

motion must be taken if the issues raised in that motion are to be considered by the Court of Appeals.”).

Changes Made After Publication and Comment. No changes were made to the text of Rule 12.1. The Appellate Rules Committee made two changes to the Note in response to public comments, and made additional changes in consultation with the Civil Rules Committee and in response to some Appellate Rules Committee members’ suggestions. The Standing Committee made two further changes to the Note.

As published for comment, the second paragraph of the Note read: “[Appellate Rule 12.1 is not limited to the Civil Rule 62.1 context; Rule 12.1 may also be used, for example, in connection with motions under Criminal Rule 33. *See United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984).] The procedure formalized by Rule 12.1 is helpful whenever relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal.” The Appellate Rules Committee discussed the Solicitor General’s concern that Appellate Rule 12.1 might be misused in the criminal context. In response, the Appellate Rules Committee deleted the second paragraph as published and substituted the following language: “The procedure formalized by Rule 12.1 is helpful when relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal. In the criminal context, the Committee anticipates that Rule 12.1’s use will be limited to newly discovered evidence motions under Criminal Rule 33(b)(1) (*see United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984)), reduced sentence motions under Criminal Rule 35(b), and motions under 18 U.S.C. §3582(c).” The Standing Committee further revised the latter sentence to read: “In the criminal context, the Committee anticipates that Rule 12.1 will be used primarily if not exclusively for newly discovered evidence motions under Criminal Rule 33(b)(1) (*see United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984)), reduced sentence motions under Criminal Rule 35(b), and motions under 18 U.S.C. §3582(c).”

As published for comment, the first sentence of the Note’s last paragraph read: “When relief is sought in the district court during the pendency of an appeal, litigants should bear in mind the likelihood that a separate notice of appeal will be necessary in order to challenge the district court’s disposition of the motion.” In response to a suggestion by Public Citizen, the Appellate Rules Committee revised this sentence to refer to a “new or amended” notice of appeal rather than a “separate” notice of appeal.

The Appellate Rules Committee, in consultation with the Civil Rules Committee, added the following parenthetical at the end of the Note’s first paragraph: “(The effect of a notice of appeal on district-court authority is addressed by Appellate Rule 4(a)(4), which lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of. The district court has authority to grant the motion without resorting to the indicative ruling procedure.)” This parenthetical is designed to forestall confusion concerning the effect of tolling motions on a district court’s power to act. The Standing Committee approved a change to the first sentence of the parenthetical; it now reads: “Appellate Rule 4(a)(4) lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of.”

The Appellate Rules Committee, acting at the suggestion of the Civil Rules Committee, altered the wording of one sentence in the first paragraph and one sentence in the fifth paragraph of the Note. The changes are designed to remove references to remands of “the action,” since those references would be in tension with the Note’s advice concerning the advisability of limited remands. Thus, in the Note’s first paragraph “if the action is remanded” became “if the court of appeals remands for that purpose,” and in the Note’s fifth paragraph “may ask the court of appeals to remand the ac-

tion” became “may ask the court of appeals to remand.”

The Appellate Rules Committee also made stylistic changes to the Note’s first and third paragraphs. “Experienced appeal lawyers” became “Experienced lawyers,” and “act in face of a pending appeal” became “act in the face of a pending appeal.”

TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT

Rule 13. Review of a Decision of the Tax Court

(a) HOW OBTAINED; TIME FOR FILING NOTICE OF APPEAL.

(1) Review of a decision of the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court’s decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court’s decision is entered.

(2) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court’s decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(b) NOTICE OF APPEAL; HOW FILED. The notice of appeal may be filed either at the Tax Court clerk’s office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to §7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(c) CONTENTS OF THE NOTICE OF APPEAL; SERVICE; EFFECT OF FILING AND SERVICE. Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) THE RECORD ON APPEAL; FORWARDING; FILING.

(1) An appeal from the Tax Court is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals. References in those rules and in Rule 3 to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

(2) If an appeal from a Tax Court decision is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

Subdivision (a). This subdivision effects two changes in practice respecting review of Tax Court decisions: (1) Section 7483 of the Internal Revenue Code, 68A Stat. 891, 26 U.S.C. §7483, provides that review of a Tax Court decision may be obtained by filing a petition for re-

view. The subdivision provides for review by the filing of the simple and familiar notice of appeal used to obtain review of district court judgments; (2) Section 7483, *supra*, requires that a petition for review be filed within 3 months after a decision is rendered, and provides that if a petition is so filed by one party, any other party may file a petition for review within 4 months after the decision is rendered. In the interest of fixing the time for review with precision, the proposed rule substitutes “90 days” and “120 days” for the statutory “3 months” and “4 months”, respectively. The power of the Court to regulate these details of practice is clear. Title 28 U.S.C. §2072, as amended by the Act of November 6, 1966, 80 Stat. 1323 (1 U.S. Code Cong. & Ad. News, p. 1546 (1966)), authorizes the Court to regulate “. . . practice and procedure in proceedings for the review by the courts of appeals of decisions of the Tax Court of the United States. . . .”

The second paragraph states the settled teaching of the case law. See *Robert Louis Stevenson Apartments, Inc. v. C.I.R.*, 337 F.2d 681, 10 A.L.R.3d 112 (8th Cir., 1964); *Denholm & McKay Co. v. C.I.R.*, 132 F.2d 243 (1st Cir., 1942); *Helvering v. Continental Oil Co.*, 63 App.D.C. 5, 68 F.2d 750 (1934); *Burnet v. Lexington Ice & Coal Co.*, 62 F.2d 906 (4th Cir., 1933); *Griffiths v. C.I.R.*, 50 F.2d 782 (7th Cir., 1931).

Subdivision (b). The subdivision incorporates the statutory provision (Title 26, U.S.C. §7502) that timely mailing is to be treated as timely filing. The statute contains special provisions respecting other than ordinary mailing. If the notice of appeal is sent by registered mail, registration is deemed prima facie evidence that the notice was delivered to the clerk of the Tax Court, and the date of registration is deemed the postmark date. If the notice of appeal is sent by certified mail, the effect of certification with respect to prima facie evidence of delivery and the postmark date depends upon regulations of the Secretary of the Treasury. The effect of a postmark made other than by the United States Post Office likewise depends upon regulations of the Secretary. Current regulations are found in 26 CFR §301.7502-1.

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

The proposed amendment reflects the change in the title of the Tax Court to “United States Tax Court.” See 26 U.S.C. §7441.

NOTES OF ADVISORY COMMITTEE ON RULES—1994 AMENDMENT

Subdivision (a). The amendment requires a party filing a notice of appeal to provide the court with sufficient copies of the notice for service on all other parties.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

REFERENCES IN TEXT

Section 7502 of the Internal Revenue Code, referred to in subd. (b), is classified to section 112 of Title 26, Internal Revenue Code.

Rule 14. Applicability of Other Rules to the Review of a Tax Court Decision

All provisions of these rules, except Rules 4–9, 15–20, and 22–23, apply to the review of a Tax Court decision.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

The proposed rule continues the present uniform practice of the circuits of regulating review of deci-

sions of the Tax Court by the general rules applicable to appeals from judgments of the district courts.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language of the rule is amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

Rule 15. Review or Enforcement of an Agency Order—How Obtained; Intervention

(a) PETITION FOR REVIEW; JOINT PETITION.

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition—using such terms as “et al.,” “petitioners,” or “respondents” does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule “agency” includes an agency, board, commission, or officer; “petition for review” includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) APPLICATION OR CROSS-APPLICATION TO ENFORCE AN ORDER; ANSWER; DEFAULT.

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 21 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) SERVICE OF THE PETITION OR APPLICATION. The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a dif-