# TITLE V

# MOTIONS

## RULE 50. GENERAL REQUIREMENTS

**(a) Form and Content of Motion:** An application to the Court for an order shall be by motion in writing, which shall state with particularity the grounds therefor and shall set forth the relief or order sought. The motion shall show that prior notice thereof has been given to each other party or counsel for each other party and shall state whether there is any objection to the motion. If a motion does not include such a statement, the Court will assume that there is an objection to the motion. Unless the Court directs otherwise, motions made during a hearing or trial need not be in writing. The rules applicable to captions, signing, and other matters of form and style of pleadings apply to all written motions. See Rules 23, 32, and 33(a). The effect of a signature on a motion shall be as set forth in Rule 33(b).

**(b) Disposition of Motions:** A motion may be disposed of in one or more of the following ways, in the discretion of the Court:

(1) The Court may take action after directing that a written response be filed. In that event, the motion shall be served upon the opposing party, who shall file such response within such period as the Court may direct. Written response to a motion shall conform to the same requirements of form and style as apply to motions.

(2) The Court may take action after directing a hearing, which normally will be held in Washington, D.C. The Court may, on its own motion or upon the written request of any party to the motion, direct that the hearing be held at some other location which serves the convenience of the parties and the Court.

(3) The Court may take such action as the Court in its discretion deems appropriate, on such prior notice, if any, which the Court may consider reasonable. The action of the Court may be taken with or without written response, hearing, or attendance of a party to the motion at the hearing.

**(c) Attendance at Hearings:** If a motion is noticed for hearing, then a party to the motion may, prior to or at the

time for such hearing, submit a written statement of such party's position together with any supporting documents. Such statement may be submitted in lieu of or in addition to attendance at the hearing.

**(d) Defects in Pleading:** Where the motion or order is directed to defects in a pleading, prompt filing of a proper pleading correcting the defects may obviate the necessity of a hearing thereon.

**(e) Postponement of Trial:** The filing of a motion shall not constitute cause for postponement of a trial. With respect to motions for continuance, see Rule 133.

**(f) Service of Motions:** The rules applicable to service of pleadings apply to service of motions. See Rule 21; for the rules applicable to service of papers in partnership actions, see Rule 246.

[1]**(g) Effect of Orders:** Orders shall not be treated as precedent, except as may be relevant for purposes of establishing the law of the case, res judicata, collateral estoppel, or other similar doctrine.

## RULE 51. MOTION FOR MORE DEFINITE STATEMENT

**(a) General:** If a pleading to which a responsive pleading is permitted or required is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, then the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. See Rules 70 and 90 for procedures available to narrow the issues or to elicit further information as to the facts involved or the positions of the parties.

**(b) Penalty for Failure of Response:** The Court may strike the pleading to which the motion is directed or may make such other order as it deems just, if the required response is not made within such period as the Court may direct.

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[1] New paragraph (g) of Rule 50 is effective as of March 1, 2008.

## RULE 52. MOTION TO STRIKE

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 30 days after the service of the pleading, or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, frivolous, or scandalous matter. In like manner and procedure, the Court may order stricken any such objectionable matter from briefs, documents, or any other papers or responses filed with the Court.

## RULE 53. MOTION TO DISMISS

A case may be dismissed for cause upon motion of a party or upon the Court's initiative.

## RULE 54. TIMELY FILING AND JOINDER OF MOTIONS [1]

**(a) Timely Filing:** Unless otherwise permitted by the Court, motions must be made timely.

**(b) Joinder of Motions:** Unless otherwise permitted by the Court, motions shall be separately stated and not joined together, except that motions may be joined in the following instances: (1) Motions under Rules 51 and 52 directed to the same pleading or other paper; and (2) motions under Rule 56 for the review of a jeopardy assessment and for the review of a jeopardy levy, but only if the assessment and the levy are the subject of the same written statement required by Code section 7429(a)(1).

## RULE 55. MOTION TO RESTRAIN ASSESSMENT OR COLLECTION OR TO ORDER REFUND OF AMOUNT COLLECTED

[2]A motion to restrain assessment or collection or to order refund of any amount collected may be filed with the Court only where a timely petition has been filed with the Court. See Code secs. 6015(e)(1)(B)(ii), 6213(a), 6225(b), 6246(b),

[1] The amendments are effective as of March 1, 2008.

[2] The amendments are effective as of October 3, 2008.

6330(e), 7436(d). For the rules applicable to captions, signing, and other matters of form and style of motions, see Rule 50(a).

## RULE 56. MOTION FOR REVIEW OF JEOPARDY ASSESSMENT OR JEOPARDY LEVY

**(a) Commencement of Review:** (1) *How Review Is Commenced:* Review of a jeopardy assessment or a jeopardy levy under Code section 7429(b) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of a then-pending action under Code section 6213(a) which provides the jurisdictional nexus for review required by Code section 7429(b)(2)(B). The motion shall be styled "Motion for Review of Jeopardy Assessment" or "Motion for Review of Jeopardy Levy", as may be appropriate. As to joinder of such motions, see Rule 54(b).

(2) *When Review Is Commenced:* The motion under subparagraph (1) shall be filed within the time provided by Code section 7429(b)(1).

**(b) Service of Motion:** A motion filed with the Court pursuant to this Rule shall be served by the petitioner on counsel for the Commissioner (as specified in Rule 21(b)(1)) in such manner as may reasonably be expected to reach the Commissioner's counsel not later than the day on which the motion is received by the Court.

**(c) Content of Motion:** A motion filed pursuant to this Rule shall contain the following:

(1) A statement whether the petitioner contends that:

(A) The making of the assessment in respect of which the motion is filed was not reasonable under the circumstances;

(B) the amount so assessed or demanded is not appropriate under the circumstances; or

(C) the levy in respect of which the motion is filed was not reasonable under the circumstances.

(2) As to each contention in paragraph (c)(1) of this Rule:

(A) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner; and

(B) clear and concise lettered statements of the facts on which the petitioner bases the assignments of error.

(3) As to the contention in paragraph (c)(1)(B) of this Rule, a statement of the amount, if any, that would be appropriate under the circumstances.

(4) A statement whether the petitioner requests an evidentiary or other hearing on the motion, and if so, the reasons why. For the place of hearing, see paragraph (e) of this Rule.

(5) A list identifying by caption and number all other dockets in which the motion could have been filed if more than one then-pending action for the redetermination of a deficiency under Code section 6213(a) provides the jurisdictional nexus for review required by Code section 7429(b)(2)(B).

(6) A copy of:

(A) The written statement required to be furnished to the petitioner under Code section 7429(a)(1), together with any notice or other document regarding the jeopardy assessment or jeopardy levy that may have been served on the petitioner by the Commissioner and in respect of which the motion is filed;

(B) the request for administrative review made by the petitioner under Code section 7429(a)(2); and

(C) the determination made by the Commissioner under Code section 7429(a)(3).

(7) A certificate showing service of the motion in accordance with paragraph (b) of this Rule.

**(d) Response by Commissioner:** (1) *Content:* The Commissioner shall file a written response to a motion filed pursuant to this Rule. The response shall contain the following:

(A) A specific admission or denial of each allegation in the motion, arranged in paragraphs that are designated to correspond to those of the motion to which they relate.

(B) A clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies.

(C) A statement whether the Commissioner requests a hearing on the motion, and if so, the reasons why.

(D) A copy of:

(i) The written notification to the Court required by Code section 6861(c); and

(ii) any item required for consideration of the basis of the petitioner's motion, if that item has not been attached to the petitioner's motion.

(E) A certificate showing service of the response in accordance with subparagraph (2) of this paragraph.

(2) *Time for and Service of Response*: The response required by paragraph (d)(1) of this Rule shall be received by the Court not later than 10 days after the date on which the petitioner's motion is received by the Court. Said response shall be served by the Commissioner in such manner as may reasonably be expected to reach the petitioner or the petitioner's counsel (as specified in Rule 21(b)(2)) not later than the day on which the response is received by the Court.

[1]**(e) Place of Hearing:** If required, a hearing on the motion filed pursuant to this Rule will ordinarily be held at the place of trial previously requested in accordance with paragraph (a) of Rule 140 unless otherwise ordered by the Court.

## RULE 57. MOTION FOR REVIEW OF PROPOSED SALE OF SEIZED PROPERTY

**(a) Commencement of Review:** (1) *How Review Is Commenced:* Review of the Commissioner's determination under Code section 6863(b)(3)(B) that seized property may be sold shall be commenced by filing a motion with the Court. The movant shall place on the motion the same docket number as that of the then-pending action under Code section 6213(a) in respect of which the sale of seized property is stayed by virtue of Code section 6863(b)(3)(A)(iii). If filed by the petitioner, the motion shall be styled "Motion to Stay Proposed Sale of Seized Property—Sec. 6863(b)(3)(C)". If filed by the Commissioner, the motion shall be styled "Motion to Authorize Proposed Sale of Seized Property—Sec. 6863(b)(3)(C)".

(2) *When Review Is Commenced:* (A) *Proposed Sale Not Scheduled:* If a date for a proposed sale has not been

[1] The amendment is effective as of March 1, 2008.

scheduled, then the Commissioner may file the motion under subparagraph (1) at any time.

(B) *Proposed Sale Scheduled:* (i) *In General:* If a date for a proposed sale has been scheduled, then the movant shall file the motion under subparagraph (1) not less than 15 days before the date of the proposed sale and not more than 20 days after receipt of the notice of sale prescribed by Code section 6335(b).

(ii) *Motion Not Filed Within Prescribed Period:* If the motion under subparagraph (1) is filed less than 15 days before the date of the proposed sale or more than 20 days after receipt of the notice of sale prescribed by Code section 6335(b), then an additional statement shall be included in the motion as provided by paragraph (c)(3) of this Rule. A motion not filed within the period prescribed by subparagraph (2)(B)(i) shall be considered dilatory unless the movant shows that there was good reason for not filing the motion within that period. As to the effect of the motion's being dilatory, see paragraph (g)(4) of this Rule.

**(b) Service of Motion: (1)** *By the Petitioner:* A motion filed with the Court pursuant to this Rule shall be served by the petitioner on counsel for the Commissioner (as specified in Rule 21(b)(1)) in such manner as may reasonably be expected to reach the Commissioner's counsel not later than the day on which the motion is received by the Court.

(2) *By the Commissioner:* A motion filed with the Court pursuant to this Rule shall be served by the Commissioner on the petitioner or on the petitioner's counsel (as specified in Rule 21(b)(2)) in such manner as may reasonably be expected to reach the petitioner or the petitioner's counsel not later than the day on which the motion is received by the Court.

**(c) Content of Motion:** A motion filed pursuant to this Rule shall contain the following:

(1) The time and place of the proposed sale.

(2) A description of the property proposed to be sold, together with a copy of the notice of seizure prescribed by Code section 6335(a) and the notice of sale prescribed by Code section 6335(b).

(3) If the motion is filed less than 15 days before the date of the proposed sale or more than 20 days after re-

ceipt of the notice of sale prescribed by Code section 6335(b), as the case may be, a statement of the reasons why review was not commenced within the prescribed period.

(4) A statement that the petitioner does not consent to the proposed sale.

(5) A statement whether the property proposed to be sold—

(A) is or is not likely to perish;

(B) is or is not likely to become greatly reduced in price or value by keeping; and

(C) is or is not likely to be greatly expensive to conserve or maintain.

(6) The movant's basis for each statement in subparagraph (5) that the movant expressed in the affirmative, together with any appraisal, affidavit, valuation report, or other document relied on by the movant to support each statement.

(7) A statement whether the movant requests an evidentiary or other hearing on the motion, and if so, the reasons why. For the place of hearing, see paragraph (f) of this Rule.

(8) A certificate showing service of the motion in accordance with paragraph (b) of this Rule.

**(d) Response to Motion:** (1) *Content:* The petitioner or the Commissioner, as the case may be, shall file a written response to a motion filed pursuant to this Rule. The response shall contain the following:

(A) A specific admission or denial of each allegation in the motion arranged in paragraphs that are designated to correspond to those of the motion to which they relate.

(B) A clear and concise statement of every ground, together with the facts in support thereof, on which the responding party relies.

(C) A statement whether the responding party requests a hearing on the motion, and if so, the reasons why.

(D) A copy of:

(i) Any appraisal, affidavit, valuation report, or other document relied on by the responding party; and

(ii) any item required for consideration of the basis of the movant's motion, if that item has not been attached to the movant's motion.

(E) A certificate showing service of the response in accordance with subparagraph (2) of this paragraph.

(2) *Time for and Service of Response:* The response required by paragraph (d)(1) of this Rule shall be received by the Court not later than 10 days after the date on which the movant's motion is received by the Court. This response shall be served in such manner as may reasonably be expected to reach the movant or the movant's counsel (as specified in Rule 21(b)(1) or Rule 21(b)(2), as the case may be) not later than the day on which the response is received by the Court.

**(e) Effect of Signature:** The provisions of Rule 33(b), relating to the effect of the signature of counsel or a party, shall apply to a motion filed pursuant to this Rule and to the response required by paragraph (d) of this Rule.

[1]**(f) Place of Hearing:** If required, a hearing on a motion filed pursuant to this Rule will ordinarily be held at the place of trial previously requested in accordance with paragraph (a) of Rule 140 unless otherwise ordered by the Court. For the manner in which the Court may dispose of such a motion, see paragraph (g)(3) of this Rule.

**(g) Disposition of Motion:** (1) *General:* A motion filed pursuant to this Rule may be disposed of in one or more of the following ways, in the discretion of the Court:

(A) The Court may:

(i) Authorize, or decline to stay, the proposed sale; or

(ii) stay the proposed sale temporarily until the Court has had an adequate opportunity to consider the motion.

(B) The Court may stay the proposed sale until a specified date or event, or for a specified period, or until further application is made for a sale, or any combination of the foregoing.

(C) The Court may stay the proposed sale until specified undertakings or safeguards are effectuated.

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[1] The amendment is effective as of March 1, 2008.

(D) The Court may provide such other temporary, extended, or permanent relief as may be appropriate under the circumstances.

(2) *Evidence:* In disposing of a motion filed pursuant to this Rule, the Court may consider such appraisals, affidavits, valuation reports, and other evidence as may be appropriate, giving due regard to the necessity of acting on the motion within a brief period of time.

(3) *Disposition on Motion Papers or Otherwise:* The Court may dispose of a motion filed pursuant to this Rule on the motion papers, or after an evidentiary hearing or oral argument, or may require legal memoranda, or any combination of the foregoing that the Court deems appropriate. For the place of hearing, see paragraph (f) of this Rule.

(4) *Dilatory Motions:* The fact that a motion filed pursuant to this Rule is dilatory within the meaning of paragraph (a)(2)(B)(ii) of this Rule shall be considered by the Court in disposing of the motion.

## RULE 58. MISCELLANEOUS

For reference in the Rules to other motions, see Rules 25(c) (extension of time), 40 (defenses made by motion), 41 (amendment of pleadings), 63 (substitution of parties), 71(c) (answers to interrogatories), 81(b) (depositions), 90(e) (requests for admission), 91(f) (stipulations), 121(a) (summary judgment), 123(c) (setting aside default or dismissal), 133 (continuances), 140(c) (place of trial), 141 (consolidation and separation), 151(c) (delinquent briefs), 157 (retention of official case file in estate tax case involving election under Code section 6166), 161 (reconsideration), 162 (vacating or revising decision), 231 (reasonable litigation and administrative costs), 260 (enforcement of overpayment determination), 261 (redetermination of interest on deficiency), and 262 (modification of decision in estate tax case involving election under Code section 6166).