

8610.0070 MOTION PRACTICE.

Subpart 1. **Scope and application.** Except as otherwise provided in Minnesota Statutes, chapters 271 and 278, this part governs pretrial motion practice before the tax court, other than motions to continue or motions to consolidate.

Subp. 2. **Definitions.** Motions are either dispositive or nondispositive, as defined in items A and B.

A. "Dispositive motions" are motions that seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment, and motions under Minnesota Rules of Civil Procedure 12.02 (a)-(f).

B. "Nondispositive motions" are all other motions, including, but not limited to, discovery, third party practice, temporary relief, intervention, and amendment of pleadings.

Subp. 3. **Time.** The time limits in this part are to provide the tax court adequate opportunity to prepare for and promptly rule on matters, and the tax court may modify the time limits. The time allowed for summary judgment motions, however, may not be less than the time established by Minnesota Rules of Civil Procedure 56.03. If this part requires documents to be filed with the tax court administrator within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following:

A. three days must be added to the prescribed period; and

B. filing may not be considered timely unless the documents are deposited in the mail within the prescribed period.

Minnesota Rules of Civil Procedure, 5.02 and 6.05, apply regarding service of documents by mail.

Subp. 4. **Obtaining hearing date; notice to parties.** A hearing date and time must be obtained from the tax court administrator. A party obtaining a date and time for a hearing on a motion or for any other calendar setting, shall promptly give notice advising all other parties who have appeared in the action so that cross motions may, insofar as possible, be heard on a single hearing date. The notice to the other parties must contain a statement describing the nature of the motion and the relief sought.

Subp. 5. **Dispositive motions.**

A. No dispositive motion may be heard until the moving party serves a copy of the following documents on opposing counsel or party if that party is pro se and files the original with the tax court administrator at least 28 days prior to the hearing:

- (1) notice of motion and motion;
- (2) proposed order;

(3) any affidavits and exhibits to be submitted in conjunction with the motion; and

(4) memorandum of law.

B. The party responding to the motion shall serve a copy of the following documents on opposing counsel or party if that party is pro se and shall file the originals with the tax court administrator at least nine days prior to the hearing:

(1) memorandum of law; and

(2) any supplementary affidavits and exhibits to be submitted in conjunction with the response.

C. The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel or party if that party is pro se and filing the original with the tax court administrator at least three days before the hearing.

D. For summary judgment motions, the memorandum of law must include:

(1) A statement by the moving party of the issues involved that are the grounds for the motion for summary judgment.

(2) A statement identifying all documents, such as depositions or excerpts of depositions, pleadings, exhibits, admissions, interrogatory answers, and affidavits, which comprise the record on which the motion is made. Opposing parties shall identify in their responding memorandum of law any additional documents on which they rely.

(3) A recital by the moving party of the material facts that are not in genuine dispute, with a specific citation to that part of the record supporting each fact, such as deposition page and line or page and paragraph of an exhibit. A party opposing the motion shall make a similar recital of any material facts claimed to be in dispute.

(4) The party's argument and authorities. Subitem (3) is excluded from the page limitations of subpart 7.

Subp. 6. Nondispositive motions.

A. No nondispositive motion may be heard until the moving party serves a copy of the following documents on opposing counsel or party if that party is pro se and files the original with the tax court administrator at least 14 days prior to the hearing:

(1) notice of motion and motion;

(2) proposed order;

(3) any affidavits and exhibits to be submitted in conjunction with the motion; and

(4) any memorandum of law.

B. The party responding to the nondispositive motion shall serve a copy of the following documents on opposing counsel or party if that party is pro se and shall file the original with the tax court administrator at least seven days prior to the hearing:

(1) a memorandum of law; and

(2) any relevant affidavits and exhibits to be submitted in conjunction with the response.

C. The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel or party if that party is pro se and filing the original with the tax court administrator at least three days before the hearing.

Subp. 7. **Page limits.** No memorandum of law submitted in connection with either a dispositive or nondispositive motion may exceed 35 pages, exclusive of the recital of facts required for each motion, except with permission of the tax court. For motions involving discovery requests, the moving party's memorandum must set forth only the particular discovery requests and the response or objection to them which are the subject of the motion, and a concise recitation of why the response or objection is improper. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum must not exceed 35 pages, except with permission of the tax court.

Subp. 8. **Failure to comply.** If the moving papers are not properly served and filed, the hearing may be canceled by the tax court. If responsive papers are not properly served and filed in a nondispositive motion, the tax court may consider the motion unopposed and may grant the relief requested without a hearing. For a dispositive motion, the tax court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may allow reasonable attorney's fees, or may take other appropriate action.

Subp. 9. **Relaxation of time limits.** If irreparable harm will result without immediate action by the court, or if the interests of justice otherwise require, the tax court may waive or modify the time limits established by this part.

Subp. 10. **Witnesses.** No testimony will be taken at motion hearings except under unusual circumstances. A party seeking to present witnesses at a motion hearing must obtain prior consent of the tax court and must notify the adverse party in the motion papers of the names and addresses of the witnesses that party intends to call at the hearing.

Subp. 11. **Telephone hearings.** If a motion is authorized by the tax court to be heard by telephone conference call, the moving party shall either initiate the conference call or comply with the court's instructions on initiation of the conference call. Dispositive motions must be recorded. Nondispositive motions may be recorded at the request of either party

or on motion of the tax court. "Recorded" for this purpose means by tape recording or by a court reporter, as determined by the tax court.

Statutory Authority: *MS s 271.06*

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