

Minnesota Tax Court**Proposed Permanent Rules and Amendments to Rules of Tax Court Procedure****8610.0020 PRACTICE BEFORE TAX COURT BY NONRESIDENT LAWYERS.**

[For text of subpart 1, see Minnesota Rules]

Subp. 2. **Motion to oppose; denial of privilege.** No later than 30 days before the first scheduled hearing on the matter, opposing counsel may move the tax court for a hearing to oppose the practice of the nonresident lawyer before the tax court. The opposing counsel has the burden of establishing cause to deny the nonresident lawyer the privilege of practicing before the tax court. This hearing may be conducted by telephone or remote technology. Failure of opposing counsel to respond within the specified time period waives opposing counsel's right to contest the nonresident lawyer's practice before the tax court. The tax court may, for cause, deny the nonresident lawyer the privilege of practicing before the tax court.

[For text of subpart 3, see Minnesota Rules]

8610.0030 EXTENSION OF TIME TO APPEAL FROM AN ORDER OF COMMISSIONER OF REVENUE.

A request for an extension of time to appeal from an order of the commissioner of revenue should be made to the tax court either by telephone, by email, or by mail to the main office of the tax court in St. Paul, Minnesota.

If the request for an extension of time is received within 60 days of the making and filing of the order, the tax court will extend the time to appeal for an additional 30 days. If the request for an extension is made more than 60 days after the making and filing of the order, the tax court may, for cause shown, extend the time for appeal to a date not more than 90 days from the date of the making and filing of the order of the commissioner. A request for an extension made more than 60 days after the making and filing of the order must explain why the extension was not requested within the original 60-day period.

8610.0070 MOTION PRACTICE.

[For text of subparts 1 to 10, see Minnesota Rules]

Subp. 11. **Telephone and remote 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.~~ If a motion is authorized by the tax court to be heard by remote technology or telephone conference call, the parties must comply with the court's instructions for joining a remote or telephonic proceeding. Dispositive motions must be transcribed. Nondispositive motions may be transcribed at the request of either party or the tax court.

8610.0080 MOTIONS TO RECONSIDER.

Motions to reconsider are prohibited except by express permission of the tax court, which will be granted only upon a showing of compelling circumstances. Requests to make a motion and any responses to such requests must be made only by letter to the tax court of no more than two pages in length, a copy of which must be served on all opposing counsel and self-represented litigants.

Nothing in this part alters or tolls any deadlines established by statute, including the deadlines for obtaining appellate review of any order of the tax court.

8610.0100 STIPULATION OF FACTS.

The parties may stipulate ~~in writing~~ to any or all questions of fact involved in the appeal or petition. ~~An original and one copy of the stipulation must be filed with the tax court.~~ Any written stipulation of fact must be filed with the tax court. Any oral stipulation of fact must be placed on the record.

8610.0110 SUBMISSION WITHOUT HEARING.

If all parties to an appeal or petition by written stipulation waive their right to a public hearing, the parties may submit the matter to the tax court on written stipulation of facts and briefs. After the submission the court may, in its discretion, require appearance for the taking of further testimony or for oral argument. If an appearance is required, written notice must be ~~given by mail~~ provided to all parties at least ten days before the hearing.

8610.0130 DOCUMENTARY EVIDENCE.

If originals of books, documents, records, or other papers have been received in evidence, a copy of them, or of so many of them as may be material or relevant, may in the discretion of the court be substituted. Copies of documents will be admitted as evidence under the Rules of Evidence.

Originals of books, documents, records, diagrams, or other exhibits introduced in evidence before the court may be withdrawn from the custody of the court in the manner and upon the terms the court in its discretion prescribes.

~~An original and one copy of all exhibits must be furnished to the court, and a copy must be furnished to opposing counsel or the opposing party if the party is pro se.~~

8610.0150 REQUEST FOR COSTS AND DISBURSEMENTS.

No later than 90 days after the date of a final order of the tax court, a party may file and serve a motion that costs and disbursements be granted to the prevailing party in the case of a commissioner of revenue matter under Minnesota Statutes, chapter 271, or be included in the judgment in the case of a real estate tax appeal under Minnesota Statutes, chapter 278. The ~~moving party~~ motion must ~~file an affidavit with the tax court~~ be supported by an affidavit outlining the basis for granting costs and itemizing the ~~items and~~ amounts ~~to be granted~~ requested. The moving party shall serve a copy of the affidavit on the other party to the action and file proof of service with the tax court. Within ten days of being

~~served, the other party must notify the moving party and the tax court of any objection to the request for costs and disbursements and the basis of the objection. The objection to an award must clearly state the basis of the objection and copies of the objection must be served on the moving party and proof of service filed with the tax court.~~ non-moving party must file and serve any objection to the request for costs and disbursements. The tax court may order a hearing within 20 days of receiving an objection to determine whether costs and disbursements will be awarded. The hearing may be conducted by telephone or remote technology at the court's discretion. Failure to respond within the ten-day period waives the ~~other~~ non-moving party's right to contest awarding costs.

8610.0160 E-FILE AND E-SERVICE.

Subpart 1. **Definitions.** The terms used in this part have the meanings given to them in this subpart.

A. "Confidential document" means a document that will not be accessible to the public, but will be accessible to tax court personnel and, if applicable, to certain governmental entities as authorized by law, court rule, or court order.

B. "Conventionally" means the filing or serving of documents or other materials through authorized means other than through the e-filing system in accordance with this part.

C. "Designated provider" means the electronic filing service provider designated by the tax court administrator.

D. "Designated email address" has the meaning set forth in subpart 5.

E. "E-filing system" means the designated provider's Internet-accessible electronic filing and service system.

F. "Electronic means" means transmission using computers or similar means of transmitting documents electronically, including facsimile transmission.

G. "Registered user" means a person registered with the designated provider and authorized to file and serve documents electronically through the e-filing system under this part.

H. "Select users" means the following persons appearing or submitting documents in a case:

(1) attorneys admitted to practice and in good standing in the courts of Minnesota;

(2) attorneys appearing in the tax court under part 8610.0020; and

(3) for purposes of notices of appeal from orders of the commissioner of revenue in the Small Claims Division only, a duly authorized employee of the commissioner of revenue.

I. "Self-represented litigant" means an individual, other than a licensed attorney, who represents themselves in a case or proceeding before the tax court.

Subp. 2. **Scope of mandatory and voluntary e-file and e-service.** Unless otherwise authorized by this part, other rules of court, or court order, select users must file all documents electronically with the tax court through the e-filing system and must serve documents electronically through the e-filing system as required under subpart 6, item C.

Subp. 3. **E-service of e-filed documents only.** Documents not filed may not be e-served through the e-filing system. Unless discovery material is properly filed with the tax court, such discovery material may not be served using the e-filing system.

A. **Request for exception to mandatory e-file and e-service requirement.** A select user required to file and serve electronically may request to be excused from mandatory e-filing and e-service in a particular case, or with respect to a particular document, by motion to the presiding judge. An opt out request may be granted for good cause shown.

B. Self-represented litigants voluntary and mandatory e-file and e-serve.

(1) Election to use e-filing system. Unless otherwise required by tax court order, a self-represented litigant may elect to use the e-filing system to electronically file and serve documents. Unless otherwise ordered by the presiding judge, a self-represented litigant is not required to use the e-filing system. If a self-represented litigant has elected or been ordered to use the e-filing system and has become a registered user, that individual must electronically file and serve all documents in that case through the e-filing system unless otherwise required or authorized by this part or the tax court. Registered users are subject to all applicable requirements and obligations as set forth in this part.

(2) Excuse and prohibition. A self-represented litigant who has elected to use the e-filing system may be excused from the requirement to electronically file and serve only upon request to and at the discretion of the presiding judge.

(3) Misuse. If the tax court becomes aware of any misuse of the e-filing system by a self-represented litigant or determines it appropriate in the exercise of discretion, considering the need for the just, speedy, and inexpensive determination of every action, the tax court may, without prior notice, revoke the self-represented litigant's right to use the e-filing system in the case and require the individual to file and serve all documents conventionally.

C. Case initiating documents. Minnesota Statutes, chapters 271 and 278, govern the service of certain case-initiating documents by conventional means, or the filing of case-initiating documents other than by e-filing in the tax court. Nothing in this subpart or chapter 8610 supersedes statutes governing filing and service.

Subp. 4. Relief from operation of this part.

A. Technical errors; relief for sending party. Upon motion and a showing that electronic filing or electronic service of a document was not completed because of:

- (1) an error in the transmission of the document to the e-filing system;
- (2) a failure of the e-filing system to process the document when received;

or

(3) other technical problems experienced by the sending party or e-filing system, the tax court may enter an order permitting the document to be deemed filed or served on the date and time it was first attempted to be transmitted electronically. If appropriate, the tax court may adjust the schedule for responding to these documents or the tax court's hearing.

B. Technical errors; relief for other parties. Upon motion and a showing that an electronically served document was unavailable to or not received by a party served, the tax court may enter an order extending the time for responding to that document.

Subp. 5. Registration process and duty to designate email address for service.

A. Becoming a registered user. Only a registered user may electronically file or serve documents through the e-filing system. To become a registered user, a select user or self-represented litigant must complete the registration process, as established by the tax court administrator, and must designate an email address for receipt of electronic service and tax court notices. Registration as a registered user includes consent to receive electronic service and notices from the tax court and other registered users in the case through the e-filing system at a designated email address. This designated email address may also be used by the tax court, but not other parties, to deliver official tax court notices by means other than the e-filing system.

B. Obligations and responsibilities of registered users.

(1) A registered user is responsible for all documents filed or served under the registered user's username and password.

(2) If a registered user knows their login information has been misappropriated, misused, or compromised in any way, they must promptly notify the tax court and change their password.

(3) The court must deem any electronic transmission, downloading, or viewing of an electronic document under a registered user's username and password to have been made with the authorization of that registered user unless and until proven otherwise by a preponderance of the evidence.

(4) A registered user shall maintain a designated email address for receiving electronic service and tax court notices for the duration of any case in which the registered user has electronically transmitted a document for filing as a party or person and until all applicable appeal periods have expired. A registered user shall ensure the designated email address and account are current, monitored regularly, have not exceeded any storage limitation, and that all notices and document links transmitted to the designated email account are timely opened and reviewed.

(5) A registered user may not designate email addresses for any other person or party who is not the registered user's client, law firm staff, or co-counsel. The tax court may impose a sanction against any registered user who violates this subpart. It shall not be a violation for a registered user to select service recipients who have been added to the service list for a case by another registered user when filing or serving documents using the e-filing system.

Subp. 6. Filing and service of documents and tax court notices.

A. Filed upon transmittal if accepted. If it is subsequently accepted by the tax court administrator, a document that is electronically filed is deemed to have been filed on the date and time of its transmittal to the tax court through the e-filing system, and except for proposed orders, the filing shall be stamped with this date and time. Acceptance of electronic filings is governed by rule 5.04(c) of the Minnesota Rules of Civil Procedure. If

the filing is not subsequently accepted by the tax court administrator, no date stamp shall be applied and the e-filing system shall notify the filer that the filing was not accepted. Upon receipt of a document electronically transmitted for filing by a registered user, the e-filing system shall confirm to the registered user that the transmission of the document was completed and the date and time of the document's receipt, through an automatically generated notification to the registered user's designated email address. Absent confirmation of receipt, there is no presumption that the document was successfully transmitted to the tax court. The registered user is solely responsible for verifying that the tax court received all electronically transmitted documents.

B. Effective time of filing. Any document electronically transmitted to the tax court through the e-filing system for filing by 11:59 p.m. local Minnesota time shall be deemed filed on that date so long as the document is not subsequently rejected for filing by the tax court administrator for a reason authorized by rule 5.04 of the Minnesota Rules of Civil Procedure.

C. Service by registered users. Unless personal service is otherwise required by statute, this part, other rules of court, or court order, a registered user shall serve all e-filed documents required or permitted to be served upon another party or person in the following manner:

(1) **Service on registered users.** Except as otherwise permitted in subpart 3, if the party or person to be served is a registered user, service shall be accomplished by using the electronic service function of the e-filing system.

(2) **Service on other parties or persons.** If the party or person to be served is not a registered user but has agreed to service by electronic means outside the e-filing system, such as by email, service may be made in the agreed upon manner. The presiding judge may also order that service on the non registered user be made by electronic means

outside of the e-filing system. If service by electronic means is not required or permitted, another method of service authorized under applicable rules or law must be used.

D. **Effective date of service.** Service via the e-filing system is effective upon completion of the electronic transmission of the document to the e-filing system, even if the document is subsequently rejected for filing by the tax court administrator.

E. **Tax court notices.** The tax court may transmit any document or notice to a registered user through the e-filing system. Notice is effective upon transmission of the document or notice to the e-filing system by the tax court. The tax court may also transmit notices outside the e-filing system as provided in subpart 5, item A, or other applicable rules.

F. **Document requirements and format.** Unless otherwise authorized by this part, other rules of court, or court order, all documents filed electronically must conform to the document technical and size requirements as established by the tax court. Such technical and size requirements may be described from time to time in the General Order: e-filing and e-service, which shall be posted on the tax court website.

G. **Nonconforming documents.** If it is not feasible for a registered user to convert a document to an authorized electronic form by scanning, imaging, or other means, or when a document cannot reasonably be transmitted through the e-filing system in conformance with technical and size requirements as established by the tax court, the tax court may allow the registered user to file the document conventionally. A motion to file a nonconforming document must be filed electronically. If the tax court grants the registered user's motion to file a nonconforming document, the registered user shall file and serve the nonconforming document conventionally.

Subp. 7. Signatures.

A. Judge and administrator signatures. All electronically filed and served documents that require a judge's or tax court administrator's signature shall either capture the signature electronically or begin with a handwritten signature on paper that is then converted to electronic form by scanning, imaging, or other means such that the final electronic document has the judge's or tax court administrator's signature depicted thereon. The final electronic document shall constitute an original.

B. Registered user and nonregistered user signatures.

(1) Registered users. Any document electronically filed or served through the e-filing system that requires the signature of the registered user filing or serving the document shall be deemed to have been signed by the registered user and shall bear the facsimile or typographical signature of the person, along with the typed name, address, telephone number, designated email address, and, if applicable, attorney registration number of a signing attorney. The typographical or facsimile signature of a registered user shall be considered the functional equivalent of an original, handwritten signature produced on paper. A typographical signature shall be in the form: /s/ Pat L. Smith.

(2) Nonregistered users. Any document electronically filed or served through the e-filing system that requires the signature of a person who is not the registered user filing or serving the document shall bear the typed name, along with the facsimile or typographical signature, of the person. The typographical or facsimile signature of a nonregistered user shall be considered the functional equivalent of an original, handwritten signature produced on paper. A typographical signature shall be in the form: /s/ Pat L. Smith.

C. Notary signature, stamp. Unless specifically required by court rule, all documents, including affidavits, electronically filed or served through the e-filing system are not required to be notarized. When a signature under penalty of perjury is otherwise required, the provisions of item D apply. A document electronically filed or served through

the e-filing system that by court rule specifically requires a signature of a notary public shall be deemed signed by the notary public if, before filing or service, the notary public has signed a printed or electronic form of the document and the electronically filed or served document bears a facsimile or typographical notary signature and stamp.

D. **Perjury penalty acknowledgment.** A document electronically filed or served through the e-filing system that requires a signature under penalty of perjury may, with the same force and effect and in lieu of an oath, be supported by an unsworn declaration. The typographical or facsimile signature of the declarant must be affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed must be noted on the document.

E. **Certification.** By electronically filing or serving a document through the e-filing system, the registered user certifies compliance with the signature requirements of this part for all signatures on the document, and the signatures on the document are the functional equivalent of original, handwritten signatures produced on paper.

Subp. 8. **Proof of service.** When a document is both e-filed and e-served together using the e-filing system, the records of the e-filing system indicating transmittal to the registered user recipient shall be sufficient proof of service on the recipient for all purposes.

Subp. 9. **Submission of nonpublic information; e-filing system.**

A. **Filer's duty to designate as confidential.** If a registered user electronically files a document that is not accessible to the public in whole or in part under any applicable law, court rule, or court order, the registered user is responsible for designating that document as confidential in the e-filing system before transmitting it to the court. This designation is made in the e-filing system by selecting the box "Request Confidential" and by providing the basis for nonpublic status. A registered user must seek advance approval from the tax

court to transmit a document for filing designated as confidential if that document is not already inaccessible to the public under any applicable law, court rule, or court order. The registered user must separate all nonpublic documents from public documents when filing.

B. Correction of designation by the court. The tax court may modify the designation of any document incorrectly designated as confidential and shall provide prompt notice of any change to the registered user who filed the document.

C. Filing confidential document in paper form. A confidential document may be filed in paper form if required or permitted by the tax court. A motion to file a confidential document in paper form must be filed and served electronically.

Subp. 10. **Records: official; supreme court appeal; certified copies.** Both documents filed electronically and paper documents filed conventionally but converted into electronic form by the tax court are official tax court records for all purposes. Certified copies may be issued in the conventional manner or in any manner authorized by law, but no certified copies shall be made of any proposed orders. Unless otherwise provided in this part or by tax court order, a conventionally filed paper document need not be maintained or retained by the tax court after the court digitizes, records, scans, or otherwise reproduces the document into an electronic record, document, or image.

8610.0170 VOLUNTARY ALTERNATIVE DISPUTE RESOLUTION.

Subpart 1. **Application of rule.** Cases pending in the tax court may be submitted, by agreement of all parties to the dispute, to voluntary alternative dispute resolution ("ADR"). The provisions of subparts 2, item B, and 3 apply exclusively to ADR provided by a current judge of the tax court as described in subpart 2, item A, subitem (1).

Subp. 2. **Selection of neutral.**

A. Selection by parties or by tax court. If the parties have agreed to voluntary ADR, the parties may elect to proceed either with:

(1) voluntary mediation by a current judge of the tax court who is not assigned to hear their case serving as neutral ("tax court mediation"); or

(2) another ADR process of the parties' agreement.

The scheduling order may establish a deadline for the completion of the ADR process.

B. **Compensation.** Tax court judges serving as neutrals in tax court mediation consent to the jurisdiction of the ADR Review Board and compliance with the Code of Ethics set forth in the Appendix to Rule 114 of the General Rules of Practice for the District Courts. No current judge of the tax court may receive any form of compensation for serving as a neutral in tax court mediation.

Subp. 3. **Attendance at mediation.**

A. **Privacy.** Tax court mediation is not open to the public except with the consent of all parties.

B. **Attendance.** An individual with the authority to settle the case on behalf of each party must attend tax court mediation, unless otherwise authorized by the tax court. The tax court may require that the attorneys who will try the case attend tax court mediation.

C. **Sanctions.** The tax court may impose sanctions, including attorney fees and costs, for failure to attend scheduled tax court mediation.

Subp. 4. **Confidentiality.**

A. **Evidence; inadmissibility.** As provided by Minnesota Statutes, section 595.02, or without the consent of all parties and an order of the tax court, statements made and documents produced in nonbinding ADR processes, such as mediation under this part that are not otherwise discoverable are not subject to discovery or other disclosure. Such evidence is inadmissible for any purpose at trial, including impeachment.

B. **Records of neutral.** Notes, records, and recollections of the neutral are confidential, which means they may not be disclosed to the parties, the public, or anyone other than the neutral, unless:

(1) all parties and the neutral agree to disclosure, or

(2) disclosure is required by law or other applicable professional codes. No record shall be made without the parties' agreement, except for a memorandum of issues that are resolved.

Subp. 5. **Communication with mediator and presiding judge.**

A. **Tax court mediation.** Parties and their counsel may communicate ex parte with the neutral in a tax court mediation, so long as the communication relates directly to the substance of the mediation and encourages or facilitates settlement.

B. **Communications to presiding judge during mediation.** During mediation the presiding judge may be informed only of the following:

(1) the failure of a party or an attorney to comply with the order to attend the process;

(2) any request by the parties for additional time to complete mediation;

(3) with the written consent of the parties, any procedural action by the tax court that would facilitate mediation; and

(4) the neutral's assessment that the case is inappropriate for mediation.

C. **Communications to presiding judge after mediation.** When mediation has concluded, the presiding judge may be informed only of the following:

(1) if the parties do not reach an agreement on any matter, the neutral must report the lack of an agreement to the presiding judge, including by entry on docket, without comment or recommendation, subject to subitem (3);

(2) if the parties reach an agreement, the final settlement; and

(3) with the written consent of the parties, the neutral's report also may identify any pending motion or outstanding legal issue, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of settlement.