

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

**N o t i c e**  
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CC-2003-011

March 31, 2003

Subject: Change to the Tax Court's Standing Pretrial Order      Cancellation Date: Until Incorporation Into The CCDM

On February 10, 2003, the United States Tax Court announced that it had adopted changes to the format for the Standing Pretrial Order used in connection with Notices Setting Cases for Trial. This new format will be used by the Tax Court commencing with the Fall 2003 Trial Sessions. While the new Standing Pretrial Order incorporates many of the procedures in the current Standing Pretrial Order, there are some changes, which are discussed below. In order to be compliant with the Court's procedures, those who practice in the Tax Court should read the new Standing Pretrial Order and understand the new procedures. Attached to this Notice is a copy of the new Standing Pretrial Order.

The new Standing Pretrial Order provides that all documents or materials which a party expects to utilize at trial, but which are not stipulated, shall be identified in writing and exchanged by the parties at least fourteen days before the first day of the trial session instead of fifteen days as provided in the current Standing Pretrial Order. The new Standing Pretrial Order also clarifies that the exception for impeachment in either stipulations or the exchange of documents only applies to information which is to be used solely to impeach the credibility of a witness.

In cases where the parties are unable to reach a basis for settlement, the new Standing Pretrial Order provides for the preparation and exchange of a Pretrial Memorandum, rather than a Trial Memorandum. The Pretrial Memorandum, substantially in the form attached to this Notice, is to be submitted directly to the Judge and the opposing party not less than fourteen days before the first day of the trial session, rather than fifteen days as provided in the current Standing Pretrial Order. Thus, the Pretrial Memorandum is now due on a Monday instead of the previous Friday for a normal trial session where the Monday is not a legal holiday. Commencing with the Fall 2003 Trial Sessions, we will use Pretrial Memoranda to advise the Court of the current status of the cases on the calendar. Additionally, commencing with the Fall 2003 Trial Sessions, use of the Ten-Day or Calendar Status Report will be discontinued.

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UNITED STATES TAX COURT  
WASHINGTON, D.C.  
[www.ustaxcourt.gov](http://www.ustaxcourt.gov)

STANDING PRETRIAL ORDER

**To the parties named in the Notice Setting Case For Trial to which this Order is attached:**

The parties shall begin discussions as soon as practicable for purposes of settlement and/or preparation of a stipulation of facts. Valuation cases and reasonable compensation cases are generally susceptible of settlement, and the Court expects the parties to negotiate in good faith with this objective in mind. All minor issues should be settled so that the Court can focus on the issue(s) needing a Court decision.

If difficulties are encountered in communicating with another party, or in complying with this order, the affected party should promptly advise the Court in writing, with copy to each other party, or in a conference call among the parties and the trial judge.

Continuances will be granted only in exceptional circumstances. See Rule 133, Tax Court Rules of Practice and Procedure. (The Court's Rules are available at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).) Even joint motions for continuance will not routinely be granted.

The Court may impose appropriate sanctions, including dismissal, for any unexcused failure to comply with this Order. See Rule 131(b). Such failure may also be considered in relation to sanctions against and disciplinary proceedings involving counsel. See Rule 202(a).

To facilitate an orderly and efficient disposition of all cases on the trial calendar, it is hereby

**ORDERED** that all facts shall be stipulated to the maximum extent possible. All documentary and written evidence shall be marked and stipulated in accordance with Rule 91(b), unless the evidence is to be used solely to impeach the credibility of a witness. Objections may be preserved in the stipulation. If a complete stipulation of facts is not ready for submission at the commencement of the trial or at such other time ordered by the Court, and if the Court determines that this is the result of either party's failure to fully cooperate in the preparation thereof, the Court may order sanctions against the uncooperative party. Any documents or materials which a party expects to utilize in the event of trial (except solely for impeachment), but which are not stipulated, shall be identified in writing and exchanged by the parties at least 14 days before the first day of the trial session. The Court may refuse to receive in evidence any document or material not so stipulated or exchanged, unless otherwise agreed by the parties or allowed by the Court for good cause shown. It is further

**ORDERED** that unless a basis of settlement has been reached, each party shall prepare a Pretrial Memorandum substantially in the form attached hereto, which shall indicate the current status of the case. Each party shall submit the Pretrial Memorandum directly to the undersigned and to the opposing party not less than 14 days before the first day of the trial session. It is further

**ORDERED** that witnesses shall be identified in the Pretrial Memorandum with a brief summary of the anticipated testimony of such witnesses. Witnesses who are not identified will not be permitted to testify at the

trial without leave of the Court upon sufficient showing of cause. Unless otherwise permitted by the Court upon timely request, expert witnesses shall prepare a written report which shall be submitted directly to the undersigned and served upon each other party at least 30 days before the first day of the trial session. An expert witness's testimony may be excluded for failure to comply with this Order and the provisions of Rule 143(f). It is further

**ORDERED** that, where a basis of settlement has been reached, a stipulated decision shall be submitted to the Court prior to, or at the call of the calendar on, the first day of the trial session. Additional time for submitting a stipulated decision will be granted only where it is clear that settlement has been approved by all parties, and the parties shall be prepared to state for the record the basis of settlement and the reasons for delay. The Court will specify the date by which the stipulated decision and any related settlement documents will be due. It is further

**ORDERED** that all parties shall be prepared for trial at any time during the term of the trial session unless a specific date has been previously set by the Court. It is further

**ORDERED** that every pleading, motion, letter or other document (with the exception of posttrial briefs, see Rule 151(c)) submitted to the Court by any party subsequent to the date of the Notice Setting Case For Trial shall be served by the party upon every other party or counsel for a party and shall contain a certificate of service as specified in Rule 21(b).

Judge

Dated:

Trial Calendar:  
Date:

**PRETRIAL MEMORANDUM FOR (Petitioner/Respondent)**  
Please type or print legibly  
(This form may be expanded as necessary)

**NAME OF CASE:**

**DOCKET NO.(S):**

**ATTORNEYS:**

Petitioner: \_\_\_\_\_ Respondent: \_\_\_\_\_

Tel. No.: \_\_\_\_\_ Tel. No.: \_\_\_\_\_

**AMOUNTS IN DISPUTE:**

<u>Year(s)/Period(s)</u>	<u>Deficiencies/Liabilities</u>	<u>Additions/Penalties</u>
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**STATUS OF CASE:**

Probable Settlement \_\_\_\_\_ Probable Trial \_\_\_\_\_ Definite Trial \_\_\_\_\_

**CURRENT ESTIMATE OF TRIAL TIME:** \_\_\_\_\_

**MOTIONS YOU EXPECT TO MAKE:** (Title and brief description)

**STATUS OF STIPULATION OF FACTS:** Completed \_\_\_\_\_ In Process \_\_\_\_\_

**ISSUES:**

**WITNESS(ES) YOU EXPECT TO CALL:** (Name and brief summary of expected testimony)

**SUMMARY OF FACTS:** (Attach separate pages, if necessary, to inform Court of facts in chronological narrative form)

**BRIEF SYNOPSIS OF LEGAL AUTHORITIES:** (Attach separate pages, if necessary, to discuss fully your legal position)

**EVIDENTIARY PROBLEMS:**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
Petitioner/Respondent

Return to: **Judge**  
**United States Tax Court, Room 400**  
**Second Street, N.W.**  
**Washington, D.C. 20217**  
(202)