



Tax Reduction Letter

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Tax Court Rule 70(c)

RULE 70. GENERAL PROVISIONS

(a) General: ¹(1) *Methods and Limitations of Discovery:* In conformity with these Rules, a party may obtain discovery by written interrogatories (Rule 71), by production of documents, electronically stored information, or things (Rules 72 and 73), by depositions upon consent of the parties (Rule 74(b)), or by depositions without consent of the parties in certain cases (Rule 74(c)). However, the Court expects the parties to attempt to attain the objectives of discovery through informal consultation or communication before utilizing the discovery procedures provided in these Rules. Discovery is not available under these Rules through depositions except to the limited extent provided in Rule 74. See Rules 91(a) and 100 regarding relationship of discovery to stipulations.

²(2) *Time for Discovery:* Discovery shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38). Discovery shall be completed and any motion to compel or any other motion with respect to such discovery shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for call of the case from a trial calendar. Discovery by a deposition under Rule 74(c) may not be commenced before a notice of trial has been issued or the case has been assigned to a Judge or Special Trial Judge and any motion to compel or any other motion with respect to such discovery shall be filed within the time provided by the preceding sentence. Discovery of matters which are relevant only to the issue of a party's entitlement to reasonable litigation or administrative costs shall not be commenced, without leave of Court, before a motion for reasonable litigation or administrative costs has been noticed for a hearing, and discovery shall be completed and any motion to compel or any other motion with respect to such

¹ The amendments are effective as of January 1, 2010.

² The amendments conforming to the merger of former Rules 74, 75, and 76 are effective as of January 1, 2010. The amendments clarifying the timing for discovery-related motions are effective as of May 5, 2011.

discovery shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for hearing.

(3) *Cases Consolidated for Trial:* With respect to a common matter in cases consolidated for trial, discovery may be had by any party to such a case to the extent provided by these Rules, and, for that purpose, the reference to a “party” in this Title VII, in Title VIII, or in Title X, shall mean any party to any of the consolidated cases involving such common matter.

¹(b) Scope of Discovery: The information or response sought through discovery may concern any matter not privileged and which is relevant to the subject matter involved in the pending case. It is not ground for objection that the information or response sought will be inadmissible at the trial, if that information or response appears reasonably calculated to lead to discovery of admissible evidence, regardless of the burden of proof involved. If the information or response sought is otherwise proper, it is not objectionable merely because the information or response involves an opinion or contention that relates to fact or to the application of law to fact. But the Court may order that the information or response sought need not be furnished or made until some designated time or a particular stage has been reached in the case or until a specified step has been taken by a party.

²(c) Limitations on Discovery: (1) *General:* The frequency or extent of use of the discovery methods set forth in paragraph (a) shall be limited by the Court if it determines that: (A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the impor-

¹ The amendments restructuring former paragraph (b) and adding new paragraph (c) are effective as of July 6, 2012. Former paragraph (b) had previously been amended effective January 1, 2010, to incorporate as paragraph (b)(3) provisions now generally included as part of new paragraph (c).

² The amendments adding new paragraph (c) are effective as of July 6, 2012.



tance of the issues at stake in the litigation. The Court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 103.

(2) *Electronically Stored Information:* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 70(c)(1). The Court may specify conditions for the discovery.

(3) *Documents and Tangible Things:*

(A) A party generally may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent), unless, subject to Rule 70(c)(4),

(i) they are otherwise discoverable under Rule 70(b); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) If the Court orders discovery of those materials, it must protect against disclosure of mental impressions, conclusions, opinions, or legal theories of a party's counsel or other representative concerning the litigation.

(4) *Experts:*

(A) Rule 70(c)(3) protects drafts of any expert witness report required under Rule 143(g), regardless of the form in which the draft is recorded.

(B) Rule 70(c)(3) protects communications between a party's counsel and any witness required to provide a report under Rule 143(g), regardless of the form of the communications, except to the extent the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's counsel provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's counsel provided and that the expert relied on in forming the opinions to be expressed.

(C) A party generally may not, by interrogatories or depositions, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial, except on a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

¹(d) Party's Statements: Upon request to the other party and without any showing except the assertion in writing that the requester lacks and has no convenient means of obtaining a copy of a statement made by the requester, a party shall be entitled to obtain a copy of any such statement which has a bearing on the subject matter of the case and is in the possession or control of another party to the case.

²(e) Use In Case: The answers to interrogatories, things produced in response to a request, or other information or responses obtained under Rules 71, 72, 73, and 74 may be used at trial or in any proceeding in the case prior or subsequent to trial to the extent permitted by the rules of evidence. Such answers or information or responses will not be considered as evidence until offered and received as evidence. No objections to interrogatories or the answers thereto, or to a request to produce or the response thereto, will be considered unless made within the time prescribed, except that the objection that an interrogatory or answer would be

¹ The amendment redesignating former paragraph (c) as paragraph (d) is effective as of July 6, 2012.

² The amendments conforming former paragraph (d) to the merger of former Rules 74, 75, and 76 are effective as of January 1, 2010. The amendment redesignating former paragraph (d) as paragraph (e) is effective as of July 6, 2012.

inadmissible at trial is preserved even though not made prior to trial.

¹(f) Signing of Discovery Requests, Responses, and Objections: (1) Every request for discovery or response or objection thereto made by a party represented by counsel shall be signed by at least one counsel of record. A party who is not represented by counsel shall sign the request, response, or objection. The signature shall conform to the requirements of Rule 23(a)(3). The signature of counsel or a party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, it is: (A) Consistent with these Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, then it shall be stricken, unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If a certification is made in violation of this Rule, then the Court upon motion or upon its own initiative, may impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable counsel's fees.

²(g) Other Applicable Rules: For Rules concerned with the frequency and timing of discovery in relation to other procedures, supplementation of answers, protective or-

¹ The amendment redesignating former paragraph (e) as paragraph (f) is effective as of July 6, 2012.

² The amendment redesignating former paragraph (f) as paragraph (g) is effective as of July 6, 2012.

ders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.