

Minnesota Tax Court

Proposed Permanent Rules of Tax Court Procedure

8610.0080 MOTIONS FOR RECONSIDERATION.

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.

8610.0170 E-FILE AND E-SERVICE.

Subpart 1. **Definitions.** The terms used in chapter 8610 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 e-mail 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 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.

Cases subject to mandatory e-filing 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(d).

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 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 court order, a self-represented litigant may elect to use the E-Filing System to electronically file and serve. Unless otherwise ordered by the presiding judge, a self-represented litigant is not required to do so. Once a self-represented litigant has elected or been ordered to use the E-Filing System and has become a Registered User, that individual must thereafter electronically file and serve all documents in that case unless otherwise required or authorized by this part or the 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 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 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. Statutes, such as chapters 271 and 278, or court rules may require or permit 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 other 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 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 court may adjust the schedule for responding to these documents or the 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 court may enter an order extending the time for responding to that document.

Subp. 5. Registration process and duty to designate e-mail 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 designate an e-mail address (“designated e-mail address”) for receipt of electronic service and court notices. A Registered User consents to receive electronic service and notices from the court and other Registered Users in the case through the E-Filing System at a designated e-mail address. This designated e-mail address may also be used by the court (but not other parties) to deliver official 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 court and change their password.

(3) Any electronic transmission, downloading, or viewing of an electronic document under a Registered User's username and password shall be deemed 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 e-mail address for receiving electronic service and court notices for the duration of any case in which they have electronically transmitted a document for filing as a party or participant and until all applicable appeal periods have expired. A Registered User shall ensure their designated e-mail address and account are current, monitored regularly, have not exceeded their size limitation, and that all notices and document links transmitted to the designated e-mail account are timely opened and reviewed.

(5) A Registered User may not designate e-mail addresses for any other person or party who is not the Registered User's client, law firm staff, or co-counsel. The 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 court notices.

A. Availability of E-Filing System. Registered Users may electronically transmit documents for filing or service through the E-Filing System 24 hours a day, 7 days a week, except when the system is unavailable due to breakdown or scheduled maintenance.

B. 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 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 e-mail address. Absent confirmation of receipt, there is no presumption that the document was successfully transmitted to the court. The Registered User is solely responsible for verifying that the court received all electronically transmitted documents.

C. Effective time of filing. Any document electronically transmitted to the 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.

D. 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 participants. If the party or participant to be served is not a Registered User but has agreed to service by electronic means outside the E-Filing System (such as by e-mail), 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.

E. 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.

F. Court notices. The 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 court. The court may also transmit notices outside the E-Filing System as provided in subpart 5, item A or other applicable rules.

G. 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 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.

H. Non-conforming 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 where a document cannot reasonably be transmitted through the E-Filing System in conformance with technical and size requirements as established by the court, the court may allow the Registered User to file the document conventionally. A motion to file a non-conforming document must be filed electronically. If the court grants the Registered

User's motion to file a non-conforming document, the Registered User shall file and serve the non-conforming 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 Users and non-Registered Users 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 e-mail 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) Non-Registered 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 non-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.

C. Notary signature, stamp. Unless specifically required by court rule, 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 subpart 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 is certifying compliance with the signature requirements of this part for all signatures on the document, and the signatures on the document shall be considered 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 non-public information; E-Filing System.

A. Filer’s duty to designate as confidential. A Registered User electronically filing a document that is not accessible to the public in whole or in part under any applicable statute, court rules, or court order, 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 non-public status in the field “Confidential Reason.” The Registered User must separate all non-public 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. A Registered User must seek advance approval from the tax court to transmit a document for filing designated as confidential or if that document is not already inaccessible to the public under any applicable law, court rules, or court order.

C. Filing confidential document in paper form when not seeking in camera review. 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.

Documents electronically filed and paper documents conventionally filed 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.

8610.0180 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(B) & 3 apply exclusively to ADR provided by a current judge of the tax court as described in subpart 2(A)(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’s 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 non-binding ADR processes, such as mediation under this part, which are not otherwise discoverable, are not subject to discovery or other disclosure. Such evidence is inadmissible for any purpose at the 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 tax court 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 subparagraph C(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 motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.