

1 December 15. A.R.S. § 42-16201(A). The majority of cases filed are done so in
2 the last quarter of the year, creating an imbalanced trial schedule for small tax
3 cases in that, by rule, many trials must be held in the first five and a half months
4 of the calendar year and the remaining months have significantly fewer trials.

5 6 **II. Increased Filings of Small Tax Cases**

7 The State of Arizona is experiencing unprecedented times. “The State of
8 Arizona faces the largest financial crisis in its history.” Ariz. Supreme Court
9 Admin. Order 2009-01. Due to the severe economic downturn and significant
10 reduction in property values, filings of small tax cases are extremely high. The
11 Tax Court has experienced an approximately 76% increase in the number of
12 small tax cases filed in 2009 as compared to 2008. More than 1,100 small tax
13 cases were filed in the first half of December 2009. This figure is unprecedented.
14 Under the current rule, these 1,100 plus small tax trials must be held by June 15,
15 2010. Even if the Tax Court could set the over 1,100 cases for trial by June 15,
16 the respective County Assessors, who are also short staffed as a result of the
17 budget crisis, will be unlikely to keep up with this case volume. Further, as it
18 currently stands, with the judicial officers available to hear these matters, cases
19 are booked into October, 2010 (well beyond the time limit contemplated by Rule
20 24). Trials continue to be set.

21 22 **III. The Filing of a Complaint Should Not Trigger the Calculation**

23 The current rule calculates the time period for trial as six months from
24 “notice to the Tax Court of the taxpayer’s election that the case proceed as a
25 small claim.” Rule 24, Arizona Tax Court Rules of Practice. In the vast majority
26 of cases seen by the Tax Court, the taxpayer’s “notice” occurs when the
27 complaint is filed with the words “SMALL CLAIMS PROCEDURE” in the
28 caption. *See* Rule 18, Arizona Tax Court Rules of Practice. Utilizing the filing

1 of the complaint as the starting point of the calculation of time to trial can present
2 problems when, for example, the defendant fails to timely file an answer. In
3 those instances, taxpayer plaintiffs rarely seek a default of the defendants (this
4 may be due to the fact that most of the plaintiffs are *pro per* litigants unfamiliar
5 with the rules for default, as well as the fact that service of the governmental
6 defendants is accomplished by the Clerk of the Court consistent with Rule 21,
7 Arizona Tax Court Rules of Practice, and it may be unclear to the plaintiff
8 specifically when the service occurred). Thus, if the court strictly complies with
9 Rule 24 in these instances, a trial could be scheduled and held before the case is
10 fully joined. Therefore, the Tax Court requests a change in Rule 24 that would
11 allow the calculation of time to trial based upon the filing of the defendant's
12 answer.¹

14 **IV. Proposed Amendment**

15 No statute or constitutional provision sets forth the time in which the court
16 must set a small tax case for trial. This is merely a procedural rule adopted by
17 the Supreme Court. As such, the Supreme Court has the authority to amend the
18 timeframe.² Therefore, the Arizona Tax Court respectfully requests an
19 amendment to Rule 24 relating to setting small claims for trial. The Tax Court
20 requests extending the period of time for trial from six months to nine months,
21 and requests the time period begin at the time an answer is filed or the notice to
22 the Tax Court of the election to proceed as a small claim, whichever is later.
23 Finally, the Tax Court requests the addition of a provision that would allow the
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25
26 ¹ Although exceedingly rare, the Tax Court rules do contemplate instances when a taxpayer defendant will
designate a matter to proceed as a Small Claims matter. Therefore, the amended rule would allow for the filing of
the answer or notice of election to use small claims procedure, whichever is later.

27 ² The Tax Court acknowledges a potential issue with a change to the time period for small tax trials. Extending the
28 trial time beyond six months could result in the taxpayer having to pay additional taxes to continue with the action,
and if the court finds in favor of the taxpayer, the County may have to reimburse those additional taxes to the
taxpayer. These are legislative mandates that apply regardless of the timeframes in the court rules.

1 Presiding Judge of the Superior Court to extend the time by administrative order
2 for extraordinary circumstances. The text of the proposed rule is attached as
3 Exhibit A.

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5 **V. Technical Corrections Needed**

6 In addition to the change to Rule 24, the Arizona Tax Court notes that it
7 appears that when current Rule 2 was added in 2003, causing a re-numbering of
8 the existing rules, certain conforming changes appear to have been inadvertently
9 overlooked. Thus, certain internal references in rules of the Arizona Tax Court
10 Rules of Procedure to other rules are now incorrect. As a result, the following
11 conforming changes are necessary:

<u>Rule</u>	<u>Incorrect Reference</u>	<u>Should Be</u>
6(a)	“Rule 3”	“Rule 4”
6(a)	“Rule 9”	“Rule 10”
18	“Rule 8”	“Rule 9”
19	“Rule 3”	“Rule 4”
20	“Rule 3”	“Rule 4”

18 (See Exhibit B.)

19
20 **VI. Request for Emergency Adoption**

21 The Arizona Tax Court has been unable to set all of the small tax cases
22 filed by December 15, 2009 within six months. With more than 1,100 cases filed
23 in the first 15 days of December, the judicial officers assigned to small tax cases
24 cannot schedule all of them to be tried by June 15.

25 Currently, two commissioners are assigned to hear small tax cases. The
26 Superior Court in Maricopa County lacks additional judicial officers to assign to
27 tax court. Moreover, the Superior Court in Maricopa County lacks additional
28 judicial officers with the requisite experience and/or education as required by

1 Arizona Code of Judicial Administration Section 1-306, adopted by Arizona
2 Supreme Court Administrative Order 2008-07.

3 Additionally, with regard to the technical changes to Rules 6, 18, 19, and
4 20, these are simply conforming changes that should have occurred years ago,
5 and they correct errors that exist in the rules as currently drafted. The Arizona
6 Tax Court does not anticipate any opposition to these conforming changes.

7 Therefore, the Presiding Judge of the Arizona Tax Court respectfully
8 requests expedited adoption of the proposed amendments with a comment period
9 to follow, as permitted by Supreme Court Rule 28(G).

10 Respectfully submitted this 14th day of April, 2010.

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Hon. Dean M. Fink
14 Presiding Judge, Arizona Tax Court
Superior Court of Arizona, Maricopa County

15 Original and six (6) copies delivered this
16 14th day of April, 2010 to:

17 Clerk of the Arizona Supreme Court
18 1501 W. Washington, Suite 402
19 Phoenix, AZ 85007

20 Copy hand-delivered this
21 14th day of April, 2010 to:

22 David K. Byers, Director
23 Administrative Office of the Courts
24 1501 W. Washington St.
25 Phoenix, Arizona 85007
26
27
28

1 Exhibit A

2 **Arizona Tax Court Rules of Practice**

3 Rule 24. Setting Small Claims for Trial

4 The Court will set a small tax case for trial so that it will be tried within ~~six (6)~~
5 nine (9) months of the filing of an Answer or notice to the Tax Court of the
6 taxpayer's election that the case proceed as a small claim, whichever is later. The
7 Presiding Judge of the Superior Court in Maricopa County by Administrative
8 Order may extend the time to trial for extraordinary circumstances.

1 Exhibit B

2 **Arizona Tax Court Rules of Practice**

3 Rule 6. Cases Transferred to the Tax Court

4 (a) Tax cases filed in the Superior Court, but not in the Tax Court, which are later
5 transferred to the Tax Court shall be treated by the Clerk for purposes of Rule 34
6 as if they were cases newly filed in the Tax Court. In such cases, the Plaintiff shall
7 comply with Rule 910 within 30 days of the order directing the transfer.

8 (b) When a tax case is transferred, the Clerk of the Superior Court from which the
9 case is transferred shall forthwith transmit the file together with all exhibits and
10 certified transcripts to the Clerk of the Tax Court. If the case is transferred from a
11 county other than Maricopa, the Clerk of the county from which the case is
12 received shall remit to the Clerk of the Maricopa County Superior Court Tax
13 Court Department filing and appearance fees paid to the transferring Clerk by the
14 parties. If the case was first filed other than in Maricopa County, the parties shall
15 pay to the Clerk of the Maricopa County Superior Court Tax Court Department
16 such document storage and retrieval fees, and other surcharges as are applicable.
17 Such payment shall be made within 30 days of the order transferring the case.

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19 Rule 18. Election

20 A taxpayer plaintiff elects to use small claims procedures by placing the legend,
21 “SMALL CLAIMS PROCEDURE”, as directed in Rule 89. A taxpayer defendant
22 elects to use small claims procedures by filing a “Notice of Election to Use Small
23 Claims Procedures” with the answer. If a “Notice of Election to Use Small Claims
24 Procedures” is filed by a taxpayer defendant, and the plaintiff asserts that the case
25 does not meet the requirements for a small tax claim, as is set out in § 12-172,
26 Arizona Revised Statutes, the plaintiff may, within 10 days of the filing of the
27 answer, controvert the defendant's election. A Tax Court judge or commissioner
28 will rule on the issue without further argument.

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Rule 19. Reclassification when Defendant Taxpayer Elects

If a defendant taxpayer elects small claims procedures, and such election is not controverted, or if controverted, the controversion is overruled, the case shall be reclassified as a small tax claim, and the clerk shall assign the case a new number as directed in Rule 34.

Rule 20. Reclassification when Requirements Not Met

If the Court determines that a case designated as a small tax claim does not meet the requirements of Section 12-172, Arizona Revised Statutes, the case shall be reclassified as a record tax case. The clerk shall assign a new number as directed in Rule 34, and shall assess the taxpayer and all other parties for whom the payment of filing and appearance fees are not exempt, with the difference between what such party paid to file or appear, and the statutory fees required for a record tax case. Parties are to pay such assessment within 10 days of notice by the clerk.