

DISTRICT COURT OF GUAM

LOCAL TAX RULES

LTR 1 General Provisions

(a) Definitions.

- (1) “Clerk” means the Clerk of Court of the District Court of Guam.
- (2) “Court” means the District Court of Guam.
- (3) “Department” means the Guam Department of Revenue and Taxation.
- (4) “Director” means the Director of the Guam Department of Revenue and Taxation.

(b) Citation. The Local Tax Rules (“LTR”) shall be cited as Tax L.R. followed by the number and section of the rule. (e.g., Tax L.R. 2(b)).

LTR 2 Filing of Petition for Redetermination

(a) The taxpayer may file a petition with this Court for a redetermination of a deficiency or liability within ninety (90) days after the notice of deficiency or liability is mailed, or one hundred fifty (150) days if the notice is mailed to a person outside the Territory of Guam. If the ninetieth or one hundred fiftieth day falls on a Saturday, Sunday, or legal holiday on Guam, the next business day of the Court shall be treated as the last day. (*See* 11 GUAM CODE ANN. § 36101.)

(b) Ordinarily, a separate petition shall be filed with respect to each notice of deficiency or each notice of liability. However, a single petition may be filed seeking a redetermination with respect to all notices of deficiency or liability directed to one person alone or to him and one or more other persons or to a husband and a wife individually, except that the Court may require a severance and a separate case to be maintained with respect to one or more of such notices. Where the notice of deficiency or liability is directed to more than one person, each such person desiring to contest it shall file a petition, either separately or jointly with any such other person, and each such person must satisfy all the requirements of this Rule in order for the petition to be treated as filed by or for such person.

(c) The petition shall be complete, so as to enable ascertainment of the issues intended to be presented. No telegram, cablegram, radiogram, telephone call, electronically transmitted copy, or similar communication will be recognized as a petition. Failure of the petition to satisfy applicable requirements may be grounds for dismissal of the case

LTR 3 Content of Petition in Deficiency or Liability Actions

The petition in a deficiency or liability action shall contain:

(a) In the case of a petitioner who is an individual, the petitioner's name and State or Territory of legal residence; in the case of a petitioner other than an individual, the petitioner's name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address, identification number (e.g., the Social Security Number or Employer Identification Number), and the office of the Department, with which the tax return for the period in controversy was filed. The mailing address, State or Territory of legal residence, principal place of business, or principal office or agency shall be stated as of the date of filing the petition. In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition. (See Attachment Tax L.R. 2A entitled "Petition in Tax Cases.")

(b) The date of mailing of the notice of deficiency or liability, or other proper allegations showing jurisdiction in the Court, and the city of the Office of the Department, which issued the notice.

(c) The amount of the deficiency or liability, as the case may be, determined by the Director; the nature of the tax; the year or years or other periods for which the determination was made; and, if different from the Director's determination, the approximate amount of taxes in controversy.

(d) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Director in the determination of the deficiency or liability. The assignments of error shall include issues in respect of which the burden of proof is on the Director. Any issue not raised in the assignment of errors shall be deemed to be conceded. Each assignment of error shall be separately lettered.

(e) Clear and concise lettered statements of the facts, on which petitioner bases the assignment of error, except with respect to those assignments of error as to which the burden of proof is on the Director.

(f) A prayer setting forth relief sought by the petitioner.

(g) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's District Court and/or Guam bar number(s).

(h) A copy of the notice of deficiency or liability, as the case may be, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of deficiency or liability or accompanying statement incorporates by reference any prior notices or other material furnished by the Department, such parts thereof as are material to the issues raised by the assignments of error likewise shall be appended to the petition.

LTR 4 Filing Fee, Number Filed, and Entry on Docket

For each petition filed, there shall be a signed original together with one conformed copy. The fee for filing a petition shall be \$60.00, payable at the time of filing. Upon receiving the petition, the Clerk will enter the case upon the docket, assign a number to the case, and notify the parties

thereof. Thereafter, the parties shall include the case number on all papers filed in the case, and shall refer to the case number in all correspondence with the Court.

LTR 5 Answer

(a) Time to Answer or Move. The Director shall have sixty (60) days from the date of service of the petition within which to file an answer, or forty-five (45) days from that date within which to move with respect to the petition. With respect to an amended petition or amendments to the petition, the Director shall have like periods from the date of service of those papers within which to answer or move in response thereto, except as the Court may otherwise direct.

(b) Form and Content. The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation in the petition; however, should the Director be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the Director shall so state, and such statement shall have the effect of a denial. If the Director intends to qualify or to deny only a part of an allegation, then the Director shall specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof on which the Director relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

(c) Effect of Answer. Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted.

LTR 6 Reply

(a) Time to Reply or Move. The petitioner shall have forty-five (45) days from the date of service of the answer within which to file a reply, or thirty (30) days from that date within which to move with respect to the answer. With respect to an amended answer or amendments to the answer, the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct.

(b) Form and Content. In response to each material allegation in the answer and the facts in support thereof on which the Director has the burden of proof, the reply shall contain a specific admission or denial; however, should the petitioner be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the petitioner shall so state, and such statement shall have the effect of a denial. In addition, the reply shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Director has the burden of proof. In other respects the requirements of pleading applicable to the answer provided in Tax L.R. ~~LTR~~ 4(b) shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

(c) Effect of Reply or Failure Thereof. Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply, shall be deemed to be admitted.

Where a reply is not filed, the affirmative allegations in the answer will be deemed denied unless the Director, within forty-five (45) days after expiration of the time for filing the reply, files a motion that specified allegations in the answer be deemed admitted. That motion will be served on the petitioner and may be granted unless the required reply is filed within the time directed by the Court.

(d) New Material. Any new material contained in the reply shall be deemed to be denied.

LTR 7 Discovery, Discovery Plan, and Scheduling Order

Local Civil Rules 16.1 - 16.6 are applicable to tax cases. The parties are required to include in their Scheduling Order a pretrial conference date, a trial date and the date the Stipulation required by Local Tax Rule 7 is to be filed.

LTR 8 Stipulations for Trial

(a) Stipulations required.

(1) General - The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law or fact. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute. Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the grounds of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this rule without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.

(2) Stipulations to be Comprehensive - The fact that any matter may have been obtained through discovery, requests for admission, or through any other authorized procedure is not grounds for omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of subparagraph (1), must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

(b) Form. Stipulations required under this Rule shall be in writing, signed by the parties thereto or by their counsel, and shall observe the requirements of Gen. L.R. ~~General Rule~~ 5.1 as to form and style of papers, except that the stipulation shall be filed with the Court in duplicate and only one set of exhibits shall be required. Documents or other papers, which are the subject of stipulation in any respect and which the parties intend to place before the Court, shall be annexed to or filed with the stipulation. The stipulation shall be clear and concise. Separate items shall be stated in separate paragraphs, and shall be appropriately lettered or numbered. Exhibits attached to a stipulation shall be numbered serially, i.e., 1, 2, 3, etc. The exhibit number shall be followed

by “P” if offered by the petitioner, e.g., 1-P; “R” if offered by the respondent, e.g., 2-R; or “J” if joint, e.g., 3-J.

(c) Filing. Executed stipulations prepared pursuant to this Rule, and related exhibits, shall be filed by the parties at least five (5) working days before the scheduled pretrial conference, unless the Court shall otherwise specify. A stipulation when filed need not be offered formally to be considered in evidence.

(d) Objections. Any objection to all or any part of a stipulation should be noted in the stipulation. However, the Court will consider an objection to a stipulated matter made at the commencement of the trial or during the trial, if the objecting party demonstrates good cause for failure to object in the stipulation.

(e) Binding Effect. A stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or agreed upon by the parties. The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or in part, except where justice so requires. A stipulation and the admissions therein shall be binding and have effect only in the pending case and not for any other purpose, and cannot be used against any of the parties thereto in any other case or proceeding.

(f) Noncompliance by a Party.

(1) Motion to Compel Stipulation - If, after the issuance of a scheduling order in a case, a party has refused or failed to confer with his adversary with respect to entering into a stipulation in accordance with this Rule, or a party has refused or failed to make such a stipulation of any matter within the terms of this Rule, the party proposing to stipulate may, at a time not later than forty-five (45) days prior to the trial date, file a motion with the Court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion shall (i) show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation; (ii) set forth the specific stipulation which the moving party proposes with respect to each such matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation; (iii) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated; (iv) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation; and (v) show proof of service of a copy of the motion on opposing counsel or the other parties.

(2) Procedure - Upon the filing of such a motion, an order to show cause shall be issued forthwith, unless the Court shall direct otherwise. The order to show cause will be served by the Clerk, with a copy thereof sent to the moving party. Within twenty-one (21) ~~(20)~~ days of service of the order to show cause, the party to whom the order is directed shall file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matter set forth in the motion papers should

not be deemed admitted for purposes of the pending case. The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons and basis on which the responding party relies for that purpose. The Court, where it is found appropriate, may set the order to show cause for a hearing or conference at such time as the Court shall determine.

(3) Failure of Response - If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be issued accordingly.

(4) Matters Considered - Opposing claims of evidence will not be weighed under this rule unless such evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists, or whether in the interests of justice a matter must not be deemed stipulated to.

LTR 9 Pretrial Conferences

(a) General. The Court will undertake to confer with the parties in a pretrial conference with a view of narrowing issues, stipulating to facts, simplifying the presentation of evidence, or otherwise assisting in the preparation for trial or possible disposition of the case in whole or in part without trial.

(b) Cases Calendared. The parties will set a pretrial conference date in their Scheduling Order. (See Local Civil Rule 16.7(h).)

(c) Orders. The Court may, in its discretion, issue appropriate pretrial orders.

LTR 10 Decisions Without Trial: Judgment on the Pleadings

(a) General. After the pleadings have closed, but within such time as not to delay the trial, a party may move for judgment on the pleadings. The motion shall be filed and served in accordance with Local Civil Rule 7.1. Such motions shall be disposed of before trial unless the Court determines otherwise.

(b) Matters Outside Pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment, and shall be disposed of as provided in Tax L.R. ~~LTR~~ 10, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Tax L.R. ~~LTR~~ 10.

LTR 11 Decisions Without Trial: Summary Judgment

(a) General. A party may move, with or without supporting affidavits, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing thirty (30) days after the pleadings are closed, but within such time as not to delay the trial.

(b) Motion and Proceedings Thereon. The motion shall be filed and served in accordance with the requirements of Civ. L.R. ~~LR~~ 7.1 and Gen. L.R. ~~GR~~ 5.1. An opposing written response, with or without supporting affidavits, shall be filed within such period as the Court may direct. The court shall grant summary judgment if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. The court may grant partial summary judgment that does not dispose of all the issues in the case, if deemed appropriate.

(c) Case Not Fully Adjudicated on Motion. If, on motion under this rule, the court does not render a decision upon the whole case or for all the relief asked and a trial is necessary, the Court may ascertain, by examining the pleadings and the evidence before it and by interrogating counsel, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear to be without substantial controversy, including the extent to which the relief sought is not in controversy, and directing such further proceedings in the case as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be proceed accordingly.

(d) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The Court may permit affidavits to be supplemented or opposed by answers to interrogatories, depositions, further affidavits, or other acceptable materials, to the extent that other applicable conditions in these Rules are satisfied for utilizing such procedures. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party.

(e) When Affidavits Are Unavailable. If it appears from the affidavits of a party opposing the motion that such party cannot for reasons stated present by affidavit facts essential to justify such party's opposition, then the Court may deny the motion or may order a continuance to permit affidavits to be obtained or other steps to be taken or may make such other order as is just. If it appears from the affidavits of a party opposing the motion that such party's only legally available method of contravening the facts set forth in the supporting affidavits of the moving party is through cross-examination of such affiants or the testimony of third parties from whom affidavits cannot be secured, then such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits are genuinely disputed.

(f) Affidavits Made in Bad Faith. If it appears to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or for the purpose of delay, then the Court may order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable counsel's fees, and the offending party or counsel may be adjudged guilty of contempt or otherwise disciplined by the Court.

LTR 12 Submission Without Trial

(a) General. A case not requiring a trial for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, established by deposition, or included in the record in some other way), may be submitted at any time by motion of the parties filed with the Court. The parties need not wait for the case to be calendared for trial and need not appear in Court. The Court will thereafter fix a time for filing briefs or for oral argument.

(b) Burden of Proof. The fact of submission of a case, under paragraph (a) of this rule, does not alter the burden of proof, or the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof.

LTR 13 Default and Dismissal

(a) Default. When any party has failed to plead or otherwise proceed as provided by the LTR and other applicable local rules or as required by the Court, such party may be held in default by the Court either sua sponte or on motion of another party. Thereafter, the Court may enter a decision against the defaulting party, upon such terms and conditions as the Court may deem proper, or may impose such sanctions pursuant to Gen. L.R. 2.1 as the Court may deem appropriate. The Court may, in its discretion, conduct hearings to ascertain whether a default has been committed, to determine the decision to be entered or the sanctions to be imposed, or to ascertain the truth of any matter.

(b) Dismissal. If a petitioner fails to prosecute or fails to comply with the LTR, other applicable local rules, or an order of the Court, or for other cause which the Court deems sufficient, the

Court may dismiss a case at any time and enter a decision against the petitioner. The Court may, for similar reasons, decide against a party on an issue as to which such party has the burden of proof, and such decision shall be treated as a dismissal for purposes of paragraphs (c) and (d) of this Rule.

(c) Setting Aside a Default or Dismissal. For reasons deemed sufficient by the Court and upon motion expeditiously made, the Court may set aside a default or dismissal or the decision rendered thereon.

(d) Effect of Decision on Default or Dismissal. A decision rendered upon a default or in consequence of a dismissal, other than a dismissal for lack of jurisdiction, shall operate as an adjudication on the merits.

LTR 14 Computation by Parties for Entry of Decision

(a) Agreed Upon Computations. Where the Court has filed or orally stated its opinion determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount of the deficiency, liability, or overpayment to be included in the decision. If the parties are in agreement as to the amount of the deficiency or overpayment to be included in the decision pursuant to the findings and conclusions of the Court, they, or either of them, shall file promptly with the Court an original and two copies of a computation showing the amount of the deficiency, liability, or overpayment and that there is no disagreement that the figures shown are in accordance with the findings and conclusions of the Court. The Court will then enter its decision.

(b) Procedure in Absence of Agreement. If, however, the parties are not in agreement as to the amount of the deficiency, liability, or overpayment to be included in the decision in accordance with the findings and conclusions of the Court, either of them may file with the Court a computation of the deficiency, liability, or overpayment believed by such party to be in accordance with the Court's findings and conclusions. The Clerk will serve upon the opposite party a notice of such filing accompanied by a copy of such computation. If the opposite party fails to file within seven (7) days, an objection, accompanied or preceded by an alternative computation, the Court may enter decision in accordance with the computation already submitted. If, in accordance with this rule, the parties submit computations that differ as to the amount to be included in the decision of the Court, the parties may, at the Court's discretion, be afforded an opportunity to be heard in argument thereon and the Court will determine the correct deficiency, liability, or overpayment and will enter its decision accordingly.

(c) Limit on Argument. Any argument under this rule will be confined strictly to consideration of the correct computation of the deficiency, liability, or overpayment resulting from the findings and conclusions made by the Court, and no argument will be heard upon or consideration given to the issues or matters disposed of by the Court's findings and conclusions or to any new issues. This rule is not to be regarded as affording an opportunity for retrial or reconsideration.