

TAX LOCAL RULES
effective February 15, 2015

TXLR 1 General Provisions

(a) Definitions.

- (1) “Clerk” means the Clerk of Court of the District Court of Guam and deputy clerks, unless the context otherwise requires.
- (2) “Court” refers to the District Court of Guam, and not to any particular judge of the Court.
- (3) “Department” means the Guam Department of Revenue and Taxation.
- (4) “Director” means the Director of the Guam Department of Revenue and Taxation.
- (5) “Code” means the Internal Revenue Code of 1986, as in effect for the relevant period or the relevant time.

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

(c) Effective Date; Transitional Provision. These rules govern all actions and proceedings pending on or commenced after the effective date of these rules, except for motions filed prior to the effective date which shall be governed by the prior motion practice of this Court. Where justice requires, the Chief Judge may order that an action or proceeding pending before the Court prior to that date be governed by the prior practice of this Court.

TXLR 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. Unless the Court orders otherwise, if the clerk’s office is inaccessible on the last day for filing under this rule, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday.

(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.

(d) The petitioner shall submit simultaneously with the petition a statement of the petitioner's taxpayer identification number (*e.g.*, Social Security number or employer identification number), or lack thereof. The statement shall be filed under seal with the Clerk's Office and in a form substantially compliant with Tax Attachment 2.

(e) A nongovernmental corporation, a partnership, or a limited liability company filing a petition with the Court shall submit with its petition a separate disclosure statement. In the case of a nongovernmental corporation, the disclosure statement shall identify any parent corporation and any publicly held entity owning 10 percent or more of petitioner's stock or state that there is no such entity. In the case of a partnership or a limited liability company, the disclosure statement shall identify any publicly held entity owning an interest in such partnership or limited liability company or state that there is no such entity. A petitioner shall promptly submit a supplemental statement if there is any change in the information required under this Rule.

TXLR 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. 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 Tax Attachment 1 entitled "Petition in a Tax Case."*)

(b) The date of mailing of the notice of deficiency or liability, or other proper allegations showing jurisdiction in the Court.

(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 of each petitioner or each petitioner's counsel.

(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.

TXLR 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 and assign a number to the case. 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.

TXLR 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.

TXLR 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 TXLR 5(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.

TXLR 7 Discovery, Scheduling Order and Pretrial Conferences

See applicable Civil Local Rules (“CVLRs”). The provisions of CVLR 16-1 and 26 are applicable to tax proceedings.

TXLR 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 and filed with the Court, signed by the parties thereto or by their counsel, and shall observe the requirements of the applicable General Local Rules as to form and style of papers. 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 seven (7) 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) 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.

TXLR 9 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 CVLR 7 and 12. 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 TXLR10, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by TXLR 10.

TXLR 10 Decisions Without Trial: Summary Judgment

The provisions of Federal Rule of Civil Procedure 56 and CVLR 56 are applicable to tax proceedings.

TXLR 11 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.

TXLR 12 Default and Dismissal

(a) Default. When any party has failed to plead or otherwise proceed as provided by the TXLR 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 the applicable General Local Rules 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 TXLR, 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.

TXLR 13 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. If the opposing party fails to file within fourteen (14) days, an objection, accompanied or preceded by an alternative computation, the Court may enter its 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.

TXLR 14 Small Tax Cases

The following rules, referred to herein as the "Small Tax Case Rules," set forth the special provisions which are to be applied to small tax cases. The term "small tax case" means a case in which the amount in dispute is \$50,000 or less (within the meaning of the Internal Revenue Code) and the Court has concurred in the petitioner's election. *See* Code 26 U.S.C. §§ 7436(c), 7463. Except as otherwise provided in these Small Tax Case Rules, the other rules of practice of the Court are applicable to such cases.

TXLR 14.1 Election of Small Tax Case Procedure

With respect to classification of a case as a small tax case, the following shall apply:

(a) A petitioner who wishes to have the proceedings in the case conducted as a small tax case may so request at the time the petition is filed. *See* TXLR 14.3.

(b) A petitioner may, at any time after the petition is filed and before trial, request that the proceedings be conducted as a small tax case.

(c) If such request is made in accordance with the provisions of this rule, then the case will be docketed as a small tax case. The Court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, issue an order directing that the small tax case designation be removed and that the proceedings not be conducted under the Small Tax Case Rules. If no such order is issued, then the petitioner will be considered to have exercised the petitioner's option and the Court shall be deemed to have concurred therein, at the commencement of the trial.

TXLR 14.2 Representation

A petitioner in a small tax case may appear without representation or may be represented by any person admitted to practice before the Court.

TXLR 14.3 Pleadings

(a) Petition.

- (1) Form and Content: The petition in a small tax case shall be substantially in accordance with Tax Attachment 1.
- (2) Filing Fee: The fee for filing a petition shall be \$60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information the inability to make such payment.

(b) **Answer.** The Director shall file an answer or shall move with respect to the petition within the periods specified in, and in accordance with the provisions of TXLR 5.

(c) **Reply.** A reply to the answer shall not be filed unless the Court otherwise directs. Any reply shall conform to the requirements of TXLR 6(b). In the absence of a requirement of a reply, the provisions of the second sentence of TXLR 6(c) shall not apply and the affirmative allegations of the answer shall be deemed denied.

TXLR 14.4 Trial

(a) **Conduct of Trial and Evidence.** Trials of small tax cases will be conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the Court

to have probative value shall be admissible.

(b) Briefs. Neither briefs nor oral arguments will be required in small tax cases unless the Court otherwise directs.

TXLR 15 Motion to Restrain Assessment or Collection or to Order Refund of Amount Collected

A motion to restrain assessment or collection or to order refund of any amount collected may be filed with the Court only where a timely petition has been filed with the Court. *See* Code §§ 6015(e)(1)(B)(ii), 6213(a), 6225(b), 6246(b), 6330(e), 7436(d). For the rules applicable to captions, signing, and other matters of form and style of motions, see the applicable General Local Rules.

TXLR 16 Motion for Review of Jeopardy Assessment or Jeopardy Levy

(a) Commencement of Review.

- (1) How Review Is Commenced. Review of a jeopardy assessment or a jeopardy levy under Code section 7429(b) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of a then-pending action under Code section 6213(a) which provides the jurisdictional nexus for review required by Code section 7429(b)(2)(B). The motion shall be styled “Motion for Review of Jeopardy Assessment” or “Motion for Review of Jeopardy Levy,” as may be appropriate.
- (2) When Review Is Commenced. The motion under subparagraph (1) shall be filed within the time provided by Code section 7429(b)(1).

(b) Service of Motion. A motion filed with the Court pursuant to this Rule shall be served as specified in Fed. R. Civ. P. 5.

(c) Content of Motion. A motion filed pursuant to this Rule shall contain the following:

- (1) A statement whether the petitioner contends that:
 - (A) the making of the assessment in respect of which the motion is filed was not reasonable under the circumstances;
 - (B) the amount so assessed or demanded is not appropriate under the circumstances; or
 - (C) the levy in respect of which the motion is filed was not reasonable under the circumstances.
- (2) As to each contention in paragraph (c)(1) of this Rule:
 - (A) clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Director; and

- (B) clear and concise lettered statements of the facts on which the petitioner bases the assignments of error.
- (3) As to the contention in paragraph (c)(1)(B) of this Rule, a statement of the amount, if any, that would be appropriate under the circumstances.
- (4) A statement whether the petitioner requests an evidentiary or other hearing on the motion, and if so, the reasons why.
- (5) A list identifying by caption and number all other dockets in which the motion could have been filed if more than one then-pending action for the redetermination of a deficiency under Code section 6213(a) provides the jurisdictional nexus for review required by Code section 7429(b)(2)(B).
- (6) A copy of:
 - (A) The written statement required to be furnished to the petitioner under Code section 7429(a)(1), together with any notice or other document regarding the jeopardy assessment or jeopardy levy that may have been served on the petitioner by the Director and in respect of which the motion is filed;
 - (B) the request for administrative review made by the petitioner under Code section 7429(a)(2); and
 - (C) the determination made by the Director under Code section 7429(a)(3).
- (7) A certificate showing service of the motion in accordance with paragraph (b) of this Rule.

(d) Response by Director.

- (1) Content. The Director shall file a written response to a motion filed pursuant to this Rule. The response shall contain the following:
 - (A) A specific admission or denial of each allegation in the motion, arranged in paragraphs that are designated to correspond to those of the motion to which they relate.
 - (B) A clear and concise statement of every ground, together with the facts in support thereof, on which the Director relies.
 - (C) A statement whether the Director requests a hearing on the motion, and if so, the reasons why.
 - (D) A copy of:
 - (i) The written notification to the Court required by Code section 6861(c); and
 - (ii) any item required for consideration of the basis of the petitioner's motion, if that item has not been attached to the petitioner's motion.
 - (E) A certificate showing service of the response in accordance with subparagraph (2) of this paragraph.
- (2) Time for and Service of Response. The response required by paragraph (d)(1) of this Rule shall be received by the Court not later than 21 days after the date on which the petitioner's motion is received by the Court. Said response shall be served as specified in Fed. R. Civ. P. 5.

TXLR 17 Motion for Review of Proposed Sale of Seized Property

(a) Commencement of Review.

- (1) How Review Is Commenced. Review of the Director’s determination under Code section 6863(b)(3)(B) that seized property may be sold shall be commenced by filing a motion with the Court. The movant shall place on the motion the same docket number as that of the then-pending action under Code section 6213(a) in respect of which the sale of seized property is stayed by virtue of Code section 6863(b)(3)(A)(iii). If filed by the petitioner, the motion shall be styled “Motion to Stay Proposed Sale of Seized Property – Sec. 6863(b)(3)(C).” If filed by the Director, the motion shall be styled “Motion to Authorize Proposed Sale of Seized Property – Sec. 6863(b)(3)(C).”
- (2) When Review Is Commenced.
 - (A) Proposed Sale Not Scheduled. If a date for a proposed sale has not been scheduled, then the Director may file the motion under subparagraph (1) at any time.
 - (B) Proposed Sale Scheduled.
 - (i) General. If a date for a proposed sale has been scheduled, then the movant shall file the motion under subparagraph (1) not less than 14 days before the date of the proposed sale and not more than 21 days after receipt of the notice of sale prescribed by Code section 6335(b).
 - (ii) Motion Not Filed Within Prescribed Period. If the motion under subparagraph (1) is filed less than 14 days before the date of the proposed sale or more than 21 days after receipt of the notice of sale prescribed by Code section 6335(b), then an additional statement shall be included in the motion as provided by paragraph (c)(3) of this Rule. A motion not filed within the period prescribed by subparagraph (2)(B)(i) shall be considered dilatory unless the movant shows that there was good reason for not filing the motion within that period. As to the effect of the motion’s being dilatory, see paragraph (f)(4) of this Rule.

(b) Service of Motion.

- (1) By the Petitioner. A motion filed with the Court pursuant to this Rule shall be served by the petitioner on counsel for the Director as specified in Fed. R. Civ. P. 5.
- (2) By the Director. A motion filed with the Court pursuant to this Rule shall be served as specified in Fed. R. Civ. P. 5.

(c) Content of Motion. A motion filed pursuant to this Rule shall contain the following:

- (1) The time and place of the proposed sale.

- (2) A description of the property proposed to be sold, together with a copy of the notice of seizure prescribed by Code section 6335(a) and the notice of sale prescribed by Code section 6335(b).
- (3) If the motion is filed less than 14 days before the date of the proposed sale or more than 21 days after receipt of the notice of sale prescribed by Code section 6335(b), as the case may be, a statement of the reasons why review was not commenced within the prescribed period.
- (4) A statement that the petitioner does not consent to the proposed sale.
- (5) A statement whether the property proposed to be sold —
 - (A) is or is not likely to perish;
 - (B) is or is not likely to become greatly reduced in price or value by keeping; and
 - (C) is or is not likely to be greatly expensive to conserve or maintain.
- (6) The movant's basis for each statement in subparagraph (5) that the movant expressed in the affirmative, together with any appraisal, affidavit, valuation report, or other document relied on by the movant to support each statement.
- (7) A statement whether the movant requests an evidentiary or other hearing on the motion, and if so, the reasons why.
- (8) A certificate showing service of the motion in accordance with paragraph (b) of this Rule.

(d) Response to Motion.

- (1) Content. The petitioner or the Director, as the case may be, shall file a written response to a motion filed pursuant to this Rule. The response shall contain the following:
 - (A) A specific admission or denial of each allegation in the motion arranged in paragraphs that are designated to correspond to those of the motion to which they relate.
 - (B) A clear and concise statement of every ground, together with the facts in support thereof, on which the responding party relies.
 - (C) A statement whether the responding party requests a hearing on the motion, and if so, the reasons why.
 - (D) A copy of: (i) Any appraisal, affidavit, valuation report, or other document relied on by the responding party; and (ii) any item required for consideration of the basis of the movant's motion, if that item has not been attached to the movant's motion.
 - (E) A certificate showing service of the response in accordance with subparagraph (2) of this paragraph.
- (2) Time for and Service of Response. The response required by paragraph (d)(1) of this Rule shall be received by the Court not later than 21 days after the date on which the movant's motion is received by the Court. This response shall be served as specified in Fed. R. Civ. P. 5.

(e) **Effect of Signature.** The provisions of Fed. R. Civ. P. 11 and CVLR 11, relating to the effect of the signature of counsel or a party, shall apply to a motion filed pursuant to this Rule and to the response required by paragraph (d) of this Rule.

(f) **Disposition of Motion.**

- (1) General. A motion filed pursuant to this Rule may be disposed of in one or more of the following ways, in the discretion of the Court:
 - (A) The Court may: (i) authorize, or decline to stay, the proposed sale; or (ii) stay the proposed sale temporarily until the Court has had an adequate opportunity to consider the motion.
 - (B) The Court may stay the proposed sale until a specified date or event, or for a specified period, or until further application is made for a sale, or any combination of the foregoing.
 - (C) The Court may stay the proposed sale until specified undertakings or safeguards are effectuated.
 - (D) The Court may provide such other temporary, extended, or permanent relief as may be appropriate under the circumstances.
- (2) Evidence. In disposing of a motion filed pursuant to this Rule, the Court may consider such appraisals, affidavits, valuation reports, and other evidence as may be appropriate, giving due regard to the necessity of acting on the motion within a brief period of time.
- (3) Disposition on Motion Papers or Otherwise. The Court may dispose of a motion filed pursuant to this Rule on the motion papers, or after an evidentiary hearing or oral argument, or may require legal memoranda, or any combination of the foregoing that the Court deems appropriate.
- (4) Dilatory Motions. The fact that a motion filed pursuant to this Rule is dilatory within the meaning of paragraph (a)(2)(B)(ii) of this Rule shall be considered by the Court in disposing of the motion.