

*Amendments to FRAP 13*

**TITLE III. REVIEW OF A DECISION OF APPEALS FROM  
THE UNITED STATES TAX COURT**

**Rule 13. Review of a Decision of Appeals from the Tax Court**

**(a) ~~How Obtained; Time for Filing Notice of Appeal~~ Appeal as of Right.**

**(1) How Obtained; Time for Filing a Notice of Appeal.**

~~(1) Review of a decision of~~ (A) An appeal as of right from the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

~~(2) (B)~~ If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

~~(b) (2) Notice of Appeal; How Filed.~~ The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

~~(c) (3) Contents of the Notice of Appeal; Service; Effect of Filing and Service.~~ Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

**~~(d) (4) The Record on Appeal; Forwarding; Filing.~~**

~~(1) (A) Except as otherwise provided under Tax Court rules for the transcript of proceedings, the~~ An appeal from the Tax Court is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals. ~~References in those rules and in Rule 3 to the district court and district clerk are to be read as referring to the Tax Court and its clerk.~~

~~(2) (B)~~ If an appeal ~~from a Tax Court decision~~ is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

**(b) Appeal by Permission.** An appeal by permission is governed by Rule 5.

*Proposed Revision to Circuit Rule 13*

**Circuit Rule 13**

**~~Review of a Decision of~~ Appeals from the Tax Court**

There is no corresponding Circuit Rule.

*Amendments to FRAP 14*

**Rule 14. Applicability of Other Rules to ~~the Review of a~~ Appeals from the Tax Court Decision**

All provisions of these rules, except Rules ~~4-9~~ 4, 6-9, 15-20, and 22-23, apply to the review of a appeals from the Tax Court decision. References in any applicable rule (other than Rule 24(a)) to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

*Proposed Revision to Circuit Rule 14*

**Circuit Rule 14**

**Applicability of Other Rules to ~~the Review of a~~ Appeals from the Tax Court Decision**

There is no corresponding Circuit Rule.

*Amendments to FRAP 24*

**Rule 24. Proceeding in Forma Pauperis**

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**(b) Leave to Proceed in Forma Pauperis on Appeal from the United States Tax Court or on Appeal or Review of an Administrative-Agency Proceeding.** ~~When an appeal or review of a proceeding before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court) proceeds directly in a court of appeals, a A party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1);~~

(1) in an appeal from the United States Tax Court; and

(2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.

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*Amendments to FRAP 28*

**Rule 28. Briefs**

**(a) Appellant's Brief.** The appellant's brief must contain, under appropriate headings and in the order indicated:

- (1) a corporate disclosure statement if required by Rule 26.1;
- (2) a table of contents, with page references;
- (3) a table of authorities cases (alphabetically arranged), statutes, and other authorities with references to the pages of the brief where they are cited;
- (4) a jurisdictional statement, including:
  - (A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
  - (B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
  - (C) the filing dates establishing the timeliness of the appeal or petition for review; and
  - (D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;
- (5) a statement of the issues presented for review;
- (6) a concise statement of the case ~~briefly indicating the nature of the case, the course of proceedings, and the disposition below;~~
- ~~(7) a statement of setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));~~
- ~~(8) (7)~~ a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;
- ~~(9) (8)~~ the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

~~(10)~~ (9) a short conclusion stating the precise relief sought; and

~~(11)~~ (10) the certificate of compliance, if required by Rule 32(a)(7).

**(b) Appellee's Brief.** The appellee's brief must conform to the requirements of Rule 28(a)(1)-~~(9)~~ (8) and ~~(11)~~ (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

~~(4)~~ the statement of the facts; and

~~(5)~~ (4) the statement of the standard of review.

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*Proposed Amendment to Circuit Rule 28*

**Circuit Rule 28**

**Briefs**

**(a) Contents of Briefs: Additional Requirements.** Briefs for an appellant/petitioner and an appellee/respondent, and briefs for an intervenor and an amicus curiae, must contain the following in addition to the items required by FRAP 28:

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**(4) Statements of Jurisdiction and the Case.** The brief of the appellant or petitioner must set forth the jurisdictional statement required by FRAP 28(a)(4). Any party, intervenor, or amicus curiae may include in its brief a counter statement regarding jurisdiction. ~~The parties need not include in their briefs a statement of the case.~~

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*Amendments to FRAP 28.1*

**Rule 28.1. Cross-Appeals**

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**(c) Briefs.** In a case involving a cross-appeal:

(1) **Appellant's Principal Brief.** The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) **Appellee's Principal and Response Brief.** The appellee must file a principal brief in the crossappeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case ~~or a statement of the facts~~ unless the appellee is dissatisfied with the appellant's statement.

(3) **Appellant's Response and Reply Brief.** The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(9) (8) and ~~(11)~~ (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

- (A) the jurisdictional statement;
- (B) the statement of the issues;
- (C) the statement of the case;
- ~~(D) the statement of the facts;~~ and
- ~~(E)~~ (D) the statement of the standard of review.

(4) **Appellee's Reply Brief.** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)-(3) and ~~(11)~~ (10) and must be limited to the issues presented by the cross-appeal.

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