

**J. EDGAR MURDOCK INN OF COURT**  
Motions for Reconsideration/Motions to Vacate

Federal Rules v. Tax Court Rules v. Rules of the Court of Federal Claims

<u>FEDERAL RULES</u>	<u>TAX COURT RULES</u>	<u>CFC RULES</u>
<p><b>Motion for New Trial or Altering or Amending a Judgment: FRCP 59.</b></p> <ul style="list-style-type: none"><li>• Filed within 28 days after entry of judgment (before 2009, was only 10 days).</li><li>• Tolls finality of judgment.</li><li>• Movant must show prejudicial error in the record or that substantial justice has not been done. <i>See Universal City Studios, Inc. v. Nintendo Co.</i>, 109 F.R.D. 121, 124 (S.D.N.Y. 1985).</li><li>• New trial possible.</li></ul> <p><b>Motion for Relief from a Judgment or Order: FRCP 60.</b></p> <ul style="list-style-type: none"><li>• Made within “reasonable time” up to one year from the entry of judgment or order.</li><li>• Does not toll finality of judgment.</li><li>• Permits the correction of clerical mistakes or mistakes of oversight or omission.</li><li>• Grounds can include inadvertence, surprise, excusable neglect, newly discovered evidence that could have been used in a FRCP 59 motion, or fraud.</li><li>• New trial possible.</li></ul> <p><b>Definition of Harmless Error: FRCP 61.</b></p> <ul style="list-style-type: none"><li>• Unless inconsistent with substantial justice or affects substantial rights of the parties, it is harmless error.</li></ul>	<p><b>Motion for Reconsideration of Findings or Opinion: TC Rule 161.</b></p> <ul style="list-style-type: none"><li>• Must be separate from a Rule 162 motion (see below).</li><li>• Filed within 30 days of written opinion or transcript served. Leave has been granted in some cases.</li><li>• Can be coupled with a motion for full court review.</li><li>• Movant must show unusual circumstances or substantial error. <i>Vaughn v. Comm’r</i>, 87 T.C. 164 (1986). No new legal theories. <i>Knudsen v. Comm’r</i>, 131 T.C. 185(2008). Harmless error not grounds.</li></ul> <p><b>Motion to Vacate or Revise Decision: TC Rule 162.</b></p> <ul style="list-style-type: none"><li>• Filed within 30 days after decision entered or with leave of the Court.</li><li>• Tolls 90-day period appeal period (finality).</li><li>• If movant seeks leave of Court to move under Rule 162 after decision becomes final (after 90 days) then Court may grant motion only to consider subject matter jurisdiction, fraud on the Court, clerical errors or mutual mistake. <i>Charles Schwab Corp. v. Comm’r</i>, 122 T.C. 191 (2004).</li><li>• New trial possible.</li></ul> <p><b>Definition of Harmless Error: TC Rule 160.</b></p> <ul style="list-style-type: none"><li>• Unless inconsistent with substantial justice or affects substantial rights of the parties, it is harmless error.</li></ul>	<p><b>New Trial; Reconsideration; Altering or Amending a Judgment: RCFC 59.</b></p> <ul style="list-style-type: none"><li>• Motion for New Trial or Reconsideration upon the showing of fraud, wrong, or injustice. Must file within 2 years of final disposition of the suit.</li><li>• Motion for New Trial or Reconsideration for any other reason. Must file within 28 days of entry of judgment.</li><li>• Motion to Alter or Amend the Judgment must be filed within 28 days of entry of judgment.</li></ul> <p><b>Relief from a Judgment/Order: RCFC 60.</b></p> <ul style="list-style-type: none"><li>• File within one year of entry of judgment if grounds for motion are mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or fraud.</li><li>• File within “reasonable time” if grounds for motion are for any other reason (generally, judgment is void or satisfied).</li><li>• Must seek leave of appellate court if appeal has been docketed.</li><li>• Permits the correction of clerical mistakes or mistakes of oversight or omission.</li><li>• Does not affect finality of judgment.</li></ul> <p><b>Definition of Harmless Error: RCFC 61.</b></p> <ul style="list-style-type: none"><li>• Unless justice requires otherwise or the error affects substantial rights of the parties, it is harmless error.</li></ul>