

§ 301.7452-1

(a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of costs under section 7430.* Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (e) of this section, are not recoverable under section 7430.

(i) *Effective date.* This section applies with respect to civil actions under section 7433 filed after January 30, 1992.

[T.D. 8392, 57 FR 3536, Jan. 30, 1992; 57 FR 5931, Feb. 18, 1992]

26 CFR Ch. I (4-1-01 Edition)

THE TAX COURT

PROCEDURE

§ 301.7452-1 Representation of parties.

The Commissioner shall be represented by the Chief Counsel for the Internal Revenue Service in the same manner before the Tax Court as he has heretofore been represented in proceedings before such Court. The taxpayer shall continue to be represented in accordance with the rules of practice prescribed by the Court.

§ 301.7454-1 Burden of proof in fraud and transferee cases.

In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Commissioner.

§ 301.7454-2 Burden of proof in foundation manager, etc. cases.

(a) *Foundation manager.* In any proceeding involving the issue whether a foundation manager as defined in section 4946(b) has "knowingly" participated in an act of self-dealing within the meaning of section 4941, participated in an investment which jeopardizes the carrying out of exempt purposes within the meaning of section 4944, or agreed to the making of a taxable expenditure within the meaning of section 4945 or whether an organization manager (as defined in section 4958(f)(2)) has "knowingly" participated in an excess benefit transaction (as defined in section 4958(c)), the burden of proof in respect of such issue shall be upon the Commissioner.

(b) *Trustee of a black lung benefit trust.* In any proceeding involving the issue whether a trustee of a trust described in section 501(c)(21) has "knowingly" participated in an act of self-dealing within the meaning of section 4951 or agreed to the making of a taxable expenditure within the meaning of section 4952, the burden of proof in respect

Internal Revenue Service, Treasury

§ 301.7477-1

of such issue shall be upon the Commissioner.

[T.D. 7838, 47 FR 44253, Oct. 7, 1982, as amended by T.D. 8920, 66 FR 2171, Jan. 10, 2001]

§ 301.7456-1 Administration of oaths and procurement of testimony; production of records of foreign corporations, foreign trusts or estates and nonresident alien individuals.

Upon motion and notice by the Commissioner and upon good cause shown therefor, the Tax Court or any division thereof shall order any foreign corporation, foreign trust or estate, or nonresident alien individual, who has filed a petition with the Tax Court, to produce, or, upon satisfactory proof to the Tax Court or any of its divisions that the petitioner is unable to produce, to make available to the Commissioner, and, in either case, to permit the inspection, copying, or photographing of, such books, records, documents, memoranda, correspondence and other papers, wherever situated, as the Tax Court or any of its divisions may deem relevant to the proceedings and which are in the possession, custody or control of the petitioner, or of any person directly or indirectly under his control or having control over him or subject to the same common control.

§ 301.7457-1 Witness fees.

Any witness summoned for the Commissioner or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States. Such fees and mileage and the expense of taking any such deposition shall be paid by the Commissioner out of any moneys appropriated for the collection of internal revenue taxes, and may be paid in advance.

§ 301.7458-1 Hearings.

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Commissioner. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Commissioner shall be entitled to notice and opportunity to be heard be-

fore the Tax Court upon review, except upon a specific order of the chief judge.

§ 301.7461-1 Publicity of proceedings.

All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Commissioner, permit the withdrawal by the party entitled thereto of the originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any of its divisions; or the Tax Court may, on its own action, make such other disposition thereof as it deems advisable.

DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

§ 301.7476-1 Declaratory judgments.

See the regulations under section 7476 contained in part 1 of this chapter (Income Tax Regulations) for provisions relating to declaratory judgments, for provisions relating to the qualification of an employee as an "interested party", and for a requirement that the applicant for an advance determination by the Internal Revenue Service of the qualification of certain retirement plans give notice of such application to interested parties.

[T.D. 7421, 41 FR 20878, May 21, 1976]

§ 301.7477-1 Declaratory judgments relating to transfers of property from the United States.

(a) *Petition*—(1) *General rule*. A transferor or transferee of stock, securities of property transferred in an exchange described in section 367(a)(1) may petition the Tax Court for a declaratory judgment with respect to the exchange if—

- (i) The pleading is timely filed; and
- (ii) The exchange has begun before the pleading is filed.

(2) *Pleading timely filed*. The pleading is timely filed if it is filed before the 92d day after the day on which notice