

Internal Revenue Service, Treasury

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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

of the determination of the Commissioner is sent to the petitioner by certified or registered mail. In the absence of such notice, neither section 7477 nor this section imposes any time limit on the filing of the pleading.

(3) *Beginning of exchange.* An exchange generally shall be considered to begin upon the beginning of the first transfer of property pursuant to the plan under which the exchange is to be made. For rules determining the beginning of a transfer, see § 1.367(a)-1(c)(4).

A transfer shall not be considered to begin with a decision of a board of directors or similar action. A transfer shall be deemed to have begun even though it is made subject to a condition that, if there is a failure to obtain a determination that the exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, the transaction will not be consummated and to the extent possible the assets transferred will be returned.

(b) *Judgment*—(1) *General rule.* The Tax Court may issue a declaratory judgment or decree within the scope described in section 7477(a)(2) if—

(i) There is a case of actual controversy, and

(ii) The petitioner has exhausted the administrative remedies available to it within the Internal Revenue Service, with respect to a determination or a failure to make a determination.

(2) *Exhaustion of administrative remedies.* The petitioner shall be deemed to have exhausted the administrative remedies available to it within the Internal Revenue Service if—

(i) The petitioner has completed all applicable procedures published in regulations, the statement of procedural rules (26 CFR part 601) or revenue procedures relating to the filing of a request for a ruling under section 367(a)(1) and, if such a ruling has been issued, to the filing of a protest to such a ruling;

(ii) The petitioner has submitted prompt and complete responses to any requests by the Internal Revenue Service for further information; and

(iii) The Internal Revenue Service has had a reasonable time to act upon the request for the ruling, any protest thereto and any additional information

submitted in response to any request made therefor by the Internal Revenue Service. If there has been a failure to make a determination, the Internal Revenue Service shall be deemed not to have had a reasonable time to act before the expiration of 270 days after the day on which petitioner properly filed the request for a ruling. In no event shall the Internal Revenue Service be deemed to have had a reasonable time to act if a failure to act has occurred because the petitioner did not proceed with due diligence or because the petitioner has not provided all available information or materials reasonably requested by the Internal Revenue Service.

(3) *Effect of judgment.* The declaratory judgment or decree of the Tax Court, when final under section 7481, shall be binding on the parties to the case for purposes of section 367(a)(1). However, if the facts of the exchange differ from those presented to the Court, the judgment shall be binding only to the extent appropriate under the legal doctrines of estoppel and stare decisis.

(c) *Definitions*—(1) *Exchange described to section 367(a)(1).* For purposes of this section, an “exchange described in section 367(a)(1)” is an exchange in connection with which the petitioner has filed a ruling request pursuant to section 367(a)(1) and the regulations thereunder without regard to whether or not section 332, 351, 354, 355, 356 or 361 applies to the exchange.

(2) *Determination.* For purposes of this section, a “determination” is the Commissioner’s determination for purposes of section 367(a)(1), made in response to the petitioner’s protest to a ruling issued under section 367(a)(1)—

(i) That an exchange described in section 367(a)(1) is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, or

(ii) Of the terms and conditions pursuant to which such an exchange will be determined not to be in pursuance of such a plan.

(d) *Effective date.* The provisions of this section shall apply with respect to pleadings filed after October 4, 1976, but

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only with respect to exchanges beginning after October 9, 1975.

(Approved by the Office of Management and Budget under control number 1545-0719)

(Sec. 367(a)(1), 90 Stat. 1634, 26 U.S.C. 367(a)(1) and 7805, 68A Stat. 917, 26 U.S.C. 7805, Internal Revenue Code of 1954)

[T.D. 7596, 44 FR 10707, Feb. 23, 1979, as amended by T.D. 7954, 49 FR 19466, May 8, 1984]

COURT REVIEW OF TAX COURT DECISIONS

§ 301.7481-1 Date when Tax Court decision becomes final; decision modified or reversed.

(a) *Upon mandate of Supreme Court.* Under section 7481(3)(A) of the Code, if the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(b) *Upon mandate of the Court of Appeals.* Under section 7481(3)(B) of the Code, if the decision of the Tax Court is modified or reversed by the U.S. Court of Appeals, and if—

(i) The time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) The petition for certiorari has been denied, or

(iii) The decision of the U.S. Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the U.S. Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

§ 301.7482-1 Courts of review; venue.

Under section 7482(b)(2) of the Code, decisions of the Tax Court may be reviewed by any U.S. Court of Appeals which may be designated by the Commissioner and the taxpayer by stipulation in writing.

§ 301.7483-1 Petition for review.

The decision of the Tax Court may be reviewed by a U.S. Court of Appeals as provided in section 7482 of the Code if a petition for such review is filed by either the Commissioner or the taxpayer within 3 months after the decision is rendered. If, however, a petition for such review is so filed by one party to the proceeding, a petition for review of the decision of the Tax Court may be filed by any other party to the proceeding within 4 months after such decision is rendered.

§ 301.7484-1 Change of incumbent in office.

When the incumbent of the office of Commissioner changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court.

MISCELLANEOUS PROVISIONS

§ 301.7502-1 Timely mailing of documents and payments treated as timely filing and paying.

(a) *General rule.* Section 7502 provides that, if the requirements of that section are met, a document or payment is deemed to be filed or paid on the date of the postmark stamped on the envelope or other appropriate wrapper (envelope) in which the document or payment was mailed. Thus, if the envelope that contains the document or payment has a timely postmark, the document or payment is considered timely filed or paid even if it is received after the last date, or the last day of the period, prescribed for filing the document or making the payment. Section 7502 does not apply in determining whether a failure to file a return or pay a tax has continued for an additional month or fraction thereof for purposes of computing the penalties and additions to tax imposed by section 6651. Except as provided in section