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INTERIM AMENDMENT

For interim amendment of this Appendix, see provisions set out after Appendix IV below.

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INTERIM AMENDMENTS

The following represents the text of specific Rules with amendments provided on an interim basis pending formal publication in the Reports of the Court by the Government Printing Office.

TITLE V.—MOTIONS

Rule 55. 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 amount collected may be filed with the Court only where a timely petition has been filed with the Court. See Code Sections 6015(e)(B)(ii),¹ 6213(a), 6225(b), 6246(b). For the rules applicable to captions, signing, and other matters of form and style of motions, see Rule 50(a).

EFFECTIVE DATE OF AMENDMENT

Amendments, insofar as they relate to section 6015(e)(1)(B)(ii) of this title, effective for any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of July 22, 1998; insofar as they relate to section 6213(a) of this title, are effective as of July 22, 1998; insofar as they relate to section 6225(b) of this title, are effective for partnership tax years ending after Aug. 5, 1997; and insofar as they relate to section 6246(b) of this title, are effective for partnership tax years ending on or after Dec. 31, 1997.

TITLE XIV.—TRIALS

Rule 142. Burden of Proof

(a) **General:** (1) The burden of proof shall be upon the petitioner, except as otherwise provided by statute or determined by the Court; and except that, in respect of any new matter, increases in deficiency, and affirmative defenses, pleaded in the answer, it shall be upon the respondent. As to affirmative defenses, see Rule 39.

(2) See Code Section 7491 where credible evidence is introduced by the taxpayer, or any item of income is reconstructed by the Commissioner based on statistical information on unrelated taxpayers, or any penalty, addition to tax, or additional amount is determined by the Commissioner.

(b) **Fraud:** In any case involving the issue of fraud with intent to evade tax, the burden of proof in respect of that issue is on the respondent, and that burden of proof is to be carried by clear and convincing evidence. Code Section 7454(a).

(c) **Foundation Managers; Trustees; Organization Managers:** In any case involving the issue of the knowing conduct of a foundation manager as set forth in the provisions of Code Section 4941, 4944, or 4945, or the knowing conduct of a trustee as set forth in the provisions of Code Section 4951 or 4952, or the knowing conduct of an organization manager as set forth in the provisions of Code Section 4912 or 4955, the burden of proof in respect of such issue is on the respondent, and such burden of proof is to be carried by clear and convincing evidence. Code Section 7454(b).

(d) **Transferee Liability:** The burden of proof is on the respondent to show that a petitioner is

liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax. Code Section 6902(a).

(e) **Accumulated Earnings Tax:** Where the notice of deficiency is based in whole or in part on an allegation of accumulation of corporate earnings and profits beyond the reasonable needs of the business, the burden of proof with respect to such allegation is determined in accordance with Code Section 534. If the petitioner has submitted to the respondent a statement which is claimed to satisfy the requirements of Code Section 534(c), the Court will ordinarily, on timely motion filed after the case has been calendared for trial, rule prior to the trial on whether such statement is sufficient to shift the burden of proof to the respondent to the limited extent set forth in Code Section 534(a)(2).

(f) **Other:** For the burden of proof in cases submitted without trial, see Rule 122(b); in declaratory judgment actions, see Rule 217(c); in disclosure actions, see Rule 229; in claims for litigation and administrative costs, see Rule 232(e); and in administrative costs actions, see Rule 270(d).

EFFECTIVE DATE OF AMENDMENT

Amendment of par. (a) effective for court proceedings arising in connection with examinations commencing after July 22, 1998; except that in any case in which there is no examination, amendments apply to court proceedings arising in connection with taxable periods or events beginning or occurring after July 22, 1998.

TITLE XVII.—SMALL TAX CASES

Rule 171. Small Tax Case Defined

The term “small tax case” means a case in which:

(a) Neither the amount of the deficiency, nor the amount of any claimed overpayment, placed in dispute (including any additions to tax, additional amounts, and penalties) exceeds

(1) \$50,000 for any one taxable year in the case of income taxes,

(2) \$50,000 in the case of estate taxes,

(3) \$50,000 for any one calendar year in the case of gift taxes, or

(4) \$50,000 for any one taxable period or, if there is no taxable period, for any taxable event in the case of excise taxes under Code Chapter 41, 42, 43, or 44 (taxes on certain organizations and persons dealing with them) or under Code Chapter 45 (windfall profit tax);

(b) The petitioner has made a request in accordance with Rule 172 to have the proceedings conducted under Code Section 7463; and

(c) The Court has not issued an order in accordance with Rule 172(c) or Rule 173, discontinuing the proceedings in the case under Code Section 7463.

EFFECTIVE DATE OF AMENDMENT

Amendments effective with respect to proceedings commenced after July 22, 1998.

Rule 173. Discontinuance of Proceedings

After the commencement of a trial of a small tax case, but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under Code Section

¹ So in original. Probably should be “6015(e)(1)(B)(ii).”