

of, any property sells or causes or allows the same to be sold before such tax is paid, with intent to avoid such tax, or in fraud of the internal revenue laws, any debt contracted in such sale, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court.

**(b) Forfeiture of sum paid on contract**

If such property has been paid for, in whole or in part, the sum so paid shall be deemed forfeited.

**(c) Moiety**

Any person who shall sue for the sum so paid (in an action of debt) shall recover from the seller the amount so paid, one-half to his own use and the other half to the use of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 872.)

**§ 7342. Penalty for refusal to permit entry or examination**

Any owner of any building or place, or person having the agency or superintendence of the same, who refuses to admit any officer or employee of the Treasury Department acting under the authority of section 7606 (relating to entry of premises for examination of taxable articles) or refuses to permit him to examine such article or articles, shall, for every such refusal, forfeit \$500.

(Aug. 16, 1954, ch. 736, 68A Stat. 872.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4083, 7606 of this title.

**§ 7343. Definition of term “person”**

The term “person” as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(Aug. 16, 1954, ch. 736, 68A Stat. 872.)

**§ 7344. Extended application of penalties relating to officers of the Treasury Department**

All provisions of law imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury, or under any agency or office thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or employees in connection with such law, or are persons having the custody or disposition of any public money.

(Aug. 16, 1954, ch. 736, 68A Stat. 872.)

**CHAPTER 76—JUDICIAL PROCEEDINGS**

Subchapter A. Civil actions by the United States ..... Sec.<sup>1</sup> 7401

<sup>1</sup> Section numbers editorially supplied.

B. Proceedings by Taxpayers and Third Parties ..... 7421  
C. The Tax Court ..... 7441  
D. Court review of Tax Court decisions ..... 7481  
E. Burden of proof ..... 7491

AMENDMENTS

1998—Pub. L. 105-206, title III, §3001(b), July 22, 1998, 112 Stat. 727, added item for subchapter E.

1976—Pub. L. 94-455, title XIX, §1952(n)(4)(B), Oct. 4, 1976, 90 Stat. 1846, struck out item for subchapter E “Miscellaneous provisions”.

1966—Pub. L. 89-719, title I, §110(d)(3), Nov. 2, 1966, 80 Stat. 1145, substituted “Taxpayers and Third Parties” for “taxpayers” in item for subchapter B.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 7801, 7851 of this title.

**Subchapter A—Civil Actions by the United States**

Sec. 7401. Authorization.  
7402. Jurisdiction of district courts.  
7403. Action to enforce lien or to subject property to payment of tax.  
7404. Authority to bring civil action for estate taxes.  
7405. Action for recovery of erroneous refunds.  
7406. Disposition of judgments and moneys recovered.  
7407. Action to enjoin income tax return preparers.  
7408. Action to enjoin promoters of abusive tax shelters, etc.  
7409. Action to enjoin flagrant political expenditures of section 501(c)(3) organizations.  
7410. Cross references.

AMENDMENTS

1987—Pub. L. 100-203, title X, §10713(a)(2), Dec. 22, 1987, 101 Stat. 1330-469, added item 7409 and redesignated former item 7409 as 7410.

1982—Pub. L. 97-248, title III, §321(b), Sept. 3, 1982, 96 Stat. 612, added item 7408 and redesignated former item 7408 as 7409.

1976—Pub. L. 94-455, title XII, §1203(i)(4), Oct. 4, 1976, 90 Stat. 1695, added item 7407 and redesignated former item 7407 as 7408.

**§ 7401. Authorization**

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

(Aug. 16, 1954, ch. 736, 68A Stat. 873; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

**§ 7402. Jurisdiction of district courts**

**(a) To issue orders, processes, and judgments**

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or

appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

**(b) To enforce summons**

If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

**(c) For damages to United States officers or employees**

Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

**[(d) Repealed. Pub. L. 92-310, title II, § 230(d), June 6, 1972, 86 Stat. 209]**

**(e) To quiet title**

The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

**(f) General jurisdiction**

**For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.**

(Aug. 16, 1954, ch. 736, 68A Stat. 873; Pub. L. 89-719, title I, § 107(a), Nov. 2, 1966, 80 Stat. 1140; Pub. L. 93-310, title II, § 230(d), June 6, 1972, 86 Stat. 209.)

AMENDMENTS

1972—Subsec. (d). Pub. L. 92-310 repealed subsec. (d) which granted district courts jurisdiction of actions brought on official bonds.

1966—Subsecs. (e), (f). Pub. L. 89-719 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)-(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7407, 7408, 7409, 7604 of this title.

**§ 7403. Action to enforce lien or to subject property to payment of tax**

**(a) Filing**

In any case where there has been a refusal or neglect to pay any tax, or to discharge any li-

ability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability. For purposes of the preceding sentence, any acceleration of payment under section 6166(g) shall be treated as a neglect to pay tax.

**(b) Parties**

All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

**(c) Adjudication and decree**

The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary directs.

**(d) Receivership**

In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(Aug. 16, 1954, ch. 736, 68A Stat. 874; Pub. L. 89-719, title I, § 107(b), Nov. 2, 1966, 80 Stat. 1140; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), title XX, § 2004(f)(2), Oct. 4, 1976, 90 Stat. 1834, 1872; Pub. L. 97-34, title IV, § 422(e)(8), Aug. 13, 1981, 95 Stat. 316.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-34 struck out “or 6166A(h)” after “section 6166(g)”.

1976—Subsec. (a). Pub. L. 94-455, §§ 1906(b)(13)(A), 2004(f)(2), struck out “or his delegate” after “Secretary” and inserted provisions relating to the acceleration of payment under section 6166(g) or 6166A(h).

Subsecs. (c), (d). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1966—Subsec. (c). Pub. L. 89-719 inserted sentence permitting the United States, if the property is sold to satisfy a first lien held by the United States, to bid at the sale such sum, not more than the amount of such lien with expenses of sale, as the Secretary or his delegate directs.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97-34, set out as a note under section 6166 of this title.

## EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)-(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

**§ 7404. Authority to bring civil action for estate taxes**

If the estate tax imposed by chapter 11 is not paid on or before the due date thereof, the Secretary shall proceed to collect the tax under the provisions of general law; or appropriate proceedings in the name of the United States may be commenced in any court of the United States having jurisdiction to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This section insofar as it applies to the collection of a deficiency shall be subject to the provisions of sections 6213 and 6601.

(Aug. 16, 1954, ch. 736, 68A Stat. 874; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

## AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

**§ 7405. Action for recovery of erroneous refunds**

**(a) Refunds after limitation period**

Any portion of a tax imposed by this title, refund of which is erroneously made, within the meaning of section 6514, may be recovered by civil action brought in the name of the United States.

**(b) Refunds otherwise erroneous**

Any portion of a tax imposed by this title which has been erroneously refunded (if such refund would not be considered as erroneous under section 6514) may be recovered by civil action brought in the name of the United States.

**(c) Interest**

**For provision relating to interest on erroneous refunds, see section 6602.**

**(d) Periods of limitation**

**For periods of limitations on actions under this section, see section 6532(b).**

(Aug. 16, 1954, ch. 736, 68A Stat. 874.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6514, 6532, 6602 of this title.

**§ 7406. Disposition of judgments and moneys recovered**

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the Secretary as collections of internal revenue taxes.

(Aug. 16, 1954, ch. 736, 68A Stat. 875; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

## AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

**§ 7407. Action to enjoin income tax return preparers**

**(a) Authority to seek injunction**

A civil action in the name of the United States to enjoin any person who is an income tax return preparer from further engaging in any conduct described in subsection (b) or from further action as an income tax return preparer may be commenced at the request of the Secretary. Any action under this section shall be brought in the District Court of the United States for the district in which the income tax preparer resides or has his principal place of business or in which the taxpayer with respect to whose income tax return the action is brought resides. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such income tax preparer or any taxpayer.

**(b) Adjudication and decrees**

In any action under subsection (a), if the court finds—

(1) that an income tax return preparer has—

(A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title,

(B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as an income tax return preparer,

(C) guaranteed the payment of any tax refund or the allowance of any tax credit, or

(D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws, and

(2) that injunctive relief is appropriate to prevent the recurrence of such conduct, the court may enjoin such person from further engaging in such conduct. If the court finds that an income tax return preparer has continually or repeatedly engaged in any conduct described in subparagraphs (A) through (D) of this subsection and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, the court may enjoin such person from acting as an income tax return preparer.

(Added Pub. L. 94-455, title XII, §1203(g), Oct. 4, 1976, 90 Stat. 1693; amended Pub. L. 101-239, title VII, §7738(a), (b), Dec. 19, 1989, 103 Stat. 2404.)

## PRIOR PROVISIONS

A prior section 7407 was renumbered section 7410 of this title.

## AMENDMENTS

1989—Subsec. (a). Pub. L. 101-239, §7738(b), substituted “A civil” for “Except as provided in subsection (c), a civil”.

Subsec. (c). Pub. L. 101-239, §7738(a), struck out subsec. (c) relating to bonds to stay injunctions.

## EFFECTIVE DATE OF 1989 AMENDMENT

Section 7738(c) of Pub. L. 101-239 provided that: “The amendments made by this section [amending this sec-

tion] shall apply to actions commenced after December 31, 1989.”

EFFECTIVE DATE

Section applicable to documents prepared after Dec. 31, 1976, see section 1203(j) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 7701 of this title.

**§ 7408. Action to enjoin promoters of abusive tax shelters, etc.**

**(a) Authority to seek injunction**

A civil action in the name of the United States to enjoin any person from further engaging in conduct subject to penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability) may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in conduct subject to penalty under section 6700 or section 6701. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

**(b) Adjudication and decree**

In any action under subsection (a), if the court finds—

(1) that the person has engaged in any conduct subject to penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability), and

(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under section 6700 or section 6701.

**(c) Citizens and residents outside the United States**

If any citizen or resident of the United States does not reside in, and does not have his principal place of business in, any United States judicial district, such citizen or resident shall be treated for purposes of this section as residing in the District of Columbia.

(Added Pub. L. 97-248, title III, § 321(a), Sept. 3, 1982, 96 Stat. 612; amended Pub. L. 98-369, div. A, title I, § 143(b), July 18, 1984, 98 Stat. 682.)

PRIOR PROVISIONS

A prior section 7408 was renumbered section 7410 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 143(b)(1), (2), inserted “or section 6701 (relating to penalties for aiding and abetting understatement of tax liability)” and inserted reference to section 6701 at end of second sentence.

Subsec. (b). Pub. L. 98-369, § 143(b)(1), (3), inserted “or section 6701 (relating to penalties for aiding and abetting understatement of tax liability),” in par. (1) and inserted reference to section 6701 at end.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective on day after July 18, 1984, see section 143(c) of Pub. L. 98-369, set out as a note under section 6700 of this title.

EFFECTIVE DATE

Section 321(c) of Pub. L. 97-248 provided that: “The amendments made by this section [enacting this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982].”

**§ 7409. Action to enjoin flagrant political expenditures of section 501(c)(3) organizations**

**(a) Authority to seek injunction**

**(1) In general**

If the requirements of paragraph (2) are met, a civil action in the name of the United States may be commenced at the request of the Secretary to enjoin any section 501(c)(3) organization from further making political expenditures and for such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3). Any action under this section shall be brought in the district court of the United States for the district in which such organization has its principal place of business or for any district in which it has made political expenditures. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such organization.

**(2) Requirements**

An action may be brought under subsection (a) only if—

(A) the Internal Revenue Service has notified the organization of its intention to seek an injunction under this section if the making of political expenditures does not immediately cease, and

(B) the Commissioner of Internal Revenue has personally determined that—

(i) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

(ii) injunctive relief is appropriate to prevent future political expenditures.

**(b) Adjudication and decree**

In any action under subsection (a), if the court finds on the basis of clear and convincing evidence that—

(1) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

(2) injunctive relief is appropriate to prevent future political expenditures,

the court may enjoin such organization from making political expenditures and may grant such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3).

**(c) Definitions**

For purposes of this section, the terms “section 501(c)(3) organization” and “political expenditures” have the respective meanings given to such terms by section 4955.

(Added Pub. L. 100-203, title X, §10713(a)(1), Dec. 22, 1987, 101 Stat. 1330-468.)

**PRIOR PROVISIONS**

A prior section 7409 was renumbered section 7410 of this title.

**§ 7410. Cross references**

(1) For provisions for collecting taxes in general, see chapter 64.

(2) For venue in a civil action for the collection of any tax, see section 1396 of Title 28 of the United States Code.

(3) For venue of a proceeding for the recovery of any fine, penalty, or forfeiture, see section 1395 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 875, §7407; renumbered §7408, Pub. L. 94-455, title XII, §1203(g), Oct. 4, 1976, 90 Stat. 1693; renumbered §7409, Pub. L. 97-248, title III, §321(a), Sept. 3, 1982, 96 Stat. 612; renumbered §7410, Pub. L. 100-203, title X, §10713(a)(1), Dec. 22, 1987, 101 Stat. 1330-468.)

**Subchapter B—Proceedings by Taxpayers and Third Parties**

Sec. 7421.	Prohibition of suits to restrain assessment or collection.
7422.	Civil actions for refund.
7423.	Repayments to officers or employees.
7424.	Intervention.
7425.	Discharge of liens.
7426.	Civil actions by persons other than taxpayers.
7427.	Income tax return preparers.
7428.	Declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.
7429.	Review of jeopardy levy or assessment procedures.
7430.	Awarding of costs and certain fees.
7431.	Civil damages for unauthorized inspection or disclosure of returns and return information.
7432.	Civil damages for failure to release lien.
7433.	Civil damages for certain unauthorized collection actions.
7434.	Civil damages for fraudulent filing of information returns.
7435.	Civil damages for unauthorized enticement of information disclosure.
7436.	Proceedings for determination of employment status.
7437.	Cross references.

**AMENDMENTS**

1997—Pub. L. 105-35, §3(d)(5), Aug. 5, 1997, 111 Stat. 1106, inserted “inspection or” before “disclosure” in item 7431.

Pub. L. 105-34, title XIV, §1454(b)(4), Aug. 5, 1997, 111 Stat. 1057, added items 7436 and 7437 and struck out former item 7436 “Cross references”.

1996—Pub. L. 104-168, title VI, §601(b), title XII, §1203(b), July 30, 1996, 110 Stat. 1462, 1471, added items 7434 and 7435 and redesignated former item 7434 as 7436.

1988—Pub. L. 100-647, title VI, §§6237(e)(4), 6239(c), 6240(b), 6241(c), Nov. 10, 1988, 102 Stat. 3743, 3746-3748, inserted “levy or” after “jeopardy” in item 7429, struck out “court” after “Awarding of” in item 7430, added items 7432 and 7433, and redesignated former item 7432 as 7434.

1982—Pub. L. 97-248, title II, §292(d)(1), title III, §357(b)(3), Sept. 3, 1982, 96 Stat. 574, 646, added items 7430 and 7431 and redesignated former item 7430 as 7432.

1976—Pub. L. 94-455, title XII, §§1203(b)(2)(B), 1204(c)(13), title XIII, §1306(b)(6), Oct. 4, 1976, 90 Stat. 1690, 1699, 1719, added items 7427 to 7429 and redesignated former item 7427 as 7430.

1966—Pub. L. 89-719, title I, §110(d)(1), (2), Nov. 2, 1966, 80 Stat. 1145, inserted “and Third Parties” in subchapter heading, substituted “Intervention” for “Civil action to clear title to property” in item 7424, added items 7425 and 7426, and redesignated former item 7425 as 7427.

**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in section 6103 of this title.

**§ 7421. Prohibition of suits to restrain assessment or collection**

**(a) Tax**

Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

**(b) Liability of transferee or fiduciary**

No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code<sup>1</sup> in respect of any such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Pub. L. 89-719, title I, §110(c), Nov. 2, 1966, 80 Stat. 1144; Pub. L. 94-455, title XII, §1204(c)(11), Oct. 4, 1976, 90 Stat. 1699; Pub. L. 95-628, §9(b)(1), Nov. 10, 1978, 92 Stat. 3633; Pub. L. 97-258, §3(f)(13), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 105-34, title XII, §1222(b)(1), 1239(e)(3), title XIV, §1454(b)(2), Aug. 5, 1997, 111 Stat. 1019, 1028, 1057; Pub. L. 105-206, title III, §3201(e)(3), July 22, 1998, 112 Stat. 740; Pub. L. 105-277, div. J, title IV, §4002(c)(1), (f), Oct. 21, 1998, 112 Stat. 2681-906, 2681-907; Pub. L. 106-554, §1(a)(7) [title III, §§313(b)(2)(B), 319(24)], Dec. 21, 2000, 114 Stat. 2763, 2763A-642, 2763A-647.)

**AMENDMENTS**

2000—Subsec. (a). Pub. L. 106-554 inserted “6330(e)(1),” after “6246(b),” and substituted “6672(c)” for “6672(b)”.

1998—Subsec. (a). Pub. L. 105-277 substituted “6015(e)” for “6015(d)” and inserted “6331(i),” after “6246(b),”.

Pub. L. 105-206 inserted “6015(d),” after “sections”.

1997—Subsec. (a). Pub. L. 105-34, §1454(b)(2), substituted “7429(b), and 7436” for “and 7429(b)”.

Pub. L. 105-34, §1239(e)(3), inserted “6225(b),” after “6213(a),”.

Pub. L. 105-34, §1222(b)(1), inserted “6246(b),” after “6213(a),”.

1982—Subsec. (b)(2). Pub. L. 97-258 substituted “section 3713(b) of title 31, United States Code” for “section 3467 of the Revised Statutes (31 U.S.C. 192)”.

<sup>1</sup> So in original. Probably should be followed by a comma.

1978—Subsec. (a). Pub. L. 95-628 inserted references to sections 6672(b) and 6694(c).

1976—Subsec. (a). Pub. L. 94-455 substituted “7426(a) and (b)(1), and 7429(b)” for “and 7426(a) and (b)(1)”.

1966—Subsec. (a). Pub. L. 89-719 inserted reference to section 7426(a), (b)(1), and “by any person, whether or not such person is the person against whom such tax was assessed”.

#### EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, to which such amendment relates, see section 4002(k) of Pub. L. 105-277, set out as a note under section 1 of this title.

Amendment by Pub. L. 105-206 applicable to 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 such date, see section 3201(g)(1) of Pub. L. 105-206, set out as a note under section 6015 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1222(b)(1) of Pub. L. 105-34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105-34, as amended, set out as a note under section 6011 of this title.

Amendment by section 1239(e)(3) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105-34, set out as a note under section 6225 of this title.

Amendment by section 1454(b)(2) of Pub. L. 105-34, effective Aug. 5, 1997, see section 1454(c) of Pub. L. 105-34, set out as a note under section 6511 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-628 applicable with respect to penalties assessed more than 60 days after Nov. 10, 1978, see section 9(c) of Pub. L. 95-628, set out as a note under section 6672 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to action taken under section 6851, 6861, or 6862 of this title where notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)-(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

#### PROHIBITION ON REQUESTS TO TAXPAYERS TO GIVE UP RIGHTS TO BRING ACTIONS

Pub. L. 105-206, title III, §3468, July 22, 1998, 112 Stat. 770, provided that:

“(a) PROHIBITION.—No officer or employee of the United States may request a taxpayer to waive the taxpayer’s right to bring a civil action against the United States or any officer or employee of the United States for any action taken in connection with the internal revenue laws.

“(b) EXCEPTIONS.—Subsection (a) shall not apply in any case where—

“(1) a taxpayer waives the right described in subsection (a) knowingly and voluntarily; or

“(2) the request by the officer or employee is made in person and the taxpayer’s attorney or other federally authorized tax practitioner (within the meaning of section 7525(a)(3)(A) of the Internal Revenue Code of 1986) is present, or the request is made in writing to the taxpayer’s attorney or other representative.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4961, 6015, 6207, 6213, 6246, 6330, 6331, 6672, 6694, 6703, 6904 of this title.

## § 7422. Civil actions for refund

### (a) No suit prior to filing claim for refund

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

### (b) Protest or duress

Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

### (c) Suits against collection officer a bar

A suit against any officer or employee of the United States (or former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court.

### (d) Credit treated as payment

The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.

### (e) Stay of proceedings

If the Secretary prior to the hearing of a suit brought by a taxpayer in a district court or the United States Court of Federal Claims for the recovery of any income tax, estate tax, gift tax, or tax imposed by chapter 41, 42, 43, or 44 (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer’s suit, the proceedings in taxpayer’s suit shall be stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter. If the taxpayer files a petition with the Tax Court, the district court or the United States Court of Federal Claims, as the case may be, shall lose jurisdiction of taxpayer’s suit to whatever extent jurisdiction is acquired by the Tax Court of the subject matter of taxpayer’s suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer’s suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwith-

standing that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issues raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by a taxpayer which, prior to the date of enactment of this title, is commenced, instituted, or pending in a district court or the United States Court of Federal Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes).

**(f) Limitation on right of action for refund**

**(1) General rule**

A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative. Such suit or proceeding may be maintained against the United States notwithstanding the provisions of section 2502 of title 28 of the United States Code (relating to aliens' privilege to sue) and notwithstanding the provisions of section 1502 of such title 28 (relating to certain treaty cases).

**(2) Misjoinder and change of venue**

If a suit or proceeding brought in a United States district court against an officer or employee of the United States (or former officer or employee) or his personal representative is improperly brought solely by virtue of paragraph (1), the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action commenced, upon proper service of process on the United States. Such suit or proceeding shall upon request by the United States be transferred to the district or division where it should have been brought if such action initially had been brought against the United States.

**(g) Special rules for certain excise taxes imposed by chapter 42 or 43**

**(1) Right to bring actions**

**(A) In general**

With respect to any taxable event, payment of the full amount of the first tier tax shall constitute sufficient payment in order to maintain an action under this section with respect to the second tier tax.

**(B) Definitions**

For purposes of subparagraph (A), the terms "taxable event", "first tier tax", and "second tier tax" have the respective meanings given to such terms by section 4963.

**(2) Limitation on suit for refund**

No suit may be maintained under this section for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, unless no other suit has been maintained for credit or

refund of, and no petition has been filed in the Tax Court with respect to a deficiency in, any other tax imposed by such sections with respect to such act (or failure to act).

**(3) Final determination of issues**

For purposes of this section, any suit for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, shall constitute a suit to determine all questions with respect to any other tax imposed with respect to such act (or failure to act) under such sections, and failure by the parties to such suit to bring any such question before the Court shall constitute a bar to such question.

**(h) Special rule for actions with respect to partnership items**

No action may be brought for a refund attributable to partnership items (as defined in section 6231(a)(3)) except as provided in section 6228(b) or section 6230(c).

**(i) Special rule for actions with respect to tax shelter promoter and understatement penalties**

No action or proceeding may be brought in the United States Court of Federal Claims for any refund or credit of a penalty imposed by section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability).

**(j) Special rule for actions with respect to estates for which an election under section 6166 is made**

**(1) In general**

The district courts of the United States and the United States Court of Federal Claims shall not fail to have jurisdiction over any action brought by the representative of an estate to which this subsection applies to determine the correct amount of the estate tax liability of such estate (or for any refund with respect thereto) solely because the full amount of such liability has not been paid by reason of an election under section 6166 with respect to such estate.

**(2) Estates to which subsection applies**

This subsection shall apply to any estate if, as of the date the action is filed—

(A) no portion of the installments payable under section 6166 have been accelerated;

(B) all such installments the due date for which is on or before the date the action is filed have been paid;

(C) there is no case pending in the Tax Court with respect to the tax imposed by section 2001 on the estate and, if a notice of deficiency under section 6212 with respect to such tax has been issued, the time for filing a petition with the Tax Court with respect to such notice has expired; and

(D) no proceeding for declaratory judgment under section 7479 is pending.

**(3) Prohibition on collection of disallowed liability**

If the court redetermines under paragraph (1) the estate tax liability of an estate, no part

of such liability which is disallowed by a decision of such court which has become final may be collected by the Secretary, and amounts paid in excess of the installments determined by the court as currently due and payable shall be refunded.

**(k) Cross references**

**(1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abate-ments, credit, and refund) and chapter 66 (relating to limitations).**

**(2) For duty of United States attorneys to defend suits, see section 507 of Title 28 of the United States Code.**

**(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.**

**(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.**

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Pub. L. 85-866, title I, § 78, Sept. 2, 1958, 72 Stat. 1662; Pub. L. 89-713, § 3(a), Nov. 2, 1966, 80 Stat. 1108; Pub. L. 91-172, title I, § 101(i), (j)(56), Dec. 30, 1969, 83 Stat. 525, 532; Pub. L. 92-178, title III, § 309(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 93-406, title II, § 1016(a)(26), Sept. 2, 1974, 88 Stat. 931; Pub. L. 94-455, title XIII, § 1307(d)(2)(F)(viii), title XVI, § 1605(b)(11), title XIX, § 1906(a)(44), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1728, 1755, 1830, 1834; Pub. L. 96-222, title I, § 108(b)(1)(D)-(F), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96-223, title I, § 101(f)(1)(J), Apr. 2, 1980, 94 Stat. 252; Pub. L. 96-596, § 2(c)(2), Dec. 24, 1980, 94 Stat. 3474; Pub. L. 97-164, title I, § 151, Apr. 2, 1982, 96 Stat. 46; Pub. L. 97-248, title IV, § 402(c)(11), Sept. 3, 1982, 96 Stat. 668; Pub. L. 98-369, div. A, title VII, § 714(g)(1), (p)(2)(H), July 18, 1984, 98 Stat. 961, 965; Pub. L. 99-514, title XVIII, § 1899A(58), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 100-203, title X, § 10712(c)(5), Dec. 22, 1987, 101 Stat. 1330-467; Pub. L. 100-418, title I, § 1941(b)(2)(B)(x), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 102-572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-168, title XIII, § 1311(c)(4), July 30, 1996, 110 Stat. 1478; Pub. L. 105-206, title III, § 3104(a), July 22, 1998, 112 Stat. 731.)

REFERENCES IN TEXT

The date of enactment of this title, referred to in subsec. (e), is Aug. 16, 1954.

AMENDMENTS

1998—Subsecs. (j), (k). Pub. L. 105-206 added subsec. (j) and redesignated former subsec. (j) as (k).

1996—Subsec. (g)(2), (3). Pub. L. 104-168 inserted “4958,” after “4955.”

1992—Subsecs. (e), (i). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court” wherever appearing.

1988—Subsec. (e). Pub. L. 100-418 substituted “or 44” for “44, or 45”.

1987—Subsec. (g)(2), (3). Pub. L. 100-203 inserted “4955,” after “4952.”

1986—Subsec. (g)(1)(B). Pub. L. 99-514 substituted “section 4963” for “section 4962”.

1984—Subsec. (h). Pub. L. 98-369, § 714(p)(2)(H), substituted “section 6231(a)(3)” for “section 6131(a)(3)”.

Subsecs. (i), (j). Pub. L. 98-369, § 714(g)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

1982—Subsec. (e). Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims” wherever appearing.

Subsecs. (h), (i). Pub. L. 97-248 added subsec. (h) and redesignated former subsec. (h) as (i).

1980—Subsec. (e). Pub. L. 96-223 inserted reference to chapter 45.

Subsec. (g). Pub. L. 96-596 substituted in par. (1) provision authorizing, with respect to any taxable event, payment of the full amount of the first tier tax as constituting sufficient payment in order to maintain an action under this section with respect to the second tier tax and defining the terms “taxable event”, “first tier tax”, and “second tier tax” as having the respective meanings given to such terms by section 4962 of this title for provision authorizing, with respect to any act or failure to act giving rise to liability under sections 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975 of this title, payment of the full amount of tax imposed under specified subsections of those sections as constituting sufficient payment in order to maintain an action under this section with respect to such act or failure to act.

Pub. L. 96-222 substituted in pars. (1) to (3) “4944, 4945, 4951, 4952” for “4944, 4945” and in par. (1) “section 4945(a) (relating to initial taxes on taxable expenditures), section 4951(a) (relating to initial taxes on self dealing), 4952(a) (relating to initial taxes on taxable expenditures)” for “section 4945(a) (relating to initial taxes on taxable expenditures)” and “section 4945(b) (relating to additional taxes on taxable expenditures), section 4951(b) (relating to additional taxes on self-dealing), 4952(b) (relating to additional taxes on taxable expenditures)” for “section 4945(b) (relating to additional taxes on taxable expenditures)”.

1976—Subsec. (a). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c). Pub. L. 94-455, § 1906(a)(44), struck out “instituted after June 15, 1942,” after “res judicata in all suits” and “where the petition to the Tax Court was filed after such date” after “decisions of the Tax Court”.

Subsec. (e). Pub. L. 94-455, §§ 1307(d)(2)(F)(viii), 1605(b)(11), 1906(b)(13)(A), struck out “or his delegate” after “Secretary” and substituted “chapter 41, 42,” for “chapter 42” and “43, or 44” for “or 43”.

1974—Subsec. (e). Pub. L. 93-406, § 1016(a)(26)(A), substituted “chapter 42 or 43” for “chapter 42”.

Subsec. (g). Pub. L. 93-406, § 1016(a)(26)(B)-(F), substituted “chapter 42 or 43” for “chapter 42” in heading, substituted “4945, 4971, or 4975” for “or 4945”, “section 4945(a) (relating to initial taxes on taxable expenditures), 4971(a) (relating to initial tax on failure to meet minimum funding standard), 4975(a) (relating to initial tax on prohibited transactions)” for “section 4945(a) (relating to initial taxes on taxable expenditures)”, and “section 4945(b) (relating to additional taxes on taxable expenditures), section 4971(b) (relating to additional tax on failure to meet minimum funding standard), or section 4975(b) (relating to additional tax on prohibited transactions)” for “or section 4945(b) (relating to additional taxes on taxable expenditures)” in par. (1), and substituted “4945, 4971, or 4975” for “or 4945” in pars. (2) and (3).

1971—Subsec. (f)(1). Pub. L. 92-178 authorized maintenance of suit or proceeding against the United States notwithstanding provisions of section 1502 of Title 28 (relating to certain treaty cases).

1969—Subsec. (e). Pub. L. 91-172, § 101(j)(56), inserted reference to chapter 42 taxes.

Subsecs. (g), (h). Pub. L. 91-172, § 101(i), added subsec. (g) and redesignated former subsec. (g) as (h).

1966—Subsecs. (f), (g). Pub. L. 89-713 added subsec. (f) and redesignated former subsec. (f) as (g).

1958—Subsec. (f)(2). Pub. L. 85-866 struck out “district” before “attorneys”.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, § 3104(c), July 22, 1998, 112 Stat. 732, provided that: “The amendments made by this section [amending this section and section 7479 of this title] shall apply to any claim for refund filed after the date of the enactment of this Act [July 22, 1998].”

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995 and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104-168, set out as a note under section 4955 of this title.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as a note under section 164 of this title.

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 714(g)(1) of Pub. L. 98-369 applicable to any claim for refund or credit filed after July 18, 1984, see section 714(g)(4) of Pub. L. 98-369, set out as an Effective Date note under section 1509 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 714(p)(2)(H) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

## EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

Amendment by Pub. L. 96-222 effective as if included in the provisions of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, see section 108(b)(4) of Pub. L. 96-222, set out as a note under section 192 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(d)(2)(F)(viii) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94-455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(11) of Pub. L. 94-455, see section 1608(d) of Pub. L. 94-455, set out as a note under section 856 of this title.

Amendment by section 1906(a)(44), (b)(13)(A) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

## EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, and in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

## EFFECTIVE DATE OF 1971 AMENDMENT

Section 309(b) of Pub. L. 92-178 provided that: "The amendment made by subsection (a) [amending this section] shall apply to suits or proceedings which are instituted after January 30, 1967."

## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

## EFFECTIVE DATE OF 1966 AMENDMENT

Section 3(d) of Pub. L. 89-713 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 2502 of Title 28, Judiciary and Judicial Procedure] shall apply to suits brought against officers, employees, or personal representatives referred to therein which are instituted 90 days or more after the date of the enactment of this Act [Nov. 2, 1966]. The amendment made by subsection (c) [amending section 7482 of this title] shall apply to all decisions of the Tax Court entered after the date of enactment of this Act."

## EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 as effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85-866, set out as a note under section 165 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4961, 6228, 6234, 6532, 7426 of this title; title 28 section 2502.

**§ 7423. Repayments to officers or employees**

The Secretary, subject to regulations prescribed by the Secretary, is authorized to repay—

**(1) Collections recovered**

To any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

**(2) Damages and costs**

All damages and costs recovered against any officer or employee of the United States in any suit brought against him by reason of

anything done in the due performance of his official duty under this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 877; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” in provisions preceding par. (1).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3111.

### § 7424. Intervention

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

(Aug. 16, 1954, ch. 736, 68A Stat. 877; Pub. L. 89-719, title I, §108, Nov. 2, 1966, 80 Stat. 1140.)

#### AMENDMENTS

1966—Pub. L. 89-719 substituted “Intervention” for “Civil action to clear title to property” in section catchline and substituted provisions, set out in a single paragraph, granting the government authority to intervene in a court proceeding to assert any lien arising under this title on property which is the subject of a civil action or suit to which the government is not a party with the same procedural rules to apply as where the government is initially joined properly as a party and with the proceedings to have no effect on the government’s lien if the application to intervene is denied, for provisions, formerly set out in three subsections, setting out a procedure by which a person having a lien upon or interest in property referred to in section 7403 could file a civil action to clear title to the property and obtain an adjudication of the matter involved in the same manner as in the case of a civil action filed under section 7403.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, with certain exceptions, see section 114(a) to (c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

#### CIVIL ACTIONS TO CLEAR TITLE TO PROPERTY COMMENCED BEFORE NOV. 2, 1966

Section 114(d) of Pub. L. 89-719 provided that civil actions commenced before Nov. 2, 1966, to clear title to property pursuant to this section as in effect before Nov. 2, 1966, were to be determined in accord with this section as in effect before Nov. 2, 1966.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 2409a.

### § 7425. Discharge of liens

#### (a) Judicial proceedings

If the United States is not joined as a party, a judgment in any civil action or suit described

in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

#### (b) Other sales

Notwithstanding subsection (a) sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1); or

(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

(B) the law makes no provision for such filing, or

(C) notice of such sale is given in the manner prescribed in subsection (c)(1).

#### (c) Special rules

##### (1) Notice of sale

Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary.

**(2) Consent to sale**

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

**(3) Sale of perishable goods**

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary) in writing, by registered or certified mail or by personal service, to the Secretary before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

**(4) Forfeitures of land sales contracts**

For purposes of subsection (b), a sale of property includes any forfeiture of a land sales contract.

**(d) Redemption by United States****(1) Right to redeem**

In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

**(2) Amount to be paid**

In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

**(3) Certificate of redemption****(A) In general**

In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary shall execute a certificate of redemption therefor.

**(B) Filing**

The Secretary shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by

law designated an office in which such certificate may be recorded, the Secretary shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

**(C) Effect**

A certificate of redemption executed by the Secretary shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property.

(Added Pub. L. 89-719, title I, §109, Nov. 2, 1966, 80 Stat. 1141; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title XV, §1572(a), Oct. 22, 1986, 100 Stat. 2765.)

## PRIOR PROVISIONS

A prior section 7425 was renumbered 7434 of this title.

## AMENDMENTS

1986—Subsec. (c)(4), Pub. L. 99-514 added par. (4).  
1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

## EFFECTIVE DATE OF 1986 AMENDMENT

Section 1572(b) of Pub. L. 99-514 provided that: “The amendment made by subsection (a) [amending this section] shall apply to forfeitures after the 30th day after the date of the enactment of this Act [Oct. 22, 1986].”

## EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)-(c) of Pub. L. 89-719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7810 of this title; title 28 section 2409a.

**§ 7426. Civil actions by persons other than taxpayers****(a) Actions permitted****(1) Wrongful levy**

If a levy has been made on property or property has been sold pursuant to a levy, and any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary.

**(2) Surplus proceed**

If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus

proceeds of such sale may bring a civil action against the United States in a district court of the United States.

**(3) Substituted sale proceeds**

If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

**(4) Substitution of value**

If a certificate of discharge is issued to any person under section 6325(b)(4) with respect to any property, such person may, within 120 days after the day on which such certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary. No other action may be brought by such person for such a determination.

**(b) Adjudication**

The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

**(1) Injunction**

If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

**(2) Recovery of property**

If the court determines that such property has been wrongfully levied upon, the court may—

(A) order the return of specific property if the United States is in possession of such property;

(B) grant a judgment for the amount of money levied upon; or

(C) if such property was sold, grant a judgment for an amount not exceeding the greater of—

(i) the amount received by the United States from the sale of such property, or

(ii) the fair market value of such property immediately before the levy.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

**(3) Surplus proceeds**

If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of

the amount of the surplus proceeds of such sale.

**(4) Substituted sale proceeds**

If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

**(5) Substitution of value**

If the court determines that the Secretary's determination of the value of the interest of the United States in the property for purposes of section 6325(b)(4) exceeds the actual value of such interest, the court shall grant a judgment ordering a refund of the amount deposited, and a release of the bond, to the extent that the aggregate of the amounts thereof exceeds such value determined by the court.

**(c) Validity of assessment**

For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

**(d) Limitation on rights of action**

No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

**(e) Substitution of United States as party**

If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

**(f) Provision inapplicable**

The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

**(g) Interest**

Interest shall be allowed at the overpayment rate established under section 6621—

(1) In the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary receives the money wrongfully levied upon to the date of payment of such judgment;

(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment; and

(3) in the case of a judgment pursuant to subsection (b)(5) which orders a refund of any amount, from the date the Secretary received such amount to the date of payment of such judgment.

**(h) Recovery of damages permitted in certain cases****(1) In general**

Notwithstanding subsection (b), if, in any action brought under this section, there is a finding that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$1,000,000 (\$100,000 in the case of negligence) or the sum of—

(A) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent disregard of any provision of this title by the officer or employee (reduced by any amount of such damages awarded under subsection (b)); and

(B) the costs of the action.

**(2) Requirement that administrative remedies be exhausted; mitigation; period**

The rules of section 7433(d) shall apply for purposes of this subsection.

**(3) Payment authority**

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

**(i) Cross reference**

**For period of limitation, see section 6532(c).**

(Added Pub. L. 89-719, title I, §110(a), Nov. 2, 1966, 80 Stat. 1142; amended Pub. L. 93-625, §7(a)(2)(E), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-248, title III, §350(a), Sept. 3, 1982, 96 Stat. 639; Pub. L. 99-514, title XV, §1511(c)(16), Oct. 22, 1986, 100 Stat. 2745; Pub. L. 105-206, title III, §§3102(b), 3106(b)(1), (2), July 22, 1998, 112 Stat. 730, 733.)

## AMENDMENTS

1998—Subsec. (a)(4). Pub. L. 105-206, §3106(b)(1), added par. (4).

Subsec. (b)(5). Pub. L. 105-206, §3106(b)(2)(A), added par. (5).

Subsec. (g)(3). Pub. L. 105-206, §3106(b)(2)(B), added par. (3).

Subsecs. (h), (i). Pub. L. 105-206, §3102(b), added subsec. (h) and redesignated former subsec. (h) as (i).

1986—Subsec. (g). Pub. L. 99-514 substituted “the overpayment rate established under section 6621” for “an annual rate established under section 6621”.

1982—Subsec. (b)(2)(C). Pub. L. 97-248 inserted “if such property was sold,” before “grant a judgment” and “the greater of—” after “not exceeding”, redesignated remaining provisions as cl. (i), and added cl. (ii).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1975—Subsec. (g). Pub. L. 93-625 substituted “an annual rate established under section 6621” for “the rate of 6 percent per annum”.

## EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3102(d), July 22, 1998, 112 Stat. 731, provided that: “The amendments made by this section [amending this section and section 7433 of this title] shall apply to actions of officers or employees of the Internal Revenue Service after the date of the enactment of this Act [July 22, 1998].”

Amendment by section 3106(b)(1), (2) of Pub. L. 105-206 effective July 22, 1998, see section 3106(c) of Pub. L. 105-206, set out as a note under section 6325 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99-514, set out as a note under section 47 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Section 350(b) of Pub. L. 97-248 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to levies made after December 31, 1982.”

## EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93-625, set out as an Effective Date note under section 6621 of this title.

## EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which section would impair a priority held by any person other than United States holding a lien or interest prior to Nov. 2, 1966, operate to increase liability of such person, or shorten time of bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)-(c) of Pub. L. 89-719, set out as Effective Date of 1966 Amendments note under section 6323 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6325, 6503, 6532, 7421 of this title; title 28 sections 1346, 2409a.

**§ 7427. Income tax return preparers**

In any proceeding involving the issue of whether or not an income tax return preparer has willfully attempted in any manner to understate the liability for tax (within the meaning of section 6694(b)), the burden of proof in respect to such issue shall be upon the Secretary.

(Added Pub. L. 94-455, title XII, §1203(b)(2)(A), Oct. 4, 1976, 90 Stat. 1690.)

## PRIOR PROVISIONS

A prior section 7427 was renumbered 7437 of this title.

**§ 7428. Declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.****(a) Creation of remedy**

In a case of actual controversy involving—

(1) a determination by the Secretary—

(A) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) or as an organization described in section 170(c)(2),

(B) with respect to the initial classification or continuing classification of an organization as a private foundation (as defined in section 509(a)), or

(C) with respect to the initial classification or continuing classification of an organization as a private operating foundation (as defined in section 4942(j)(3)), or

(2) a failure by the Secretary to make a determination with respect to an issue referred to in paragraph (1),

upon the filing of an appropriate pleading, the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification or with respect to such initial classification or continuing classification. Any such declaration shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification.

**(b) Limitations**

**(1) Petitioner**

A pleading may be filed under this section only by the organization the qualification or classification of which is at issue.

**(2) Exhaustion of administrative remedies**

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service. An organization requesting the determination of an issue referred to in subsection (a)(1) shall be deemed to have exhausted its administrative remedies with respect to a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination.

**(3) Time for bringing action**

If the Secretary sends by certified or registered mail notice of his determination with respect to an issue referred to in subsection (a)(1) to the organization referred to in paragraph (1), no proceeding may be initiated under this section by such organization unless the pleading is filed before the 91st day after the date of such mailing.

**(c) Validation of certain contributions made during pendency of proceedings**

**(1) In general**

If—

(A) the issue referred to in subsection (a)(1) involves the revocation of a determination that the organization is described in section 170(c)(2),

(B) a proceeding under this section is initiated within the time provided by subsection (b)(3), and

(C) either—

(i) a decision of the Tax Court has become final (within the meaning of section 7481), or

(ii) a judgment of the district court of the United States for the District of Columbia has been entered, or

(iii) a judgment of the Court of Federal Claims, has been entered,

and such decision or judgment, as the case may be, determines that the organization was not described in section 170(c)(2),

then, notwithstanding such decision or judgment, such organization shall be treated as having been described in section 170(c)(2) for purposes of section 170 for the period beginning on the date on which the notice of the revocation was published and ending on the date on which the court first determined in such proceeding that the organization was not described in section 170(c)(2).

**(2) Limitation**

Paragraph (1) shall apply only—

(A) with respect to individuals, and only to the extent that the aggregate of the contributions made by any individual to or for the use of the organization during the period specified in paragraph (1) does not exceed \$1,000 (for this purpose treating a husband and wife as one contributor), and

(B) with respect to organizations described in section 170(c)(2) which are exempt from tax under section 501(a) (for this purpose excluding any such organization with respect to which there is pending a proceeding to revoke the determination under section 170(c)(2)).

**(3) Exception**

This subsection shall not apply to any individual who was responsible, in whole or in part, for the activities (or failures to act) on the part of the organization which were the basis for the revocation.

**(d) Subpoena power for district court for District of Columbia**

In any action brought under this section in the district court of the United States for the District of Columbia, a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States.

(Added Pub. L. 94-455, title XIII, §1306(a), Oct. 4, 1976, 90 Stat. 1717; amended Pub. L. 95-600, title VII, §701(dd)(2), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 97-164, title I, §152, Apr. 2, 1982, 96 Stat. 46; Pub. L. 98-369, div. A, title X, §1033(b), July 18, 1984, 98 Stat. 1039; Pub. L. 102-572, title IX, §902(b), Oct. 29, 1992, 106 Stat. 4516.)

PRIOR PROVISIONS

A prior section 7428 was renumbered 7437 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court” and “Court of Federal Claims” for “Claims Court” in concluding provisions.

Subsecs. (b)(2), (c)(1)(C)(iii). Pub. L. 102-572, §902(b)(2), substituted “Court of Federal Claims” for “Claims Court”.

1984—Subsec. (d). Pub. L. 98-369 added subsec. (d).

1982—Subsecs. (a), (b)(2), (c)(1)(C)(iii). Pub. L. 97-164 substituted “Claims Court” for “Court of Claims”.

1978—Subsec. (a). Pub. L. 95-600 inserted provision relating to change in qualification or classification.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to inquiries and examinations beginning after Dec. 31, 1984, see section 1033(d) of Pub. L. 98-369, set out as an Effective Date note under section 7611 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective as if included in this section at the time section was added to this title, see section 701(dd)(3) of Pub. L. 95-600, set out as a note under section 7476 of this title.

## EFFECTIVE DATE

Section 1306(c) of Pub. L. 94-455 provided that: "The amendments made by this section [enacting this section and amending sections 7451, 7459, 7470, and 7482 of this title, enacting section 1507 of Title 28, Judiciary and Judicial Procedure, and amending sections 1346 and 2201 of Title 28] shall apply with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to determinations (or requests for determinations) made after January 1, 1976."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7451, 7459, 7482, 7611 of this title; title 28 sections 1346, 1507, 2201.

### § 7429. Review of jeopardy levy or assessment procedures

#### (a) Administrative review

##### (1) Administrative review

###### (A) Prior approval required

No assessment may be made under section 6851(a), 6852(a), 6861(a), or 6862, and no levy may be made under section 6331(a) less than 30 days after notice and demand for payment is made, unless the Chief Counsel for the Internal Revenue Service (or such Counsel's delegate) personally approves (in writing) such assessment or levy.

###### (B) Information to taxpayer

Within 5 days after the day on which such an assessment or levy is made, the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relied in making such assessment or levy.

##### (2) Request for review

Within 30 days after the day on which the taxpayer is furnished the written statement described in paragraph (1), or within 30 days after the last day of the period within which such statement is required to be furnished, the taxpayer may request the Secretary to review the action taken.

#### (3) Redetermination by Secretary

After a request for review is made under paragraph (2), the Secretary shall determine—

##### (A) whether or not—

(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

#### (b) Judicial review

##### (1) Proceedings permitted

Within 90 days after the earlier of—

(A) the day the Secretary notifies the taxpayer of the Secretary's determination described in subsection (a)(3), or

(B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States for a determination under this subsection in the court with jurisdiction determined under paragraph (2).

##### (2) Jurisdiction for determination

###### (A) In general

Except as provided in subparagraph (B), the district courts of the United States shall have exclusive jurisdiction over any civil action for a determination under this subsection.

###### (B) Tax Court

If a petition for a redetermination of a deficiency under section 6213(a) has been timely filed with the Tax Court before the making of an assessment or levy that is subject to the review procedures of this section, and 1 or more of the taxes and taxable periods before the Tax Court because of such petition is also included in the written statement that is provided to the taxpayer under subsection (a), then the Tax Court also shall have jurisdiction over any civil action for a determination under this subsection with respect to all the taxes and taxable periods included in such written statement.

##### (3) Determination by court

Within 20 days after a proceeding is commenced under paragraph (1), the court shall determine—

##### (A) whether or not—

(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

If the court determines that proper service was not made on the United States or on the

Secretary, as may be appropriate, within 5 days after the date of the commencement of the proceeding, then the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States or on the Secretary, as may be appropriate.

**(4) Order of court**

If the court determines that the making of such levy is unreasonable, that the making of such assessment is unreasonable, or that the amount assessed or demanded is inappropriate, then the court may order the Secretary to release such levy, to abate such assessment, to redetermine (in whole or in part) the amount assessed or demanded, or to take such other action as the court finds appropriate.

**(c) Extension of 20-day period where taxpayer so requests**

If the taxpayer requests an extension of the 20-day period set forth in subsection (b)(2) and establishes reasonable grounds why such extension should be granted, the court may grant an extension of not more than 40 additional days.

**(d) Computation of days**

For purposes of this section, Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the last day of any period.

**(e) Venue**

**(1) District court**

A civil action in a district court under subsection (b) shall be commenced only in the judicial district described in section 1402(a)(1) or (2) of title 28, United States Code.

**(2) Transfer of actions**

If a civil action is filed under subsection (b) with the Tax Court and such court finds that there is want of jurisdiction because of the jurisdiction provisions of subsection (b)(2), then the Tax Court shall, if such court determines it is in the interest of justice, transfer the civil action to the district court in which the action could have been brought at the time such action was filed. Any civil action so transferred shall proceed as if such action had been filed in the district court to which such action is transferred on the date on which such action was actually filed in the Tax Court from which such action is transferred.

**(f) Finality of determination**

Any determination made by a court under this section shall be final and conclusive and shall not be reviewed by any other court.

**(g) Burden of proof**

**(1) Reasonableness of levy, termination, or jeopardy assessment**

In a proceeding under subsection (b) involving the issue of whether the making of a levy described in subsection (a)(1) or the making of an assessment under section 6851, 6852, 6861, or 6862 is reasonable under the circumstances, the burden of proof in respect to such issue shall be upon the Secretary.

**(2) Reasonableness of amount of assessment**

In a proceeding under subsection (b) involving the issue of whether an amount assessed or

demand as a result of action taken under section 6851, 6852, 6861, or 6862 is appropriate under the circumstances, the Secretary shall provide a written statement which contains any information with respect to which his determination of the amount assessed was based, but the burden of proof in respect of such issue shall be upon the taxpayer.

(Added Pub. L. 94-455, title XII, §1204(a), Oct. 4, 1976, 90 Stat. 1695; amended Pub. L. 98-369, div. A, title IV, §446(a), July 18, 1984, 98 Stat. 817; Pub. L. 100-203, title X, §10713(b)(2)(F), Dec. 22, 1987, 101 Stat. 1330-470; Pub. L. 100-647, title VI, §6237(a)-(e)(3), Nov. 10, 1988, 102 Stat. 3741-3743; Pub. L. 105-206, title III, §3434(a), July 22, 1998, 112 Stat. 760.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-206 substituted “Administrative review” for “Information to taxpayer” in heading and amended text of par. (1) generally. Prior to amendment, text read as follows: “Within 5 days after the day on which an assessment is made under section 6851(a), 6852(a), 6861(a), or 6862, or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section 6331(a), the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relies in making such assessment or levy.”

1988—Pub. L. 100-647, §6237(e)(3), inserted “levy or” after “jeopardy” in section catchline.

Subsec. (a)(1). Pub. L. 100-647, §6237(a), inserted “or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section 6331(a),” after “6862,” and “or levy” after “such assessment”.

Subsec. (a)(3). Pub. L. 100-647, §6237(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “After a request for review is made under paragraph (2), the Secretary shall determine whether or not—

“(A) the making of the assessment under section 6851, 6852, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

“(B) the amount so assessed or demanded as a result of the action taken under section 6851, 6852, 6861, or 6862 is appropriate under the circumstances.”

Subsec. (b). Pub. L. 100-647, §6237(c), amended subsec. (b) generally, substituting provisions of pars. (1) to (4) for provisions of former pars. (1) to (3) relating to actions permitted, determination by district court, and order of district court.

Subsec. (c). Pub. L. 100-647, §6237(e)(1), struck out “district” before “court”.

Subsec. (e). Pub. L. 100-647, §6237(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “A civil action under subsection (b) shall be commenced only in the judicial district described in section 1402(a)(1) or (2) of title 28, United States Code.”

Subsec. (f). Pub. L. 100-647, §6237(e)(1), struck out “district” after “made by a”.

Subsec. (g)(1). Pub. L. 100-647, §6237(e)(2), in heading substituted “levy, termination,” for “termination” and in text substituted “a proceeding” for “an action” and inserted “the making of a levy described in subsection (a)(1) or” after “whether”.

Subsec. (g)(2). Pub. L. 100-647, §6237(e)(2)(C), substituted “a proceeding” for “an action”.

1987—Subsec. (a)(1). Pub. L. 100-203, §10713(b)(2)(F)(i), substituted “6851(a), 6852(a)” for “6851(a),”.

Subsecs. (a)(3)(A), (B), (b)(2)(A), (B), (g)(1), (2). Pub. L. 100-203, §10713(b)(2)(F)(ii), substituted “6851, 6852,” for “6851,” wherever appearing.

1984—Subsec. (b)(2). Pub. L. 98-369 inserted provision that if the court determines that proper service was not made on the United States within 5 days after the date of the commencement of the action, the running

of the 20-day period shall not begin before the day on which proper service was made on the United States.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Pub. L. 105-206, title III, §3434(b), July 22, 1998, 112 Stat. 760, provided that: “The amendment made by this section [amending this section] shall apply to taxes assessed and levies made after the date of the enactment of this Act [July 22, 1998].”

**EFFECTIVE DATE OF 1988 AMENDMENT**

Section 6237(f) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section] shall apply to jeopardy levies issued and assessments made on or after July 1, 1989.”

**EFFECTIVE DATE OF 1984 AMENDMENT**

Section 446(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply to actions commenced after the date of the enactment of this Act [July 18, 1984].”

**EFFECTIVE DATE**

Section applicable with respect to action taken under section 6851, 6861, or 6862 of this title where notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 6851, 6863, 6867 of this title; title 28 section 1346.

**§ 7430. Awarding of costs and certain fees**

**(a) In general**

In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for—

- (1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and
- (2) reasonable litigation costs incurred in connection with such court proceeding.

**(b) Limitations**

**(1) Requirement that administrative remedies be exhausted**

A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service. Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.

**(2) Only costs allocable to the United States**

An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

**(3) Costs denied where party prevailing protracts proceedings**

No award for reasonable litigation and administrative costs may be made under sub-

section (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

**(4) Period for applying to IRS for administrative costs**

An award may be made under subsection (a) by the Internal Revenue Service for reasonable administrative costs only if the prevailing party files an application with the Internal Revenue Service for such costs before the 91st day after the date on which the final decision of the Internal Revenue Service as to the determination of the tax, interest, or penalty is mailed to such party.

**(c) Definitions**

For purposes of this section—

**(1) Reasonable litigation costs**

The term “reasonable litigation costs” includes—

- (A) reasonable court costs, and
- (B) based upon prevailing market rates for the kind or quality of services furnished—

(i) the reasonable expenses of expert witnesses in connection with a court proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and

(iii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of \$125 per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for such proceeding, the difficulty of the issues presented in the case, or the local availability of tax expertise, justifies a higher rate.

In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting “calendar year 1995” for “calendar year 1992” in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.

**(2) Reasonable administrative costs**

The term “reasonable administrative costs” means—

(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the court under clause (ii) or (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under paragraph (4)(C) of the

awarding of reasonable administrative costs is made by the Internal Revenue Service.

Such term shall only include costs incurred on or after whichever of the following is the earliest: (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; (ii) the date of the notice of deficiency; or (iii) the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.

**(3) Attorneys' fees**

**(A) In general**

For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

**(B) Pro bono services**

The court may award reasonable attorneys' fees under subsection (a) in excess of the attorneys' fees paid or incurred if such fees are less than the reasonable attorneys' fees because an individual is representing the prevailing party for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. This subparagraph shall apply only if such award is paid to such individual or such individual's employer.

**(4) Prevailing party**

**(A) In general**

The term "prevailing party" means any party in any proceeding to which subsection (a) applies (other than the United States or any creditor of the taxpayer involved)—

(i) which—

(I) has substantially prevailed with respect to the amount in controversy, or

(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

(ii) which meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) except to the extent differing procedures are established by rule of court and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect).

**(B) Exception if United States establishes that its position was substantially justified**

**(i) General rule**

A party shall not be treated as the prevailing party in a proceeding to which subsection (a) applies if the United States establishes that the position of the United States in the proceeding was substantially justified.

**(ii) Presumption of no justification if Internal Revenue Service did not follow certain published guidance**

For purposes of clause (i), the position of the United States shall be presumed not to

be substantially justified if the Internal Revenue Service did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

**(iii) Effect of losing on substantially similar issues**

In determining for purposes of clause (i) whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in courts of appeal for other circuits on substantially similar issues.

**(iv) Applicable published guidance**

For purposes of clause (ii), the term "applicable published guidance" means—

(I) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

(II) any of the following which are issued to the taxpayer: private letter rulings, technical advice memoranda, and determination letters.

**(C) Determination as to prevailing party**

Any determination under this paragraph as to whether a party is a prevailing party shall be made by agreement of the parties or—

(i) in the case where the final determination with respect to the tax, interest, or penalty is made at the administrative level, by the Internal Revenue Service, or

(ii) in the case where such final determination is made by a court, the court.

**(D) Special rules for applying net worth requirement**

In applying the requirements of section 2412(d)(2)(B) of title 28, United States Code, for purposes of subparagraph (A)(ii) of this paragraph—

(i) the net worth limitation in clause (i) of such section shall apply to—

(I) an estate but shall be determined as of the date of the decedent's death, and

(II) a trust but shall be determined as of the last day of the taxable year involved in the proceeding, and

(ii) individuals filing a joint return shall be treated as separate individuals for purposes of clause (i) of such section.

**(E) Special rules where judgment less than taxpayer's offer**

**(i) In general**

A party to a court proceeding meeting the requirements of subparagraph (A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding (determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted a qualified offer of the party under subsection (g).

**(ii) Exceptions**

This subparagraph shall not apply to—

(I) any judgment issued pursuant to a settlement; or

(II) any proceeding in which the amount of tax liability is not in issue, including any declaratory judgment proceeding, any proceeding to enforce or quash any summons issued pursuant to this title, and any action to restrain disclosure under section 6110(f).

**(iii) Special rules**

If this subparagraph applies to any court proceeding—

(I) the determination under clause (i) shall be made by reference to the last qualified offer made with respect to the tax liability at issue in the proceeding; and

(II) reasonable administrative and litigation costs shall only include costs incurred on and after the date of such offer.

**(iv) Coordination**

This subparagraph shall not apply to a party which is a prevailing party under any other provision of this paragraph.

**(5) Administrative proceedings**

The term “administrative proceeding” means any procedure or other action before the Internal Revenue Service.

**(6) Court proceedings**

The term “court proceeding” means any civil action brought in a court of the United States (including the Tax Court and the United States Court of Federal Claims).

**(7) Position of United States**

The term “position of the United States” means—

(A) the position taken by the United States in a judicial proceeding to which subsection (a) applies, and

(B) the position taken in an administrative proceeding to which subsection (a) applies as of the earlier of—

(i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or

(ii) the date of the notice of deficiency.

**(d) Special rules for payment of costs**

**(1) Reasonable administrative costs**

An award for reasonable administrative costs shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

**(2) Reasonable litigation costs**

An award for reasonable litigation costs shall be payable in the case of the Tax Court in the same manner as such an award by a district court.

**(e) Multiple actions**

For purposes of this section, in the case of—

(1) multiple actions which could have been joined or consolidated, or

(2) a case or cases involving a return or returns of the same taxpayer (including joint re-

turns of married individuals) which could have been joined in a single court proceeding in the same court,

such actions or cases shall be treated as 1 court proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated.

**(f) Right of appeal**

**(1) Court proceedings**

An order granting or denying (in whole or in part) an award for reasonable litigation or administrative costs under subsection (a) in a court proceeding, may be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment.

**(2) Administrative proceedings**

A decision granting or denying (in whole or in part) an award for reasonable administrative costs under subsection (a) by the Internal Revenue Service shall be subject to the filing of a petition for review with the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute). If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing.

**(3) Appeal of Tax Court decision**

An order of the Tax Court disposing of a petition under paragraph (2) shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

**(g) Qualified offer**

For purposes of subsection (c)(4)—

**(1) In general**

The term “qualified offer” means a written offer which—

(A) is made by the taxpayer to the United States during the qualified offer period;

(B) specifies the offered amount of the taxpayer’s liability (determined without regard to interest);

(C) is designated at the time it is made as a qualified offer for purposes of this section; and

(D) remains open during the period beginning on the date it is made and ending on the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.

**(2) Qualified offer period**

For purposes of this subsection, the term “qualified offer period” means the period—

(A) beginning on the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, and

(B) ending on the date which is 30 days before the date the case is first set for trial.

(Added Pub. L. 97-248, title II, §292(a), Sept. 3, 1982, 96 Stat. 572; amended Pub. L. 98-369, div. A, title VII, §714(c), July 18, 1984, 98 Stat. 961; Pub. L. 99-514, title XV, §1551(a)-(g), Oct. 22, 1986, 100 Stat. 2752, 2753; Pub. L. 100-647, title I, §1015(i), title VI, §6239(a), Nov. 10, 1988, 102 Stat. 3571, 3743; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-168, title VII, §§701(a)-(c)(2), 702(a), 703(a), 704(a), July 30, 1996, 110 Stat. 1463, 1464; Pub. L. 105-34, title XII, §1285(a)-(c), title XIV, §1453(a), Aug. 5, 1997, 111 Stat. 1038, 1055; Pub. L. 105-206, title III, §3101(a)-(e), title VI, §§6012(h), 6014(e), July 22, 1998, 112 Stat. 727, 728, 819, 820; Pub. L. 106-554, §1(a)(7) [title III, §319(25)], Dec. 21, 2000, 114 Stat. 2763, 2763A-647.)

#### ADJUSTMENT OF HOURLY LIMIT ON ATTORNEY FEES AWARDED FOR CALENDAR YEAR 2003

*For adjustment of the hourly limit on attorney fees awarded under this section for calendar year 2003, see section 3.32 of Revenue Procedure 2002-70, set out as a note under section 1 of this title.*

#### PRIOR PROVISIONS

A prior section 7430 was renumbered section 7437 of this title.

#### AMENDMENTS

2000—Subsec. (c)(3). Pub. L. 106-554, §1(a)(7) [title III, §319(25)(A)], substituted “Attorneys” for “Attorneys” in heading.

Subsec. (c)(3)(B). Pub. L. 106-554, §1(a)(7) [title III, §319(25)(B)], substituted “attorneys’ fees” for “attorneys fees” wherever appearing.

1998—Subsec. (b)(4), (5). Pub. L. 105-206, §6012(h), redesignated par. (5) as (4).

Subsec. (c)(1)(B)(iii). Pub. L. 105-206, §3101(a), substituted “\$125” for “\$110” and inserted “the difficulty of the issues presented in the case, or the local availability of tax expertise,” before “justifies a higher rate”.

Subsec. (c)(2). Pub. L. 105-206, §3101(b), added concluding provisions and struck out former concluding provisions which read as follows: “Such term shall only include costs incurred on or after the earlier of (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or (ii) the date of the notice of deficiency.”

Subsec. (c)(3). Pub. L. 105-206, §3101(c), substituted “attorneys” for “attorney’s” in heading and amended text of par. (3) generally. Prior to amendment, text read as follows: “For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.”

Subsec. (c)(4)(B)(iii), (iv). Pub. L. 105-206, §3101(d), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (c)(4)(D). Pub. L. 105-206, §6014(e), substituted “subparagraph (A)(ii)” for “subparagraph (A)(iii)” in introductory provisions.

Subsec. (c)(4)(E). Pub. L. 105-206, §3101(e)(1), added subpar. (E).

Subsec. (g). Pub. L. 105-206, §3101(e)(2), added subsec. (g).

1997—Subsec. (b)(5). Pub. L. 105-34, §1285(b), added par. (5).

Subsec. (c)(4)(D). Pub. L. 105-34, §1453(a), added subpar. (D).

Subsec. (f)(2). Pub. L. 105-34, §1285(c), substituted “the filing of a petition for review with” for “appeal to” and inserted at end “If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be ini-

tiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing.”

Subsec. (f)(3). Pub. L. 105-34, §1285(a), added par. (3).

1996—Subsec. (b)(1). Pub. L. 104-168, §703(a), inserted at end “Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.”

Subsec. (b)(3), (4). Pub. L. 104-168, §704(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows:

“(3) EXCLUSION OF DECLARATORY JUDGMENT PROCEEDINGS.—

“(A) IN GENERAL.—No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

“(B) EXCEPTION FOR SECTION 501(c)(3) DETERMINATION REVOCATION PROCEEDINGS.—Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in section 501(c)(3).”

Subsec. (c)(1). Pub. L. 104-168, §702(a)(3), inserted closing provisions “In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting ‘calendar year 1995’ for ‘calendar year 1992’ in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.”

Subsec. (c)(1)(B)(iii). Pub. L. 104-168, §702(a)(1), (2), substituted “\$110” for “\$75” and struck out “an increase in the cost of living or” before “a special factor.”

Subsec. (c)(2)(B). Pub. L. 104-168, §701(c)(1), substituted “paragraph (4)(C)” for “paragraph (4)(B)”.

Subsec. (c)(4)(A). Pub. L. 104-168, §701(a), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: “which establishes that the position of the United States in the proceeding was not substantially justified.”

Subsec. (c)(4)(B). Pub. L. 104-168, §701(b), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (c)(4)(C). Pub. L. 104-168, §701(c)(2), substituted “Any determination under this paragraph” for “Any determination under subparagraph (A)”.

Pub. L. 104-168, §701(b), redesignated subpar. (B) as (C).

1992—Subsec. (c)(6). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1988—Pub. L. 100-647, §6239(a), substituted “costs” for “court costs” in section catchline and amended text generally, revising and restating provisions so as to include costs and fees in administrative proceedings.

Subsec. (c)(2)(A)(iii). Pub. L. 100-647, §1015(i), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “meets the requirements of section 504(b)(1)(B) of title 5, United States Code (as in effect on the date of the enactment of the Tax Reform Act of 1986 and applied by taking into account the commencement of the proceeding described in subsection (a) in lieu of the initiation of the adjudication referred to in such section).”

1986—Subsec. (a). Pub. L. 99-514, §1551(f), inserted “(payable in the case of the Tax Court in the same manner as such an award by a district court)” in concluding provisions.

Subsec. (b). Pub. L. 99-514, §1551(a), (b), redesignated pars. (2) to (4) as (1) to (3), respectively, added par. (4), and struck out former par. (1), maximum dollar amount, which read as follows: “The amount of reasonable litigation costs which may be awarded under subsection (a) with respect to any prevailing party in any civil proceeding shall not exceed \$25,000.”

Subsec. (c)(1)(A). Pub. L. 99-514, §1551(c), amended subpar. (A) generally. Prior to amendment, subpar. (A)

read as follows: “The term ‘reasonable litigation costs’ includes—

- “(i) reasonable court costs,
- “(ii) the reasonable expenses of expert witnesses in connection with the civil proceeding,
- “(iii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and
- “(iv) reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding.”

Subsec. (c)(2)(A). Pub. L. 99-514, §1551(d), substituted “was not substantially justified” for “was unreasonable” in cl. (i), and added cl. (iii).

Subsec. (c)(4). Pub. L. 99-514, §1551(e), added par. (4).

Subsec. (f). Pub. L. 99-514, §1551(g), struck out subsec. (f), termination, which read as follows: “This section shall not apply to any proceeding commenced after December 31, 1985.”

1984—Subsec. (a)(2). Pub. L. 98-369 inserted reference to United States Claims Court.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3101(g), July 22, 1998, 112 Stat. 729, provided that: “The amendments made by this section [amending this section and section 7431 of this title] shall apply to costs incurred (and, in the case of the amendment made by subsection (c) [amending this section], services performed) more than 180 days after the date of the enactment of this Act [July 22, 1998].”

Amendment by sections 6012(h) and 6014(e) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 1285(d) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section] shall apply to civil actions or proceedings commenced after the date of the enactment of this Act [Aug. 5, 1997].”

Section 1453(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to proceedings commenced after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 701(a)-(c)(2) of Pub. L. 104-168 applicable in case of proceedings commenced after July 30, 1996, see section 701(d) of Pub. L. 104-168, set out as a note under section 6404 of this title.

Section 702(b) of Pub. L. 104-168 provided that: “The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996].”

Section 703(b) of Pub. L. 104-168 provided that: “The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996].”

Section 704(b) of Pub. L. 104-168 provided that: “The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996].”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1015(i) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the

provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Section 6239(d) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section and section 504 of Title 5, Government Organization and Employees] shall apply to proceedings commencing after the date of the enactment of this Act [Nov. 10, 1988].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1551(h) of Pub. L. 99-514 provided that:

“(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to amounts paid after September 30, 1986, in civil actions or proceedings, commenced after December 31, 1985.

“(2) SUBSECTION (f).—The amendment made by subsection (f) [amending this section] shall take effect as if included in the amendments made by section 292 of the Tax Equity and Fiscal Responsibility Act of 1982 [see Effective Date note below].

“(3) APPLICABILITY OF AMENDMENTS TO CERTAIN PRIOR CASES.—The amendments made by this section shall apply to any case commenced after December 31, 1985, and finally disposed of before the date of the enactment of this Act [Oct. 22, 1986], except that in any such case, the 30-day period referred to in section 2412(d)(1)(B) of title 28, United States Code, or Rule 231 of the Tax Court [26 App. U.S.C. Rule 231], as the case may be, shall be deemed to commence on the date of the enactment of this Act [Oct. 22, 1986].”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

#### EFFECTIVE DATE

Section 292(e) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title I, §160, July 18, 1984, 98 Stat. 696, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 6673 of this title and section 2412 of Title 28, Judiciary and Judicial Procedure] shall apply to civil actions or proceedings commenced after February 28, 1983.

“(2) PENALTY.—The amendments made by subsections (b) and (d)(2) [amending section 6673 of this title] shall apply to any action or proceeding in the United States Tax Court which—

“(A) is commenced after December 31, 1982, or

“(B) is pending in the United States Tax Court on the day which is 120 days after the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984].”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6404, 6512, 6656, 7431, 7433, 7436, 7491, 7611 of this title; title 5 section 504; title 28 section 2412.

### § 7431. Civil damages for unauthorized inspection or disclosure of returns and return information

#### (a) In general

##### (1) Inspection or disclosure by employee of United States

If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages

against the United States in a district court of the United States.

**(2) Inspection or disclosure by a person who is not an employee of United States**

If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

**(b) Exceptions**

No liability shall arise under this section with respect to any inspection or disclosure—

- (1) which results from a good faith, but erroneous, interpretation of section 6103, or
- (2) which is requested by the taxpayer.

**(c) Damages**

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

- (1) the greater of—
  - (A) \$1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or
  - (B) the sum of—
    - (i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus
    - (ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus
- (2) the costs of the action, plus
- (3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4)).

**(d) Period for bringing action**

Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

**(e) Notification of unlawful inspection and disclosure**

If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of—

- (1) paragraph (1) or (2) of section 7213(a),
- (2) section 7213A(a), or
- (3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,

the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

**(f) Definitions**

For purposes of this section, the terms “inspect”, “inspection”, “return”, and “return in-

formation” have the respective meanings given such terms by section 6103(b).

**(g) Extension to information obtained under section 3406**

For purposes of this section—

(1) any information obtained under section 3406 (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any inspection or use of such information other than for purposes of meeting any requirement under section 3406 or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103 shall be treated as a violation of section 6103.

For purposes of subsection (b), the reference to section 6103 shall be treated as including a reference to section 3406.

**(h) Special rule for information obtained under section 6103(k)(9)**

For purposes of this section, any reference to section 6103 shall be treated as including a reference to section 6311(e).

(Added Pub. L. 97-248, title III, §357(a), Sept. 3, 1982, 96 Stat. 645; amended Pub. L. 98-67, title I, §104(b), Aug. 5, 1983, 97 Stat. 379; Pub. L. 105-34, title XII, §1205(c)(2), Aug. 5, 1997, 111 Stat. 998; Pub. L. 105-35, §3(a)-(d)(4), (6), Aug. 5, 1997, 111 Stat. 1105, 1106; Pub. L. 105-206, title III, §3101(f), title VI, §6012(b)(3), July 22, 1998, 112 Stat. 729, 819.)

PRIOR PROVISIONS

A prior section 7431 was renumbered section 7437 of this title.

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105-206, §3101(f), substituted “, plus” for the period at end.

Subsec. (c)(3). Pub. L. 105-206, §3101(f), added par. (3).  
Subsecs. (g), (h). Pub. L. 105-206, §6012(b)(3), redesignated subsec. (g), relating to special rule for information obtained under section 6103(k)(8), as (h), and substituted “(9)” for “(8)” in heading.

1997—Pub. L. 105-35, §3(d)(4), inserted “inspection or” before “disclosure” in section catchline.

Subsec. (a)(1), (2). Pub. L. 105-35, §3(a)(1), (2), substituted “Inspection or disclosure” for “Disclosure” in headings and “inspects or discloses” for “discloses” in text.

Subsec. (b). Pub. L. 105-35, §3(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103.”

Subsec. (c)(1). Pub. L. 105-35, §3(d)(1), (2), inserted “inspection or” before “disclosure” in subpars. (A) and (B)(i) and substituted “willful inspection or disclosure or an inspection or disclosure” for “willful disclosure or a disclosure” in subpar. (B)(ii).

Subsec. (d). Pub. L. 105-35, §3(d)(1), inserted “inspection or” before “disclosure”.

Subsec. (e). Pub. L. 105-35, §3(b), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-35, §3(b), (d)(3), redesignated subsec. (e) as (f) and amended it generally. Prior to amendment, subsec. (f) read as follows:

“(f) RETURN; RETURN INFORMATION.—For purposes of this section, the terms ‘return’ and ‘return informa-

tion' have the respective meanings given such terms in section 6103(b)."

Subsec. (g). Pub. L. 105-35, §3(b), (d)(6), redesignated subsec. (f) as (g) and substituted "any inspection or use" for "any use" in par. (2).

Pub. L. 105-34, §1205(c)(2), added subsec. (g) relating to special rule for information obtained under section 6103(k)(8).

1983—Subsec. (f). Pub. L. 98-67 added subsec. (f).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 3101(f) of Pub. L. 105-206 applicable to costs incurred more than 180 days after July 22, 1998, see section 3101(g) of Pub. L. 105-206, set out as a note under section 7430 of this title.

Amendment by section 6012(b)(3) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Section 3(e) of Pub. L. 105-35 provided that: "The amendments made by this section [amending this section] shall apply to inspections and disclosures occurring on and after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by Pub. L. 105-34 effective on the day 9 months after Aug. 5, 1997, see section 1205(d) of Pub. L. 105-34, set out as a note under section 6103 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-67 effective Aug. 5, 1983, see section 110(c) of Pub. L. 98-67, set out as a note under section 31 of this title.

#### EFFECTIVE DATE

Section 357(c) of Pub. L. 97-248 provided that: "The amendments made by this section [enacting this section and repealing section 7217 of this title] shall apply with respect to disclosures made after the date of enactment of this Act [Sept. 3, 1982]."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3406, 6105, 6311 of this title; title 5 section 3111.

### § 7432. Civil damages for failure to release lien

#### (a) In general

If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien under section 6325 on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

#### (b) Damages

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

- (1) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus
- (2) the costs of the action.

#### (c) Payment authority

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

#### (d) Limitations

##### (1) Requirement that administrative remedies be exhausted

A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

##### (2) Mitigation of damages

The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

##### (3) Period for bringing action

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

#### (e) Notice of failure to release lien

The Secretary shall by regulation prescribe reasonable procedures for a taxpayer to notify the Secretary of the failure to release a lien under section 6325 on property of the taxpayer. (Added Pub. L. 100-647, title VI, §6240(a), Nov. 10, 1988, 102 Stat. 3746.)

#### PRIOR PROVISIONS

A prior section 7432 was renumbered 7437 of this title.

#### EFFECTIVE DATE

Section 6240(c) of Pub. L. 100-647 provided that: "The amendments made by this section [enacting this section] shall apply to notices provided by the taxpayer of the failure to release a lien, and damages arising, after December 31, 1988."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7433 of this title.

### § 7433. Civil damages for certain unauthorized collection actions

#### (a) In general

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

#### (b) Damages

In any action brought under subsection (a) or petition filed under subsection (e), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$1,000,000 (\$100,000, in the case of negligence) or the sum of—

- (1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent actions of the officer or employee, and

(2) the costs of the action.

**(c) Payment authority**

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

**(d) Limitations**

**(1) Requirement that administrative remedies be exhausted**

A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

**(2) Mitigation of damages**

The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

**(3) Period for bringing action**

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

**(e) Actions for violations of certain bankruptcy procedures**

**(1) In general**

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to automatic stay) or 524 (relating to effect of discharge) of title 11, United States Code (or any successor provision), or any regulation promulgated under such provision, such taxpayer may petition the bankruptcy court to recover damages against the United States.

**(2) Remedy to be exclusive**

**(A) In general**

Except as provided in subparagraph (B), notwithstanding section 105 of such title 11, such petition shall be the exclusive remedy for recovering damages resulting from such actions.

**(B) Certain other actions permitted**

Subparagraph (A) shall not apply to an action under section 362(h) of such title 11 for a violation of a stay provided by section 362 of such title; except that—

(i) administrative and litigation costs in connection with such an action may only be awarded under section 7430; and

(ii) administrative costs may be awarded only if incurred on or after the date that the bankruptcy petition is filed.

(Added Pub. L. 100-647, title VI, §6241(a), Nov. 10, 1988, 102 Stat. 3747; amended Pub. L. 104-168, title VIII, §§801(a), 802(a), July 30, 1996, 110 Stat. 1465; Pub. L. 105-206, title III, §3102(a), (c), July 22, 1998, 112 Stat. 730.)

PRIOR PROVISIONS

A prior section 7433 was renumbered 7437 of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-206, §3102(a)(1)(A), inserted “, or by reason of negligence,” after “recklessly or intentionally”.

Subsec. (b). Pub. L. 105-206, §3102(a)(1)(B)(i), (c)(2), in introductory provisions, inserted “or petition filed under subsection (e)” after “subsection (a)” and inserted “(\$100,000, in the case of negligence)” after “\$1,000,000”.

Subsec. (b)(1). Pub. L. 105-206, §3102(a)(1)(B)(ii), inserted “or negligent” after “reckless or intentional”.

Subsec. (d)(1). Pub. L. 105-206, §3102(a)(2), substituted “Requirement that administrative remedies be exhausted” for “Award for damages may be reduced if administrative remedies not exhausted” in heading and amended text of par. (1) generally. Prior to amendment, text read as follows: “The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.”

Subsec. (e). Pub. L. 105-206, §3102(c)(1), added subsec. (e).

1996—Subsec. (b). Pub. L. 104-168, §801(a), substituted “\$1,000,000” for “\$100,000”.

Subsec. (d)(1). Pub. L. 104-168, §802(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 applicable to actions of officers or employees of Internal Revenue Service after July 22, 1998, see section 3102(d) of Pub. L. 105-206, set out as a note under section 7426 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 801(b) of Pub. L. 104-168 provided that: “The amendment made by subsection (a) [amending this section] shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act [July 30, 1996].”

Section 802(b) of Pub. L. 104-168 provided that: “The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6304, 6335, 6673, 7426 of this title.

**§ 7434. Civil damages for fraudulent filing of information returns**

**(a) In general**

If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

**(b) Damages**

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of—

(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

(2) the costs of the action, and

(3) in the court’s discretion, reasonable attorneys’ fees.

**(c) Period for bringing action**

Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of—

(1) 6 years after the date of the filing of the fraudulent information return, or

(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

**(d) Copy of complaint filed with IRS**

Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

**(e) Finding of court to include correct amount of payment**

The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

**(f) Information return**

For purposes of this section, the term “information return” means any statement described in section 6724(d)(1)(A).

(Added Pub. L. 104-168, title VI, § 601(a), July 30, 1996, 110 Stat. 1462; amended Pub. L. 105-206, title VI, § 6023(29), July 22, 1998, 112 Stat. 826.)

## PRIOR PROVISIONS

A prior section 7434 was renumbered 7437 of this title.

## AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-206 substituted “attorneys’ fees” for “attorneys fees”.

## EFFECTIVE DATE

Section 601(c) of Pub. L. 104-168 provided that: “The amendments made by this section [enacting this section and renumbering former section 7434 as 7435 of this title] shall apply to fraudulent information returns filed after the date of the enactment of this Act [July 30, 1996].”

**§ 7435. Civil damages for unauthorized enticement of information disclosure****(a) In general**

If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer’s tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

**(b) Damages**

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$500,000 or the sum of—

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and

(2) the costs of the action.

Damages shall not include the taxpayer’s liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

**(c) Payment authority**

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

**(d) Period for bringing action**

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

**(e) Mandatory stay**

Upon a certification by the Commissioner or the Commissioner’s delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

**(f) Crime-fraud exception**

Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime.

(Added Pub. L. 104-168, title XII, § 1203(a), July 30, 1996, 110 Stat. 1470.)

## PRIOR PROVISIONS

A prior section 7435 was renumbered 7437 of this title.

## EFFECTIVE DATE

Section 1203(c) of Pub. L. 104-168 provided that: “The amendments made by this section [enacting this section and renumbering former section 7435 as 7436 of this title] shall apply to actions after the date of the enactment of this Act [July 30, 1996].”

**§ 7436. Proceedings for determination of employment status****(a) Creation of remedy**

If, in connection with an audit of any person, there is an actual controversy involving a determination by the Secretary as part of an examination that—

(1) one or more individuals performing services for such person are employees of such person for purposes of subtitle C, or

(2) such person is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978 with respect to such an individual,

upon the filing of an appropriate pleading, the Tax Court may determine whether such a determination by the Secretary is correct and the proper amount of employment tax under such determination. Any such redetermination by the Tax Court shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

**(b) Limitations****(1) Petitioner**

A pleading may be filed under this section only by the person for whom the services are performed.

**(2) Time for filing action**

If the Secretary sends by certified or registered mail notice to the petitioner of a determination by the Secretary described in subsection (a), no proceeding may be initiated under this section with respect to such determination unless the pleading is filed before the 91st day after the date of such mailing.

**(3) No adverse inference from treatment while action is pending**

If, during the pendency of any proceeding brought under this section, the petitioner changes his treatment for employment tax purposes of any individual whose employment status as an employee is involved in such proceeding (or of any individual holding a substantially similar position) to treatment as an employee, such change shall not be taken into account in the Tax Court's determination under this section.

**(c) Small case procedures****(1) In general**

At the option of the petitioner, concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings under this section may (notwithstanding the provisions of section 7453) be conducted subject to the rules of evidence, practice, and procedure applicable under section 7463 if the amount of employment taxes placed in dispute is \$50,000 or less for each calendar quarter involved.

**(2) Finality of decisions**

A decision entered in any proceeding conducted under this subsection shall not be reviewed in any other court and shall not be treated as a precedent for any other case not involving the same petitioner and the same determinations.

**(3) Certain rules to apply**

Rules similar to the rules of the last sentence of subsection (a), and subsections (c), (d), and (e), of section 7463 shall apply to proceedings conducted under this subsection.

**(d) Special rules****(1) Restrictions on assessment and collection pending action, etc.**

The principles of subsections (a), (b), (c), (d), and (f) of section 6213, section 6214(a), section 6215, section 6503(a), section 6512, and section 7481 shall apply to proceedings brought under this section in the same manner as if the Secretary's determination described in subsection (a) were a notice of deficiency.

**(2) Awarding of costs and certain fees**

Section 7430 shall apply to proceedings brought under this section.

**(e) Employment tax**

The term "employment tax" means any tax imposed by subtitle C.

(Added Pub. L. 105-34, title XIV, §1454(a), Aug. 5, 1997, 111 Stat. 1055; amended Pub. L. 105-206, title III, §3103(b)(1), July 22, 1998, 112 Stat. 731; Pub. L. 106-554, §1(a)(7) [title III, §314(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-643.)

## REFERENCES IN TEXT

Section 530 of the Revenue Act of 1978, referred to in subsec. (a)(2), is section 530 of Pub. L. 95-600, which is set out as a note under section 3401 of this title.

## PRIOR PROVISIONS

A prior section 7436 was renumbered section 7437 of this title.

## AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554 inserted "and the proper amount of employment tax under such determination" before period at end of first sentence.

1998—Subsec. (c)(1). Pub. L. 105-206 substituted "\$50,000" for "\$10,000".

## EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106-554, set out as a note under section 56 of this title.

## EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3103(c), July 22, 1998, 112 Stat. 731, provided that: "The amendments made by this section [amending this section and sections 7443A and 7463 of this title] shall apply to proceedings commenced after the date of the enactment of this Act [July 22, 1998]."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6511, 7421, 7453, 7481 of this title.

**§ 7437. Cross references**

(1) For determination of amount of any tax, additions to tax, etc., in title 11 cases, see section 505 of title 11 of the United States Code.

(2) For exclusion of tax liability from discharge in cases under title 11 of the United States Code, see section 523 of such title 11.

(3) For recognition of tax liens in cases under title 11 of the United States Code, see sections 545 and 724 of such title 11.

(4) For collection of taxes in connection with plans for individuals with regular income in cases under title 11 of the United States Code, see section 1328 of such title 11.

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see section 3713(a) of title 31, United States Code.

(7) For interest on judgments for overpayments, see section 2411(a) of Title 28 of the United States Code.

(8) For review of a Tax Court decision, see section 7482.

(9) For statute prohibiting suits to replevy property taken under revenue laws, see section 2463 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 878, §7425; renumbered §7427, Pub. L. 89-719, title I, §109, Nov. 2, 1966, 80 Stat. 1141; renumbered §7428, and amended Pub. L. 94-455, title XII, §1203(b)(2)(A),

title XIX, §1906(a)(45), Oct. 4, 1976, 90 Stat. 1690, 1830; renumbered §7430, Pub. L. 94-455, title XIII, §1306(a), Oct. 4, 1976, 90 Stat. 1717; Pub. L. 96-589, §6(d)(1), (i)(13), Dec. 24, 1980, 94 Stat. 3408, 3411; renumbered §7431, Pub. L. 97-248, title II, §292(a), Sept. 3, 1982, 96 Stat. 572; renumbered §7432, Pub. L. 97-248, title III, §357(a), Sept. 3, 1982, 96 Stat. 645; Pub. L. 97-258, §3(f)(14), Sept. 13, 1982, 96 Stat. 1065; renumbered §7434, Pub. L. 100-647, title VI, §§6240(a), 6241(a), Nov. 10, 1988, 102 Stat. 3746, 3747; renumbered §7435, Pub. L. 104-168, title VI, §601(a), July 30, 1996, 110 Stat. 1462; renumbered §7436, Pub. L. 104-168, title XII, §1203(a), July 30, 1996, 110 Stat. 1470; renumbered §7437, Pub. L. 105-34, title XIV, §1454(a), Aug. 5, 1997, 111 Stat. 1055.)

## AMENDMENTS

1982—Par. (6). Pub. L. 97-258 substituted “section 3713(a) of title 31, United States Code” for “R.S. 3466 (31 U.S.C. 191)”. Notwithstanding the directory language that amendment be made to section 7430, the amendment was executed to this section to reflect the probable intent of Congress and the intervening renumbering of section 7430 as 7432 by Pub. L. 97-248.

1980—Par. (1). Pub. L. 96-589, §6(d)(1), added par. (1). Former par. (1), which provided cross reference to former section 35 of title 11 for exclusion of tax liability from discharge in bankruptcy, was struck out.

Par. (2). Pub. L. 96-589, §6(d)(1), (i)(13), added par. (2). Former par. (2), which provided cross reference to former section 93 of title 11 for limit on amount allowed in bankruptcy proceedings on debts owing to the United States, was struck out.

Par. (3). Pub. L. 96-589, §6(d)(1), (i)(13), added par. (3). Former par. (3), which provided cross reference to former section 107 of title 11 for recognition of tax liens in proceedings under the Bankruptcy Act, was struck out.

Par. (4). Pub. L. 96-589, §6(d)(1), (i)(13), added par. (4). Former par. (4), which provided for cross reference to former section 1080 of title 11 for collection of taxes in connection with wage earners' plans in bankruptcy courts, was struck out.

1976—Par. (1). Pub. L. 94-455, §1906(a)(45)(A), struck out “52 Stat. 851;” before “11 U.S.C. 35”.

Par. (2). Pub. L. 94-455, §1906(a)(45)(B), struck out “52 Stat. 867;” before “11 U.S.C. 93”.

Par. (3). Pub. L. 94-455, §1906(a)(45)(C), struck out “52 Stat. 876-877;” before “11 U.S.C. 107”.

Par. (4). Pub. L. 94-455, §1906(a)(45)(D), struck out “52 Stat. 938;” before “11 U.S.C. 1080”.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

## Subchapter C—The Tax Court

Part I.	Organization and jurisdiction.
II.	Procedure.
III.	Miscellaneous provisions.
IV.	Declaratory judgments.

## AMENDMENTS

1976—Pub. L. 94-455, title X, §1042(d)(2)(F), Oct. 4, 1976, 90 Stat. 1639, struck out in item relating to part IV “relating to qualification of certain retirement plans” after “Declaratory judgments”.

1974—Pub. L. 93-406, title II, §1041(c), Sept. 2, 1974, 88 Stat. 951, inserted item relating to part IV.

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6215, 6406 of this title.

## PART I—ORGANIZATION AND JURISDICTION

Sec. 7441.	Status.
7442.	Jurisdiction.
7443.	Membership.
7443A.	Special trial judges.
7444.	Organization.
7445.	Offices.
7446.	Times and places of sessions.
7447.	Retirement.
7448.	Annuities of surviving spouses and dependent children. <sup>1</sup>

## AMENDMENTS

1986—Pub. L. 99-514, title XV, §1556(b)(3), Oct. 22, 1986, 100 Stat. 2755, added item 7443A.

1976—Pub. L. 94-455, title XIX, §1906(b)(10), Oct. 4, 1976, 90 Stat. 1834, substituted “Annuities of surviving spouses and dependent children” for “Annuities to widows and dependent children of judges” in item 7448.

1961—Pub. L. 87-370, §2, Oct. 4, 1961, 75 Stat. 801, added item 7448.

## § 7441. Status

There is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 879; Pub. L. 91-172, title IX, §951, Dec. 30, 1969, 83 Stat. 730.)

## AMENDMENTS

1969—Pub. L. 91-172 substituted provisions establishing Tax Court as a Constitutional court, and enumerating the members that comprise its bench, for provisions continuing the Board of Tax Appeals, known as the Tax Court, as an independent agency in the Executive Branch of Government and enumerating the members that comprise its bench.

## EFFECTIVE DATE OF 1969 AMENDMENT

Section 962(a) of Pub. L. 91-172 provided that: “The amendments made by sections 951, 953, 954(c) and (e), 955, 956, 958, and 960(c), (d), (e), (g), and (j) [amending this section and sections 7443, 7447, 7448, 7456, 7471, and 7701 of this title] shall take effect on the date of enactment of this Act [Dec. 30, 1969].”

## REPORT ON INVENTORY OF CASES IN TAX COURT

Pub. L. 99-514, title XV, §1552(c), Oct. 22, 1986, 100 Stat. 2753, provided that: “The Secretary of the Treasury or his delegate and the Tax Court shall each prepare a report for 1987 and for each 2-calendar year period thereafter on the inventory of cases in the Tax Court and the measures to close cases more efficiently. Such reports shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.”

## CONTINUATION OF STATUS

Section 961 of Pub. L. 91-172 provided that: “The United States Tax Court established under the amendment made by section 951 [amending this section] is a continuation of the Tax Court of the United States as it existed prior to the date of enactment of this Act [Dec. 30, 1969], the judges of the Tax Court of the United States immediately prior to the date of enactment of this Act [Dec. 30, 1969] shall become the judges of the United States Tax Court upon the enactment of this Act, and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Tax

<sup>1</sup> So in original. Does not conform to section catchline.

Court of the United States before the date of enactment of this Act [Dec. 30, 1969] shall result from the enactment of this Act.”

#### § 7442. Jurisdiction

The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10–87), or by laws enacted subsequent to February 26, 1926.

(Aug. 16, 1954, ch. 736, 68A Stat. 879.)

##### REFERENCES IN TEXT

Chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, referred to in text, were comprised of sections 1 to 482, 500 to 706, 800 to 939, and 1000 to 1031 of former Title 26, Internal Revenue Code. Chapters 1 and 2 of the Internal Revenue Code of 1939 were repealed by section 7851(a)(1)(A) of this title, and chapters 3 and 4 of the Internal Revenue Code of 1939 were repealed by section 7851(a)(2)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

The Revenue Act of 1926, referred to in text, is act Feb. 26, 1926, ch. 27, 44 Stat. 9. For complete classification of this Act to the Code, see Tables.

#### § 7443. Membership

##### (a) Number

The Tax Court shall be composed of 19 members.

##### (b) Appointment

Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

##### (c) Salary

(1) Each judge shall receive salary at the same rate and in the same installments as judges of the district courts of the United States.

(2) For rate of salary and frequency of installment see section 135, title 28, United States Code, and section 5505, title 5, United States Code.

##### (d) Expenses for travel and subsistence

Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Court of International Trade.

##### (e) Term of office

The term of office of any judge of the Tax Court shall expire 15 years after he takes office.

##### (f) Removal from office

Judges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

##### (g) Disbarment of removed judges

A judge of the Tax Court removed from office in accordance with subsection (f) shall not be

permitted at any time to practice before the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 879; Mar. 2, 1955, ch. 9, §1(h), 69 Stat. 10; Pub. L. 88–426, title IV, §403(i), Aug. 14, 1964, 78 Stat. 434; Pub. L. 91–172, title IX, §§952, 953, Dec. 30, 1969, 83 Stat. 730; Pub. L. 96–417, title VI, §601(10), Oct. 10, 1980, 94 Stat. 1744; Pub. L. 96–439, §1(a), (b), Oct. 13, 1980, 94 Stat. 1878.)

##### AMENDMENTS

1980—Subsec. (a). Pub. L. 96–439, §1(a), increased number of judges from 16 to 19.

Subsec. (b). Pub. L. 96–439, §1(b), struck out age limitation that no one could be appointed a member of the Tax Court unless appointed before attaining age 65.

Subsec. (d). Pub. L. 96–417 substituted “Court of International Trade” for “Customs Court”.

1969—Subsec. (b). Pub. L. 91–172, §952(a), provided that an individual may not be appointed a judge of the Tax Court after reaching age 65.

Subsec. (c). Pub. L. 91–172, §953, substituted provisions fixing salary of Tax Court judges at the same rate and same installments as District Court judges, for provisions that each judge of the Tax Court receive a salary of \$30,000 per annum, to be paid in monthly installments.

Subsec. (e). Pub. L. 91–172, §952(b), substituted provisions that a term in office of any Tax Court judge would expire 15 years after he takes office, for provisions that a term in office of any Tax Court judge would expire 12 years after the expiration of the term for which his predecessor was appointed, and any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed would be appointed only for the unexpired term of his predecessor.

1964—Subsec. (c). Pub. L. 88–426 increased salary of judges from \$22,500 to \$30,000.

1955—Subsec. (c). Act Mar. 2, 1955, increased salary of judges from \$15,000 to \$22,500.

##### EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1(c) of Pub. L. 96–439 provided that: “The amendments made by this section [amending this section] shall take effect on February 1, 1981.”

Amendment by Pub. L. 96–417 effective, except as otherwise provided, Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, as amended, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

##### EFFECTIVE DATE OF 1969 AMENDMENT

Section 962(b), (c) of Pub. L. 91–172 provided that:

“(b) The amendment made by section 952(a) [amending this section] shall apply to judges appointed after the date of enactment of this Act [Dec. 30, 1969].

“(c) The amendment made by section 952(b) [amending this section] shall take effect on the date of enactment of this Act [Dec. 30, 1969], except that—

“(1) the term of office being served by a judge of the Tax Court on that date shall expire on the date it would have expired under the law in effect on the date preceding the date of enactment of this Act [Dec. 30, 1969]; and

“(2) a judge of the Tax Court on the date of enactment of this Act [Dec. 30, 1969] may be reappointed in the same manner as a judge of the Tax Court hereafter appointed.”

Amendment by section 953 of Pub. L. 91–172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

##### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964,

except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

#### EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 31 of Title 2, The Congress.

#### SALARY INCREASES

1987—Salaries of judges increased to \$89,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of judges increased to \$54,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2.

1969—Salaries of judges increased to \$40,000 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2.

#### CERTIFICATION BY JUDGE OF TRAVEL EXPENSES

Provisions authorizing the travel expenses of the judges of the United States Tax Court to be paid upon the written certificate of the judge were contained in the following appropriation acts:

- Pub. L. 107-67, title IV, Nov. 12, 2001, 115 Stat. 543.
- Pub. L. 106-554, §1(a)(3) [title IV], Dec. 21, 2000, 114 Stat. 2763, 2763A-150.
- Pub. L. 106-58, title IV, Sept. 29, 1999, 113 Stat. 463.
- Pub. L. 105-277, div. A, §101(h) [title IV], Oct. 21, 1998, 112 Stat. 2681-480, 2681-510.
- Pub. L. 105-61, title IV, Oct. 10, 1997, 111 Stat. 1304.
- Pub. L. 104-208, div. A, title I, §101(f) [title IV], Sept. 30, 1996, 110 Stat. 3009-314, 3009-344.
- Pub. L. 104-52, title IV, Nov. 19, 1995, 109 Stat. 491.
- Pub. L. 103-329, title IV, Sept. 30, 1994, 108 Stat. 2408.
- Pub. L. 103-123, title IV, Oct. 28, 1993, 107 Stat. 1251.
- Pub. L. 102-393, title IV, Oct. 6, 1992, 106 Stat. 1757.
- Pub. L. 102-141, title IV, Oct. 28, 1991, 105 Stat. 862.
- Pub. L. 101-509, title IV, Nov. 5, 1990, 104 Stat. 1422.
- Pub. L. 101-136, title IV, Nov. 3, 1989, 103 Stat. 811.
- Pub. L. 100-440, title IV, Sept. 22, 1988, 102 Stat. 1746.
- Pub. L. 100-202, §101(m) [title IV], Dec. 22, 1987, 101 Stat. 1329-390, 1329-414.
- Pub. L. 99-500, §101(m) [title IV], Oct. 18, 1986, 100 Stat. 1783-308, 1783-323, and Pub. L. 99-591, §101(m) [title IV], Oct. 30, 1986, 100 Stat. 3341-308, 3341-323.
- Pub. L. 99-190, title I, §101(h) [H.R. 3036, title IV], Dec. 19, 1985, 99 Stat. 1291.
- Pub. L. 98-473, title I, §101(j) [H.R. 5798, title IV], Oct. 12, 1984, 98 Stat. 1963.
- Pub. L. 98-151, §101(f) [H.R. 4139, title IV], Nov. 14, 1983, 97 Stat. 973.
- Pub. L. 97-377, title I, §101(a) [incorporating H.R. 4121, title IV, for FY 1982], Dec. 21, 1982, 96 Stat. 1830.
- Pub. L. 97-92, §101(a) [H.R. 4121, title IV], Dec. 15, 1981, 95 Stat. 1183.
- Pub. L. 96-536, §101(a) [incorporating Pub. L. 96-74, title IV], Dec. 16, 1980, 94 Stat. 3166.
- Pub. L. 96-74, title IV, Sept. 29, 1979, 93 Stat. 572.
- Pub. L. 95-429, title IV, Oct. 10, 1978, 92 Stat. 1013.
- Pub. L. 95-81, title IV, July 31, 1977, 91 Stat. 352.
- Pub. L. 94-363, title IV, July 14, 1976, 90 Stat. 975.
- Pub. L. 94-91, title IV, Aug. 9, 1975, 89 Stat. 456.
- Pub. L. 93-381, title IV, Aug. 21, 1974, 88 Stat. 629.
- Pub. L. 93-143, title IV, Oct. 30, 1973, 87 Stat. 522.
- Pub. L. 92-351, title IV, July 13, 1972, 86 Stat. 485.
- Pub. L. 92-49, title IV, July 9, 1971, 85 Stat. 120.
- Pub. L. 91-422, title IV, Sept. 26, 1970, 84 Stat. 878.
- Pub. L. 91-74, title IV, Sept. 29, 1969, 83 Stat. 123.
- Pub. L. 90-350, title IV, June 19, 1968, 82 Stat. 196.
- Pub. L. 90-47, title IV, July 7, 1967, 81 Stat. 118.
- Pub. L. 89-474, title IV, June 29, 1966, 80 Stat. 228.
- Pub. L. 89-57, title IV, June 30, 1965, 79 Stat. 203.
- Pub. L. 88-392, title IV, Aug. 1, 1964, 78 Stat. 375.
- Pub. L. 88-39, title IV, June 13, 1963, 77 Stat. 65.
- Pub. L. 87-575, title V, Aug. 6, 1962, 76 Stat. 317.

- Pub. L. 87-159, title III, Aug. 21, 1961, 75 Stat. 398.
- Pub. L. 86-561, title III, June 30, 1960, 74 Stat. 288.
- Pub. L. 86-39, title III, June 11, 1959, 73 Stat. 70.
- Pub. L. 85-354, title III, Mar. 28, 1958, 72 Stat. 66.
- Pub. L. 85-37, title III, May 27, 1957, 71 Stat. 41.
- Apr. 2, 1956, ch. 161, title III, 70 Stat. 98.
- June 1, 1955, ch. 113, title III, 69 Stat. 78.

#### EXECUTIVE ORDER NO. 12064

Ex. Ord. No. 12064, June 5, 1978, 43 F.R. 24661, which established the United States Tax Court Nominating Commission and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7443A, 7447, 7448 of this title.

### § 7443A. Special trial judges

#### (a) Appointment

The chief judge may, from time to time, appoint special trial judges who shall proceed under such rules and regulations as may be promulgated by the Tax Court.

#### (b) Proceedings which may be assigned to special trial judges

The chief judge may assign—

- (1) any declaratory judgment proceeding,
- (2) any proceeding under section 7463,
- (3) any proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds \$50,000,
- (4) any proceeding under section 6320 or 6330, and
- (5) any other proceeding which the chief judge may designate,

to be heard by the special trial judges of the court.

#### (c) Authority to make court decision

The court may authorize a special trial judge to make the decision of the court with respect to any proceeding described in paragraph (1), (2), (3), or (4) of subsection (b), subject to such conditions and review as the court may provide.

#### (d) Salary

Each special trial judge shall receive salary—

- (1) at a rate equal to 90 percent of the rate for judges of the Tax Court, and
- (2) in the same installments as such judges.

#### (e) Expenses for travel and subsistence

Subsection (d) of section 7443 shall apply to special trial judges subject to such rules and regulations as may be promulgated by the Tax Court.

(Added Pub. L. 99-514, title XV, §1556(a), Oct. 22, 1986, 100 Stat. 2754; amended Pub. L. 105-206, title III, §§3103(b)(1), 3401(c), July 22, 1998, 112 Stat. 731, 749; Pub. L. 105-277, div. J, title IV, §4002(e), Oct. 21, 1998, 112 Stat. 2681-907.)

#### AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-206, §3103(b)(1), substituted “\$50,000” for “\$10,000”.

Subsec. (b)(4), (5). Pub. L. 105-206, §3401(c)(1), as amended by Pub. L. 105-277, §4002(e)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 105-206, §3401(c)(2), as amended by Pub. L. 105-277, §4002(e)(2), substituted “(3), or (4)” for “or (3)”.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, to which such amendment relates, see section 4002(k) of Pub. L. 105-277, set out as a note under section 1 of this title.

Amendment by section 3103 of Pub. L. 105-206 applicable to proceedings commenced after July 22, 1998, see section 3103(c) of Pub. L. 105-206, set out as a note under section 7436 of this title.

Amendment by section 3401 of Pub. L. 105-206 applicable to collection actions initiated after the date which is 180 days after July 22, 1998, see section 3401(d) of Pub. L. 105-206, set out as an Effective Date note under section 6320 of this title.

EFFECTIVE DATE

Section 1556(c) of Pub. L. 99-514 provided that: “(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 7456 and 7471 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].

“(2) SALARY.—Subsection (d) of section 7443A of the Internal Revenue Code of 1954 [now 1986] (as added by this section) shall take effect on the 1st day of the 1st month beginning after the date of the enactment of this Act [Oct. 22, 1986].

“(3) NEW APPOINTMENTS NOT REQUIRED.—Nothing in the amendments made by this section shall be construed to require the reappointment of any individual serving as a special trial judge of the Tax Court on the day before the date of the enactment of this Act [Oct. 22, 1986].”

INCONSISTENCIES WITH PRESIDENTIAL SALARY RECOMMENDATIONS

Pub. L. 100-647, title I, §1015(j), Nov. 10, 1988, 102 Stat. 3571, provided that: “To the extent the salary recommendations submitted by the President on January 5, 1987, are inconsistent with the provisions of section 7443A(d)(1) of the 1986 Code, such recommendations shall not be effective for any period.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7471 of this title.

§ 7444. Organization

(a) Seal

The Tax Court shall have a seal which shall be judicially noticed.

(b) Designation of chief judge

The Tax Court shall at least biennially designate a judge to act as chief judge.

(c) Divisions

The chief judge may from time to time divide the Tax Court into divisions of one or more judges, assign the judges of the Tax Court thereto, and in case of a division of more than one judge, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a judge assigned thereto to serve thereon, is composed of less than the number of judges designated for the division, the chief judge may assign other judges to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of judges thereto.

(d) Quorum

A majority of the judges of the Tax Court or of any division thereof shall constitute a

quorum for the transaction of the business of the Tax Court or of the division, respectively. A vacancy in the Tax Court or in any division thereof shall not impair the powers nor affect the duties of the Tax Court or division nor of the remaining judges of the Tax Court or division, respectively.

(Aug. 16, 1954, ch. 736, 68A Stat. 880.)

§ 7445. Offices

The principal office of the Tax Court shall be in the District of Columbia, but the Tax Court or any of its divisions may sit at any place within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 880.)

§ 7446. Times and places of sessions

The times and places of the sessions of the Tax Court and of its divisions shall be prescribed by the chief judge with a view to securing reasonable opportunity to taxpayers to appear before the Tax Court or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 880.)

§ 7447. Retirement

(a) Definitions

For purposes of this section—

(1) The term “Tax Court” means the United States Tax Court.

(2) The term “judge” means the chief judge or a judge of the Tax Court; but such term does not include any individual performing judicial duties pursuant to subsection (c).

(3) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as judge, as judge of the Tax Court of the United States, or as a member of the Board of Tax Appeals.

(b) Retirement

(1) Any judge shall retire upon attaining the age of 70.

(2) Any judge who meets the age and service requirements set forth in the following table may retire:

The judge has attained age:	And the years of service as a judge are at least:
65 .....	15
66 .....	14
67 .....	13
68 .....	12
69 .....	11
70 .....	10.

(3) Any judge who is not reappointed following the expiration of the term of his office may retire upon the completion of such term, if (A) he has served as a judge of the Tax Court for 15 years or more and (B) not earlier than 9 months preceding the date of the expiration of the term of his office and not later than 6 months preceding such date, he advised the President in writing that he was willing to accept reappointment to the Tax Court.

(4) Any judge who becomes permanently disabled from performing his duties shall retire.

Section 8335(a) of title 5 of the United States Code (relating to automatic separation from the service) shall not apply in respect of judges. Any judge who retires shall be designated “senior judge”.

**(c) Recalling of retired judges**

At or after his retirement, any individual who has elected to receive retired pay under subsection (d) may be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of him for any period or periods specified by the chief judge; except that in the case of any such individual—

(1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

(2) he shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court; but any such individual shall not be counted as a judge of the Tax Court for purposes of section 7443(a). Any individual who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

**(d) Retired pay**

Any individual who—

(1) retires under paragraph (1), (2), or (3) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period as the number of years he has served as judge bears to 10; except that the rate of such retired pay shall not be more than the rate of such salary for such period; or

(2) retires under paragraph (4) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate—

(A) equal to the rate of the salary payable to a judge during such period if before he retired he had served as a judge not less than 10 years; or

(B) one-half of the rate of the salary payable to a judge during such period if before he retired he had served as a judge less than 10 years.

Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more.

In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge.

**(e) Election to receive retired pay**

Any judge may elect to receive retired pay under subsection (d). Such an election—

(1) may be made only while an individual is a judge (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, it may be made at any time before the day after the day on which his successor takes office);

(2) once made, shall be irrevocable;

(3) in the case of any judge other than the chief judge, shall be made by filing notice thereof in writing with the chief judge; and

(4) in the case of the chief judge, shall be made by filing notice thereof in writing with the Office of Personnel Management.

The chief judge shall transmit to the Office of Personnel Management a copy of each notice filed with him under this subsection.

**(f) Retired pay affected in certain cases**

In the case of an individual for whom an election to receive retired pay under subsection (d) is in effect—

**(1) 1-year forfeiture for failure to perform judicial duties**

If such individual during any calendar year fails to perform judicial duties required of him by subsection (c), such individual shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the 1st day on which he so fails to perform such duties.

**(2) Permanent forfeiture of retired pay where certain non-Government services performed**

If such individual performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for his client, his employer, or any of his employer's clients, such individual shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the 1st day on which he engages in any such activity. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

**(3) Suspension of retired pay during period of compensated Government service**

If such individual accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)), such individual shall forfeit all rights to retired pay under subsection (d) for the period for which such compensation is received.

**(4) Forfeitures of retired pay under paragraphs (1) and (2) not to apply where individual elects to freeze amount of retired pay**

**(A) In general**

If any individual makes an election under this paragraph—

(i) paragraphs (1) and (2) (and subsection (c)) shall not apply to such individual beginning on the date such election takes effect, and

(ii) the retired pay under subsection (d) payable to such individual for periods beginning on or after the date such election takes effect shall be equal to the retired pay to which such individual would be entitled without regard to this clause at the time of such election.

**(B) Election**

An election under this paragraph—

(i) may be made by an individual only if such individual meets the age and service requirements for retirement under paragraph (2) of subsection (b),

(ii) may be made only during the period during which the individual may make an election to receive retired pay or while the individual is receiving retired pay, and

(iii) shall be made in the same manner as the election to receive retired pay.

Such an election, once it takes effect, shall be irrevocable.

**(C) When election takes effect**

Any election under this paragraph shall take effect on the 1st day of the 1st month following the month in which the election is made.

**(g) Coordination with civil service retirement**

**(1) General rule**

Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as a judge (together with other service as an officer or employee to whom such civil service retirement laws apply) as if this section had not been enacted.

**(2) Effect of electing retired pay**

In the case of any individual who has filed an election to receive retired pay under subsection (d)—

(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as judge or otherwise);

(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to him under subsection (d) or from any other salary, pay, or compensation payable to him, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331(8) of title 5 of the United States Code upon making application therefor with the Office of Personnel Management.

**(h) Retirement for disability**

(1) Any judge who becomes permanently disabled from performing his duties shall certify to the President his disability in writing. If the chief judge retires for disability, his retirement shall not take effect until concurred in by the President. If any other judge retires for disability, he shall furnish to the President a certificate of disability signed by the chief judge.

(2) Whenever any judge who becomes permanently disabled from performing his duties does not retire and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President shall declare such judge to be retired.

**(i) Revocation of election to receive retired pay**

**(1) In general**

Notwithstanding subsection (e)(2), an individual who has filed an election to receive retired pay under subsection (d) may revoke such election at any time before the first day on which retired pay (or compensation under subsection (c) in lieu of retired pay) would (but for such revocation) begin to accrue with respect to such individual.

**(2) Manner of revoking**

Any revocation under this subsection shall be made by filing a notice thereof in writing with the Civil Service Commission. The Civil Service Commission shall transmit to the chief judge a copy of each notice filed under this subsection.

**(3) Effect of revocation**

In the case of any revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (d),

(B) for purposes of section 7448—

(i) the individual shall be treated as not having filed an election under section 7448(b), and

(ii) section 7448(g) shall not apply, and the amount credited to such individual's account (together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual,

(C) no credit shall be allowed for any service as a judge of the Tax Court unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

(D) the Tax Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (e), and

(E) if subparagraph (D) is complied with, service on the Tax Court shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(Aug. 16, 1954, ch. 736, 68A Stat. 880; Pub. L. 89-354, §1, Feb. 2, 1966, 80 Stat. 5; Pub. L. 91-172, title IX, §§954, 960(c), (d), Dec. 30, 1969, 83 Stat. 730, 734; Pub. L. 92-41, §4(a), July 1, 1971, 85 Stat. 99; Pub. L. 95-472, §1, Oct. 17, 1978, 92 Stat. 1332; Pub. L. 97-362, title I, §106(d), Oct. 25, 1982, 96 Stat. 1730; Pub. L. 99-514, title XV, §1557(a), (b), (d), Oct. 22, 1986, 100 Stat. 2756, 2757; Pub. L. 100-647, title I, §1015(k)(1), Nov. 10, 1988, 102 Stat. 3571.)

#### REFERENCES IN TEXT

The civil service retirement laws, referred to in subsecs. (g)(2)(A) and (i)(3)(C), are classified generally to subchapter III (§8331 et seq.) of chapter 83 of Title 5, Government Organization and Employees.

The Civil Service Retirement and Disability Fund, referred to in subsecs. (g)(2)(B) and (i)(3)(C), (D), is provided for in section 8348 of Title 5.

#### AMENDMENTS

1988—Subsec. (d). Pub. L. 100-647 inserted at end “In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge.”

1986—Subsec. (a)(2), (3), (5). Pub. L. 99-514, §1557(d)(1), redesignated pars. (3) and (5) as (2) and (3), respectively, and struck out former par. (2) which read as follows: “The term ‘Civil Service Commission’ means the United States Civil Service Commission.”

Subsec. (b)(2). Pub. L. 99-514, §1557(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Any judge who has attained the age of 65 may retire any time after serving as judge for 15 years or more.”

Subsec. (e). Pub. L. 99-514, §1557(d)(2), substituted “Office of Personnel Management” for “Civil Service Commission” in par. (4) and in last sentence.

Subsec. (f). Pub. L. 99-514, §1557(b), amended subsec. (f) generally. Prior to amendment, subsec. (f), individuals receiving retired pay to be available for recall, read as follows: “Any individual who has elected to receive retired pay under subsection (d) who thereafter—

“(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)); or

“(2) performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation or in the field of the renegotiation of Federal contracts for his client, his employer, or any of his employer’s clients,

shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the first day on which he accepts such office or employment or engages in any activity described in paragraph (2). Any individual who has elected to receive retired pay under subsection (d) who thereafter during any calendar year fails to perform judicial duties required of him by subsection (c) shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the first day on which he so fails to perform such duties.”

Subsec. (g)(2)(C). Pub. L. 99-514, §1557(d)(3), substituted “Office of Personnel Management” for “Civil Service Commission”.

1982—Subsec. (b). Pub. L. 97-362 inserted provision that any judge who retires shall be designated “senior judge”.

1978—Subsec. (i). Pub. L. 95-472 added subsec. (i).

1971—Subsec. (c). Pub. L. 92-41 substituted “At or after his retirement, any individual who has elected to receive” for “Any individual who is receiving”.

1969—Subsec. (a)(4). Pub. L. 91-172, §954(e)(1), struck out par. (4) which defined the term “Civil Service Retirement Act”.

Subsec. (a)(1). Pub. L. 91-172, §960(c), substituted “United States Tax Court” for “Tax Court of the United States”.

Subsec. (a)(5). Pub. L. 91-172, §960(d), inserted reference to service as a judge of the Tax Court of the United States.

Subsec. (b). Pub. L. 91-172, §954(a), substituted provisions authorizing retirement at age 70, or age 65 after serving 15 years, or when any judge has become permanently disabled, authorizing any judge not reappointed who has served 15 years or more to retire under enumerated condition, and rendering section 8335(a) of title 5 not applicable to judges, for provisions authorizing retirement after a judge has served 18 years, requiring anyone who served as a judge for 10 years or more and attained the age of 70 years to retire no later than the close of the third month beginning after the month in which he attained 70 years or the month completing the tenth year of service or August 1953, and rendering section 2(a) of the Civil Service Retirement Act not applicable to judges.

Subsec. (d). Pub. L. 91-172, §954(b), substituted provisions specifying methods of computation of retirement pay under subsec. (b) of this section so as to conform such provisions to subsec. (b) (relating to conditions for retiring), for provisions specifying methods of computation for retirement pay under former subsec. (b) of this section (relating to conditions for retiring).

Subsec. (g)(1). Pub. L. 91-172, §954(e)(2), substituted “civil service retirement laws” and “such civil service retirement laws apply” for “Civil Service Retirement Act” and “such Act applies”, respectively.

Subsec. (g)(2). Pub. L. 91-172, §954(c), substituted provisions that any individual electing to receive retirement pay under subsec. (d) of this section is not to receive any payment under the civil service retirement laws, and no deduction is to be made for the Civil Service Retirement and Disability Fund, and a lump-sum credit computed under section 8331(8) of Title 5 is to be paid, for provisions which enumerated the effects and conditions of electing retirement pay under former subsec. (d) of this section.

Subsec. (g)(3). Pub. L. 91-172, §954(c), struck out par. (3) which enumerated the conditions and effects of waiving civil service benefits in lieu of retirement pay under former subsec. (d) of this section.

Subsec. (g)(4). Pub. L. 91-172, §954(c), struck out par. (4) which provided that the fourth and sixth paragraphs of section 6 of the Civil Service Retirement Act would be applicable to retirement pay accruing under subsec. (d) of this section.

Subsec. (h). Pub. L. 91-172, §954(d), added subsec. (h).  
1966—Subsec. (d). Pub. L. 89-354 substituted “during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period” for “at a rate which bears the same ratio to the rate of the salary payable to him as judge at the time he ceases to be a judge” and “the rate of such salary for such period” for “the rate of such salary” wherever appearing.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 1015(k)(2) of Pub. L. 100-647 provided that: “The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining the amount of retired pay for months beginning after the date of the enactment of this Act [Nov. 10, 1988] regardless of when the services under section 7447(c) of the 1986 Code were performed.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1557(e) of Pub. L. 99-514 provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 7448 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].

“(2) FORFEITURE OF RETIRED PAY.—The amendments made by this section shall not apply to any individual who, before the date of the enactment of this Act [Oct. 22, 1986], forfeited his rights to retired pay under section 7447(d) of the Internal Revenue Code of 1954 [now 1986] by reason of the 1st sentence of section 7447(f) of such Code (as in effect on the day before such date).”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(a) of Pub. L. 95-472 provided that: “The amendment made by the first section of this Act [amending this section] shall apply with respect to revocations made after the date of the enactment of this Act [Oct. 17, 1978].”

#### EFFECTIVE DATE OF 1971 AMENDMENT

Section 4(c)(1) of Pub. L. 92-41, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall be effective as if included in the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the date of its enactment [July 1, 1971]. Provisions having the same effect as such amendment shall be treated as having been included in the Internal Revenue Code of 1939 [section 1106(c)] effective on and after August 7, 1953.”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by sections 954(c), (e) and 960(c), (d) of Pub. L. 91-172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

Section 962(d) of Pub. L. 91-172, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by subsections (a), (b), and (d) of section 954 [amending this section] shall apply to—

“(1) all judges of the Tax Court retiring on or after the date of enactment of this Act [Dec. 30, 1969], and  
“(2) all individuals performing judicial duties pursuant to section 7447(c) or receiving retired pay pursuant to section 7447(d) on the day preceding the date of enactment of this Act [Dec. 30, 1969].

Any individual who has served as a judge of the Tax Court for 18 years or more by the end of one year after the date of the enactment of this Act [Dec. 30, 1969] may retire in accordance with the provisions of section 7447 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as in effect on the day preceding the date of the enactment of this Act. Any individual who is a judge of the Tax Court on the date of the enactment of this Act may retire under the provisions of section 7447 of such Code upon the completion of the term of his office, if he is not reappointed as a judge of the Tax Court and gives notice to the President within the time prescribed by section 7447(b) of such Code (or if his term expires within 6 months after the date of enactment of this Act, gives notice to the President before the expiration of 3 months after the date of enactment of this Act), and shall receive retired pay at a rate which bears the same ratio to the rate of the salary payable to a judge as the number of years he has served as a judge of the Tax Court bears to 15; except that the rate of such retired pay shall not exceed the rate of the salary of a judge of the Tax Court. For purposes of the preceding sentence the years of service as a judge of the Tax Court shall be determined in the manner set forth in section 7447(d) of such Code.”

#### EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89-354, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by the first section of this Act [amending this section and section 1106 of I.R.C. 1939] shall apply with respect to retired pay accruing under section 1106 of the Internal Revenue Code of 1939 or sec-

tion 7447 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on or after the first day of the first calendar month which begins after the date of enactment of this Act [Feb. 2, 1966].”

#### TRANSFER OF FUNCTIONS

Functions vested by statute in United States Civil Service Commission or Chairman thereof transferred to Director of Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

#### REDEPOSITING FUNDS IN CIVIL SERVICE RETIREMENT AND DISABILITY FUND; CREDITABLE SERVICE

Section 2(b) of Pub. L. 95-472, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Any individual who elects to revoke under section 7447(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] within one year after the date of enactment of this Act [Oct. 17, 1978] shall be treated as having the requisite current service for purposes of redepositing funds in the Civil Service Retirement and Disability Fund and for purposes of reviving creditable service under subchapter III of chapter 83 of title 5 of the United States Code.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7448 of this title; title 28 sections 178, 377.

### § 7448. Annuities to surviving spouses and dependent children of judges

#### (a) Definitions

For purposes of this section—

(1) The term “Tax Court” means the United States Tax Court.

(2) The term “judge” means the chief judge or a judge of the Tax Court, including any individual receiving retired pay (or compensation in lieu of retired pay) under section 7447 or under section 1106 of the Internal Revenue Code of 1939 whether or not performing judicial duties pursuant to section 7447(c) or pursuant to section 1106(d) of the Internal Revenue Code of 1939.

(3) The term “chief judge” means the chief judge of the Tax Court.

(4) The term “judge’s salary” means the salary of a judge received under section 7443(c), retired pay received under section 7447(d), and compensation (in lieu of retired pay) received under section 7447(c).

(5) The term “survivors annuity fund” means the Tax Court judges survivors annuity fund established by this section.

(6) The term “surviving spouse” means a surviving spouse of an individual, who either (A) shall have been married to such individual for at least 2 years immediately preceding his death or (B) is a parent of issue by such marriage, and who has not remarried.

(7) The term “dependent child” means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of 18 years or who because of physical or mental disability is incapable of self-support.

#### (b) Election

Any judge may by written election filed while he is a judge (except that in the case of an indi-

vidual who is not reappointed following expiration of his term of office, it may be made at any time before the day after the day on which his successor takes office) bring himself within the purview of this section. In the case of any judge other than the chief judge the election shall be filed with the chief judge; in the case of the chief judge the election shall be filed as prescribed by the Tax Court.

**(c) Survivors annuity fund**

**(1) Salary deductions**

There shall be deducted and withheld from the salary of each judge electing under subsection (b) a sum equal to 3.5 percent of such judge's salary. The amounts so deducted and withheld from such judge's salary shall, in accordance with such procedure as may be prescribed by the Comptroller General of the United States, be deposited in the Treasury of the United States to the credit of a fund to be known as the "Tax Court judges survivors annuity fund" and said fund is appropriated for the payment of annuities, refunds, and allowances as provided by this section. Each judge electing under subsection (b) shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this section.

**(2) Appropriations where unfunded liability**

**(A) In general**

Not later than the close of each fiscal year, there shall be deposited in the Treasury of the United States to the credit of the survivors annuity fund, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, amounts required to reduce to zero the unfunded liability (if any) of such fund. Subject to appropriation Acts, such deposits shall be taken from sums available for such fiscal year for the payment of amounts described in subsection (a)(4), and shall immediately become an integrated part of such fund.

**(B) Exception**

The amount required by subparagraph (A) to be deposited in any fiscal year shall not exceed an amount equal to 11 percent of the aggregate amounts described in subsection (a)(4) paid during such fiscal year.

**(C) Unfunded liability defined**

For purposes of subparagraph (A), the term "unfunded liability" means the amount estimated by the Secretary to be equal to the excess (as of the close of the fiscal year involved) of—

- (i) the present value of all benefits payable from the survivors annuity fund (determined on an annual basis in accordance with section 9503 of title 31, United States Code), over
- (ii) the sum of—

- (I) the present values of future deductions under subsection (c) and future deposits under subsection (d), plus

- (II) the balance in such fund as of the close of such fiscal year.

**(D) Amounts not credited to individual accounts**

Amounts appropriated pursuant to this paragraph shall not be credited to the account of any individual for purposes of subsection (g).

**(d) Deposits in survivors annuity fund**

Each judge electing under subsection (b) shall deposit, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the survivors annuity fund, a sum equal to 3.5 percent of his judge's salary and of his basic salary, pay, or compensation for service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, and for any other civilian service within the purview of section 8332 of title 5 of the United States Code. Each such judge may elect to make such deposits in installments during the continuance of his service as a judge in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the surviving spouse of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge, unless such surviving spouse shall elect to eliminate such service entirely from credit under subsection (n), except that no deposit shall be required from a judge for any year with respect to which deductions from his salary were actually made under the civil service retirement laws and no deposit shall be required for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

**(e) Investment of survivors annuity fund**

The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, such portions of the survivors annuity fund as in his judgment may not be immediately required for the payment of the annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of said fund for the purpose of paying annuities and of carrying out the provisions of subsections (g), (h), and (j).

**(f) Crediting of deposits**

The amount deposited by or deducted and withheld from the salary of each judge electing to bring himself within the purview of this section for credit to the survivors annuity fund shall be credited to an individual account of such judge.

**(g) Termination**

If the service of any judge electing under subsection (b) terminates other than pursuant to the provisions of section 7447 or other than pursuant to section 1106 of the Internal Revenue Code of 1939 or if any judge ceases to be married

after making the election under subsection (b) and revokes (in a writing filed as provided in subsection (b)) such election, the amount credited to his individual account, together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his relinquishment of office, shall be returned to him. For the purpose of this section, the service of any judge electing under subsection (b) who is not reappointed following expiration of his term but who, at the time of such expiration, is eligible for and elects to receive retired pay under section 7447 shall be deemed to have terminated pursuant to said section.

**(h) Entitlement to annuity**

In case any judge electing under subsection (b) shall die while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made—

(1) if such judge is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m); or

(2) if such judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(A) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

(B) 20 percent of such average annual salary, divided by the number of such children; or

(3) if such judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(A) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

(B) 40 percent of such average annual salary, divided by the number of such children.

The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of 18 years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a surviving spouse of a judge leaving a

dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

**(i) Determination of dependency and disability**

Questions of dependency and disability arising under this section shall be determined by the chief judge subject to review only by the Tax Court, the decision of which shall be final and conclusive. The chief judge may order or direct at any time such medical or other examinations as he shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this section, and may suspend or deny any such annuity for failure to submit to any examination so ordered or directed.

**(j) Payments in certain cases**

(1) In any case in which—

(A) a judge electing under subsection (b) shall die while in office (whether in regular active service or retired from such service under section 7447), before having rendered 5 years of civilian service computed as prescribed in subsection (n), or after having rendered 5 years of such civilian service but without a survivor or survivors entitled to annuity benefits provided by subsection (h), or

(B) the right of all persons entitled to annuity under subsection (h) based on the service of such judge shall terminate before a valid claim therefor shall have been established,

the total amount credited to the individual account of such judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

(i) to the beneficiary or beneficiaries whom the judge may have designated by a writing filed prior to his death with the chief judge, except that in the case of the chief judge such designation shall be by a writing filed by him, prior to his death, as prescribed by the Tax Court;

(ii) if there be no such beneficiary, to the surviving spouse of such judge;

(iii) if none of the above, to the child or children of such judge and the descendants of any deceased children by representation;

(iv) if none of the above, to the parents of such judge or the survivor of them;

(v) if none of the above, to the duly appointed executor or administrator of the estate of such judge; and

(vi) if none of the above, to such other next of kin of such judge as may be determined by

the chief judge to be entitled under the laws of the domicile of such judge at the time of his death.

Determination as to the surviving spouse, child, or parent of a judge for the purposes of this paragraph shall be made by the chief judge without regard to the definitions in subsections (a)(6) and (7).

(2) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (1).

(3) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) to the duly appointed executor or administrator of the estate of such person;

(B) if there is no such executor or administrator payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

**(k) Payments to persons under legal disability**

Where any payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

**(l) Method of payment of annuities**

Annuities granted under the terms of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. None of the moneys mentioned in this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

**(m) Computation of annuities**

The annuity of the surviving spouse of a judge electing under subsection (b) shall be an amount equal to the sum of 1.5 percent of the average

annual salary (whether judge's salary or compensation for other allowable service) received by such judge for judicial service (including periods in which he received retired pay under section 7447(d)) or for any other prior allowable service during the period of 3 consecutive years in which he received the largest such average annual salary, multiplied by the sum of his years of such judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 2107 of title 5 of the United States Code,<sup>1</sup> and (2) three-fourths of 1 percent of such average annual salary multiplied by his years of any other prior allowable service, except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 25 percent of such average annual salary, and shall be further reduced in accordance with subsection (d) (if applicable). In determining the period of 3 consecutive years referred to in the preceding sentence, there may not be taken into account any period for which an election under section 7447(f)(4) is in effect.

**(n) Includible service**

Subject to the provisions of subsection (d), the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of his surviving spouse shall include his years of service as a member of the United States Board of Tax Appeals, as a judge of the Tax Court of the United States, and as a judge of the Tax Court, his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 8332 of title 5 of the United States Code.

**(o) Simultaneous entitlement**

Nothing contained in this section shall be construed to prevent a surviving spouse eligible therefor from simultaneously receiving an annuity under this section and any annuity to which such spouse would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of such spouse's annuity under this section shall not be credited.

**(p) Estimates of expenditures**

The chief judge shall submit to the President annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The chief judge shall

<sup>1</sup> So in original. A closing parenthesis probably should precede the comma.

cause periodic examinations of the survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the chief judge to the Tax Court.

**(q) Transitional provision**

In the case of a judge who dies within 6 months after the date of enactment of this section after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), but without having made an election as provided in subsection (b), an annuity shall be paid to his surviving spouse and surviving dependents as is provided in this section, as if such judge had elected on the day of his death to bring himself within the purview of this section but had not made the deposit provided for by subsection (d). An annuity shall be payable under this section computed upon the basis of the actual length of service as a judge and other allowable service of the judge and subject to the reduction required by subsection (d) even though no deposit has been made, as required by subsection (h) with respect to any of such service.

**(r) Waiver of civil service benefits**

Any judge electing under subsection (b) shall, at the time of such election, waive all benefits under the civil service retirement laws. Such a waiver shall be made in the same manner and shall have the same force and effect as an election filed under section 7447(e).

**(s) Increases attributable to increased pay**

Whenever the salary of a judge under section 7443(c) is increased, each annuity payable from the survivors annuity fund which is based, in whole or in part, upon a deceased judge having rendered some portion of his or her final 18 months of service as a judge of the Tax Court, shall also be increased. The amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each full 5 percent by which such salary has been increased.

**(t) Authorization of appropriation**

Funds necessary to carry out the provisions of this section may be appropriated out of any money in the Treasury not otherwise appropriated.

(Added Pub. L. 87-370, §1, Oct. 4, 1961, 75 Stat. 796; amended Pub. L. 91-172, title IX, §§955, 960(c), (e), Dec. 30, 1969, 83 Stat. 732, 734; Pub. L. 92-41, §4(b), July 1, 1971, 85 Stat. 99; Pub. L. 94-455, title XIX, §1906(a)(46), Oct. 4, 1976, 90 Stat. 1830; Pub. L. 97-362, title I, §105(a), (b), Oct. 25, 1982, 96 Stat. 1729; Pub. L. 98-216, §3(c)(1), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98-369, div. A, title IV, §462(a), July 18, 1984, 98 Stat. 824; Pub. L. 99-514, title XV, §§1557(c), 1559(a)-(c), Oct. 22, 1986, 100 Stat. 2757-2760.)

REFERENCES IN TEXT

Section 1106 of the Internal Revenue Code of 1939, referred to in subssecs. (a)(2) and (g), was classified to section 1106 of former Title 26, Internal Revenue Code. For

table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

The civil service retirement laws, referred to in subssecs. (d), (h), and (r), are contained in subchapter III (§8331 et seq.) of chapter 83 of Title 5, Government Organization and Employees.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514, §1559(a)(1)(A), (2)(A), substituted “Survivors annuity fund” for “Salary deductions” in heading, inserted par. (1) designation and heading “Salary deductions” before existing text, realigned margin of text and substituted “3.5 percent” for “3 percent”, and added par. (2).

Subsec. (d). Pub. L. 99-514, §1559(a)(1)(B), substituted “3.5 percent” for second reference to “3 percent”.

Subsec. (g). Pub. L. 99-514, §1559(c), struck out “of service” after “Termination” in heading and inserted “or if any judge ceases to be married after making the election under subsection (b) and revokes (in a writing filed as provided in subsection (b)) such election” in text.

Subsec. (h). Pub. L. 99-514, §1559(a)(2)(B), substituted “subsection (c)(1)” for “subsection (c)” in introductory provisions.

Pub. L. 99-514, §1559(b)(1)(B), substituted “or such surviving spouse’s remarriage before attaining age 55” for “or remarriage” in second sentence.

Subsec. (h)(2). Pub. L. 99-514, §1559(b)(2)(A), substituted “the lesser of—

“(A) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

“(B) 20 percent of such average annual salary, divided by the number of such children; or” for “one-half the amount of the annuity of such surviving spouse, but not to exceed \$4,644 per year divided by the number of such children or \$1,548 per year, whichever is lesser; or”.

Subsec. (h)(3). Pub. L. 99-514, §1559(b)(2)(B), substituted “the lesser of—

“(A) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

“(B) 40 percent of such average annual salary, divided by the number of such children” for “the amount of the annuity to which such surviving spouse would have been entitled under paragraph (2) of this subsection had such spouse survived, but not to exceed \$5,580 per year divided by the number of such children or \$1,860 per year, whichever is lesser”.

Subsec. (m). Pub. L. 99-514, §1559(b)(1)(A), substituted “1.5 percent” for “1¼ percent” and “except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 25 percent of such average annual salary, and shall be further reduced in accordance with subsection (d) (if applicable)” for “but such annuity shall not exceed 40 percent of such average annual salary and shall be further reduced in accordance with subsection (d), if applicable”.

Pub. L. 99-514, §1557(c), inserted last sentence.

1984—Subsec. (h)(2). Pub. L. 98-369, §462(a)(1), substituted “\$4,644” for “\$900” and “\$1,548” for “\$360”.

Subsec. (h)(3). Pub. L. 98-369, §462(a)(2), substituted “\$5,580 per year divided by the number of such children or \$1,860 per year, whichever is lesser” for “\$480 per year”.

Subsec. (p). Pub. L. 98-216 substituted “President” for “Bureau of the Budget”.

1982—Subsec. (m). Pub. L. 97-362, §105(a), substituted “3 consecutive years” for “5 consecutive years”, and “40 percent” for “37½ percent”.

Subsecs. (s), (t). Pub. L. 97-362, §105(b), added subsec. (s) and redesignated former subsec. (s) as (t).

1976—Pub. L. 94-455, §1906(a)(46)(F), substituted “surviving spouses” for “widows” in section catchline.

Subsec. (a)(6). Pub. L. 94-455, §1906(a)(46)(A), substituted “The term ‘surviving spouse’ means a surviving spouse of” for “The term ‘widow’ means a surviving wife of” and “a parent of issue” for “the mother of issue”.

Subsec. (d). Pub. L. 94-455, §1906(a)(46)(E), substituted “surviving spouse” for “widow” wherever appearing.

Subsec. (h). Pub. L. 94-455, §1906(a)(46)(B), (C), substituted “a surviving spouse” for “a widow”, “such surviving spouse” for “such widow”, “surviving spouse’s” for “widow’s”, “surviving spouse” for “surviving widow or widower”, “such spouse” for “she” and “surviving such spouse” for “surviving her”.

Subsecs. (j), (m), (n). Pub. L. 94-455, §1906(a)(46)(E), substituted “surviving spouse” for “widow” wherever appearing.

Subsec. (o). Pub. L. 94-455, §1906(a)(46)(C), (D), (E), substituted “surviving spouse” for “widow”, “such spouse” for “she” and “such spouse’s” for “her”.

Subsec. (q). Pub. L. 94-455, §1906(a)(46)(E), substituted “surviving spouse” for “widow”.

1971—Subsec. (m). Pub. L. 92-41 inserted “(whether judge’s salary or compensation for other allowable service)” and “(including periods in which he received retired pay under section 7447(d))” after “average annual salary” and “judicial service”, respectively, and substituted “or for any other prior allowable service during the period of 5 consecutive years in which he received the largest such average annual salary, multiplied by the sum of his years of such judicial service” for “and any other prior allowable service during the last 5 years of such service prior to his death, or prior to his receiving retired pay under section 7447(d), whichever first occurs, multiplied by the sum of his years of judicial service”.

1969—Subsec. (a)(1). Pub. L. 91-172, §960(c), substituted “United States Tax Court” for “Tax Court of the United States”.

Subsec. (b). Pub. L. 91-172, §955(a), substituted provisions authorizing a judge to file notice of election to take benefits relating to survivor annuities while a judge, and if not reappointed, authorizing such election at any time before the day after the day on which his successor takes office, for provisions authorizing a judge to file within 6 months after he takes office or is reappointed, or within 6 months after he becomes eligible for retirement under former section 7447(b) of this title, or within 6 months after Oct. 4, 1961.

Subsec. (d). Pub. L. 91-172, §955(d)(1), (2), substituted “civil service retirement laws” for “Civil Service Retirement Act” and “section 8332 of title 5 of the United States Code” for “section 3 of the Civil Service Retirement Act (5 U.S.C. 2253)”.

Subsec. (h). Pub. L. 91-172, §955(b)(1), substituted “civil service retirement laws” for “Civil Service Retirement Act”.

Subsec. (m). Pub. L. 91-172, §955(b)(3), substituted “section 2107 of title 5 of the United States Code” for “section 1(c) of the Civil Service Retirement Act (5 U.S.C. 2251(c))”.

Subsec. (n). Pub. L. 91-172, §§955(b)(2), 960(e), substituted “section 8332 of title 5 of the United States Code” for “section 3 of the Civil Service Retirement Act (5 U.S.C. 2253)” and inserted reference to service as a judge of the Tax Court of the United States.

Subsec. (r). Pub. L. 91-172, §955(b)(1), (4), substituted “civil service retirement laws” for “Civil Service Retirement Act” and substituted “an election filed under section 7447(e)” for “a waiver filed under section 7447(g)(3)”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1557(c) of Pub. L. 99-514 effective Oct. 22, 1986, but not applicable to any individual who, before Oct. 22, 1986, forfeited his rights to retired pay under section 7447(d) of this title by reason of the 1st sentence of section 7447(f) of this title (as in effect on the day before such date), see section 1557(e) of Pub.

L. 99-514, set out as a note under section 7447 of this title.

Section 1559(d) of Pub. L. 99-514 provided that:

“(1) SALARY DEDUCTIONS.—

“(A) The amendment made by subsection (a)(1)(A) [amending this section] shall apply to amounts paid after November 1, 1986.

“(B) The amendment made by subsection (a)(1)(B) [amending this section] shall apply to service after November 1, 1986.

“(2) APPROPRIATIONS.—The amendments made by subsection (a)(2) [amending this section] shall apply to fiscal years beginning after 1986.

“(3) COMPUTATION OF ANNUITIES.—The amendments made by subsection (b) [amending this section] shall apply to annuities the starting date of which is after November 1, 1986.

“(4) OPPORTUNITY TO REVOKE SURVIVOR ANNUITY ELECTION.—

“(A) IN GENERAL.—Any individual who before November 1, 1986, made an election under subsection (b) of section 7448 of the Internal Revenue Code of 1954 [now 1986] may revoke such election. Such a revocation shall constitute a complete withdrawal from the survivor annuity program provided for in such section and shall be filed as provided for elections under such subsection.

“(B) EFFECT OF REVOCATION.—Any revocation under subparagraph (A) shall have the same effect as if there were a termination to which section 7448(g) of such Code applies on the date such revocation is filed.

“(C) PERIOD REVOCATION PERMITTED.—Any revocation under subparagraph (A) may be made only during the 180-day period beginning on the date of the enactment of this Act [Oct. 22, 1986].

“(5) OPPORTUNITY TO ELECT SURVIVOR ANNUITY WHERE PRIOR REVOCATION.—Any individual who under paragraph (4) revoked an election under subsection (b) of section 7448 of such Code may thereafter make such an election only if such individual deposits to the credit of the survivors annuity fund under subsection (c) of such section the entire amount paid to such individual under paragraph (4), together with interest computed as provided in subsection (d) of such section.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 462(b) of Pub. L. 98-369, provided that: “The amendments made by this [sic] subsection (a) [amending this section] shall apply to annuities payable with respect to months beginning after the date of the enactment of this Act [July 18, 1984].”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 105(d) of Pub. L. 97-362 provided that:

“(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to annuities payable with respect to judges dying after the date of the enactment of this Act [Oct. 25, 1982].

“(2) SUBSECTION (b).—The amendment made by subsection (b) of this section [amending this section] shall apply with respect to increases in the salary of judges of the United States Tax Court taking effect after the date of the enactment of this Act [Oct. 25, 1982].”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d) of Pub. L. 94-455, set out as a note under section 6013 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Section 4(c)(2) of Pub. L. 92-41 provided that: “The amendment made by subsection (b) [amending this section] shall apply only with respect to judges of the United States Tax Court dying on or after the date of the enactment of this Act [July 1, 1971].”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

## TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## CATCHUP FOR SURVIVORS ANNUITIES IN PAY STATUS ON OCTOBER 25, 1982

Section 105(c) of Pub. L. 97-362, as amended by Pub. L. 97-448, title III, § 305(e), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If an annuity payable under section 7448(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to entitlement to annuity) to the surviving spouse of a judge of the United States Tax Court is being paid on the date of the enactment of this Act, then the amount of that annuity shall be adjusted, as of the first day of the first month beginning more than 30 days after such date, to reflect the amount of the annuity which would have been payable if the amendment made by subsection (b) applied with respect to increases in the salary of a judge under section 7443(c) of such Code taking effect after December 31, 1963."

[Pub. L. 97-448, title III, § 311(c)(5), Jan. 12, 1983, 96 Stat. 2412, provided that: "The amendment made by subsection (e) of section 305 [amending section 105(c) of Pub. L. 97-362, set out above] shall take effect on the date of the enactment of the Miscellaneous Revenue Act of 1982 [Oct. 25, 1982]."]

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7447 of this title.

## PART II—PROCEDURE

Sec.	
7451.	Fee for filing petition.
7452.	Representation of parties.
7453.	Rules of practice, procedure, and evidence.
7454.	Burden of proof in fraud and transferee cases. <sup>1</sup>
7455.	Service of process.
7456.	Administration of oaths and procurement of testimony.
7457.	Witness fees.
7458.	Hearings.
7459.	Reports and decisions.
7460.	Provisions of special application to divisions.
7461.	Publicity of proceedings.
7462.	Publication of reports.
7463.	Disputes involving \$50,000 or less.
7464.	Intervention by trustee of debtor's estate.
7465.	Provisions of special application to transferees.

## AMENDMENTS

1998—Pub. L. 105-206, title III, § 3103(b)(2), July 22, 1998, 112 Stat. 731, substituted "\$50,000" for "\$10,000" in item 7463.

1984—Pub. L. 98-369, div. A, title IV, § 461(a)(2)(B), July 18, 1984, 98 Stat. 823, substituted "\$10,000" for "\$5,000" in item 7463.

1980—Pub. L. 96-589, § 6(c)(2), Dec. 24, 1980, 94 Stat. 3407, added item 7464 and redesignated former item 7464 as 7465.

1978—Pub. L. 95-600, title V, § 502(a)(2)(B), Nov. 6, 1978, 92 Stat. 2879, substituted "\$5,000" for "\$1,500" in item 7463.

1972—Pub. L. 92-512, title II, § 203(b)(3), Oct. 20, 1972, 86 Stat. 945, substituted "\$1,500" for "\$1,000" in item 7463.

1969—Pub. L. 91-172, title IX, § 957(b), Dec. 30, 1969, 83 Stat. 733, added item 7463 and redesignated former item 7463 as 7464.

<sup>1</sup>Section catchline amended by Pub. L. 91-172 without corresponding amendment of analysis.

## § 7451. Fee for filing petition

The tax court is authorized to impose a fee in an amount not in excess \$60 to be fixed by the Tax Court for the filing of any petition for the redetermination of a deficiency or for a declaratory judgment under part IV of this subchapter or under section 7428 or for judicial review under section 6226 or section 6228(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 93-406, title II, § 1041(b)(1), Sept. 2, 1974, 88 Stat. 950; Pub. L. 94-455, title XIII, § 1306(b)(1), Oct. 4, 1976, 90 Stat. 1719; Pub. L. 97-34, title VII, § 751(a), Aug. 13, 1981, 95 Stat. 349; Pub. L. 97-248, title IV, § 402(c)(12), Sept. 3, 1982, 96 Stat. 668.)

## AMENDMENTS

1982—Pub. L. 97-248 inserted provision relating to judicial review under section 6226 or section 6228(a).

1981—Pub. L. 97-34 increased limitation on amount of fee to \$60 from \$10.

1976—Pub. L. 94-455 inserted "or under section 7428" after "part IV of this subchapter".

1974—Pub. L. 93-406 inserted reference to a declaratory judgment under part IV of this subchapter.

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENT

Section 751(b) of Pub. L. 97-34 provided that: "The amendment made by this section [amending this section] shall apply to petitions filed after December 31, 1981."

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976, but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94-455, set out as an Effective Date note under section 7428 of this title.

## EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable to pleadings filed more than one year after Sept. 2, 1974, see section 1041(d) of Pub. L. 93-406, set out as an Effective Date note under section 7476 of this title.

## § 7452. Representation of parties

The Secretary shall be represented by the Chief Counsel for the Internal Revenue Service or his delegate 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. No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling.

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 86-368, § 2(a), Sept. 22, 1959, 73 Stat. 648; Pub. L.

94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1959—Pub. L. 86-368 substituted “Chief Counsel for the Internal Revenue Service or his delegate” for “Assistant General Counsel of the Treasury Department serving as Chief Counsel of the Internal Revenue Service, or the delegate of such Chief Counsel.”.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-368 effective when Chief Counsel for Internal Revenue Service first appointed pursuant to amendment of section 7801 of this title by Pub. L. 86-368 qualifies and takes office, see section 3 of Pub. L. 86-368, set out as a note under section 7801 of this title.

### § 7453. Rules of practice, procedure, and evidence

Except in the case of proceedings conducted under section 7436(c) or 7463, the proceedings of the Tax Court and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia.

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 91-172, title IX, §960(f), Dec. 30, 1969, 83 Stat. 734; Pub. L. 105-34, title XIV, §1454(b)(3), Aug. 5, 1997, 111 Stat. 1057.)

#### AMENDMENTS

1997—Pub. L. 105-34 substituted “section 7436(c) or 7463” for “section 7463”.

1969—Pub. L. 91-172 inserted reference to the exception in the case of proceedings conducted under section 7463 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91-172, set out as an Effective Date note under section 7463 of this title.

#### TAX COURT RULE MAKING NOT AFFECTED

Authority of Tax Court to prescribe rules under this section unaffected by amendments of title IV of Pub. L. 100-702, see section 405 of Pub. L. 100-702, set out as a note under section 2071 of Title 28, Judiciary and Judicial Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6110, 7436, 7463 of this title.

### § 7454. Burden of proof in fraud, foundation manager, and transferee cases

#### (a) Fraud

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 Secretary.

#### (b) Foundation managers

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 the 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), or whether an organization manager (as defined in section 4955(f)(2)) has “knowingly” agreed to the making of a political expenditure (within the meaning of section 4955),<sup>1</sup> or whether an organization manager (as defined in section 4912(d)(2)) has “knowingly” agreed to the making of disqualifying lobbying expenditures within the meaning of section 4912(b), 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 Secretary.

#### (c) Cross reference

**For provisions relating to burden of proof as to transferee liability, see section 6902(a).**

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 91-172, title I, §101(j)(57), Dec. 30, 1969, 83 Stat. 532; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-227, §4(d)(7), Feb. 10, 1978, 92 Stat. 23; Pub. L. 96-222, title I, §108(b)(3)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 100-203, title X, §§10712(c)(6), 10714(b), Dec. 22, 1987, 101 Stat. 1330-467, 1330-471; Pub. L. 104-168, title XIII, §1311(c)(5), July 30, 1996, 110 Stat. 1478; Pub. L. 104-188, title I, §1704(t)(43), Aug. 20, 1996, 110 Stat. 1889.)

#### AMENDMENTS

1996—Subsec. (b). Pub. L. 104-188 substituted “section 4955(f)(2)” for “section 4955(e)(2)”.

Pub. L. 104-168 inserted “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)),” after “section 4912(b).”.

1987—Subsec. (b). Pub. L. 100-203, §10714(b), substituted “, or whether an organization manager (as defined in section 4912(d)(2)) has ‘knowingly’ agreed to the making of disqualifying lobbying expenditures within the meaning of section 4912(b), the burden of proof” for “the burden of proof”.

Pub. L. 100-203, §10712(c)(6), substituted “or whether an organization manager (as defined in section 4955(e)(2)) has ‘knowingly’ agreed to the making of a political expenditure (within the meaning of section 4955), the burden of proof” for “the burden of proof”.

1980—Subsec. (b). Pub. L. 96-222 substituted “section 501(c)(21)” for “section 502(c)(21)”.

1978—Subsec. (b). Pub. L. 95-227 inserted provision relating to trustees of a trust described under section 502(c)(21) of this title.

1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1969—Pub. L. 91-172 inserted “, foundation manager” in section catchline.

Subsecs (b), (c). Pub. L. 91-172 added subsec. (b) and redesignated former subsec. (b) as (c).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995,

<sup>1</sup> So in original.

and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104-168, set out as a note under section 4955 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10712(c)(6) of Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

Amendment by section 10714(b) of Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10714(e) of Pub. L. 100-203, set out as an Effective Date note under section 4912 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective as if included in the provisions of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, see section 108(b)(4) of Pub. L. 96-222, set out as a note under section 192 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date note under section 192 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 162 of this title.

### § 7455. Service of process

The mailing by certified mail or registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Tax Court shall be held sufficient service of such pleading, decision, order, notice, or process.

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 85-866, title I, § 89(b), Sept. 2, 1958, 72 Stat. 1665.)

#### AMENDMENTS

1958—Pub. L. 85-866 inserted “certified mail or” before “registered mail”.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85-866, set out as a note under section 7502 of this title.

### § 7456. Administration of oaths and procurement of testimony

#### (a) In general

For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge or special trial judge of the Tax Court, the clerk of the court or his deputies, as such, or any other employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge or special trial judge of the Tax Court may examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge or special trial judge (or by the clerk of the Tax Court or by any

other employee of the Tax Court when acting as deputy clerk)—

(1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or

(2) the taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

#### (b) Production of records in the case of foreign corporations, foreign trusts or estates and nonresident alien individuals

The Tax Court or any division thereof, upon motion and notice by the Secretary, and upon good cause shown therefor, 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 Secretary, 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 division thereof, 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. If the petitioner fails or refuses to comply with any of the provisions of such order, after reasonable time for compliance has been afforded to him, the Tax Court or any division thereof, upon motion, shall make an order striking out pleadings or parts thereof, or dismissing the proceeding or any part thereof, or rendering a judgment by default against the petitioner. For the purpose of this subsection, the term “foreign trust or estate” includes an estate or trust, any fiduciary of which is a foreign corporation or nonresident alien individual; and the term “control” is not limited to legal control.

#### (c) Incidental powers

The Tax Court and each division thereof shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

It shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for any district in which the Tax Court is sitting shall, when requested by the chief judge of the Tax Court, attend any session of the Tax Court in such district.

(Aug. 16, 1954, ch. 736, 68A Stat. 885; Pub. L. 91-172, title IX, §§956, 958, Dec. 30, 1969, 83 Stat. 732, 734; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title III, §336(b)(1), title V, §502(c), Nov. 6, 1978, 92 Stat. 2841, 2879; Pub. L. 96-222, title I, §105(a)(1)(B), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97-164, title I, §153(a), Apr. 2, 1982, 96 Stat. 47; Pub. L. 97-248, title IV, §402(c)(13), Sept. 3, 1982, 96 Stat. 668; Pub. L. 97-362, title I, §106(c), Oct. 25, 1982, 96 Stat. 1730; Pub. L. 98-369, div. A, title IV, §§463(a), 464(a)-(c), July 18, 1984, 98 Stat. 824; Pub. L. 99-514, title XV, §§1555(a), 1556(b)(1), Oct. 22, 1986, 100 Stat. 2754, 2755.)

#### AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514, §1556(b)(1), redesignated subsec. (e) as (c). Former subsec. (c), which provided for the appointment of special trial judges, was struck out.

Pub. L. 99-514, §1555(a), inserted last sentence.

Subsec. (d). Pub. L. 99-514, §1556(b)(1), struck out subsec. (d) which set out proceedings which could be assigned to special trial judges appointed under former subsec. (c).

Subsec. (e). Pub. L. 99-514, §1556(b)(1), redesignated subsec. (e) as (c).

1984—Subsec. (a). Pub. L. 98-369, §464(a), substituted “special trial judge” for “commissioner” in three places.

Subsec. (c). Pub. L. 98-369, §464(b), substituted “Special trial judges” for “Commissioners” in heading, and in text substituted “special trial judges” for “commissioners” and “special trial judge” for “commissioner”.

Subsec. (d). Pub. L. 98-369, §464(c), substituted “Special trial judges” for “Commissioners” in heading, and substituted “special trial judges” for “commissioners” and “special trial judge” for “commissioner” in provisions following par. (4).

Pub. L. 98-369, §463(a), in amending subsec. (d) generally, struck out “and” at end of par. (2), substituted “any proceeding” for “any other proceeding” and “\$10,000; and” for “\$5,000,” in par. (3), added par. (4), and substituted “any proceeding described in paragraph (1), (2), or (3), subject to such conditions and review as the court may provide” for “any such proceeding, subject to such conditions and review as the court may by rule provide” in provisions following par. (4).

1982—Subsec. (c). Pub. L. 97-362, §106(c)(2), struck out provision that the chief judge may assign proceedings under sections 6226, 6228(a), 7428, 7463, 7476, 7477, and 7478 to be heard by the commissioners of the court, and that the court may authorize a commissioner to make the decision of the court with respect to such proceedings, subject to such conditions and review as the court may by rule provide. See subsec. (d) of this section.

Pub. L. 97-248 inserted “6226, 6228(a),” after “proceedings under sections”.

Pub. L. 97-164 substituted “Each commissioner shall receive pay at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of title 28, United States Code, and also necessary traveling expenses and per diem allowances, as provided in subchapter I of chapter 57 of title 5, United States Code, while traveling on official business and away from Washington, District of Columbia” for “Each commissioner shall receive the same compensation and travel and subsistence allowances provided by law for commissioners of the United States Court of Claims”.

Subsecs. (d), (e). Pub. L. 97-362, §106(c)(1), added subsec. (d) and redesignated former subsec. (d) as (e).

1980—Subsec. (c). Pub. L. 96-222 substituted “sections 7428, 7463” for “sections 7428”.

1978—Subsec. (a). Pub. L. 95-600, §502(c), substituted “any judge or commissioner of the Tax Court” for “any judge of the Tax Court” wherever appearing, and “by the judge or commissioner” for “by the judge” after “and signed”.

Subsec. (c). Pub. L. 95-600, §336(b)(1), inserted provision that the chief judge may assign proceedings under sections 7428, 7476, 7477, and 7478 to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to such proceedings, subject to such conditions and review as the court may by rule provide.

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1969—Subsec. (c). Pub. L. 91-172, §958, provided that commissioners be compensated at rates identical to those of commissioners of the United States Court of Claims, and substituted provisions authorizing the chief judge of the Tax Court to appoint Commissioners for provisions authorizing attorneys from the legal staff of the Tax Court to act as Commissioners.

Subsec. (d). Pub. L. 91-172, §956, added subsec. (d).

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1555(b) of Pub. L. 99-514 provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].”

Amendment by section 1556(b)(1) of Pub. L. 99-514 effective Oct. 22, 1986, except as otherwise provided, see section 1556(c) of Pub. L. 99-514, set out as an Effective Date note under section 7443A of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 463(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if enacted as part of the Miscellaneous Revenue Act of 1982 [Pub. L. 97-362].”

Section 464(e)(1) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section and section 7471 of this title and enacting provisions set out below] shall take effect on the date of the enactment of this Act [July 18, 1984].”

#### EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Section 105(b)(1) of Pub. L. 96-222 provided that: “The amendments made by subsection (a)(1) [amending this section and section 7463 of this title] shall take effect on the date of the enactment of this Act [Apr. 1, 1980].”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 336(b)(1) of Pub. L. 95-600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95-600, set out as an Effective Date note under section 7478 of this title.

Amendment by section 502(c) of Pub. L. 95-600 effective Nov. 6, 1978, see section 502(d)(2) of Pub. L. 95-600, set out as a note under section 7463 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

#### REFERENCES TO COMMISSIONERS DEEMED REFERENCES TO SPECIAL TRIAL JUDGES

Section 464(e)(2) of Pub. L. 98-369 provided that: “Any reference in any law to a commissioner of the Tax

Court shall be treated as a reference to a special trial judge of the Tax Court.”

COMMISSIONERS' SALARIES PENDING CHANGES UNDER  
FEDERAL SALARY ACT

Section 153(b) of Pub. L. 97-164, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Notwithstanding the amendment made by subsection (a) [amending this section], until such time as a change in the salary rate of a commissioner of the United States Tax Court occurs in accordance with section 7456(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the salary of such commissioner shall be equal to the salary of a commissioner of the Court of Claims immediately prior to the effective date of this Act [Oct. 1, 1982].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7457 of this title.

**§ 7457. Witness fees**

**(a) Amount**

Any witness summoned or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States.

**(b) Payment**

Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

**(1) Witnesses for Secretary**

In the case of witnesses for the Secretary, such payments shall be made by the Secretary out of any moneys appropriated for the collection of internal revenue taxes, and may be made in advance.

**(2) Other Witnesses**

In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Tax Court, by the party at whose instance the witness appears or the deposition is taken.

(Aug. 16, 1954, ch. 736, 68A Stat. 886; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b)(1). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

**§ 7458. Hearings**

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Secretary. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Secretary shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge. Hearings before the Tax Court and its divisions shall be open to the public, and the testimony, and, if the Tax Court so requires, the argument, shall be stenographically reported. The Tax Court is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies.

(Aug. 16, 1954, ch. 736, 68A Stat. 886; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), (L), Oct. 4, 1976, 90 Stat. 1834, 1835.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” and struck out “nor his delegate” after “nor the Secretary”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6110 of this title.

**§ 7459. Reports and decisions**

**(a) Requirement**

A report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable. The decision shall be made by a judge in accordance with the report of the Tax Court, and such decision so made shall, when entered, be the decision of the Tax Court.

**(b) Inclusion of findings of fact or opinions in report**

It shall be the duty of the Tax Court and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Tax Court shall report in writing all its findings of fact, opinions, and memorandum opinions. Subject to such conditions as the Tax Court may by rule provide, the requirements of this subsection and of section 7460 are met if findings of fact or opinion are stated orally and recorded in the transcript of the proceedings.

**(c) Date of decision**

A decision of the Tax Court (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Tax Court or, in the case of a declaratory judgment proceeding under part IV of this subchapter or under section 7428 or in the case of an action brought under section 6226, 6228(a),<sup>1</sup> 6247, or 6252, the date of the court's order entering the decision. If the Tax Court dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Secretary, or if the Tax Court dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Tax Court, and the decision of the Tax Court shall be held to be rendered upon the date of such entry.

**(d) Effect of decision dismissing petition**

If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary. An order specifying such amount shall be entered in the records of the Tax Court unless the Tax Court cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

<sup>1</sup> See 1997 Amendment note below.

**(e) Effect of decision that tax is barred by limitation**

If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Tax Court to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

**(f) Findings of fact as evidence**

The findings of the Board of Tax Appeals made in connection with any decision prior to February 26, 1926, shall, notwithstanding the enactment of the Revenue Act of 1926 (44 Stat. 9), continue to be prima facie evidence of the facts therein stated.

**(g) Penalty**

**For penalty for taxpayer instituting proceedings before Tax Court merely for delay, see section 6673.**

(Aug. 16, 1954, ch. 736, 68A Stat. 886; Pub. L. 93-406, title II, §1041(b)(2), Sept. 2, 1974, 88 Stat. 950; Pub. L. 94-455, title XIII, §1306(b)(2), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1719, 1834; Pub. L. 97-248, title IV, §402(c)(14), Sept. 3, 1982, 96 Stat. 668; Pub. L. 97-362, title I, §106(b), Oct. 25, 1982, 96 Stat. 1730; Pub. L. 105-34, title XII, §§1222(b)(2), 1239(e)(1), Aug. 5, 1997, 111 Stat. 1019, 1028.)

## REFERENCES IN TEXT

The Revenue Act of 1926, referred to in subsec. (f), is act Feb. 26, 1926, ch. 27, 44 Stat. 9. For complete classification of this Act to the Code, see Tables.

## AMENDMENTS

1997—Subsec. (c). Pub. L. 105-34, §1239(e)(1), which directed the amendment of subsec. (c) by substituting “, 6228(a), or 6234(c)” for “or section 6228(a)” could not be executed because the words “or section 6228(a)” did not appear in text subsequent to amendment by Pub. L. 105-34, §1222(b)(2). See below.

Pub. L. 105-34, §1222(b)(2), substituted “, 6228(a), 6247, or 6252” for “or section 6228(a)”.

1982—Subsec. (b). Pub. L. 97-362 inserted provision that subject to such conditions as the Tax Court may by rule provide, the requirements of subsec. (b) and of section 7460 of this title are met if findings of fact or opinion are stated orally and recorded in the transcript of the proceedings.

Subsec. (c). Pub. L. 97-248 inserted “or in the case of an action brought under section 6226 or section 6228(a)” after “or under section 7428”.

1976—Subsec. (c). Pub. L. 94-455 inserted “or under section 7428” after “under part IV of this subchapter” and struck out “or his delegate” after “Secretary”.

Subsec. (d). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1974—Subsec. (c). Pub. L. 93-406 inserted “or, in the case of a declaratory judgment proceeding under part IV of this subchapter, the date of the court’s order entering the decision” after “deficiency is entered in the records of the Tax Court”.

## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1222(b)(2) of Pub. L. 105-34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105-34, as amended, set out as a note under section 6011 of this title.

Amendment by section 1239(e)(1) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105-34, set out as a note under section 6225 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with

provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1306(b)(2) of Pub. L. 94-455 applicable with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976 but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94-455, set out as an Effective Date note under section 7428 of this title.

## EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable to pleadings filed more than one year after Sept. 2, 1974, see section 1041(d) of Pub. L. 93-406, set out as an Effective Date note under section 7476 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6215, 7463 of this title.

**§ 7460. Provisions of special application to divisions****(a) Hearings, determinations, and reports**

A division shall hear, and make a determination upon, any proceeding instituted before the Tax Court and any motion in connection therewith, assigned to such division by the chief judge, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

**(b) Effect of action by a division**

The report of the division shall become the report of the Tax Court within 30 days after such report by the division, unless within such period the chief judge has directed that such report shall be reviewed by the Tax Court. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Tax Court except in accordance with such rules as the Tax Court may prescribe. The report of a division shall not be a part of the record in any case in which the chief judge directs that such report shall be reviewed by the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 887.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7459, 7463 of this title.

**§ 7461. Publicity of proceedings****(a) General rule**

Except as provided in subsection (b), 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.

**(b) Exceptions****(1) Trade secrets or other confidential information**

The Tax Court may make any provision which is necessary to prevent the disclosure of

trade secrets or other confidential information, including a provision that any document or information be placed under seal to be opened only as directed by the court.

**(2) Evidence, etc.**

After the decision of the Tax Court in any proceeding has become final, the Tax Court may, upon motion of the taxpayer or the Secretary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable.

(Aug. 16, 1954, ch. 736, 68A Stat. 887; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title IV, §465(a), July 18, 1984, 98 Stat. 825.)

AMENDMENTS

1984—Pub. L. 98-369, in amending section generally, designated existing provisions as subsecs. (a) and (b)(2), added subsec. (b)(1), and in subsec. (b)(2), as so designated, struck out reference to the Secretary's delegate.

1976—Pub. L. 94-455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 465(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6110 of this title.

**§ 7462. Publication of reports**

The Tax Court shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Tax Court therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents.

(Aug. 16, 1954, ch. 736, 68A Stat. 887.)

**§ 7463. Disputes involving \$50,000 or less**

**(a) In general**

In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) \$50,000 for any one taxable year, in the case of the taxes imposed by subtitle A,

(2) \$50,000, in the case of the tax imposed by chapter 11,

(3) \$50,000 for any one calendar year, in the case of the tax imposed by chapter 12, or

(4) \$50,000 for any 1 taxable period (or, if there is no taxable period, taxable event) in the case of any tax imposed by subtitle D which is described in section 6212(a) (relating to a notice of deficiency),

at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

**(b) Finality of decisions**

A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any other court and shall not be treated as a precedent for any other case.

**(c) Limitation of jurisdiction**

In any case in which the proceedings are conducted under this section, notwithstanding the provisions of sections 6214(a) and 6512(b), no decision shall be entered redetermining the amount of a deficiency, or determining an overpayment, except with respect to amounts placed in dispute within the limits described in subsection (a) and with respect to amounts conceded by the parties.

**(d) Discontinuance of proceedings**

At any time before a decision entered in a case in which the proceedings are conducted under this section becomes final, the taxpayer or the Secretary may request that further proceedings under this section in such case be discontinued. The Tax Court, or the division thereof hearing such case, may, if it finds that (1) there are reasonable grounds for believing that the amount of the deficiency placed in dispute, or the amount of an overpayment, exceeds the applicable jurisdictional amount described in subsection (a), and (2) the amount of such excess is large enough to justify granting such request, discontinue further proceedings in such case under this section. Upon any such discontinuance, proceedings in such case shall be conducted in the same manner as cases to which the provisions of sections 6214(a) and 6512(b) apply.

**(e) Amount of deficiency in dispute**

For purposes of this section, the amount of any deficiency placed in dispute includes additions to the tax, additional amounts, and penalties imposed by chapter 68, to the extent that the procedures described in subchapter B of chapter 63 apply.

**(f) Additional cases in which proceedings may be conducted under this section**

At the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings may be conducted under this section (in the same manner as a case described in subsection (a)) in the case of—

(1) a petition to the Tax Court under section 6015(e) in which the amount of relief sought does not exceed \$50,000, and

(2) an appeal under section 6330(d)(1)(A) to the Tax Court of a determination in which the unpaid tax does not exceed \$50,000.

(Added Pub. L. 91-172, title IX, §957(a), Dec. 30, 1969, 83 Stat. 733; amended Pub. L. 92-512, title

II, § 203(b)(1), (2), Oct. 20, 1972, 86 Stat. 945; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title V, § 502(a)(1), (2)(A), (b), Nov. 6, 1978, 92 Stat. 2879; Pub. L. 96-222, title I, § 105(a)(1)(A), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97-362, title I, § 106(a)(1), Oct. 25, 1982, 96 Stat. 1730; Pub. L. 98-369, div. A, title IV, § 461(a)(1), (2)(A), July 18, 1984, 98 Stat. 823; Pub. L. 101-508, title XI, § 11801(c)(21)(B), Nov. 5, 1990, 104 Stat. 1388-528; Pub. L. 105-206, title III, § 3103(a), July 22, 1998, 112 Stat. 731; Pub. L. 106-554, § 1(a)(7) [title III, § 313(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-642.)

#### PRIOR PROVISIONS

A prior section 7463 was renumbered section 7465 of this title.

#### AMENDMENTS

2000—Subsec. (f). Pub. L. 106-554 added subsec. (f).  
 1998—Pub. L. 105-206 in section catchline and in subsec. (a)(1) to (4) substituted “\$50,000” for “\$10,000”.  
 1990—Subsec. (f). Pub. L. 101-508 struck out subsec. (f) “Qualified State individual income taxes” which read as follows: “For purposes of this section, a deficiency placed in dispute or claimed overpayment with regard to a qualified State individual income tax to which subchapter E of chapter 64 applies, for a taxable year, shall be treated as a portion of a deficiency placed in dispute or claimed overpayment of the income tax for that taxable year.”  
 1984—Pub. L. 98-369, § 461(a)(2)(A), substituted “\$10,000” for “\$5,000” in section catchline.  
 Subsec. (a). Pub. L. 98-369, § 461(a)(1), substituted “\$10,000” for “\$5,000” in pars. (1) to (4).  
 1982—Section (a)(4). Pub. L. 97-362 added par. (4).  
 1980—Subsec. (g). Pub. L. 96-222 struck out subsec. (g) which authorized the chief judge of the Tax Court to assign proceedings conducted under this section to be heard by the Commissioners of the court.  
 1978—Pub. L. 95-600, § 502(a)(2)(A), substituted “\$5,000” for “\$1,500” in section catchline.  
 Subsec. (a). Pub. L. 95-600, § 502(a)(1), “\$5,000 for any one taxable year, in the case of the taxes imposed by subtitle A” for “\$1,500 for any one taxable year, in the case of the taxes imposed by subtitle A and chapter 12, or” in par. (1), “\$5,000, in the case of the tax imposed by chapter 11, or” for “\$1,500 in the case of the tax imposed by chapter 11,” in par. (2), and added par. (3).  
 Subsec. (g). Pub. L. 95-600, § 502(b), added subsec. (g).  
 1976—Subsec. (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.  
 1972—Pub. L. 92-512, § 203(b)(2), substituted “\$1,500” for “\$1,000” in section catchline.  
 Subsec. (a)(1), (2). Pub. L. 92-512, § 203(b)(2), substituted “\$1,500” for “\$1,000”.  
 Subsec. (f). Pub. L. 92-512, § 203(b)(1), added subsec. (f).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 applicable to proceedings commenced after July 22, 1998, see section 3103(c) of Pub. L. 105-206, set out as a note under section 7436 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 461(b) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 106(a)(2) of Pub. L. 97-362 provided that: “The amendment made by this subsection [amending this section] shall apply with respect to petitions filed after the date of the enactment of this Act [Oct. 25, 1982].”

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective Apr. 1, 1980, see section 105(b)(1) of Pub. L. 96-222, set out as a note under section 7456 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 502(d) of Pub. L. 95-600 provided that:

“(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first calendar month beginning more than 180 days after the date of the enactment of this Act [Nov. 6, 1978].

“(2) SUBSECTIONS (b) AND (c).—The amendments made by subsection (b) [amending this section] and (c) [amending section 7456 of this title] shall take effect on the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1972 AMENDMENT

Section 204 of title II of Pub. L. 92-512, as amended by Pub. L. 94-455, title XXI, § 2116(a), Oct. 4, 1976, 90 Stat. 1910; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) GENERAL RULE.—Except as provided in subsections (b) and (c), the provisions of this title (and the amendments made thereby) [enacting this section and sections 6362 and 6363 of this title and amending this section and section 6405 of this title] shall take effect on the date of the enactment of this Act [Oct. 20, 1972].

“(b) COLLECTION AND ADMINISTRATION OF STATE TAXES BY THE UNITED STATES MAY NOT BEGIN BEFORE JANUARY 1, 1974.—Section 6361 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by section 202(a) of this Act) shall take effect on whichever of the following is the later:

“(1) January 1, 1974, or

“(2) the first January 1 which is more than one year after the first date on which at least one State has notified the Secretary of the Treasury or his delegate of an election to enter into an agreement under section 6363 of such Code.

“(c) JURISDICTION OF TAX COURT IN DISPUTES INVOLVING \$1,500 OR LESS.—The amendments made by paragraphs (2) and (3) of section 203(b) of this Act [amending this section] shall take effect on January 1, 1974.”

#### EFFECTIVE DATE

Section 962(e) of Pub. L. 91-172 provided that: “The amendments made by sections 957 [enacting this section] and 960(a), (b), (f), and (i) [amending sections 6214, 6512, 7453, 7456, 7481, 7487, of this title] shall take effect one year after the date of enactment of this Act [Dec. 30, 1969].”

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6214, 6512, 7430, 7436, 7443A, 7453, 7481, 7487, 7526 of this title.

#### § 7464. Intervention by trustee of debtor's estate

The trustee of the debtor's estate in any case under title 11 of the United States Code may intervene, on behalf of the debtor's estate, in any proceeding before the Tax Court to which the debtor is a party.

(Added Pub. L. 96-589, § 6(c)(1), Dec. 24, 1980, 94 Stat. 3407.)

#### PRIOR PROVISIONS

A prior section 7464 was renumbered section 7465 of this title.

#### EFFECTIVE DATE

Section effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced be-

fore Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

**§ 7465. Provisions of special application to transferees**

(1) For rules of burden of proof in transferee proceedings, see section 6902(a).

(2) For authority of Tax Court to prescribe rules by which a transferee of property of a taxpayer shall be entitled to examine books, records and other evidence, see section 6902(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 888, §7463; renumbered §7464, Pub. L. 91-172, title IX, §957(a), Dec. 30, 1969, 83 Stat. 733; renumbered §7465, Pub. L. 96-589, §6(c)(1), Dec. 24, 1980, 94 Stat. 3407.)

PART III—MISCELLANEOUS PROVISIONS

Sec.

7471.	Employees.
7472.	Expenditures.
7473.	Disposition of fees.
7474.	Fee for transcript of record.
7475.	Practice fee.

AMENDMENTS

1988—Pub. L. 100-647, title I, §1018(u)(45), Nov. 10, 1988, 102 Stat. 3592, added item 7475.

**§ 7471. Employees**

**(a) Appointment and compensation**

The Tax Court is authorized to appoint, in accordance with the provisions of title 5, United States Code, governing appointment in the competitive service, and to fix the basic pay of, in accordance with chapter 51 and subchapter III of chapter 53 of such title, such employees as may be necessary efficiently to execute the functions vested in the Tax Court.

**(b) Expenses for travel and subsistence**

The employees of the Tax Court shall receive their necessary traveling expenses, and expenses for subsistence while traveling on duty and away from their designated stations, as provided in chapter 57 of title 5, United States Code.

**(c) Special trial judges**

For compensation and travel and subsistence allowances of special trial judges of the Tax Court, see subsections (d) and (e) of section 7443A.

(Aug. 6, 1954, ch. 736, 68A Stat. 888; Pub. L. 91-172, title IX, §960(g), Dec. 30, 1969, 83 Stat. 734; Pub. L. 94-455, title XIX, §1906(a)(47), Oct. 4, 1976, 90 Stat. 1831; Pub. L. 98-369, div. A, title IV, §464(d), July 18, 1984, 98 Stat. 825; Pub. L. 99-514, title XV, §1556(b)(2), Oct. 22, 1986, 100 Stat. 2755.)

REFERENCES IN TEXT

The provisions of title 5, United States Code, governing appointment in the competitive service, referred to in subsec. (a), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514 substituted “subsections (d) and (e) of section 7443A” for “section 7456(c)”.

1984—Subsec. (c). Pub. L. 98-369 substituted references to special trial judges for references to commissioners in the subsection heading and text.

1976—Subsec. (a). Pub. L. 94-455, §1906(a)(47)(A), among other changes, substituted provisions referring

to title 5 of the United States Code for provisions referring to the civil service law, and to chapter 51 and subchapter III of chapter 53 of title 5 for the Classification Act of 1949.

Subsec. (b). Pub. L. 94-455, §1906(a)(47)(B), substituted “as provided in chapter 57 of title 5, United States Code” for “as provided in the Travel Expense Act of 1949 (63 Stat. 166; 5 U.S.C. chapter 16)”.

1969—Subsec. (c). Pub. L. 91-172 inserted reference to the compensation of commissioners.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective Oct. 22, 1986, except as otherwise provided, see section 1556(c) of Pub. L. 99-514, set out as an Effective Date note under section 7443A of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, see section 464(e)(1) of Pub. L. 98-369, set out as a note under section 7456 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

**§ 7472. Expenditures**

The Tax Court is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Tax Court. Except as provided in section 7475, all expenditures of the Tax Court shall be allowed and paid, out of any moneys appropriated for purposes of the Tax Court, upon presentation of itemized vouchers therefor signed by the certifying officer designated by the chief judge.

(Aug. 16, 1954, ch. 736, 68A Stat. 888; Pub. L. 99-514, title XV, §1553(b)(1), Oct. 22, 1986, 100 Stat. 2754.)

AMENDMENTS

1986—Pub. L. 99-514 substituted “Except as provided in section 7475, all” for “All” in second sentence.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective Jan. 1, 1987, see section 1553(c) of Pub. L. 99-514, set out as an Effective Date note under section 7475 of this title.

**§ 7473. Disposition of fees**

Except as provided in section 7475, all fees received by the Tax Court shall be covered into the Treasury as miscellaneous receipts.

(Aug. 16, 1954, ch. 736, 68A Stat. 888; Pub. L. 99-514, title XV, §1553(b)(2), Oct. 22, 1986, 100 Stat. 2754.)

AMENDMENTS

1986—Pub. L. 99-514 substituted “Except as provided in section 7475, all” for “All”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective Jan. 1, 1987, see section 1553(c) of Pub. L. 99-514, set out as an Effective Date note under section 7475 of this title.

**§ 7474. Fee for transcript of record**

The Tax Court is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 888.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7487 of this title.

**§ 7475. Practice fee**

**(a) In general**

The Tax Court is authorized to impose a periodic registration fee on practitioners admitted to practice before such Court. The frequency and amount of such fee shall be determined by the Tax Court, except that such amount may not exceed \$30 per year.

**(b) Use of fees**

The fees described in subsection (a) shall be available to the Tax Court to employ independent counsel to pursue disciplinary matters.

(Added Pub. L. 99-514, title XV, § 1553(a), Oct. 22, 1986, 100 Stat. 2754.)

EFFECTIVE DATE

Section 1553(c) of Pub. L. 99-514 provided that: "The amendments made by this section [enacting this section and amending sections 7472 and 7473 of this title] shall take effect on January 1, 1987."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7472, 7473 of this title.

PART IV—DECLARATORY JUDGMENTS

Sec.	
7476.	Declaratory judgments relating to qualification of certain retirement plans.
7477.	Declaratory judgments relating to value of certain gifts.
7478.	Declaratory judgments relating to status of certain governmental obligations.
7479.	Declaratory judgments relating to eligibility of estate with respect to installment payments under section 6166.

AMENDMENTS

1997—Pub. L. 105-34, title V, §§ 505(b), 506(c)(2), Aug. 5, 1997, 111 Stat. 855, 856, added items 7477 and 7479.

1984—Pub. L. 98-369, div. A, title I, § 131(e)(2)(B), July 18, 1984, 98 Stat. 665, struck out item 7477 "Declaratory judgments relating to transfers of property from the United States".

1978—Pub. L. 95-600, title III, § 336(c)(2), Nov. 6, 1978, 92 Stat. 2842, added item 7478.

1976—Pub. L. 94-455, title X, § 1042(d)(2)(D), (E), Oct. 4, 1976, 90 Stat. 1639, struck out in part heading "RELATING TO QUALIFICATIONS OF CERTAIN RETIREMENT PLANS" after "DECLARATORY JUDGMENTS", inserted "relating to qualification of certain retirement plans" after "Declaratory judgments" in item 7476, and added item 7477.

1974—Pub. L. 93-406, title II, § 1041(a), Sept. 2, 1974, 88 Stat. 949, added part heading and analysis of sections.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 7451, 7459 of this title.

**§ 7476. Declaratory judgments relating to qualification of certain retirement plans**

**(a) Creation of remedy**

In a case of actual controversy involving—

(1) a determination by the Secretary with respect to the initial qualification or continuing qualification of a retirement plan under subchapter D of chapter 1, or

(2) a failure by the Secretary to make a determination with respect to—

(A) such initial qualification, or

(B) such continuing qualification if the controversy arises from a plan amendment or plan termination,

upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to such initial qualification or continuing qualification. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification includes any revocation of or other change in a qualification.

**(b) Limitations**

**(1) Petitioner**

A pleading may be filed under this section only by a petitioner who is the employer, the plan administrator, an employee who has qualified under regulations prescribed by the Secretary as an interested party for purposes of pursuing administrative remedies within the Internal Revenue Service, or the Pension Benefit Guaranty Corporation.

**(2) Notice**

For purposes of this section, the filing of a pleading by any petitioner may be held by the Tax Court to be premature, unless the petitioner establishes to the satisfaction of the court that he has complied with the requirements prescribed by regulations of the Secretary with respect to notice to other interested parties of the filing of the request for a determination referred to in subsection (a).

**(3) Exhaustion of administrative remedies**

The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Internal Revenue Service. A petitioner shall not be deemed to have exhausted his administrative remedies with respect to a failure by the Secretary to make a determination with respect to initial qualification or continuing qualification of a retirement plan before the expiration of 270 days after the request for such determination was made.

**(4) Plan put into effect**

No proceeding may be maintained under this section unless the plan (and, in the case of a controversy involving the continuing qualification of the plan because of an amendment to the plan, the amendment) with respect to which a decision of the Tax Court is sought has been put into effect before the filing of the pleading. A plan or amendment shall not be treated as not being in effect merely because

under the plan the funds contributed to the plan may be refunded if the plan (or the plan as so amended) is found to be not qualified.

**(5) Time for bringing action**

If the Secretary sends by certified or registered mail notice of his determination with respect to the qualification of the plan to the persons referred to in paragraph (1) (or, in the case of employees referred to in paragraph (1), to any individual designated under regulations prescribed by the Secretary as a representative of such employee), no proceeding may be initiated under this section by any person unless the pleading is filed before the ninety-first day after the day after such notice is mailed to such person (or to his designated representative, in the case of an employee).

**(c) Retirement plan**

For purposes of this section, the term “retirement plan” means—

- (1) a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is part of such a plan, or
- (2) an annuity plan described in section 403(a).

**(d) Cross reference**

**For provisions concerning intervention by Pension Benefit Guaranty Corporation and Secretary of Labor in actions brought under this section and right of Pension Benefit Guaranty Corporation to bring action, see section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974.**

(Added Pub. L. 93-406, title II, §1041(a), Sept. 2, 1974, 88 Stat. 949; amended Pub. L. 94-455, title X, §1042(d)(2)(C), title XIII, §1306(b)(3), title XIX, §§1906(a)(48), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1639, 1719, 1831, 1834; Pub. L. 95-600, title III, §336(b)(2)(A), title VII, §701(dd)(1), Nov. 6, 1978, 92 Stat. 2842, 2924; Pub. L. 98-369, div. A, title IV, §491(d)(52), July 18, 1984, 98 Stat. 852; Pub. L. 99-514, title XVIII, §1899A(59), Oct. 22, 1986, 100 Stat. 2962.)

REFERENCES IN TEXT

Section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d), is classified to section 1201(c) of Title 29, Labor.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514 substituted “plan, or” for “plan., or”.

1984—Subsec. (c)(3). Pub. L. 98-369 struck out par. (3) which included a bond purchase plan described in section 405(a) within the term “retirement plan”.

1978—Subsec. (a). Pub. L. 95-600, §701(dd)(1), inserted provision relating to revocation of qualification.

Subsecs. (c) to (e). Pub. L. 95-600, §336(b)(2)(A), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c), which authorized the chief judge to assign proceedings under this section or section 7428 to be heard by the commissioners of the court, was struck out.

1976—Pub. L. 94-455, §1042(d)(2)(C), inserted “relating to qualification of certain retirement plans” after “Declaratory judgments” in section catchline.

Subsec. (a). Pub. L. 94-455, §§1906(a)(48), (b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing, and “United States” after “appropriate pleading, the” in provisions following par. (2).

Subsec. (b). Pub. L. 94-455, §1906(b)(13)(A), struck out in pars. (1) to (3) and (5), “or his delegate” after “Secretary” wherever appearing.

Subsec. (c). Pub. L. 94-455, §1306(b)(3), substituted “this section or section 7428” for “this section”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 336(b)(2)(A) of Pub. L. 95-600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95-600, set out as an Effective Date note under section 7478 of this title.

Section 701(dd)(3) of Pub. L. 95-600, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by paragraphs (1) and (2) [amending this section and section 7428 of this title] shall take effect as if included in section 7476 or 7428 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as the case may be) at the respective times such sections were added to such Code.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1042(d)(2)(C) of Pub. L. 94-455 applicable to pleadings filed with the Tax Court after Oct. 4, 1976, but only with respect to transfers beginning after Oct. 9, 1975, see section 1042(e)(1) of Pub. L. 94-455, set out as a note under section 367 of this title.

Amendment by section 1306(b)(3) of Pub. L. 94-455 applicable with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976 but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94-455, set out as an Effective Date note under section 7428 of this title.

Amendment by section 1906(a)(48), (b)(13)(A) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Section 1041(d) of Pub. L. 93-406 provided that: “The amendments made by this section [enacting this section and amending sections 7451, 7459, and 7482 of this title] shall apply to pleadings filed more than 1 year after the date of the enactment of this Act [Sept. 2, 1974].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7482 of this title; title 29 section 1201.

**§ 7477. Declaratory judgments relating to value of certain gifts**

**(a) Creation of remedy**

In a case of an actual controversy involving a determination by the Secretary of the value of any gift shown on the return of tax imposed by chapter 12 or disclosed on such return or in any statement attached to such return, upon the filing of an appropriate pleading, the Tax Court may make a declaration of the value of such gift. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

**(b) Limitations**

**(1) Petitioner**

A pleading may be filed under this section only by the donor.

**(2) Exhaustion of administrative remedies**

The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service.

**(3) Time for bringing action**

If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing.

(Added Pub. L. 105-34, title V, § 506(c)(1), Aug. 5, 1997, 111 Stat. 855.)

## PRIOR PROVISIONS

A prior section 7477, added Pub. L. 94-455, title X, § 1042(d)(1), Oct. 4, 1976, 90 Stat. 1637; amended Pub. L. 95-600, title III, § 336(b)(2)(B), Nov. 6, 1978, 92 Stat. 2842, provided for declaratory judgments relating to transfers of property from the United States, prior to repeal by Pub. L. 98-369, div. A, title I, § 131(e)(1), (g), July 18, 1984, 98 Stat. 664, 665, applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984.

## EFFECTIVE DATE

Section applicable to gifts made after Aug. 5, 1997, see section 506(e)(1) of Pub. L. 105-34, set out as an Effective Date of 1997 Amendment note under section 2001 of this title.

**§ 7478. Declaratory judgments relating to status of certain governmental obligations****(a) Creation of remedy**

In a case of actual controversy involving—

(1) a determination by the Secretary whether interest on prospective obligations will be excludable from gross income under section 103(a), or

(2) a failure by the Secretary to make a determination with respect to any matter referred to in paragraph (1),

upon the filing of an appropriate pleading, the Tax Court may make a declaration whether interest on such prospective obligations will be excludable from gross income under section 103(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

**(b) Limitations****(1) Petitioner**

A pleading may be filed under this section only by the prospective issuer.

**(2) Exhaustion of administrative remedies**

The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service. A petitioner shall be deemed to have exhausted its administrative remedies with respect to a failure of the Secretary to make a determination with respect to an issue of obligations at the expiration of 180 days after the

date on which the request for such determination was made if the petitioner has taken, in a timely manner, all reasonable steps to secure such determination.

**(3) Time for bringing action**

If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a)(1) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing.

(Added Pub. L. 95-600, title III, § 336(a), Nov. 6, 1978, 92 Stat. 2841; amended Pub. L. 100-647, title I, § 1013(a)(42), Nov. 10, 1988, 102 Stat. 3544.)

## AMENDMENTS

1988—Subsec. (a). Pub. L. 100-647 substituted “whether interest on prospective obligations will be excludable from gross income under section 103(a)” for “whether prospective obligations are described in section 103(a)” in par. (1) and “whether interest on such prospective obligations will be excludable from gross income under section 103(a)” for “whether such prospective obligations are described in section 103(a)” in concluding provisions.

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

## EFFECTIVE DATE

Section 336(d) of Pub. L. 95-600 provided that: “The amendments made by this section [enacting this section and amending sections 7456, 7476, 7477, and 7482 of this title] shall apply to requests for determinations made after December 31, 1978.”

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7482 of this title.

**§ 7479. Declaratory judgments relating to eligibility of estate with respect to installment payments under section 6166****(a) Creation of remedy**

In a case of actual controversy involving a determination by the Secretary of (or a failure by the Secretary to make a determination with respect to)—

(1) whether an election may be made under section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business) with respect to an estate (or with respect to any property included therein), or

(2) whether the extension of time for payment of tax provided in section 6166(a) has ceased to apply with respect to an estate (or with respect to any property included therein),

upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to whether such election may be made or whether such extension has ceased to apply. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

**(b) Limitations****(1) Petitioner**

A pleading may be filed under this section, with respect to any estate, only—

- (A) by the executor of such estate, or  
 (B) by any person who has assumed an obligation to make payments under section 6166 with respect to such estate (but only if each other such person is joined as a party).

**(2) Exhaustion of administrative remedies**

The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service. A petitioner shall be deemed to have exhausted its administrative remedies with respect to a failure of the Secretary to make a determination at the expiration of 180 days after the date on which the request for such determination was made if the petitioner has taken, in a timely manner, all reasonable steps to secure such determination.

**(3) Time for bringing action**

If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing.

**(c) Extension of time to file refund suit**

The 2-year period in section 6532(a)(1) for filing suit for refund after disallowance of a claim shall be suspended during the 90-day period after the mailing of the notice referred to in subsection (b)(3) and, if a pleading has been filed with the Tax Court under this section, until the decision of the Tax Court has become final.

(Added Pub. L. 105-34, title V, §505(a), Aug. 5, 1997, 111 Stat. 854; amended Pub. L. 105-206, title III, §3104(b), title VI, §6007(d), July 22, 1998, 112 Stat. 732, 809.)

AMENDMENTS

1998—Subsec. (a)(1), (2). Pub. L. 105-206, §6007(d), substituted “an estate (or with respect to any property included therein),” for “an estate.”

Subsec. (c). Pub. L. 105-206, §3104(b), added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 3104(b) of Pub. L. 105-206 applicable to any claim for refund filed after July 22, 1998, see section 3104(c) of Pub. L. 105-206, set out as a note under section 7422 of this title.

Amendment by section 6007(d) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 505(c) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7422 of this title.

**Subchapter D—Court Review of Tax Court Decisions**

Sec.	
7481.	Date when Tax Court decision becomes final.

Sec.	
7482.	Courts of review.
7483.	Notice of appeal.
7484.	Change of incumbent in office.
7485.	Bond to stay assessment and collection.
7486.	Refund, credit, or abatement of amounts disallowed.
7487.	Cross references.

AMENDMENTS

1969—Pub. L. 91-172, title IX, §§959(b), 960(i)(2), Dec. 30, 1969, 83 Stat. 734, 735, substituted “Notice of appeal” for “Petition for review” in item 7483 and substituted “Cross references” for “Cross reference” in item 7487.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6406 of this title.

**§ 7481. Date when Tax Court decision becomes final**

**(a) Reviewable decisions**

Except as provided in subsections (b), (c), and (d), the decision of the Tax Court shall become final—

**(1) Timely notice of appeal not filed**

Upon the expiration of the time allowed for filing a notice of appeal, if no such notice has been duly filed within such time; or

**(2) Decision affirmed or appeal dismissed**

**(A) Petition for certiorari not filed on time**

Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Tax Court has been affirmed or the appeal dismissed by the United States Court of Appeals and no petition for certiorari has been duly filed; or

**(B) Petition for certiorari denied**

Upon the denial of a petition for certiorari, if the decision of the Tax Court has been affirmed or the appeal dismissed by the United States Court of Appeals; or

**(C) After mandate of Supreme Court**

Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Tax Court be affirmed or the appeal dismissed.

**(3) Decision modified or reversed**

**(A) Upon mandate of Supreme Court**

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 Secretary 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**

If the decision of the Tax Court is modified or reversed by the United States 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 United States 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 United States 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 Secretary 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.

#### (4) Rehearing

If the Supreme Court orders a rehearing; or if the case is remanded by the United States Court of Appeals to the Tax Court for a rehearing, and if—

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

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals has been affirmed by the Supreme Court,

then the decision of the Tax Court rendered upon such rehearing shall become final in the same manner as though no prior decision of the Tax Court has been rendered.

#### (5) Definition of “mandate”

As used in this section, the term “mandate”, in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate.

#### (b) Nonreviewable decisions

The decision of the Tax Court in a proceeding conducted under section 7436(c) or 7463 shall become final upon the expiration of 90 days after the decision is entered.

#### (c) Jurisdiction over interest determinations

##### (1) In general

Notwithstanding subsection (a), if, within 1 year after the date the decision of the Tax Court becomes final under subsection (a) in a case to which this subsection applies, the taxpayer files a motion in the Tax Court for a redetermination of the amount of interest involved, then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest or the Secretary has made an underpayment of such interest and the amount thereof.

##### (2) Cases to which this subsection applies

This subsection shall apply where—

(A)(i) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title, and

(ii) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

(B) the Tax Court finds under section 6512(b) that the taxpayer has made an overpayment.

#### (3) Special rules

If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest or that the Secretary has made an underpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining interest, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court.

#### (d) Decisions relating to estate tax extended under section 6166

If with respect to a decedent's estate subject to a decision of the Tax Court—

(1) the time for payment of an amount of tax imposed by chapter 11 is extended under section 6166, and

(2) there is treated as an administrative expense under section 2053 either—

(A) any amount of interest which a decedent's estate pays on any portion of the tax imposed by section 2001 on such estate for which the time of payment is extended under section 6166, or

(B) interest on any estate, succession, legacy, or inheritance tax imposed by a State on such estate during the period of the extension of time for payment under section 6166,

then, upon a motion by the petitioner in such case in which such time for payment of tax has been extended under section 6166, the Tax Court may reopen the case solely to modify the Court's decision to reflect such estate's entitlement to a deduction for such administration expenses under section 2053 and may hold further trial solely with respect to the claim for such deduction if, within the discretion of the Tax Court, such a hearing is deemed necessary. An order of the Tax Court disposing of a motion under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(Aug. 16, 1954, ch. 736, 68A Stat. 889; Pub. L. 91-172, title IX, §960(h)(1), Dec. 30, 1969, 83 Stat. 734; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100-647, title VI, §§6246(a), (b)(2), 6247(a), (b)(2), Nov. 10, 1988, 102 Stat. 3751, 3752; Pub. L. 105-34, title XIV, §§1452(a), 1454(b)(3), Aug. 5, 1997, 111 Stat. 1054, 1057.)

#### AMENDMENTS

1997—Subsec. (b). Pub. L. 105-34, §1454(b)(3), substituted “section 7436(c) or 7463” for “section 7463”.

Subsec. (c). Pub. L. 105-34, §1452(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Notwithstanding subsection (a), if—

“(1) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title,

“(2) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

“(3) within 1 year after the date the decision of the Tax Court becomes final under subsection (a), the taxpayer files a petition in the Tax Court for a determination that the amount of interest claimed by the

Secretary exceeds the amount of interest imposed by this title, then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest and the amount of any such overpayment. If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining the interest due, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court.”

1988—Subsec. (a). Pub. L. 100-647, § 6247(b)(2), substituted “subsections (b), (c), and (d)” for “subsections (b) and (c)”.

Pub. L. 100-647, § 6246(b)(2), substituted “subsections (b) and (c)” for “subsection (b)”.

Subsec. (c). Pub. L. 100-647, § 6246(a), added subsec. (c).

Subsec. (d). Pub. L. 100-647, § 6247(a), added subsec. (d).

1976—Subsecs. (a)(3)(A), (B)(iii). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1969—Pub. L. 91-172 designated existing provisions as subsec. (a), inserted reference to the exception provided for in subsec. (b), substituted “notice of appeal” for “petition for review” in par. (1), and substituted references to dismissal of appeal for references to dismissal of petition for review in par. (2), and added subsec. (b).

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 1452(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].”

Amendment by section 1454(b)(3) of Pub. L. 105-34 effective Aug. 5, 1997, see section 1454(c) of Pub. L. 105-34, set out as a note under section 6511 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 6246(a), (b)(2) of Pub. L. 100-647 applicable to assessments of deficiencies redetermined by the Tax Court made after Nov. 10, 1988, see section 6246(c) of Pub. L. 100-647, set out as a note under section 6512 of this title.

Amendment by section 6247(a), (b)(2) of Pub. L. 100-647 effective with respect to Tax Court cases for which the decision is not final on Nov. 10, 1988, see section 6247(c) of Pub. L. 100-647, set out as a note under section 6512 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91-172, set out as a note under section 7483 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6214, 6230, 6255, 6512, 7428, 7436 of this title.

### § 7482. Courts of review

#### (a) Jurisdiction

##### (1) In general

The United States Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

#### (2) Interlocutory orders

##### (A) In general

When any judge of the Tax Court includes in an interlocutory order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals may, in its discretion, permit an appeal to be taken from such order, if application is made to it within 10 days after the entry of such order. Neither the application for nor the granting of an appeal under this paragraph shall stay proceedings in the Tax Court, unless a stay is ordered by a judge of the Tax Court or by the United States Court of Appeals which has jurisdiction of the appeal or a judge of that court.

##### (B) Order treated as Tax Court decision

For purposes of subsections (b) and (c), an order described in this paragraph shall be treated as a decision of the Tax Court.

##### (C) Venue for review of subsequent proceedings

If a United States Court of Appeals permits an appeal to be taken from an order described in subparagraph (A), except as provided in subsection (b)(2), any subsequent review of the decision of the Tax Court in the proceeding shall be made by such Court of Appeals.

#### (3) Certain orders entered under section 6213(a)

An order of the Tax Court which is entered under authority of section 6213(a) and which resolves a proceeding to restrain assessment or collection shall be treated as a decision of the Tax Court for purposes of this section and shall be subject to the same review by the United States Court of Appeals as a similar order of a district court.

#### (b) Venue

##### (1) In general

Except as otherwise provided in paragraphs (2) and (3), such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

(A) in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner,

(B) in the case of a corporation seeking redetermination of tax liability, the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any judicial circuit, then the office to which was made the return of the tax in respect of which the liability arises,

(C) in the case of a person seeking a declaratory decision under section 7476, the principal place of business, or principal office or agency of the employer,

(D) in the case of an organization seeking a declaratory decision under section 7428,

the principal office or agency of the organization.

(E) in the case of a petition under section 6226, 6228(a), 6247, or 6252, the principal place of business of the partnership, or

(F) in the case of a petition under section 6234(c)—

(i) the legal residence of the petitioner if the petitioner is not a corporation, and

(ii) the place or office applicable under subparagraph (B) if the petitioner is a corporation.

If for any reason no subparagraph of the preceding sentence applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court or as of the time the petition seeking a declaratory decision under section 7428 or 7476 or the petition under section 6226, 6228(a), or 6234(c), was filed with the Tax Court.

**(2) By agreement**

Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary and the taxpayer by stipulation in writing.

**(3) Declaratory judgment actions relating to status of certain governmental obligations**

In the case of any decision of the Tax Court in a proceeding under section 7478, such decision may only be reviewed by the Court of Appeals for the District of Columbia.

**(c) Powers**

**(1) To affirm, modify, or reverse**

Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

**(2) To make rules**

Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2072 of title 28 of the United States Code.

**(3) To require additional security**

Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

**(4) To impose penalties**

The United States Court of Appeals and the Supreme Court shall have the power to require the taxpayer to pay to the United States a penalty in any case where the decision of the Tax Court is affirmed and it appears that the appeal was instituted or maintained primarily for delay or that the taxpayer's position in the appeal is frivolous or groundless.

(Aug. 16, 1954, ch. 736, 68A Stat. 890; Pub. L. 89-713, §3(c), Nov. 2, 1966, 80 Stat. 1109; Pub. L.

91-172, title IX, §960(h)(2), Dec. 30, 1969, 83 Stat. 735; Pub. L. 93-406, title II, §1041(b)(3), Sept. 2, 1974, 88 Stat. 950; Pub. L. 94-455, title X, §1042(d)(2)(A), (B), title XIII, §1306(b)(4), (5), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1638, 1639, 1719, 1834; Pub. L. 95-600, title III, §336(c)(1), Nov. 6, 1978, 92 Stat. 2842; Pub. L. 97-164, title I, §154, Apr. 2, 1982, 96 Stat. 47; Pub. L. 97-248, title IV, §402(c)(15), Sept. 3, 1982, 96 Stat. 668; Pub. L. 98-369, div. A, title I, §131(e)(2)(A), July 18, 1984, 98 Stat. 665; Pub. L. 99-514, title XV, §1558(a), (b), title XVIII, §§1810(g)(2), 1899A(60), Oct. 22, 1986, 100 Stat. 2757, 2758, 2828, 2962; Pub. L. 100-647, title VI, §6243(b), Nov. 10, 1988, 102 Stat. 3750; Pub. L. 101-239, title VII, §7731(b), Dec. 19, 1989, 103 Stat. 2401; Pub. L. 105-34, title XII, §§1222(b)(3), 1239(d), Aug. 5, 1997, 111 Stat. 1019, 1028.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105-34, §1239(d)(2), substituted “, 6228(a), or 6234(c)” for “or 6228(a)” in concluding provisions.

Subsec. (b)(1)(E). Pub. L. 105-34, §1222(b)(3), substituted “, 6228(a), 6247, or 6252” for “or 6228(a)”.

Subsec. (b)(1)(F). Pub. L. 105-34, §1239(d)(1), added subpar. (F).

1989—Subsec. (c)(4). Pub. L. 101-239 substituted “penalties” for “damages” in heading and amended text generally. Prior to amendment, text read as follows: “The United States Court of Appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the notice of appeal was filed merely for delay.”

1988—Subsec. (a)(3). Pub. L. 100-647 added par. (3).

1986—Subsec. (a). Pub. L. 99-514, §1558(a), (b), inserted par. (1) designation and heading “In general” before existing text and realigned its margin, and added par. (2).

Subsec. (b)(1). Pub. L. 99-514, §1810(g)(2), substituted “section 7428 or 7476” for “section 7428, 7476, or 7477” in last sentence.

Subsec. (b)(1)(E). Pub. L. 99-514, §1899A(60), substituted “partnership.” for “partnership.”

1984—Subsec. (b)(1)(D) to (F). Pub. L. 98-369 struck out subpar. (D) which provided that venue in the case of a person seeking declaratory judgment under section 7477 be the legal residence of such person if such person is not a corporation, or the principal place of business or principal office or agency of such person if such person is a corporation, and redesignated subpars. (E) and (F) as (D) and (E), respectively.

1982—Subsec. (a). Pub. L. 97-164 inserted “(other than the United States Court of Appeals for the Federal Circuit)” after “The United States Courts of Appeals”.

Subsec. (b)(1). Pub. L. 97-248 added subpar. (F), and in provisions following subpar. (F) inserted “, or the petition under section 6226 or 6228(a),” after “or 7477”.

1978—Subsec. (b)(1). Pub. L. 95-600, §336(c)(1)(A), substituted “provided in paragraphs (2) and (3)” for “provided in paragraph (2)”.

Subsec. (b)(3). Pub. L. 95-600, §336(c)(1)(B), added par. (3).

1976—Subsec. (b)(1)(D). Pub. L. 94-455, §1042(d)(2)(A), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 94-455, §1306(b)(4), added subpar. (E).

Subsec. (b)(1). Pub. L. 94-455, §§1042(d)(2)(B), 1306(b)(5), in provisions following subpar. (E), substituted “no subparagraph of the preceding sentence applies” for “subparagraph (A), (B), and (C) do not apply” and “section 7428, 7476, or 7477” for “section 7476”.

Subsec. (b)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1974—Subsec. (b)(1). Pub. L. 93-406 added subpar. (C) and, in provisions following subpar. (C), substituted “If for any reason subparagraph (A), (B), and (C) do not

apply” for “If for any reason neither subparagraph (A) nor (B) applies”, and inserted provisions referring to the time the petition seeking a declaratory decision under section 7476 was filed with the Tax Court.

1969—Subsec. (c). Pub. L. 91-172 substituted “section 2072 of title 28” for “section 2074 of title 28” in par. (2) and struck out provision for the applicability of rules adopted under authority of section 1141(c)(2) of the Internal Revenue Act of 1939 until such time as rules prescribed by the Supreme Court under section 2072 of title 28 become effective and, in par. (4), substituted “notice of appeal” for “petition”.

1966—Subsec. (b)(1). Pub. L. 89-713 substituted provisions requiring that appeals from Tax Court decisions be made to the Court of Appeals for the circuit in which the taxpayer resides, in the case of a taxpayer other than a corporation, and, in the case of appeals by corporations, to the Court of Appeals for the circuit in which the corporation has its principal place of business or principal office or agency for provisions prescribing review by the Court of Appeals for the circuit in which was located the office to which was made the return of the tax in respect of which the liability arose, and inserted provision for the time of determining legal residence, place of business, or principal office or agency.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1222(b)(3) of Pub. L. 105-34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105-34, as amended, set out as a note under section 6011 of this title.

Amendment by section 1239(d) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105-34, set out as a note under section 6225 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to positions taken after Dec. 31, 1989, in proceedings which are pending on, or commenced after such date, see section 7731(d) of Pub. L. 101-239, set out as a note under section 6673 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable to orders entered after Nov. 10, 1988, see section 6243(c) of Pub. L. 100-647, set out as a note under section 6213 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1558(c) of Pub. L. 99-514 provided that: “The amendments made by this section [amending this section] shall apply to any order of the Tax Court entered after the date of the enactment of this Act [Oct. 22, 1986].”

Amendment by section 1810(g)(2) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as a note under section 367 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the

Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95-600, set out as an Effective Date note under section 7478 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1042(d)(2)(A), (B) of Pub. L. 94-455 applicable with respect to pleadings filed with the Tax Court after Oct. 4, 1976, but only with respect to transfers beginning after Oct. 9, 1975, see section 1042(e)(1) of Pub. L. 94-455, set out as a note under section 367 of this title.

Amendment by section 1306(b)(4), (5) of Pub. L. 94-455 applicable with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976 but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94-455, set out as an Effective Date note under section 7428 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable to pleadings filed more than one year after Sept. 2, 1974, see section 1041(d) of Pub. L. 93-406, set out as an Effective Date note under section 7476 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91-172, set out as a note under section 7483 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-713 applicable to all decisions of the Tax Court entered after Nov. 2, 1966, see section 3(d) of Pub. L. 89-713, set out as a note under section 7422 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7437, 7485 of this title.

### § 7483. Notice of appeal

Review of a decision of the Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.

(Aug. 16, 1954, ch. 736, 68A Stat. 891; Pub. L. 91-172, title IX, §959(a), Dec. 30, 1969, 83 Stat. 734.)

#### AMENDMENTS

1969—Pub. L. 91-172 substituted references to notice of appeal for references to petition for review, and otherwise generally altered the section as to time for appeal and terminology in order to conform section to the form of the Federal Rules of Appellate Procedure.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Section 962(f) of Pub. L. 91-172, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“The amendments made by sections 959 and 960(h) [amending this section and sections 7481, 7482, and 7485 of this title] shall take effect 30 days after the date of the enactment of this Act [Dec. 30, 1969]. In the case of any decision of the Tax Court entered before the 30th day after the date of the enactment of this Act [Dec. 30, 1969], the United States Courts of Appeals shall have jurisdiction to hear an appeal from such decision, if such appeal was filed within the time prescribed by Rule 13(a) of the Federal Rules of Appellate Procedure or by section 7483 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as in effect at the time the decision of the Tax Court was entered.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6512, 7482, 7485 of this title.

#### § 7484. Change of incumbent in office

When the incumbent of the office of Secretary 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.

(Aug. 16, 1954, ch. 736, 68A Stat. 891; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

#### § 7485. Bond to stay assessment and collection

##### (a) Upon notice of appeal

Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, the review under section 7483 shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Tax Court unless a notice of appeal in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer—

(1) on or before the time his notice of appeal is filed has filed with the Tax Court a bond in a sum fixed by the Tax Court not exceeding double the amount of the portion of the deficiency in respect of which the notice of appeal is filed, and with surety approved by the Tax Court, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or

(2) has filed a jeopardy bond under the income or estate tax laws.

If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Tax Court is paid after the filing of the appeal bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

##### (b) Bond in case of appeal of certain partnership-related decisions

The condition of subsection (a) shall be satisfied if a partner duly files notice of appeal from a decision under section 6226, 6228(a), 6247, or 6252 and on or before the time the notice of appeal is filed with the Tax Court, a bond in an amount fixed by the Tax Court is filed, and with surety approved by the Tax Court, conditioned

upon the payment of deficiencies attributable to the partnership items to which that decision relates as finally determined, together with any interest, penalties, additional amounts, or additions to the tax provided by law. Unless otherwise stipulated by the parties, the amount fixed by the Tax Court shall be based upon its estimate of the aggregate liability of the parties to the action.

#### (c) Cross references

(1) For requirement of additional security notwithstanding this section, see section 7482(c)(3).

(2) For deposit of United States bonds or notes in lieu of sureties, see section 9303 of title 31, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 891; Pub. L. 91-172, title IX, §960(h)(3), Dec. 30, 1969, 83 Stat. 735; Pub. L. 97-248, title IV, §402(c)(16), Sept. 3, 1982, 96 Stat. 668; Pub. L. 97-258, §3(f)(15), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 105-34, title XII, §§1222(b)(4), 1241(a), Aug. 5, 1997, 111 Stat. 1019, 1029.)

#### REFERENCES IN TEXT

The income and estate tax laws, referred to in subsec. (a)(2), are classified generally to this title.

#### AMENDMENTS

1997—Subsec. (b). Pub. L. 105-34, §1222(b)(4)(B), amended heading generally. Prior to amendment, heading read as follows: “Bond in case of appeal of decision under section 6226 or section 6228(a)”.

Pub. L. 105-34, §1222(b)(4)(A), substituted “, 6228(a), 6247, or 6252” for “or 6228(a)”.

Pub. L. 105-34, §1241(a), inserted “penalties,” after “any interest,” and substituted “aggregate liability of the parties to the action” for “aggregate of such deficiencies”.

1982—Subsecs. (b), (c). Pub. L. 97-248 added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c)(2). Pub. L. 97-258 substituted “section 9303 of title 31, United States Code” for “6 U.S.C. 15”. Notwithstanding the directory language that amendment be made to subsec. (b)(2), the amendment was executed to subsec. (c)(2) to reflect the probable intent of Congress and the intervening redesignation of subsec. (b) as (c) by Pub. L. 97-248.

1969—Subsec. (a). Pub. L. 91-172 substituted “notice of appeal” for “petition for review” and “appeal bond” for “review bond”.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1222(b)(4) of Pub. L. 105-34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105-34, as amended, set out as a note under section 6011 of this title.

Section 1241(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248].”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91-172, set out as a note under section 7483 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6015, 6215, 7101, 7103 of this title.

**§ 7486. Refund, credit, or abatement of amounts disallowed**

In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Tax Court is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated.

(Aug. 16, 1954, ch. 736, 68A Stat. 891.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6422 of this title.

**§ 7487. Cross references**

(1) **Nonreviewability.**—For nonreviewability of Tax Court decisions in small claims cases, see section 7463(b).

(2) **Transcripts.**—For authority of the Tax Court to fix fees for transcript of records, see section 7474.

(Aug. 16, 1954, ch. 736, 68A Stat. 892; Pub. L. 91-172, title IX, §960(i)(1), Dec. 30, 1969, 83 Stat. 735.)

## AMENDMENTS

1969—Pub. L. 91-172 inserted reference to section 7463(b) for nonreviewability of Tax Court decisions in small claims cases.

## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91-172, set out as an Effective Date note under section 7463 of this title.

## Subchapter E—Burden of Proof

Sec.  
7491. Burden of proof.

**§ 7491. Burden of proof**

**(a) Burden shifts where taxpayer produces credible evidence**

**(1) General rule**

If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

**(2) Limitations**

Paragraph (1) shall apply with respect to an issue only if—

(A) the taxpayer has complied with the requirements under this title to substantiate any item;

(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430(c)(4)(A)(ii).

Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section

645(b)(1)) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section 645(b)(2)).

**(3) Coordination**

Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

**(b) Use of statistical information on unrelated taxpayers**

In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

**(c) Penalties**

Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.

(Added Pub. L. 105-206, title III, §3001(a), July 22, 1998, 112 Stat. 726; amended Pub. L. 105-277, div. J, title IV, §4002(b), Oct. 21, 1998, 112 Stat. 2681-906.)

## PRIOR PROVISIONS

A prior section 7491, act Aug. 16, 1954, ch. 736, 68A Stat. 893, placed the burden of proof in establishing the applicability of an exemption upon the defendant in the case of marijuana offenses, prior to repeal by Pub. L. 91-513, title III, §§1101(b)(5)(A), 1103, 1105(a), Oct. 27, 1970, 84 Stat. 1292, 1294, 1295, effective on first day of seventh calendar month that begins after Oct. 26, 1970, with prosecutions commenced prior to such date not to be affected or abated by reason thereof.

A prior section 7492, act Aug. 16, 1954, ch. 736, 68A Stat. 893, related to the enforceability of cotton futures contracts, prior to repeal by Pub. L. 94-455, title XIX, §1952(n)(4)(A), (o), Oct. 4, 1976, 90 Stat. 1846, effective on the 90th day after Oct. 4, 1976.

A prior section 7493, act Aug. 16, 1954, ch. 736, 68A Stat. 893, provided that no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter D of chapter 39 of this title withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39 of this title or of any regulation made pursuant to such chapter, but that such person called by such officer who testifies in the case be exempt from prosecution for any offense to which his testimony relates, prior to repeal by Pub. L. 91-452, title II, §§232, 260, Oct. 15, 1970, 84 Stat. 930, 931, effective on 60th day following Oct. 15, 1970, and not to affect any immunity to which any individual was entitled under by reason of any testimony given before 60th day following Oct. 15, 1970. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

## AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-277 inserted concluding provisions.

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, to which such amendment relates, see section 4002(k) of Pub. L. 105-277, set out as a note under section 1 of this title.

## EFFECTIVE DATE

Pub. L. 105-206, title III, §3001(c), July 22, 1998, 112 Stat. 727, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this subchapter] shall apply to court proceedings arising in connection with examinations commencing after the date of the enactment of this Act [July 22, 1998].

“(2) TAXABLE PERIODS OR EVENTS AFTER DATE OF ENACTMENT.—In any case in which there is no examination, such amendments shall apply to court proceedings arising in connection with taxable periods or events beginning or occurring after such date of enactment.”

## CHAPTER 77—MISCELLANEOUS PROVISIONS

Sec.

7501. Liability for taxes withheld or collected.
7502. Timely mailing treated as timely filing and paying.
7503. Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.
7504. Fractional parts of a dollar.
7505. Sale of personal property acquired by the United States.
7506. Administration of real estate acquired by the United States.
7507. Exemption of insolvent banks from tax.
7508. Time for performing certain acts postponed by reason of service in combat zone.
- 7508A. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions.
7509. Expenditures incurred by the United States Postal Service.
7510. Exemption from tax of domestic goods purchased for the United States.
- [7511. Repealed.]
7512. Separate accounting for certain collected taxes, etc.
7513. Reproduction of returns and other documents.
7514. Authority to prescribe or modify seals.
7515. Special statistical studies and compilations and other services on request.<sup>1</sup>
7516. Supplying training and training aids on request.
7517. Furnishing on request of statement explaining estate or gift valuation.
7518. Tax incentives relating to merchant marine capital construction funds.
7519. Required payments for entities electing not to have required taxable year.
7520. Valuation tables.
7521. Procedures involving taxpayer interviews.
7522. Content of tax due, deficiency, and other notices.
7523. Graphic presentation of major categories of Federal outlays and income.
7524. Annual notice of tax delinquency.
7525. Confidentiality privileges relating to taxpayer communications.
7526. Low-income taxpayer clinics.
7527. Advance payment of credit for health insurance costs of eligible individuals.

## AMENDMENTS

2002—Pub. L. 107-210, div. A, title II, §202(d)(1), Aug. 6, 2002, 116 Stat. 963, added item 7527.

Pub. L. 107-134, title I, §112(e)(1), Jan. 23, 2002, 115 Stat. 2435, substituted “Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions” for “Authority to postpone certain tax-related deadlines by reason of presidentially declared disaster” in item 7508A.

1998—Pub. L. 105-206, title III, §§3411(b), 3601(b), July 22, 1998, 112 Stat. 751, 776, added items 7525 and 7526.

<sup>1</sup>Section repealed by Pub. L. 94-455 without corresponding amendment of analysis.

1997—Pub. L. 105-34, title IX, §911(b), Aug. 5, 1997, 111 Stat. 878, added item 7508A.

1996—Pub. L. 104-168, title XII, §1204(b), July 30, 1996, 110 Stat. 1471, added item 7524.

1990—Pub. L. 101-508, title XI, §§11622(b), 11704(a)(31), Nov. 5, 1990, 104 Stat. 1388-505, 1388-519, substituted “7522. Content of tax due, deficiency, and other notices.” for “7521. Content of tax due, deficiency, and other notices.” and added item 7523.

1989—Pub. L. 101-239, title VII, §7816(u)(2), Dec. 19, 1989, 103 Stat. 2423, redesignated item 7520, relating to procedures involving taxpayer interviews, as 7521.

1988—Pub. L. 100-647, title VI, §6233(b), Nov. 10, 1988, 102 Stat. 3735, added item 7521.

Pub. L. 100-647, title VI, §6228(c), Nov. 10, 1988, 102 Stat. 3732, added item 7520 relating to procedures involving taxpayer interviews.

Pub. L. 100-647, title V, §5031(b), Nov. 10, 1988, 102 Stat. 3669, added item 7520 relating to valuation tables.

1987—Pub. L. 100-203, title X, §10206(b)(2), Dec. 22, 1987, 101 Stat. 1330-401, added item 7519.

1986—Pub. L. 99-514, title II, §261(f), Oct. 22, 1986, 100 Stat. 2216, added item 7518.

1976—Pub. L. 94-455, title XIX, §1906(b)(11), (12), Oct. 4, 1976, 90 Stat. 1834, substituted “Time for performing certain acts postponed by reason of service in combat zone” for “Time for performing certain acts postponed by reason of war” in item 7508, and “Expenditures incurred by the United States Postal Service” for “Expenditures incurred by the Post Office Department” in item 7509.

Pub. L. 94-455, title XX, §2008(a)(2)(C), Oct. 4, 1976, 90 Stat. 1891, added item 7517 relating to statement explaining estate or gift valuation.

1966—Pub. L. 89-719, title I, §111(c)(2), Nov. 2, 1966, 80 Stat. 1145, substituted “acquired” for “purchased” in item 7505.

Pub. L. 89-713, §5(b), Nov. 2, 1966, 80 Stat. 1111, inserted “and paying” in item 7502.

1962—Pub. L. 87-870, §3(a)(2), Oct. 23, 1962, 76 Stat. 1161, added items 7515 and 7516.

Pub. L. 87-456, title III, §302(d), May 24, 1962, 76 Stat. 77, struck out item 7511 “Exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles”.

1958—Pub. L. 85-866, title I, §§90(b), 91(b), Sept. 2, 1958, 72 Stat. 1666, 1667, added items 7513 and 7514.

Pub. L. 85-321, §3(a), Feb. 11, 1958, 72 Stat. 6, added item 7512.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 7801, 7851 of this title.

## § 7501. Liability for taxes withheld or collected

## (a) General rule

Whenever any person is required to collect or withhold any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

## (b) Penalties

**For penalties applicable to violations of this section, see sections 6672 and 7202.**

(Aug. 16, 1954, ch. 736, 68A Stat. 895.)