

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,

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.

**§ 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 re-

<sup>1</sup> So in original.

turns, 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 and may otherwise provide, when requested by the chief judge of the Tax Court, for the security of the Tax Court, including the personal protection of Tax Court judges, court

officers, witnesses, and other threatened persons in the interests of justice, where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding. The United States Marshals Service retains final authority regarding security requirements for the Tax Court.

(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; Pub. L. 110-177, title I, §102(b), Jan. 7, 2008, 121 Stat. 2535.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-177 inserted before period at end of concluding provisions "and may otherwise provide, when requested by the chief judge of the Tax Court, for the security of the Tax Court, including the personal protection of Tax Court judges, court officers, witnesses, and other threatened persons in the interests of justice, where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding. The United States Marshals Service retains final authority regarding security requirements for the Tax Court".

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

Pub. L. 99-514, title XV, §1555(b), Oct. 22, 1986, 100 Stat. 2754, 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

Pub. L. 98-369, div. A, title IV, §463(b), July 18, 1984, 98 Stat. 824, 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].”

Pub. L. 98-369, div. A, title IV, §464(e)(1), July 18, 1984, 98 Stat. 825, 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

Pub. L. 96-222, title I, §105(b)(1), Apr. 1, 1980, 94 Stat. 221, provided that: “The amendments made by sub-

section (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.

#### REIMBURSEMENT

Pub. L. 110-177, title I, §102(c), Jan. 7, 2008, 121 Stat. 2535, provided that: “The United States Tax Court shall reimburse the United States Marshals Service for protection provided under the amendments made by this section [amending this section and section 566 of Title 28, Judiciary and Judicial Procedure].”

#### REFERENCES TO COMMISSIONERS DEEMED REFERENCES TO SPECIAL TRIAL JUDGES

Pub. L. 98-369, div. A, title IV, §464(e)(2), July 18, 1984, 98 Stat. 825, 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

Pub. L. 97-164, title I, §153(b), Apr. 2, 1982, 96 Stat. 47, 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].”

### § 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.