

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.

**§ 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”.

**§ 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.

**(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”.

<sup>1</sup> See 1997 Amendment note below.