

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.

Pub. L. 91-172, title IX, §962(d), Dec. 30, 1969, 83 Stat. 736, 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

Pub. L. 89-354, §2, Feb. 2, 1966, 80 Stat. 5, 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 section 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

Pub. L. 95-472, §2(b), Oct. 17, 1978, 92 Stat. 1333, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Any individual who elects to re-

voke 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.”

### § 7448. Annuities to surviving spouses and dependent children of judges and special trial 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 “special trial judge” means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under chapter 83 or 84 of title 5, United States Code, whether or not performing judicial duties under section 7443B.<sup>1</sup>

(6) The term “special trial judge’s salary” means the salary of a special trial judge received under section 7443A(d), any amount received as an annuity under chapter 83 or 84 of title 5, United States Code, and compensation received under section 7443B.<sup>1</sup>

(7) The term “survivors annuity fund” means the Tax Court judges survivors annuity fund established by this section.

(8) 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.

(9) The term “dependent child” means an unmarried child, including a dependent step-child 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

##### (1) Judges

Any judge may by written election filed while he is a judge (except that in the case of an individual 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

<sup>1</sup> See References in Text note below.

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.

**(2) Special trial judges**

Any special trial judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

- (A) 6 months after the date of the enactment of this paragraph,
- (B) the date the judge takes office, or
- (C) the date the judge marries.

**(c) Survivors annuity fund**

**(1) Salary deductions**

There shall be deducted and withheld from the salary of each judge or special trial judge electing under subsection (b) a sum equal to 3.5 percent of such judge's or special trial judge's salary. The amounts so deducted and withheld from such judge's or special trial 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 judicial officers survivors annuity fund" and said fund is appropriated for the payment of annuities, refunds, and allowances as provided by this section. Each judge or special trial 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 or special trial 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 section 7443A(d), 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) and (a)(6) paid during such fiscal year.

**(C) Unfunded liability defined**

For purposes of subparagraph (A), the term "unfunded liability" means the amount esti-

mated 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 or special trial 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 or special trial 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 or special trial judge may elect to make such deposits in installments during the continuance of his service as a judge or special trial 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 or special trial judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the surviving spouse of such judge or special trial 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 or special trial 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 or special trial 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 or special trial 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 or special trial judge.

**(g) Termination**

If the service of any judge or special trial 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 or special trial 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 or special trial 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 or special trial judge electing under subsection (b) shall die while a judge or special trial 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 or special trial 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 special trial 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 or special trial 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 or special trial 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 or special trial 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 or special trial 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 or special trial judge leaving a dependent child or children of the judge or special trial 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 or special trial judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge or special trial 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 or special trial judge electing under subsection (b) shall die while in office (whether in regular active service, retired from such service under section 7447, or receiving any annuity under chapter 83 or 84 of title 5, United States Code),<sup>2</sup> 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 or special trial judge shall terminate before a valid claim therefor shall have been established,

the total amount credited to the individual account of such judge or special trial judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, com-

<sup>2</sup> So in original.

pounded on December 31 of each year, to the date of the death of such judge or special trial 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 or special trial 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 or special trial judge;

(iii) if none of the above, to the child or children of such judge or special trial judge and the descendants of any deceased children by representation;

(iv) if none of the above, to the parents of such judge or special trial 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 or special trial judge; and

(vi) if none of the above, to such other next of kin of such judge or special trial judge as may be determined by the chief judge to be entitled under the laws of the domicile of such judge or special trial judge at the time of his death.

Determination as to the surviving spouse, child, or parent of a judge or special trial judge for the purposes of this paragraph shall be made by the chief judge without regard to the definitions in paragraphs (8) and (9) of subsection (a).

(2) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge or special trial judge shall terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge or special trial 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 or special trial 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 or special trial 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 or special trial 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 or special trial judge electing under subsection (b) shall be an amount equal to the sum of (1) 1.5 percent of the average annual salary (whether judge's or special trial judge's salary or compensation for other allowable service) received by such judge or special trial judge for judicial service (including periods in which he received retired pay under section 7447(d) or any annuity under chapter 83 or 84 of title 5, United States Code) 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>3</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 or special trial judge

<sup>3</sup>So in original. A closing parenthesis probably should precede the comma.

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 or special trial judge of the Tax Court of the United States, and as a judge or special trial judge of the Tax Court, his years of service pursuant to any appointment under section 7443A, 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 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 in survivor annuities**

Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).

**(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; Pub. L. 109-280, title VIII, §§851(a), 854(a)-(c)(1), (3)-(7), Aug. 17, 2006, 120 Stat. 1016-1018.)

REFERENCES IN TEXT

Section 1106 of the Internal Revenue Code of 1939, referred to in subsecs. (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.

Section 7443B, referred to in subsec. (a)(5), (6), was repealed by Pub. L. 110-458, title I, §108(l), Dec. 23, 2008, 122 Stat. 5110.

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 109-280, which was approved Aug. 17, 2006.

AMENDMENTS

2006—Pub. L. 109-280, §854(c)(3), which directed amendment of subsec. (u) of this section by inserting “or special trial judge” after “judge” and “or special trial judge’s” after “judge’s” wherever appearing, could not be executed because no subsec. (u) has been enacted.

Pub. L. 109-280, §854(c)(1), inserted “and special trial judges” after “children of judges” in section catchline.

Subsec. (a)(5) to (9). Pub. L. 109-280, §854(a), which directed amendment of subsec. (a) by adding pars. (5) and (6) and redesignating former pars. (5) to (8) as (7) to (10), respectively, was executed by adding pars. (5) and (6) and redesignating former pars. (5) to (7) as (7) to (9), respectively, to reflect the probable intent of Congress. Subsec. (a) did not contain a par. (8) prior to the amendment.

Subsec. (b). Pub. L. 109-280, §854(b), reenacted subsec. heading without change, designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

Subsec. (c)(1). Pub. L. 109-280, §854(c)(4)(A), substituted “Tax Court judicial officers” for “Tax Court judges”.

Pub. L. 109-280, §854(c)(3), inserted “or special trial judge” after “judge” and “or special trial judge’s” after “judge’s” wherever appearing.

Subsec. (c)(2)(A). Pub. L. 109-280, § 854(c)(4)(B)(i), inserted “and section 7443A(d)” after “(a)(4)”.

Subsec. (c)(2)(B). Pub. L. 109-280, § 854(c)(4)(B)(ii), substituted “subsection (a)(4) and (a)(6)” for “subsection (a)(4)”.

Subsec. (d). Pub. L. 109-280, § 854(c)(3), inserted “or special trial judge” after “judge” wherever appearing except after “chief judge” and inserted “or special trial judge’s” after “judge’s”.

Subsecs. (f) to (h). Pub. L. 109-280, § 854(c)(3)(A), inserted “or special trial judge” after “judge” wherever appearing.

Subsec. (j). Pub. L. 109-280, § 854(c)(3)(A), inserted “or special trial judge” after “judge” wherever appearing except after “chief judge”.

Subsec. (j)(1). Pub. L. 109-280, § 854(c)(5)(B), substituted “paragraphs (8) and (9) of subsection (a)” for “subsections (a)(6) and (7)” in concluding provisions.

Subsec. (j)(1)(A). Pub. L. 109-280, § 854(c)(5)(A), substituted “service, retired from such service under section 7447, or receiving any annuity under chapter 83 or 84 of title 5, United States Code,” for “service or retired from such service under section 7447”.

Subsec. (m). Pub. L. 109-280, § 854(c)(6), inserted “or any annuity under chapter 83 or 84 of title 5, United States Code” after “7447(d)”.

Pub. L. 109-280, § 854(c)(3), inserted “or special trial judge’s” after “judge’s” and “or special trial judge” after “judge” in two places.

Subsec. (n). Pub. L. 109-280, § 854(c)(3)(A), (7), inserted “or special trial judge” after “judge” wherever appearing and “his years of service pursuant to any appointment under section 7443A,” after “of the Tax Court.”

Subsec. (s). Pub. L. 109-280, § 851(a), amended heading and text of subsec. (s) generally. Prior to amendment, text read as follows: “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.”

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”.

Subsec. (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 2006 AMENDMENT

Pub. L. 109-280, title VIII, §851(b), Aug. 17, 2006, 120 Stat. 1016, provided that: “The amendment made by this section [amending this section] shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act [Aug. 17, 2006].”

#### 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.

Pub. L. 99-514, title XV, §1559(d), Oct. 22, 1986, 100 Stat. 2760, 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

Pub. L. 98-369, div. A, title IV, §462(b), July 18, 1984, 98 Stat. 824, 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

Pub. L. 97-362, title I, §105(d), Oct. 25, 1982, 96 Stat. 1730, 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

Pub. L. 92-41, §4(c)(2), July 1, 1971, 85 Stat. 99, 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

Pub. L. 97-362, title I, §105(c), Oct. 25, 1982, 96 Stat. 1729, 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].”

## 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.

### § 7451. Fee for filing petition

The tax court is authorized to impose a fee in an amount not in excess of \$60 to be fixed by the Tax Court for the filing of any petition.

(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; Pub. L. 109-280, title VIII, §859(a), Aug. 17, 2006, 120 Stat. 1020.)

### AMENDMENTS

2006—Pub. L. 109-280 struck out “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)” after “petition”.

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 2006 AMENDMENT

Pub. L. 109-280, title VIII, §859(b), Aug. 17, 2006, 120 Stat. 1020, provided that: “The amendment made by

<sup>1</sup>Section catchline amended by Pub. L. 91-172 without corresponding amendment of analysis.

this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].”

### 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

Pub. L. 97-34, title VII, §751(b), Aug. 13, 1981, 95 Stat. 349, 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