

peal 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.”

§ 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 the partnership duly files notice of appeal from a decision under section 6234 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-related items (as defined in section 6241) 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; Pub. L. 114-74, title XI, §1101(f)(14), Nov. 2, 2015, 129 Stat. 638; Pub. L. 115-141, div. U, title II, §§201(c)(8), 206(p)(8), Mar. 23, 2018, 132 Stat. 1173, 1182.)

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-141 substituted “the partnership” for “a partner” and “partnership-related items (as defined in section 6241)” for “partnership items”.

2015—Subsec. (b). Pub. L. 114-74 substituted “section 6234” for “section 6226, 6228(a), 6247, or 6252”.

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 2018 AMENDMENT

Amendment by Pub. L. 115-141 effective as if included in section 1101 of Pub. L. 114-74, see section 207 of Pub. L. 115-141, set out as a note under section 6031 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-74 applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, see section 1101(g) of Pub. L. 114-74, set out as an Effective Date note under section 6221 of this title.

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.

Pub. L. 105-34, title XII, §1241(b), Aug. 5, 1997, 111 Stat. 1029, 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 a note under section 702 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.

§ 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.)

§ 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 marihuana 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