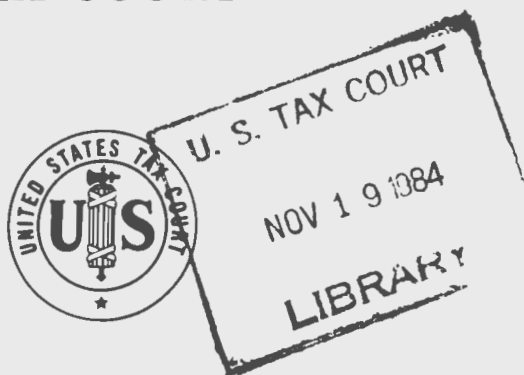


REPORTS
OF THE
UNITED STATES
TAX COURT



January 1, 1984, to June 30, 1984

Volume 82

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MARY T. PITTMAN
REPORTER OF DECISIONS

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON 1984

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OF THE
UNITED STATES
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(24-83 TC)

MARY T. HITTMAN
Reporter in Chief

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JUDGES OF THE UNITED STATES TAX COURT

Chief Judge

HOWARD A. DAWSON, JR.

Judges

WILLIAM M. FAY
CHARLES R. SIMPSON
SAMUEL B. STERRETT
WILLIAM A. GOFFE
DARRELL D. WILES
RICHARD C. WILBUR
HERBERT L. CHABOT
ARTHUR L. NIMS III
EDNA G. PARKER

MEADE WHITAKER
JULES G. KORNER III
PERRY SHIELDS
LAPSLEY W. HAMBLIN, JR.
MARY ANN COHEN
CHARLES E. CLAPP II
STEPHEN J. SWIFT
JULIAN I. JACOBS¹
JOEL GERBER²

Senior judges recalled to perform judicial duties under the provisions of section 7447 of the Internal Revenue Code of 1954:

BRUCE M. FORRESTER³
ARNOLD RAUM
WILLIAM M. DRENNEN
IRENE F. SCOTT

LEO H. IRWIN
THEODORE TANNENWALD, JR.
C. MOXLEY FEATHERSTON

Special Trial Judges

JAMES M. GUSSIS
FRED S. GILBERT, JR.
FRANCIS J. CANTREL
DANIEL J. DINAN
MARVIN F. PETERSON
JOHN J. PAJAK
FRED R. TANSILL

RANDOLPH F. CALDWELL, JR.
LEE M. GALLOWAY
HELEN A. BUCKLEY
PETER J. PANUTHOS
JOAN SEITZ PATE
HU S. VANDERVORT⁴

CHARLES S. CASAZZA, *Clerk*

PAUL NEJELSKI, *Administrator*⁵

¹Judge Jacobs took oath of office March 30, 1984

²Judge Gerber took oath of office June 18, 1984

³Termination of recall February 15, 1984

⁴Appointed March 2, 1984

⁵Appointed April 22, 1984

AMENDMENTS

to

RULES OF PRACTICE AND PROCEDURE

of the

UNITED STATES TAX COURT

The Rules of Practice and Procedure of the United States Tax Court are amended by adding a new Title XXIV (Rules 240 through 247) and by amending Rules 2, 171, 173, 182, 183, 200, 201, and 202.

The Notes accompanying these amendments were prepared by the Rules Committee and are included herein for the convenience of the Bar. They are not officially part of the Rules and are not included in the printed publication prepared for general distribution.

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TITLE I

SCOPE OF RULES; CONSTRUCTION; EFFECTIVE DATE; DEFINITIONS

RULE 2. EFFECTIVE DATE

(a) **Adoption:** These Rules, except as otherwise provided, will take effect on January 16, 1984. They govern all proceedings and cases commenced after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the Court their application, in a particular case pending when the Rules take effect, would not be feasible or would work injustice, in which event the former procedure applies.

Note

Par. (a) of this Rule has been revised to provide that these Rules are effective January 16, 1984, except as otherwise provided. Thus, par. (a) contains the general effective date of these Rules. Any reference to the effective dates for specific Rules has been eliminated. However, amendments adopted after January 16, 1984, will state their effective date.

TITLE XVII

SMALL TAX CASES*

[Rule 170 not changed.]

RULE 171. SMALL TAX CASE DEFINED

The term "small tax case" means a case in which:

*The maximum amount of the deficiency in dispute, for a taxable or calendar year, has been increased from \$5,000 to \$10,000, effective July 18, 1984. See Section 461 of the Tax Reform Act of 1984, Public Law 98-369 (July 18, 1984).

(a) Neither the amount of the deficiency, nor the amount of any claimed overpayment, placed in dispute (including any additions to tax, additional amounts, and penalties) exceeds—

(1) \$10,000 for any one taxable year in the case of income taxes,

(2) \$10,000 in the case of estate taxes,

(3) \$10,000 for any one calendar year in the case of gift taxes, or

(4) \$10,000 for any one taxable period or, if there is no taxable period, for any taxable event in the case of excise taxes under Chapter 41, 42, 43, or 44 of the Code (taxes on certain organizations and persons dealing with them) or under Chapter 45 of the Code (windfall profit tax);

Note

Par. (a) of this Rule has been amended to reflect the increased amount of deficiencies in dispute in cases eligible for the small tax case procedure. See Section 461 of the Tax Reform Act of 1984, Public Law 98-369, 98 Stat. 494, 823 (July 18, 1984).

RULE 173. DISCONTINUANCE OF PROCEEDINGS

After the commencement of a trial of a small tax case, but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under Code Section 7463, and that the case be tried under the rules of practice other than the Small Tax Case Rules, but such order will be issued only if (1) there are reasonable grounds for believing that the amount of the deficiency, or the claimed overpayment, in dispute will exceed \$10,000 and (2) the Court finds that justice requires the discontinuance of the proceedings under Code Section 7463, taking into consideration the convenience and expenses for both parties that would result from the order.

Note

See Note to Rule 171(a).

TITLE XVIII**SPECIAL TRIAL JUDGES****RULE 182. CASES INVOLVING \$10,000 OR LESS**

Except as otherwise directed by the Chief Judge, the following procedure shall be observed in small tax cases (as defined in Rule 171) and in all other cases where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds \$10,000:

(a) [Not changed.]

(b) **Other Cases Involving \$10,000 or Less:** Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a case (other than a small tax case) where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds \$10,000 shall, as soon after such trial as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge.

(c) **Decision:** Subject to the provisions of paragraphs (a) and (b) of this Rule, the Special Trial Judge is authorized to make the decision of the Court in any small tax case (as defined in Rule 171) and in any other case where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds \$10,000.

Note

Rule 182 has been amended to reflect the increased amount of the deficiencies in dispute in cases in which the Special Trial Judges are authorized to make the decision of the Court. See Section 463 of the Tax Reform Act of 1984, Public Law 98-369, 98 Stat. 494, 824 (July 18, 1984). The amendment is effective as of October 25, 1982.

RULE 183. CASES INVOLVING MORE THAN \$10,000

[Only the caption of this Rule has been changed.]

Note

See Note to Rule 182.

TITLE XX

PRACTICE BEFORE THE COURT

RULE 200. ADMISSION TO PRACTICE

(a) **Qualifications:** (1) *General:* [Not changed.]

(2) *Attorneys:* An attorney at law may be admitted to practice upon filing with the Admissions Clerk a completed application accompanied by a fee of \$25 and a current certificate from the Clerk of the appropriate court, showing that the applicant has been admitted to practice before and is a member in good standing of the Bar of the Supreme Court of the United States, or of the highest or appropriate court of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States. A current court certificate is one executed within 60 calendar days preceding the date of the filing of the application.

Note

Par. (a)(2) of Rule 200 has been amended to clarify that an attorney may be admitted to practice before the Court upon a showing that the attorney is a member in good standing of the Bar of any commonwealth, territory, or possession of the United States. The amendment is effective as of January 1, 1974.

RULE 201. CONDUCT OF PRACTICE BEFORE THE COURT

(a) **General:** Practitioners before the Court shall carry on their practice in accordance with the letter and spirit of the

Rules of Professional Conduct of the American Bar Association.

Note

Par. (a) of Rule 201 has been amended to reflect the adoption by the American Bar Association of new Model Rules of Professional Conduct on August 2, 1983.

**RULE 202. DISQUALIFICATION, SUSPENSION,
OR DISBARMENT**

(a) **General:** The Court may deny admission to its Bar to, or suspend, or disbar, any person who in its judgment does not possess the requisite qualifications to represent others, or who is lacking in character, integrity, or proper professional conduct. Upon the conviction of any practitioner admitted to practice before this Court for a criminal violation of any provision of the Internal Revenue Code or for any crime involving moral turpitude, or where any practitioner has been suspended or disbarred from the practice of his profession in any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, the Court may, in the exercise of its discretion, forthwith suspend such practitioner from the Bar of this Court until further order of Court; but otherwise no person shall be suspended for more than 60 days or disbarred until he has been afforded an opportunity to be heard. A Judge of the Court may immediately suspend any person for not more than 60 days for contempt or misconduct during the course of any trial or hearing.

Note

Par. (a) of Rule 202 has been amended to clarify that the Court may forthwith suspend any practitioner who has been suspended from the practice of his profession in any commonwealth, territory, or possession of the United States. The amendment is effective as of January 1, 1974.

TITLE XXIV

PARTNERSHIP ACTIONS

RULE 240. GENERAL

(a) **Applicability:** The Rules of this Title XXIV set forth the special provisions which apply to actions for readjustment of partnership items under Code Section 6226 and actions for adjustment of partnership items under Code Section 6228. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such partnership actions.

(b) **Definitions:** As used in the Rules in this Title—

(1) The term “partnership” means a partnership as defined in Code Section 6231(a)(1).

(2) A “partnership action” is either an “action for readjustment of partnership items” under Code Section 6226 or an “action for adjustment of partnership items” under Code Section 6228.

(3) The term “partnership item” means any item described in Code Section 6231(a)(3).

(4) The term “tax matters partner” means the person who is the tax matters partner under Code Section 6231(a)(7).

(5) A “notice of final partnership administrative adjustment” is the notice described in Code Section 6223(a)(2).

(6) The term “administrative adjustment request” means a request for an administrative adjustment of partnership items filed by the tax matters partner on behalf of the partnership under Code Section 6227(b).

(7) The term “partner” means a person who was a partner as defined in Code Section 6231(a)(2) at any time during any partnership taxable year at issue in a partnership action.

(8) The term “notice partner” means a person who is a notice partner under Code Section 6231(a)(8).

(9) The term “5-percent group” means a 5-percent group as defined in Code Section 6231(a)(11).

(c) **Jurisdictional Requirements:** The Court does not have jurisdiction of a partnership action under this Title unless the following conditions are satisfied:

(1) *Actions for Readjustment of Partnership Items:* (i) The Commissioner has issued a notice of final partnership administrative adjustment. See Code Section 6226(a) and (b).

(ii) A petition for readjustment of partnership items is filed with the Court by the tax matters partner within the period specified in Code Section 6226(a), or by a partner other than the tax matters partner subject to the conditions and within the period specified in Code Section 6226(b).

(2) *Actions for Adjustment of Partnership Items:* (i) The Commissioner has not allowed all or some of the adjustments requested in an administrative adjustment request. See Code Section 6228(a).

(ii) A petition for adjustment of partnership items is filed with the Court by the tax matters partner subject to the conditions and within the period specified in Code Section 6228(a)(2) and (3).

(d) **Form and Style of Papers:** All papers filed in a partnership action shall be prepared in the form and style set forth in Rule 23, except that the caption shall state the name of the partnership and the full name and surname of any partner filing the petition and shall indicate whether such partner is the tax matters partner, as for example, "ABC Partnership, John Doe, Tax Matters Partner, Petitioner" or "ABC Partnership, Richard Roe, A Partner Other Than the Tax Matters Partner, Petitioner."

Note

The Court has issued a new Title XXIV (Rules 240 through 247), which sets forth procedures for partnership actions under Code Section 6226 (action for readjustment of partnership items) and Code Section 6228 (action for adjustment of partnership items), enacted by Section 402(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 96 Stat. 324, 648 (Sept. 3, 1982). For the effective date of such provisions, see Section 407(a) of such act.

In an action for readjustment of partnership items, the Court's jurisdiction depends upon the issuance of a notice of final partnership administrative adjustment and the timely filing of a petition by the tax matters partner, a notice partner, or a representative of a 5-percent group. The Court's jurisdiction in an action for adjustment of partnership items depends upon the Commissioner's failure to allow all or some of the adjustments requested in an administrative adjustment request filed by the tax matters partner and the timely filing of a petition by the tax matters partner.

All papers filed in a partnership action shall conform generally to the requirements of Rule 23, except that the caption also shall include the name of the partnership and shall indicate whether the petitioner is the tax matters partner.

RULE 241. COMMENCEMENT OF PARTNERSHIP ACTION

(a) **Commencement of Action:** A partnership action shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, Rule 32, relating to form of pleadings, and Rule 34(d), relating to number of copies to be filed.

(b) **Contents of Petition:** Each petition shall be entitled either "Petition for Readjustment of Partnership Items under Code Section 6226" or "Petition for Adjustment of Partnership Items under Code Section 6228." Each such petition shall contain the allegations described in paragraph (c) of this Rule, and the allegations described in paragraph (d) or (e) of this Rule.

(c) **All Petitions:** All petitions in partnership actions shall contain the following:

(1) The name and address of the petitioner.

(2) The name, employer identification number, and principal place of business of the partnership at the time the petition is filed.

(3) The office of the Internal Revenue Service with which the partnership's return for the period in controversy was filed.

A claim for reasonable litigation costs shall not be included in the petition in a partnership action. For the requirements as to claims for reasonable litigation costs, see Rule 231.

(d) **Petition for Readjustment of Partnership Items:** In addition to including the information specified in paragraph (c) of this Rule, a petition for readjustment of partnership items shall also contain:

(1) **All Petitions:** All petitions for readjustment of partnership items shall contain:

(i) The date of the notice of final partnership administrative adjustment and the City and State of the office of the Internal Revenue Service which issued the notice.

(ii) The year or years or other periods for which the notice of final partnership administrative adjustment was issued.

(iii) Clear and concise statements of each and every error which the petitioner alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issues not raised in the assignments of error, or in the assignments of error in any amendment to the petition, shall be deemed to be conceded. Each assignment of error shall be set forth in a separately lettered subparagraph.

(iv) Clear and concise lettered statements of the facts on which the petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(v) A prayer setting forth relief sought by the petitioner.

(vi) The signature, mailing address, and telephone number of each petitioner or his counsel.

(vii) A copy of the notice of final partnership administrative adjustment, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of final partnership administrative adjustment or an accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are material to the assignments of error likewise shall be appended to the petition.

(2) *Petitions by Tax Matters Partner*: In addition to including the information specified in paragraph (d)(1) of this Rule, a petition filed by a tax matters partner shall also contain:

(i) A separate numbered paragraph stating that he is the tax matters partner.

(ii) There shall be appended to the petition a copy of one of the notices required by subparagraph (1) of paragraph (f) of this Rule with a certificate by the petitioner or his counsel that service of such a notice has been made as required

therein, including in such certificate the names and addresses of the partners so served.

(3) *Petitions by Other Partners:* In addition to including the information specified in paragraph (d)(1) of this Rule, a petition filed by a partner other than the tax matters partner shall also contain:

(i) A separate numbered paragraph stating that he is a notice partner or a representative of a 5-percent group (see Code Section 6226(b)(1)).

(ii) A separate numbered paragraph setting forth facts establishing that he satisfies the requirements of Code Section 6226(d).

(iii) A separate numbered paragraph stating that the tax matters partner has not filed a petition for readjustment of partnership items within the period specified in Code Section 6226(a).

(iv) There shall be appended to the petition a certificate by the petitioner or his counsel that service of a copy of the petition has been made on the tax matters partner in accordance with the requirements of subparagraph (2) of paragraph (f) of this Rule.

A single petition may be filed by two or more partners; however, each such partner must satisfy all requirements of this Title with respect to himself in order for the petition to be treated as filed by or for him.

(e) **Petition for Adjustment of Partnership Items:** In addition to including the information specified in paragraph (c) of this Rule, a petition for adjustment of partnership items shall also contain:

(1) A statement that the petitioner is the tax matters partner.

(2) The date that the administrative adjustment request was filed and other proper allegations showing jurisdiction in the Court in accordance with the requirements of Code Section 6228(a)(1) and (2).

(3) The year or years or other periods to which the administrative adjustment request relates.

(4) The City and State of the office of the Internal Revenue Service with which the administrative adjustment request was filed.

(5) A clear and concise statement describing each partnership item on the partnership return that is sought to be changed, and the basis for each such requested change. Each such statement shall be set forth in a separately lettered subparagraph.

(6) Clear and concise lettered statements of the facts on which the petitioner relies in support of such requested changes in treatment of partnership items.

(7) A prayer setting forth relief sought by the petitioner.

(8) The signature, mailing address, and telephone number of the petitioner or his counsel.

(9) A copy of the administrative adjustment request shall be appended to the petition.

(10) There shall be appended to the petition a copy of one of the notices required by subparagraph (1) of paragraph (f) of this Rule with a certificate by the petitioner or his counsel that service of such a notice has been made as required therein, including in such certificate the names and addresses of the partners so served.

(f) Notice of Filing: (1) *Petitions by Tax Matters Partner:* On or before the day the petition is delivered to the Court, or, if the petition is mailed to the Court, on or before the day of mailing, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as referred to in Code Section 6231(a)(2)(A).

(2) *Petitions by Other Partners:* On or before the day the petition is delivered to the Court, or, if the petition is mailed to the Court, on or before the day of mailing, the petitioner shall serve a copy of the petition on the tax matters partner. Upon notification thereof by the Clerk, the petitioner shall notify the tax matters partner of the docket number assigned the case by the Court (see Rule 35). Within 15 days from the date of service of the petition, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as referred to in Code Section 6231(a)(2)(A).

(g) Copy of Petition To Be Provided All Partners: Upon request by any partner in the partnership as referred to in Code Section 6231(a)(2)(A), the tax matters partner shall, within 10 days of receipt of such request, make available to such partner a copy of any petition filed by the tax matters

partner or by any other partner, which copy shall contain the docket number assigned by the Court.

Note

Rule 241 sets forth the requirements as to the contents of the petition in a partnership action.

The provisions in par. (d) of this Rule regarding the contents of the petition in an action for readjustment of partnership items are patterned after the comparable provisions relating to deficiency actions. Par. (d)(1)(iii) provides that issues not raised in the assignments of error, or in the assignments of error in any amendment to the petition, shall be deemed to be conceded. This reflects the Court's current practice under Rules 34(b)(4) and 41. It is not intended to alter the Court's existing practice with respect to issues tried by consent or amendments to conform to the proof (Rule 41(b)). Par. (d)(3) requires that a petitioner other than the tax matters partner also allege that he is a notice partner or a representative of a 5-percent group, that he satisfies the requirements of Code Section 6226(d), and that the tax matters partner has not filed a timely petition.

The requirements as to a petition for adjustment of partnership items are set forth in par. (e).

Par. (f) requires the tax matters partner to serve notice of the filing of a petition by him on each partner in the partnership as referred to in Code Section 6231(a)(2)(A). Any other partner who files a petition is required to serve a copy of the petition on the tax matters partner, who is then required to serve notice of the filing of the petition on other partners. Although the notice of the filing of the petition will not include the docket number, par. (g) requires that the tax matters partner furnish a copy of any petition filed by him or by any other partner, with the docket number assigned by the Court, to any partner upon request. To comply with this requirement, the tax matters partner need only include the docket number on the copy so furnished; the tax matters partner need not provide a copy of the petition with the docket number stamped by the Court. The docket number must be included on all papers thereafter filed in the case. See Rule 35.

RULE 242. DESIGNATION OF PLACE OF TRIAL

At the time of filing a petition in a partnership action, a designation of place of trial shall be filed in accordance with Rule 140.

Note

Rule 242 provides for the filing of a designation of place of trial in accordance with Rule 140. Any party who objects to the place of trial so

designated may file a motion to change the place of trial in accordance with Rule 140(c).

RULE 243. OTHER PLEADINGS

(a) Answer: The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

(b) Reply: For provisions relating to the filing of a reply, see Rule 37.

Note

The provisions of Rule 243 regarding the answer and reply incorporate those set forth in Rules 36 and 37.

Where several notice partners or 5-percent groups file separate petitions (see Code Section 6226(b)(1)), the Court expects the Commissioner to move to dismiss all petitions filed subsequent to the first petition (see Code Section 6226(b)(2)).

RULE 244. INTERVENTION AND PARTICIPATION

(a) Tax Matters Partner: The tax matters partner may intervene in an action for readjustment of partnership items brought by another partner or partners by filing a notice of election to intervene with the Court. Such notice shall state that the intervenor is the tax matters partner and shall be filed within 210 days from the date of the mailing of the notice of final partnership administrative adjustment to the tax matters partner.

(b) Other Partners: Any other partner who satisfies the requirements of Code Section 6226(d) or 6228(a)(4)(B) may participate in the action by filing a notice of election to participate with the Court. Such notice shall set forth facts establishing that such partner satisfies the requirements of Code Section 6226(d) in the case of an action for readjustment of partnership items or Code Section 6228(a)(4)(B) in the case of an action for adjustment of partnership items and shall be filed:

(1) In an action for readjustment of partnership items, within 210 days from the date of the mailing of the notice

of final partnership administrative adjustment to the tax matters partner;

(2) In an action for adjustment of partnership items, within 60 days from the date of service of the notice of filing of the petition described in Rule 241(f)(1).

A single notice may be filed by two or more partners; however, each such partner must satisfy all requirements of this paragraph with respect to himself in order for the notice to be treated as filed by or for him.

(c) **Enlargement of Time:** The Court may grant leave to file a notice of election to intervene or a notice of election to participate out of time upon a showing of sufficient cause.

(d) **Pleading:** No assignment of error, allegation of fact, or other statement in the nature of a pleading shall be included in a notice of election to intervene or notice of election to participate.

(e) **Amendments to the Petition:** A party other than the petitioner who is authorized to raise issues not raised in the petition may do so by filing an amendment to the petition. Such an amendment may be filed, without leave of Court, in an action for readjustment of partnership items at any time within the period specified in Rule 244(b)(1) and in an action for adjustment of partnership items at any time within the period specified in Rule 244(b)(2). Otherwise, such an amendment may be filed only by leave of Court. See Rule 36(a) for time for responding to amendments to the petition.

Note

Rule 244 prescribes the procedure for intervention by the tax matters partner and participation by any other partner in a partnership action. The Rule allows 210 days from the date of the mailing of the notice of final partnership administrative adjustment to the tax matters partner for the filing of the notice of election to intervene or to participate in an action for readjustment of partnership items, and 60 days from the date of service of the notice of the filing of the petition for the filing of the notice of election to participate in an action for adjustment of partnership items. The 60-day period for filing a notice of election to participate in an action for adjustment of partnership items is comparable to the period for filing such notice in an action for readjustment of partnership items, in that the former expires approximately 60 days after the filing of the petition, and the latter expires approximately 60 days after the latest date for filing a petition.

Par. (c) provides that the Court may grant leave to file the notice out of time upon a showing of sufficient cause. For example, in an action for readjustment of partnership items, a motion for leave to file the notice out of time ordinarily will be granted where it is shown that the partner timely filed a notice of election to intervene or to participate in another action with respect to the same partnership and that such other action was dismissed (see Code Section 6226(b)(4)), if such motion is filed promptly after the dismissal of such other action. Leave to file the notice out of time also may be granted upon other showings of good cause.

Par. (d) reflects that the notice described in this Rule is not a pleading and should not plead facts or issues.

Par. (e) establishes the procedure for other partners to raise issues not raised in the petition. This paragraph is not intended to express any views as to whether partners who are not entitled to file a petition may raise new issues.

RULE 245. SERVICE OF PAPERS

All petitions, and all papers issued by the Court, shall be served by the Clerk. All other papers required to be served (see Rule 21(a)) shall be served by the parties. Whenever a paper (other than a petition) is required by these Rules to be filed with the Court, the original paper shall be filed with the Court with certificates by the party or his counsel that service of that paper has been made on each of the other parties to the case or his counsel.

Note

Rule 245 generally requires a party to serve all papers (other than the petition) on each of the other parties to the action. For purposes of the service requirement of this Rule, a partner who did not file a petition or elect to intervene or participate in the action is not considered to be a party. See Rule 246.

RULE 246. PARTIES

For purposes of these Rules, only the partner who filed the petition, a tax matters partner who has elected to intervene in the action (see Rule 244(a)), and any other partner who has elected to participate in the action (see Rule 244(b)), shall be treated as parties to the action.

Note

Code Sections 6226(c)(1) and 6228(a)(4)(A)(i) provide that all partners in the partnership shall be treated as parties to the action. Code Sections 6226(c)(2) and 6228(a)(4)(A)(ii) provide that all such partners shall be given the opportunity to participate in the action. Thus, under the statutory scheme, all partners are treated as parties and generally are bound by the Court's determination regardless of whether they elect to intervene or to participate in the action.

Rule 246 provides that for purposes of the procedures established by these Rules, only the partner who files the petition, a tax matters partner who intervenes in the action, and any other partners who elect to participate in the action, shall be treated as parties. Thus, for example, if the tax matters partner did not file the petition and did not intervene in the action, he would not be treated as a party to the action, and his deposition could be taken under Rule 75, but only if the other requirements of that Rule are satisfied. Similarly, any other partner who did not file the petition or elect to participate in the action would not be a party and could not block a deposition under Rule 74 by refusing to consent to the taking of the deposition. However, under the Rule, any participating partner would be a party subject to discovery by any other participating partner. Only partners who are treated as parties under Rule 246 shall be entitled to receive service of papers.

RULE 247. ACTION FOR ADJUSTMENT OF PARTNERSHIP ITEMS TREATED AS ACTION FOR READJUSTMENT OF PARTNERSHIP ITEMS

(a) Amendment to Petition: If, after the filing of a petition for adjustment of partnership items (see Code Section 6228(a) and Rule 241(a)) but before the hearing of such petition, the Commissioner mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the petition relates, such petition shall be treated as a petition in an action for readjustment of the partnership items to which such notice relates. The petitioner, within 90 days after the date on which the notice of final partnership administrative adjustment is mailed to the tax matters partner, shall file an amendment to the petition, setting forth every error which the petitioner alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment, and the facts on which the petitioner bases the assignments of error. A copy of the

notice of final partnership administrative adjustment shall be appended to the amendment to the petition.

(b) **Participation:** Any partner who has filed a timely notice of election to participate in the action for adjustment of partnership items shall be deemed to have elected to participate in the action for readjustment of partnership items and need not file another notice of election to do so. Any other partner may participate in the action by filing a notice of election to participate within 210 days from the date of the mailing of the notice of final partnership administrative adjustment to the tax matters partner. See Rule 244(b)(1).

Note

Code Section 6228(a)(3)(B) provides that if the Secretary mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which a request under Code Section 6227 relates after the filing of a petition under Code Section 6228(a) but before the hearing of such petition, such petition shall be treated as a petition in an action under Code Section 6226 with respect to that administrative adjustment. Par. (a) of Rule 247 provides that the tax matters partner, within 90 days of the date of mailing of such notice, shall file an amendment to the petition setting forth assignments of error and facts in support thereof. Under par. (b), a partner who has elected to participate in the action for adjustment of partnership items (Code Section 6228(a)) is not required to file a second notice in order to participate in the action for readjustment of partnership items. A partner who has not previously filed a notice of election to participate in the action may do so in accordance with Rule 244(b)(1).