

REPORTS OF THE UNITED STATES TAX COURT



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MARY T. PITTMAN
REPORTER OF DECISIONS

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U. S TAX COURT

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ERRATA

89 T.C. at 726 *Estate of Egger v. Commissioner*):

This opinion was filed September 30, 1987, not on September 23, as shown.

Counsel listing for the respondent should read:

Vincent J. Guiliano, Kevin C. Reilly, and Louis B. Jack,
for the respondent.

89 T.C. at 837 and 848 (*Segel v. Commissioner*):

By Court order dated August 1, 1988, the text in footnote 26 on page 837 was deleted and the following text inserted in lieu thereof:

²⁶All ITC's generated through the 1975 tax year were used by petitioners to reduce their taxes. No ITC carryforwards remained available for petitioners through 1975—the latest year in issue for which respondent determined a minimum tax liability.

On page 848, the following paragraph was substituted for the last full paragraph:

In conclusion, we have found that sections 111, 58(h), and 47 do not provide petitioners with any statutory relief from the full recapture of the ITC's. In that tax credits are a matter of legislative grace (*Richard v. Commissioner*, 88 T.C. 196), and we have not been shown any authority for granting to petitioners relief from full recapture under section 47, we hold that petitioners are liable for the full amount of ITC recapture and may not decrease their minimum tax liability on account of ITC's recaptured.

JUDGES OF THE UNITED STATES TAX COURT

Chief Judge

SAMUEL B. STERRETT¹

Judges

HERBERT L. CHABOT	STEPHEN J. SWIFT
ARTHUR L. NIMS III ²	JULIAN I. JACOBS
EDNA G. PARKER	JOEL GERBER
MEADE WHITAKER	LAWRENCE A. WRIGHT
JULES G. KÖRNER III	CAROLYN MILLER PARR
PERRY SHIELDS	B. JOHN WILLIAMS, JR.
LAPSLEY W. HAMBLIN, JR.	THOMAS B. WELLS
MARY ANN COHEN	ROBERT P. RUWE
CHARLES E. CLAPP II	LAURENCE J. WHALEN

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

ARNOLD RAUM	C. MOXLEY FEATHERSTON
WILLIAM M. DRENNEN	WILLIAM M. FAY
IRENE F. SCOTT	WILLIAM A. GOFFE
THEODORE TANNENWALD, JR.	CHARLES R. SIMPSON

Special Trial Judges

MARVIN F. PETERSON, *Chief Special Trial Judge*

JAMES M. GUSSIS	JOAN SEITZ PATE
FRANCIS J. CANTREL	HU S. VANDERVORT
DANIEL J. DINAN	D. IRVIN COUVILLON
JOHN J. PAJAK	NORMAN H. WOLFE
LEE M. GALLOWAY	STANLEY J. GOLDBERG
HELEN A. BUCKLEY	CARLETON D. POWELL
PETER J. PANUTHOS	LARRY L. NAMEROFF

CHARLES S. CASAZZA, *Clerk*

PAUL NEJELSKI, *Court Administrator*

¹Chief Judge Sterrett resigned May 31, 1988.

²Judge Nims succeeded Judge Sterrett as Chief Judge on June 1, 1988.

UNITED STATES TAX COURT

WASHINGTON, D.C. 20217

GENERAL ORDER No. 2

Supplement 16

The names of Judge Robert P. Ruwe and Judge Laurence J. Whalen are added to the list of alternate designees to Judge Mary Ann Cohen with respect to the Small Tax Case Division of the United States Tax Court effective as of July 1, 1988. The names of Judge Meade Whitaker and Judge B. John Williams, Jr., are deleted from said list effective as of that same date.

ARTHUR L. NIMS III
Chief Judge

Dated: Washington, D.C.
June 28, 1988

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 Rules 244, 248, 250, and 251, and by amending Rules 13, 20, 25, 34, 38, 240, 241, 245 (formerly Rule 244), 246 (formerly Rule 245), 247 (formerly Rule 246), and 249 (formerly Rule 247).

Both the Prefatory Note to Title XXIV and the Notes which follow each of the within Rules 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.

AMERICAN
IN
OFFICE OF THE ATTORNEY GENERAL
OF THE
UNITED STATES COURT

The United States Court of Appeals for the Second Circuit, in the case of the United States of America, Plaintiff, against the United States of America, Defendant, has heard the case of the United States of America, Plaintiff, against the United States of America, Defendant, and has rendered its decision. The United States Court of Appeals for the Second Circuit, in the case of the United States of America, Plaintiff, against the United States of America, Defendant, has heard the case of the United States of America, Plaintiff, against the United States of America, Defendant, and has rendered its decision.

TITLE II

THE COURT

RULE 13. JURISDICTION

(a) Notice of Deficiency or of Transferee or Fiduciary Liability Required: Except in actions for declaratory judgment, for disclosure, or for readjustment or adjustment of partnership items (see Titles XXI, XXII, and XXIV), the jurisdiction of the Court depends (1) in a case commenced in the Court by a taxpayer, upon the issuance by the Commissioner of a notice of deficiency in income, gift, or estate tax or, in the taxes under Chapter 41, 42, 43, or 44 of the Code (relating to the excise taxes on certain organizations and persons dealing with them), or in the tax under Chapter 45 of the Code (relating to the windfall profit tax), or in any other taxes which are the subject of the issuance of a notice of deficiency by the Commissioner; and (2) in a case commenced in the Court by a transferee or fiduciary, upon the issuance by the Commissioner of a notice of liability to the transferee or fiduciary. See Code Sections 6212, 6213, and 6901.

(b) Declaratory Judgment, Disclosure, or Partnership Actions: For the jurisdictional requirements in an action for declaratory judgment, for disclosure, or for readjustment or adjustment of partnership items, see Rules 210(c), 220(c), and 240(c).

(c) Timely Petition Required: In all cases, the jurisdiction of the Court also depends on the timely filing of a petition. See Code Sections 6213 and 7502; with respect to declaratory judgment actions, see Code Sections 7428, 7476, 7477, and 7478; with respect to disclosure actions, see Code Section 6110; and with respect to partnership actions, see Code Sections 6226 and 6228.

Note

Rule 13(a) has been amended to include actions for readjustment or adjustment of partnership items as well as a cross-reference to Title XXIV.

Rule 13(b) has been amended to include actions for readjustment or adjustment of partnership items as well as a cross-reference to Rule 240(c).

Rule 13(c) has been amended to include partnership actions as well as cross-references to Code Sections 6226 and 6228.

The effective date of the amendments to Rule 13 is the effective date of Title XXIV of these Rules as originally prescribed. See 82 T.C. 1077.

TITLE III

COMMENCEMENT OF CASE; SERVICE AND FILING OF PAPERS; FORM AND STYLE OF PAPERS; APPEARANCE AND REPRESENTATION; COMPUTATION OF TIME

RULE 20. COMMENCEMENT OF CASE

(a) **General:** A case is commenced in the Court by filing a petition with the Court to redetermine a deficiency set forth in a notice of deficiency issued by the Commissioner, or to redetermine the liability of a transferee or fiduciary set forth in a notice of liability issued by the Commissioner to the transferee or fiduciary, or to obtain a declaratory judgement, or to obtain or restrain a disclosure, or to adjust or readjust partnership items. See Rule 13, Jurisdiction.

Note

Rule 20(a) has been amended to include a petition filed with the Court to adjust or readjust partnership items.

The effective date of the amendment to Rule 20 is the effective date of Title XXIV of these Rules as originally prescribed. See 82 T.C. 1077.

RULE 25. COMPUTATION OF TIME

(a) **Computation:** In computing any period of time prescribed or allowed by these Rules or by direction of the Court or by any applicable statute which does not provide otherwise, the day of the act, event, or default from which a

designated period of time begins to run shall not be included. In the event of service made by mail, a period of time computed with respect to the service shall begin on the day after the date of mailing. Saturdays, Sundays, and all legal holidays shall be counted; provided, however, that, when the period prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays in the District of Columbia shall be excluded in the computation; and, provided further, that the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such a legal holiday. When such legal holiday falls on a Sunday, the next day shall be considered a holiday; and, when such a legal holiday falls on a Saturday, the preceding day shall be considered a holiday. For computation of the period within which to file a petition with the Court to redetermine a deficiency or liability, see Code Section 6213; for the period within which to file a petition in a declaratory judgment action, see Code Sections 7428, 7476, 7477, and 7478; for the period within which to file a petition in a disclosure action, see Code Section 6110; and for the period within which to file a petition in a partnership action, see Code Sections 6226 and 6228. See also Code Section 7502.

Note

Rule 25(a) has been amended to include the period within which to file a petition in a partnership action as well as cross-references to Code Sections 6226 and 6228.

The effective date of the amendments to Rule 25 is the effective date of Title XXIV of these Rules as originally prescribed. See 82 T.C. 1077.

TITLE IV

PLEADINGS

RULE 34. PETITION

(a) General: (1) * * *

(2) *Other Actions:* For the requirements relating to the petition in declaratory judgment actions, in disclosure actions, or in partnership actions, see Rules 211(b), 221(b), and 241(b), respectively. As to joinder of parties in such actions, see Rules 215, 226, and 241(d)(3), respectively.

* * * * *

(c) Content of Petition in Other Actions: For the requirements as to the content of the petition in other actions, see Rule 211(c), (d), (e), and (f), Rule 221(c), (d), and (e), and Rule 241(c), (d), and (e).

Note

Rule 34(a)(2) has been amended to include petitions in partnership actions as well as cross-references to Rule 241(b) and (d)(3).

Rule 34(c) has been amended to include a cross-reference to Rule 241(c), (d), and (e).

The effective date of the amendments to Rule 34 is the effective date of Title XXIV of these Rules as originally prescribed. See 82 T.C. 1077.

RULE 38. JOINDER OF ISSUE

A case shall be deemed at issue upon the filing of the answer, unless a reply is required under Rule 37, in which event it shall be deemed at issue upon the filing of a reply or the entry of an order disposing of a motion under Rule 37(c) or the expiration of the period specified in Rule 37(c) in case the Commissioner fails to move. With respect to declaratory judgment actions, disclosure actions, and partnership actions, see Rules 214, 224, and 244, respectively.

Note

Rule 38 has been amended to include partnership actions as well as a cross-reference to Rule 244.

The amendments to Rule 38 are effective with respect to petitions filed on or after September 1, 1988.

TITLE XXIV

PARTNERSHIP ACTIONS*

Prefatory Note

The Rules of Practice and Procedure of the United States Tax Court are revised by making substantive amendments to Title XXIV, relating to Partnership Actions, which are discussed below. Technical and conforming amendments have also been made to Rules 13, 20, 25, 34 and 38.

The amendments to Title XXIV include four new Rules:

Rule 244 - Joinder of Issue in Partnership Action;

Rule 248 - Settlement Agreements;

Rule 250 - Appointment and Removal of the Tax Matters Partner; and

Rule 251 - Decisions.

The amendments also include the complete revision of two existing Rules:

Rule 246 - Service of Papers; and

Rule 247 - Parties, as well as the significant revision of two others:

Rule 241 - Commencement of Partnership Actions; and

Rule 245 - Intervention and Participation.

In addition, amendments have been made to Rule 240 ("General") and Rule 249 ("Action for Adjustment of Partnership Items Treated as Action for Readjustment of

*Title XXIV sets forth procedures for partnership actions under Code Sec. 6226 (action for readjustment of partnership items) and Code Sec. 6228 (action for adjustment of partnership items), enacted by Sec. 402(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248 (Sept. 3, 1982). For the effective date of such provisions, see Sec. 407(a) of such act.

Partnership Items"). Lastly, two new forms have been added to Appendix I: a Notice of Election to Intervene (Form 14) and a Notice of Election to Participate (Form 15).

In many cases, the amendments are effective as of September 1, 1988, as more fully stated in the relevant Note to a specific Rule. However, certain of the amendments are merely declarative of existing law, and where this is the case it is so stated in the relevant Note to a specific Rule.

A significant Rule revision is reflected in the new definition of the term 'parties' contained in Rule 247. The Court has expanded the defined term (i) to be consistent with the statute (see Code Sections 6226(c)(1) and 6228(a)(4)(A)(i)), and (ii) to insure that the tax matters partner will be a party to every partnership action.

Rule 248 is an additional significant new Rule. This Rule outlines comprehensive procedures for each of three types of settlements that may be effected in partnership actions. The importance of this Rule is underscored by the fact that the Court considers it likely that a substantial majority of partnership actions will be settled by the parties prior to trial.

Other significant changes include (but are not necessarily limited to):

Rule 240: The definition of the term "tax matters partner" has been amended to emphasize the pivotal role expected to be played by the tax matters partner as the liaison between the partnership entity and the members thereof, the Commissioner, and the Court;

Rule 241: The notice of filing procedures of Rule 241(f) have been amended to require that partners be advised of (a) the fact of the filing of the petition, (b) the docket number assigned to the case by the Court, and (c) the date the petition was served by the Clerk on the Commissioner;

Rule 244: The time at which a partnership action is at issue is now expressly defined;

Rule 245: In an action for readjustment, the period of time for a tax matters partner to elect to intervene and for other partners to elect to participate without leave of Court is now 90 days from the date of service of the petition by the Clerk on the Commissioner;

Rule 246: This Rule is intended to insure that because of the requirement under the amended Rules that every tax matters partner is to serve at least the minimum role of liaison for the partnership entity, as discussed above, the tax matters partner will always be served with papers by the Court and should also always be served by the parties, whether or not the tax matters partner commenced the action or has intervened therein;

Rule 249: In any action for adjustment of partnership items which is treated as an action for readjustment of partnership items, the period of time for other partners to elect to participate, without leave of Court, is now 90 days from the date of filing of the amendment to petition;

Rule 250: Rule 250 is intended to insure that there is a functioning tax matters partner at all times during the pendency of the action; and

Rule 251: The scope of a decision entered by the Court in a partnership action is defined by this Rule.

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) and who under these Rules is responsible for keeping each

partner fully informed of the partnership action. See Code Sections 6223(g) and 6230(l).

(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, Mary Doe, Tax Matters Partner, Petitioner” or “ABC Partnership, Richard Roe, A Partner Other Than the Tax Matters Partner, Petitioner.”

Note

The definition of the term “tax matters partner” in Rule 240(b)(4) has been amended in order to emphasize the pivotal role played by the tax matters partner in serving as the liaison partner on behalf of the other partners in the partnership. The tax matters partner’s duties include, but are not limited to, serving within the prescribed period of time the various documents specifically required to be served by the Rules in this Title on the other partners in the partnership.

Rule 240(d) has been amended to make the examples of captions in partnership actions gender balanced.

The effective date of the amendments to Rule 240 is the effective date of Title XXIV of these Rules as originally prescribed. See 82 T.C. 1077.

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 20, relating to commencement of case, 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 City and State of 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 each petitioner's 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 any 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 a separate numbered paragraph stating that the pleader is the tax matters partner.

(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 the pleader 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 the pleader satisfies the requirements of Code Section 6226(d).

(iii) A separate numbered paragraph stating the name and current address of the tax matters partner.

(iv) 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).

(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 the petitioner's counsel.

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

(f) **Notice of Filing:** (1) *Petitions by Tax Matters Partner:* Within 5 days after receiving the Notification of Receipt of Petition from the Court, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as required by Code Section 6223(g). Said notice shall include the docket number assigned to the case by the Court (see Rule 35) and the date the petition was served by the Clerk on the Commissioner.

(2) *Petitions by Other Partners:* Within 5 days after receiving the Notification of Receipt of Petition from the Court, the petitioner shall serve a copy of the petition on the tax matters partner, and at the same time notify the tax matters partner of the docket number assigned to the case by the Court (see Rule 35) and the date the petition was served by the Clerk on the Commissioner. Within 5 days after receiving a copy of the petition and the aforementioned notification from the petitioner, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as required by Code Section 6223(g). Said notice shall include the docket number assigned to the case by the Court and the date the petition was served by the Clerk on the Commissioner.

(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.

Note

Rule 241(a) has been amended to include a cross-reference to Rule 20 relating to commencement of case.

Rule 241(c)(3) has been amended to require that the pleader identify, by city and State, the particular office of the Internal Revenue Service with which the partnership's return for the period in controversy was filed. The requirements of the Rule now conform to the requirements of Rule 241(d)(1)(i) and Rule 241(e)(4).

Rule 241(d)(1)(vi), (d)(3), and (e)(8) have been amended to make the language gender neutral.

Rule 241(d)(2) has been streamlined to provide that the only additional information that a tax matters partner must plead is the fact that the pleader is the tax matters partner. Similarly, Rule 241(d)(3)(iii) and (d)(3)(iv) have also been streamlined by deleting former paragraph (d)(3)(iv), renumbering former paragraph (d)(3)(iii) as paragraph (d)(3)(iv), and adding paragraph (d)(3)(iii) to require that the pleader allege the name and current address of the tax matters partner. This last allegation is necessary to enable the Court as well as all parties to effect service on the tax matters partner. See Rule 246, *infra*. The other amendments have been made to conform paragraph (d) with the amendments made to Rule 241(f).

Rule 241(d)(3) has also been amended to eliminate pre-petition joinder. If a petition is filed by a partner under Rule 241(d)(3), other notice partners who may want to be actively involved in the partnership action must file notices of election to participate under Rule 245(b). Notice partners may no longer join together in filing a single petition.

Former Rule 241(e)(10) has been deleted because of the amendment made to Rule 241(f)(1).

The notice of filing procedures of Rule 241(f) have been amended so that partners are advised of the fact of filing of the petition in the partnership action, the docket number assigned to the case by the Court and the date the petition was served by the Clerk on the Commissioner. The partners shall utilize the docket number on any notice of election to intervene or to participate. See Rule 35. The date on which the petition is served by the Clerk on the Commissioner commences the 90-day period within which notices of election may be filed without leave of Court. See Rule 245, *infra*.

Under Rule 241 as amended, if a petition is filed by the tax matters partner, then under paragraph (f)(1) the tax matters partner must, within 5 days after receiving the Notification of Receipt of Petition from the Court, serve notice of the filing of the petition on each partner in the partnership and notify each such partner of the assigned docket number and the date the petition was served by the Clerk on the Commissioner. If a petition is filed by a partner other than the tax matters partner, then under paragraph (f)(2) that partner must, within the same 5-day period, serve a copy of the petition on the tax matters partner and notify the latter of the assigned docket number and the date the petition was served by the Clerk on the Commissioner. Within 5 days after receiving a

copy of the petition and the aforementioned notification the tax matters partner must in turn serve each partner with a notice of filing of the petition and include therein the assigned docket number and the date the petition was served by the Clerk on the Commissioner.

Rule 241(g) has been amended to delete the requirement that the copy of the petition furnished to a partner, upon that partner's request therefor to the tax matters partner, contain the docket number assigned to the case by the Court. Under the revised notice of filing procedures of Rule 241(f), discussed *supra*, the partners would have already been advised of the docket number assigned to the case by the Court.

The amendments to Rule 241 are effective with respect to petitions filed on or after September 1, 1988.

RULE 244. JOINDER OF ISSUE IN PARTNERSHIP ACTION

A partnership action shall be deemed at issue upon the later of:

- (1) the time provided by Rule 38, or
- (2) the expiration of the period within which a notice of election to intervene or to participate may be filed under Rule 245(a) or (b).

Note

Rule 244 is a new Rule. It establishes the date on which a partnership action shall be deemed at issue, which is the later of (1) the date provided by Rule 38 or (2) 90 days from the date of service of the petition by the Clerk on the Commissioner.

Rule 244 is effective with respect to petitions filed on or after September 1, 1988.

RULE 245. 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 90 days from the date of service of the petition by the Clerk on the Commissioner. See Code Section 6226(b)(2) and Rule 241(d)(3).

(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 within 90 days from the date of service of the petition by the Clerk on the Commissioner. A single notice may be filed by two or more partners; however, each such partner must satisfy all requirements of this paragraph in order for the notice to be treated as filed by or for that partner.

(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. As to the form and content of a notice of election to intervene and a notice of election to participate, see Appendix I, Forms 14 and 15, respectively.

(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, at any time within the period specified in Rule 245(b). 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

Former Rule 244 has been renumbered and amended and is now Rule 245.

Rule 245(a) now provides that the period of time within which a tax matters partner may file a notice of election to intervene without leave of Court is 90 days from the date of service of the petition by the Clerk on the Commissioner. Cross-references to Code Section 6226(b)(2) and Rule 241(d)(3) have also been added.

Rule 245(b) now provides that in both an action for readjustment of partnership items and an action for adjustment of partnership items, the period of time within which certain other partners may file a notice of election to participate without leave of Court is 90 days from the date of service of the petition by the Clerk on the Commissioner.

The above two amendments are designed to shorten the period of time between the filing of a petition and joinder of issue in partnership actions. See Rule 244, *supra*. In most instances this will facilitate the calendaring of such actions for trial at an earlier date. It will also facilitate the determination of the period within which a notice of election to intervene or to participate, as appropriate, may be filed. See Rule 241(f) as amended. Rule 241(f) now provides that the tax matters partner shall notify every partner of the filing of a petition, the assigned docket number, and the date the petition was served by the Clerk on the Commissioner.

Rule 245(b) has also been amended to make it gender neutral.

Rule 245(d) has been amended to include a cross-reference to Appendix I regarding forms. A sample notice of election to intervene and a sample notice of election to participate have been added to that appendix.

Rule 245(e) has been amended to reflect the renumbering of the Rule.

The amendments to Rule 245 are effective with respect to petitions filed on or after September 1, 1988.

RULE 246. SERVICE OF PAPERS

(a) **Petitions:** All petitions shall be served by the Clerk on the Commissioner.

(b) **Papers Issued by the Court:** All papers issued by the Court shall be served by the Clerk on the Commissioner, the tax matters partner (whether or not the tax matters partner is a participating partner), and all other participating partners.

(c) **All Other Papers:** All other papers required to be served (see Rule 21(a)) shall be served by the parties filing such papers. 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 filing party or the filing party's counsel that service of the paper has been made on each of the other parties set forth in paragraph (b) of this Rule or on such other parties' counsel.

Note

Former Rule 245 has been renumbered and amended and is now Rule 246.

Rule 246 has been revised to reflect the new definition of the term "party" provided in amended Rule 247. Rule 246 provides for service only upon "participating partners" (as that term is defined in Rule 247(b), *infra*) and the tax matters partner (if the tax matters partner is not a participating partner). Other partners must rely on the tax matters partner to keep them informed of developments in the partnership action. In this regard see Code Section 6223(g) which requires the tax matters partner to keep the partners informed of both administrative and judicial proceedings for the adjustment at the partnership level of partnership items.

Rule 246(a) provides that all petitions shall be served by the Clerk on the Commissioner. Pursuant to the amendments made to Rule 241(f), discussed *supra*, the tax matters partner shall notify every partner of the filing of a petition, the assigned docket number and the date the petition was served by the Clerk on the Commissioner. A partner filing a petition who is not the tax matters partner is required to serve a copy of the petition on the tax matters partner so that the latter can in turn notify the other partners of the pendency of the partnership action. See Rule 241(f)(2), *supra*, and Code Section 6223(g).

Rule 246(b) provides that all papers issued by the Court shall be served by the Clerk (1) on the Commissioner, (2) on all of the participating partners, and (3) on the tax matters partner (whether or not the tax matters partner is a participating partner). Service is made on the tax matters partner, regardless of that partner's status as a participating partner, so that the tax matters partner can keep the nonparticipating partners informed of developments in the partnership action. See Code Section 6223(g).

Rule 246(c) requires that all other papers required to be served shall be served by the parties filing such papers and that service of such papers shall be made on the Commissioner, on all of the participating partners, and on the tax matters partner (whether or not the tax matters partner is a participating partner). As before, service is made on the tax matters partner regardless of that partner's status as a participating partner so that the tax matters partner can keep the nonparticipating partners informed of developments in the partnership action. See Code Section 6223(g).

The amendments to Rule 246 are effective with respect to petitions filed on or after September 1, 1988.

RULE 247. PARTIES

(a) **In General:** For purposes of this title of these Rules, the Commissioner, the partner who filed the petition, the tax matters partner, and each person who satisfies the

requirements of Code Section 6226(c) and (d) or 6228(a)(4) shall be treated as parties to the action.

(b) **Participating Partners:** Participating partners are the partner who filed the petition and such other partners who have filed either a notice of election to intervene or a notice of election to participate in accordance with the provisions of Rule 245. See Code Sections 6226(c) and 6228(a)(4)(A).

Note

Former Rule 246 has been renumbered and amended and is now Rule 247.

Rule 247 represents a significant revision of the former Rule. Because of the unique nature of partnership actions, paragraph (a) of the Rule incorporates an expansive definition of the term "party" for purposes of Title XXIV. The definition includes every partner in the partnership who has an interest in the outcome of the partnership action. Accordingly, all partners are parties except those who have entered into settlement agreements or consistent agreements with the Commissioner.

The definition of "party" in Rule 247 comports with Code Sections 6226(c)(1) and 6228(a)(4)(i). Those Code sections provide that each person who was a partner in a partnership at any time during the partnership taxable year shall be treated as a party to the partnership action. The definition of "party" in Rule 247 also insures that the tax matters partner will be a party to every partnership action.

Rule 247(b) defines "participating partners." The term is essentially equivalent to the definition of "parties" found in former Rule 246. Participating partners are the partner who filed the petition and such other partners who have filed either a notice of election to intervene or a notice of election to participate. The tax matters partner is not necessarily a participating partner.

Rule 247 is effective with respect to petitions filed on or after September 1, 1988, except that it is effective with respect to all pending cases as of September 1, 1988, for purposes of trial or final resolution of the case.

RULE 248. SETTLEMENT AGREEMENTS

(a) **Consent By the Tax Matters Partner to Entry of Decision:** A stipulation consenting to entry of decision executed by the tax matters partner and filed with the Court shall bind all parties. The signature of the tax matters partner constitutes a certificate by the tax matters partner that no party objects to entry of decision. See Rule 251.

(b) Settlement or Consistent Agreements Entered Into By All Participating Partners or No Objection By Participating Partners: (1) After the expiration of the time within which to file a notice of election to intervene or to participate under Rule 245(a) or (b), the Commissioner shall move for entry of decision, and shall submit a proposed form of decision with such motion, if—

(i) all of the participating partners have entered into a settlement agreement or consistent agreement with the Commissioner, or all of such partners do not object to the granting of the Commissioner's motion for entry of decision, and

(ii) the tax matters partner (if a participating partner) agrees to the proposed decision in the case but does not certify that no party objects to the granting of the Commissioner's motion for entry of decision.

(2) Within 3 days from the date on which the Commissioner's motion for entry of decision is filed with the Court, the Commissioner shall serve on the tax matters partner a certificate showing the date on which the Commissioner's motion was filed with the Court.

(3) Within 3 days after receiving the Commissioner's certificate, the tax matters partner shall serve on all other parties to the action other than the participating partners, a copy of the Commissioner's motion for entry of decision, a copy of the proposed decision, a copy of the Commissioner's certificate showing the date on which the Commissioner's motion was filed with the Court, and a copy of this Rule.

(4) If any party objects to the granting of the Commissioner's motion for entry of decision, then that party shall, within 60 days from the date on which the Commissioner's motion was filed with the Court, file a motion for leave to file a notice of election to intervene or to participate, accompanied by a separate notice of election to intervene or a separate notice of election to participate, as the case may be. If no such motion is filed with the Court within such period, or if the Court should deny such motion, then the Court may enter the proposed decision as its decision in the partnership action. See Code Sections 6226(f) and 6228(a)(5). See also Rule 245, relating to intervention and participation, and Rule 251, relating to decisions.

(c) **Other Settlement and Consistent Agreements:** If a settlement agreement or consistent agreement is not within the scope of paragraph (b) of this Rule, then—

(1) in the case of a participating partner, the Commissioner shall promptly file with the Court a notice of settlement agreement or notice of consistent agreement, whichever may be appropriate, that identifies the participating partner or partners who have entered into the settlement agreement or consistent agreement; and

(2) in the case of any partner who enters into a settlement agreement, the Commissioner shall, within 7 days after the settlement agreement is executed by both the partner and the Commissioner, serve on the tax matters partner a statement which sets forth

(i) the identity of the party or parties to the settlement agreement and the date of the agreement;

(ii) the year or years to which the settlement agreement relates; and

(iii) the terms of settlement as to each partnership item and the allocation of such items among the partners. Within 7 days after receiving the statement required by this subparagraph, the tax matters partner shall serve a copy of the statement on all parties to the action.

Note

Rule 248 is a new Rule. It is intended to provide comprehensive procedures applicable to settlement agreements which may affect some or all of the parties to a partnership action. These procedures shall be effected through this Rule in combination with the mandatory service requirements of Rule 246(c) and the provisions of Code Section 6223(g) which require that the tax matters partner keep each partner informed of all proceedings for the adjustment at the partnership level of partnership items. See also Rule 240(b)(4), *supra*, and Code Section 6230(l).

Under Rule 248(a), all of the parties will be bound by a stipulation executed by the tax matters partner and filed with the Court if the tax matters partner consents therein to entry of decision. (Such stipulation would, of course, also be executed by counsel for the Commissioner.) The signature of the tax matters partner on such stipulation constitutes a certificate by the tax matters partner that no party objects to entry of decision. Accordingly, the Court will not ordinarily solicit a response from any other party when such a stipulation is filed, but may enter its decision based upon such stipulation, thus bringing the partnership action to a conclusion. See Rule 251, *infra*. For purposes of the procedure

set forth in paragraph (a), the tax matters partner may, but need not, be a participating partner. For the definition of "participating partner," see Rule 247(b), *supra*.

The signature required by Rule 248(a) is the signature of the tax matters partner and not the signature of counsel for the tax matters partner. In other words, counsel may not execute the stipulation contemplated by Rule 248(a) for or on behalf of the tax matters partner, even though counsel may have previously entered an appearance in the case. If the tax matters partner is not an individual, the stipulation shall be executed by an authorized representative, such as an officer of a corporation, by and through which the tax matters partner must necessarily act, and not by counsel for the tax matters partner.

In addition to the stipulation referred to in the preceding paragraph, Rule 248(a) also contemplates that the parties will submit therewith a decision suitable for execution by a Judge and entry by the Court.

Rule 248(b) sets forth a procedure designed to (a) bring a partnership action to a conclusion or, alternatively, (b) require nonparticipating partners who wish to do so to request the Court's consent to their continuing the partnership litigation as participating partners. The procedure is operative only after the expiration of the time within which a party may file a notice of election to intervene or to participate under Rule 245(a) or (b), respectively. Moreover, the procedure is operative whether or not the tax matters partner is a participating partner, but in either event, it is contemplated that the procedure will be invoked by the filing of a motion of entry of decision by the Commissioner. If the tax matters partner is a participating partner, then the procedure is operative only if (1) all of the participating partners have entered into a settlement agreement or consistent agreement with the Commissioner, or all of such partners do not object to the granting of the Commissioner's motion for entry of decision, and (2) the tax matters partner agrees to the proposed decision in the case but does not certify that no party objects to the granting of the Commissioner's motion. Compare Rule 248(a). If the tax matters partner is not a participating partner, then the procedure is operative only if all of the participating partners have entered into a settlement agreement or a consistent agreement with the Commissioner, or all of such partners do not object to the granting of the Commissioner's motion.

If the procedure set forth in paragraph (b) is applicable, then the Commissioner shall submit to the Court a proposed form of decision, along with the motion for entry of decision. (It is not contemplated that the form of decision be signed by the parties.) The Commissioner shall serve the motion, along with the proposed form of decision, in accordance with Rule 246(c). Within 3 days after filing the motion, the Commissioner shall serve on the tax matters partner a certificate showing the date on which the motion was filed with the Court. The tax matters partner shall in turn serve copies of the proposed decision, the Commissioner's motion, the Commissioner's certificate, and Rule 248 on all other parties to the action other than the participating partners. If any such party objects to the granting of the Commissioner's motion, then that party must, within

a prescribed period of time, file a motion for leave to file a notice of election to intervene or to participate, as appropriate. (A separate notice of election to intervene or a separate notice of election to participate, as appropriate, must accompany the motion for leave to file.) If no such motion is filed with the Court within the prescribed period, or if the Court should deny such motion, then the Court may enter the proposed decision as its decision, thereby bringing the partnership action to a conclusion. See Rule 251, *infra*. On the other hand, if such a motion is filed and granted, then the partnership action will continue with the objecting partners as participating partners. It is contemplated, however, that any objecting partners would have to make a substantial showing in order for the Court to grant their motion.

Rule 248(c) sets forth a procedure which does not have as its immediate objective the cessation of the partnership action. Accordingly, it is operative only when a settlement agreement or a consistent agreement is not within the scope of Rule 248(b). The procedure is designed to accomplish two objectives. First, it provides a mechanism whereby the Court and the participating partners are notified of all settlement and consistent agreements entered into by some but not all participating partners. Under Code Sections 6226(d) and 6228(a)(4), partners who enter into such agreements would no longer be parties to the partnership action. Accordingly, such participating partners would no longer be subject to the service requirements of Rule 246(b) and (c), and would not be bound by a subsequent decision of the Court in the partnership action.

Second, paragraph (c) is designed to afford all parties the opportunity of entering into a consistent agreement based on a settlement agreement entered into by any partner, whether or not a participating partner. This opportunity is afforded by requiring the Commissioner to serve on the tax matters partner (within 7 days after the settlement agreement is executed by the signatories thereto) a statement setting forth the relevant data surrounding the settlement agreement and by requiring the tax matters partner to serve a copy of the statement (within 7 days after receipt) on all parties to the action.

The statement required by Rule 248(c)(2) is a separate and distinct document from the notice of settlement agreement or notice of consistent agreement required by Rule 248(c)(1). Moreover, the two documents also serve different purposes. Finally, because only the notice required by Rule 248(c)(1) is filed with the Court, only that document is subject to the mandatory service requirement of Rule 246(c).

Rule 248 is effective for cases pending on or after September 1, 1968.

RULE 249. 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. On or before the day the amendment to petition is delivered to the Court, or, if the amendment to 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 amendment to petition on each partner in the partnership as required by Code Section 6223(g).

(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 90 days from the date of filing of the amendment to petition. See Rule 245.

Note

Former Rule 247 has been renumbered and amended and is now Rule 249.

Rule 249(a) has been amended by adding a new sentence at the end thereof. The amendment is designed to place on the tax matters partner the responsibility for serving the other partners with notice of the filing of the amendment to petition. Such notice is of particular importance to those partners who have not previously filed a notice of election to participate in the action for adjustment of partnership items. A 90-day window of opportunity is given to those partners within which they may now file, without leave of Court, a notice of election to participate in the action for readjustment of partnership items. See Rule 249(b), *supra*.

Rule 249(b) has been amended to provide that the period within which any other partner may participate in the action by filing a notice of election to participate, without leave of Court, is now 90 days from the date of filing of the amendment to petition. This period of time is similar to, but is not exactly coextensive with, the period of time provided by Rule 245, *supra*. The cross-reference in paragraph (b) to Rule 245 has also been amended to reflect the renumbering of that Rule.

The amendments to Rule 249 are effective with respect to petitions filed on or after September 1, 1988.

RULE 250. APPOINTMENT AND REMOVAL OF THE TAX MATTERS PARTNER

(a) **Appointment of Tax Matters Partner:** If, at the time of commencement of a partnership action by a partner other than the tax matters partner, the tax matters partner is not identified in the petition, the Court will take such action as may be necessary to establish the identity of the tax matters partner or to effect the appointment of a tax matters partner.

(b) **Removal of Tax Matters Partner:** After notice and opportunity to be heard, (1) the Court may for cause remove a partner as the tax matters partner and (2) if the tax matters partner is removed by the Court, or if a partner's status as the tax matters partner is terminated for reason other than removal by the Court, the Court may appoint another partner as the tax matters partner if the partnership fails to designate a successor tax matters partner within such period as the Court may direct.

Note

Rule 250 is a new Rule. It is intended to deal with two distinct situations. In each situation, however, the Rule recognizes that partnership litigation under Title XXIV requires that there be a functioning tax matters partner. Accordingly, the purpose of the Rule is to guarantee the Court's involvement in insuring that there is a functioning tax matters partner during the pendency of the partnership litigation.

Rule 250(a) deals with the situation where a petition is filed by a partner other than the tax matters partner and the petition fails to allege the name and current address of the tax matters partner as required by Rule 241(d)(3)(iii). This situation could arise, for example, where the petitioning partner, after reasonable inquiry, is unable to ascertain the name and current address of the tax matters partner and therefore pleads

lack of knowledge or information. (See Rule 33(b) for the effect of the signature of counsel or a party to a pleading.) In this situation the Court will take appropriate action to establish the identity of the tax matters partner or to effect the appointment of a tax matters partner.

Rule 250(b) deals with the situation where the tax matters partner is not functioning as such. The Rule is intended to advise the parties that the Court may for cause remove a partner as the tax matters partner. Circumstances which may occasion the removal of a partner as the tax matters partner include (but are not necessarily limited to) the incarceration of the tax matters partner and a material breach of a fiduciary duty by the tax matters partner. See Rule 240(b)(4) and the Note thereto.

A partner's status as the tax matters partner may be terminated for reason other than removal by the Court. Factors which will occasion the termination of such a partner's status include (but are not necessarily limited to) the death of the tax matters partner, an adjudication by a court of competent jurisdiction that the individual presently designated as the tax matters partner is incompetent, the liquidation or dissolution of the tax matters partner (if the tax matters partner is not an individual), the filing of a petition in bankruptcy, and the termination of the tax matters partner's status as a partner in the partnership.

If the Court removes a partner as the tax matters partner, or if a partner's status as the tax matters partner is terminated for reason other than removal by the Court, the Court expects the partnership to designate a successor tax matters partner. If the partnership fails to designate a successor tax matters partner within such period as the Court may direct, then the Court may itself appoint another partner as the tax matters partner.

Any action that the Court might take in either appointing a tax matters partner or removing a tax matters partner is for the limited purpose of the pending partnership action only. See Code Section 6230(1).

Rule 250 is intended to fill the void when the tax matters partner is either not identified or not functioning so that there will always be a tax matters partner who is responsible for keeping each partner fully informed of the partnership action. Accordingly, Rule 250(a) is effective with respect to petitions filed on or after September 1, 1988. On the other hand, because Rule 250(b) is declarative of the Court's inherent supervisory authority under existing law, that Rule is effective with respect to action taken by the Court to remove or appoint a tax matters partner after September 3, 1982 in partnership actions. For the definition of a partnership action, see Rule 240(b)(2). See also *Computer Programs Lambda, Ltd. v. Commissioner*, 89 T.C. 198 (1987), and *Computer Programs Lambda, Ltd. v. Commissioner*, 90 T.C. 1124 (1988).

RULE 251. DECISIONS

A decision entered by the Court in a partnership action shall be binding on all parties. For the definition of parties, see Rule 247(a).

Note

Rule 251 is a new Rule. It is intended to advise the parties to a partnership action that a decision entered by the Court will be binding on them. The Rule contemplates decisions entered after trial and opinion, decisions entered pursuant to the settlement procedures set forth in Rule 248(a) and (b), and decisions entered pursuant to dismissals under Code Section 6226(h).

Rule 251 is declarative of existing law. It is therefore effective with respect to decisions entered by the Court after September 3, 1982, in partnership actions. For the definition of a partnership action, see Rule 240(b)(2).

APPENDIX I

FORMS

The following forms are listed in this appendix:

- Form 1. Petition (Other Than In Small Tax Case)
- *Form 2. Petition (Small Tax Case)
- *Form 3. Entry of Appearance
- *Form 4. Designation of Place of Trial
- *Form 5. Subpoena
- *Form 6. Application For Order To Take Deposition
- Form 7. Certificate On Return
- Form 8. Notice of Appeal To Court Of Appeals
- Form 9. Appeal Bond, Corporate Surety
- Form 10. Appeal Bond, Approved Collateral
- Form 11. Power of Attorney and Agreement by Corporation
- Form 12. Power of Attorney and Agreement by Individuals
- Form 13. Certificate of Service
- Form 14. Notice of Election to Intervene
- Form 15. Notice of Election to Participate

The forms marked by an asterisk (*) (Forms 2, 3, 4, 5, and 6) have been printed and are available upon request from the Clerk of the Court. All the forms may be typewritten, except that the subpoena (Form 5) must be obtained from the Court. When preparing papers for filing with the Court, attention should be given to the applicable requirements of Rule 23 in regard to form, size, type, and number of copies, as well as to such other Rules of the Court as may apply to the particular item.

FORM 14

NOTICE OF ELECTION TO INTERVENE

(See Rule 245)

UNITED STATES TAX COURT

ABC Partnership, Richard Roe,
A Partner Other Than the Tax
Matters Partner,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. _____

NOTICE OF ELECTION TO INTERVENE

Mary Doe, the tax matters partner in the ABC Partnership, hereby elects to intervene, pursuant to section 6226(b)(5), I.R.C. 1986, and Rule 245(a), Tax Court Rules of Practice and Procedure, in the above-entitled action for readjustment of partnership items.

dated: _____

Mary Doe
Tax Matters Partner
Present Address—Street, City,
State, Zip Code
Telephone (with Area Code)

dated: _____

Counsel for Tax Matters Partner
Present Address—Street, City,
State, Zip Code
Telephone (with Area Code)
Tax Court Bar Number

FORM 15

NOTICE OF ELECTION TO PARTICIPATE
Action for Readjustment of Partnership Items

(See Rule 245)

UNITED STATES TAX COURT

ABC Partnership, Mary Doe,
Tax Matters Partner,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. ____

NOTICE OF ELECTION TO PARTICIPATE

Richard Roe hereby elects to participate, pursuant to section 6226(c)(2), I.R.C. 1986, and Rule 245(b), Tax Court Rules of Practice and Procedure, in the above-entitled action for readjustment of partnership items.

Richard Roe satisfies the requirements of section 6226(d), I.R.C. 1986, because he was a partner during the applicable period(s) for which readjustment of partnership items is sought and, if such readjustment is made, the tax attributable to such partnership items may be assessed against him.

dated: _____

Richard Roe
Present Address--Street, City,
State, Zip Code
Telephone (with Area Code)

dated: _____

Counsel for Richard Roe
Present Address--Street, City,
State, Zip Code
Telephone (with Area Code)
Tax Court Bar Number