

# Litigating Partnership Tax Cases Under the New Partnership Tax Rules of The Bipartisan Budget Act of 2015

ABA Panel Tax Section Court Practice and Procedure Committee  
May 2016 Meeting

**Moderator:**

Charles M. Ruchelman  
*Caplin & Drysdale, Chartered, Washington, D.C.*

**Panelists:**

The Honorable L. Paige Marvel  
*United States Tax Court, Washington, D.C.*

Rochelle Hodes  
*Office of Tax Policy, Department of Treasury, Washington, D.C.*

Gregory T. Armstrong  
*IRS Office of Associate Chief Counsel, Washington, D.C.*

Mark Allison  
*Caplin & Drysdale, Chartered, New York, New York*

# Overview

1. Overview of the New Statutory Regime and Purpose of the Panel
2. Proposed Amendments to the Tax Court Rules for Partnership Actions Under Bipartisan Budget Act of 2015
3. Particular Litigation Issues Presented by New Rules

# Proposed Amendments

-17-

## TITLE XXIV.A PARTNERSHIP ACTIONS UNDER BBA SECTION 1101

### RULE 255.1. GENERAL

**(a) Applicability:** The Rules of this Title XXIV.A set forth the provisions that apply where a partnership elects under section 1101(g)(4) of the Bipartisan Budget Act of 2015 (BBA), Pub. L. 114-74, Stat. , to apply the partnership provisions of BBA section 1101. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to the action.

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

(1) The term "partnership" means a partnership as defined in Code section 6241(1).

(2) A "partnership action" is an action for readjustment of final partnership adjustments under Code section 6234(a)(1).

(3) The term "partnership representative" means the person whom the partnership designates under Code section 6223(a).

(4) A "notice of final partnership adjustment" is the notice described in Code section 6231(a)(3).

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

(1) A partnership through its partnership representative elects under BBA section 1101(g)(4) to apply the partnership provisions of BBA section 1101.

(2) The Commissioner has mailed a notice of final partnership adjustment with respect to the partnership's taxable year(s). See Code sec. 6234(a).

(3) The partnership representative files a petition for readjustment with respect to the year(s) within 90 days after the date on which the notice of final partnership adjustment is mailed.

# Proposed Amendments

-18-

**(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 partnership representative.

## Explanation

A new Title XXIV.A (inclusive of Rules 255.1 through 255.6) is proposed to be added to set forth procedures for partnership actions under Code sections 6221 through 6241, added by section 1101(c) of the Bipartisan Budget Act of 2015, Pub. L. 114-74, \_\_ Stat. \_\_ (BBA). BBA section 1101(g)(1) generally states that Code sections 6221 through 6241 shall apply to returns filed for partnership taxable years beginning after Dec. 31, 2017. BBA section 1101(g)(4), however, lets a partnership elect to apply Code sections 6221 through 6241 (except to the extent of the election in Code section 6221(b)) to a partnership return filed for a partnership taxable year beginning on a day from Nov. 3, 2015, through Dec. 31, 2017. The Court has determined that there is not an immediate need to provide the proposed amendments set forth in new Title XXIV.A as interim amendments because it is unlikely that a petition to which those amendments would apply will be filed in the near future.

### **RULE 255.2. COMMENCEMENT OF PARTNERSHIP ACTION**

**(a) Commencement of Action:** A partnership action under this Title shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; the taxpayer identification number to be provided under paragraph (b) of that Rule shall be the partnership's employer identification number. See also Rule 22, relating to the place and manner of filing the petition; Rule 32, relating to form of pleadings; and Rule 255.1(d), relating to the caption.

**(b) Content of Petition:** A petition filed pursuant to this Rule shall be entitled "Petition for Partnership Action Under BBA Section 1101(b)" and shall contain the following:

(1) The partnership representative's name, State of legal residence, and mailing address, each as of the date that the petition is filed, and a

-19-

separate numbered paragraph stating that the partnership designated the partnership representative as its partnership representative.

(2) The partnership's name and principal place of business as of 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(s) for the year(s) in controversy was filed.

(4) The date of the notice of final partnership adjustment.

(5) The year or years for which the notice of final partnership adjustment was issued.

(6) Clear and concise statements of each and every error that the petitioner alleges the Commissioner committed in the notice of final partnership adjustment. The assignments of error shall include issues in respect of which the Commissioner has the burden of proof. Any issue not raised in the assignments of error, including any amendment thereto, shall be deemed to be conceded. Each assignment of error shall be set forth in a separately lettered subparagraph.

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

(8) A prayer setting forth the relief that the petitioner seeks.

(9) The partnership representative's signature, mailing address, and telephone number, if self-represented, or that of the partnership representative's counsel with counsel's Tax Court bar number.

(10) A copy of the notice of final partnership adjustment shall be appended to the petition, as shall any statement accompanying the notice as is material to the issues that the assignments of error raise. If the notice of final partnership adjustment or any accompanying statement incorporates by reference a prior notice or other material that the Internal Revenue Service furnished, the parts thereof that are material to the assignments of error shall also be appended to the petition.

**(c) Joinder of Parties:** (1) Permissive Joinder: A separate petition shall be filed with respect to each notice of final partnership adjustment issued to separate partnerships. A single petition for readjustment, however, may be filed

# Proposed Amendments

-20-

seeking readjustments of partnership items with respect to more than one notice of final partnership adjustment if the notices pertain to the same partnership.

(2) Severance or Other Orders: With respect to a case based upon multiple notices of final partnership adjustment, the Court may order a severance and a separate case to be maintained with respect to one or more of the notices whenever it appears to the Court that proceeding separately furthers convenience, or avoids prejudice, or when separate trials will be conducive to expedition or economy.

(d) Filing Fee: The fee for filing a petition for a partnership action is \$60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit or a declaration containing specific financial information the inability to make the payment.

Explanation

See Explanation for Rule 255.1.

## **RULE 255.3. REQUEST FOR PLACE OF TRIAL**

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

Explanation

See Explanation for Rule 255.1.

-21-

## **RULE 255.4. 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.

Explanation

See Explanation for Rule 255.1.

## **RULE 255.5. JOINDER OF ISSUE IN PARTNERSHIP ACTION**

A partnership action shall be deemed at issue as provided by Rule 38.

Explanation

See Explanation for Rule 255.1.

## **RULE 255.6. DECISIONS**

A decision that the Court enters in a partnership action shall be binding on the partnership and on all of its partners. See Code section 6223(b).

Explanation

See Explanation for Rule 255.1.

\* \* \* \* \*

# Particular Issues Presented by New Rules

- A. What are a partnership's tax payment options for litigating in the various forums
1. What is the role of the jurisdictional deposit, how is it calculated, and how does the IRS treat it?
  2. For litigated cases, what is considered the "adjustment year" for the imputed adjustment payment?
  3. What are the mechanics for using the "revised" K-1 procedures in litigated cases? How does this interplay with the jurisdictional deposit?

# Particular Issues Presented by New Rules

- B. How does a partnership litigate an administrative adjustment request resulting in a tax refund under section 6227?

Caplin & Drysdale,  
Chartered

# Particular Issues Presented by New Rules

- C. What are the litigation roles of the partnership representative, the partnership, and the partners?
  1. Practitioner's perspective
  2. IRS's perspective
  3. Court's perspective



# Particular Issues Presented by New Rules

- D. How does a petition for judicial review impact the IRS's ability to collect the imputed underpayment?

Caplin & Drysdale,  
Chartered

# Particular Issues Presented by New Rules

- E. What is the effect of decision dismissing an action under section 6234(e)?
  1. Rescission Under Section 6231(c)

# Particular Issues Presented by New Rules

F. Do the new rules impact a choice of forum analysis?

Caplin & Drysdale,  
Chartered