

**UNITED STATE TAX COURT  
WASHINGTON, D.C. 20217**

**December 19, 2018**

**PRESS RELEASE**

Chief Judge Maurice B. Foley announced today that the United States Tax Court has adopted interim and proposed amendments to its Rules of Practice and Procedure comprising new Title XXIV.A (Partnership Actions Under BBA Section 1101).

On March 28, 2016, the Court issued proposed amendments to its Rules of Practice and Procedure to reflect the new regime for the administrative and judicial review of adjustments to partnership income enacted in the Bipartisan Budget Act of 2015 (BBA), Pub. L. No. 114-74, 129 Stat. 584. The Court received comments on the proposed amendments from the American Bar Association Section of Taxation (ABA), the Tax Section of the State Bar of Texas (Texas Bar), and the Office of Chief Counsel of the Internal Revenue Service (Office of Chief Counsel). After considering the comments received, the Court has made certain revisions to the proposed amendments.

Although the Court has determined to adopt the amendments as interim amendments at this time, the Court is republishing the amendments in final proposed form to afford notice and further opportunity for public comment.

The interim and proposed amendments are included in the appendix to this press release, accompanied by an explanation for each amendment, and are available on the Rules tab at the Court's Internet Web site, [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

Chief Judge Foley announced that written comments must be received by January 18, 2019, and should be addressed to:

Stephanie A. Servoss  
Clerk of the Court  
United States Tax Court  
400 Second St., N.W., Room 111  
Washington, D.C. 20217.

**New Title XXIV.A is adopted here, comprising Rules 255.1 through 255.7.**

**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 to a partnership proceeding commenced pursuant to section 6234(a)(1), as added to the Code by section 1101(c)(1) of the Bipartisan Budget Act of 2015 (BBA), Pub. L. No. 114-74, 129 Stat. 584. 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 partner (or other person) designated by the partnership or selected by the Secretary pursuant to Code section 6223(a), or designated pursuant to Rule 255.6.

(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) The Commissioner has mailed a notice of final partnership adjustment with respect to the partnership’s taxable year(s).

(2) 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.

**(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 name of the partnership representative.

## Explanation

A new Title XXIV.A (inclusive of Rules 255.1 through 255.7) is 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 (BBA), Pub. L. No. 114-74, 129 Stat. 584. 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 return filed for a partnership taxable year beginning after Nov. 2, 2015, and before Jan. 1, 2018.

Rule 255.1 sets forth general rules (including definitions) for a partnership action subject to BBA section 1101. Rule 255.1 generally tracks the structure of the provisions of Rule 240, which sets forth general rules (including definitions) for a partnership action subject to the Tax Equity and Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, sec. 402(a), 96 Stat. 648.

### **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" and shall contain the following:

(1) The partnership representative's name, State of legal residence (or in the case of a partnership representative other than an individual, the partnership representative's principal place of business or principal office or agency), and mailing address, each as of the date that the petition is filed, and a separate numbered paragraph stating that the partnership designated or that the Secretary selected 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 amount of the imputed underpayment, determined by the Commissioner, the nature of the tax, the year or years or other periods for which the determination was made; and, if different from the Commissioner's determination, the approximate amount of the imputed underpayment in controversy, including any proposed modification(s) of the imputed underpayment to which the Commissioner did not consent.

(6) Clear and concise statements of each and every error that the petitioner alleges the Commissioner committed in the notice of final partnership adjustment and each and every proposed modification of the imputed underpayment to which the Commissioner did not consent. 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 and the proposed modifications, 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 signature, mailing address, telephone number and Tax Court bar number of the partnership's counsel; or if the partnership is self-represented, the signature, mailing address, and telephone number of the individual who filed the petition on behalf of the partnership, with a statement of the individual's capacity to file the petition on behalf of the partnership.

(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.

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

**(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 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

Rule 255.2 sets forth rules for the commencement of a partnership action subject to BBA section 1101. Rule 255.2 generally tracks the structure of the provisions of Rule 241, which sets forth rules for the commencement of a partnership action subject to TEFRA. For further explanation for Rule 255.2, 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**

Rule 255.3 sets forth a rule for a request for place of trial for a partnership action subject to BBA section 1101. Rule 255.3 tracks the structure of the provisions of Rule 242, which sets forth a rule for a request for place of trial for a partnership action subject to TEFRA. For further explanation for Rule 255.3, see Explanation for Rule 255.1.

### **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**

Rule 255.4 sets forth rules for other pleadings for a partnership action subject to BBA section 1101. Rule 255.4 tracks the structure of the provisions of Rule 243, which sets forth rules for other pleadings for a partnership action subject to TEFRA. For further explanation for Rule 255.4, 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

Rule 255.5 sets forth a rule on the joinder of issue for a partnership action subject to BBA section 1101. Rule 255.5 tracks the structure of the provisions of Rule 244, which sets forth a rule for joinder of issue for a partnership action subject to TEFRA. For further explanation for Rule 255.5, see Explanation for Rule 255.1.

## **RULE 255.6. IDENTIFICATION AND REMOVAL OF PARTNERSHIP REPRESENTATIVE**

**(a) At the Commencement of a Case:** If, at the time of commencement of a partnership action under this Title XXIV.A, the partnership representative is not identified in the petition, then the Court will take such action as may be necessary to establish the identity of the partnership representative.

**(b) After the Commencement of a Case:** After notice and opportunity to be heard, (1) the Court may for cause remove a partnership representative, and (2) if a partnership representative's status is terminated for any reason, including removal by the Court, the partnership shall then designate a successor partnership representative within such period as the Court may direct.

### Explanation

Rule 255.6 provides that the Court may act to identify or remove a partnership representative in a partnership action subject to BBA section 1101. This authority flows from the Court's inherent supervisory authority over cases docketed in the Court. Rule 255.6 does not take a position on whether the Court may appoint a partnership representative. For further explanation for Rule 255.6, see Explanation for Rule 255.1.

## **RULE 255.7. DECISIONS**

A decision that the Court enters in a partnership action shall be binding on the partnership and on all of its partners.

### **Explanation**

Rule 255.7 sets forth a rule on the effect of an entry of a decision in a partnership action subject to BBA section 1101. Rule 255.7 tracks the structure of the provisions of Rule 251, which sets forth a rule for a decision for a partnership action subject to TEFRA. For further explanation for Rule 255.7, see Explanation for Rule 255.1.

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