



**480.3 Evidence; presumption; payment of cash for stock.** Shortly after its incorporation, in a jurisdiction in which the law provided that nothing but money could be considered as payment for stock, the taxpayer issued stock. *Held*, the corporation was presumed to have complied with the law and, in the absence of rebuttal, such presumption fortified by the presumption that government officials performed their duties in issuance of the charter and failed to dissolve the corporation, overcomes the presumption of correctness of the Commissioner's determination that stock was issued for property other than cash under section 326(a)(4) of the Revenue Act of 1918. (Sec. 7453, '86 Code.)

Washington Post Co., 10 B.T.A. 1077, Acq., 1958-2 C.B. 8.

**480.4 Expedition of cases; Appellate Division; Regional Counsel.** In order to provide for prompt action and disposition of cases before the Tax Court to enable Regional Counsel to stipulate undisputed facts as required by the Tax Court in an orderly manner and make adequate preparations for trial and defense of the Commissioner's determination of tax liabilities; and to facilitate actions under the Commissioner's Delegation Orders Nos. 60 and 66, Chief Counsel's Orders Nos. 1958-5 and 1958-11; procedures have been issued under which the Appellate Division and Regional Counsel will operate. Modified by Rev. Proc. 78-9. (Sec. 601.106, S.P.R.)

Rev. Proc. 60-18, 1960-2 C.B. 988.

**480.5 Jurisdiction; assignment v. receivership; Kentucky.** Under Kentucky law, the assignment to an assignee for the benefit of the taxpayer's creditors is equivalent to the appointment of a receiver in a receivership proceeding, and the subsequent filing of a petition with the Tax Court for redetermination of deficiencies was prohibited. (Sec. 6871, '86 Code.)

Ruby M. Williams, 44 T.C. 673, Acq., 1966-2 C.B. 7.

**480.6 Jurisdiction; bankruptcy adjudication.** The referee in bankruptcy paid in full a claim for 1921 taxes; taxpayer was adjudicated bankrupt in 1923, discharged in 1924, and in 1926, filed a petition with the Board for redetermination of an assessment for 1921. Commissioner raised the taxpayer's bankruptcy and challenged the Board's jurisdiction. *Held*, the discharge in bankruptcy does not bar assessment and collection of additional tax due from 1921. (The assessment was made under the 1924 Revenue Act which had no bankruptcy provision similar to the 1926 Act.) (Sec. 282(a), Rev. Act '26; Sec. 6871, '86 Code.)

Eli McDonald, 23 B.T.A. 521, Nonacq., 1966-1 C.B. 4.

**480.7 Jurisdiction; bankruptcy proceedings; petition for redetermination of deficiency.** After being adjudicated bankrupt but before termination of the bankruptcy proceedings, taxpayers filed petitions with the Tax Court for redetermination of proposed pre-bankruptcy deficiencies which were neither assessed nor claimed in the proceedings. *Held*, the Tax Court has jurisdiction to redetermine the deficiencies; the prohibition of section 6871(b) applies only when the deficiency has been assessed under section 6871(a) or a timely proof of claim filed with the bankruptcy court. (Secs. 6213, 6871, 7442; '86 Code.)

Samuel J. King, 51 T.C. 851, Acq., 1973-1 C.B. 1; Glenn E. Stevenson, 51 T.C. 970, Acq., 1973-1 C.B. 2.

**480.8 Jurisdiction; credit determination.** Taxpayer manufactured and sold wire to a U.S. agency pursuant to a contract containing a provision for price redetermination. The price was subsequently adjusted downward and the agency was repaid, entitling the taxpayer to a tax credit. *Held*, the Court had jurisdiction to determine the amount

of credit allowable for purposes of redetermining the prior tax deficiency. (Secs. 322(d), 3806, '39 Code; Secs. 1481, 6512, '86 Code.)

Ovedakes Corp., 41 T.C. 503, Acq., 1965-1 C.B. 4.

**480.9 Jurisdiction; deficiency asserted.** The Service mailed taxpayer a letter meeting all the requirements of a statutory notice of deficiency. The computation of tax due reflected no adjustments to taxpayer's taxable income but referred to self-employment tax less estimated tax as "Deficiency of income tax." *Held*, the Service had determined a deficiency in taxpayer's income tax, and the Court had jurisdiction over the petition. (Sec. 7442, '86 Code.)

Daniel E. Hannan, 52 T.C. 787; Nonacq., 1971-1 C.B. 3.

**480.10 Jurisdiction; dissolved corporation.** A corporation that dissolved in 1952 and consented to extend the statute of limitations for taxable years 1948 and 1950 until 1958, petitioned the Tax Court in 1958 regarding deficiencies filed against it for 1948, 1949, and 1950 and subsequently moved to dismiss the petition for lack of jurisdiction. *Held*, motion to dismiss granted. The corporation was nonexistent under State law and no one had the authority to act for it in filing the petition. (Sec. 276(b), '39 Code; Sec. 6501, '86 Code.)

Wheeler's Peachtree Pharmacy, Inc., 35 T.C. 177, Acq., 1961-1 C.B. 4.

**480.11 Jurisdiction; estate and widow as surviving spouse.** The Court had no jurisdiction with respect to an estate's liability for prior year deficiencies for which a single joint notice was sent to the widow as administratrix and as surviving spouse and for which, in petitioning for a redetermination she signed as an individual rather than in a fiduciary capacity. (Sec. 272(a), '39 Code; Sec. 6212, '86 Code.)

John T. Eversole, 39 T.C. 1113, Acq., 1963-2 C.B. 4.

**480.12 Jurisdiction; improper party to consolidated return; "conditional deficiency"** The fact that a corporation which joined in the filing of a consolidated return was found not to be a proper party to that return does not deprive the Tax Court of jurisdiction in respect of a petition filed by such corporation in response to a notice from the Commissioner asserting a deficiency against it. The Commissioner's notice in effect determined a "conditional deficiency" which is sufficient to confer jurisdiction on the Tax Court. (Sec. 6213, '86 Code.)

Intervest Enterprises, Inc., 59 T.C. 91, Acq., 1973-2 C.B. 2.

**480.13 Jurisdiction; non-pecuniary loss penalties not claimed in bankruptcy proceedings.** Additions to tax for fraud were assessed but not claimed in bankruptcy and, under the Bankruptcy Act, would not have been allowed as a claim against the assets of the bankrupt had they been claimed. *Held*, the Tax Court's jurisdiction to determine fraud additions is not precluded by section 6871 of the Code. (Secs. 6871, 7442; '86 Code.)

John V. Prather, 50 T.C. 445, Nonacq., 1973-1 C.B. 2.

**480.14 Jurisdiction; notice of deficiency; incorrect address.** A notice of deficiency mailed to an incorrect address was received two days later by a taxpayer. He mailed a petition on the 91st day, which was received and filed with the Tax Court on the 93rd day. *Held*, the proceeding must be dismissed for lack of jurisdiction because no proper statutory notice was ever sent. The taxpayer did not waive the error by filing a petition. (Sec. 6261, '86 Code.)

John W. Heaberlin, 34 T.C. 58, Nonacq., 1974-1 C.B. 3.

**480.15 Jurisdiction; notice of deficiency; incorrectly addressed.** In April 1973 a notice of

## Tax Court

**480.1 Deficiency dividends deduction by personal holding company.** A decision of the Tax Court becomes final 90 days after entry pursuant to a stipulation of the parties, provided no notice of appeal has been duly filed within that time, for purposes of the deficiency dividends deduction by a personal holding company. Rev. Rul. 54-536 revoked. §§1.547-2, 301.7481-1, 301.7483-1. (Secs. 547, 7481, 7483; '86 Code.)

Rev. Rul. 72-251, 1972-1 C.B. 172.

**480.2 Disposition of docketed cases.** Procedures are revised for the development and disposition of cases docketed in the Tax Court. Rev. Proc. 79-59 superseded. (Sec. 601.106, S.P.R.)

Rev. Proc. 82-42, 1982-2 C.B. 761.

deficiency was mailed to the taxpayers at the address on their 1968 and 1969 joint tax returns although they had previously advised agents on several occasions of changes in their addresses. The notice was returned to the Commissioner unopened. Upon receiving a collection notice eight months later taxpayers filed a petition with the Tax Court. *Held*, the notice of deficiency was invalid and the taxpayer's motion to dismiss for lack of jurisdiction was granted. (Sec. 6213, '86 Code.)

Emmett N. Shelton, 63 T.C. 193, Acq., 1975-1 C.B. 2.

**480.16 Jurisdiction; notice of deficiency last known address.** Duplicate notices of deficiency were mailed to the incarcerated taxpayer, one to the attorney of a co-defendant and one in care of a bondsman, neither of which he received until a year after the mailing. *Held*, the notices were not mailed to the taxpayer's "last known address," were insufficient and invalid, and did not serve to give the Court jurisdiction in the case. (Secs. 6212, 6213; '86 Code.)

Patrick Michael O'Brien, 62 T.C. 543, Acq., 1974-2 C.B. 3.

**480.17 Jurisdiction; ordering or denying refund; offers in compromise.** Commissioner contended that offers in compromise specifically barred the refund of an overpayment. *Held*, the Court is not authorized by statute to order or deny a refund, its power is limited to determining the existence and amount of any deficiency or overpayment; jurisdiction in ordering or denying refund is solely within the Court of Claims and the District Courts. (Secs. 6512, 7122, 7442; '86 Code.)

Robbins Tire and Rubber Co., 53 T.C. 275, Acq., 1973-2 C.B. 3.

**480.18 Jurisdiction; petition timely filed.** Petitions received by the Tax Court 94 days after the date of the mailing of notices of deficiency in an envelope postmarked by a postage meter stamp on the last day for filing, which was the 90th day after the date on the notice of deficiency, were timely filed. (Sec. 7502, '86 Code.)

P. P. Leventis, Jr., 49 T.C. 353, Acq., 1969-1 C.B. 21.

**480.19 Jurisdiction; petition timely filed; notice unclaimed.** A deficiency notice mailed to taxpayer was returned unclaimed after the post office forwarded the notice to a new address and then held it for 15 days, whereupon it was returned to the District Director who made no further attempt at delivery. Upon request, a copy of the notice was furnished the taxpayer's attorney, and a petition for a redetermination of the deficiency was filed. *Held*, District Director did not reasonably ascertain the last known address, the mailing date is considered to be the date of delivery to the attorney, and the petition was considered timely filed. (Sec. 6213, '86 Code.)

Nettie M. McKaig, 51 T.C. 331, Nonacq., 1971-1 C.B. 3.

**480.20 Jurisdiction; petition timely filed; postmark inadvertently omitted.** A petition received by the Tax Court, 91 days from the date of the mailing of the Statutory notice of deficiency in an envelope which the postal service inadvertently failed to postmark, was timely tiled and the Commissioner's motion to dismiss for lack of jurisdiction was denied by the Court. (Sec. 7502, '86 Code.)

Fred Sylvan, 65 T.C. 548, Nonacq., 1977-2 C.B. 3.

**480.21 Jurisdiction; petition timely filed; taxpayer abroad.** Administratrix was temporarily outside the U.S. on a pleasure cruise the day a notice of deficiency was mailed to her U.S. residence. She filed a petition with the Tax Court more than days after the notice was mailed. *Held*, the

notice was considered mailed to a person outside the U.S. and the petition was timely filed. (Sec. 6213, '86 Code.)

William Krueger, 33 T.C. 667, Acq., 1964-1 (Part 1) C.B. 4.

**480.22 Jurisdiction; refunds.** The determination of a deficiency with respect to hobby losses is considered, for jurisdictional and procedural purposes, the same as any other timely determination of a deficiency and the Court has jurisdiction to of any overpayments. (Sec. 322(d), '39 Code; Sec. 6512, '86 Code.)

Arthur V. Davis, 29 T.C. 878, Acq., 1959-2 C.B. 4.

**480.23 Jurisdiction; taxable period for deficiency.** Although a corporation in liquidation filed a return for a short period, November 1, 1958, to January 31, 1959, its proper taxable year as determined by the Tax Court was the fiscal year ending on October 31, 1959. Consequently, a deficiency proposed for the taxable year November 1, 1958, to January 31, 1959, was not proper and the Tax Court did not have jurisdiction to determine deficiency. (Secs. 441, 443; '86 Code.)

Anne Schick, 45 T.C. 368, Acq., 1966-2 C.B. 7.

**480.24 Motion for increased deficiency.** After rendering its opinion but before the final disposition of the case, the Court denied the Commissioner's motion for an increased deficiency made pursuant to a mathematical adjustment resulting from the Court's holding. (Sec. 272(e), '39 Code; Sec. 6214, '86 Code.)

Meldrum & Fewsmith, Inc., 20 T.C. 790, Nonacq., 1954-2 C.B. 6.

**480.25 Motion for increased deficiency.** The Commissioner's motion to amend his answer to claim an increased deficiency filed after the entry of a decision by the Tax Court was not made "at or before the hearing or a rehearing" within the meaning of section 6214(a). (Sec. 6214, '86 Code.)

Manuel M. Koufman, 69 T.C. 473, Acq., 1978-1 C.B. 2.

**480.26 Petition; time for filing; Armed Forces; combat zone.** The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determinedly adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. §1.6072-1. (Secs. 6072, 7508; '86 Code.)

Rev. Rul. 76-425, 1976-2 C.B. 447.

**480.27 Status and rules of practice.** In accordance with the establishment of the United States Tax Court as a court of record under Article I of the Constitution of the United States, the rule other material under Chapter II, Parts 700, 701, and 702 of Title 26 of the Code of Federal Regulations are deleted. New Rules of Practice and Procedure issued in accordance with section 7453 of the Code are effective January 1, 1974.

1970-2C.B. 644; Announcement 74-7, 1974-1 C.B. 504.