

# TITLE XXI

## DECLARATORY JUDGMENTS<sup>1</sup>

### RULE 210. GENERAL<sup>2</sup>

**(a) Applicability:** The Rules of this Title XXI set forth the special provisions which apply to declaratory judgment actions relating to the qualification of certain retirement plans, the value of certain gifts, the status of certain governmental obligations, the eligibility of an estate with respect to installment payments under Code section 6166, and the initial or continuing qualification of certain exempt organizations or the initial or continuing classification of certain private foundations. For the Rules that apply to declaratory judgment actions relating to treatment of items other than partnership items with respect to an oversheltered return, see the Rules contained in Title XXX. 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 actions for declaratory judgment.

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

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<sup>1</sup>Amendments to Title XXI set forth procedures for declaratory judgment actions under Code sections 7477 and 7479, added by sections 506(c)(1) and 505(a), respectively, of the Taxpayer Relief Act of 1997, Pub. L. 105–34, 111 Stat. 854. Code section 7477 provides for a declaratory judgment relating to the valuation of a gift and is effective for gifts made after August 5, 1997. Code section 7479 provides for a declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code section 6166 and is effective with respect to estates of decedents dying after August 5, 1997. The amendments to the Rules of this Title XXI that relate to gift valuation actions are effective as to proceedings commenced with respect to gifts made after August 5, 1997; the amendments that relate to estate tax installment payment actions are effective as to proceedings commenced with respect to estates of decedents dying after August 5, 1997; and the amendment that relates to oversheltered return actions is effective as to proceedings commenced with respect to partnership tax years ending after August 5, 1997.

<sup>2</sup>The amendments are generally effective as of June 30, 2003; except that the amendments that relate to gift valuation actions are effective as to proceedings commenced with respect to gifts made after August 5, 1997; the amendments that relate to estate tax installment payment actions are effective as to proceedings commenced with respect to estates of decedents dying after August 5, 1997; and the amendment that relates to oversheltered return actions are effective as to proceedings commenced with respect to partnership tax years ending after August 5, 1997.

- (1) "Retirement plan" has the meaning provided by Code section 7476(c).
- (2) A "gift" is any transfer of property that was shown on the return of tax imposed by Chapter 12 or disclosed on such return or in any statement attached to such return.
- (3) "Governmental obligation" means an obligation the status of which under Code section 103(a) is in issue.
- (4) An "estate" is any estate whose initial or continuing eligibility with respect to the deferral and installment payment election under Code section 6166 is in issue.
- (5) An "exempt organization" is an organization described in Code section 501(c)(3) which is exempt from tax under Code section 501(a) or is an organization described in Code section 170(c)(2).
- (6) A "private foundation" is an organization described in Code section 509(a).
- (7) A "private operating foundation" is an organization described in Code section 4942(j)(3).
- (8) An "organization" is any organization whose qualification as an exempt organization, or whose classification as a private foundation or a private operating foundation, is in issue.
- (9) A "determination" means—
  - (A) A determination with respect to the initial or continuing qualification of a retirement plan;
  - (B) A determination of the value of any gift;
  - (C) A determination as to whether prospective governmental obligations are described in Code section 103(a);
  - (D) A determination as to whether, with respect to an estate, an election may be made under Code section 6166 or whether the extension of time for payment of estate tax provided in Code section 6166 has ceased to apply; or
  - (E) A determination with respect to the initial or continuing qualification of an organization as an exempt organization, or with respect to the initial or continuing classification of an organization as a private foundation or a private operating foundation.
- (10) A "revocation" is a determination that a retirement plan is no longer qualified, or that an organization, previously qualified or classified as an exempt organization or

as a private foundation or private operating foundation, is no longer qualified or classified as such an organization.

(11) An "action for declaratory judgment" is either a retirement plan action, a gift valuation action, a governmental obligation action, an estate tax installment payment action, or an exempt organization action, as follows:

(A) A "retirement plan action" means an action for declaratory judgment provided for in Code section 7476 relating to the initial or continuing qualification of a retirement plan.

(B) A "gift valuation action" means an action for declaratory judgment provided for in Code section 7477 relating to the valuation of a gift.

(C) A "governmental obligation action" means an action for declaratory judgment provided for in Code section 7478 relating to the status of certain prospective governmental obligations.

(D) An "estate tax installment payment action" means an action for declaratory judgment provided for in Code section 7479 relating to the eligibility of an estate with respect to installment payments under Code section 6166.

(E) An "exempt organization action" means a declaratory judgment action provided for in Code section 7428 relating to the initial or continuing qualification of an organization as an exempt organization, or relating to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

(12) "Administrative record" includes, where applicable, the request for determination, all documents submitted to the Internal Revenue Service by the applicant in respect of the request for determination, all protests and related papers submitted to the Internal Revenue Service, all written correspondence between the Internal Revenue Service and the applicant in respect of the request for determination or such protests, all pertinent returns filed with the Internal Revenue Service, and the notice of determination by the Commissioner.

(13) "Party" includes a petitioner and the respondent Commissioner of Internal Revenue. In a retirement plan action, an intervenor is also a party. In a gift valuation action, only the donor may be a petitioner. In a governmental

obligation action, only the prospective issuer may be a petitioner. In an estate tax installment payment action, a person joined pursuant to Code section 7479(b)(1)(B) is also a party. In an exempt organization action, only the organization may be a petitioner.

(14) "Declaratory judgment" is the decision of the Court in a retirement plan action, a gift valuation action, a governmental obligation action, an estate tax installment payment action, or an exempt organization action.

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

(1) The Commissioner has issued a notice of determination, or has been requested to make a determination and failed to do so for a period of at least 270 days (180 days in the case of either a request for determination as to the status of prospective governmental obligations or a request for determination as to the initial or continuing eligibility of an estate with respect to installment payments under Code section 6166) after the request for such determination was made. In the case of a retirement plan action, the Court has jurisdiction over an action brought because of the Commissioner's failure to make a determination with respect to the continuing qualification of the plan only if the controversy arises as a result of an amendment or termination of such plan. See Code sec. 7476(a)(2)(B). In the case of a gift valuation action, the Court has jurisdiction if the Commissioner has issued a notice of determination. See Code sec. 7477(a).

(2) There is an actual controversy. In that connection—

(A) In the case of a retirement plan action, the retirement plan or amendment thereto in issue has been put into effect before commencement of the action.

(B) In the case of a governmental obligation action, the prospective issuer has, prior to the commencement of the action, adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations.

(C) In the case of an exempt organization action, the organization must be in existence before commencement of the action.

(3) A petition for declaratory judgment is filed with the Court within the period specified in Code section 7476(b)(5) with respect to a retirement plan action, or the period specified in Code section 7477(b)(3) with respect to a gift valuation action, or the period specified in Code section 7478(b)(3) with respect to a governmental obligation action, or the period specified in Code section 7479(b)(3) with respect to an estate tax installment payment action, or the period specified in Code section 7428(b)(3) with respect to an exempt organization action. See Code sec. 7502.

(4) The petitioner has exhausted all administrative remedies which were available to the petitioner within the Internal Revenue Service.

(d) **Form and Style of Papers:** All papers filed in an action for declaratory judgment, with the exception of documents included in the administrative record, shall be prepared in the form and style set forth in Rule 23; except that whenever any party joins or intervenes in the action in those instances in which joinder or intervention is permitted, then thereafter, in addition to the number of copies required to be filed under such Rule, an additional copy shall be filed for each party who joins or intervenes in the action.

#### **RULE 211. COMMENCEMENT OF ACTION FOR DECLARATORY JUDGMENT**

(a) **Commencement of Action:** An action for declaratory judgment shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, and Rule 32, relating to form of pleadings.

(b) **Content of Petition:** Every petition shall be entitled "Petition for Declaratory Judgment (Retirement Plan)", "Petition for Declaratory Judgment (Gift Valuation)", "Petition for Declaratory Judgment (Governmental Obligation)", "Petition for Declaratory Judgment (Estate Tax Installment Payment)", or "Petition for Declaratory Judgment (Exempt Organization)", as the case may be. Each such petition shall

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<sup>1</sup>The amendments are generally effective as of June 30, 2003; except that the amendment relating to gift valuation actions is effective as to proceedings commenced with respect to gifts made after August 5, 1997; and the amendment relating to estate tax installment payment actions is effective as to proceedings commenced with respect to estates of decedents dying after August 5, 1997.

contain the allegations described in paragraph (c), (d), (e), (f), or (g) of this Rule. A claim for reasonable litigation or administrative costs shall not be included in the petition in a declaratory judgment action. For the requirements as to claims for reasonable litigation or administrative costs, see Rule 231.

(c) **Petition in Retirement Plan Action:** The petition in a retirement plan action shall contain:

(1) *All Petitions:* All petitions in retirement plan actions shall contain the following:

(A) The petitioner's name and address, and the name and principal place of business, or principal office or agency of the employer at the time the petition is filed; and

(B) The office of the Internal Revenue Service with which the request for determination, if any, was filed and the date of such filing.

(2) *Employer Petitions:* In addition to including the information described in paragraph (c)(1) of this Rule, a petition filed by an employer shall also contain:

(A) A separate numbered paragraph stating that the employer has complied with the requirements of the regulations issued under Code section 7476(b)(2) with respect to notice to other interested parties;

(B) A separate numbered paragraph stating that the employer has exhausted the employer's administrative remedies within the Internal Revenue Service;

(C) A separate numbered paragraph stating that the retirement plan has been put into effect in accordance with Code section 7476(b)(4);

(D) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify—

(i) the date of the notice of the Commissioner's determination,

(ii) a copy of such notice of determination,

(iii) in a separate numbered paragraph, a clear and concise assignment of each error, set forth in a separate lettered subparagraph, which the employer alleges to have been committed by the Commissioner in the determination, and

- (iv) a statement of facts upon which the petitioner relies to support each such claim;
  - (E) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, separate numbered paragraphs stating that—
    - (i) the requested determination is of the type described in Code section 7476(a)(1) or (2),
    - (ii) no determination has been made by the Commissioner in response thereto, and
    - (iii) the retirement plan does qualify;
  - (F) An appropriate prayer for relief; and
  - (G) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.
- (3) *Petitions Filed by Plan Administrators:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by a plan administrator shall contain:
- (A) The name, address, and principal place of business, or principal office or agency, of the employer who is required to contribute under the plan; and
  - (B) In separate numbered paragraphs, the statements or information required in the case of employer petitions in paragraph (c)(2) of this Rule.
- (4) *Employee Petitions:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by an employee shall also contain:
- (A) A separate numbered paragraph setting forth a statement that the employee has qualified as an interested party in accordance with the regulations issued under Code section 7476(b)(1);
  - (B) In separate numbered paragraphs, the statements described in subparagraph (2)(B) and (C) of paragraph (c) of this Rule;
  - (C) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify, a copy of such notice of determination, and in separate numbered paragraphs, the statements described in subparagraph (2)(D)(i), (iii), and (iv) of paragraph (c) of this Rule;

(D) Where the Commissioner has issued a notice of determination that a retirement plan does qualify, a copy of such notice of determination, and in separate numbered paragraphs, the date of such notice of determination, and a clear and concise statement of each ground, set forth in a separate lettered subparagraph, upon which the employee relies to assert that such plan does not qualify and the facts to support each ground;

(E) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, a statement, in a separate numbered paragraph, as to whether the retirement plan qualifies—

(i) if the employee alleges that the retirement plan does qualify, such paragraph shall also include the statements described in paragraph (c)(2)(E) of this Rule, or

(ii) if the employee alleges that the retirement plan does not qualify, in addition to the statements described in paragraph (c)(2)(E) of this Rule, such paragraph shall also include a clear and concise statement of each ground, in a separate lettered subparagraph, upon which the employee relies to support the allegation that such plan does not qualify and the facts relied upon to support each ground; and

(F) In separate numbered paragraphs, the statements described in paragraph (c)(2)(F) and (G) of this Rule.

(5) *Petitions Filed by the Pension Benefit Guaranty Corporation:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by the Pension Benefit Guaranty Corporation shall also contain in separate numbered paragraphs the statements described in paragraph (c)(4)(B), (C), (D), (E), and (F) of this Rule.

**<sup>1(d)</sup> Petition in Gift Valuation Action:** The petition in a gift valuation action shall contain:

(1) The petitioner's name, legal residence, mailing address, and identification number (e.g., Social Security number or employer identification number);

(2) A statement that the petitioner is the donor of a gift described in Code section 7477(a);

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<sup>1</sup>The amendments are effective as to proceedings commenced with respect to gifts made after August 5, 1997.

(3) A statement that the petitioner has exhausted all administrative remedies within the Internal Revenue Service;

(4) With respect to the Commissioner's notice of determination—

(A) the date of the notice of determination;

(B) a copy of the notice of determination;

(C) in a separate numbered paragraph, a clear and concise statement of each error, in separate lettered subparagraphs, which the petitioner alleges to have been committed by the Commissioner in the determination; and

(D) a statement of facts upon which the petitioner relies to support each such claim;

(5) An appropriate prayer for relief; and

(6) The signature, mailing address, and telephone number of the petitioner or petitioner's counsel, as well as counsel's Tax Court bar number.

**<sup>1</sup>(e) Petition in Governmental Obligation Action:** The petition in a governmental obligation action shall contain:

(1) The petitioner's name and address;

(2) The office of the Internal Revenue Service with which the request for determination was filed and the date of such filing;

(3) A statement that the petitioner is a prospective issuer of governmental obligations described in Code section 103(a) which has adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations;

(4) A statement that the petitioner has exhausted its administrative remedies;

(5) Where the Commissioner has issued a determination—

(A) the date of the notice of determination;

(B) a copy of such notice of determination;

(C) in a separate numbered paragraph, a clear and concise statement of each error, in separate lettered subparagraphs, which the petitioner alleges to have been committed by the Commissioner in the determination; and

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<sup>1</sup>The amendment is effective as of June 30, 2003.

- (D) a statement of facts upon which the petitioner relies to support each such claim;
- (6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating that—
  - (A) no such determination has been made by the Commissioner; and
  - (B) the prospective governmental obligations are described in Code section 103(a);
- (7) An appropriate prayer for relief; and
- (8) The signature, mailing address, and telephone number of the petitioner or its counsel, as well as counsel's Tax Court bar number.

**<sup>1</sup>(f) Petition in Estate Tax Installment Payment Action:** The petition in an estate tax installment payment action shall contain:

- (1) *All Petitions:*
  - (A) The petitioner's name and address;
  - (B) The decedent's name, legal residence at the date of death, and identification number (e.g., Social Security number or employer identification number) and the jurisdiction in which the estate was admitted to probate;
  - (C) The office of the Internal Revenue Service with which the request for determination, if any, was filed and the date of such filing; and
  - (D) A statement that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service;
  - (E) Where the Commissioner has issued a determination either that the estate may not make the election under Code section 6166 or that the extension of time for payment of tax provided in Code section 6166 has ceased to apply with respect to the estate—
    - (i) the date of the notice of the Commissioner's determination,
    - (ii) a copy of such notice of determination,
    - (iii) in a separate numbered paragraph, a clear and concise assignment of each error, set forth in a separate lettered subparagraph, which the petitioner al-

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<sup>1</sup>The amendments are effective as to proceedings commenced with respect to estates of decedents dying after August 5, 1997.

leges to have been committed by the Commissioner in the determination, and

(iv) a statement of facts upon which the petitioner relies to support each such claim;

(F) Where the Commissioner has not issued a notice of determination as to the initial or continuing eligibility of the estate with respect to installment payments under Code section 6166, separate numbered paragraphs stating that—

(i) the requested determination is of the type described in Code section 7479(a)(1) or (2),

(ii) no determination has been made by the Commissioner in response thereto, and

(iii) the estate is eligible;

(G) An appropriate prayer for relief; and

(H) The signature, mailing address, and telephone number of petitioner or petitioner's counsel, as well as counsel's Tax Court bar number.

(2) *Petitions Filed by Executors:* In addition to including the information specified in paragraph (f)(1) of this Rule, a petition filed by an estate's executor shall contain a separate numbered paragraph stating that the petition has been filed on behalf of an executor.

(3) *Petitions Filed by Persons Who Have Assumed an Obligation To Make Payments Under Code Section 6166:* In addition to including the information specified in paragraph (f)(1) of this Rule, a petition filed by a person, or persons, who has, or have, assumed an obligation to make payments under Code section 6166 with respect to an estate shall also contain:

(A) A separate numbered paragraph stating that the person, or persons, has, or have, assumed an obligation to make payments under Code section 6166 with respect to the estate; and

(B) In a separate numbered paragraph, the name and address of each other person who has assumed such obligation and is not a party to the action.

**1(g) Petition in Exempt Organization Action:** The petition in an exempt organization action shall contain:

(1) The petitioner's name and principal place of business or principal office or agency;

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<sup>1</sup>The amendment is effective as of June 30, 2003.

- (2) The date upon which the request for determination, if any, was mailed to the Internal Revenue Service, and the office to which it was mailed;
- (3) A statement that the petitioner is an exempt organization or a private foundation or a private operating foundation, as the case may be, the qualification or classification of which is at issue;
- (4) A statement that the petitioner has exhausted its administrative remedies within the Internal Revenue Service;
- (5) Where the Commissioner has issued a determination—
  - (A) the date of the notice of determination;
  - (B) a copy of such notice of determination;
  - (C) in a separate numbered paragraph, a clear and concise statement of each reason, in separate lettered subparagraphs, why the determination is erroneous; and
  - (D) a statement of facts upon which petitioner relies to support each of such reasons;
- (6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating that—
  - (A) no such determination has been made by the Commissioner; and
  - (B) the organization is qualified under Code section 501(c)(3) or 170(c)(2), or should be classified with respect to Code section 509(a) or 4942(j)(3) in the manner set forth by the petitioner in its request for determination;
- (7) An appropriate prayer for relief; and
- (8) The signature, mailing address, and telephone number of the petitioner or its counsel, as well as counsel's Tax Court bar number.

**1(h) Service:** For the provisions relating to service of the petition and other papers, see Rule 21.

#### **RULE 212. DESIGNATION OF PLACE FOR SUBMISSION TO THE COURT**

At the time of filing a petition for a declaratory judgment, a designation of place for submission to the Court shall be filed in accordance with Rule 140. In addition to including in

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<sup>1</sup>The amendment is effective as of June 30, 2003.

the designation the information specified in Rule 140, the petitioner shall also include the date on which the petitioner expects the action will be ready for submission to the Court and the petitioner's estimate of the time required therefor. In cases involving a revocation or involving the status of a governmental obligation, the Commissioner shall, at the time the answer is filed, also set forth in a separate statement the date on which the Commissioner expects the action will be ready for submission to the Court and an estimate of the time required therefor. After the action becomes at issue (see Rule 214), it will ordinarily, without any further request by the Court for information as to readiness for submission, be placed on a calendar for submission to the Court. See Rule 217(b).

### **RULE 213. OTHER PLEADINGS**

**(a) Answer:** (1) *Time To Answer or Move:* The Commissioner shall have 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition. With respect to an amended petition or amendments to the petition, the Commissioner shall have like time periods from the date of service of those papers within which to answer or move in response thereto, except as the Court may otherwise direct.

(2) *Form and Content:* The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation of the petition. If the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation as to jurisdictional facts or as to inferences or conclusions that may be drawn from materials in the administrative record or as to facts involved in a revocation, then the Commissioner may so state, and such statement shall have the effect of a denial. Facts other than jurisdictional facts, and other than facts involved in a revocation or in a governmental obligation action, may be admitted only for purposes of the pending action for declaratory judgment. If the Commissioner intends to clarify or to deny only a part of an allegation, then the Commissioner shall specify so much of it as is true and shall qualify or deny only the remain-

der. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

(3) *Index to Administrative Record:* In addition, the answer shall contain an affirmative allegation that attached thereto is a complete index of the contents of the administrative record to be filed with the Court. See Rule 217(b). There shall be attached to the answer such complete index.

(4) *Effect of Answer:* Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted.

**(b) Reply:** Each petitioner shall file a reply in every action for declaratory judgment.

(1) *Time To Reply or Move:* The petitioner shall have 60 days from the date of service of the answer within which to file a reply, or 30 days from that date within which to move with respect to the answer. With respect to an amended answer or amendments to the answer, the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct.

(2) *Form and Content:* In response to each material allegation in the answer and the facts in support thereof on which the Commissioner has the burden of proof, the reply shall contain a specific admission or denial; however, if the petitioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the petitioner shall so state, and such statement shall have the effect of a denial. If the petitioner denies the affirmative allegation in the answer that a complete index of the contents of the administrative record is attached to the answer, then the petitioner shall specify the reasons for such denial. In addition, the reply shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Commissioner has the burden of proof. In other respects, the requirements of pleading applicable to the an-

swer provided in paragraph (a)(2) of this Rule shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

(3) *Effect of Reply or Failure Thereof:* Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed admitted.

(4) *New Material:* Any new material contained in the reply shall be deemed to be denied.

#### **RULE 214. JOINDER OF ISSUE IN ACTION FOR DECLARATORY JUDGMENT**

An action for declaratory judgment shall be deemed at issue upon the filing of the reply or at the expiration of the time for doing so.

#### **RULE 215. JOINDER OF PARTIES**

(a) **Joinder in Retirement Plan Action:** The joinder of parties in retirement plan actions shall be subject to the following requirements:

(1) *Permissive Joinder:* Any person who, under Code section 7476(b)(1), is entitled to commence an action for declaratory judgment with respect to the qualification of a retirement plan may join in filing a petition with any other such person in such an action with respect to the same plan. If the Commissioner has issued a notice of determination with respect to the qualification of the plan, then any person joining in the petition must do so within the period specified in Code section 7476(b)(5). If more than one petition is filed with respect to the qualification of the same retirement plan, then see Rule 141 (relating to the possibility of consolidating the actions with respect to the plan).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment with respect to the qualification of a retirement plan may move to have joined in the action any employer who established or maintains the plan, plan administrator, or any person in whose absence

complete relief cannot be accorded among those already parties. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue. See Rule 214. Such motion shall be served on the parties to the action (other than the movant). See Rule 21(b). The movant shall cause personal service to be made on each person sought to be joined by a United States marshal or by a deputy marshal, or by any other person who is not a party and is not less than 18 years of age, who shall make a return of service. See Form 10, Appendix I. Such return of service shall be filed with the motion, but failure to do so or otherwise to make proof of service does not affect the validity of the service. Unless otherwise permitted by the Court, any objection to such motion shall be filed within 30 days after the service of the motion. The motion will be granted whenever the Court finds that in the interests of justice such person should be joined. If the motion is granted, such person will thereupon become a party to the action, and the Court will enter such orders as it deems appropriate as to further pleading and other matters. See Rule 50(b) with respect to actions on motions.

(3) *Nonjoinder of Necessary Parties:* If the Court determines that any person described in subparagraph (2) of this paragraph is a necessary party to an action for declaratory judgment and that such person has not been joined, then the Court may, on its own motion or on the motion of any party or any such person, dismiss the action on the ground that the absent person is necessary and that justice cannot be accomplished in the absent person's absence, or direct that any such person be made a party to the action. An order dismissing a case for nonjoinder of a necessary party may be conditional or absolute.

**<sup>1</sup>(b) Joinder in Estate Tax Installment Payment Action:** The joinder of parties in estate tax installment payment actions shall be subject to the following requirements:

(1) *Permissive Joinder:* Any person who, under Code section 7479(b)(1), is entitled to commence an action for declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code section 6166 may join in filing a petition with any other such per-

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<sup>1</sup>The amendments are effective as to proceedings commenced with respect to estates of decedents dying after August 5, 1997.

son in such an action with respect to such estate. If the Commissioner has issued a notice of determination with respect to the eligibility of the estate, then any person joining in the petition must do so within the period specified in Code section 7479(b)(3). If more than one petition is filed with respect to the eligibility of the same estate, then see Rule 141 (relating to the possibility of consolidating the actions with respect to the estate).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code section 6166 may move to have joined in the action any executor or any person who has assumed an obligation to make payments under Code section 6166 with respect to such estate. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue. See Rule 214. Such motion shall be served on the parties to the action (other than the movant). See Rule 21(b). The movant shall cause personal service to be made on each person sought to be joined by a United States marshal or by a deputy marshal, or by any other person who is not a party and is not less than 18 years of age, who shall make a return of service. See Form 10, Appendix I. Such return of service shall be filed with the motion, but failure to do so or otherwise to make proof of service does not affect the validity of the service. Unless otherwise permitted by the Court, any objection to such motion shall be filed within 30 days after the service of the motion. The motion will be granted whenever the Court finds that in the interests of justice such person should be joined. If the motion is granted, such person will thereupon become a party to the action, and the Court will enter such orders as it deems appropriate as to further pleading and other matters. See Rule 50(b) with respect to actions on motions.

(3) *Nonjoinder of Necessary Parties:* If the Court determines that any person described in subparagraph (2) of this paragraph is a necessary party to an action for declaratory judgment, or, in the case of an action brought by a person described in Code section 7479(b)(1)(B), is another such person described in Code section 7479(b)(1)(B), and that such person has not been joined, then the Court may, on its own motion or on the motion of any party or any

such person, dismiss the action on the ground that the absent person is necessary and that justice cannot be accomplished in the absence of such person, or direct that any such person be made a party to the action. An order dismissing a case for nonjoinder of a necessary party may be conditional or absolute.

**1(c) Joinder of Parties in Gift Valuation, Governmental Obligation, and Exempt Organization Actions:** Joinder of parties is not permitted in a gift valuation action, in a governmental obligation action, or in an exempt organization action. See Code secs. 7477(b)(1), 7478(b)(1), 7428(b)(1). With respect to consolidation of actions, see Rule 141.

#### **RULE 216. INTERVENTION IN RETIREMENT PLAN ACTIONS**

**(a) Who May Intervene:** The Pension Benefit Guaranty Corporation and, if entitled to intervene pursuant to the provisions of section 3001(c) of the Employee Retirement Income Security Act of 1974, the Secretary of Labor, or either of them, shall be permitted to intervene in a retirement plan action in accordance with the provisions of Code section 7476.

**(b) Procedure:** If either of the persons mentioned in paragraph (a) of this Rule desires to intervene, then such person shall file a pleading, either a petition in intervention or an answer in intervention, not later than 30 days after joinder of issue (see Rule 214) unless the Court directs otherwise. All new matters of claim or defense in a pleading in intervention shall be deemed denied.

#### **RULE 217. DISPOSITION OF ACTIONS FOR DECLARATORY JUDGMENT<sup>2</sup>**

**(a) General:** Disposition of an action for declaratory judgment which involves the initial qualification of a retire-

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<sup>1</sup>The amendments are effective as of June 30, 2003; except that the amendments relating to gift valuation actions are effective as to proceedings commenced with respect to gifts made after August 5, 1997.

<sup>2</sup>The amendments are effective as of June 30, 2003; except that the amendments relating to gift valuation actions are effective as to proceedings commenced with respect to gifts made after August 5, 1997; and the

ment plan or the initial qualification or classification of an exempt organization, a private foundation, or a private operating foundation will ordinarily be made on the basis of the administrative record, as defined in Rule 210(b)(12). Only with the permission of the Court, upon good cause shown, will any party be permitted to introduce before the Court any evidence other than that presented before the Internal Revenue Service and contained in the administrative record as so defined. Disposition of an action for declaratory judgment involving a revocation, a gift valuation, or the eligibility of an estate with respect to installment payments under Code section 6166 may be made on the basis of the administrative record alone only where the parties agree that such record contains all the relevant facts and that such facts are not in dispute. Disposition of a governmental obligation action will be made on the basis of the administrative record, augmented by additional evidence to the extent that the Court may direct.

**(b) Procedure:** (1) *Disposition on the Administrative Record:* Within 30 days after service of the answer, the parties shall file with the Court the entire administrative record (or so much thereof as either party may deem necessary for a complete disposition of the action for declaratory judgment), stipulated as to its genuineness. If, however, the parties are unable to file such a stipulated administrative record, then, not sooner than 30 days nor later than 45 days after service of the answer, the Commissioner shall file with the Court the entire administrative record, as defined in Rule 210(b)(12), appropriately certified as to its genuineness by the Commissioner or by an official authorized to act for the Commissioner in such situation. See Rule 212, as to the time and place for submission of the action to the Court. The Court will thereafter issue an opinion and declaratory judgment in the action. In an action involving the initial qualification of a retirement plan or the initial qualification or classification of an exempt organization, a private foundation, or a private operating foundation, the Court's decision will be based upon the assumption that the facts as represented in the administrative record as so stipulated or so

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amendments relating to estate tax installment payment actions are effective as to proceedings commenced with respect to estates of decedents dying after August 5, 1997.

certified are true and upon any additional facts as found by the Court if the Court deems that a trial is necessary. In an action involving a gift valuation, the eligibility of an estate with respect to installment payments under Code section 6166, a revocation, or the status of a governmental obligation, the Court may, upon the basis of the evidence presented, make findings of fact which differ from the administrative record.

(2) *Other Dispositions Without Trial:* In addition, an action for declaratory judgment may be decided on a motion for a judgment on the pleadings under Rule 120 or on a motion for summary judgment under Rule 121 or such an action may be submitted at any time by notice of the parties filed with the Court in accordance with Rule 122.

(3) *Disposition Where Trial is Required:* Whenever a trial is required in an action for declaratory judgment, such trial shall be conducted in accordance with the Rules contained in Title XIV, except as otherwise provided in this Title.

#### **RULE 218. PROCEDURE IN ACTIONS HEARD BY A SPECIAL TRIAL JUDGE OF THE COURT**

(a) **Where Special Trial Judge Is To Make the Decision:** When an action for declaratory judgment is assigned to a Special Trial Judge who is authorized in the order of assignment to make the decision, the opinion and proposed decision of the Special Trial Judge shall be submitted to and approved by the Chief Judge or by another Judge designated by the Chief Judge for that purpose, prior to service of the opinion and decision upon the parties.

(b) **Where Special Trial Judge Is Not To Make the Decision:** Where an action for declaratory judgment is assigned to a Special Trial Judge who is not authorized in the order of assignment to make the decision, the procedure provided in Rule 183 shall be followed.