

TITLE XXIV
PARTNERSHIP ACTIONS

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 secs. 6223(g), 6230(1).

(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:* (A) The Commissioner has issued a notice of final partnership administrative adjustment. See Code sec. 6226(a) and (b).

(B) 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:* (A) The Commissioner has not allowed all or some of the adjustments requested in an administrative adjustment request. See Code section 6228(a).

(B) 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”.

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; Rule 34(d), relating to number of copies to be filed; and Rule 240(d), relating to caption of papers.

(b) Content 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 or administrative costs shall not be included in the petition in a partnership action. For the requirements as to claims for reasonable litigation or administrative 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:

- (A) 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.
- (B) The year or years or other periods for which the notice of final partnership administrative adjustment was issued.

(C) 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.

(D) 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.

(E) A prayer setting forth relief sought by the petitioner.

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

(G) 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:

(A) A separate numbered paragraph stating that the pleader is a notice partner or a representative of a 5-percent group. See Code sec. 6226(b)(1).

(B) A separate numbered paragraph setting forth facts establishing that the pleader satisfies the requirements of Code section 6226(d).

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

(D) 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 para-

graph (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, as well as counsel's Tax Court bar number.

(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.

(h) Joinder of Parties: (1) *Permissive Joinder:* A separate petition shall be filed with respect to each notice of final partnership administrative adjustment or each administrative adjustment request issued to separate partnerships. However, a single petition for readjustment of partnership items or petition for adjustment of partnership items may be filed seeking readjustments or adjustments of partnership items with respect to more than one notice of final partnership administrative adjustment or administrative adjustment request if the notices or requests pertain to the same partnership. For the procedures to be followed by partners who wish to intervene or participate in a partnership action, see Rule 245.

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

RULE 242. DESIGNATION OF PLACE OF TRIAL

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

RULE 243. 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.

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).

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 sec. 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 11 and 12, 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.

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. The Court may return without filing documents that are not accompanied by certificates of service required by this Rule.

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 secs. 6226(c), 6228(a)(4)(A).

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—

(A) 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

(B) 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 secs. 6226(f), 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—

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

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

(C) the terms of the 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 on all parties to the action a copy of such statement.

**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, then 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.

**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, then 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, then 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.

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).