

## TITLE XXV

### SUPPLEMENTAL PROCEEDINGS

#### RULE 260. PROCEEDING TO ENFORCE OVERPAYMENT DETERMINATION

(a) **Commencement of Proceeding:** (1) *How Proceeding Is Commenced:* A proceeding to enforce an overpayment determined by the Court under Code section 6512(b)(1) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of the action in which the Court determined the overpayment.

(2) *When Proceeding May Be Commenced:* A proceeding under this Rule may not be commenced before the expiration of 120 days after the decision of the Court determining the overpayment has become final within the meaning of Code section 7481(a).

(b) **Content of Motion:** A motion to enforce an overpayment determination filed pursuant to this Rule shall contain the following:

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

(2) A statement whether any dispute exists between the parties regarding either the fact or amount of interest payable in respect of the overpayment determined by the Court and, if such a dispute exists, clear and concise lettered statements of the facts regarding the dispute and the petitioner's position in respect of each disputed matter.

(3) A copy of the Court's decision which determined the overpayment, together with a copy of any stipulation referred to therein and any computation filed pursuant to Rule 155 setting forth the amount and date of each payment made by the petitioner.

(4) A copy of the petitioner's written demand on the Commissioner to refund the overpayment determined by the Court, together with interest as provided by law; this demand shall have been made not less than 60 days before the filing of the motion under this Rule and shall have been made on the Commissioner through the Commissioner's last counsel of record in the action in which the

Court determined the overpayment which the petitioner now seeks to enforce by this motion.

(5) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

**(c) Response by Commissioner:** Within 30 days after service of a motion filed pursuant to this Rule, the Commissioner shall file a written response. The response shall specifically admit or deny each allegation set forth in the petitioner's motion. If a dispute exists between the parties regarding either the fact or amount of interest payable in respect of the overpayment determined by the Court, then the Commissioner's response shall also include clear and concise statements of the facts regarding the dispute and the Commissioner's position in respect of each disputed matter. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

**(d) Disposition of Motion:** A motion to enforce an overpayment determination filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

**(e) Recognition of Counsel:** Counsel recognized by the Court in the action in which the Court determined the overpayment which the petitioner now seeks to enforce will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

**(f) Cross-Reference:** For the need, in the case of an overpayment, to include the amount and date of each payment made by the petitioner in any computation for entry of decision, see paragraphs (a) and (b) of Rule 155.

**RULE 261. PROCEEDING TO REDETERMINE INTEREST<sup>1</sup>**

**(a) Commencement of Proceeding:** (1) *How Proceeding Is Commenced:* A proceeding to redetermine interest on a deficiency assessed under Code section 6215 or to redetermine interest on an overpayment determined under Code section 6512(b) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of the action in which the Court redetermined the deficiency or determined the overpayment.

(2) *When Proceeding May Be Commenced:* Any proceeding under this Rule must be commenced within one year after the date that the Court's decision becomes final within the meaning of Code section 7481(a).

**(b) Content of Motion:** A motion to redetermine interest filed pursuant to this Rule shall contain:

(1) *All Motions:* All motions to redetermine interest shall contain the following:

(A) The petitioner's identification number (e.g., Social Security number or employer identification number) and current mailing address.

(B) A statement setting forth the petitioner's contentions regarding the correct amount of interest, together with a schedule detailing the computation of that amount.

(C) A statement whether the petitioner has discussed the dispute over interest with the Commissioner, and if so, the contentions made by the petitioner; and if not, the reason or reasons why not.

(2) *Motions To Redetermine Interest on a Deficiency:* In addition to including the information described in paragraph (b)(1) of this Rule, a motion to redetermine interest on a deficiency shall also contain:

(A) A statement that the petitioner has paid the entire amount of the deficiency assessed under Code section 6215 plus interest claimed by the Commissioner in respect of which the proceeding under this Rule has been commenced.

(B) A schedule setting forth—

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<sup>1</sup>The amendments are effective as of August 5, 1997.

(i) the amount of each payment made by the petitioner in respect of the deficiency and interest described in paragraph (b)(2)(A) of this Rule,

(ii) the date of each such payment, and

(iii) if applicable, the part of each such payment allocated by the petitioner to tax and the part of each such payment allocated by the petitioner to interest.

(iv) A copy of the Court's decision which redetermined the deficiency, together with a copy of any notice of assessment including any supporting schedules or any collection notice that the petitioner may have received from the Commissioner, in respect of which the proceeding under this Rule has been commenced.

(3) *Motions To Redetermine Interest on an Overpayment:* In addition to including the information described in paragraph (b)(1) of this Rule, a motion to redetermine interest on an overpayment shall also contain:

(A) A statement that the Court has determined under Code section 6512(b) that the petitioner has made an overpayment.

(B) A schedule setting forth—

(i) the amount and date of each payment made by the petitioner in respect of which the overpayment was determined, and

(ii) the amount and date of each credit, offset, or refund received from the Commissioner in respect of the overpayment and interest claimed by the petitioner.

(C) A copy of the Court's decision which determined the overpayment, together with a copy of any notice of credit or offset or other correspondence that the petitioner may have received from the Commissioner, in respect of which the proceeding under this Rule has been commenced.

(4) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

**(c) Response by Commissioner:** Within 60 days after service of a motion filed pursuant to this Rule, the Commissioner shall file a written response. The response shall spe-

cifically address each of the contentions made by the petitioner regarding the correct amount of interest and the petitioner's computation of that amount. The Commissioner shall attach to the Commissioner's response a schedule detailing the computation of interest claimed to be owed to or due from the Commissioner and, in the case of a motion to redetermine interest on an overpayment, the amount and date of each credit, offset, or refund made by the Commissioner and, if applicable, the part of each such credit, offset, or refund allocated by the Commissioner to the overpayment and the part of each such credit, offset, or refund allocated by the Commissioner to interest. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

**(d) Disposition of Motion:** A motion to redetermine interest filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

**(e) Recognition of Counsel:** Counsel recognized by the Court in the action in which the Court redetermined the deficiency or determined the overpayment the interest in respect of which the petitioner now seeks a redetermination will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

**RULE 262. PROCEEDING TO MODIFY DECISION IN  
ESTATE TAX CASE INVOLVING SECTION 6166  
ELECTION**

**(a) Commencement of Proceeding:** A proceeding to modify a decision in an estate tax case pursuant to Code section 7481(d) shall be commenced by filing a motion with the Court accompanied by a proposed form of decision. The petitioner shall place on the motion and the proposed form of de-

cision the same docket number as that of the action in which the Court entered the decision which the petitioner now seeks to modify.

**(b) Content of Motion:** A motion to modify a decision filed pursuant to this Rule shall contain the following:

- (1) The petitioner's identification number.
- (2) The name and current mailing address of each fiduciary authorized to act on behalf of the petitioner.
- (3) A copy of the decision entered by the Court which the petitioner now seeks to modify.
- (4) A statement that the time for payment by the petitioner of an amount of tax imposed by Code section 2001 has been extended pursuant to Code section 6166.
- (5) A schedule setting forth—
  - (A) the amount of interest paid by the petitioner on any portion of the tax imposed by Code section 2001 on the petitioner for which the time of payment has been extended under Code section 6166;
  - (B) the amount of interest on any estate, succession, legacy, or inheritance tax imposed by a State on the petitioner during the period of the extension of time for payment under Code section 6166; and
  - (C) the date that each such amount of interest was paid by the petitioner.
- (6) A statement describing the nature of any dispute within the purview of Code section 7481(d), or if no such dispute exists, then a statement to that effect.
- (7) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

**(c) Response by Commissioner in Unagreed Case:** If a dispute exists between the parties regarding either the petitioner's right to relief under Code section 7481(d) or the amount of interest deductible as an administrative expense under Code section 2053, then the Commissioner shall, within 60 days after service of a motion filed pursuant to this Rule, file a written response accompanied by a proposed form of decision. The response shall identify the nature of the dispute, shall specifically admit or deny each allegation set forth in the petitioner's motion, and shall state the Commissioner's

position in respect of each disputed matter. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

**(d) Disposition of Motion:** A motion to modify a decision filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

**(e) Recognition of Counsel:** Counsel recognized by the Court in the action in which the Court entered the decision which the petitioner now seeks to modify will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

**(f) Cross-Reference:** For the need to move the Court to retain its official case file in the action with respect to which the petitioner seeks to modify the decision, see Rule 157.