

TITLE XXX

**ACTIONS FOR DECLARATORY
JUDGMENT RELATING TO
TREATMENT OF ITEMS OTHER
THAN PARTNERSHIP ITEMS
WITH RESPECT TO AN
OVERSHELTERED RETURN¹**

RULE 310. GENERAL²

(a) **Applicability:** The Rules of this Title XXX set forth the provisions which apply to actions for declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return pursuant to Code section 6234. 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—

(1) An “oversheltered return action” means an action for declaratory judgment provided for in Code section 6234 relating to the treatment of items other than partnership items with respect to an oversheltered return.

(2) The term “partnership item” means any item described in Code section 6231(a)(3).

(3) An “oversheltered return” means an income tax return which—

(A) shows no taxable income for the taxable year, and

(B) shows a net loss from partnership items. See Code sec. 6234(b).

¹New Title XXX sets forth procedures for declaratory judgment actions under Code section 6234, added by sec. 1231(a) of the Taxpayer Relief Act of 1997, Pub. L. 105–34, 111 Stat. 1020. Code section 6234 provides for a declaratory judgment relating to the treatment of items other than partnership items with respect to an oversheltered return and is effective with respect to partnership tax years ending after August 5, 1997. Similarly, the Rules of this Title XXX are effective as to oversheltered return actions commenced with respect to partnership tax years ending after August 5, 1997.

²New Rule 310 is effective as to oversheltered return actions commenced with respect to partnership tax years ending after August 5, 1997.

(4) “Declaratory judgment” is the decision of the Court in an oversheltered return action.

(c) **Jurisdiction:** The Court shall have jurisdiction of an action for declaratory judgment under this Title when the following conditions are satisfied:

(1) The Commissioner has issued a notice of adjustment. See Code sec. 6234(a)(3).

(2) A petition for declaratory judgment is filed with the Court within the period specified in Code section 6234(c). See Code sec. 7502.

RULE 311. COMMENCEMENT OF ACTION FOR DECLARATORY JUDGMENT (OVERSHELTERED RETURN)¹

(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:** A petition filed pursuant to this Rule shall be entitled “Petition for Declaratory Judgment (Oversheltered Return)” and shall comply with the requirements of Rule 34(b), or shall, in the alternative, be substantially in accordance with Form 1 shown in Appendix I, except that “adjustment” shall be substituted therein for “deficiency or liability”.

(c) **Filing Fee:** The fee for filing a petition for declaratory judgment shall be \$60, payable at the time of filing.

RULE 312. DESIGNATION OF PLACE OF TRIAL²

At the time of filing a petition for declaratory judgment with respect to an oversheltered return, the petitioner shall file a designation of place of trial in accordance with Rule 140.

¹New Rule 311 is effective as to oversheltered return actions commenced with respect to partnership tax years ending after August 5, 1997.

²New Rule 312 is effective as to oversheltered return actions commenced with respect to partnership tax years ending after August 5, 1997.

RULE 313. OTHER PLEADINGS¹

(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 314. JOINDER OF ISSUE IN ACTION FOR DECLARATORY JUDGMENT (OVERSHELTERED RETURN)²

An action for declaratory judgment under this Title XXX shall be deemed at issue as provided by Rule 38.

RULE 315. DISPOSITION OF ACTION FOR DECLARATORY JUDGMENT (OVERSHELTERED RETURN)³

Disposition of an oversheltered return action generally will be by trial, conducted in accordance with the Rules contained in Title XIV. In addition, an action for declaratory judgment may be decided without a trial in accordance with the Rules contained in Title XII.

RULE 316. ACTION FOR DECLARATORY JUDGMENT (OVERSHELTERED RETURN) TREATED AS DEFICIENCY ACTION⁴

If, after the filing of a petition for declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return for a taxable year but before the Court makes a declaration, the treatment of any partnership item for that taxable year is finally determined pursuant to Code section 6234(g)(4), or any such item ceases to be a partnership item pursuant to Code section 6231(b),

¹ New Rule 313 is effective as to oversheltered return actions commenced with respect to partnership tax years ending after August 5, 1997.

² New Rule 314 is effective as to oversheltered return actions commenced with respect to partnership tax years ending after August 5, 1997.

³ New Rule 315 is effective as to oversheltered return actions commenced with respect to partnership tax years ending after August 5, 1997.

⁴ New Rule 316 is effective as to oversheltered return actions commenced with respect to partnership tax years ending after August 5, 1997.

and as a result of that final determination or cessation, a deficiency can be determined with respect to the items that are the subject of the notice of adjustment, then the notice of adjustment shall be treated as a notice of deficiency under Code section 6212 and the petition shall be treated as a petition in an action brought under Code section 6213. See Code sec. 6234(g)(3).