

TITLE XXVIII
ACTIONS FOR REDETERMINATION OF
EMPLOYMENT STATUS

RULE 290. GENERAL

(a) Applicability: The Rules of this Title XXVIII set forth the provisions which apply to actions for redetermination of employment status under Code section 7436. 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 redetermination.

(b) Jurisdiction: The Court shall have jurisdiction of an action for redetermination of employment status under this Title when the following conditions are satisfied:

(1) In connection with an audit of any person, there is an actual controversy involving a determination by the Commissioner as part of an examination that:

(A) One or more individuals performing services for such person are employees of such person for purposes of subtitle C of the Code, or

(B) such person is not entitled to the treatment under subsection (a) of sec. 530 of the Revenue Act of 1978, Pub. L. 95-600, 92 Stat. 2885, with respect to such an individual.

(2) A petition for redetermination of employment status is filed with the Court in accordance with Rule 291 by the person for whom the services are performed.

(c) Time for Filing After Notice Sent: If the Commissioner sends by certified or registered mail to the petitioner notice of the Commissioner's determination of matters set forth in Code section 7436(a)(1) and (2), then no proceeding may be initiated with respect to such determination unless the petition is filed within the period specified in Code section 7436(b)(2).

RULE 291. COMMENCEMENT OF ACTION FOR
REDETERMINATION OF EMPLOYMENT STATUS

(a) Commencement of Action: An action for redetermination of employment status under Code section 7436 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; and Rule 32, relating to the form of pleadings.

(b) Content of Petition: A petition filed pursuant to this Rule shall be entitled “Petition for Redetermination of Employment Status Under Code Section 7436” and shall contain the following:

(1) In the case of a petitioner who is an individual, the petitioner’s name and State of legal residence; in the case of a petitioner other than an individual, the petitioner’s name and principal place of business or principal office or agency; and, in all cases, the petitioner’s mailing address. The mailing address, State of legal residence, and principal place of business, or principal office or agency, shall be stated as of the date that the petition is filed.

(2) If the Commissioner sent by certified or registered mail to the petitioner notice of the Commissioner’s determination of matters set forth in Code section 7436(a)(1) and (2), then—

(A) the date of the notice in respect of which the petition is filed and the city and State of the office of the Internal Revenue Service that issued the notice; and

(B) as an attachment, a copy of such notice.

(3) The calendar quarter or quarters for which the determination was made.

(4) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the Commissioner’s determination of matters set forth in Code section 7436(a)(1) and (2), and in the Commissioner’s determination of the proper amount of employment tax. Any issue not raised in the assignments of error shall be deemed to be conceded. Each assignment of error shall be separately lettered.

(5) Clear and concise lettered statements of the facts on which the petitioner bases the assignments of error.

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

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

A claim for reasonable litigation or administrative costs shall not be included in the petition in an action for redetermina-

tion of employment status. For the requirements as to claims for reasonable litigation or administrative costs, see Rule 231.

(c) Small Tax Case Under Code Section 7436(c): For provisions regarding the content of a petition in a small tax case under Code section 7436(c), see Rules 170 through 175.

(d) Filing Fee: The fee for filing a petition for redetermination of employment status shall be \$60, payable at the time of filing.

RULE 292. REQUEST FOR PLACE OF TRIAL

At the time of filing a petition for redetermination of employment status, the petitioner shall file a request for place of trial in accordance with Rule 140.

RULE 293. 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 294. JOINDER OF ISSUE IN ACTION FOR REDETERMINATION OF EMPLOYMENT STATUS

An action for redetermination of employment status under Code section 7436 shall be deemed at issue as provided by Rule 38.