

**TITLE XXX****ACTIONS FOR DECLARATORY  
JUDGMENT RELATING TO  
TREATMENT OF ITEMS OTHER  
THAN PARTNERSHIP ITEMS  
WITH RESPECT TO AN  
OVERSHELTERED RETURN****RULE 310. GENERAL**

(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).

(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)**

(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. REQUEST FOR PLACE OF TRIAL**

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

**RULE 313. 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 314. JOINDER OF ISSUE IN ACTION FOR  
DECLARATORY JUDGMENT (OVERSHELTERED  
RETURN)**

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)**

Disposition of an oversheltered return action generally will be by trial, conducted in accordance with the Rules contained in Title XXIV. 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 ACTION**

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), 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).