

TITLE 26 - INTERNAL REVENUE CODE
Subtitle F - Procedure and Administration
CHAPTER 76 - JUDICIAL PROCEEDINGS
Subchapter E - Burden of Proof

§ 7491. Burden of proof

(a) Burden shifts where taxpayer produces credible evidence

(1) General rule

If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

(2) Limitations

Paragraph (1) shall apply with respect to an issue only if—

- (A)** the taxpayer has complied with the requirements under this title to substantiate any item;
- (B)** the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and
- (C)** in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430 (c)(4)(A)(ii).

Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section 645 (b)(1)) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section 645 (b)(2)).

(3) Coordination

Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

(b) Use of statistical information on unrelated taxpayers

In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

(c) Penalties

Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.

(Added Pub. L. 105–206, title III, § 3001(a), July 22, 1998, 112 Stat. 726; amended Pub. L. 105–277, div. J, title IV, § 4002(b), Oct. 21, 1998, 112 Stat. 2681–906.)

Prior Provisions

A prior section 7491, act Aug. 16, 1954, ch. 736, 68A Stat. 893, placed the burden of proof in establishing the applicability of an exemption upon the defendant in the case of marijuana offenses, prior to repeal by Pub. L. 91–513, title III, §§ 1101(b)(5)(A), 1103, 1105 (a), Oct. 27, 1970, 84 Stat. 1292, 1294, 1295, effective on first day of seventh calendar month that begins after Oct. 26, 1970, with prosecutions commenced prior to such date not to be affected or abated by reason thereof.

A prior section 7492, act Aug. 16, 1954, ch. 736, 68A Stat. 893, related to the enforceability of cotton futures contracts, prior to repeal by Pub. L. 94–455, title XIX, § 1952(n)(4)(A), (o), Oct. 4, 1976, 90 Stat. 1846, effective on the 90th day after Oct. 4, 1976.

A prior section 7493, act Aug. 16, 1954, ch. 736, 68A Stat. 893, provided that no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

D of chapter 39 of this title withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39 of this title or of any regulation made pursuant to such chapter, but that such person called by such officer who testifies in the case be exempt from prosecution for any offense to which his testimony relates, prior to repeal by Pub. L. 91-452, title II, §§ 232, 260, Oct. 15, 1970, 84 Stat. 930, 931, effective on 60th day following Oct. 15, 1970, and not to affect any immunity to which any individual was entitled under by reason of any testimony given before 60th day following Oct. 15, 1970. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Amendments

1998—Subsec. (a)(2). Pub. L. 105-277 inserted concluding provisions.

Effective Date of 1998 Amendment

Amendment by Pub. L. 105-277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, to which such amendment relates, see section 4002(k) of Pub. L. 105-277, set out as a note under section 1 of this title.

Effective Date

Pub. L. 105-206, title III, § 3001(c), July 22, 1998, 112 Stat. 727, provided that:

“(1) In general.—The amendments made by this section [enacting this subchapter] shall apply to court proceedings arising in connection with examinations commencing after the date of the enactment of this Act [July 22, 1998].

“(2) Taxable periods or events after date of enactment.—In any case in which there is no examination, such amendments shall apply to court proceedings arising in connection with taxable periods or events beginning or occurring after such date of enactment.”