

## **RULE 142. BURDEN OF PROOF**

**(a) General:** (1) The burden of proof shall be upon the petitioner, except as otherwise provided by statute or determined by the Court; and except that, in respect of any new matter, increases in deficiency, and affirmative defenses, pleaded in the answer, it shall be upon the respondent. As to affirmative defenses, see Rule 39.

(2) See Code section 7491 where credible evidence is introduced by the taxpayer, or any item of income is reconstructed by the Commissioner solely through the use of statistical information on unrelated taxpayers, or any penalty, addition to tax, or additional amount is determined by the Commissioner.

**(b) Fraud:** In any case involving the issue of fraud with intent to evade tax, the burden of proof in respect of that issue is on the respondent, and that burden of proof is to be carried by clear and convincing evidence. See Code sec. 7454(a).

**(c) Foundation Managers; Trustees; Organization Managers:** In any case involving the issue of the knowing conduct of a foundation manager as set forth in the provisions of Code section 4941, 4944, or 4945, or the knowing conduct of a trustee as set forth in the provisions of Code section 4951 or 4952, or the knowing conduct of an organization manager as set forth in the provisions of Code section 4912 or 4955, the burden of proof in respect of such issue is on the respondent, and such burden of proof is to be carried by clear and convincing evidence. See Code sec. 7454(b).

**(d) Transferee Liability:** The burden of proof is on the respondent to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax. See Code sec. 6902(a).

**(e) Accumulated Earnings Tax:** Where the notice of deficiency is based in whole or in part on an allegation of accumulation of corporate earnings and profits beyond the reasonable needs of the business, the burden of proof with respect to such allegation is determined in accordance with Code section 534. If the petitioner has submitted to the respondent a statement which is claimed to satisfy the requirements of Code section 534(c), the Court will ordinarily, on timely motion filed after the case has been calendared for trial, rule prior to the trial on whether such statement is suf-

ficient to shift the burden of proof to the respondent to the limited extent set forth in Code section 534(a)(2).