

#18 EXTEND THE TIME LIMIT FOR TAXPAYERS TO SUE FOR DAMAGES FOR IMPROPER COLLECTION ACTIONS

Present Law

IRC § 7433(a) provides that in connection with any collection of Federal tax, if an IRS employee recklessly or intentionally, or by reason of negligence, disregards any provision of the IRC or any regulation, then that taxpayer may sue the United States for damages. Under IRC § 7433(d)(3) and the regulations thereunder, suit must be brought within two years after the date on which the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action. Under IRC § 7433(d)(1), before bringing suit, the taxpayer must first file an administrative claim with the IRS. Treasury Regulation § 301.7433-1(d) further provides that taxpayers may not file suit in court until the earlier of: six months after filing their administrative claim or the date the IRS renders a decision on their claim. However, if the claim is filed within the last six months of the two-year period for filing suit, then the taxpayer can file suit at any time before expiration of the two-year period.

Reasons for Change

A taxpayer who has been subjected to improper collection action must first file an administrative claim for damages. While the claim is pending, the two-year period for filing suit in a U.S. district court continues to run. Thus, a taxpayer who files an administrative claim within the final six months of the two-year window may be forced to incur the expense of filing suit in a district court rather than allowing the IRS to first make a decision on a pending administrative claim.

Recommendation

Amend IRC § 7433(d)(3) to allow taxpayers who have filed an administrative claim to file a civil action in U.S. district court any time after the earlier of: the date that is six months from the date of filing the administrative claim; the date on which the IRS renders a decision on the administrative claim; or the date that is within two years after the date on which the taxpayer reasonably could have discovered that the actions of the officer or employee were taken in disregard of a provision of this title or any regulation promulgated under this title.⁹²

92 The Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. § 201 (2017) contains language that is generally consistent with this recommendation.