

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

Present Law

Internal Revenue Code (IRC) § 7433(a) provides that if an IRS employee recklessly or intentionally, or by reason of negligence, disregards any provision of the IRC or any regulation in connection with the collection of federal tax, the taxpayer harmed by the improper collection action may sue the United States for damages. Under IRC § 7433(d)(3) and Treasury Regulation § 301.7433-1(g)(2), the suit must be brought in a U.S. District Court within two years from 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 file an administrative claim with the IRS. Treasury Regulation § 301.7433-1(d) provides that a taxpayer generally may not file suit in court until the earlier of (i) the date six months after filing an administrative claim or (ii) the date on which the IRS renders a decision on the claim. However, if the claim is filed within the last six months of the two-year period for filing suit, the taxpayer may file suit in court at any time before expiration of the two-year period.

Reasons for Change

IRC § 7433(d)(1) reflects a policy decision that it is generally in the best interests of both the taxpayer and the government to allow the IRS to consider and render a decision on a taxpayer's claim before a case is brought to court. If a case is resolved at the administrative level, both parties are spared the time and expense of litigation. Treasury Regulation § 301.7433-1(d) reflects a complementary policy decision that where the IRS does not render a decision on an administrative claim within six months, taxpayers should be able to bring their cases to court without having to wait indefinitely for an IRS decision.

However, the existing rules do not always achieve the goal of allowing the IRS to consider and render a decision before suit is filed. For example, while a claim is pending at the administrative level, the two-year period for filing suit in a U.S. District Court continues to run. If a taxpayer files an administrative claim during the final six months of the two-year period, the taxpayer may be forced to file suit in a U.S. District Court before the IRS has an opportunity to render a decision on the administrative claim (or forfeit the right to do so).

To give the IRS an opportunity to render an administrative decision while preserving the taxpayer's right to challenge an adverse decision in court, the two-year period that commences when the right of action accrues should be pegged to the deadline for filing an administrative claim (rather than the deadline for filing suit). Specifically, if the IRS renders an adverse or partially adverse decision on a timely-filed administrative claim, the taxpayer should be allowed to file suit within two years from the date of the IRS's decision (*i.e.*, similar to the time period allowed for filing suit after a refund claim is denied).

At the same time, to ensure taxpayers do not have to wait indefinitely for an IRS decision, a taxpayer should be permitted to file suit in a U.S. District Court if a timely-filed administrative claim goes unanswered for six months. These rules would ensure the IRS has a full six-month period to consider and render a decision on a taxpayer's damages claim based on an alleged improper collection action, while preserving the taxpayer's right to file suit if the IRS does not render a timely decision.

Recommendation

- Amend IRC § 7433(d)(3) to allow taxpayers who file an administrative claim with the IRS within two years after the date a right of action accrues to file a civil action in a U.S. District Court any time after six months from the date the administrative claim was filed or, if the IRS renders a decision, within two years from the date the IRS mails its decision on the administrative claim to the taxpayer by certified mail or registered mail.¹⁰⁸

¹⁰⁸ The Taxpayer Bill of Rights Enhancement Act, S. 1793, 115th Cong. § 201(c) (2017), and S. 1578, 114th Cong. § 301 (2015), would have amended IRC § 7433(d)(3) to replace the requirement that taxpayers bring suit within two years of the date the cause of action accrues with a requirement that a suit be commenced by “*the later of the date on which administrative remedies available within the Internal Revenue Service have been exhausted or the date on which the taxpayer reasonably could have discovered that the actions of the officer or employee were done in disregard of a provision of this title or any regulation promulgated under this title.*” (Emphasis added.) This proposed change would prevent taxpayers from being forced to file suit before the IRS has had the opportunity to render a decision on the administrative claim and is thus generally consistent with this recommendation. However, the recommendation we are making would also preserve the IRC § 7433(d)(1) requirement that taxpayers must file an administrative claim before they can bring suit in a U.S. District Court and is thus more comprehensive.