

#44 REPEAL STATUTE SUSPENSION UNDER IRC § 7811(D) FOR TAXPAYERS SEEKING ASSISTANCE FROM THE TAXPAYER ADVOCATE SERVICE

Present Law

Internal Revenue Code (IRC) § 7811(d) suspends the statutory period of limitations for any action with respect to which a taxpayer is seeking assistance from TAS. The period is only suspended, however, if the taxpayer submits a written application for assistance.¹⁶⁶

Reasons for Change

Suspension of the assessment or collection period disadvantages the taxpayer because it gives the IRS more time to take enforcement actions. If the IRS has caused a problem that the taxpayer is working with TAS to resolve, statute suspension effectively punishes the taxpayer for coming to TAS.

Further, there is no compelling reason for the suspension, as evidenced by the fact that the IRS itself has never implemented it. It is unnecessary to protect the government's interests because an application for TAS assistance generally does not prevent the IRS from taking enforcement action while the taxpayer is working with TAS. IRC § 7811(d) is also impossible for the IRS to administer using its existing computer systems.

Moreover, if IRC § 7811(d) were ever to be implemented, it would create an elective trap for the unwary. As noted above, it applies only when a taxpayer submits a written request for TAS assistance. The provision does not apply when taxpayers request TAS assistance by phone, which is the method by which most taxpayers seek TAS's assistance. Thus, this provision — apart from being unnecessary and unutilized — would produce disparate outcomes for taxpayers who, despite lacking any knowledge of this issue, contact TAS by different means.

Recommendation

- Repeal IRC § 7811(d).¹⁶⁷

¹⁶⁶ Treas. Reg. § 301.7811-1(e)(4).

¹⁶⁷ For legislative language generally consistent with this recommendation, see Taxpayer Protection Act, H.R. 2171, 115th Cong. § 202 (2017); Taxpayer Protection Act, H.R. 4912, 114th Cong. § 202 (2016). For more detail, see National Taxpayer Advocate 2015 Annual Report to Congress 316-328 (Legislative Recommendation: *Repeal or Fix Statute Suspension Under IRC § 7811(d)*). In informal discussions, IRS officials have noted that a Taxpayer Assistance Order (TAO) may direct the IRS to refrain from taking collection action pending resolution of the case and that, as a result, the period of limitations for taking collection action might expire before the TAS case is resolved. We think this concern is unfounded because (i) the IRS has never implemented statute suspension despite having the legal authority to do so and (ii) we are not aware of a single case in which a TAO caused a period of limitations to expire before the IRS could take collection action.