

Legislative Recommendation #44**Repeal Statute Suspension Under IRC § 7811(d) for Taxpayers Seeking Assistance From the Taxpayer Advocate Service****PRESENT LAW**

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 relief.¹

REASONS FOR CHANGE

Despite the fact that Congress enacted this provision in 1988,² the IRS has never implemented it. The intent of the provision was to protect the interests of the government, but the IRS has not seen a need to make use of it. Relatedly, implementation of the rule would require significant technology upgrades and procedural changes that the IRS has chosen not to undertake.

In concept, IRC § 7811(d) aims to ensure that the IRS will not lose the ability to assess or collect tax if the applicable statutory deadlines pass while a taxpayer's case is pending with TAS. Suspension of the assessment or collection period would give the IRS more time to take enforcement actions.

However, statute suspensions are unnecessary to protect the government's interests. If the end of a limitations period is near, the IRS routinely asks the taxpayer to agree to an extension, even if TAS is involved. The IRS also may take enforcement actions against taxpayers with open TAS cases, if necessary, to protect the government's interests.³

Moreover, if IRC § 7811(d) were ever to be implemented, it would create an elective trap for the unwary. By its terms, the provision only applies 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 help. 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.

Lastly, despite the IRS's decision not to implement the provision, it has been raised in litigation.⁴ Because this provision has not been utilized since it was enacted more than 30 years ago, because it serves no useful

1 Treas. Reg. § 301.7811-1(e)(4).

2 Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 6230, 102 Stat. 3342, 3734 (1988).

3 Even if TAS issues a Taxpayer Assistance Order (TAO) directing the IRS to suspend collection, TAS will generally agree to modify the TAO if collection is in jeopardy. And if TAS ever did not agree to do so, the Commissioner or Deputy Commissioner could modify or rescind the TAO.

4 In *Rothkamm v. United States*, 802 F.3d 699 (5th Cir. 2015), *rev'g* 2014 WL 4986884 (M.D. La. Sept. 15, 2014), the United States Court of Appeals for the Fifth Circuit held, in relevant part, that IRC § 7811(d) tolled the period for filing a wrongful levy claim, which by operation of IRC § 6532(c)(2) extended the period for filing suit. IRS Action on Decision (AOD) 2020-03 (Apr. 24, 2020) explains that except for cases appealable to the Fifth Circuit, the IRS will not follow the holding in *Rothkamm* that IRC § 7811(d) suspends the running of the limitations periods for third parties to file wrongful levy claims or suits, and outside the Fifth Circuit, the government will continue to defend its interpretation.

purpose, and to avoid future litigation in which this provision is cited, the National Taxpayer Advocate recommends that it be repealed.

RECOMMENDATION

- Repeal IRC § 7811(d).⁵

5 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)*).