

Legislative Recommendation #26**Extend the Time Limit for Taxpayers to Sue for Damages for Improper Collection Actions****SUMMARY**

- *Problem:* Both taxpayers and the government benefit when the IRS has an opportunity to consider a taxpayer's claim to recover damages for improper collection actions before the taxpayer files suit in court, but current filing deadlines in some cases require taxpayers to file suit in court before the IRS has a chance to consider their claims.
- *Solution:* Give taxpayers more time to file suit in court if they have filed a timely administrative claim with the IRS.

PRESENT LAW

IRC § 7433(a) authorizes taxpayers harmed by improper collection actions to sue the United States for damages if an IRS employee has recklessly or intentionally, or by reason of negligence, disregarded any provision of the tax code or any regulation relating to the collection of federal tax. Under IRC § 7433(d)(3) and Treas. Reg. § 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 had a reasonable opportunity to discover all essential elements of a possible cause of action.

Before a taxpayer may sue the United States, IRC § 7433(d)(1) requires the taxpayer to file an administrative claim with the IRS. Treas. Reg. § 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. Treas. Reg. § 301.7433-1(d) reflects a complementary policy decision that if 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.

The existing rules, however, 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 else will 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 tied 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 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)(1) to provide that before a taxpayer may file a civil action, the taxpayer must first file an administrative claim with the IRS within two years from the date a right of action accrues.
- Amend IRC § 7433(d)(3) to allow taxpayers to file a civil action in a U.S. district court (i) no earlier than six months from the date on which the administrative claim was filed and (ii) no later than the earlier of two years from the date on which the IRS sends its decision on the administrative claim to the taxpayer by certified or registered mail or, if the IRS does not render a decision, five years from the date the right of action accrued to file the administrative claim with the IRS.¹

¹ For legislative language generally consistent with this recommendation, see Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. § 201(c) (2017); and Taxpayer Bill of Rights Enhancement Act of 2015, S. 1578, 114th Cong. § 301(c) (2015). Other bills have proposed simply lengthening the period to bring an action under IRC § 7433(d)(3) from two years to five years. See, e.g., Small Business Taxpayer Bill of Rights Act of 2023, S. 1177 and H.R. 2681, 118th Cong. § 3(b) (2023); and Small Business Taxpayer Bill of Rights Act of 2022, S. 1656 and H.R. 7033, 117th Cong. § 3(b) (2022).