

provisions under section 524 of the Bankruptcy Code unless it files an administrative claim for damages or for relief from a violation of section 362 or 524 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay or discharge violation was filed pursuant to § 301.7433-2(e) and satisfies the other conditions set forth in § 301.7433-2(d) prior to filing a petition under section 7433.

(2) *Section 362(h) claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code unless it files an administrative claim for relief from a violation of section 362 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay violation was filed pursuant to § 301.7433-2(e) and satisfies the other conditions set forth in § 301.7433-2(d) prior to filing a petition under section 362(h) of the Bankruptcy Code.

* * *

§ 301.7430-2 [Amended]

Par. 4. In § 301.7430-2, paragraph (c)(2) is amended by:

1. Adding the language “, except that requests with respect to administrative proceedings defined by § 301.7430-8(c) should be made to the Chief, Local Insolvency Unit” at the end of the first sentence.

2. Removing the language “District Director for the district” and adding “Internal Revenue Service office” in its place in the second sentence.

Par. 5. Section 301.7430-3 is amended by:

1. Revising paragraph (a)(4),
2. Paragraph (b) is amended by adding the language “, except those collection actions described by section 7433(e)” at the end of the penultimate sentence.

The revision reads as follows:

§ 301.7430-3 Administrative proceeding and administrative proceeding date.

(a) * * *

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under section 7432 or 7433, except proceedings brought under section 7433(e) and § 301.7433-2 or proceedings otherwise described in § 301.7430-8(c). See § 301.7430-8.

* * *

Par. 6. Section 301.7430-6 is amended by adding a sentence at the end of the section to read as follows:

§ 301.7430-6 Effective dates.

* * * Sections 301.7430-1(e), 301.7430-2(c)(2), 7430-3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 7. Section 301.7430-8 is added to read as follows:

§ 301.7430-8 Administrative costs incurred in damage actions for violations of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* The Internal Revenue Service may grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) *Prevailing party.* A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430-5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and
(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

(c) *Administrative proceeding.* For purposes of this section, an administrative proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under § 301.7433-2(e).

(d) *Costs incurred after filing of bankruptcy petition.* Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) *Time for filing claim for administrative costs.* (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs within six months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia, the term legal holiday also means a statewide legal holiday in the state where such office is located.

(f) *Effective date.* This section is applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 8. Section 301.7433-1 is amended as follows:

1. In paragraph (a) introductory text, in the first sentence, the language “, or by reason of negligence,” is added after the language “recklessly or intentionally”. In addition, the language “\$100,000” in the third sentence is removed and “\$1,000,000 (\$100,000 in the case of negligence)” is added in its place.

2. In paragraph (b)(1), in the first sentence, the language “, or negligent,” is added after the language “reckless or intentional”.

3. In paragraph (e)(1), in the first sentence, the language “\$100,000” is removed and “\$1,000,000 (\$100,000 in the case of negligence)” is added in its place. In addition, the language “district director (marked for the attention of the Chief, Special Procedures Function) of the district” is removed and “Area Director, Attn: Compliance Technical Support Manager of the area” is added in its place.

4. In paragraph (h), in the penultimate sentence, the language “7432(a)” is removed and “7433(a)” is added in its place.

5. Revising paragraph (i).

The revision reads as follows: