

§ 301.7433-1 Civil cause of action for certain unauthorized collection actions.

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(i) *Effective dates.* The portions of this section relating to reckless or intentional acts are applicable to actions taken by Internal Revenue Service officials after July 30, 1996. The portions of this section relating to negligent acts are applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

Par. 9. Section 301.7433-2 is added to read as follows:

§ 301.7433-2 Civil cause of action for violation of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* (1) If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to the automatic stay) or section 524 (relating to discharge) of title 11, United States Code, or any regulation promulgated under such provision, the taxpayer may file a petition for damages against the United States in Federal bankruptcy court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of \$1,000,000, or the sum of—

(i) Actual, direct economic damages sustained as a proximate result of the willful actions of the officer or employee; and

(ii) Costs of the action.

(2) An action under this section constitutes the exclusive remedy under the Internal Revenue Code for violations of sections 362 and 524 of the Bankruptcy Code. In addition, taxpayers injured by violations of section 362 of the Bankruptcy Code may maintain actions under section 362(h) of the Bankruptcy Code (relating to an individual injured by a willful violation of the stay). However, any administrative or litigation costs in connection with an action under section 362(h) may be awarded, if at all, only under section 7430 of the Internal Revenue Code.

(b) *Actual, direct economic damages—*(1) *Definition.* See § 301.7433-1(b)(1).

(2) *Litigation costs and administrative costs not recoverable as actual, direct economic damages.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. These costs may be recoverable under section 7430 (see paragraph (h) of this section), or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the costs set forth in § 301.7433-1(c).

(d) *No civil action in federal bankruptcy court prior to filing an administrative claim—*(1) *In general.* Except as provided in paragraph (d)(2) of this section, no action under paragraph (a)(1) of this section shall be maintained in any bankruptcy court before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) *When administrative claim filed in last six months of period of limitations.* If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may petition the bankruptcy court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim—*(1) *Manner.* An administrative claim for the lesser of \$1,000,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address, and current home and work telephone numbers (with an identification of any convenient times to be contacted) of the taxpayer making the claim;

(ii) The location of the bankruptcy court in which the underlying bankruptcy case was filed and the case number of the case in which the violation occurred;

(iii) A description, in reasonable detail, of the violation (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iv) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(v) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any

available documentation or evidence); and

(vi) The signature of the taxpayer or duly authorized representative.

(3) *Duly authorized representative defined.* For purposes of this paragraph (e), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) *No action in bankruptcy court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section may be instituted in federal bankruptcy court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations—*(1) *Time for filing.* A petition for damages under paragraph (a) of this section must be filed in bankruptcy court within two years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of litigation costs and administrative costs under section 7430—*(1) *In general.* Litigation costs, as defined in § 301.7433-1(b)(2)(i), including attorneys fees, not recoverable under this section may be recoverable under section 7430 if a taxpayer challenges in whole or in part an Internal Revenue Service denial of an administrative claim for damages by filing a petition in the bankruptcy court. If, following the Internal Revenue Service's denial of an administrative claim for damages, a taxpayer files a petition in the bankruptcy court challenging that denial in whole or in part, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(ii) (relating to net worth and size requirements), the taxpayer will be considered a prevailing party for purposes of section 7430, unless the Internal Revenue Service establishes that the position of the