

EFFECTIVE DATE

Pub. L. 94-455, title XIII, §1306(c), Oct. 4, 1976, 90 Stat. 1720, provided that: "The amendments made by this section [enacting this section and amending sections 7451, 7459, 7470, and 7482 of this title, enacting section 1507 of Title 28, Judiciary and Judicial Procedure, and amending sections 1346 and 2201 of Title 28] shall apply with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to determinations (or requests for determinations) made after January 1, 1976."

§ 7429. Review of jeopardy levy or assessment procedures

(a) Administrative review

(1) Administrative review

(A) Prior approval required

No assessment may be made under section 6851(a), 6852(a), 6861(a), or 6862, and no levy may be made under section 6331(a) less than 30 days after notice and demand for payment is made, unless the Chief Counsel for the Internal Revenue Service (or such Counsel's delegate) personally approves (in writing) such assessment or levy.

(B) Information to taxpayer

Within 5 days after the day on which such an assessment or levy is made, the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relied in making such assessment or levy.

(2) Request for review

Within 30 days after the day on which the taxpayer is furnished the written statement described in paragraph (1), or within 30 days after the last day of the period within which such statement is required to be furnished, the taxpayer may request the Secretary to review the action taken.

(3) Redetermination by Secretary

After a request for review is made under paragraph (2), the Secretary shall determine—

(A) whether or not—

(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

(b) Judicial review

(1) Proceedings permitted

Within 90 days after the earlier of—

(A) the day the Secretary notifies the taxpayer of the Secretary's determination described in subsection (a)(3), or

(B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States for a determination under

this subsection in the court with jurisdiction determined under paragraph (2).

(2) Jurisdiction for determination

(A) In general

Except as provided in subparagraph (B), the district courts of the United States shall have exclusive jurisdiction over any civil action for a determination under this subsection.

(B) Tax Court

If a petition for a redetermination of a deficiency under section 6213(a) has been timely filed with the Tax Court before the making of an assessment or levy that is subject to the review procedures of this section, and 1 or more of the taxes and taxable periods before the Tax Court because of such petition is also included in the written statement that is provided to the taxpayer under subsection (a), then the Tax Court also shall have jurisdiction over any civil action for a determination under this subsection with respect to all the taxes and taxable periods included in such written statement.

(3) Determination by court

Within 20 days after a proceeding is commenced under paragraph (1), the court shall determine—

(A) whether or not—

(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

If the court determines that proper service was not made on the United States or on the Secretary, as may be appropriate, within 5 days after the date of the commencement of the proceeding, then the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States or on the Secretary, as may be appropriate.

(4) Order of court

If the court determines that the making of such levy is unreasonable, that the making of such assessment is unreasonable, or that the amount assessed or demanded is inappropriate, then the court may order the Secretary to release such levy, to abate such assessment, to redetermine (in whole or in part) the amount assessed or demanded, or to take such other action as the court finds appropriate.

(c) Extension of 20-day period where taxpayer so requests

If the taxpayer requests an extension of the 20-day period set forth in subsection (b)(2) and establishes reasonable grounds why such extension should be granted, the court may grant an extension of not more than 40 additional days.

(d) Computation of days

For purposes of this section, Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the last day of any period.

(e) Venue**(1) District court**

A civil action in a district court under subsection (b) shall be commenced only in the judicial district described in section 1402(a)(1) or (2) of title 28, United States Code.

(2) Transfer of actions

If a civil action is filed under subsection (b) with the Tax Court and such court finds that there is want of jurisdiction because of the jurisdiction provisions of subsection (b)(2), then the Tax Court shall, if such court determines it is in the interest of justice, transfer the civil action to the district court in which the action could have been brought at the time such action was filed. Any civil action so transferred shall proceed as if such action had been filed in the district court to which such action is transferred on the date on which such action was actually filed in the Tax Court from which such action is transferred.

(f) Finality of determination

Any determination made by a court under this section shall be final and conclusive and shall not be reviewed by any other court.

(g) Burden of proof**(1) Reasonableness of levy, termination, or jeopardy assessment**

In a proceeding under subsection (b) involving the issue of whether the making of a levy described in subsection (a)(1) or the making of an assessment under section 6851, 6852, 6861, or 6862 is reasonable under the circumstances, the burden of proof in respect to such issue shall be upon the Secretary.

(2) Reasonableness of amount of assessment

In a proceeding under subsection (b) involving the issue of whether an amount assessed or demanded as a result of action taken under section 6851, 6852, 6861, or 6862 is appropriate under the circumstances, the Secretary shall provide a written statement which contains any information with respect to which his determination of the amount assessed was based, but the burden of proof in respect of such issue shall be upon the taxpayer.

(Added Pub. L. 94-455, title XII, §1204(a), Oct. 4, 1976, 90 Stat. 1695; amended Pub. L. 98-369, div. A, title IV, §446(a), July 18, 1984, 98 Stat. 817; Pub. L. 100-203, title X, §10713(b)(2)(F), Dec. 22, 1987, 101 Stat. 1330-470; Pub. L. 100-647, title VI, §6237(a)-(e)(3), Nov. 10, 1988, 102 Stat. 3741-3743; Pub. L. 105-206, title III, §3434(a), July 22, 1998, 112 Stat. 760.)

Editorial Notes**AMENDMENTS**

1998—Subsec. (a)(1). Pub. L. 105-206 substituted “Administrative review” for “Information to taxpayer” in heading and amended text of par. (1) generally. Prior to amendment, text read as follows: “Within 5 days after

the day on which an assessment is made under section 6851(a), 6852(a), 6861(a), or 6862, or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section 6331(a), the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relies in making such assessment or levy.”

1988—Pub. L. 100-647, §6237(e)(3), inserted “levy or” after “jeopardy” in section catchline.

Subsec. (a)(1). Pub. L. 100-647, §6237(a), inserted “or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section 6331(a),” after “6862,” and “or levy” after “such assessment”.

Subsec. (a)(3). Pub. L. 100-647, §6237(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “After a request for review is made under paragraph (2), the Secretary shall determine whether or not—

“(A) the making of the assessment under section 6851, 6852, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

“(B) the amount so assessed or demanded as a result of the action taken under section 6851, 6852, 6861, or 6862 is appropriate under the circumstances.”

Subsec. (b). Pub. L. 100-647, §6237(c), amended subsec. (b) generally, substituting provisions of pars. (1) to (4) for provisions of former pars. (1) to (3) relating to actions permitted, determination by district court, and order of district court.

Subsec. (c). Pub. L. 100-647, §6237(e)(1), struck out “district” before “court”.

Subsec. (e). Pub. L. 100-647, §6237(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “A civil action under subsection (b) shall be commenced only in the judicial district described in section 1402(a)(1) or (2) of title 28, United States Code.”

Subsec. (f). Pub. L. 100-647, §6237(e)(1), struck out “district” after “made by a”.

Subsec. (g)(1). Pub. L. 100-647, §6237(e)(2), in heading substituted “levy, termination,” for “termination” and in text substituted “a proceeding” for “an action” and inserted “the making of a levy described in subsection (a)(1) or” after “whether”.

Subsec. (g)(2). Pub. L. 100-647, §6237(e)(2)(C), substituted “a proceeding” for “an action”.

1987—Subsec. (a)(1). Pub. L. 100-203, §10713(b)(2)(F)(i), substituted “6851(a), 6852(a)” for “6851(a),”.

Subsecs. (a)(3)(A), (B), (b)(2)(A), (B), (g)(1), (2). Pub. L. 100-203, §10713(b)(2)(F)(ii), substituted “6851, 6852,” for “6851,” wherever appearing.

1984—Subsec. (b)(2). Pub. L. 98-369 inserted provision that if the court determines that proper service was not made on the United States within 5 days after the date of the commencement of the action, the running of the 20-day period shall not begin before the day on which proper service was made on the United States.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 1998 AMENDMENT**

Pub. L. 105-206, title III, §3434(b), July 22, 1998, 112 Stat. 760, provided that: “The amendment made by this section [amending this section] shall apply to taxes assessed and levies made after the date of the enactment of this Act [July 22, 1998].”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VI, §6237(f), Nov. 10, 1988, 102 Stat. 3743, provided that: “The amendments made by this section [amending this section] shall apply to jeopardy levies issued and assessments made on or after July 1, 1989.”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title IV, §446(b), July 18, 1984, 98 Stat. 817, provided that: “The amendment made by subsection (a) [amending this section] shall apply to actions commenced after the date of the enactment of this Act [July 18, 1984].”

EFFECTIVE DATE

Section applicable with respect to action taken under section 6851, 6861, or 6862 of this title where notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

§ 7430. Awarding of costs and certain fees**(a) In general**

In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for—

- (1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and
- (2) reasonable litigation costs incurred in connection with such court proceeding.

(b) Limitations**(1) Requirement that administrative remedies be exhausted**

A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service. Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.

(2) Only costs allocable to the United States

An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

(3) Costs denied where party prevailing protracts proceedings

No award for reasonable litigation and administrative costs may be made under subsection (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

(4) Period for applying to IRS for administrative costs

An award may be made under subsection (a) by the Internal Revenue Service for reasonable administrative costs only if the prevailing party files an application with the Internal Revenue Service for such costs before the 91st day after the date on which the final decision of the Internal Revenue Service as to the determination of the tax, interest, or penalty is mailed to such party.

(c) Definitions

For purposes of this section—

(1) Reasonable litigation costs

The term “reasonable litigation costs” includes—

- (A) reasonable court costs, and
- (B) based upon prevailing market rates for the kind or quality of services furnished—

(i) the reasonable expenses of expert witnesses in connection with a court proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

(iii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of \$125 per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for such proceeding, the difficulty of the issues presented in the case, or the local availability of tax expertise, justifies a higher rate.

In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting “calendar year 1995” for “calendar year 2016” in subparagraph (A)(ii) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.

(2) Reasonable administrative costs

The term “reasonable administrative costs” means—

(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the court under clause (ii) or (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under paragraph (4)(C) of the awarding of reasonable administrative costs is made by the Internal Revenue Service.

Such term shall only include costs incurred on or after whichever of the following is the earliest: (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Independent Office of Appeals; (ii) the date of the notice of deficiency; or (iii) the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Independent Office of Appeals is sent.

(3) Attorneys' fees**(A) In general**

For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

(B) Pro bono services

The court may award reasonable attorneys' fees under subsection (a) in excess of