

case of proceedings commenced after the date of the enactment of this Act [July 30, 1996].”

§ 7433A. Civil damages for certain unauthorized collection actions by persons performing services under qualified tax collection contracts

(a) In general

Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

(b) Modifications

For purposes of subsection (a):

(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

(3) Such civil action shall not be an exclusive remedy with respect to such person.

(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.

(Added Pub. L. 108-357, title VIII, § 881(b)(1), Oct. 22, 2004, 118 Stat. 1626.)

§ 7434. Civil damages for fraudulent filing of information returns

(a) In general

If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

(b) Damages

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of—

(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

(2) the costs of the action, and

(3) in the court's discretion, reasonable attorneys' fees.

(c) Period for bringing action

Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of—

(1) 6 years after the date of the filing of the fraudulent information return, or

(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

(d) Copy of complaint filed with IRS

Any person bringing an action under subsection (a) shall provide a copy of the complaint

to the Internal Revenue Service upon the filing of such complaint with the court.

(e) Finding of court to include correct amount of payment

The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

(f) Information return

For purposes of this section, the term “information return” means any statement described in section 6724(d)(1)(A).

(Added Pub. L. 104-168, title VI, § 601(a), July 30, 1996, 110 Stat. 1462; amended Pub. L. 105-206, title VI, § 6023(29), July 22, 1998, 112 Stat. 826.)

Editorial Notes

PRIOR PROVISIONS

A prior section 7434 was renumbered 7437 of this title.

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-206 substituted “attorneys' fees” for “attorneys fees”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 104-168, title VI, § 601(c), July 30, 1996, 110 Stat. 1462, provided that: “The amendments made by this section [enacting this section and renumbering former section 7434 as 7435 of this title] shall apply to fraudulent information returns filed after the date of the enactment of this Act [July 30, 1996].”

§ 7435. Civil damages for unauthorized enticement of information disclosure

(a) In general

If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$500,000 or the sum of—

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and

(2) the costs of the action.

Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

(c) Payment authority

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(d) Period for bringing action

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

(e) Mandatory stay

Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

(f) Crime-fraud exception

Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime.

(Added Pub. L. 104-168, title XII, §1203(a), July 30, 1996, 110 Stat. 1470.)

Editorial Notes

PRIOR PROVISIONS

A prior section 7435 was renumbered 7437 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 104-168, title XII, §1203(c), July 30, 1996, 110 Stat. 1471, provided that: "The amendments made by this section [enacting this section and renumbering former section 7435 as 7436 of this title] shall apply to actions after the date of the enactment of this Act [July 30, 1996]."

§ 7436. Proceedings for determination of employment status

(a) Creation of remedy

If, in connection with an audit of any person, there is an actual controversy involving a determination by the Secretary as part of an examination that—

(1) one or more individuals performing services for such person are employees of such person for purposes of subtitle C, or

(2) such person is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978 with respect to such an individual,

upon the filing of an appropriate pleading, the Tax Court may determine whether such a determination by the Secretary is correct and the proper amount of employment tax under such determination. Any such redetermination by the Tax Court shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(b) Limitations

(1) Petitioner

A pleading may be filed under this section only by the person for whom the services are performed.

(2) Time for filing action

If the Secretary sends by certified or registered mail notice to the petitioner of a de-

termination by the Secretary described in subsection (a), no proceeding may be initiated under this section with respect to such determination unless the pleading is filed before the 91st day after the date of such mailing.

(3) No adverse inference from treatment while action is pending

If, during the pendency of any proceeding brought under this section, the petitioner changes his treatment for employment tax purposes of any individual whose employment status as an employee is involved in such proceeding (or of any individual holding a substantially similar position) to treatment as an employee, such change shall not be taken into account in the Tax Court's determination under this section.

(c) Small case procedures

(1) In general

At the option of the petitioner, concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings under this section may (notwithstanding the provisions of section 7453) be conducted subject to the rules of evidence, practice, and procedure applicable under section 7463 if the amount of employment taxes placed in dispute is \$50,000 or less for each calendar quarter involved.

(2) Finality of decisions

A decision entered in any proceeding conducted under this subsection shall not be reviewed in any other court and shall not be treated as a precedent for any other case not involving the same petitioner and the same determinations.

(3) Certain rules to apply

Rules similar to the rules of the last sentence of subsection (a), and subsections (c), (d), and (e), of section 7463 shall apply to proceedings conducted under this subsection.

(d) Special rules

(1) Restrictions on assessment and collection pending action, etc.

The principles of subsections (a), (b), (c), (d), and (f) of section 6213, section 6214(a), section 6215, section 6503(a), section 6512, and section 7481 shall apply to proceedings brought under this section in the same manner as if the Secretary's determination described in subsection (a) were a notice of deficiency.

(2) Awarding of costs and certain fees

Section 7430 shall apply to proceedings brought under this section.

(e) Employment tax

The term "employment tax" means any tax imposed by subtitle C.

(Added Pub. L. 105-34, title XIV, §1454(a), Aug. 5, 1997, 111 Stat. 1055; amended Pub. L. 105-206, title III, §3103(b)(1), July 22, 1998, 112 Stat. 731; Pub. L. 106-554, §1(a)(7) [title III, §314(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-643.)

Editorial Notes

REFERENCES IN TEXT

Section 530 of the Revenue Act of 1978, referred to in subsec. (a)(2), is section 530 of Pub. L. 95-600, which is set out as a note under section 3401 of this title.