

## § 301.7426-2

## 26 CFR Ch. I (4-1-10 Edition)

(d) Paragraphs (a)(4) and (b)(5) of this section apply to any request for a certificate of discharge made after January 31, 2008.

[T.D. 7305, 39 FR 9951, Mar. 15, 1974, as amended by T.D. 8541, 59 FR 26601, May 23, 1994; 73 FR 5744, Jan. 31, 2008]

### § 301.7426-2 Recovery of damages in certain cases.

(a) *In general.* In addition to remedies related to wrongful levy set forth in § 301.7426-1(b), if a district court of the United States finds in any action brought under section 7426 that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title, the United States shall be liable to the plaintiff for damages. The plaintiff has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of \$1,000,000 (\$100,000 in the case of negligence), or the sum of—

(1) Actual, direct economic damages as defined in § 301.7433-1(b) sustained as a proximate result of the reckless, intentional, or negligent actions of the officer or employee, reduced by the amount of any damages awarded under § 301.7426-1(b); and

(2) Costs of the action as defined in § 301.7433-1(c).

(b) *Administrative remedies must be exhausted.* The court may not award a judgment for damages under paragraph (a) of this section unless the court determines that the plaintiff has filed an administrative claim pursuant to paragraph (d) of this section, and has satisfied the requirements of paragraph (c) of this section.

(c) *No request for damages in a district court of the United States prior to filing an administrative claim.* (1) Except as provided in paragraph (c)(2) of this section, no request for damages under paragraph (a) of this section shall be maintained in any district court of the United States before the earlier of the following dates—

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

(ii) The date that is six months after the date an administrative claim is

filed in accordance with paragraph (d) of this section.

(2) If an administrative claim is filed in accordance with paragraph (d) of this section during the last six months of the period of limitations described in paragraph (f) of this section, the claimant may file an action in a district court of the United States any time after the administrative claim is filed and before the expiration of the period of limitations.

(d) *Procedures for an administrative claim—*(1) *Manner.* An administrative claim for the lesser of \$1,000,000 (\$100,000 in the case of negligence) or actual, direct economic damages as defined in § 301.7433-1(b) shall be sent in writing to the Area Director, Attn: Compliance Technical Support Manager of the area in which the taxpayer currently resides.

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

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

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the damages incurred by the claimant filing the claim (include copies of any available substantiating documentation or evidence);

(iv) 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 substantiating documentation or evidence); and

(v) The signature of the claimant or duly authorized representative.

(3) *Duly authorized representative.* For purposes of this paragraph (d), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the claimant 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 to the claimant.

(e) *No liability for damages for any sum in excess of the dollar amount sought in the administrative claim.* See §301.7433-1(f).

(f) *Period of limitations*—(1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in a district court of the United States 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 plaintiff has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(g) *Recovery of costs under section 7430.* See §301.7433-1(h).

(h) *Effective date.* This section is applicable March 25, 2003.

[T.D. 9050, 68 FR 14319, Mar. 25, 2003]

**§301.7429-1 Review of jeopardy and termination assessment and jeopardy levy procedures; information to taxpayer.**

Not later than 5 days after the day on which an assessment is made under section 6851(a), 6852(a), 6861(a), or 6862, or a levy is made under section 6331(a) without complying with the notice before levy provisions of section 6331(d), the district director shall provide the taxpayer a written statement setting forth the information upon which the district director relies in authorizing such assessment or levy.

[T.D. 8453, 57 FR 58985, Dec. 14, 1992]

**§301.7429-2 Review of jeopardy and termination assessment and jeopardy levy procedures.**

(a) *Request for administrative review.* Any request for the review of a jeopardy or termination assessment or jeopardy levy provided for by section 7429(a)(2) shall be filed with the district director within 30 days after the statement described in §301.7429-1 is given to the taxpayer. However, if no statement is given within the 5 day period described in §301.7429-1, any request for review of the jeopardy or termination assessment or jeopardy levy shall be filed within 35 days after the date such assessment or levy is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as

will enable the district director to make the redetermination described in section 7429(a)(3).

(b) *Administrative review.* In determining whether the assessment is reasonable and the amount assessed is appropriate, or whether the jeopardy levy is reasonable, the district director shall take into account not only information available at the time the assessment or jeopardy levy is made but also information which subsequently becomes available.

(c) *Abatement of assessment.* For rules relating to the abatement of assessments made under sections 6851 and 6861 see §§301.6861-1(e), 301.6861-1(f) and 1.6851-1(d) of this chapter.

[T.D. 8453, 57 FR 58985, Dec. 14, 1992]

**§301.7429-3 Review of jeopardy and termination assessment and jeopardy levy procedures; judicial action.**

(a) *Time for bringing judicial action.* An action for judicial review described in section 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of—

(1) The date the district director notifies the taxpayer of the determination described in section 7429(a)(3) and ending on the 90th day thereafter; or

(2) The 16th day after the request described in section 7429(a)(2) was made by the taxpayer and ending on the 90th day thereafter.

(b) *Extension of period for judicial review.* The United States Government may not by itself seek an extension of the 20 day period described in section 7429(b)(3), but it may join with the taxpayer in seeking such an extension.

(c) *Jurisdiction for determination.* In general, the United States district court will have exclusive jurisdiction over any civil action for a determination described in section 7429(b). However, if a petition for a redetermination of a deficiency has been timely filed with the Tax Court prior to the making of an assessment or levy that is subject to the section 7429 review procedures, and one or more of the taxes and tax periods before the Tax Court as a result of the petition is also included in the written statement that was provided to the taxpayer, then the