

(2) injunctive relief is appropriate to prevent future political expenditures,

the court may enjoin such organization from making political expenditures and may grant such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3).

### (c) Definitions

For purposes of this section, the terms “section 501(c)(3) organization” and “political expenditures” have the respective meanings given to such terms by section 4955.

(Added Pub. L. 100-203, title X, §10713(a)(1), Dec. 22, 1987, 101 Stat. 1330-468.)

#### PRIOR PROVISIONS

A prior section 7409 was renumbered section 7410 of this title.

### § 7410. Cross references

(1) For provisions for collecting taxes in general, see chapter 64.

(2) For venue in a civil action for the collection of any tax, see section 1396 of Title 28 of the United States Code.

(3) For venue of a proceeding for the recovery of any fine, penalty, or forfeiture, see section 1395 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 875, §7407; renumbered §7408, Pub. L. 94-455, title XII, §1203(g), Oct. 4, 1976, 90 Stat. 1693; renumbered §7409, Pub. L. 97-248, title III, §321(a), Sept. 3, 1982, 96 Stat. 612; renumbered §7410, Pub. L. 100-203, title X, §10713(a)(1), Dec. 22, 1987, 101 Stat. 1330-468.)

### Subchapter B—Proceedings by Taxpayers and Third Parties

Sec.	
7421.	Prohibition of suits to restrain assessment or collection.
7422.	Civil actions for refund.
7423.	Repayments to officers or employees.
7424.	Intervention.
7425.	Discharge of liens.
7426.	Civil actions by persons other than taxpayers.
7427.	Tax return preparers.
7428.	Declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.
7429.	Review of jeopardy levy or assessment procedures.
7430.	Awarding of costs and certain fees.
7431.	Civil damages for unauthorized inspection or disclosure of returns and return information.
7432.	Civil damages for failure to release lien.
7433.	Civil damages for certain unauthorized collection actions.
7433A.	Civil damages for certain unauthorized collection actions by persons performing services under qualified tax collection contracts.
7434.	Civil damages for fraudulent filing of information returns.
7435.	Civil damages for unauthorized enticement of information disclosure.
7436.	Proceedings for determination of employment status.
7437.	Cross references.

#### AMENDMENTS

2007—Pub. L. 110-28, title VIII, §8246(a)(2)(J)(ii), May 25, 2007, 121 Stat. 202, substituted “Tax return preparers” for “Income tax return preparers” in item 7427.

2004—Pub. L. 108-357, title VIII, §881(b)(2), Oct. 22, 2004, 118 Stat. 1626, added item 7433A.

1997—Pub. L. 105-35, §3(d)(5), Aug. 5, 1997, 111 Stat. 1106, inserted “inspection or” before “disclosure” in item 7431.

Pub. L. 105-34, title XIV, §1454(b)(4), Aug. 5, 1997, 111 Stat. 1057, added items 7436 and 7437 and struck out former item 7436 “Cross references”.

1996—Pub. L. 104-168, title VI, §601(b), title XII, §1203(b), July 30, 1996, 110 Stat. 1462, 1471, added items 7434 and 7435 and redesignated former item 7434 as 7436.

1988—Pub. L. 100-647, title VI, §§6237(e)(4), 6239(c), 6240(b), 6241(c), Nov. 10, 1988, 102 Stat. 3743, 3746-3748, inserted “levy or” after “jeopardy” in item 7429, struck out “court” after “Awarding of” in item 7430, added items 7432 and 7433, and redesignated former item 7432 as 7434.

1982—Pub. L. 97-248, title II, §292(d)(1), title III, §357(b)(3), Sept. 3, 1982, 96 Stat. 574, 646, added items 7430 and 7431 and redesignated former item 7430 as 7436.

1976—Pub. L. 94-455, title XII, §§1203(b)(2)(B), 1204(c)(13), title XIII, §1306(b)(6), Oct. 4, 1976, 90 Stat. 1690, 1699, 1719, added items 7427 to 7429 and redesignated former item 7427 as 7430.

1966—Pub. L. 89-719, title I, §110(d)(1), (2), Nov. 2, 1966, 80 Stat. 1145, inserted “and Third Parties” in subchapter heading, substituted “Intervention” for “Civil action to clear title to property” in item 7424, added items 7425 and 7426, and redesignated former item 7425 as 7427.

### § 7421. Prohibition of suits to restrain assessment or collection

#### (a) Tax

Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

#### (b) Liability of transferee or fiduciary

No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code<sup>1</sup> in respect of any such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Pub. L. 89-719, title I, §110(c), Nov. 2, 1966, 80 Stat. 1144; Pub. L. 94-455, title XII, §1204(c)(11), Oct. 4, 1976, 90 Stat. 1699; Pub. L. 95-628, §9(b)(1), Nov. 10, 1978, 92 Stat. 3633; Pub. L. 97-258, §3(f)(13), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 105-34, title XII, §§1222(b)(1), 1239(e)(3), title XIV, §1454(b)(2), Aug. 5, 1997, 111 Stat. 1019, 1028, 1057; Pub. L. 105-206, title III, §3201(e)(3), July 22, 1998, 112 Stat. 740; Pub. L. 105-277, div. J, title IV, §4002(c)(1), (f), Oct. 21, 1998, 112 Stat. 2681-906, 2681-907; Pub. L. 106-554, §1(a)(7) [title III, §§313(b)(2)(B), 319(24)], Dec. 21, 2000, 114 Stat. 2763, 2763A-642, 2763A-647.)

#### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554 inserted “6330(e)(1),” after “6246(b),” and substituted “6672(c)” for “6672(b)”.

<sup>1</sup> So in original. Probably should be followed by a comma.

1998—Subsec. (a). Pub. L. 105-277 substituted “6015(e)” for “6015(d)” and inserted “6331(i),” after “6246(b).”

Pub. L. 105-206 inserted “6015(d),” after “sections”.

1997—Subsec. (a). Pub. L. 105-34, §1454(b)(2), substituted “7429(b), and 7436” for “and 7429(b)”.

Pub. L. 105-34, §1239(e)(3), inserted “6225(b),” after “6213(a).”

Pub. L. 105-34, §1222(b)(1), inserted “6246(b),” after “6213(a).”

1982—Subsec. (b)(2). Pub. L. 97-258 substituted “section 3713(b) of title 31, United States Code” for “section 3467 of the Revised Statutes (31 U.S.C. 192)”.

1978—Subsec. (a). Pub. L. 95-628 inserted references to sections 6672(b) and 6694(c).

1976—Subsec. (a). Pub. L. 94-455 substituted “7426(a) and (b)(1), and 7429(b)” for “and 7426(a) and (b)(1)”.

1966—Subsec. (a). Pub. L. 89-719 inserted reference to section 7426(a), (b)(1), and “by any person, whether or not such person is the person against whom such tax was assessed”.

#### EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, to which such amendment relates, see section 4002(k) of Pub. L. 105-277, set out as a note under section 1 of this title.

Amendment by Pub. L. 105-206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105-206, set out as a note under section 6015 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1222(b)(1) of Pub. L. 105-34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105-34, as amended, set out as a note under section 6011 of this title.

Amendment by section 1239(e)(3) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105-34, set out as a note under section 6225 of this title.

Amendment by section 1454(b)(2) of Pub. L. 105-34, effective Aug. 5, 1997, see section 1454(c) of Pub. L. 105-34, set out as a note under section 6511 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-628 applicable with respect to penalties assessed more than 60 days after Nov. 10, 1978, see section 9(c) of Pub. L. 95-628, set out as a note under section 6672 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 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.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)-(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

#### PROHIBITION ON REQUESTS TO TAXPAYERS TO GIVE UP RIGHTS TO BRING ACTIONS

Pub. L. 105-206, title III, §3468, July 22, 1998, 112 Stat. 770, provided that:

“(a) PROHIBITION.—No officer or employee of the United States may request a taxpayer to waive the taxpayer’s right to bring a civil action against the United States or any officer or employee of the United States for any action taken in connection with the internal revenue laws.

“(b) EXCEPTIONS.—Subsection (a) shall not apply in any case where—

“(1) a taxpayer waives the right described in subsection (a) knowingly and voluntarily; or

“(2) the request by the officer or employee is made in person and the taxpayer’s attorney or other federally authorized tax practitioner (within the meaning of section 7525(a)(3)(A) of the Internal Revenue Code of 1986) is present, or the request is made in writing to the taxpayer’s attorney or other representative.”

### § 7422. Civil actions for refund

#### (a) No suit prior to filing claim for refund

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

#### (b) Protest or duress

Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

#### (c) Suits against collection officer a bar

A suit against any officer or employee of the United States (or former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court.

#### (d) Credit treated as payment

The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.

#### (e) Stay of proceedings

If the Secretary prior to the hearing of a suit brought by a taxpayer in a district court or the United States Court of Federal Claims for the recovery of any income tax, estate tax, gift tax, or tax imposed by chapter 41, 42, 43, or 44 (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer’s suit, the proceedings in taxpayer’s suit shall be stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter. If the taxpayer files a petition with the Tax Court, the district court or the United States Court of Federal Claims, as the case may be, shall lose jurisdiction of taxpayer’s suit to whatever extent jurisdiction is acquired by the

Tax Court of the subject matter of taxpayer's suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer's suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwithstanding that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issues raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by a taxpayer which, prior to the date of enactment of this title, is commenced, instituted, or pending in a district court or the United States Court of Federal Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes).

**(f) Limitation on right of action for refund**

**(1) General rule**

A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative. Such suit or proceeding may be maintained against the United States notwithstanding the provisions of section 2502 of title 28 of the United States Code (relating to aliens' privilege to sue) and notwithstanding the provisions of section 1502 of such title 28 (relating to certain treaty cases).

**(2) Misjoinder and change of venue**

If a suit or proceeding brought in a United States district court against an officer or employee of the United States (or former officer or employee) or his personal representative is improperly brought solely by virtue of paragraph (1), the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action commenced, upon proper service of process on the United States. Such suit or proceeding shall upon request by the United States be transferred to the district or division where it should have been brought if such action initially had been brought against the United States.

**(g) Special rules for certain excise taxes imposed by chapter 42 or 43**

**(1) Right to bring actions**

**(A) In general**

With respect to any taxable event, payment of the full amount of the first tier tax shall constitute sufficient payment in order to maintain an action under this section with respect to the second tier tax.

**(B) Definitions**

For purposes of subparagraph (A), the terms "taxable event", "first tier tax", and "second tier tax" have the respective meanings given to such terms by section 4963.

**(2) Limitation on suit for refund**

No suit may be maintained under this section for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, unless no other suit has been maintained for credit or refund of, and no petition has been filed in the Tax Court with respect to a deficiency in, any other tax imposed by such sections with respect to such act (or failure to act).

**(3) Final determination of issues**

For purposes of this section, any suit for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, shall constitute a suit to determine all questions with respect to any other tax imposed with respect to such act (or failure to act) under such sections, and failure by the parties to such suit to bring any such question before the Court shall constitute a bar to such question.

**(h) Special rule for actions with respect to partnership items**

No action may be brought for a refund attributable to partnership items (as defined in section 6231(a)(3)) except as provided in section 6228(b) or section 6230(c).

**(i) Special rule for actions with respect to tax shelter promoter and understatement penalties**

No action or proceeding may be brought in the United States Court of Federal Claims for any refund or credit of a penalty imposed by section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability).

**(j) Special rule for actions with respect to estates for which an election under section 6166 is made**

**(1) In general**

The district courts of the United States and the United States Court of Federal Claims shall not fail to have jurisdiction over any action brought by the representative of an estate to which this subsection applies to determine the correct amount of the estate tax liability of such estate (or for any refund with respect thereto) solely because the full amount of such liability has not been paid by reason of an election under section 6166 with respect to such estate.

**(2) Estates to which subsection applies**

This subsection shall apply to any estate if, as of the date the action is filed—

(A) no portion of the installments payable under section 6166 have been accelerated;

(B) all such installments the due date for which is on or before the date the action is filed have been paid;

(C) there is no case pending in the Tax Court with respect to the tax imposed by section 2001 on the estate and, if a notice of

deficiency under section 6212 with respect to such tax has been issued, the time for filing a petition with the Tax Court with respect to such notice has expired; and

(D) no proceeding for declaratory judgment under section 7479 is pending.

**(3) Prohibition on collection of disallowed liability**

If the court redetermines under paragraph (1) the estate tax liability of an estate, no part of such liability which is disallowed by a decision of such court which has become final may be collected by the Secretary, and amounts paid in excess of the installments determined by the court as currently due and payable shall be refunded.

**(k) Cross references**

(1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund) and chapter 66 (relating to limitations).

(2) For duty of United States attorneys to defend suits, see section 507 of Title 28 of the United States Code.

(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.

(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Pub. L. 85-866, title I, §78, Sept. 2, 1958, 72 Stat. 1662; Pub. L. 89-713, §3(a), Nov. 2, 1966, 80 Stat. 1108; Pub. L. 91-172, title I, §101(i), (j)(56), Dec. 30, 1969, 83 Stat. 525, 532; Pub. L. 92-178, title III, §309(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 93-406, title II, §1016(a)(26), Sept. 2, 1974, 88 Stat. 931; Pub. L. 94-455, title XIII, §1307(d)(2)(F)(viii), title XVI, §1605(b)(11), title XIX, §1906(a)(44), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1728, 1755, 1830, 1834; Pub. L. 96-222, title I, §108(b)(1)(D)-(F), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96-223, title I, §101(f)(1)(J), Apr. 2, 1980, 94 Stat. 252; Pub. L. 96-596, §2(c)(2), Dec. 24, 1980, 94 Stat. 3474; Pub. L. 97-164, title I, §151, Apr. 2, 1982, 96 Stat. 46; Pub. L. 97-248, title IV, §402(c)(11), Sept. 3, 1982, 96 Stat. 668; Pub. L. 98-369, div. A, title VII, §714(g)(1), (p)(2)(H), July 18, 1984, 98 Stat. 961, 965; Pub. L. 99-514, title XVIII, §1899A(58), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 100-203, title X, §10712(c)(5), Dec. 22, 1987, 101 Stat. 1330-467; Pub. L. 100-418, title I, §1941(b)(2)(B)(x), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-168, title XIII, §1311(c)(4), July 30, 1996, 110 Stat. 1478; Pub. L. 105-206, title III, §3104(a), July 22, 1998, 112 Stat. 731.)

REFERENCES IN TEXT

The date of enactment of this title, referred to in subsec. (e), is Aug. 16, 1954.

AMENDMENTS

1998—Subsecs. (j), (k). Pub. L. 105-206 added subsec. (j) and redesignated former subsec. (j) as (k).

1996—Subsec. (g)(2), (3). Pub. L. 104-168 inserted “4958,” after “4955.”

1992—Subsecs. (e), (i). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court” wherever appearing.

1988—Subsec. (e). Pub. L. 100-418 substituted “or 44” for “44, or 45”.

1987—Subsec. (g)(2), (3). Pub. L. 100-203 inserted “4955,” after “4952.”

1986—Subsec. (g)(1)(B). Pub. L. 99-514 substituted “section 4963” for “section 4962”.

1984—Subsec. (h). Pub. L. 98-369, §714(p)(2)(H), substituted “section 6231(a)(3)” for “section 6131(a)(3)”.

Subsecs. (i), (j). Pub. L. 98-369, §714(g)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

1982—Subsec. (e). Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims” wherever appearing.

Subsecs. (h), (i). Pub. L. 97-248 added subsec. (h) and redesignated former subsec. (h) as (i).

1980—Subsec. (e). Pub. L. 96-223 inserted reference to chapter 45.

Subsec. (g). Pub. L. 96-596 substituted in par. (1) provision authorizing, with respect to any taxable event, payment of the full amount of the first tier tax as constituting sufficient payment in order to maintain an action under this section with respect to the second tier tax and defining the terms “taxable event”, “first tier tax”, and “second tier tax” as having the respective meanings given to such terms by section 4962 of this title for provision authorizing, with respect to any act or failure to act giving rise to liability under sections 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975 of this title, payment of the full amount of tax imposed under specified subsections of those sections as constituting sufficient payment in order to maintain an action under this section with respect to such act or failure to act.

Pub. L. 96-222 substituted in pars. (1) to (3) “4944, 4945, 4951, 4952” for “4944, 4945” and in par. (1) “section 4945(a) (relating to initial taxes on taxable expenditures), section 4951(a) (relating to initial taxes on self dealing), 4952(a) (relating to initial taxes on taxable expenditures)” for “section 4945(a) (relating to initial taxes on taxable expenditures)” and “section 4945(b) (relating to additional taxes on taxable expenditures), section 4951(b) (relating to additional taxes on self-dealing), 4952(b) (relating to additional taxes on taxable expenditures)” for “section 4945(b) (relating to additional taxes on taxable expenditures)”.

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c). Pub. L. 94-455, §1906(a)(44), struck out “instituted after June 15, 1942,” after “res judicata in all suits” and “where the petition to the Tax Court was filed after such date” after “decisions of the Tax Court”.

Subsec. (e). Pub. L. 94-455, §§1307(d)(2)(F)(viii), 1605(b)(11), 1906(b)(13)(A), struck out “or his delegate” after “Secretary” and substituted “chapter 41, 42,” for “chapter 42” and “43, or 44” for “or 43”.

1974—Subsec. (e). Pub. L. 93-406, §1016(a)(26)(A), substituted “chapter 42 or 43” for “chapter 42”.

Subsec. (g). Pub. L. 93-406, §1016(a)(26)(B)-(F), substituted “chapter 42 or 43” for “chapter 42” in heading, substituted “4945, 4971, or 4975” for “or 4945”, “section 4945(a) (relating to initial taxes on taxable expenditures), 4971(a) (relating to initial tax on failure to meet minimum funding standard), 4975(a) (relating to initial tax on prohibited transactions)” for “section 4945(a) (relating to initial taxes on taxable expenditures)”, and “section 4945(b) (relating to additional taxes on taxable expenditures), section 4971(b) (relating to additional tax on failure to meet minimum funding standard), or section 4975(b) (relating to additional tax on prohibited transactions)” for “or section 4945(b) (relating to additional taxes on taxable expenditures)” in par. (1), and substituted “4945, 4971, or 4975” for “or 4945” in pars. (2) and (3).

1971—Subsec. (f)(1). Pub. L. 92-178 authorized maintenance of suit or proceeding against the United States notwithstanding provisions of section 1502 of Title 28 (relating to certain treaty cases).

1969—Subsec. (e). Pub. L. 91-172, §101(j)(56), inserted reference to chapter 42 taxes.

Subsecs. (g), (h). Pub. L. 91-172, §101(i), added subsec. (g) and redesignated former subsec. (g) as (h).

1966—Subsecs. (f), (g). Pub. L. 89-713 added subsec. (f) and redesignated former subsec. (f) as (g).

1958—Subsec. (f)(2). Pub. L. 85-866 struck out “district” before “attorneys”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3104(c), July 22, 1998, 112 Stat. 732, provided that: “The amendments made by this section [amending this section and section 7479 of this title] shall apply to any claim for refund filed after the date of the enactment of this Act [July 22, 1998].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995 and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104-168, set out as a note under section 4955 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as a note under section 164 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 714(g)(1) of Pub. L. 98-369 applicable to any claim for refund or credit filed after July 18, 1984, see section 714(g)(4) of Pub. L. 98-369, set out as an Effective Date note under section 1509 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 714(p)(2)(H) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

Amendment by Pub. L. 96-222 effective as if included in the provisions of the Black Lung Benefits Revenue

Act of 1977, Pub. L. 95-227, see section 108(b)(4) of Pub. L. 96-222, set out as a note under section 192 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(d)(2)(F)(viii) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94-455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(11) of Pub. L. 94-455, see section 1608(d) of Pub. L. 94-455, set out as a note under section 856 of this title.

Amendment by section 1906(a)(44), (b)(13)(A) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, and in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Section 309(b) of Pub. L. 92-178 provided that: “The amendment made by subsection (a) [amending this section] shall apply to suits or proceedings which are instituted after January 30, 1967.”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Section 3(d) of Pub. L. 89-713 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 2502 of Title 28, Judiciary and Judicial Procedure] shall apply to suits brought against officers, employees, or personal representatives referred to therein which are instituted 90 days or more after the date of the enactment of this Act [Nov. 2, 1966]. The amendment made by subsection (c) [amending section 7482 of this title] shall apply to all decisions of the Tax Court entered after the date of enactment of this Act.”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 as effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85-866, set out as a note under section 165 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [ §§1101-1147 and 1171-1177] or title XVIII [ §§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 7423. Repayments to officers or employees

The Secretary, subject to regulations prescribed by the Secretary, is authorized to repay—

#### (1) Collections recovered

To any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court,

for any internal revenue taxes collected by him, with the cost and expense of suit; also

**(2) Damages and costs**

All damages and costs recovered against any officer or employee of the United States in any suit brought against him by reason of anything done in the due performance of his official duty under this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 877; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” in provisions preceding par. (1).

**§ 7424. Intervention**

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

(Aug. 16, 1954, ch. 736, 68A Stat. 877; Pub. L. 89-719, title I, §108, Nov. 2, 1966, 80 Stat. 1140.)

AMENDMENTS

1966—Pub. L. 89-719 substituted “Intervention” for “Civil action to clear title to property” in section catchline and substituted provisions, set out in a single paragraph, granting the government authority to intervene in a court proceeding to assert any lien arising under this title on property which is the subject of a civil action or suit to which the government is not a party with the same procedural rules to apply as where the government is initially joined properly as a party and with the proceedings to have no effect on the government’s lien if the application to intervene is denied, for provisions, formerly set out in three subsections, setting out a procedure by which a person having a lien upon or interest in property referred to in section 7403 could file a civil action to clear title to the property and obtain an adjudication of the matter involved in the same manner as in the case of a civil action filed under section 7403.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, with certain exceptions, see section 114(a) to (c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

CIVIL ACTIONS TO CLEAR TITLE TO PROPERTY  
COMMENCED BEFORE NOV. 2, 1966

Section 114(d) of Pub. L. 89-719 provided that civil actions commenced before Nov. 2, 1966, to clear title to property pursuant to this section as in effect before Nov. 2, 1966, were to be determined in accord with this section as in effect before Nov. 2, 1966.

**§ 7425. Discharge of liens**

**(a) Judicial proceedings**

If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

**(b) Other sales**

Notwithstanding subsection (a) sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1); or

(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

(B) the law makes no provision for such filing, or

(C) notice of such sale is given in the manner prescribed in subsection (c)(1).

**(c) Special rules**

**(1) Notice of sale**

Notice of a sale to which subsection (b) applies shall be given (in accordance with regula-

tions prescribed by the Secretary) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary.

**(2) Consent to sale**

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

**(3) Sale of perishable goods**

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary) in writing, by registered or certified mail or by personal service, to the Secretary before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

**(4) Forfeitures of land sales contracts**

For purposes of subsection (b), a sale of property includes any forfeiture of a land sales contract.

**(d) Redemption by United States**

**(1) Right to redeem**

In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

**(2) Amount to be paid**

In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

**(3) Certificate of redemption**

**(A) In general**

In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary shall execute a certificate of redemption therefor.

**(B) Filing**

The Secretary shall, without delay, cause such documents or certificate to be duly re-

corded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

**(C) Effect**

A certificate of redemption executed by the Secretary shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property.

(Added Pub. L. 89-719, title I, §109, Nov. 2, 1966, 80 Stat. 1141; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title XV, §1572(a), Oct. 22, 1986, 100 Stat. 2765.)

PRIOR PROVISIONS

A prior section 7425 was renumbered 7434 of this title.

AMENDMENTS

1986—Subsec. (c)(4), Pub. L. 99-514 added par. (4).  
1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1572(b) of Pub. L. 99-514 provided that: “The amendment made by subsection (a) [amending this section] shall apply to forfeitures after the 30th day after the date of the enactment of this Act [Oct. 22, 1986].”

EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)-(c) of Pub. L. 89-719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

**§ 7426. Civil actions by persons other than taxpayers**

**(a) Actions permitted**

**(1) Wrongful levy**

If a levy has been made on property or property has been sold pursuant to a levy, and any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary.

**(2) Surplus proceed**

If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action

against the United States in a district court of the United States.

**(3) Substituted sale proceeds**

If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

**(4) Substitution of value**

If a certificate of discharge is issued to any person under section 6325(b)(4) with respect to any property, such person may, within 120 days after the day on which such certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary. No other action may be brought by such person for such a determination.

**(b) Adjudication**

The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

**(1) Injunction**

If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

**(2) Recovery of property**

If the court determines that such property has been wrongfully levied upon, the court may—

- (A) order the return of specific property if the United States is in possession of such property;
- (B) grant a judgment for the amount of money levied upon; or
- (C) if such property was sold, grant a judgment for an amount not exceeding the greater of—
  - (i) the amount received by the United States from the sale of such property, or
  - (ii) the fair market value of such property immediately before the levy.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

**(3) Surplus proceeds**

If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

**(4) Substituted sale proceeds**

If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

**(5) Substitution of value**

If the court determines that the Secretary's determination of the value of the interest of the United States in the property for purposes of section 6325(b)(4) exceeds the actual value of such interest, the court shall grant a judgment ordering a refund of the amount deposited, and a release of the bond, to the extent that the aggregate of the amounts thereof exceeds such value determined by the court.

**(c) Validity of assessment**

For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

**(d) Limitation on rights of action**

No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

**(e) Substitution of United States as party**

If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

**(f) Provision inapplicable**

The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

**(g) Interest**

Interest shall be allowed at the overpayment rate established under section 6621—

- (1) In the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary receives the money wrongfully levied upon to the date of payment of such judgment;
- (2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment; and
- (3) in the case of a judgment pursuant to subsection (b)(5) which orders a refund of any amount, from the date the Secretary received such amount to the date of payment of such judgment.

**(h) Recovery of damages permitted in certain cases**

**(1) In general**

Notwithstanding subsection (b), if, in any action brought under this section, there is a

finding 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 defendant shall be liable to the plaintiff in an amount equal to the lesser of \$1,000,000 (\$100,000 in the case of negligence) or the sum of—

(A) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent disregard of any provision of this title by the officer or employee (reduced by any amount of such damages awarded under subsection (b)); and

(B) the costs of the action.

**(2) Requirement that administrative remedies be exhausted; mitigation; period**

The rules of section 7433(d) shall apply for purposes of this subsection.

**(3) Payment authority**

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

**(i) Cross reference**

**For period of limitation, see section 6532(c).**

(Added Pub. L. 89-719, title I, §110(a), Nov. 2, 1966, 80 Stat. 1142; amended Pub. L. 93-625, §7(a)(2)(E), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-248, title III, §350(a), Sept. 3, 1982, 96 Stat. 639; Pub. L. 99-514, title XV, §1511(c)(16), Oct. 22, 1986, 100 Stat. 2745; Pub. L. 105-206, title III, §§3102(b), 3106(b)(1), (2), July 22, 1998, 112 Stat. 730, 733.)

AMENDMENTS

1998—Subsec. (a)(4). Pub. L. 105-206, §3106(b)(1), added par. (4).

Subsec. (b)(5). Pub. L. 105-206, §3106(b)(2)(A), added par. (5).

Subsec. (g)(3). Pub. L. 105-206, §3106(b)(2)(B), added par. (3).

Subsecs. (h), (i). Pub. L. 105-206, §3102(b), added subsec. (h) and redesignated former subsec. (h) as (i).

1986—Subsec. (g). Pub. L. 99-514 substituted “the overpayment rate established under section 6621” for “an annual rate established under section 6621”.

1982—Subsec. (b)(2)(C). Pub. L. 97-248 inserted “if such property was sold,” before “grant a judgment” and “the greater of—” after “not exceeding”, redesignated remaining provisions as cl. (i), and added cl. (ii).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1975—Subsec. (g). Pub. L. 93-625 substituted “an annual rate established under section 6621” for “the rate of 6 percent per annum”.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3102(d), July 22, 1998, 112 Stat. 731, provided that: “The amendments made by this section [amending this section and section 7433 of this title] shall apply to actions of officers or employees of the Internal Revenue Service after the date of the enactment of this Act [July 22, 1998].”

Amendment by section 3106(b)(1), (2) of Pub. L. 105-206 effective July 22, 1998, see section 3106(c) of Pub. L. 105-206, set out as a note under section 6325 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable for purposes of determining interest for periods after Dec. 31, 1986,

see section 1511(d) of Pub. L. 99-514, set out as a note under section 47 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 350(b) of Pub. L. 97-248 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to levies made after December 31, 1982.”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93-625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which section would impair a priority held by any person other than United States holding a lien or interest prior to Nov. 2, 1966, operate to increase liability of such person, or shorten time of bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)-(c) of Pub. L. 89-719, set out as Effective Date of 1966 Amendments note under section 6323 of this title.

**§ 7427. Tax return preparers**

In any proceeding involving the issue of whether or not a tax return preparer has willfully attempted in any manner to understate the liability for tax (within the meaning of section 6694(b)), the burden of proof in respect to such issue shall be upon the Secretary.

(Added Pub. L. 94-455, title XII, §1203(b)(2)(A), Oct. 4, 1976, 90 Stat. 1690; amended Pub. L. 110-28, title VIII, §8246(a)(2)(J)(i), May 25, 2007, 121 Stat. 202.)

PRIOR PROVISIONS

A prior section 7427 was renumbered 7437 of this title.

AMENDMENTS

2007—Pub. L. 110-28 substituted “Tax return preparers” for “Income tax return preparers” in section catchline and “a tax return preparer” for “an income tax return preparer” in text.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110-28, set out as a note under section 6060 of this title.

**§ 7428. Declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.**

**(a) Creation of remedy**

In a case of actual controversy involving—

(1) a determination by the Secretary—

(A) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) or as an organization described in section 170(c)(2),

(B) with respect to the initial classification or continuing classification of an organiza-

nization as a private foundation (as defined in section 509(a)),

(C) with respect to the initial classification or continuing classification of an organization as a private operating foundation (as defined in section 4942(j)(3)), or

(D) with respect to the initial classification or continuing classification of a cooperative as an organization described in section 521(b) which is exempt from tax under section 521(a), or

(2) a failure by the Secretary to make a determination with respect to an issue referred to in paragraph (1),

upon the filing of an appropriate pleading, the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification or with respect to such initial classification or continuing classification. Any such declaration shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification.

**(b) Limitations**

**(1) Petitioner**

A pleading may be filed under this section only by the organization the qualification or classification of which is at issue.

**(2) Exhaustion of administrative remedies**

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service. An organization requesting the determination of an issue referred to in subsection (a)(1) shall be deemed to have exhausted its administrative remedies with respect to a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination.

**(3) Time for bringing action**

If the Secretary sends by certified or registered mail notice of his determination with respect to an issue referred to in subsection (a)(1) to the organization referred to in paragraph (1), no proceeding may be initiated under this section by such organization unless the pleading is filed before the 91st day after the date of such mailing.

**(4) Nonapplication for certain revocations**

No action may be brought under this section with respect to any revocation of status described in section 6033(j)(1).

**(c) Validation of certain contributions made during pendency of proceedings**

**(1) In general**

If—

(A) the issue referred to in subsection (a)(1) involves the revocation of a determination that the organization is described in section 170(c)(2),

(B) a proceeding under this section is initiated within the time provided by subsection (b)(3), and

(C) either—

(i) a decision of the Tax Court has become final (within the meaning of section 7481), or

(ii) a judgment of the district court of the United States for the District of Columbia has been entered, or

(iii) a judgment of the Court of Federal Claims, has been entered,

and such decision or judgment, as the case may be, determines that the organization was not described in section 170(c)(2),

then, notwithstanding such decision or judgment, such organization shall be treated as having been described in section 170(c)(2) for purposes of section 170 for the period beginning on the date on which the notice of the revocation was published and ending on the date on which the court first determined in such proceeding that the organization was not described in section 170(c)(2).

**(2) Limitation**

Paragraph (1) shall apply only—

(A) with respect to individuals, and only to the extent that the aggregate of the contributions made by any individual to or for the use of the organization during the period specified in paragraph (1) does not exceed \$1,000 (for this purpose treating a husband and wife as one contributor), and

(B) with respect to organizations described in section 170(c)(2) which are exempt from tax under section 501(a) (for this purpose excluding any such organization with respect to which there is pending a proceeding to revoke the determination under section 170(c)(2)).

**(3) Exception**

This subsection shall not apply to any individual who was responsible, in whole or in part, for the activities (or failures to act) on the part of the organization which were the basis for the revocation.

**(d) Subpoena power for district court for District of Columbia**

In any action brought under this section in the district court of the United States for the District of Columbia, a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States.

(Added Pub. L. 94-455, title XIII, § 1306(a), Oct. 4, 1976, 90 Stat. 1717; amended Pub. L. 95-600, title VII, § 701(dd)(2), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 97-164, title I, § 152, Apr. 2, 1982, 96 Stat. 46; Pub. L. 98-369, div. A, title X, § 1033(b), July 18, 1984, 98 Stat. 1039; Pub. L. 102-572, title IX, § 902(b),

Oct. 29, 1992, 106 Stat. 4516; Pub. L. 108-357, title III, § 317(a), Oct. 22, 2004, 118 Stat. 1470; Pub. L. 109-280, title XII, § 1223(c), Aug. 17, 2006, 120 Stat. 1091.)

#### PRIOR PROVISIONS

A prior section 7428 was renumbered 7437 of this title.

#### AMENDMENTS

2006—Subsec. (b)(4). Pub. L. 109-280, which directed addition of par. (4) at the end of section 7428(b), without specifying the act to be amended, was executed by making the addition at the end of subsec. (b) of this section, which is section 7428 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2004—Subsec. (a)(1)(D). Pub. L. 108-357 added subpar. (D).

1992—Subsec. (a). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court” and “Court of Federal Claims” for “Claims Court” in concluding provisions.

Subsecs. (b)(2), (c)(1)(C)(iii). Pub. L. 102-572, § 902(b)(2), substituted “Court of Federal Claims” for “Claims Court”.

1984—Subsec. (d). Pub. L. 98-369 added subsec. (d).

1982—Subsecs. (a), (b)(2), (c)(1)(C)(iii). Pub. L. 97-164 substituted “Claims Court” for “Court of Claims”.

1978—Subsec. (a). Pub. L. 95-600 inserted provision relating to change in qualification or classification.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to notices and returns with respect to annual periods beginning after 2006, see section 1223(f) of Pub. L. 109-280, set out as a note under section 6033 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title III, § 317(b), Oct. 22, 2004, 118 Stat. 1470, provided that: “The amendments made by this section [amending this section] shall apply with respect to pleadings filed after the date of the enactment of this Act [Oct. 22, 2004].”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to inquiries and examinations beginning after Dec. 31, 1984, see section 1033(d) of Pub. L. 98-369, set out as an Effective Date note under section 7611 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective as if included in this section at the time section was added to this title, see section 701(dd)(3) of Pub. L. 95-600, set out as a note under section 7476 of this title.

#### EFFECTIVE DATE

Section 1306(c) of Pub. L. 94-455 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 ac-

tion 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 ju-

dicial 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.)

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.

#### 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

Section 6237(f) of Pub. L. 100-647 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

Section 446(b) of Pub. L. 98-369 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 1992” in subparagraph (B) 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 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 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 the attorneys’ fees paid or incurred if such fees are less than the reasonable attorneys’ fees because an individual is representing the prevailing party for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. This subparagraph shall apply only if such award is paid to such individual or such individual’s employer.

**(4) Prevailing party**

**(A) In general**

The term “prevailing party” means any party in any proceeding to which subsection (a) applies (other than the United States or any creditor of the taxpayer involved)—

(i) which—

(I) has substantially prevailed with respect to the amount in controversy, or

(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

(ii) which meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) except to the extent differing procedures are established by rule of court and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect).

**(B) Exception if United States establishes that its position was substantially justified**

**(i) General rule**

A party shall not be treated as the prevailing party in a proceeding to which subsection (a) applies if the United States establishes that the position of the United States in the proceeding was substantially justified.

**(ii) Presumption of no justification if Internal Revenue Service did not follow certain published guidance**

For purposes of clause (i), the position of the United States shall be presumed not to be substantially justified if the Internal Revenue Service did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

**(iii) Effect of losing on substantially similar issues**

In determining for purposes of clause (i) whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in courts of appeal for other circuits on substantially similar issues.

**(iv) Applicable published guidance**

For purposes of clause (ii), the term “applicable published guidance” means—

(I) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

(II) any of the following which are issued to the taxpayer: private letter rulings, technical advice memoranda, and determination letters.

**(C) Determination as to prevailing party**

Any determination under this paragraph as to whether a party is a prevailing party shall be made by agreement of the parties or—

(i) in the case where the final determination with respect to the tax, interest, or penalty is made at the administrative level, by the Internal Revenue Service, or

(ii) in the case where such final determination is made by a court, the court.

**(D) Special rules for applying net worth requirement**

In applying the requirements of section 2412(d)(2)(B) of title 28, United States Code,

for purposes of subparagraph (A)(ii) of this paragraph—

(i) the net worth limitation in clause (i) of such section shall apply to—

- (I) an estate but shall be determined as of the date of the decedent's death, and
- (II) a trust but shall be determined as of the last day of the taxable year involved in the proceeding, and

(ii) individuals filing a joint return shall be treated as separate individuals for purposes of clause (i) of such section.

**(E) Special rules where judgment less than taxpayer's offer**

**(i) In general**

A party to a court proceeding meeting the requirements of subparagraph (A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding (determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted a qualified offer of the party under subsection (g).

**(ii) Exceptions**

This subparagraph shall not apply to—

- (I) any judgment issued pursuant to a settlement; or
- (II) any proceeding in which the amount of tax liability is not in issue, including any declaratory judgment proceeding, any proceeding to enforce or quash any summons issued pursuant to this title, and any action to restrain disclosure under section 6110(f).

**(iii) Special rules**

If this subparagraph applies to any court proceeding—

- (I) the determination under clause (i) shall be made by reference to the last qualified offer made with respect to the tax liability at issue in the proceeding; and
- (II) reasonable administrative and litigation costs shall only include costs incurred on and after the date of such offer.

**(iv) Coordination**

This subparagraph shall not apply to a party which is a prevailing party under any other provision of this paragraph.

**(5) Administrative proceedings**

The term “administrative proceeding” means any procedure or other action before the Internal Revenue Service.

**(6) Court proceedings**

The term “court proceeding” means any civil action brought in a court of the United States (including the Tax Court and the United States Court of Federal Claims).

**(7) Position of United States**

The term “position of the United States” means—

- (A) the position taken by the United States in a judicial proceeding to which subsection (a) applies, and

(B) the position taken in an administrative proceeding to which subsection (a) applies as of the earlier of—

- (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or
- (ii) the date of the notice of deficiency.

**(d) Special rules for payment of costs**

**(1) Reasonable administrative costs**

An award for reasonable administrative costs shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

**(2) Reasonable litigation costs**

An award for reasonable litigation costs shall be payable in the case of the Tax Court in the same manner as such an award by a district court.

**(e) Multiple actions**

For purposes of this section, in the case of—

- (1) multiple actions which could have been joined or consolidated, or
- (2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single court proceeding in the same court,

such actions or cases shall be treated as 1 court proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated.

**(f) Right of appeal**

**(1) Court proceedings**

An order granting or denying (in whole or in part) an award for reasonable litigation or administrative costs under subsection (a) in a court proceeding, may be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment.

**(2) Administrative proceedings**

A decision granting or denying (in whole or in part) an award for reasonable administrative costs under subsection (a) by the Internal Revenue Service shall be subject to the filing of a petition for review with the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute). If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing.

**(3) Appeal of Tax Court decision**

An order of the Tax Court disposing of a petition under paragraph (2) shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

**(g) Qualified offer**

For purposes of subsection (c)(4)—

**(1) In general**

The term “qualified offer” means a written offer which—

(A) is made by the taxpayer to the United States during the qualified offer period;

(B) specifies the offered amount of the taxpayer’s liability (determined without regard to interest);

(C) is designated at the time it is made as a qualified offer for purposes of this section; and

(D) remains open during the period beginning on the date it is made and ending on the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.

**(2) Qualified offer period**

For purposes of this subsection, the term “qualified offer period” means the period—

(A) beginning on the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, and

(B) ending on the date which is 30 days before the date the case is first set for trial.

(Added Pub. L. 97-248, title II, §292(a), Sept. 3, 1982, 96 Stat. 572; amended Pub. L. 98-369, div. A, title VII, §714(c), July 18, 1984, 98 Stat. 961; Pub. L. 99-514, title XV, §1551(a)-(g), Oct. 22, 1986, 100 Stat. 2752, 2753; Pub. L. 100-647, title I, §1015(i), title VI, §6239(a), Nov. 10, 1988, 102 Stat. 3571, 3743; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-168, title VII, §§701(a)-(c)(2), 702(a), 703(a), 704(a), July 30, 1996, 110 Stat. 1463, 1464; Pub. L. 105-34, title XII, §1285(a)-(c), title XIV, §1453(a), Aug. 5, 1997, 111 Stat. 1038, 1055; Pub. L. 105-206, title III, §3101(a)-(e), title VI, §§6012(h), 6014(e), July 22, 1998, 112 Stat. 727, 728, 819, 820; Pub. L. 106-554, §1(a)(7) [title III, §319(25)], Dec. 21, 2000, 114 Stat. 2763, 2763A-647.)

**INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS**

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.*

**PRIOR PROVISIONS**

A prior section 7430 was renumbered section 7437 of this title.

**AMENDMENTS**

2000—Subsec. (c)(3). Pub. L. 106-554, §1(a)(7) [title III, §319(25)(A)], substituted “Attorneys” for “Attorneys” in heading.

Subsec. (c)(3)(B). Pub. L. 106-554, §1(a)(7) [title III, §319(25)(B)], substituted “attorneys’ fees” for “attorneys fees” wherever appearing.

1998—Subsec. (b)(4), (5). Pub. L. 105-206, §6012(h), redesignated par. (5) as (4).

Subsec. (c)(1)(B)(iii). Pub. L. 105-206, §3101(a), substituted “\$125” for “\$110” and inserted “the difficulty of the issues presented in the case, or the local availability of tax expertise,” before “justifies a higher rate”.

Subsec. (c)(2). Pub. L. 105-206, §3101(b), added concluding provisions and struck out former concluding provisions which read as follows: “Such term shall only include costs incurred on or after the earlier of (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or (ii) the date of the notice of deficiency.”

Subsec. (c)(3). Pub. L. 105-206, §3101(c), substituted “attorneys” for “attorneys” in heading and amended text of par. (3) generally. Prior to amendment, text read as follows: “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.”

Subsec. (c)(4)(B)(iii), (iv). Pub. L. 105-206, §3101(d), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (c)(4)(D). Pub. L. 105-206, §6014(e), substituted “subparagraph (A)(ii)” for “subparagraph (A)(iii)” in introductory provisions.

Subsec. (c)(4)(E). Pub. L. 105-206, §3101(e)(1), added subpar. (E).

Subsec. (g). Pub. L. 105-206, §3101(e)(2), added subsec. (g).

1997—Subsec. (b)(5). Pub. L. 105-34, §1285(b), added par. (5).

Subsec. (c)(4)(D). Pub. L. 105-34, §1453(a), added subpar. (D).

Subsec. (f)(2). Pub. L. 105-34, §1285(c), substituted “the filing of a petition for review with” for “appeal to” and inserted at end “If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing.”

Subsec. (f)(3). Pub. L. 105-34, §1285(a), added par. (3).

1996—Subsec. (b)(1). Pub. L. 104-168, §703(a), inserted at end “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.”

Subsec. (b)(3), (4). Pub. L. 104-168, §704(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows:

“(3) EXCLUSION OF DECLARATORY JUDGMENT PROCEEDINGS.—

“(A) IN GENERAL.—No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

“(B) EXCEPTION FOR SECTION 501(C)(3) DETERMINATION REVOCATION PROCEEDINGS.—Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in section 501(c)(3).”

Subsec. (c)(1). Pub. L. 104-168, §702(a)(3), inserted closing provisions “In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (ii) 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 1992’ in subparagraph (B) 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.”

Subsec. (c)(1)(B)(iii). Pub. L. 104-168, §702(a)(1), (2), substituted “\$110” for “\$75” and struck out “an increase in the cost of living or” before “a special factor.”

Subsec. (c)(2)(B). Pub. L. 104-168, §701(c)(1), substituted “paragraph (4)(C)” for “paragraph (4)(B)”.

Subsec. (c)(4)(A). Pub. L. 104-168, §701(a), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: “which establishes that the position of the United States in the proceeding was not substantially justified.”

Subsec. (c)(4)(B). Pub. L. 104-168, §701(b), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (c)(4)(C). Pub. L. 104-168, §701(c)(2), substituted “Any determination under this paragraph” for “Any determination under subparagraph (A)”.

Pub. L. 104-168, §701(b), redesignated subpar. (B) as (C).

1992—Subsec. (c)(6). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1988—Pub. L. 100-647, § 6239(a), substituted “costs” for “court costs” in section catchline and amended text generally, revising and restating provisions so as to include costs and fees in administrative proceedings.

Subsec. (c)(2)(A)(iii). Pub. L. 100-647, § 1015(i), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “meets the requirements of section 504(b)(1)(B) of title 5, United States Code (as in effect on the date of the enactment of the Tax Reform Act of 1986 and applied by taking into account the commencement of the proceeding described in subsection (a) in lieu of the initiation of the adjudication referred to in such section).”

1986—Subsec. (a). Pub. L. 99-514, § 1551(f), inserted “(payable in the case of the Tax Court in the same manner as such an award by a district court)” in concluding provisions.

Subsec. (b). Pub. L. 99-514, § 1551(a), (b), redesignated pars. (2) to (4) as (1) to (3), respectively, added par. (4), and struck out former par. (1), maximum dollar amount, which read as follows: “The amount of reasonable litigation costs which may be awarded under subsection (a) with respect to any prevailing party in any civil proceeding shall not exceed \$25,000.”

Subsec. (c)(1)(A). Pub. L. 99-514, § 1551(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The term ‘reasonable litigation costs’ includes—

“(i) reasonable court costs,

“(ii) the reasonable expenses of expert witnesses in connection with the civil proceeding,

“(iii) 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

“(iv) reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding.”

Subsec. (c)(2)(A). Pub. L. 99-514, § 1551(d), substituted “was not substantially justified” for “was unreasonable” in cl. (i), and added cl. (iii).

Subsec. (c)(4). Pub. L. 99-514, § 1551(e), added par. (4).

Subsec. (f). Pub. L. 99-514, § 1551(g), struck out subsec. (f), termination, which read as follows: “This section shall not apply to any proceeding commenced after December 31, 1985.”

1984—Subsec. (a)(2). Pub. L. 98-369 inserted reference to United States Claims Court.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, § 3101(g), July 22, 1998, 112 Stat. 729, provided that: “The amendments made by this section [amending this section and section 7431 of this title] shall apply to costs incurred (and, in the case of the amendment made by subsection (c) [amending this section], services performed) more than 180 days after the date of the enactment of this Act [July 22, 1998].”

Amendment by sections 6012(h) and 6014(e) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 1285(d) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section] shall apply to civil actions or proceedings commenced after the date of the enactment of this Act [Aug. 5, 1997].”

Section 1453(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to proceedings commenced after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 701(a)–(c)(2) of Pub. L. 104-168 applicable in case of proceedings commenced after July

30, 1996, see section 701(d) of Pub. L. 104-168, set out as a note under section 6404 of this title.

Section 702(b) of Pub. L. 104-168 provided that: “The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996].”

Section 703(b) of Pub. L. 104-168 provided that: “The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996].”

Section 704(b) of Pub. L. 104-168 provided that: “The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996].”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1015(i) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Section 6239(d) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section and section 504 of Title 5, Government Organization and Employees] shall apply to proceedings commencing after the date of the enactment of this Act [Nov. 10, 1988].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1551(h) of Pub. L. 99-514 provided that:

“(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to amounts paid after September 30, 1986, in civil actions or proceedings, commenced after December 31, 1985.

“(2) SUBSECTION (f).—The amendment made by subsection (f) [amending this section] shall take effect as if included in the amendments made by section 292 of the Tax Equity and Fiscal Responsibility Act of 1982 [see Effective Date note below].

“(3) APPLICABILITY OF AMENDMENTS TO CERTAIN PRIOR CASES.—The amendments made by this section shall apply to any case commenced after December 31, 1985, and finally disposed of before the date of the enactment of this Act [Oct. 22, 1986], except that in any such case, the 30-day period referred to in section 2412(d)(1)(B) of title 28, United States Code, or Rule 231 of the Tax Court, as the case may be, shall be deemed to commence on the date of the enactment of this Act [Oct. 22, 1986].”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

#### EFFECTIVE DATE

Section 292(e) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title I, § 160, July 18, 1984, 98 Stat. 696, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 6673 of this title and section 2412 of Title 28, Judiciary and Judicial Procedure] shall apply to civil actions or proceedings commenced after February 28, 1983.

“(2) PENALTY.—The amendments made by subsections (b) and (d)(2) [amending section 6673 of this title] shall

apply to any action or proceeding in the United States Tax Court which—

“(A) is commenced after December 31, 1982, or

“(B) is pending in the United States Tax Court on the day which is 120 days after the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984].”

**§ 7431. Civil damages for unauthorized inspection or disclosure of returns and return information**

**(a) In general**

**(1) Inspection or disclosure by employee of United States**

If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

**(2) Inspection or disclosure by a person who is not an employee of United States**

If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103 or in violation of section 6104(c), such taxpayer may bring a civil action for damages against such person in a district court of the United States.

**(b) Exceptions**

No liability shall arise under this section with respect to any inspection or disclosure—

- (1) which results from a good faith, but erroneous, interpretation of section 6103, or
- (2) which is requested by the taxpayer.

**(c) 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 sum of—

- (1) the greater of—

(A) \$1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of—

(i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus

(ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus

- (2) the costs of the action, plus

(3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4)).

**(d) Period for bringing action**

Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to

the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

**(e) Notification of unlawful inspection and disclosure**

If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of—

- (1) paragraph (1) or (2) of section 7213(a),
- (2) section 7213A(a), or
- (3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,

the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

**(f) Definitions**

For purposes of this section, the terms “inspect”, “inspection”, “return”, and “return information” have the respective meanings given such terms by section 6103(b).

**(g) Extension to information obtained under section 3406**

For purposes of this section—

(1) any information obtained under section 3406 (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any inspection or use of such information other than for purposes of meeting any requirement under section 3406 or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103 shall be treated as a violation of section 6103.

For purposes of subsection (b), the reference to section 6103 shall be treated as including a reference to section 3406.

**(h) Special rule for information obtained under section 6103(k)(9)**

For purposes of this section, any reference to section 6103 shall be treated as including a reference to section 6311(e).

(Added Pub. L. 97-248, title III, §357(a), Sept. 3, 1982, 96 Stat. 645; amended Pub. L. 98-67, title I, §104(b), Aug. 5, 1983, 97 Stat. 379; Pub. L. 105-34, title XII, §1205(c)(2), Aug. 5, 1997, 111 Stat. 998; Pub. L. 105-35, §3(a)-(d)(4), (6), Aug. 5, 1997, 111 Stat. 1105, 1106; Pub. L. 105-206, title III, §3101(f), title VI, §6012(b)(3), July 22, 1998, 112 Stat. 729, 819; Pub. L. 109-280, title XII, §1224(b)(7), Aug. 17, 2006, 120 Stat. 1093.)

PRIOR PROVISIONS

A prior section 7431 was renumbered section 7437 of this title.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109-280, which directed insertion of “or in violation of section 6104(c)” after “6103” in subsec. (a)(2) of section 7431, without specifying the act to be amended, was executed by making the insertion in subsec. (a)(2) of this section, which is section 7431 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1998—Subsec. (c)(2). Pub. L. 105-206, §3101(f), substituted “, plus” for the period at end.

Subsec. (c)(3). Pub. L. 105-206, §3101(f), added par. (3).  
Subsecs. (g), (h). Pub. L. 105-206, §6012(b)(3), redesignated subsec. (g), relating to special rule for informa-

tion obtained under section 6103(k)(8), as (h), and substituted “(9)” for “(8)” in heading.

1997—Pub. L. 105-35, §3(d)(4), inserted “inspection or” before “disclosure” in section catchline.

Subsec. (a)(1), (2). Pub. L. 105-35, §3(a)(1), (2), substituted “Inspection or disclosure” for “Disclosure” in headings and “inspects or discloses” for “discloses” in text.

Subsec. (b). Pub. L. 105-35, §3(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103.”

Subsec. (c)(1). Pub. L. 105-35, §3(d)(1), (2), inserted “inspection or” before “disclosure” in subpars. (A) and (B)(i) and substituted “willful inspection or disclosure or an inspection or disclosure” for “willful disclosure or a disclosure” in subpar. (B)(ii).

Subsec. (d). Pub. L. 105-35, §3(d)(1), inserted “inspection or” before “disclosure”.

Subsec. (e). Pub. L. 105-35, §3(b), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-35, §3(b), (d)(3), redesignated subsec. (e) as (f) and amended it generally. Prior to amendment, subsec. (f) read as follows:

“(f) RETURN; RETURN INFORMATION.—For purposes of this section, the terms ‘return’ and ‘return information’ have the respective meanings given such terms in section 6103(b).”

Subsec. (g). Pub. L. 105-35, §3(b), (d)(6), redesignated subsec. (f) as (g) and substituted “any inspection or use” for “any use” in par. (2).

Pub. L. 105-34, §1205(c)(2), added subsec. (g) relating to special rule for information obtained under section 6103(k)(8).

1983—Subsec. (f). Pub. L. 98-67 added subsec. (f).

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 effective Aug. 17, 2006, but not applicable to requests made before such date, see section 1224(c) of Pub. L. 109-280, set out as a note under section 6103 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 3101(f) of Pub. L. 105-206 applicable to costs incurred more than 180 days after July 22, 1998, see section 3101(g) of Pub. L. 105-206, set out as a note under section 7430 of this title.

Amendment by section 6012(b)(3) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Section 3(e) of Pub. L. 105-35 provided that: “The amendments made by this section [amending this section] shall apply to inspections and disclosures occurring on and after the date of the enactment of this Act [Aug. 5, 1997].”

Amendment by Pub. L. 105-34 effective on the day 9 months after Aug. 5, 1997, see section 1205(d) of Pub. L. 105-34, set out as a note under section 6103 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-67 effective Aug. 5, 1983, see section 110(c) of Pub. L. 98-67, set out as a note under section 31 of this title.

#### EFFECTIVE DATE

Section 357(c) of Pub. L. 97-248 provided that: “The amendments made by this section [enacting this section and repealing section 7217 of this title] shall apply with respect to disclosures made after the date of enactment of this Act [Sept. 3, 1982].”

## § 7432. Civil damages for failure to release lien

### (a) In general

If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien under section 6325 on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

### (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 sum of—

- (1) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus
- (2) the costs of the action.

### (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) Limitations

#### (1) Requirement that administrative remedies be exhausted

A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

#### (2) Mitigation of damages

The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

#### (3) 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 right of action accrues.

### (e) Notice of failure to release lien

The Secretary shall by regulation prescribe reasonable procedures for a taxpayer to notify the Secretary of the failure to release a lien under section 6325 on property of the taxpayer.

(Added Pub. L. 100-647, title VI, §6240(a), Nov. 10, 1988, 102 Stat. 3746.)

#### PRIOR PROVISIONS

A prior section 7432 was renumbered 7437 of this title.

#### EFFECTIVE DATE

Section 6240(c) of Pub. L. 100-647 provided that: “The amendments made by this section [enacting this section] shall apply to notices provided by the taxpayer of the failure to release a lien, and damages arising, after December 31, 1988.”

## § 7433. Civil damages for certain unauthorized collection actions

### (a) In general

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer

or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

**(b) Damages**

In any action brought under subsection (a) or petition filed under subsection (e), 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 \$1,000,000 (\$100,000, in the case of negligence) or the sum of—

- (1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent actions of the officer or employee, and
- (2) the costs of the action.

**(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) Limitations**

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

A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

**(2) Mitigation of damages**

The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

**(3) 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 right of action accrues.

**(e) Actions for violations of certain bankruptcy procedures**

**(1) In general**

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to automatic stay) or 524 (relating to effect of discharge) of title 11, United States Code (or any successor provision), or any regulation promulgated under such provision, such taxpayer may petition the bankruptcy court to recover damages against the United States.

**(2) Remedy to be exclusive**

**(A) In general**

Except as provided in subparagraph (B), notwithstanding section 105 of such title 11, such petition shall be the exclusive remedy for recovering damages resulting from such actions.

**(B) Certain other actions permitted**

Subparagraph (A) shall not apply to an action under section 362(h) of such title 11 for a violation of a stay provided by section 362 of such title; except that—

- (i) administrative and litigation costs in connection with such an action may only be awarded under section 7430; and
- (ii) administrative costs may be awarded only if incurred on or after the date that the bankruptcy petition is filed.

(Added Pub. L. 100-647, title VI, § 6241(a), Nov. 10, 1988, 102 Stat. 3747; amended Pub. L. 104-168, title VIII, §§ 801(a), 802(a), July 30, 1996, 110 Stat. 1465; Pub. L. 105-206, title III, § 3102(a), (c), July 22, 1998, 112 Stat. 730.)

PRIOR PROVISIONS

A prior section 7433 was renumbered 7437 of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-206, § 3102(a)(1)(A), inserted “, or by reason of negligence,” after “recklessly or intentionally”.

Subsec. (b). Pub. L. 105-206, § 3102(a)(1)(B)(i), (c)(2), in introductory provisions, inserted “or petition filed under subsection (e)” after “subsection (a)” and inserted “(\$100,000, in the case of negligence)” after “\$1,000,000”.

Subsec. (b)(1). Pub. L. 105-206, § 3102(a)(1)(B)(ii), inserted “or negligent” after “reckless or intentional”.

Subsec. (d)(1). Pub. L. 105-206, § 3102(a)(2), substituted “Requirement that administrative remedies be exhausted” for “Award for damages may be reduced if administrative remedies not exhausted” in heading and amended text of par. (1) generally. Prior to amendment, text read as follows: “The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.”

Subsec. (e). Pub. L. 105-206, § 3102(c)(1), added subsec. (e).

1996—Subsec. (b). Pub. L. 104-168, § 801(a), substituted “\$1,000,000” for “\$100,000”.

Subsec. (d)(1). Pub. L. 104-168, § 802(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 applicable to actions of officers or employees of Internal Revenue Service after July 22, 1998, see section 3102(d) of Pub. L. 105-206, set out as a note under section 7426 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 801(b) of Pub. L. 104-168 provided that: “The amendment made by subsection (a) [amending this section] shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act [July 30, 1996].”

Section 802(b) of Pub. L. 104-168 provided that: “The amendment made by this section [amending this section] shall apply in the 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.)

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".

EFFECTIVE DATE

Section 601(c) of Pub. L. 104-168 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.)

PRIOR PROVISIONS

A prior section 7435 was renumbered 7437 of this title.

EFFECTIVE DATE

Section 1203(c) of Pub. L. 104-168 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 determination 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.)

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.

PRIOR PROVISIONS

A prior section 7436 was renumbered section 7437 of this title.

## AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554 inserted “and the proper amount of employment tax under such determination” before period at end of first sentence.

1998—Subsec. (c)(1). Pub. L. 105-206 substituted “\$50,000” for “\$10,000”.

## EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106-554, set out as a note under section 56 of this title.

## EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3103(c), July 22, 1998, 112 Stat. 731, provided that: “The amendments made by this section [amending this section and sections 743A and 7463 of this title] shall apply to proceedings commenced after the date of the enactment of this Act [July 22, 1998].”

## § 7437. Cross references

(1) For determination of amount of any tax, additions to tax, etc., in title 11 cases, see section 505 of title 11 of the United States Code.

(2) For exclusion of tax liability from discharge in cases under title 11 of the United States Code, see section 523 of such title 11.

(3) For recognition of tax liens in cases under title 11 of the United States Code, see sections 545 and 724 of such title 11.

(4) For collection of taxes in connection with plans for individuals with regular income in cases under title 11 of the United States Code, see section 1328 of such title 11.

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see section 3713(a) of title 31, United States Code.

(7) For interest on judgments for overpayments, see section 2411(a) of Title 28 of the United States Code.

(8) For review of a Tax Court decision, see section 7482.

(9) For statute prohibiting suits to replevy property taken under revenue laws, see section 2463 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 878, §7425; renumbered §7427, Pub. L. 89-719, title I, §109, Nov. 2, 1966, 80 Stat. 1141; renumbered §7428, and amended Pub. L. 94-455, title XII, §1203(b)(2)(A), title XIX, §1906(a)(45), Oct. 4, 1976, 90 Stat. 1690, 1830; renumbered §7430, Pub. L. 94-455, title XIII, §1306(a), Oct. 4, 1976, 90 Stat. 1717; Pub. L. 96-589, §6(d)(1), (i)(13), Dec. 24, 1980, 94 Stat. 3408, 3411; renumbered §7431, Pub. L. 97-248, title II, §292(a), Sept. 3, 1982, 96 Stat. 572; renumbered §7432, Pub. L. 97-248, title III, §357(a), Sept. 3, 1982, 96 Stat. 645; Pub. L. 97-258, §3(f)(14), Sept. 13, 1982, 96 Stat. 1065; renumbered §7434, Pub. L. 100-647, title VI, §§6240(a), 6241(a), Nov. 10, 1988, 102 Stat. 3746, 3747; renumbered §7435, Pub. L. 104-168, title VI, §601(a), July 30, 1996, 110 Stat. 1462; renumbered §7436, Pub. L. 104-168, title XII, §1203(a), July 30, 1996, 110 Stat. 1470; renumbered §7437, Pub. L. 105-34, title XIV, §1454(a), Aug. 5, 1997, 111 Stat. 1055.)

## AMENDMENTS

1982—Par. (6). Pub. L. 97-258 substituted “section 3713(a) of title 31, United States Code” for “R.S. 3466 (31

U.S.C. 191)”. Notwithstanding the directory language that amendment be made to section 7430, the amendment was executed to this section to reflect the probable intent of Congress and the intervening renumbering of section 7430 as 7432 by Pub. L. 97-248.

1980—Par. (1). Pub. L. 96-589, §6(d)(1), added par. (1). Former par. (1), which provided cross reference to former section 35 of title 11 for exclusion of tax liability from discharge in bankruptcy, was struck out.

Par. (2). Pub. L. 96-589, §6(d)(1), (i)(13), added par. (2). Former par. (2), which provided cross reference to former section 93 of title 11 for limit on amount allowed in bankruptcy proceedings on debts owing to the United States, was struck out.

Par. (3). Pub. L. 96-589, §6(d)(1), (i)(13), added par. (3). Former par. (3), which provided cross reference to former section 107 of title 11 for recognition of tax liens in proceedings under the Bankruptcy Act, was struck out.

Par. (4). Pub. L. 96-589, §6(d)(1), (i)(13), added par. (4). Former par. (4), which provided for cross reference to former section 1080 of title 11 for collection of taxes in connection with wage earners' plans in bankruptcy courts, was struck out.

1976—Par. (1). Pub. L. 94-455, §1906(a)(45)(A), struck out “52 Stat. 851;” before “11 U.S.C. 35”.

Par. (2). Pub. L. 94-455, §1906(a)(45)(B), struck out “52 Stat. 867;” before “11 U.S.C. 93”.

Par. (3). Pub. L. 94-455, §1906(a)(45)(C), struck out “52 Stat. 876-877;” before “11 U.S.C. 107”.

Par. (4). Pub. L. 94-455, §1906(a)(45)(D), struck out “52 Stat. 938;” before “11 U.S.C. 1080”.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

## Subchapter C—The Tax Court

Part	
I.	Organization and jurisdiction.
II.	Procedure.
III.	Miscellaneous provisions.
IV.	Declaratory judgments.

## AMENDMENTS

1976—Pub. L. 94-455, title X, §1042(d)(2)(F), Oct. 4, 1976, 90 Stat. 1639, struck out in item relating to part IV “relating to qualification of certain retirement plans” after “Declaratory judgments”.

1974—Pub. L. 93-406, title II, §1041(c), Sept. 2, 1974, 88 Stat. 951, inserted item relating to part IV.

## PART I—ORGANIZATION AND JURISDICTION

Sec.	
7441.	Status.
7442.	Jurisdiction.
7443.	Membership.
7443A.	Special trial judges.
[7443B.]	Repealed.]
7444.	Organization.
7445.	Offices.
7446.	Times and places of sessions.
7447.	Retirement.
7448.	Annuities of surviving spouses and dependent children. <sup>1</sup>

## AMENDMENTS

2008—Pub. L. 110-458 repealed amendment made by section 856 of Pub. L. 109-280. See 2006 Amendment note below.

2006—Pub. L. 109-280, title VIII, §856(b), Aug. 17, 2006, 120 Stat. 1019, added item 7443B. Pub. L. 110-458, title I,

<sup>1</sup> So in original. Does not conform to section catchline.