Central States
Bankruptcy Workshop

Consumer Track

Federal Tax Issues in Bankruptcy

John W. Menn, Moderator
Swanson Sweet LLP | Oshkosh, Wis.

Hon. Lisa S. Gretchko
U.S. Bankruptcy Court (E.D. Mich.) | Detroit

Michael Gutting
Gensburg Calandriello & Kanter, P.C. | Chicago

Michael Hanrahan
CBH Attorneys & Counselors, PLLC | Grand Rapids, Mich.

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Federal Tax Issues In and Out of Bankruptcy

Presented by:
Hon. Lisa Gretchko, Moderator
U.S. Bankruptcy Court (ED MI); Detroit, MI
Lisa_Gretchko@mieb.uscourts.gov

John W. Menn, Attorney
Swanson Sweet LLP; Oshkosh, WI
JMenn@swansonsweet.com

Mike Hanrahan, Attorney
CBH Attorneys & Counselors, PLLC; Grand Rapids, MI
Mike@cbhattorneys.com

Michael Gutting, Attorney
Gensburg Calandriello & Kanter, P.C.; Chicago, IL
mgutting@gcklegal.com

Federal Tax Issues In and Out of Bankruptcy

I. PRE-FILING CONSIDERATIONS

1. Determining Liability
    a. Pulling Transcripts
    b. Assessing Priority vs Unsecured Tax Debt
    c. Type of Non-Dischargeable Tax
2. Filing Considerations
    a. Timing of Bankruptcy Filing
    b. Feasibility Issues in Chapter 13 Plans

II. POST-FILING AND CHAPTER 13 PLAN CONSIDERATIONS

3. Plan Treatment of Tax Debts
    a. Interest Rates for Secured Claims
    b. Treatment of Priority Claims / Gap Interest Issues
4. Issues for Claim Objections vs. Adversary Proceedings
    a. Claim Objections
    b. Adversary Proceedings
5. Filing and Correcting Returns
    a. § 1308 Requirements
    b. Correcting an IRS Substitute for Return

III. STAY / DISCHARGE VIOLATION ADVERSARY PROCEEDING CONSIDERATIONS

6. Stay/Discharge Violations
7. Guide to Filing an Adversary Proceeding Against the IRS
    a. Statutory Summary
    b. Exhausting Administrative Remedies
    c. Limitation on Recoverable Attorneys' Fees

IV. NON-BANKRUPTCY ALTERNATIVES

8. The Tax Code and IRS Guidance
9. Collection Statute Expiration Date (CSED)
10. IRS Offers in Compromise
11. Installment Agreements (Long-Term Payment Plans)
12. Short-Term Payment Plans
13. Currently Not Collectible (CNC) Status
14. Penalty Abatement Based on Reasonable Cause

I. PRE-FILING CONSIDERATIONS

1. Determining Liability

a. Pulling Transcripts

i. There are multiple different kinds of tax transcripts:

1. Return transcripts lay out all the information on the filed tax return. These are only available for the most recent three years.
2. Account transcripts provide an accurate history of activity on the account for the tax period in question and include the important dates a practitioner will need for client analysis.

ii. The taxpayer can obtain copies of transcripts online at https://www.irs.gov/individuals/get-transcript

iii. Practitioners have different options to obtain transcript copies.

1. Requires an IRS Form 2848 - Power of Attorney ("POA")
2. Get a Centralized Authorization File ("CAF") Number
    a. A Centralized Authorization File Number is a number provided by the IRS to certify you as an individual authorized to practice as a third-party representative. Normally, the IRS will send these once you submit your first Power of Attorney, or you can apply for a Centralized Authorization number ahead of time. Use your Centralized Authorization File number on all future Power of Attorneys and make sure not to lose it.
3. Practitioner Priority Line: 866-860-4259
    a. After submitting your Power of Attorney to the IRS, give them about a week to process (and it may take up to a month). From there, you can make a call to the IRS Practitioner Priority Line: 866-860-4259. You can request physical copies of your clients' tax transcripts, which they will mail.
    b. Practice Pointer: the practitioner priority line can have hours-long wait times. It opens at 7:30 so the earlier you can call, the better chance you have of getting through quickly.
4. Form 4506-T

a. Form 4506-T is a request for your client's transcripts, which can be submitted along with the Form 2848 Power of Attorney. It can be faxed or mailed in and is the slowest of the options summarized here, sometimes taking months. There is no way to confirm if the request has been received besides calling the Practitioner Priority Line and asking.

5. Tax Software

a. There are tax services available that will streamline the transcript process significantly, such as Canopy Tax, which is a software that allows practitioners to download client transcripts and prepare a report from the data.

b. Interplay of Priority and Dischargeable Tax Debts

i. Statutory Background**:** 11 U.S.C. § 507(a)(8):

(a)The following expenses and claims have priority in the following order:

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A)a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—

(i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii)assessed within 240 days before the date of the filing of the petition, exclusive of—

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

ii. 11 U.S.C. § 507(a)(8) defines Priority Tax Debts

1. Bankruptcy's treatment of unsecured tax claims joins the two concepts of priority and discharge under 507(a)(8) and 523(a)(1)
2. Simply said, some taxes are priority/nondischargeable.
3. Others are nonpriority/nondischargeable.
4. And the rest are nonpriority/dischargeable.

iii. What are the prerequisites for discharging tax debt (i.e. nonpriority and dischargeable)?

1. A "return" must have been filed – 11 U.S.C. §523(a)(1)(B)(i)
2. Must be income tax liability only – 11 U.S.C. §523(a), 11 U.S.C. §507(a)(8)(A)
3. 3 Year Rule: More than 3 years must have elapsed since tax return generating liability was due (due date – deal) - 11 U.S.C. §523(a), 11 U.S.C. §507(a)(8)(A)(i)
   a. Simply said, in order for the tax debt in controversy to be discharged, it must be over three years old.
   b. For example, your Clients' 2020 tax return was due on April 15, 2021, the 3-year rule would require that the date of filing would have to be April 15, 2024, or after.
4. 240 Day Rule: Taxes must have been assessed more than 240 days before filing.
   a. In the Internal Revenue Code (IRC), the definition of "assessment" is not found in a single, specific section but rather through the context and usage across various sections of the code. The concept of "assessment" generally refers to the formal determination of a tax liability by the Internal Revenue Service (IRS). This includes the recording of the liability and the amount owed on the IRS's

records, which is a necessary step before the IRS can take enforcement actions to collect the tax.

5. 2 Year Rule: Return must have been filed more than 2 years before BK filing; 11 U.S.C. §523(a)(1)(B)(ii)
   a. If the debtor filed a tax return late, then the date of filing of the bankruptcy petition must be at least two years after the date of filing the taxes.
6. No fraud or willful evasion of tax

iv. What types of taxes would be priority and nondischargeable?

1. If any of the qualification of 11 U.S.C. §507(a)(8) are met, the tax debt is priority and nondischargeable under 11 U.S.C. §523(a)(1)
2. Examples:
   a. Taxes where a return was not filed (or a substitute for return was filed by the taxing authority);
   b. Tax debt on returns that were filed late and/or within 2 years of filing a bankruptcy.
   c. Tax debt on returns that were filed fraudulently or where the Debtor willfully attempted to evade or defeat tax due and owing.
      i. Practice pointer: this information is readily available on a client's tax transcripts. Otherwise, it will likely be a result of a criminal tax enforcement action by the taxing authorities.
   d. Be aware of tolling issues as it relates to assessment, and the 3- and 2-year rules…11 USC §507(a)(8)(G) (any administrative action tolls the Statute of Limitations, and the taxing authorities are also given additional timeframes depending on the administrative action – this is why a thorough review of the transcripts can be so important for your clients). In essence, tolling may add additional time onto the Collection Statute Expiration Date (CSED) (see Section IV(9) for further details)

v. What types of taxes would be nonpriority and nondischargeable?

1. Most commonly are taxes which are more than 3 years old (meeting requirements of 11 U.S.C. §523(a) and 11 U.S.C. §507(a)(8)(A)(i)), but were filed late, thereby not meeting the requirements of the 2-year rule under 11 U.S.C. §523(a)(1)(B)(ii).
2. Also possible for taxes which meet both the 2-year and 3-year rules but were recently assessed by nature of an audit.

2. Filing Considerations

a. Timing of Bankruptcy Filing

i. Assess priority issues carefully to determine whether waiting to file the case might cause what would be a priority tax claim to become a general unsecured claim;

1. For example, if the taxes were more than 3 years old but they were filed late (or an extension was filed), a close examination on the timelines for filing in order to meet the 2-year rule could protect you against a malpractice claim and save your client significant money.

ii. Review secured debt filings and whether tax liens exist and/or are invalid, have been paid, expired, or may be otherwise dischargeable.

1. Tax liens against real estate are only valid in the county in which they are filed.
2. Tax liens can easily be found on the register of deeds website for your county and for those in which your Debtor resides (or owns property).
3. Tax liens against non-real estate assets are perfected by filing a notice of tax lien with the secretary of state

iii. If possible, consider waiting to file until after the Collection Statute Expiration Date (CSED) (see Section IV)

b. Feasibility Issues in Chapter 13 Plans

i. Large priority claims: 11 U.S.C. § 1322(a)(2) provides that the plan “shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim.” A large priority claim arising under § 507 may present feasibility concerns if the taxing

authority does not agree to treatment other than payment-in-full through the plan.

ii. Workouts with US Attorney's Office or State

1. Local US Attorney's offices may be willing to allow a debt to survive discharge via stipulation if plan is unable to allow for full payment of tax debt through the plan.

2. Would likely require stipulation from the US Attorney's office and Chapter 13 Trustee (as well as a thorough understanding of your local rules).

iii. See Section IV for additional non-bankruptcy alternatives

II. POST-FILING AND CHAPTER 13 PLAN CONSIDERATIONS

3. Plan Treatment of Tax Debts

a. Interest Rates for Secured Claims

i. 11 U.S.C. § 511 Rate of Interest on Tax Claims states:

(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.

ii. As to over-secured claims, 11 U.S.C. § 506(b) states: "To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose." In connection with tax claims, this has been held to require payment of the underlying statutory interest rate applicable to the tax claim. See *In re Schneider*, 162 B.R. 199, 200 (Bankr. E.D. Wis. 1993):

"Under § 506(b) of the Bankruptcy Code, the holder of an oversecured claim [**3] is entitled to post-petition

interest. *United States v. Ron Pair Enterprises, Inc.,* 489 U.S. 235, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989) declared that an oversecured creditor is entitled to post-petition interest, not only where provided for by agreement of the parties, but also where such creditor holds a non-consensual statutory lien, such as a tax lien. Several courts have since interpreted *Ron Pair* to mean that taxing units are not entitled to post-petition penalties as part of their secured claims. *In re Parr Meadows Racing Ass'n,* 880 F.2d 1540, 1549 (2d Cir. 1989); *In re Pointer,* 952 F.2d 82, 89-90 (5th Cir. 1992); *Galveston Indep. Sch. Dist. v. Heartland Fed. Sav. and Loan Ass'n,* 159 Bankr. 198, 203 (Bankr. S.D. Tex. 1993); *In re California Wholesale Elec. Co.,* 121 Bankr. 360, 367 (Bankr. C.D. Cal. 1990)."

iii. Pursuant to 26 CFR 301.6621-1, the interest rate on secured tax claims is the Federal underpayment rate, which is "the sum of the federal short-term rate plus 3 percentage points." This is published every 3 months by Revenue Ruling. As of May 2024, the rate is 8%. (Rev. Rul. 2019-15).

b. Treatment of Priority Claims

i. 11 U.S.C. § 1322(a)(2) provides that the plan "shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim"

1. Because the Code refers to "full payment" of the claim, rather than paying "the value of the claim" interest is generally not to be paid on unsecured priority claims. In the case of 100% plans, interest may be paid on non-dischargeable tax claims, which would avoid the Gap Interest problem (see below).

c. Gap Interest Issues

i. *In re Monohan*, 497 B.R. 642 (1st Cir, 2013) provides a good overview of the "Gap Interest" issue. In short, post-petition interest that accrues on non-dischargeable claims is also not discharged. So, even when a non-dischargeable tax claim is paid in full without interest through the Debtor's chapter 13 plan pursuant to 11 U.S.C. § 1322(a)(2), the unpaid interest accruing from the petition date forward will still be due and owing upon completion of the plan – it is not discharged.

ii. 11 U.S.C. § 1328(a) makes the following types of tax debt non-dischargeable in chapter 13:

1. Trust fund taxes [11 U.S.C §1328(a)(2), by reference to § 507(a)(8)(C)]
2. Based on an unfiled return or late-filed return filed within 2 years of the petition [11 U.S.C §1328(a)(2), by reference to § 523(a)(1)(B)]
3. Based on fraudulent returns or willful attempts at tax evasion [11 U.S.C §1328(a)(2), by reference to § 523(a)(1)(C)]
4. Unscheduled tax claims [11 U.S.C §1328(a)(2), by reference to § 523(a)(3)]
5. Restitution or a criminal fine [11 U.S.C §1328(a)(3)]

iii. Generally speaking, interest cannot be paid on priority tax claims, even when they are non-dischargeable, so it is important to be aware of the existence of the Gap Interest issue and prepare your clients accordingly. However, 11 U.S.C. § 1322(b)(10) states that, subject to § 1322(a) and (c), the plan may "provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims."

4. Issues for Claim Objections vs. Adversary Proceedings

a. Claim Objections

Statutory Background: 11 U.S.C. §502(b)(9):

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure, except that—

(A) a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide; and

(B) in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required.

i. Taxing Authorities have 180 days from date of filing to file proof of claim. 11 U.S.C. § 502(b)(9)(A)

ii. Exception in Chapter 13: IRS has 60 days from the date of filing of a return under § 1308 [see section 5(a) of the materials, below], to file a proof of claim. 11 U.S.C. § 502(b)(9)(B).

iii. If no return, or return recently filed, common to see estimated tax claim.

1. Chapter 13: Generally going to be filed as priority – may cause complications in plan feasibility.

b. Adversary Proceedings

i. Use if determining validity of tax lien.

1. Tax lien expiration dates.

2. Is the tax lien actually secured by Debtor's assets (for example – if assets are located in a separate county in which the tax lien is filed)

3. Have taxes been paid?

ii. Use if determining dischargeability of tax debt.

1. Based on IRS Proof of Claim.

2. Based on client tax filings and/or meeting the requirements of 11 U.S.C. §523(a)(1) and 11 U.S.C. §507(a)(8)

iii. Use if tax refund issue.

1. If IRS impermissibly offsets tax refunds, relief must be sought through an adversary proceeding

5. Filing and Correcting Returns

a. § 1308 Requirements

i. Statutory Background: 11 U.S.C. §1308

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if

the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

(b)

(1)Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

(B)for any return that is not past due as of the date of the filing of the petition, the later of—

(i) the date that is 120 days after the date of that meeting; or

(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

(2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under paragraph (1), if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under paragraph (1) is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under paragraph (1) for—

(A) a period of not more than 30 days for returns described in paragraph (1)(A); and

(B) a period not to extend after the applicable extended due date for a return described in paragraph (1)(B).

(c) For purposes of this section, the term "return" includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.

ii. In Ch. 13 cases, by the date of the 341 hearing debtors are to file "all tax returns for all taxable periods ending during the 4-year period on the date of the filing of the petition" § 1308(a).

iii. Note: Debtor may not have to file current year's return prior to the due date but the IRS will likely file an estimated claim

b. Correcting an IRS Substitute for Return

i. If a taxpayer fails to file a tax return, the IRS may file a Substitute for Return ("SFR") pursuant to IRC § 6020. This SFR will generally overstate the tax due as it will exclude any applicable deductions, and it is not considered to be a return filed by the Debtor for purposes of time limitations specified in the bankruptcy code. See, e.g., *In re Crump*, 282 B.R. 859 (Bankr. N.D. Ohio 2002).

ii. If the IRS has filed a SFR, the Debtor should file their own return not only to ensure the tax assessment is accurate, but to start applicable timelines that key off of the Debtor's filing of a return, such as the Collection Statute Expiration Date and the dischargeability timelines.

iii. The IRS' website states as follows: "If the IRS files a substitute return, it is still in your best interest to file your own tax return to take advantage of any exemptions, credits and deductions you are entitled to receive. The IRS will generally adjust your account to reflect the correct figures." See https://www.irs.gov/businesses/small-businesses-self-employed/filing-past-due-tax-returns

III. STAY / DISCHARGE VIOLATION ADVERSARY PROCEEDING CONSIDERATIONS

6. Stay / Discharge Violations

a. 11 U.S.C. § 362. Automatic Stay:

(k)

(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

b. 11 U.S.C. § 524. Effect of Discharge:

(a) A discharge in a case under this title —

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

c. 11 U.S.C. § 105. Power of Court:

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

d. 11 U.S.C. § 106. Waiver of Sovereign Immunity:

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, ***but not including an award of punitive damages***. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

e. 28 U.S. Code § 2412 - Costs and fees

(d)

(1)

(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

…

(2) For the purposes of this subsection—

(A) “fees and other expenses” includes the reasonable expenses of expert witnesses, 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 reasonable attorney fees (The

amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) 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; and (ii) attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.)

7. Guide to Filing an Adversary Proceeding Against the IRS

Like any creditor, the IRS is subject to the automatic stay and the discharge injunction. However, unlike other creditors, the IRS has various statutory protections and predicates that a Debtor must comply with before bringing an action for damages arising from a violation of the stay or discharge injunction.

Although the Bankruptcy Court may still enjoin acts that are committed in violation of the stay or discharge injunction, an action for damages arising from such a violation (including recovering any attorneys' fees) is predicated on first "exhausting the Debtor's administrative remedies." A Debtor lacks standing to bring a claim for damages without first exhausting their administrative remedies, and the action for damages will be dismissed. See *In re Broos*, 534 BR 358 (8th Circuit), which summarizes the issue as follows:

> The Debtors may not bring an action for damages under § 7433 because they have failed to exhaust their administrative remedies. 26 U.S.C. § 7433(d). Section 7433(b)(1) permits recovery of actual damages and costs when a violation occurs. A bankruptcy court may also award damages for willful violations of the automatic stay under 11 U.S.C. § 362 and the discharge injunction under 11 U.S.C. § 524 committed by employees of the IRS. 26 U.S.C. § 7433(e)(1). However, a bankruptcy court may not award punitive damages. 11 U.S.C. § 106(a)(3). Importantly, actual damages may not be awarded unless "the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service." 26 U.S.C. § 7433(d).

For these reasons, it's important to know and follow the correct procedure to effectively remedy violations committed by the IRS. If successful, actual damages can be recovered, but it should be noted that there is a statutory cap on the hourly rate for recoverable attorneys' fees, which as of 2024 is 240.00/hr. Punitive damages are not recoverable.

a. Statutory Summary

26 USC § 7433 – Civil Damages for Certain Unauthorized Collection Actions.

- This discusses the general process for recovering civil damages against the IRS

26 USC § 7433(e) – Actions for Violations of Certain Bankruptcy Procedures

- This discusses specific bankruptcy stay and discharge violations
- 26 USC § 7433(e)(1) – confirms that "such taxpayer may petition the bankruptcy court to recover damages against the United States"
  - Such a petition is the exclusive remedy, except –
  - It is not the exclusive remedy for an action under 11 U.S.C. § 362(h)[now § 362(k) after the BAPCPA renumbering] for a violation of a stay provided by § 362; except that in such an action costs may be awarded only under 26 USC § 7430 and administrative costs may be awarded only if incurred on or after the bankruptcy petition date.

26 USC § 7433(d) – Limitations

- Sub (1) – plaintiff *must exhaust administrative remedies* available before an award of damages can be rendered [see *26 CFR § 301.7433-2(e)* for administrative remedies procedure]
- Sub (3) – Period for Bringing Action - … "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*"[see *26 CFR § 301.7433-2(d) and (g)*]

26 USC § 7433(b) – Damages

- In an action under sub (e), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff for the lesser of $1,000,000 ($100,000 in the case of negligence), or (1) the 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 [see definitions in 26 CFR § 301.7433-2]

26 CFR § 301.7433-2 – Civil Cause of Action for Violation of Section 362 or 524 of the Bankruptcy Code

- Sub (b)(1) defines Actual, Direct Economic Damages as set forth in § 301.7433-1(b)(1): "actual pecuniary damages sustained by the taxpayer as the proximate result of the reckless or intentional, or negligent, actions of an officer or an employee of the Internal Revenue Service. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages."
- Sub (b)(2) indicates *litigation costs and administrative costs are not recoverable as actual, direct economic damages.* They may be recoverable under 26 U.S.C. § 7430, or solely to the extent described in 26 CFR § 301.7443-2(c) as costs of the action
    - 26 U.S.C. § 7430, and see 26 CFR § 301.7443-2(h): litigation costs, defined in § 301.7433-1(b)(2)(i), including attorneys fees, not recoverable under this section may be recoverable under § 7430 if a taxpayer challenges in whole or in part an IRS denial of an administrative claim for damages by filing a petition in the bankruptcy court. The taxpayer must:
        - Succeed in the bankruptcy challenge
        - Meet the requirements of 26 U.S.C. § 7430(c)(4)(A)(ii) relating to net worth and size – in general, an individual with net worth under $2 million, or business with less than 500 employees and less than $7 million net worth, subject to various specifics
        - If the above 2 items are met, the taxpayer will be considered a prevailing party for § 7430, unless the IRS establishes that the position of the IRS was substantially justified.
        - For purposes of this subparagraph (h), failure to respond to the administrative claim constitutes the IRS's denial of the claim on the grounds that the IRS did not willfully violate Bankruptcy Code § 362 or 524
    - 26 CFR § 301.7443-2(c): Costs of the action recoverable are limited as set forth in § 301.7433-1(c):
        - (1) Fees of the clerk and marshall;

        - (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
        - (3) Fees and disbursements for printing and witnesses;
        - (4) Fees for exemplification and copies of paper necessarily obtained for use in the case;
        - (5) Docket fees; and
        - (6) Compensation of court appointed experts and interpreters.
    - Recoverable Attorney Fees: see bullet point below regarding fees
- Sub (d): Filing an administrative claim is mandatory
    - In general, the claim filed in bankruptcy must be after a decision is rendered on the administrative claim, or 6 months after the administrative claim is filed
    - If the administrative claim is filed within 6 months of the period of limitations, the taxpayer may petition the bankruptcy court any time after the administrative claim is filed and before the expiration of the period of limitations.
- Sub (e): Time for filing claim for administrative costs:
    - (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction.
    - (2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs within six months after such request

is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

- (3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90–day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia, the term legal holiday also means a statewide legal holiday in the state where such office is located.

b. Exhausting Administrative Remedies

26 CFR § 301.7430-1 Exhaustion of Administrative Remedies

- Sub (e) Actions involving willful violations of the automatic stay under section 362 or the discharge provisions under section 524 of the Bankruptcy Code—
  - (1) Section 7433 claims. A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code or the discharge provisions under section 524 of the Bankruptcy Code unless it files an administrative claim for damages or for relief from a violation of section 362 or 524 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay or discharge violation was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 7433.
  - (2) Section 362(h) claims. A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code unless it files an administrative claim for relief from a violation of section 362 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the

asserted automatic stay violation was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 362(h) of the Bankruptcy Code.

26 CFR § 301.7433-2(e) Procedures for an Administrative Claim

- Sub (1) the claim must be sent in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case. See: https://www.irs.gov/businesses/small-businesses-self-employed/claims-for-relief-and-damages-for-violations-of-bankruptcy-automatic-stay-or-discharge-injunction
- Sub (2) lists all the items the claim must include:
    - (i) The name, taxpayer identification number, current address, and current home and work telephone numbers (with an identification of any convenient times to be contacted) of the taxpayer making the claim;
    - (ii) The location of the bankruptcy court in which the underlying bankruptcy case was filed and the case number of the case in which the violation occurred;
    - (iii) A description, in reasonable detail, of the violation (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);
    - (iv) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);
    - (v) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available documentation or evidence); and
    - (vi) The signature of the taxpayer or duly authorized representative.

See Addendum A for sample Administrative Claim Letter used by Attorney John W. Menn in connection with claims of this nature.

TIP: Send a copy of this also to whatever additional IRS contact you have, who might be able to resolve the issue more effectively than the IRS Centralized Insolvency Operation

c. **Limitation on Recoverable Attorneys' Fees**

26 USC § 7430 – Awarding of Costs and Certain Fees:

- Sub (c)(1)(B)(iii) – reasonable attorney fee is $125/hr inflation adjusted from 1996.
    - NOTE: the rate was $220/hr in 2022, $230/hr in 2023, and is currently $240 per hour in 2024. The IRS publishes Revenue Procedures including the prevailing rate. Google search "For fees incurred in calendar year 20XX, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is"

26 CFR § 301.7430-8 – Process:

- Sub (a): In general.
    - The Internal Revenue Service may grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.
- (b) Prevailing party. A taxpayer is a prevailing party for purposes of this section only if—
    - (1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430–5;
    - (2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and
    - (3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

IV. NON-BANKRUPTCY ALTERNATIVES

8. **The Tax Code and IRS Guidance**

a. **Internal Revenue Code (IRC):**

i. Found in Title 26 of the United States Code (26 USC).

b. **Treasury Regulations (Treas. Reg.):**

i. Found in Title 26 of the Code of Federal Regulations (26 CFR).

ii. Provide the official interpretation of the IRC by the U.S. Department of the Treasury.

iii. Provide guidance to taxpayers on how to comply with the IRC's requirements.

www.irs.gov/privacy-disclosure/tax-code-regulations-and-official-guidance

c. Revenue Ruling (Rev. Rul.):

i. An official interpretation by the IRS of the IRC, related statutes, tax treaties, and treasury regulations.

ii. It is the conclusion of the IRS on how the law is applied to a specific set of facts (i.e., the IRS's stated position).

www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer

d. Revenue Procedure (Rev. Proc.):

i. An official statement of a procedure that affects the rights or duties of taxpayers or other members of the public under the IRC, related statutes, tax treaties, and treasury regulations.

ii. Provides return filing or other instructions concerning an IRS position.

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e. Private Letter Ruling (PLR):

i. A written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts.

ii. Issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed.

iii. Issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described.

iv. May not be relied on as precedent by other taxpayers or IRS personnel.

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f. Technical Advice Memorandum (TAM):

i. Guidance provided by the Office of Chief Counsel upon the request of an IRS director, area director, or appeals, in response

to technical or procedural questions that develop during a proceeding.

ii. Issued only on closed transactions and provide the interpretation of proper application of tax laws, tax treaties, regulations, revenue rulings, or other precedents.

iii. Represents a final determination of the position of the IRS, but only with respect to the specific issue in the specific case in which the advice is issued.

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g. Internal Revenue Manual (IRM):

i. The official compilation of IRS policies, procedures, and guidelines. IRM § 1.11.6.2(1).

ii. The purpose of the IRM is to provide instructions to staff. IRM § 1.11.6.2(2).

h. IRS Publications

i. Guides written by the IRS that provide taxpayers with additional information on various tax topics.

9. Collection Statute Expiration Date (CSED)

a. Can be calculated from IRS Account Transcripts.

b. The IRS has 3 years to assess the tax after the tax return was filed. IRC § 6501(a).

i. An income tax return filed early shall be considered to be filed on the filing deadline. IRC § 6501(b)(1).

ii. A Substitute for Return (SFR) prepared by the IRS (pursuant to IRC § 6020) shall not start the period of limitations on assessment and collection. IRC § 6501(b)(3).

1. An SFR is identified on the IRS Account Transcript as "Substitute tax return prepared by IRS."

iii. Exceptions, which include (but are not limited to):

1. In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed at any time. IRC § 6501(c)(1).

2. In the case of a failure to file a tax return, the tax may be assessed at any time. IRC § 6501(c)(3).

3. If the taxpayer omits from gross income an amount properly includible therein and such amount is in excess of 25% of the amount of gross income stated in the return, the tax may be assessed at any time within 6 years after the return was filed. IRC § 6501(e)(1).

c. The IRS has 10 years to collect the tax after the tax has been assessed. IRC § 6502(a).

i. Can have more than one CSED to track for a single tax period.

1. When the tax assessment is based on a filed tax return, the date and the amount of the assessment are found in the "Transactions" section next to the description "Tax return filed."

2. If the IRS audits the taxpayer and assesses additional tax based on the audit, the date and the amount of the additional assessment are found in the "Transactions" section next to the description "Additional tax assessed by examination."

ii. Tax assessment/claim reduced to judgment. IRC § 6502(a); IRM § 34.6.2.1.

1. Not very common.

2. Used to extend the statute of limitations for collection.

iii. Events that suspend the collection statute (below list is not all inclusive – see IRC § 6503 and IRM § 25.6.1.12.2.1).

1. Collection statute suspended during the period an Offer in Compromise is pending, for 30 days immediately following the rejection of the offer, and for any period when a timely filed appeal from the rejection is being considered by IRS Appeals. IRC § 6331(k)(3)(B); Treas. Reg. § 301.7122-1(i).

2. Collection statute suspended while proposed installment agreement is pending, for 30 days immediately following the rejection of a proposed installment agreement, for 30 days immediately following the termination of an installment agreement, and while the rejection or termination is being considered by IRS Appeals. IRC § 6331(k)(3)(B); Treas. Reg. § 301.6331-4(c).

3. Collection statute suspended during bankruptcy case plus six months. IRC § 6503(h).

4. Collection statute suspended during Collection Due Process (CDP) case until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. IRC § 6330(e)(1); Treas. Reg. § 301.6320-1(g)(1).

    a. In no case will the period for collection expire before the 90th day after the day on which there is a final determination in the hearing. IRC § 6330(e)(1); Treas. Reg. § 301.6320-1(g)(1).

5. In connection with seeking relief from joint and several liability on a joint return (i.e., a request for innocent spouse relief), the collection statute is suspended for the period for which the IRS is prohibited from taking certain collection actions plus an additional 60 days. The IRS is prohibited from collection and the CSED is suspended from the filing of the claim for relief (Form 8857) until:

    a. A waiver is filed (Form 870–IS, Waiver of Collection Restrictions in Innocent Spouse Cases);

    b. The expiration of the 90-day period for filing a Tax Court petition; or

    c. If a Tax Court petition is filed, until the date a Tax Court decision becomes final.

IRC § 6015(e)(2); IRM § 25.15.1.8.

d. The CSED can also be obtained by calling the IRS and asking an agent for the CSED. However, if the collection statute is currently suspended, the IRS will not be able to provide the CSED.

10. IRS OFFERS IN COMPROMISE

a. What is an Offer in Compromise?

i. An Offer in Compromise (Offer or OIC) is an agreement between a taxpayer and the government that settles a tax liability for payment of less than the full amount owed. IRM § 5.8.1.2.1(1).

b. Grounds for making an Offer in Compromise (Treas. Reg. § 301.7122-1(b)):

i. Doubt as to Collectibility (DATC)

1. The most common ground for obtaining an Offer in Compromise.
2. Doubt as to collectability exists in any case where the taxpayer's assets and income cannot satisfy the full amount of the liability. Rev. Proc. 2003-71.
3. An offer to compromise based on doubt as to collectibility generally will be considered acceptable if it is unlikely that the tax can be collected in full and the offer reflects the taxpayer's reasonable collection potential. Rev. Proc. 2003-71.
4. Offer in Compromise based on doubt as to collectibility is submitted on a Form 656 and requires a collection information statement (Form 433-A (OIC) or 433-B (OIC)).

ii. Doubt as to Liability (DATL)

1. Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. Rev. Proc. 2003-71.
2. Doubt as to liability does not exist where the liability has been established by a final court decision or judgment concerning the existence of the liability. Rev. Proc. 2003-71.
3. An offer to compromise based on doubt as to liability must be at least $1 and should be based on what the taxpayer believes the correct amount of tax should be. Instructions for Form 656-L.
4. An offer to compromise based on doubt as to liability generally will be considered acceptable if it reasonably reflects the amount the Service would expect to collect through litigation. Rev. Proc. 2003-71.
5. A taxpayer should consider submitting an Offer in Compromise based on doubt as to liability if they are unable to dispute the amount of tax the IRS claims they owe during the time allowed by the Internal Revenue Code or IRS guidelines. Instructions for Form 656-L.
6. Offer in Compromise based on doubt as to liability is submitted on a Form 656-L, Offer in Compromise (Doubt as to Liability).

iii. Promote Effective Tax Administration (ETA)

1. The ETA offer allows for situations where tax liabilities should not be collected even though:

    a. The tax is legally owed, and

    b. The taxpayer has the ability to pay it in full.

IRM § 5.8.11.2(3).

2. Exceptional Circumstances for which the IRS may grant an ETA offer for an amount less than full payment:

    a. Economic Hardship or

    b. Public Policy or Equity Grounds

IRM § 5.8.11.3(6).

3. What is Economic Hardship?

    a. Economic hardship occurs when a taxpayer is unable to pay reasonable basic living expenses. IRM § 5.8.11.3.1(2).

    b. Economic hardship only applies to individuals. Compromise on economic hardship grounds is not available to corporations, partnerships, estates, or other non-individual entities. IRM § 5.8.11.3.1(2).

4. An offer to compromise based on economic hardship generally will be considered acceptable when, even though the tax could be collected in full, the amount offered reflects the amount the IRS can collect without causing the taxpayer economic hardship based on the taxpayer's individual facts and circumstances. Rev. Proc. 2003-71.

5. Acceptance of an offer based on public policy or equity grounds will generally be based on a combination of facts and circumstances. IRM § 5.8.11.3.2(1).

6. Where there is no DATL, no DATC, and the liability could be collected in full without causing economic hardship, the IRS may compromise to promote ETA where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for accepting less than full payment. Compromise is authorized on this basis only where, due to exceptional circumstances, collection in full would undermine public confidence that the tax laws are being administered in a fair and equitable manner. IRM § 5.8.11.3.2(3).

7. An offer to compromise based on compelling public policy or equity considerations generally will be considered acceptable if it reflects what is fair and equitable under the particular facts and circumstances of the case. Rev. Proc. 2003-71.

8. An ETA Offer is submitted on a Form 656 and requires a collection information statement (Form 433-A (OIC) or 433-B (OIC)).

iv. Doubt as to Collectibility with Special Circumstances (DATCSC)

1. A taxpayer may qualify for a DATCSC offer when they cannot fully pay the tax due and have proven special circumstances that warrant acceptance for less than RCP. IRM § 5.8.4.2(3).

2. Factors establishing special circumstances under DATCSC are the same as those considered under ETA. IRM § 5.8.11.3(3).

3. Submitted on a Form 656 and requires a collection information statement (Form 433-A (OIC) or 433-B (OIC)).

c. What is a compromised liability?

i. An offer is effective for the entire assessed liability for tax, penalties, and interest for the years or periods covered by the offer. IRM § 5.8.1.9.1(1).

ii. All questions of tax liability for the tax periods covered by the agreement are conclusively settled. Neither the taxpayer nor the government can reopen a compromised tax period unless there was falsification of information or documents supplied in conjunction with the offer, concealment of ability to pay and/or assets, or a mutual mistake of a material fact that would be sufficient to cause the agreement to be set aside or reformed, even if the offer is subsequently defaulted. IRM § 5.8.1.9.1(1).

d. Offer Payment Terms

i. Offers other than DATL

1. Lump Sum Cash - Payable in five or fewer payments within five months from the offer acceptance date. Offer submission must include a 20% payment of offer amount unless the taxpayer meets the requirements for Low-Income Certification. IRM § 5.8.1.15.4(3) and Form 656.

2. Periodic Payment - Payable in up to 24 monthly installments. Offer submission must include first payment and the taxpayer must continue to make these monthly payments while the IRS is considering their offer unless the taxpayer meets the requirements for Low-Income Certification. Failure to make the monthly payments will cause the offer to be returned with no appeal rights. IRM § 5.8.1.15.4(3) and Form 656.

ii. DATL Offers

1. Payable within 90 days of the notification of acceptance, unless an alternative payment term is approved at the time the offer is accepted. Do not include a payment with the offer submission. See Form 656-L.

e. Offer Application Fee

i. Application fee for offers other than DATL is $205 unless the taxpayer meets the requirements for Low-Income Certification.

ii. DATL offers do not have an application fee.

f. Other Requirements for Offer in Compromise

i. The taxpayer is not in bankruptcy. See Form 656 Booklet Offer in Compromise.

ii. The taxpayer has complied with all filing and payment requirements.

g. Notice of Federal Tax Liens

i. The IRS may file a Notice of Federal Tax Lien during consideration of an offer. IRM § 5.8.4.13.

ii. If the offer is accepted, the tax lien(s) for the periods and taxes included in the offer will generally be released within 45 days after the final payment has been received and verified. See Form 656.

h. Other Information

i. The IRS will keep offer payments even if the offer is rejected, returned, or withdrawn. See Form 656.

ii. The IRS will keep the offer application fee even if the offer is rejected, returned, or withdrawn unless the offer is not accepted for processing. See Form 656.

i. Offer becomes pending:

i. An offer to compromise becomes pending when it is accepted for processing. Rev. Proc. 2003-71.

ii. A determination is made to accept an offer to compromise for processing when an IRS official with delegated authority to accept an offer for processing signs the Form 656. Rev. Proc. 2003-71.

iii. Levy is prohibited as of the date that the IRS signs the Form 656 unless the IRS determines that collection of the liability is in jeopardy. Rev. Proc. 2003-71.

j. Reasonable Collection Potential (RCP)

i. RCP is the amount that could reasonably be collected from the taxpayer. IRM Exhibit 5.8.1-1.

ii. RCP is the total of the taxpayer's "net realizable equity" in assets plus "future income."

1. Net realizable equity is quick sale value (QSV) less amounts owed to secured lien holders with priority over the federal tax lien, if applicable, and applicable exemption amounts. IRM § 5.8.5.4.1(1).

    a. QSV is defined as an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the owner to sell in a short period of time, usually 90 calendar days or less. IRM § 5.8.5.4.1(2).

    b. Normally, QSV is calculated at 80 percent of FMV. IRM § 5.8.5.4.1(3).

2. Calculation of future income

    a. Generally, the amount to be collected from future income is calculated by taking the projected gross monthly income, less allowable expenses, and multiplying the difference by the number of months applicable to the terms of the offer. IRM § 5.8.5.25(3).

    b. Lump Sum Cash Offer: multiply future income by 12

    c. Periodic Payment Offer: multiply future income by 24

    d. For Lump Sum Cash Offers and Periodic Payment Offers, when there are less than 12 or 24 months remaining on the statutory period for collection, use

the number of months remaining on the statutory period for collection.

k. Accepted Offers

i. An offer will be deemed accepted if the IRS does not make a decision on the offer and/or notify the taxpayer of its determination within two years of the IRS received date, which is stamped on the Form 656 upon receipt. IRC § 7122(f); IRM § 5.8.8.12(1).

ii. The taxpayer must timely file tax returns and timely pay taxes for the five year period beginning with the date of acceptance of the offer. See Form 656.

l. Rejected Offers

i. The taxpayer has 30 days from the date of the IRS offer rejection letter to file a written protest to the offer rejection.

1. IRS Policy Statement 8-2 (Rev. 1) prohibits Appeals from raising a new issue or reopening an issue on which the taxpayer and the IRS are in agreement. IRM § 1.2.1.9.2.

ii. When an offer is rejected, there is no obligation on the part of the taxpayer to continue to make periodic payments pursuant to the offer schedule, even if the taxpayer has appealed the rejection. IRM § 5.8.7.7(7).

iii. Reasons for rejecting an offer (IRM 5.8.7.7):

1. Generally, rejections on offers based on DATL are because the liability is believed to be correct as assessed or the taxpayer will not withdraw the offer after the account has been adjusted. IRM § 5.8.7.7(3).
2. The most common reason for rejecting an offer based on DATC is because it has been determined that more can be collected than was offered. IRM § 5.8.7.7(4).
3. An offer can also be rejected for being "not in the best interest of the government." IRM § 5.8.7.7.1.
4. An offer can be rejected based on public policy. IRM § 5.8.7.7.2.

11. Installment Agreements (Long-Term Payment Plans)

a. The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to make payment on any tax in installment payments if the Secretary determines that such

agreement will facilitate full or partial collection of such liability. IRC § 6159(a).

b. Penalties and interest continue to accrue on unpaid liabilities. IRM § 5.14.1.2(12).

c. Streamlined Installment Agreements

i. Benefits of a streamlined installment agreement:

1. A Notice of Federal Tax Lien (NFTL) determination is not required for a streamlined installment agreement (so NFTLs are generally not filed), but revenue officers do have discretion to file NFTLs. IRM § 5.14.5.2(6).

2. Avoid providing a financial statement. IRM § 5.14.5.2(12).

ii. The unpaid balance of assessments includes tax, assessed penalty, assessed interest, all other assessments (such as "fees and other expenses for collection"), but does not include accrued penalties and accrued interest. IRM § 5.14.5.2(2).

iii. The minimum monthly payment is determined by dividing the aggregate unpaid balance of assessments by 72 months, but if the collection statute will expire before the installment agreement pays off the balances, then the minimum monthly payment is based on what is needed to pay off the balances before the CSED. IRM § 5.14.5.2(2) and (3).

iv. Aggregate unpaid balance of assessments of $25,000 or less.

1. The following taxpayers qualify:

a. Individual taxpayers;

b. In business entities (Form 1120 - income tax only, and Form 1065 - late-filing penalty only); and

c. Out of business entities (any tax debt).

IRM § 5.14.5.2(2).

v. Aggregate unpaid balance of assessments of $25,001 to $50,000.

1. The following taxpayers qualify:

a. Individual taxpayers; and

b. Out of business sole proprietors.

IRM § 5.14.5.2(4).

2. Must be established as a Direct Debit Installment Agreement (DDIA) or a Payroll Deduction Installment Agreement (PDIA). IRM § 5.14.5.2(8).

d. Guaranteed Installment Agreements

i. The IRS must accept proposals to pay in installments if taxpayers are individuals who:

1. Owe income tax only of $10,000 or less (excluding penalties and interest);
2. Have not failed to file any income tax returns or to pay any tax shown on such returns during any of the preceding five taxable years;
3. Cannot pay the tax immediately;
4. Agree to fully pay the tax liability within three years or before the Collection Statute Expiration Date (CSED), whichever is earlier;
5. Agree to file and pay all tax returns during the term of the installment agreement; and
6. Have not entered into an installment agreement during any of the preceding five taxable years.

IRC § 6159(c); IRM § 5.14.5.3(1).

ii. The dollar limit for guaranteed installment agreements of $10,000 only applies to tax. IRM § 5.14.5.3(2). The taxpayer may owe additional amounts in penalty and interest (both assessed and accrued) and qualify for a guaranteed installment agreement, so long as the tax liability alone is not greater than $10,000. IRM § 5.14.5.3(2).

iii. A financial statement is not required. IRM § 5.14.5.3(3).

iv. A Notice of Federal Tax Lien (NFTL) determination is not required for a guaranteed installment agreement (so NFTLs are generally not filed), but revenue officers do have discretion to file NFTLs. IRM § 5.14.5.3(4).

e. In-Business Trust Fund (IBTF) Express Installment Agreements

i. For business taxpayers with trust fund liabilities, such as employment tax liabilities.

ii. An IBTF express installment agreement may be granted if:

1. The aggregate unpaid balance of assessments is $25,000 or less.

2. Taxes are fully paid in 24 months or before the CSED, whichever is earlier.

IRM § 5.14.5.4(1).

iii. No financial statement is required. IRM § 5.14.5.4(2).

iv. A Notice of Federal Tax Lien (NFTL) determination is not required for an IBTF express installment agreement (so NFTLs are generally not filed), but revenue officers do have discretion to file NFTLs. IRM § 5.14.5.4(3).

v. A TFRP determination is not required if:

1. Unpaid Balance of Assessment (UBA) is $25,000 or less; and,

2. Outstanding liabilities only include the current year or prior calendar year periods; and

3. The entire liability will be paid in 24 months.

IRM § 5.14.5.4(4).

vi. Use of the Direct Debit payment option (DDIA) is required on all IBTF Express Installment Agreements with a UBA between $10,000 and $25,000. IRM § 5.14.5.4(5).

f. If the taxpayer does not qualify for a guaranteed, streamlined, or IBTF express installment agreement, then the IRS will require a complete Collection Information Statement (CIS). IRM § 5.14.1.2(3).

g. Generally, the installment agreement reflects the taxpayer's ability to pay on a monthly basis. IRM § 5.14.1.4(4).

h. Allowable Expenses:

i. Allowable Living Expenses – Based on National and Local Standards (published by the IRS). IRM § 5.15.1.8.

1. Food, Clothing and Other Items

2. Out-of-Pocket Health Care Expenses

3. Housing and Utilities

4. Transportation

ii. Other Necessary Expenses – Expenses that meet the necessary expense test and normally are allowed. *Id.*

1. The necessary expense test is defined as expenses that are necessary to provide for a taxpayer's and his or her family's health and welfare and/or production of income. *Id.*

iii. Other Conditional Expenses – Expenses that may not meet the necessary expense test but may be allowable based on the circumstances of an individual case. *Id.*

1. Other conditional expenses may also be allowable if the taxpayer qualifies for the six-year rule and one-year rule. *Id.*

i. Six-Year Rule. IRM § 5.14.1.4.1(1).

i. All expenses may be allowed if:

1. The taxpayer establishes that they can stay current with all paying and filing requirements;

2. The tax liability, including projected accruals, can be fully paid within six years and within the CSED; and

3. The expense amounts are reasonable.

ii. The Six-Year Rule is not applicable to businesses.

j. One-Year Rule. IRM § 5.14.1.4.1(2).

i. Taxpayers who cannot full pay their accounts within six years may be given up to one year to modify or eliminate excessive necessary expenses.

ii. The One-Year Rule is not applicable to businesses.

k. In general, taxpayer accounts that do not qualify for a guaranteed, streamlined, or IBTF express installment agreement require NFTL determinations (and most of the time a NFTL will be filed). IRM § 5.14.1.4.3(1).

l. Partial Pay Installment Agreement

i. If full payment cannot be achieved by the Collection Statute Expiration Date (CSED), and taxpayers have some ability to pay, the IRS can enter into Partial Payment Installment Agreements (PPIAs). IRM §§ 5.14.2.1.1(2) and 5.14.2.2(1).

ii. A full Collection Information Statement is required for all PPIAs. IRM § 5.14.2.2.1(1).

iii. Only necessary expenses are permitted for PPIAs. IRM § 5.14.2.2.1(5). Conditional expenses not determined to be necessary are not allowed for PPIAs. IRM § 5.14.2.2.1(5).

iv. The taxpayer must agree to pay the maximum monthly payment based upon the taxpayer's ability to pay. IRM § 5.14.2.2.1(9).

12. Short-Term Payment Plans

a. Taxpayers may be granted Short Term Payment Plans up to 180 days if no prior Short Term Payment Plan has been granted. IRM §§ 5.19.1.6.3(1), 5.14.1.6(4).

b. Request a Short-Term Payment Plan by calling the IRS at the phone number listed on the most recent IRS notice.

i. Field collection employees (e.g., revenue officers) do not have the authority to grant a Short-Term Payment Plan. IRM § 5.14.1.6(4).

c. Generally, the IRS does not file a NFTL in connection with a Short-Term Payment Plan.

13. Currently Not Collectible (CNC) Status

a. As a general rule, accounts will be reported as currently not collectible when the taxpayer has no assets or income which are, by law, subject to levy. IRS Policy Statement 5-71 (see IRM § 1.2.1.6.14).

b. However, if there are limited assets or income but it is determined that levy action would create a hardship, the liability may be reported as currently not collectible. IRS Policy Statement 5-71 (see IRM § 1.2.1.6.14).

c. A hardship exists if a taxpayer is unable to pay reasonable basic living expenses. IRC § 5.16.1.2.9(1).

d. Generally, a Collection Information Statement (i.e., Form 433-A, Form 433-B, or Form 433-F) will be secured prior to reporting an account CNC. IRM § 5.16.1.2(2).

i. The IRS may also request some types of supporting documentation (e.g., bank statements, wage statements, mortgage statement, etc.).

e. Generally, a Notice of Federal Tax Lien (NFTL) will be filed on accounts being reported CNC when the aggregate unpaid balance of assessments equals or exceeds $10,000.00. IRM § 5.16.1.2(3).

f. Interest and penalties will continue to accrue on the account even though the collection action is suspended. IRM § 5.16.1.2.9(15).

g. How to request CNC status:

i. Call the person or the area of the IRS that the taxpayer's account is assigned to.

h. Hardship cases can be reactivated if it appears there is a change in the taxpayer's ability to pay indicating collectibility. IRM § 5.16.1.2(7).

14. Penalty Abatement Based on Reasonable Cause

a. Penalties for failure to file and failure to pay will be assessed unless it is shown that such failure is due to reasonable cause and not due to willful neglect. IRC §§ 6651(a), 6698(a), and 6699(a); Treas. Reg. § 301.6651-1(c)(1).

b. Penalties for failure to make tax deposits will be assessed unless it is shown that such failure is due to reasonable cause and not due to willful neglect. IRC § 6656(a).

c. Accuracy related penalties on underpayments of tax pursuant to IRC § 6662 shall not be imposed with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion. IRC § 6664(c)(1); Treas Reg. §§ 1.6662-1 and 1.6664-4.

d. "Willful neglect" is the conscious, intentional failure to comply with the provisions of the IRC, or reckless indifference to such provisions. IRM Exhibit § 20.1.1-8.

e. Reasonable cause:

i. Based on all the facts and circumstances in each situation. IRM § 20.1.1.3.2(1).

ii. Relief is generally granted when the taxpayer exercised ordinary business care and prudence in determining their tax obligations but was nevertheless unable to comply with those obligations. IRM § 20.1.1.3.2(1).

iii. Any reason which establishes that a taxpayer exercised ordinary business care and prudence, but nevertheless was unable to comply with a prescribed duty within the prescribed time, will be considered for penalty relief. IRM § 20.1.1.3.2(3)(a).

iv. A taxpayer may establish reasonable cause by providing facts and circumstances showing that they exercised ordinary business care and prudence (taking that degree of care that a reasonably prudent person would exercise), but nevertheless were unable to comply with the law. IRM § 20.1.1.3.2.2(1).

v. In determining if the taxpayer exercised ordinary business care and prudence, the IRS will consider:

1. Whether the dates and explanations correspond with events on which the penalties are based. IRM § 20.1.1.3.2.2(2)(a).

2. The taxpayer's overall compliance history – if the taxpayer incurred the same penalty in a prior period, that could indicate that the taxpayer is not exercising ordinary business care. IRM § 20.1.1.3.2.2(2)(b).

3. The length of time between the event cited as a reason for the noncompliance and subsequent compliance. IRM § 20.1.1.3.2.2(2)(c).

4. Whether the circumstances that caused the noncompliance were beyond the taxpayer's control. IRM § 20.1.1.3.2.2(2)(d).

vi. Death, serious illness, or unavoidable absence of the taxpayer, or a death or serious illness in the taxpayer's immediate family, may establish reasonable cause for filing, paying, or depositing late. IRM § 20.1.1.3.2.2.1.

vii. Fire, casualty, natural disaster or other disturbance may establish reasonable cause for a taxpayer's failure to timely comply with a requirement to file a return or pay a tax. IRM § 20.1.1.3.2.2.2.

viii. Inability to obtain the necessary records may constitute reasonable cause. IRM § 20.1.1.3.2.2.3.

f. The Internal Revenue Manual also provides for penalty relief from failure to file, failure to pay, and/or failure to deposit penalties under the First Time Abate administrative waiver. IRM §§ 20.1.1.3.3.2.1 and 20.1.1.3.6.1. First Time Abate applies to taxpayers that have not previously been required to file a return or if no penalties (except the estimated tax penalty) have been assessed against the taxpayer in the preceding three years. *Id.*

g. Penalties for underpayment of estimated tax:

i. Penalties for underpayment of estimated tax cannot be abated for reasonable cause alone. IRM § 20.1.3.2.7.1(1); Treas Reg. §1.6654-1(a)(1).

ii. The IRS can waive the penalty for underpayment of estimated tax if in the year at issue or the preceding year, the taxpayer retired after reaching age 62 or became disabled and the taxpayer's underpayment was due to reasonable cause. IRC § 6654(e)(3)(B); IRM § 20.1.3.2.7.2; Instructions for Form 2210.

iii. The IRS can waive the penalty for underpayment of estimated tax if the underpayment was due to a casualty, disaster, or other unusual circumstance, and it would be inequitable to impose the penalty. IRC § 6654(e)(3)(A); IRM § 20.1.3.2.7.2; Instructions for Form 2210.

h. How to request penalty abatement:

i. By phone – some penalties can be abated by calling the IRS at the phone number listed on the most recent IRS notice.

ii. By submitting Form 843, Claim for Refund and Request for Abatement, to the IRS.

i. Supporting Documents:

i. It is very helpful to provide the IRS with supporting documents (e.g., hospital records, police reports, insurance claims, etc.)

j. Appealing an IRS denial of a request to abate a penalty:

i. If the IRS rejects a request to remove a penalty, the taxpayer generally has 30 days from the date of the rejection letter to file a protest requesting an Appeals conference with the IRS Independent Office of Appeals.

John W. Menn
107 Church Avenue
Oshkosh, WI 54901
jmenn@swansonsweet.com
Phone: 920-235-6690
Fax: 920-426-5530

June 14, 2024

Internal Revenue Service
Chief, Local Insolvency Unit for the
[District] District of Wisconsin
Centralized Insolvency Operation
P.O. Box 7346
Philadelphia, PA 19101-7346

Re: [Debtor][_][and][_][Codebtor]
Administrative Claim Under 26 U.S.C. § 7433, 26 C.F.R. § 301.7433-2, and 26 C.F.R. § 301-7430-1
For Relief and Damages Related to Violations of Bankruptcy [either]Automatic Stay Under 11 U.S.C. § 362[or]Discharge Injunction Under 11 U.S.C. § 524

To Whom it May Concern:

Pursuant to 26 U.S.C. § 7433, 26 C.F.R. § 301.7433-2, and 26 C.F.R. § 301-7430-1, [Debtor][_][and][_][Codebtor] [db is/are] requesting recovery of actual damages and costs for violations of the bankruptcy [either]automatic stay under 11 U.S.C. § 362[or]discharge injunction under 11 U.S.C. § 524, and correction of these issues such that no further violations occur, as follows:

Taxpayer Name: [Debtor]

Taxpayer ID #: [SSN 1]

[if applicable]and

Taxpayer Name: [Codebtor]

Taxpayer ID #: [SSN 2]

Current Address: [address]

Current Home Phone #: [Home Phone] (use between 5:00 pm and 8:00 pm central time) [edit?]

Current Work Phone #: [Work Phone] (use between 8:00 am and 5:00 pm central time)[edit?]

Bankruptcy court & case number: [District] Bankruptcy Case # [Case #]

Description of the violation:

[Fill in Narrative Description]

Description of the injuries incurred by the taxpayer:

[Fill in Narrative Description]

Internal Revenue Service
June 14, 2024
Page 2

In addition, [Debtor Short] [db has/have] incurred attorneys' fees in [db his/her/its] efforts to rectify this problem.

Calculation of the dollar amount of the claim, including any damages that have not yet been incurred but are reasonably foreseeable:

[Summarize the claim amount] In addition, to date, [Debtor Short] [db has/have] incurred [Attorney Fees] in attorneys' fees. These fees will continue to accrue if [Debtor Short] [db is/are] forced to file a petition in the bankruptcy court to resolve this matter.

Taxpayer Entitlement to Recover Attorneys' Fees:

It is the taxpayer[db's] position that [db he/she/it] [db is/are] entitled to recovery of the reasonable attorneys' fees incurred in connection with this Administrative Claim pursuant to 26 U.S.C. § 7430 and 26 C.F.R. § 301.7430-8, upon a determination that [db he/she/it] [db is/are] the prevailing party and entitled to the relief sought above.

1. The taxpayer[db/s] satisfies[edit?] the net worth and size limitation set forth in 26 C.F.R. § 301.7430-5. This is substantiated by [edit? – net worth of less than $2million generally for individuals]
2. An officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code, as described above. "A willful violation does not require specific intent to violate the stay; it is sufficient that the creditor takes questionable action despite the awareness of a pending bankruptcy proceeding." *In re Radcliffe*, 563 F.3d 627, 631 (7th Cir. 2009) (citing *Price v. United States*, 42 F.3d 1068 (7th Cir.1994)).
3. The position of the Internal Revenue Service in the proceeding was not substantially justified. There is no exception to the automatic stay that would permit the type of offset done in this case.

Duly Authorized Representative:

This Administrative claim is submitted by Attorney [Attorney], pursuant to a Form 2848 Power of Attorney and Declaration of Representative, attached hereto.

I look forward to your prompt attention to this matter. If you have any questions, please contact me at the number above. Thank You.

Sincerely,

SWANSON SWEET LLP

/s/ John W. Menn

JOHN W. MENN
Attorney at Law

[ATTY]/[Typist]
CC: Attorney Mark J. Miller via email at Mark.J.Miller@IRSCOUNSEL.TREAS.GOV
[edit?]
[Debtor][_][and][_][Codebtor]
[address][edit?]
Enclosure

26 CFR § 301.7430-1 Exhaustion of administrative remedies.

(a) ***In general.*** Section 7430(b)(1) provides that a court shall not award reasonable litigation costs in any civil tax proceeding under section 7430(a) unless the court determines that the prevailing party has exhausted the administrative remedies available to the party within the Internal Revenue Service. This section sets forth the circumstances in which such administrative remedies shall be deemed to have been exhausted.

(b) ***Requirements***—(1) *In general.* A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to any tax matter for which an Appeals office conference is available under §§ 601.105 and 601.106 of this chapter (other than a tax matter described in paragraph (c) of this section) unless—

(i) The party, prior to filing a petition in the Tax Court or a civil action for refund in a court of the United States (including the Court of Federal Claims), participates, either in person or through a qualified representative described in § 601.502 of this chapter, in an Appeals office conference; or

(ii) If no Appeals office conference is granted, the party, prior to the issuance of a statutory notice in the case of a petition in the Tax Court or the issuance of a notice of disallowance in the case of a civil action for refund in a court of the United States (including the Court of Federal Claims)—

(A) Requests an Appeals office conference in accordance with §§ 601.105 and 601.106 of this chapter or any successor published guidance; and

(B) Files a written protest if a written protest is required to obtain an Appeals office conference.

(2) ***Participates.*** For purposes of this section, a party or qualified representative of the party described in § 601.502 of this chapter participates in an Appeals office conference if the party or qualified representative discloses to the Appeals office all relevant information regarding the party's tax matter to the extent such information and its relevance were known or should have been known to the party or qualified representative at the time of such conference.

(3) ***Tax matter.*** For purposes of this section, “tax matter” means a matter in connection with the determination, collection or refund of any tax, interest, penalty, addition to tax or additional amount under the Internal Revenue Code.

(4) ***Failure to agree to extension of time for assessments.*** Any failure by the prevailing party to agree to an extension of the time for the assessment of any tax will not be taken into account for purposes of determining whether the prevailing party has exhausted the administrative remedies available to the party within the Internal Revenue Service.

(c) ***Revocation of a determination that an organization is described in section 501(c)(3).*** A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to a revocation of a determination that it is an organization described in section 501(c)(3) unless, prior to filing a declaratory judgment action under section 7428, the party has exhausted its administrative remedies in accordance with section 7428, and any regulations, rules, and revenue procedures thereunder.

(d) ***Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.***

(1) A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to a matter other than one to which paragraph (b) or (c) of this section applies (including summonses, levies, liens, and jeopardy and termination assessments) unless, prior to filing an action in a court of the United States (including the Tax Court and the Court of Federal Claims)—

(i) The party follows all applicable Internal Revenue Service procedures for contesting the matter (including filing a written protest or claim, requesting an administrative appeal, and participating in an administrative hearing or conference); or

(ii) If there are no applicable Internal Revenue Service procedures, the party submits to the Area Director of the area having jurisdiction over the dispute a written claim for relief reciting facts and circumstances sufficient to show the nature of the relief requested and that the party is entitled to the requested relief, and the Area Director denies the claim for relief in writing or fails to act on the claim within a reasonable period after the claim is received by the Area Director.

(2) For purposes of paragraph (d)(1)(ii) of this section, a *reasonable period* is—

(i) The 5-day period preceding the filing of a petition to quash an administrative summons issued under section 7609;

(ii) The 5-day period preceding the filing of a wrongful levy action in which a demand for the return of property is made;

(iii) The period expressly provided for administrative review of the party's claim by an applicable provision of the Internal Revenue Code that expressly provides for the pursuit of administrative remedies (such as the 16-day period provided under section 7429(b)(1)(B) relating to review of jeopardy assessment procedures); or

(iv) The 60-day period following receipt of the claim for relief in all other cases.

(e) ***Actions involving willful violations of the automatic stay under section 362 or the discharge provisions under section 524 of the Bankruptcy Code—*** (1) *Section 7433 claims.* A party has not exhausted administrative remedies within

the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code or the discharge provisions under section 524 of the Bankruptcy Code unless it files an administrative claim for damages or for relief from a violation of section 362 or 524 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay or discharge violation was filed pursuant to § 301.7433-2(e) and satisfies the other conditions set forth in § 301.7433-2(d) prior to filing a petition under section 7433.

(2) ***Section 362(h) claims.*** A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code unless it files an administrative claim for relief from a violation of section 362 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay violation was filed pursuant to § 301.7433-2(e) and satisfies the other conditions set forth in § 301.7433-2(d) prior to filing a petition under section 362(h) of the Bankruptcy Code.

(f) ***Exception to requirement that party pursue administrative remedies.*** If the conditions set forth in paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this section are satisfied, a party's administrative remedies within the Internal Revenue Service shall be deemed to have been exhausted for purposes of section 7430.

(1) The Internal Revenue Service notifies the party in writing that the pursuit of administrative remedies in accordance with paragraphs (b), (c), and (d) of this section is unnecessary.

(2) In the case of a petition in the Tax Court—

(i) The party did not receive a notice of proposed deficiency (30-day letter) prior to the issuance of the statutory notice and the failure to receive such notice was not due to actions of the party (such as a failure to supply requested information or a current mailing address to the Internal Revenue Service office or service center having jurisdiction over the tax matter); and

(ii) The party does not refuse to participate in an Appeals office conference while the case is in docketed status.

(3) In the case of a civil action for refund involving a tax matter other than a tax matter described in paragraph (e)(4) of this section, the party—

(i) Participates in an Appeals office conference with respect to the tax matter prior to issuance of a statutory notice of deficiency with respect to such tax matter; or

(ii) Did not receive written notification that an Appeals office conference was available prior to issuance of a notice of disallowance and the failure to receive such a notification was not due to the actions of the party (such as the failure to

supply requested information or a current mailing address to the Internal Revenue Service office or service center having jurisdiction over the tax matter); or

(iii) Did not receive either written or oral notification that an Appeals office conference had been granted within six months from the date of the filing of the claim for refund and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the Internal Revenue Service office or service center having jurisdiction over the tax matter).

(4) In the case of a civil action for refund involving a tax matter under sections 6703 or 6694—

(i) The party did not receive a notice of proposed disallowance prior to issuance of a notice of disallowance and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the Internal Revenue Service office or service center having jurisdiction over the tax matter); or

(ii) During the six-month period following the day on which the party's claim for refund is filed, the party's claim for refund is not denied, and the Internal Revenue Service has failed to process the claim with due diligence.

(g) ***Examples.*** The provisions of this section may be illustrated by the following examples:

EXAMPLE 1.

Taxpayer A exchanges property held for investment for similar property and claims that the gain on the exchange is not recognized under section 1031. The Internal Revenue Service conducts a field examination and determines that there has not been a like-kind exchange. No agreement is reached on the matter and a notice of proposed deficiency (30-day letter) is sent to A. A does not file a request for an Appeals office conference. A pays the amount of the proposed deficiency and files a claim for refund. A notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and, instead, files a civil action for refund in a United States District Court. A has not exhausted the administrative remedies available within the Internal Revenue Service.

EXAMPLE 2.

Assume the same facts as in *Example 1* except that, after receiving the notice of proposed deficiency (30-day letter), A files a request for an Appeals office conference. No agreement is reached at the conference. A pays the amount of the proposed deficiency and files a claim for refund. A notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and files a civil action for refund in a United States District Court. A has exhausted the administrative remedies available within the Internal Revenue Service.

EXAMPLE 3.

Assume the same facts as in *Example 1* except A first requests an Appeals office conference after A's receipt of the notice of proposed disallowance. A is granted an Appeals office conference and A participates in such conference. A has exhausted the administrative remedies available within the Internal Revenue Service.

EXAMPLE 4.

Taxpayer B receives a notice of proposed deficiency (30-day letter) after completion of a field examination. B provided to the Internal Revenue Service during the examination all relevant information under the taxpayer's control and all relevant legal arguments supporting the taxpayer's position. B properly requests an Appeals office conference. The Appeals office, to obtain an additional period of time to consider the tax matter, requests that B sign Form 872 to extend the time for an assessment of tax, but B declines. Appeals then denies the request for a conference and issues a notice of deficiency. B has exhausted the administrative remedies available within the Internal Revenue Service.

EXAMPLE 5.

Taxpayer C receives a notice of proposed deficiency (30-day letter) and a written statement that C need not file a written protest or request an Appeals office conference since a conference will not be granted. C files a petition in the Tax Court after receiving the statutory notice of deficiency. C's administrative remedies within the Internal Revenue Service are deemed to have been exhausted.

EXAMPLE 6.

On January 2, the Internal Revenue Service serves a summons issued under section 7609 on third-party recordkeeper D to produce records of taxpayer E. On January 5, notice of the summons is given to E. The last day on which E may file a petition in a court of the United States to quash the summons is January 25. Thereafter, E files a written claim for relief with the Internal Revenue Service office having jurisdiction over the matter together with a copy of the summons. The claim and copy are received by the Internal Revenue Service office on January 20. On January 25, E files a petition to quash the summons. E has exhausted the administrative remedies available within the Internal Revenue Service.

EXAMPLE 7.

A notice of Federal tax lien is filed in County M on March 3, in the name of F. On April 2, F pays the entire liability thereby satisfying the lien. On May 2, F files a written claim with the Internal Revenue Service office having jurisdiction over the tax matter demanding a certificate of release of lien. Thereafter, F provides the Internal Revenue Service office with a copy of the notice of Federal tax lien and a copy of the canceled check in satisfaction of the lien, which are received by the district director on May 15. F's claim is deemed to have been filed on May 15. Accordingly, F must wait until after July 14 (60 days following the filing of the claim for relief on May 15) to commence an action, in order to have exhausted the administrative remedies available within the Internal Revenue Service.

EXAMPLE 8.

A revenue officer seizes an automobile to effect collection of G's liability on January 10. On January 22, H submits a written claim to the Internal Revenue Service office having jurisdiction over the tax matter claiming that H purchased the automobile from G for an adequate consideration before the tax lien against G arose, and demands immediate return of the automobile. A copy of the title certificate and H's canceled check are submitted with

the claim. The claim is received by the Internal Revenue Service office on January 25. On January 30, H brings a wrongful levy action. H has exhausted the administrative remedies available within the Internal Revenue Service.

EXAMPLE 9.

The Internal Revenue Service issues a revenue ruling which holds that ear piercing does not affect a function or structure of the body within the meaning of section 213 and therefore is not deductible. Taxpayer I deducts the costs of ear piercing and, following an examination, receives a notice of proposed deficiency (30-day letter) disallowing the treatment of these costs. Because of the revenue ruling, I believes a conference would not aid in the resolution of the tax dispute. Accordingly, I does not request an Appeals office conference. After receiving a statutory notice of deficiency, I files a petition in the Tax Court. I has not exhausted the administrative remedies available within the Internal Revenue Service. The issuance of a revenue ruling covering the same fact situation but taking a contrary position does not constitute notification by the Internal Revenue Service to I that the pursuit of administrative remedies is unnecessary. Similarly, the issuance to I of a private letter ruling or technical advice does not constitute notification by the Internal Revenue Service that the pursuit of administrative remedies is unnecessary.

EXAMPLE 10.

Taxpayer J is assessed a penalty under section 6701 for aiding in the understatement of the tax liability of another person. J pays 15% of the penalty in accordance with section 6703 and files a claim for refund on June 15. J is not issued a notice of proposed disallowance and thus cannot participate in an Appeals office conference within six months of the filing of the claim for refund. J brings an action on December 23. J has exhausted the administrative remedies available within the Internal Revenue Service.

EXAMPLE 11.

Taxpayer K receives a notice of proposed deficiency (30-day letter) and neither requests nor participates in an Appeals office conference. The Service then issues a statutory notice of deficiency (90-day letter). Upon receiving the statutory notice, and after filing a petition with the Tax Court, K requests an Appeals office conference. K has not exhausted the administrative remedies available within the Internal Revenue Service because the request for an Appeals office conference was made after the issuance of the statutory notice.

(h) ***Effective date.*** This section applies to court proceedings described in section 7430 filed in a court of the United States (including the Tax Court) after May 7, 1992.

26 CFR § 301.7430-5 Prevailing party.

(a) ***In general.*** For purposes of an award of reasonable administrative costs under section 7430 in the case of administrative proceedings commenced after July 30, 1996, a taxpayer is a prevailing party (other than by reason of section 7430(c)(4)(E)) only if—

(1) At least one issue (other than recovery of administrative costs) remains in dispute as of the date that the Internal Revenue Service takes a position in the administrative proceeding, as described in paragraph (b) of this section;

(2) The position of the Internal Revenue Service was not substantially justified;

(3) The taxpayer substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(4) The taxpayer satisfies the net worth and size limitations referenced in paragraph (f) of this section.

(b) ***Position of the Internal Revenue Service.*** The position of the Internal Revenue Service in an administrative proceeding is the position taken by the Internal Revenue Service as of the earlier of—

(1) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; or

(2) The date of the notice of deficiency or any date thereafter.

(c) ***Examples.*** The provisions of this section may be illustrated by the following examples:

EXAMPLE 1.

Taxpayer A receives a notice of proposed deficiency (30-day letter). A pays the amount of the proposed deficiency and files a claim for refund. A's claim is considered and a notice of proposed claim disallowance is issued by the Area Director. A does not request an Appeals office conference and the Area Director issues a notice of claim disallowance. A then files suit in a United States District Court. A cannot recover reasonable administrative costs because the notice of claim disallowance is not a notice of the decision of the Internal Revenue Service Office of Appeals or a notice of deficiency. Accordingly, the Internal Revenue Service has not taken a position in the administrative proceeding pursuant to section 7430(c)(7)(B).

EXAMPLE 2.

Taxpayer B receives a notice of proposed deficiency (30-day letter). B disputes the proposed adjustments and requests an Appeals office conference. The Appeals office determines that B has no additional tax liability. B requests administrative costs from the date of the 30-day letter. B is not the prevailing party and may not recover administrative costs because all of the proposed adjustments in the case were resolved as of the date that the Internal Revenue Service took a position in the administrative proceeding.

(d) ***Substantially justified***—(1) *In general.* The position of the Internal Revenue Service is substantially justified if it has a reasonable basis in both fact and law. A significant factor in determining whether the position of the Internal Revenue Service is substantially justified as of a given date is whether, on or before that date, the taxpayer has presented all relevant information under the taxpayer's control and relevant legal arguments supporting the taxpayer's position to the appropriate Internal Revenue Service personnel. The appropriate Internal Revenue Service personnel are personnel responsible for reviewing the information or arguments, or personnel who would transfer the information or arguments in the normal course of procedure and administration to the personnel who are responsible.

(2) ***Position in courts of appeal.*** Whether the United States has won or lost an issue substantially similar to the one in the taxpayer's case in courts of appeal for circuits other than the one to which the taxpayer's case would be appealable should be taken into consideration in determining whether the Internal Revenue Service's position was substantially justified.

(3) ***Example.*** The provisions of this section (d) are illustrated by the following example:

EXAMPLE.

The Internal Revenue Service, in the conduct of a correspondence examination of taxpayer A's individual income tax return, requests substantiation from A of claimed medical expenses. A does not respond to the request and the Internal Revenue Service issues a notice of deficiency. After receiving the notice of deficiency, A presents sufficient information and arguments to convince a tax compliance officer that the notice of deficiency is incorrect and that A owes no tax. The revenue agent then closes the case showing no deficiency. Although A incurred costs after the issuance of the notice of deficiency, A is unable to recover these costs because, as of the date these costs were incurred, A had not presented relevant information under A's control and relevant legal arguments supporting A's position to the appropriate Internal Revenue Service personnel. Accordingly, the position of the Internal Revenue Service was substantially justified at the time the costs were incurred.

(4) ***Included costs.***

(i) An award of reasonable administrative costs shall only include costs incurred on or after the administrative proceeding date as defined in section 301.7430-3(c) of this chapter.

(ii) If the Internal Revenue Service takes a position in an administrative proceeding, as defined in paragraph (b) of this section, and the position is not substantially justified, the taxpayer may be permitted to recover costs incurred before the position was taken, but not before the dates set forth in this paragraph (d)(4).

(5) ***Examples.*** The provisions of this section may be illustrated by the following examples:

EXAMPLE 1.

Pursuant to section 6672, taxpayer D receives from the Area Director Collection Operations (Collection) a proposed assessment of trust fund taxes (Trust Fund Recovery Penalty). D requests and is granted Appeals office consideration. Appeals considers the issues and decides to uphold Collection's recommended assessment. Appeals notifies D of this decision in writing. Collection then assesses the tax and notice and demand is made. D timely pays the minimum amount required to commence a court proceeding, files a claim for refund, and furnishes the required bond. Collection disallows the claim, but Appeals, on reconsideration, reverses its original position, thus upholding D's position. If Appeals' initial determination was not substantially justified, D may recover administrative costs incurred on or after the mailing of the proposed assessment of trust fund taxes, because the proposed assessment is the first determination letter that allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

EXAMPLE 2.

Taxpayer E receives a notice of proposed deficiency (30-day letter). E pays the amount of the proposed deficiency and files a claim for refund. E's claim is considered and a notice of proposed disallowance is issued by the Area Director. E requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of claim disallowance. E does not file suit in a United States District Court but instead contacts the Appeals office to attempt to reverse the decision. E convinces the Appeals officer that the notice of claim disallowance is in error. The Appeals officer then abates the assessment. E may recover reasonable administrative costs if the position taken in the notice of claim disallowance issued by the Office of Appeals was not substantially justified and the other requirements of section 7430 and the regulations thereunder are satisfied. If so, E may recover administrative costs incurred from the mailing date of the 30-day letter because the requirements of paragraph (c)(2) of this section are met. E cannot recover the costs incurred prior to the mailing of the 30-day letter because they were incurred before the administrative proceeding date.

(6) ***Exception.*** If the position of the Internal Revenue Service was substantially justified with respect to some issues in the proceeding and not substantially justified with respect to the remaining issues, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to those issues with respect to which the position of the Internal Revenue Service was not substantially justified. If the position of the Internal Revenue Service was substantially justified for only a portion of the period of the proceeding and not substantially justified for the remaining portion of the proceeding, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to that portion during which the position of the Internal Revenue Service was not substantially justified. Where an award of reasonable administrative costs is limited to that portion of the administrative proceeding during which the position of the Internal Revenue Service was not substantially justified, whether the position of the Internal Revenue Service was substantially justified is determined as of the date any cost is incurred.

26 CFR § 301.7430-5

(7) *Presumption.* If the Internal Revenue Service did not follow any applicable published guidance in an administrative proceeding commenced after July 30, 1996, the position of the Internal Revenue Service, on those issues to which the guidance applies and for all periods during which the guidance was not followed, will be presumed not to be substantially justified. This presumption may be rebutted. For purposes of this paragraph (d)(7), the term *applicable published guidance* means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, and announcements published in the Internal Revenue Bulletin and, if issued to or with respect to the taxpayer, private letter rulings, technical advice memoranda, and determination letters (§ 601.601(d)(2) of this chapter). Also, for purposes of this paragraph (d)(7), the term administrative proceeding includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in § 301.7430-3(c).

(e) *Amount in controversy.* The amount in controversy shall include the amount in issue as of the administrative proceeding date as increased by any amounts subsequently placed in issue by any party. The amount in controversy is determined without increasing or reducing the amount in controversy for amounts of loss, deduction, or credit carried over from years not in issue.

(f) *Most significant issue or set of issues presented.*

(1) *In general.* Where the taxpayer has not substantially prevailed with respect to the amount in controversy the taxpayer may nonetheless be a prevailing party if the taxpayer substantially prevails with respect to the most significant issue or set of issues presented. The issues presented include those raised as of the administrative proceeding date and those raised subsequently. Only in a multiple issue proceeding can a most significant issue or set of issues presented exist. However, not all multiple issue proceedings contain a most significant issue or set of issues presented. An issue or set of issues constitutes the most significant issue or set of issues presented if, despite involving a lesser dollar amount in the proceeding than the other issue or issues, it objectively represents the most significant issue or set of issues for the taxpayer or the Internal Revenue Service. This may occur because of the effect of the issue or set of issues on other transactions or other taxable years of the taxpayer or related parties.

(2) *Example.* The provisions of this section may be illustrated by the following example:

EXAMPLE.

In the purchase of an ongoing business, Taxpayer F obtains from the previous owner of the business a covenant not to compete for a period of five years. On audit of F's individual income tax return for the year in which the business was acquired, the Internal Revenue Service challenges the basis assigned to the covenant not to compete and a deduction taken as a business expense for a seminar attended by F. Both parties agree that the covenant not to compete is amortizable over a period of five years; however, the Internal Revenue

Service asserts that the proper basis of the covenant is $25,000, while F asserts the basis is $50,000 and claims a deduction of $10,000 in the year in which the business was acquired. F deducted $12,000 for the seminar. The Internal Revenue Service determines that the deduction for the seminar should be disallowed entirely. In the notice of deficiency, the Internal Revenue Service adjusts the amortization deduction to reflect the change to the basis of the covenant not to compete, and disallows the seminar expense. Thus, of the two adjustments determined for the year under audit, the adjustment attributable to the disallowance of the seminar is larger than that attributable to the covenant not to compete. Due to the impact on the next succeeding four years, however, the covenant not to compete adjustment is the most significant issue to both F and the Internal Revenue Service.

(g) ***Net worth and size limitations***—(1) *Individuals*. A taxpayer who is a natural person meets the net worth and size limitations of this paragraph if the taxpayer's net worth does not exceed two million dollars. For purposes of determining net worth, individuals filing a joint return, and jointly incurring administrative or litigation costs shall have their net worth determined jointly, with all assets and liabilities treated as joint for purposes of the net worth evaluation, and applying a joint cap of four million dollars. Individuals who file a joint return, but incur separate administrative or litigation costs, by retaining separate representation, and/or seeking individual administrative review or petitioning the court individually, such as under section 6015, shall have their net worth determined separately, with only those assets and liabilities reasonably attributable to each spouse considered against separate caps of two million dollars per spouse.

(2) ***Estates and trusts.*** An estate or a trust meets the net worth and size limitations of this paragraph if the estate or trust's net worth does not exceed two million dollars. The net worth of an estate shall be determined as of the date of the decedent's death provided the date of death is prior to the date the court proceeding is commenced. The net worth of a trust shall be determined as of the last day of the last taxable year involved in the proceeding.

(3) ***Others.***

(i) A taxpayer that is a partnership, corporation, association, unit of local government, or organization (other than an organization described in paragraph (g)(4) of this section) meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date:

(A) The taxpayer's net worth does not exceed seven million dollars; and

(B) The taxpayer does not have more than 500 employees.

(ii) A taxpayer who is a natural person and owns an unincorporated business is subject to the net worth and size limitations contained in paragraph (g)(3)(i) of this section if the tax at issue (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) relates directly to the business activities of the unincorporated business.

(4) ***Special rule for charitable organizations and certain cooperatives.*** An organization described in section 501(c)(3) exempt from taxation under section

501(a), or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a) (as in effect on October 22, 1986), meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date, the organization or cooperative association does not have more than 500 employees.

(5) ***Special rule for TEFRA partnership proceedings.***

(i) In cases involving partnerships subject to the unified audit and litigation procedures of subchapter C of chapter 63 of the Internal Revenue Code (TEFRA partnership cases), the TEFRA partnership meets the net worth and size limitations requirements of this paragraph (g) if, on the administrative proceeding date—

(A) The partnership's net worth does not exceed seven million dollars; and

(B) The partnership does not have more than 500 employees.

(ii) In addition, each partner requesting fees pursuant to section 7430 must meet the appropriate net worth and size limitations set forth in paragraph (g)(1), (g)(2), or (g)(3) of this section. For example, if a partner is an individual, his or her net worth must not exceed two million dollars as of the administrative proceeding date. If the partner is a corporation, its net worth must not exceed seven million dollars and it must not have more than 500 employees.

(6) ***Determining net worth.*** For purposes of determining net worth under this paragraph (g), assets are valued based on the cost of their acquisition.

(h) ***Determination of prevailing party.*** If the final decision with respect to the tax, interest, or penalty is made at the administrative level, the determination of whether a taxpayer is a prevailing party shall be made by agreement of the parties, or absent an agreement, by the Internal Revenue Service. See § 301.7430-2(c)(7) regarding the right to appeal the decision of the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs to the Tax Court.

26 CFR § 301.7430-8 Administrative costs incurred in damage actions for violations of section 362 or 524 of the Bankruptcy Code.

(a) ***In general.*** The Internal Revenue Service may grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) ***Prevailing party.*** A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430-5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and

(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

(c) ***Administrative proceeding.*** For purposes of this section, an administrative proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under § 301.7433-2(e).

(d) ***Costs incurred after filing of bankruptcy petition.*** Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) ***Time for filing claim for administrative costs.***

(1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to

a request by the taxpayer for an award of reasonable administrative costs within six months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia, the term legal holiday also means a statewide legal holiday in the state where such office is located.

(f) ***Effective date.*** This section is applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

26 CFR § 301.7430-8

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

(a) ***In general.*** If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or an employee of the Internal Revenue Service recklessly or intentionally , or by reason of negligence, disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable is the lesser of $1,000,000 ($100,000 in the case of negligence), or the sum of:

(1) The actual, direct economic damages sustained as a proximate result of the reckless or international actions of the officer or employee; and

(2) Costs of the action.

An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (e) of this section, and has waited for the period required under paragraph (d) of this section.

(b) ***Actual, direct economic damages***—(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer as the proximate result of the reckless or intentional, or negligent, actions of an officer or an employee of the Internal Revenue Service. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

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

(i) ***Litigation costs.*** For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the action taken by the officer or employee of the Internal Revenue Service, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. The term litigation costs includes the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) ***Administrative costs.*** For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the action taken by an officer or employee of the Internal Revenue Service, including costs incurred pursuing an administrative claim for damages under paragraph (e) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (b)(2)(i) of this section incurred pursuing administrative relief.

(c) ***Costs of the action.*** Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshall;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

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

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

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

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

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

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

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

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

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

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

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

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

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

(g) ***Period of limitations***—(1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

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

(h) ***Recovery of costs under section 7430.*** Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a “prevailing party” for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other

reasonable litigation costs not recoverable under this section. For purposes of this paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the claim on the grounds that the Internal Revenue Service did not violate section 7433(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (e) of this section, are not recoverable under section 7430.

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

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

(a) ***In general.***

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

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

(ii) Costs of the action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 CFR § 301.7433-2

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

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

(h) ***Recovery of litigation costs and administrative costs under section 7430***—(1) *In general.* Litigation costs, as defined in § 301.7433-1(b)(2)(i), including attorneys fees, not recoverable under this section may be recoverable under section 7430 if a taxpayer challenges in whole or in part an Internal Revenue Service denial of an administrative claim for damages by filing a petition in the bankruptcy court. If, following the Internal Revenue Service's denial of an administrative claim for damages, a taxpayer files a petition in the bankruptcy court challenging that denial in whole or in part, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(ii) (relating to net worth and size requirements), the taxpayer will be considered a prevailing party for purposes of section 7430, unless the Internal Revenue Service establishes that the position of the Internal Revenue Service in the proceeding was substantially justified. Such taxpayer will generally be entitled to attorneys' fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph (h), if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that the Internal Revenue Service did not willfully violate Bankruptcy Code section 362 or 524.

(2) ***Administrative costs***—(i) *In general.* Administrative costs, as defined in § 301.7433-1(b)(2)(ii), including attorneys' fees, not recoverable under this section may be recoverable under section 7430. *See* § 301.7430-8.

(ii) ***Limitation regarding recoverable administrative costs.*** Administrative costs may be awarded only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(i) ***Effective date.*** This section is applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

26 U.S. Code § 7430 - Awarding of costs and certain fees

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

(1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and

(2) reasonable litigation costs incurred in connection with such court proceeding.

(b) Limitations

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

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

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

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

(c) Definitions For purposes of this section—

(1) Reasonable litigation costs The term "reasonable litigation costs" includes—

(A) reasonable court costs, and

(B) based upon prevailing market rates for the kind or quality of services furnished—

(i) the reasonable expenses of expert witnesses in connection with a court proceeding, except that no expert witness shall be compensated at a rate

in excess of the highest rate of compensation for expert witnesses paid by the United States,

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

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

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

(2) Reasonable administrative costs The term "reasonable administrative costs" means—

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

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

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

(3) Attorneys' fees

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

(B)Pro bono services The court may award reasonable attorneys' fees under subsection (a) in excess of 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—

26 USC § 7430

(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 Independent 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,

26 USC § 7430

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 Independent 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.

26 U.S. Code § 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.

26 USC § 7433

11 U.S. Code § 507 – Priorities

(a) The following expenses and claims have priority in the following order:

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—

(i)
for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

(I)
any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II)
any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or

(iii)
other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B)
a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C)
a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D)
an employment tax on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on—

(i)
a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

11 USC § 507(a)(8)

(ii)
if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise—

(i)
entered for consumption within one year before the date of the filing of the petition;

(ii)
covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii)
entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G)
a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

11 USC § 507(a)(8)

Faculty

Hon. Lisa S. Gretchko is a U.S. Bankruptcy Judge for the Eastern District of Michigan in Detroit, sworn in on April 5, 2021. Prior to her judicial appointment, she spent more than four decades as a bankruptcy/creditors' rights attorney and represented nearly every constituency in bankruptcy courts around the country, including secured creditors, unsecured creditors' committees, landlords, licensors of intellectual property, customers, suppliers, business debtors and trustees. Judge Gretchko has written and lectured extensively for various organizations on numerous bankruptcy and creditors' rights issues. From April 2018-April 2022, she served as ABI's Vice President-Publications, as a member of ABI's Executive Committee and Board of Directors, and as ABI's Publications Committee chair. Judge Gretchko is a former Executive Editor of the *ABI Journal* and a former co-chair of the ABI's Unsecured Trade Creditors Committee, which named her 2014 Committee Person of the Year. She also has been named in *Michigan Super Lawyers* and *The Best Lawyers in America*, and she was honored as a Woman in the Law by *Michigan Lawyer's Weekly* in 2011. Judge Gretchko received her B.A. with honors in 1976 from the University of Michigan, where she was elected Phi Beta Kappa, and her J.D. with honors in 1978 from the University of Detroit.

Michael Gutting is a tax attorney and partner with Gensburg Calandriello & Kanter, P.C. in Chicago, where his practice focuses on federal and state tax controversy. He represents clients before the IRS, Illinois Department of Revenue and Illinois Department of Employment Security in audit/examination matters and collection matters for a variety of taxes, including income, employment and sales/use taxes, as well as penalties for persons responsible for collecting trust fund taxes. Mr. Gutting handles cases in the U.S. Tax Court, the Illinois Independent Tax Tribunal and the Illinois Department of Employment Security Administrative Hearings. For tax-collection matters, he has negotiated many tax resolutions, which have included offers in compromise, installment agreements, getting clients placed in Currently Not Collectible status, penalty abatement and innocent spouse relief. He has negotiated numerous offers in compromise including an offer in compromise that reduced a taxpayer's liability from over $10,100,000 to $21,641 and an offer in compromise that reduced a taxpayer's liability from over $4,900,000 to $74,000. Prior to starting his legal career, Mr. Gutting was employed as a tax consultant and Illinois CPA by the Chicago Division of Deloitte Tax LLP. He received his B.S. in accounting from Northern Illinois University, his M.S. in accounting and his J.D. from the Illinois Institute of Technology Chicago-Kent College of Law.

Michael Hanrahan is a partner at CBH Attorneys & Counselors, PLLC in Grand Rapids, Mich., where he focuses his areas of practice on bankruptcy law, business law and tax law. He was named a Top 40 Under 40 Lawyer by the American Society of Legal Advocates in 2016, and a Top Lawyer in Grand Rapids in the area of Bankruptcy and Tax Law, and he has been named as a "Rising Star" by *Super Lawyers* since 2018. He also acts as the Treasurer of the Debtor's Bar of West Michigan, frequently speaks at bankruptcy seminars, and has acted as an adjunct professor of bankruptcy law at Western Michigan Cooley Law School. Mr. Hanrahan received both his B.S. in business administration and his M.B.A. from St. Bonaventure University, and his J.D. from Western Michigan University's Cooley Law School. He also holds an LL.M. in taxation.

John W. Menn is a partner and founding member of Swanson Sweet LLP, in its Oshkosh, Wis., office. He primarily represents consumers, small businesses and family farmers in bankruptcy and financial reorganization cases under chapters 7, 11, 12 and 13 of the Bankruptcy Code, and in non-bankruptcy workouts, foreclosure proceedings, mortgage modifications, state court receiverships and chapter 128 debt-amortization plans. In addition to his debtor work, Mr. Menn represents individuals and small businesses as creditors in all chapters of bankruptcy, advising them of their rights, filing claims, negotiating and litigating disputed matters, and pursuing nondischargeability complaints. He has regularly presented at various state, regional and national seminars on bankruptcy/insolvencytopics. Mr. Menn received his B.A. from Calvin College in 2005 and his J.D. in 2009 from the University of Wisconsin.