

ployee as of the time such action was commenced upon proper service of process on the United States.

**(f) Provision inapplicable**

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

**(g) Interest**

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

(1) In the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary receives the money wrongfully levied upon to the date of payment of such judgment;

(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment; and

(3) in the case of a judgment pursuant to subsection (b)(5) which orders a refund of any amount, from the date the Secretary received such amount to the date of payment of such judgment.

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

**(1) In general**

Notwithstanding subsection (b), if, in any action brought under this section, there is a finding that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$1,000,000 (\$100,000 in the case of negligence) or the sum of—

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

(B) the costs of the action.

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

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

**(3) Payment authority**

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

**(i) Cross reference**

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1998 AMENDMENT

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99-514, set out as a note under section 47 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title III, §350(b), Sept. 3, 1982, 96 Stat. 639, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to levies made after December 31, 1982.”

EFFECTIVE DATE OF 1975 AMENDMENT

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

EFFECTIVE DATE

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

**§ 7427. Tax return preparers**

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

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

## PRIOR PROVISIONS

A prior section 7427 was renumbered 7437 of this title.

## AMENDMENTS

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

## EFFECTIVE DATE OF 2007 AMENDMENT

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

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

**(a) Creation of remedy**

In a case of actual controversy involving—

(1) a determination by the Secretary—

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

(B) with respect to the initial classification or continuing classification of an organization as a private foundation (as defined in section 509(a)),

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

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

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

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

**(b) Limitations**

**(1) Petitioner**

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

**(2) Exhaustion of administrative remedies**

A declaratory judgment or decree under this section shall not be issued in any proceeding

unless the Tax Court, the Court of Federal Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service. An organization requesting the determination of an issue referred to in subsection (a)(1) shall be deemed to have exhausted its administrative remedies with respect to a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination.

**(3) Time for bringing action**

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

**(4) Nonapplication for certain revocations**

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

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

**(1) In general**

If—

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

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

(C) either—

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

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

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

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

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

**(2) Limitation**

Paragraph (1) shall apply only—

(A) with respect to individuals, and only to the extent that the aggregate of the contributions made by any individual to or for the use of the organization during the period