

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 sec-

tion 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 specified in paragraph (1) does not exceed \$1,000 (for this purpose treating a husband and wife as one contributor), and

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

(3) Exception

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

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

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

(Added Pub. L. 94-455, title XIII, §1306(a), Oct. 4, 1976, 90 Stat. 1717; amended Pub. L. 95-600, title

VII, §701(dd)(2), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 97-164, title I, §152, Apr. 2, 1982, 96 Stat. 46; Pub. L. 98-369, div. A, title X, §1033(b), July 18, 1984, 98 Stat. 1039; Pub. L. 102-572, title IX, §902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 108-357, title III, §317(a), Oct. 22, 2004, 118 Stat. 1470; Pub. L. 109-280, title XII, §1223(c), Aug. 17, 2006, 120 Stat. 1091.)

PRIOR PROVISIONS

A prior section 7428 was renumbered 7437 of this title.

AMENDMENTS

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2006 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

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

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE

Pub. L. 94-455, title XIII, §1306(c), Oct. 4, 1976, 90 Stat. 1720, provided that: “The amendments made by this section [enacting this section and amending sections 7451, 7459, 7470, and 7482 of this title, enacting section 1507 of Title 28, Judiciary and Judicial Procedure, and

amending sections 1346 and 2201 of Title 28] shall apply with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to determinations (or requests for determinations) made after January 1, 1976.”

§ 7429. Review of jeopardy levy or assessment procedures

(a) Administrative review

(1) Administrative review

(A) Prior approval required

No assessment may be made under section 6851(a), 6852(a), 6861(a), or 6862, and no levy may be made under section 6331(a) less than 30 days after notice and demand for payment is made, unless the Chief Counsel for the Internal Revenue Service (or such Counsel's delegate) personally approves (in writing) such assessment or levy.

(B) Information to taxpayer

Within 5 days after the day on which such an assessment or levy is made, the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relied in making such assessment or levy.

(2) Request for review

Within 30 days after the day on which the taxpayer is furnished the written statement described in paragraph (1), or within 30 days after the last day of the period within which such statement is required to be furnished, the taxpayer may request the Secretary to review the action taken.

(3) Redetermination by Secretary

After a request for review is made under paragraph (2), the Secretary shall determine—

(A) whether or not—

(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

(b) Judicial review

(1) Proceedings permitted

Within 90 days after the earlier of—

(A) the day the Secretary notifies the taxpayer of the Secretary's determination described in subsection (a)(3), or

(B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States for a determination under this subsection in the court with jurisdiction determined under paragraph (2).

(2) Jurisdiction for determination

(A) In general

Except as provided in subparagraph (B), the district courts of the United States shall

have exclusive jurisdiction over any civil action for a determination under this subsection.

(B) Tax Court

If a petition for a redetermination of a deficiency under section 6213(a) has been timely filed with the Tax Court before the making of an assessment or levy that is subject to the review procedures of this section, and 1 or more of the taxes and taxable periods before the Tax Court because of such petition is also included in the written statement that is provided to the taxpayer under subsection (a), then the Tax Court also shall have jurisdiction over any civil action for a determination under this subsection with respect to all the taxes and taxable periods included in such written statement.

(3) Determination by court

Within 20 days after a proceeding is commenced under paragraph (1), the court shall determine—

(A) whether or not—

(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

If the court determines that proper service was not made on the United States or on the Secretary, as may be appropriate, within 5 days after the date of the commencement of the proceeding, then the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States or on the Secretary, as may be appropriate.

(4) Order of court

If the court determines that the making of such levy is unreasonable, that the making of such assessment is unreasonable, or that the amount assessed or demanded is inappropriate, then the court may order the Secretary to release such levy, to abate such assessment, to redetermine (in whole or in part) the amount assessed or demanded, or to take such other action as the court finds appropriate.

(c) Extension of 20-day period where taxpayer so requests

If the taxpayer requests an extension of the 20-day period set forth in subsection (b)(2) and establishes reasonable grounds why such extension should be granted, the court may grant an extension of not more than 40 additional days.

(d) Computation of days

For purposes of this section, Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the last day of any period.