

PRIOR PROVISIONS

A prior section 7434 was renumbered 7437 of this title.

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-206 substituted “attorneys’ fees” for “attorneys fees”.

EFFECTIVE DATE

Pub. L. 104-168, title VI, §601(c), July 30, 1996, 110 Stat. 1462, provided that: “The amendments made by this section [enacting this section and renumbering former section 7434 as 7435 of this title] shall apply to fraudulent information returns filed after the date of the enactment of this Act [July 30, 1996].”

§ 7435. Civil damages for unauthorized enticement of information disclosure

(a) In general

If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer’s tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$500,000 or the sum of—

- (1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and
- (2) the costs of the action.

Damages shall not include the taxpayer’s liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

(c) Payment authority

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

(d) Period for bringing action

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

(e) Mandatory stay

Upon a certification by the Commissioner or the Commissioner’s delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

(f) Crime-fraud exception

Subsection (a) shall not apply to information conveyed to an attorney, certified public ac-

countant, or enrolled agent for the purpose of perpetrating a fraud or crime.

(Added Pub. L. 104-168, title XII, §1203(a), July 30, 1996, 110 Stat. 1470.)

PRIOR PROVISIONS

A prior section 7435 was renumbered 7437 of this title.

EFFECTIVE DATE

Pub. L. 104-168, title XII, §1203(c), July 30, 1996, 110 Stat. 1471, provided that: “The amendments made by this section [enacting this section and renumbering former section 7435 as 7436 of this title] shall apply to actions after the date of the enactment of this Act [July 30, 1996].”

§ 7436. Proceedings for determination of employment status

(a) Creation of remedy

If, in connection with an audit of any person, there is an actual controversy involving a determination by the Secretary as part of an examination that—

- (1) one or more individuals performing services for such person are employees of such person for purposes of subtitle C, or
- (2) such person is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978 with respect to such an individual,

upon the filing of an appropriate pleading, the Tax Court may determine whether such a determination by the Secretary is correct and the proper amount of employment tax under such determination. Any such redetermination by the Tax Court shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(b) Limitations

(1) Petitioner

A pleading may be filed under this section only by the person for whom the services are performed.

(2) Time for filing action

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

(3) No adverse inference from treatment while action is pending

If, during the pendency of any proceeding brought under this section, the petitioner changes his treatment for employment tax purposes of any individual whose employment status as an employee is involved in such proceeding (or of any individual holding a substantially similar position) to treatment as an employee, such change shall not be taken into account in the Tax Court’s determination under this section.

(c) Small case procedures

(1) In general

At the option of the petitioner, concurred in by the Tax Court or a division thereof before