

"§ 1.103-18..... 1545-1226".

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: December 24, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

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26 CFR Part 301

[T.D. 8392]

RIN 1545-AM75

Civil Cause of Action for Unauthorized Collection Actions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance relating to the civil cause of action under section 7433 of the Internal Revenue Code of 1986 (the "Code") for certain unauthorized collection actions. The cause of action for unauthorized collection actions was created by section 6241 of the Technical and Miscellaneous Revenue Act of 1988. The regulations define certain key terms in the underlying statute and create an administrative remedy that must be exhausted prior to the filing of a cause of action. The regulations are needed to provide taxpayers with guidance and to create an administrative remedy in connection with this cause of action.

EFFECTIVE DATE: These regulations are effective with respect to actions filed after January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202-535-9682 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7433 of the Internal Revenue Code. The regulations reflect the addition of section 7433 to the Internal Revenue Code by section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the *Federal Register* on May 25, 1991 [26 FR 28842], providing rules under section 7433 of the Code. The final regulations adopt the rules

contained in the notice of proposed rulemaking without change.

Section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) added section 7433 to the Code. Section 7433 gives taxpayers the right to bring an action for damages in federal district court if, in connection with the collection of a federal tax, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7433 is the lesser of \$100,000, or the sum of (i) the actual, direct economic damages sustained as a proximate result in the internal revenue officer's or employee's wrongful conduct, and (ii) costs of the action. No action may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

The regulations define actual, direct economic damages as actual pecuniary damages sustained by a taxpayer as a proximate result of reckless or intentional actions of an internal revenue officer or employee. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages. Litigation and administrative costs are not recoverable under the regulations as actual, direct economic damages.

The Internal Revenue Service received only one comment concerning the proposed regulations. That comment proposed to include administrative costs in the definition of actual, direct economic damages. This issue was considered at length during the drafting of the proposed regulations, and for the reasons discussed below the final regulations adopt without change the definition of actual, direct economic damages contained in the proposed regulations.

According to the common law "American Rule", damages do not include any costs incurred by parties in seeking relief. Generally, each party must pay its own costs. If the right to receive costs from an opposing party exists at all, the right exists only by virtue of a contract or specific statutory authority.

While section 7433 does provide for the recovery of certain costs, recovery is limited specifically to costs of the civil action in federal district court. The final regulations thus define costs of the action recoverable under section

7433(b)(2) as: (1) Fees of the clerk and marshal; (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 papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the regulations. Therefore, administrative costs are not recoverable as economic damages or as costs of the action.

In addition, costs of the action do not include attorneys fees. Under the common law "American Rule", the term "costs of the action" in a statute is not ordinarily interpreted to include attorney's fees. In other contexts, where Congress intended to provide for the recovery of attorney's fees, Congress specifically provided that attorney's fees are recoverable in addition to or together with costs of the action. See section 6110(i)(2)(B) of the Code.

Reasonable litigation costs, including attorney's fees (generally limited to \$75 per hour), not recoverable under section 7433 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 section 7433.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7433, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history to the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative

costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 226 (1988).

The regulations provide that an action may not be maintained in federal district court under section 7433 unless the taxpayer first files an administrative claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of Chief, Special Procedures Function) of the district in which the taxpayer currently resides. The claim must include: (1) 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; (2) the grounds, in detail, for the claim; (3) a description of the damages incurred by the taxpayer; (4) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (5) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, 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.

The regulations provide that, after an administrative claim has been filed, an action may not be filed in federal district court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. A taxpayer, however, must file an action in federal district court within two years after a cause of action accrues. Thus, if an administrative claim is filed in the last six months before the two-year limitation period expires, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, 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 Internal Revenue Service did not violate section 7433(a).

Special Analyses

It has been determined that these final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7433-1 is added under "Proceedings by Taxpayers and Third Parties" to read as follows:

§ 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 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 \$100,000, or the sum of:

(1) The actual, direct economic damages sustained as a proximate result of the reckless or intentional 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 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 marshal;

(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 \$100,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district 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 taxpayer.

(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 7432(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 date.* This section applies with respect to civil actions under section 7433 filed after January 30, 1992.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 31, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92-2024 Filed 1-29-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[T.D. 8393]

RIN 1545-AM63

Civil Cause of Action for Failure to Release a Lien Under I.R.C. Section 6325

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance relating to the civil cause of action under section 7432 of the Internal Revenue Code of 1986 (the "Code") for the knowing or negligent failure to release a lien under section 6325 of the Code. The cause of action for the failure to release a lien was created by section 6240 of the Technical and Miscellaneous Revenue Act of 1988. The regulations define certain key terms in the underlying statute, provide procedures for a taxpayer to notify the Internal Revenue Service of the failure to release a lien and create an administrative remedy that must be exhausted prior to the filing of a cause of action. The regulations are needed to provide taxpayers with guidance and to create

an administrative remedy in connection with this cause of action.

EFFECTIVE DATE: These regulations are effective for actions filed after January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 535-9682 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7432 of the Internal Revenue Code. The regulations reflect the amendment of section 7432 by section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the *Federal Register* on June 25, 1991 (56 FR 28839), providing rules under section 7432 of the Code. The final regulations adopt the rules contained in the notice of proposed rulemaking without change.

Section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) redesignated section 7432 of the Code as section 7433 and added a new section 7432. New section 7432 gives taxpayers the right to bring an action for damages in federal district court if any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release, in accordance with section 6325 of the Code, a federal tax lien on property of the taxpayer. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7432 is the sum of (i) the actual, direct economic damages sustained by the taxpayer which, but for the actions of the officer or the employee of the Internal Revenue Service, would not have been sustained, and (ii) costs of the action. No action for damages may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

Section 6325 requires the Secretary to release a lien not later than 30 days after the day on which: (1) The Secretary finds that the underlying liability has been fully satisfied or has become legally unenforceable; or (2) the Secretary accepts a bond that is conditioned upon full payment of the underlying liability.

The regulations provide that, for purposes of section 7432, a finding that

the underlying liability has been fully satisfied or has become legally unenforceable is treated as made on the earlier of (1) the date the district director finds full satisfaction or legal unenforceability or (2) the date the district director receives a request for a certificate of release under § 401.6325-1(f) of the Income Tax Regulations, together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

The regulations define actual, direct economic damages as actual pecuniary damages sustained by the taxpayer that would not have been sustained but for an officer's or an employee's failure to release, in accordance with section 6325, a lien on property of the taxpayer. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual, pecuniary damages. Litigation and administrative costs incurred in seeking relief, through litigation or administrative processes, from the failure to release a lien are not recoverable under the regulations as actual, direct economic damages.

The Internal Revenue Service received only one comment concerning the proposed regulations. That comment proposed to include administrative costs in the definition of actual, direct economic damages. This issue was considered at length during the drafting of the proposed regulations, and for the reasons discussed below the final regulations adopt without change the definition of actual, direct economic damages contained in the proposed regulations.

According to the common law "American Rule", damages do not include any costs incurred by the parties in seeking relief. Generally, each party must pay its own costs. If the right to receive costs from an opposing party exists at all, the right exists only by virtue of a contract or specific statutory authority.

While section 7432 does provide for the recovery of certain costs, the recovery is specifically limited to costs of the civil action in federal district court. The final regulations define costs of the action recoverable as damages under section 7432(b)(2) as: (1) Fees of the clerk and marshal; (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 papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court-

appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the regulations. Therefore, administrative costs are not recoverable as economic damages or as costs of the action.

In addition, costs of the action do not include attorneys fees. Under the common law "American Rule", the term costs of the action in a statute is not ordinarily interpreted to include attorney's fees. In other contexts, where Congress intended to provide for the recovery of attorney's fees, Congress specifically provided that attorney's fees are recoverable in addition to or together with costs of the action. See section 6110(i)(2)(B) of the Code.

Reasonable litigation costs, including attorneys fees (generally limited to \$75 per hour), not recoverable under section 7432 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 7432(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 attorneys fees and other reasonable litigation costs not recoverable under section 7432.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7432, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history to the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 226 (1988). An action under section 7432 is a collection action for these purposes.

The regulations provide that an action may not be maintained in federal district court under section 7432 unless the taxpayer first files an administrative

claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed. The claim must include: (1) 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; (2) a copy of the notice of lien affecting the taxpayer's property, if available; (3) a copy of the request for release of lien under section 401.6325-1(f), if applicable; (4) the grounds for the claim; (5) a description of the damages incurred by the taxpayer; (6) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (7) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, 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.

The regulations provide that, after an administrative claim has been filed, an action may not be filed in federal district court until the earlier of (1) The time a decision is rendered on the claim or (2) 30 days from the date the administrative claim is filed. A taxpayer, however, must file an action with the federal district court within two years after the cause of the action accrues. Thus, if an administrative claim is filed in the last 30 days before the two-year limitation period expires, a taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days 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 Internal

Revenue Service did not violate section 7432(a).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * * § 301.7432 also issued under 26 U.S.C. 7432(e).

Par. 2. Section 301.7432-1 is added under "Proceedings By Taxpayers and Third Parties" to read as follows:

§ 301.7432-1 Civil cause of action for failure to release a lien.

(a) *In general.* If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien on property of the taxpayer in accordance with section 6325 of the Internal Revenue Code, such taxpayer may bring a civil action for damages against the

United States in federal district court. The total amount of damages recoverable is the sum of:

(1) The actual, direct economic damages sustained by the taxpayer which, but for the officer's or the employee's knowing or negligent failure to release the lien under section 6325, would not have been sustained; and

(2) Costs of the action. The amount of actual, direct economic damages that are recoverable is reduced to the extent such damages reasonably could have been mitigated by the plaintiff. An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (f) of this section and has waited the period required under paragraph (e) of this section.

(b) *Finding of satisfaction or unenforceability.* For purposes of this section, a finding under section 6325(a)(1) that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable is treated as made on the earlier of:

(1) The date on which the district director of the district in which the taxpayer currently resides or the district in which the lien was filed finds full satisfaction or legal unenforceability; or

(2) The date on which such district director receives a request for a certificate of release of lien in accordance with § 401.6325-1(f), together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

(c) *Actual, direct economic damages—(1) Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer that would not have been sustained but for an officer's or an employee's failure to release a lien in accordance with section 6325 of the Internal Revenue Code. 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 described in this paragraph are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (see paragraph (j) of this section) or, solely to the extent described in paragraph (d) 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 failure to release a lien, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. Litigation costs include 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 failure to release a lien, including costs incurred pursuing an administrative claim for damages under paragraph (f) 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 (c)(2)(i) of this section incurred in pursuing administrative relief.

(d) *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 marshal;
- (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.

(e) *No civil action in federal district court prior to filing an administrative claim.*—(1) Except as provided in paragraph (e)(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 a decision is rendered on a claim filed in accordance with paragraph (f) of this section; or
- (ii) The date 30 days after the date an administrative claim is filed in accordance with paragraph (f) of this section.

(2) If an administrative claim is filed in accordance with paragraph (f) of this section during the last 30 days of the period of limitations described in paragraph (i) of this section, the

taxpayer may file an action in federal district court anytime after the administrative claim is filed and before the expiration of the period of limitations, without waiting for 30 days to expire or for a decision to be rendered on the claim.

(f) *Procedures for an administrative claim.*—(1) *Manner.* An administrative claim for actual, direct economic damages as defined in paragraph (c) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) in the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed.

(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) A copy of the notice of federal tax lien affecting the taxpayer's property, if available;

(iii) A copy of the request for release of lien made in accordance with § 401.6325-1(f) of the Code of Federal Regulations, if applicable;

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

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

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

(vii) 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 taxpayer.

(g) *Notice of failure to release lien.*—An administrative claim under paragraph (f) of this section shall be considered a notice of failure to release a lien.

(h) *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 (f) 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.

(i) *Period of limitations.*—(1) *Time of 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) *Cause of action accrues.* A cause of action accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(j) *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 7432(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 the paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (f) of this section, are not recoverable under section 7430.

(k) *Effective date.*—This section applies with respect to civil actions under section 7432 filed in federal district court after January 30, 1992.

Approved: December 31, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 102

[DoD Directive 1215.6]

Uniform Reserve, Training and Retirement Categories

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR part 102 and establishes new policies and procedures consistent with recent changes in law and development of revised Defense Department Policy. The revision provides increased flexibility to the Military Departments for the management and training of Reserve component personnel within established Reserve training and retirement categories. It clarifies and simplifies existing policies, and ensures consistency with recent DoD policy directives affecting Reserve component manpower. This part outlines new and existing policies and consolidates categories for reporting and managing the Reserve components.

DATES: This part is effective December 18, 1990. Written comments on this final rule must be received by March 2, 1992.

ADDRESSES: Forward comments to the Office of Assistant Secretary of Defense, (Reserve Affairs/M&P), room 2D517, Pentagon, Washington, DC 20301-1500.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Spruell at (703) 695-7429.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 102

Armed forces reserves.

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register,

Liaison Officer,

Department of Defense.

Accordingly, 32 CFR part 102 is revised to read as follows:

PART 102—UNIFORM RESERVE, TRAINING AND RETIREMENT CATEGORIES

Sec.

102.1 Purpose.

102.2 Applicability.

102.3 Definitions.

102.4 Policy.

102.5 Responsibilities.

102.6 Procedures.

Appendix A to Part 102—Uniform Reserve, Training and Retirement Categories.

Appendix B to Part 102—Members Participating in Approved Programs Outside the Department of Defense.

Appendix C to Part 102—Definitions Explained.

Appendix D to Part 102—Authorized Reserve, Training and Retirement Categories.

Authority: 10 U.S.C. 136.

§ 102.1 Purpose.

This revises 32 CFR part 102 to:

(a) Update DoD policy and assign responsibilities for implementing recent changes in law.

(b) Establish DoD policy guidance for maintaining and reporting personnel data in accordance with (IAW) DoD Directive 1205.17¹ and DoD Instruction 7730.54.²

(c) Designate uniform Reserve component (RC) categories (RCCs) and training and retired categories (TRCs) for the Ready Reserve, Standby Reserve, and Retired Reserve of the Armed Forces under 10 U.S.C. 268, 270, 271, 273, 274, 1376, 2001, and 6017.

(d) Establish minimal training criteria for each category of the RCs.

(e) Provide DoD uniform planning policies and procedures on training.

(f) Establish DoD Policy guidance for participation in Selective Service System (SSS) activities, civil defense activities, and continental United States (CONUS) Defense programs by members of the Ready and Standby Reserve.

§ 102.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments and their Reserve components (RCs); the Chairman, Joint Chiefs of Staff and Joint Staff; the U.S. Coast Guard (USCG) and its Reserve Component (RC) with the concurrence of the Department of Transportation (DoT); and the Defense Agencies (hereafter referred to collectively as "DoD Components").

¹ Copies may be obtained at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

² See footnote 1 to § 102.1(a).

§ 102.3 Definitions.

Uniform Reserve, training and retirement categories used in this part are defined in appendix A to this part. Other terms used in this part are defined in appendices B and C to this part.

§ 102.4 Policy.

It is DoD policy to:

(a) *Establish Authorized RCCs and TRCs.* Appendix D to this part establishes authorized RCCs and TRCs in the RCs for training and accountability purposes. Each unit and member of the RCs not counted in active duty (AD) end strengths, IAW 10 U.S.C. 115(b)(1)(B), shall be placed in one of the RCCs and TRCs so identified.

(b) *Establish Criteria.* To ensure that trained and qualified RC units and individuals are available for AD in time of war or national emergency, and that funds appropriated annually for RC training are adequate for meeting mobilization requirements, the Secretary concerned shall establish necessary criteria and procedures to do the following:

(1) Place all RC members in an RCC and TRC IAW the uniform Reserve, training and retirement categories described in appendices A and D of this part. Individuals shall be assigned to RCCs and TRCs based on their mobilization obligations and training requirements.

(2) Ensure that all RC members receive training IAW mobilization assignments and required readiness levels. All members of the Ready Reserve, except members of the Army National Guard (ARNG) of the United States and the Air National Guard (ANG) of the United States, may be required to serve on AD training (ADT) up to 30 days a year (section 270(a)(2) of title 10, U.S.C.) There is no statutory maximum annual limit on required training for members of the National Guard. Training for the Individual Ready Reserve (IRR), Standby Reserve, and Retired Reserve may be accomplished voluntarily IAW DoD procedures in § 102.6.

(3) Approve any additional inactive duty training (IDT), as necessary and consistent with law. Authorizing and utilizing additional training is subject to the categories, limitations, and controls in § 102.4(c).

(c) *Provide Consideration for Establishing Criteria.* (1) Training programs shall provide for the minimal number of IDT periods, annual training (AT), and ADT required for attaining the prescribed unit readiness status and maintaining individual proficiency.