



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
June 12, 2000

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR Marcia J. Smith
Acting Chief, Special Procedures Function, Brooklyn District

FROM: Assistant Chief Counsel (Disclosure Litigation)

SUBJECT: Administrative Claim under I.R.C. § 7431

LEGEND

Taxpayer

By letter dated February 17, 2000, addressed to the Internal Revenue Service's Brooklyn District Director and Brooklyn Disclosure Officer, Taxpayer, through his attorney, submitted an administrative claim for unauthorized disclosure of return information under I.R.C. § 7431, as well as improper conduct of an agent under I.R.C. § 7433, and claims for damages under I.R.C. §§ 7213, 7214, and 7430. Further, Taxpayer requested an investigation under §1203(b) of the IRS Restructuring and Reform Act of 1998 (RRA).

Based on discussion between the Office of Assistant Chief Counsel (Disclosure Litigation), Branch 2, and Brooklyn District Counsel, it was agreed that the Brooklyn District's Special Procedures Function is the proper office to respond to the I.R.C. § 7433 administrative claim. It is our understanding that the Office of the Treasury Inspector General for Tax Administration (TIGTA) has been informed of the request for an investigation. After discussion between the Acting Chief of Special Procedures Function, Brooklyn District, and this office, it was agreed that the Brooklyn District Special Procedures Function would respond to the I.R.C. § 7431 claim along with the I.R.C. § 7433 claim since there is no prescribed administrative claim process for I.R.C. § 7431 claims. This memorandum contains our recommendations regarding the Taxpayer's § 7431 claim.

Our understanding of the facts in this matter is based on the February 17, 2000, letter from the Taxpayer's attorney. Based upon this understanding, it is our view that the Taxpayer has no actionable claim under I.R.C. § 7431.

Our suggested language regarding the I.R.C. § 7431 administrative claim is as follows:

Your February 17, 2000, administrative claim seeks damages and costs under Internal Revenue Code (I.R.C.) § 7431 for an unauthorized disclosure of tax return information. Unlike I.R.C. § 7433 claims, there is no formal administrative claim process under I.R.C. § 7431.

Section 7431 provides civil remedies for, inter alia, the unauthorized disclosure of a return and/or return information. For a claim to exist under this Code section, a taxpayer must establish that an officer or employee of the United States knowingly, or by reason of negligence, disclosed a return or return information with respect to a taxpayer in violation of any provision of I.R.C. § 6103.

Section 6103(a) sets forth the general rule that tax returns and return information shall be confidential and shall not be disclosed by Service employees or certain other persons with access to such information, “except as authorized by [Title 26].” See Church of Scientology of California v. I.R.S., 484 U.S. 9 (1987). The term “return information” is defined, in pertinent part, as:

[A] taxpayer’s identity, the nature, source or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense...

I.R.C. § 6103(b)(2).

Your letter alleges that a Revenue Officer violated I.R.C. § 7431 by: (1) identifying himself to Taxpayer’s doorman as an Internal Revenue Service employee with papers to serve on Taxpayer; and (2) by leaving a Final Notice of Intent to Levy (Final Notice) on a couch in the lobby of Taxpayer’s apartment building after Taxpayer refused to accept service of the Final Notice.

You have failed to allege any facts which constitute a disclosure of return information in violation of I.R.C. § 7431.

According to the facts set forth in your request for administrative relief, the Revenue Agent simply identified himself to the Taxpayer’s doorman as an employee of the Internal Revenue Service with papers to serve on the Taxpayer. The information alleged to have been disclosed is not “return information”. See I.R.C. § 6103(b)(2); Huckaby v. U.S. Dept. of Treasury,

794 F.2d 1041 (5th Cir. 1986), *rehearing denied*, 804 F.2d 297, *cert. denied*, 475 U.S. 1085 (the court found no disclosures of return information were made in circumstances where agent identified himself as a special agent of IRS, but did not state that taxpayer was under civil or criminal investigation).

The allegation that the Final Notice was left on a couch in the lobby of an apartment building also fails to satisfy the requirements of a claim under I.R.C. § 7431. In order to prove a claim under § 7431, a plaintiff must show the following: (1) the disclosure was unauthorized; (2) the disclosure was made knowingly or by negligence; and (3) the disclosure violated § 6103. Weiner v. IRS, 789 F. Supp. 655 (S.D.N.Y. 1992), *aff'd*, 986 F.2d 12 (2nd Cir. 1993). The term “disclose” is defined in § 6103(b)(8) as, “the making known to any person in any manner whatever a return or return information.” The allegation does not state that a disclosure actually took place, only that a disclosure could have occurred. Section 7431 only provides a civil remedy for actual disclosures, not potential disclosures. See I.R.C. § 7431(a)(1); Huckaby, *supra* at 1050 (Sections 6103 and 7431 make no provisions for attempted disclosures). Further, your claim lacks the required specificity since it fails to allege to whom the disclosure was made. Bleavins v. United States, 1991 U.S. Dist. LEXIS 20975 (C. D. Ill. January 17, 1991); Fostvedt v. United States, 824 F. Supp. 978 (D. Colo. 1993), *aff'd without op.*, 16 F.3d 416 (10th Cir. 1994); May v. United States, 1992 U.S. Dist. LEXIS 16055 (W.D. Mo. April 19, 1992). Since Taxpayer has failed to allege a disclosure, the facts do not satisfy any of the necessary three elements and there is no actionable claim under I.R.C. § 7431.

Finally, I.R.C. § 7433 provides the exclusive remedy for unauthorized collection activities. See generally: Elias v. United States, 91-U.S.T.C. (CCH) ¶ 50,040 (C.D. Cal. 1990), *aff'd*, 974 F.2d 1341 (9th Cir. 1992) (table case); Venen v. United States, 38 F.3d 100 (3rd Cir. 1994); Soghomonian v. United States, 82 F. Supp. 2d 1134 (E.D. Cal. 1999); and Henkell v. United States, 1998 WL 41565, Civ. No. S-96-2228 (E. D. Cal. Jan. 9, 1998); *cf.* Schipper v. United States, 1998 U.S. Dist. LEXIS 16653, 98-2 U.S. Tax. Cas (CCH) ¶ 50,825, 82 A.F.T.R.2d (RIA) 6821 (E. D. N.Y. Sept. 15, 1998) (holding that the exclusivity clause of Section 7433 does not preclude a Section 7431 action when the money sought to be collected was an improper tax refund not taxes owed).

Please be aware that the filing of an administrative claim under I.R.C. § 7431 does not toll the two year statute of limitations for commencing an action against the United States. See I.R.C. § 7431(d).

If you have any questions, call (202) 622-4570 and request to speak with the attorney assigned to the case.