

Suits against IRS over collection actions

Dear Reader:

You recently informed me that you may want to sue IRS over the collection actions it has taken in your case.

It has always been difficult to sue IRS over unjustified collection actions because of the doctrine of sovereign immunity. Under that doctrine, a taxpayer may begin a suit against the U.S. only if the U.S. has specifically waived sovereign immunity.

The main area in which sovereign immunity has been waived is where a taxpayer alleges that an officer or employee of IRS recklessly, intentionally, or by negligence disregarded any provision of the tax law in connection with the collection of any federal tax. If IRS employees take such unauthorized collection actions, the taxpayer may sue the U.S. (but not the IRS Commissioner, an IRS agent, or any other individual) in a federal district court. A taxpayer must exhaust his administrative remedies within IRS before any judgment for damages will be awarded. Further, any award may be reduced to the extent that damages could reasonably have been mitigated by the taxpayer.

Other suits that are sometimes brought over unfair collection actions are:

- a civil action for damages against the U.S. in a district court where an officer or employee of IRS knowingly, or through negligence, fails to release a lien on the taxpayer's property. The taxpayer must have exhausted his administrative remedies within IRS before starting this type of action.
- an action against federal employees in their individual capacity for violation of an individual's constitutional rights (often referred to as a "*Bivens* action"). Many courts, however, severely limit the ability of taxpayers to bring *Bivens* actions against IRS agents.
- an injunction action (an order directing IRS to refrain from collecting the tax). These actions must meet narrow statutory criteria, or it must be clear that IRS won't prevail on its tax claim.
- a suit to quiet title to property on which the U.S. has a lien. Quiet title actions can be used to challenge procedural irregularities in the assessment process, but not to attack the validity of an underlying tax assessment.

It is also possible to get a judicial determination relating to a lien or a levy by appealing IRS determinations in Collection Due Process (CDP) hearings to the Tax Court, but CDP procedures are only available if the taxpayer requests a CDP hearing within a 30-day period. This 30-day period is calculated, in the case of levies, from the day after the taxpayer receives notice of his right to a hearing, and, in the case of liens, from the day after the end of the five-day period within which IRS must provide notice to the taxpayer of the filing of a notice of federal tax lien. These time limits cannot be waived, however, a written request submitted within the 30-day period that does not satisfy content requirements is considered timely if the request is perfected within a reasonable period of time. If the request for a CDP hearing is untimely, either because the request was not submitted within the 30-day period or not perfected within the reasonable period provided, the taxpayer will be notified of the untimeliness of the request and offered an "equivalent hearing." But no judicial review of an equivalent hearing determination is available.

The above is a short summary of the law in this area. If you want more information on how to pursue the proposed litigation, please do not hesitate to call.