



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.3.3

MAY 22, 2025

EFFECTIVE DATE

(05-22-2025)

PURPOSE

- (1) This transmits revised IRM 25.3.3, Litigation and Judgments, Suits Against the United States and Claims for Damages under IRC 7433, IRC 7345, IRC 7426(h).

MATERIAL CHANGES

- (1) Editorial changes, references updated, and IRM title references updated throughout.
- (2) IRM 25.3.3.1(1): In compliance with the style guide (1) and (2) combined to make the Purpose of the IRM (1).

EFFECT ON OTHER DOCUMENTS

IRM 25.3.3, dated September 6, 2023, is superseded.

AUDIENCE

SB/SE Collection Employees

Thomas Kramer
Director, Collection Policy
Small Business / Self-Employed

25.3.3

Suits Against the United States and Claims for Damages under IRC 7433, IRC 7345, IRC 7426(h)

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25.3.3.1 (05-22-2025) Program Scope and Objectives

- (1) **Purpose:** The federal government in certain circumstances waives its sovereign immunity from lawsuits. This IRM discusses those circumstances. See also IRM 5.17.5.2, Doctrine of Sovereign Immunity. This section provides the procedural instructions for collection staff working suits against the United States and claims for damages under IRC 7426(h), Civil Actions by Persons Other Than Taxpayers, Recovery of Damages Permitted in Certain Cases, and IRC 7433, Civil Damages for Certain Unauthorized Collection Actions.
- (2) **Audience:** Collection employees responding to suits against the government. Primarily Collection, Civil Enforcement Advice and Support Operation (CEASO) advisors or Field Collection revenue officers use this IRM when assisting Counsel and the Department of Justice (DOJ) with defense actions related to these types of suits.
- (3) **Policy Owner:** Director, Collection Policy.
- (4) **Program Owner:** The program owner is Collection, an organization within the Small Business Self-Employed (SBSE) division.
- (5) **Primary Stakeholders:** The primary stakeholders are Chief Counsel and DOJ attorneys.
- (6) **Program Goals:** The goal of the program aligns with IRS Strategic Goal II to, Enforce the tax law fairly and efficiently to increase voluntary compliance and narrow the tax gap and Objective 1 to: Improve operations to effectively and efficiently identify and address non-compliance

25.3.3.1.1 (09-06-2023) Background

- (1) There are a number of judicial actions that may be brought by taxpayers against the United States. See IRM 5.17.5, Suits Against the United States, for a review of the principal types of actions that may be brought against the United States.
- (2) Generally, when the United States is named as a defendant in a suit arising from the collection of tax liability, Area Counsel sends a defense letter to the DOJ, Tax Division. In some situations, however, the case will be directly referred to the local U.S. Attorney's Office.

Note: The deadline for the United States to file an answer or otherwise respond to a complaint, counterclaim, or cross-claim in federal district court is generally 60 days from the date of service of the summons and complaint on the U.S. Attorney. See *Federal Rules of Civil Procedure Rule 12 – Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing*.

- (3) **Meeting time limits in judicial actions is critical**, so promptly respond to all requests from Area Counsel; the Department of Justice, Tax Division; or the U.S. Attorney's Office. Strictly observe time frames identified in the requests.
- (4) CEASO advisors are responsible for internal control of and actions pertaining to most litigation against the United States. Exceptions include:
 - a. Bankruptcy actions, which are controlled by Insolvency.
 - b. Tax Court litigation, which is controlled by Appeals or in some cases Area Counsel.

- c. Refund litigation not involving trust fund recovery penalties, which is controlled by campus refund litigation units. See IRM 3.17.243.5.2, Refund Litigation Campus Contacts, for the appropriate campuses and contacts.

25.3.3.1.2
(09-06-2023)

Authority

- (1) This IRM provides instructional procedures relating to suits against the government. See also IRM 25.3.1.4, Authorization for Filing Suits, Counterclaims or Third Party Complaints, for a discussion of the authority under IRC 7401:
- Specific policies related to collection work are located in IRM 1.2.1, Servicewide Policy Statements, and starting at IRM 1.2.1.6, Policy Statements for the Collecting Process.
 - Specific delegations of authority related to collection work are located in IRM 1.2.2, Servicewide Delegations of Authority, and starting at IRM 1.2.2.6, Delegations of Authority for the Collecting Process, IRM 1.2.2.15, Delegations of Authority for Special Topics Activities, and in IRM 1.2.65, Small Business/Self-Employed Division Delegations of Authority, and starting at IRM 1.2.65.3, SB/SE Functional Delegation Orders - Collection.
 - Specific delegation of authority and procedures related to testifying in: IRM 1.2.2.12.2, Delegation Order 11-2 (Rev. 5), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents, IRM 11.3.35-2, Testimony Considerations, and 26 CFR 301.9000-1, Definitions when used in Sections 301.9000-1 through 301.9000-6.
 - Specific delegation of authority related to approval for payment of administrative claims under IRC 7432 and IRC 7433 is located in IRM 1.2.2.6.4(20), Delegation Order 5-4 (Rev. 3), Federal Tax Lien Certificates.
- (2) See the following lists containing the legal authorities discussed in this IRM.

Authorities in Title 26 (Internal Revenue Code)

US Code Section	Regulation	Title
IRC 6343(b)	26 CFR 301.6343-2	Return of property
IRC 7345(e)	no regulation	Revocation or denial of passport in case of certain tax delinquencies, Judicial review of certification
IRC 7401	26 CFR 301.7401-1	Authorization
IRC 7421	no regulation	Prohibition of suits to restrain assessment or collection
IRC 7422	26 CFR 301.7422-1	Civil actions for refund
IRC 7426	26 CFR 301.7426-1	Civil actions by persons other than taxpayers
IRC 7426(h)	26 CFR 301.7426-2	Recovery of damages in certain cases
IRC 7430	26 CFR 301.7430-0	Awarding of costs and certain fees

US Code Section	Regulation	Title
IRC 7432	26 CFR 301.7432-1	Civil damages for failure to release lien
IRC 7433	<ul style="list-style-type: none"> 26 CFR 301.7433-1 26 CFR 301.7433-2 	Civil damages for certain unauthorized collection actions

Authorities Not In Title 26

U.S. Code Section	Title
28 USC 2410	Actions affecting property on which United States has lien
31 USC 1304	Judgments, awards, and compromise settlements

25.3.3.1.3
(09-06-2023)

Roles and Responsibilities

- (1) IRM 5.17.1, Legal Reference Guide for Revenue Officers, General Information, provides a list of the parties with an explanation of their role with suits.

25.3.3.1.4
(09-06-2023)

Program Management and Review

- (1) **Program Reports:** Suits are individual to the case and are of a wide variety and scope. When it is appropriate the Collection employee, generally a CEASO advisor, will provide a Civil Suit Narrative Report (Form 4477-B) for Area Counsel and DOJ identifying all pertinent facts so that appropriate legal action may be taken. Narrative Reports are discussed in IRM 5.17.12.20, Legal Reference Guide for Revenue Officers, Investigation and Reports, the Narrative Report, and IRM 25.3.2.4.4.4, Form 4477-B, Civil Suit Narrative Report, Instructions and Exhibits. Sources for the litigation include the DOJ attorney assigned, the Area Counsel attorney assigned, and PACER.
- (2) **Program Effectiveness:** Whenever litigation involving collection matters is pending or under consideration, revenue officers are investigators of facts. They will be required to prepare reports concerning any facts ascertained. The lawyers charged with the responsibility of handling the cases must rely on those facts and reports when making case decisions.

25.3.3.1.5
(09-06-2023)

Program Controls

- (1) The CEASO advisor maintains a copy of any suit documentation until the suit is closed. After case closure see Document 12990, Records Control Schedules, under section, Internal Revenue Service Records Control Schedule (RCS) 28, Tax Administration Collection, in:
 - PART III - Administrative Records - All Collection Functions, item number 38, Litigation Files, and in
 - PART IV - Delinquent Accounts, Delinquent Returns, And Office Services Records, item 45, Suits to Foreclose Federal Tax Liens, item 53, Civil Suit Recommendation, Form 4477, and in item 54 (a), Special Procedures Function Case Files.
- (2) Preserving electronically stored information is covered in:

- IRM 25.3.1.7, Preserving Electronically Stored Information In Litigation Cases,
- IRM 25.3.1.7.21, References, and
- Chief Counsel Notice, *CC 2016-05*, Discovery Obligations to Preserve Evidence, Including Electronically Stored Information.

25.3.3.1.6
(01-13-2017)

- (1) The following table lists commonly used acronyms and their definitions:

Terms and Acronyms

Term	Definition
CC	Chief Counsel
CEASO	Civil Enforcement Advice and Support Operations
Claim costs	<ul style="list-style-type: none"> • Costs of the action: Costs of the action recoverable as damages, • Administrative costs: incurred pursuing an administrative claim for damages, and • Litigation costs: incurred pursuing a civil action in federal district court.
DOJ	Department of Justice
et seq.	and what follows (used in page references). see volume 35, p. 329 et seq
Fed.R.Civ.P	Federal Rules of Civil Procedure
FRCP	Federal Rules of Civil Procedure
IRC	Internal Revenue Code
JFICS	Judgment Fund Internet Claims System
NF OI	Non Field Other Investigation
NFTL	Notice of Federal Tax Lien
PGLD	Privacy, Governmental Liaison, and Disclosure
Rev.	Revision
Treas. Reg	Treasury Regulation
USA	United States of America
USC	United States Code
US or U.S.	United States

25.3.3.1.7
(09-06-2023)

Related Resources

- (1) For information regarding some of the general characteristics of suits and claims for damages brought against the United States, see:
- IRM 5.17.5, Legal Reference Guide for Revenue Officers, Suits against the United States.
 - IRM 25.3.1, Litigation and Judgments, General Guidelines.
 - IRM 5.17.12, Legal Reference Guide for Revenue Officers, Investigation and Reports.
 - 31 USC 1304*, Judgments, awards, and compromise settlements.

- (2) For information regarding some of the general characteristics and procedures followed in instituting and carrying out a lawsuit for effecting or assisting in the collection of taxes, and some of the most common types of lawsuits commenced by the United States, see IRM 5.17.4, Suits by the United States.
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see *Taxpayer Bill of Rights (TBOR)*.

25.3.3.2 (09-06-2023) **Receipt of Service of Summons and Complaint**

- (1) Proper service of the summons and complaint is necessary to bring an action against the United States. Therefore, information relating to the manner in which the IRS received notice of the suit is important.
- (2) Service on the United States of a summons and complaint is governed by Rule 4(i) of the Federal Rules of Civil Procedure. To make proper service on the United States, a plaintiff must:
 - a. Deliver a copy of the summons and complaint to the U.S. Attorney, an Assistant U.S. Attorney, or designated clerical employee, for the district in which the action was filed; or send a copy of the summons and complaint by registered or certified mail addressed to the civil process clerk at the U.S. Attorney's Office;
 - b. Send a copy the summons and complaint to the Attorney General of the United States at Washington, D.C., and
 - c. If the action challenges an order of a non-party agency or officer of the U.S., send a copy of the summons and complaint by registered or certified mail to the IRS or the officer.

Note: Under IRC 7345(e), Revocation or denial of passport in case of certain tax delinquencies, Judicial review of certification, the taxpayer may bring a civil action in either the United States district court or Tax Court, but CEASO advisors will only be notified by Area Counsel if the action is filed in district court. See IRM 25.3.3.7.5, IRC 7345 Right to Determine Whether Certification as a Seriously Delinquent Taxpayer is Erroneous.

- (3) If you receive service of a summons and complaint, date-stamp it and immediately forward it to CEASO. Include information regarding the manner in which the documents were served (e.g., personal delivery, certified mail).

Note: Do not return the acknowledgment.

- (4) CEASO will immediately forward a complete set of the documents to Area Counsel and the U.S. Attorney's Office unless local procedures are established with Area Counsel and the U.S. Attorney's Office that copies of documents in certain types of suits need not be provided to that office.
- (5) Include complete information on how, when and by whom service was received.

25.3.3.3
(09-06-2023)

Removal of Action from State Court

- (1) When the United State is named as a defendant in a suit filed in state court, the United States can remove the suit to federal district court. See IRM 5.17.5.6, Removal to Federal Court.
- (2) The United States has the same right of removal if it is not named as a party defendant if it intervenes in the state court action.
- (3) Because the time period for removing an action to federal district court is short, generally within 30 days after receipt of a copy of the complaint, Area Counsel should immediately be notified whenever a complaint filed in a state court proceeding is received and there is any question as to whether the case should be removed to federal district court. Ensure CEASO is also notified so proper controls can be established.

25.3.3.4
(09-06-2023)

Initial Review and Routing/Processing (Field and CEASO)

- (1) When service of a summons and complaint is made on the IRS, prompt correct action is essential to ensure that a timely, complete response is made.
- (2) Prompt analysis and action is also important when it is discovered through other means that the United States has been made a party to litigation.

Reminder: IRC 7421(a) prohibits any suit to restrain the assessment or collection of any tax except as provided in subsection (a). The Supreme Court has determined that IRC 7421(a) applies unless the United States is incapable of winning under the most favorable view of the facts, the taxpayer does not have an adequate remedy at law, and Congress has not provided the aggrieved party with an alternative legal venue by which to contest the legality of a particular tax. *Enochs v. Williams*, 370 U.S. 1 (1962); *South Carolina v. Regan*, 465 U.S. 367 (1984).

25.3.3.4.1
(09-06-2023)

Field Actions

- (1) When service of a summons and complaint is received or litigation against the United States is otherwise discovered, the following actions must be taken:
 - a. Notify CEASO immediately.
 - b. Forward all original documents and other pertinent information to CEASO. Information regarding date, time and method of service should be included.
 - c. Thoroughly document the case history.
 - d. Retain copies of the documents and information in the case file.
 - e. Seek guidance from CEASO regarding what, if any, impact the litigation will have on open case actions.
- (2) Refer any questions to CEASO for resolution.

25.3.3.4.2
(09-06-2023)

CEASO Advisor's Review and Processing

- (1) Review available case information and internal records to determine urgency (pending CSEDs, etc.) and proper course of action.
- (2) Review any summons, complaint, or subpoena received to determine response or appearance date set by the court.
- (3) Forward documents immediately to Area Counsel and/or the U.S. Attorney's Office depending upon established local practice for the type of suit. Retain copies as needed. If the response date or appearance date is imminent, call

Area Counsel and/or the U.S. Attorney's Office to advise, and hand deliver the documents to them. If hand delivery is not feasible, send the documents by overnight mail.

- (4) Open a case on the Integrated Collection System (ICS) no later than 10 calendar days after receiving notice that a suit has been filed against the IRS.
- (5) Advise and provide applicable guidance to field or ACS personnel to whom affected accounts are assigned. Seek Area Counsel guidance as needed and appropriate.
- (6) Take applicable initial actions as described in IRM 25.3.6, Open Litigation Control, Monitoring and Closing Actions.

25.3.3.5 (09-06-2023) Information for Defense of Suits

- (1) When the United States is named as a defendant in a suit, information/evidence will need to be gathered and a report prepared to assist in defending the government's position in some cases. In such cases, the CEASO advisor will ensure that any narrative report necessary to reflect the factual situation is prepared and that other data requested or required by Area Counsel is secured. Specific reporting forms are not prescribed for use in all types of defense suits.

Note: Form 4477-D, Civil Suit Package, will be used for interpleaders and suits in the nature of an interpleader. These forms may also be used for other defense suits when appropriate. See IRM 25.3.2, Suits by the United States, for instructions on completing and submitting the suit package.

- (2) When necessary, the CEASO advisor will issue courtesy investigations to Field Collection to gather information and prepare reports. The requested action must be taken promptly and completed within the specified time frames to ensure proper defense of the suit.
- (3) If a request from Area Counsel or the Department of Justice requires additional investigation or examination by either a revenue officer or a revenue agent, the CEASO advisor will have a copy of the request secure emailed to Collection or Examination, as applicable, and request that the investigation or examination be given preferential treatment and that the information be furnished as soon as possible.
- (4) Use Form 4481, Civil Suit - Advisory Transmittal, with the civil suit package submissions to Counsel; and use Form 4481-A, Advisory Transmittal to United States Attorney, for submissions to the U.S. Attorney's Office, any transcript, administrative file, reports or other documents as appropriate and when required.
- (5) Upon receipt of a summons and complaint or a request for data, the CEASO advisor will determine the periods of tax liability in question and take action to secure a certified transcript, if necessary.
- (6) Form 4844, Request for Terminal Action, will be prepared and forwarded to Case Processing to secure the administrative files if needed.

- (7) The CEASO advisor, with the assistance of Area Counsel, will review the complaint and determine what documents are needed. These documents may include:

- a. Original and refiled Notices of Federal Tax Lien in cases where lien priority is an issue (e.g., *28 USC 2410* cases).
- b. Original tax returns in cases where it may be anticipated that the tax liability will be contested.

Note: A return that is submitted after a case has been referred to DOJ is essentially a nullity. The IRS does not have the authority to make adjustments to the liability after the case has been referred. For cases in DOJ's jurisdiction, date-stamp the return and forward it to both DOJ and Area Counsel. DOJ will then associate with the "administrative file" the original return(s) and other materials received from the IRS. The administrative file is normally returned to the IRS through Area Counsel when the litigation is ultimately concluded.

- c. Form 4340, Certificate of Assessments and Payments, under seal.
- d. Files and reports associated with tax adjustments or substitutes for return, such as revenue agent reports and substitute for return files. See also, the **Note** with list item (b).
- e. Form 872, Consent to Extend the Time to Assess Tax, where timeliness of the assessment is an issue. (See IRM 4.8.9.22.1(2), Updating the Assessment Statute Expiration Date.) Or, Form 900, Tax Collection Waiver, if one was secured for a partial pay installment agreement. (See IRM 5.14.2.2.3, Waiver Procedures for Partial Payment Installment Agreements.
- f. Any Closing Agreements that the taxpayer may have signed.
- g. Statutory notices of deficiency (90 day letter for assessment notice and demand, etc.). (See IRM 4.8.9, Statutory Notices of Deficiency.)
- h. Copies of offers in compromise, proofs of claim, and data as to other court proceedings in cases where the collection statute may be an issue (e.g., discharge of tax liabilities under the provisions of the Bankruptcy Code). Closed BAL DUE, offer in compromise, collection due process or trust fund recovery penalty files may be needed.
- i. Other information or documents may include, but are not limited to, notices of levy, seizure and sale documents, data as to whether a jeopardy assessment is involved, data as to the existence and/or validity of competing liens and/or claims (including copies of instruments when necessary). Form 4479, Civil Suit - Property, Liens, and Claims, may be used for providing information regarding other liens and/or claims.

Note: Items e), f), and g) are commonly associated with the files and reports relating to tax adjustments or substitutes for return.

- (8) In most cases the required data can and should be anticipated and gathered before a request is received from the U.S. Attorney or Area Counsel since the CEASO advisor will normally have received notification of the pending suit through direct sources.
- (9) The CEASO advisor will ensure that required data is secured promptly and will follow-up on all requests for administrative files, tax returns, or other documents, and requests for investigations. The data should be sent to Area Counsel and/or the U.S. Attorney's Office as soon as it is received and no later than the 45th day after the complaint or petition was filed. Area Counsel should

be advised of any delay by telephone, including situations where the CEASO advisor is not made aware of the suit, or does not receive a copy of the complaint or petition, until many days after the suit is filed.

Note: In certain types of cases or cases involving significant issues, the defense letter prepared by Area Counsel must be pre-reviewed by the appropriate Associate Chief Counsel Office. Included in the list of issues requiring Associate Office review are collection issues involving disregarded entities, the collection of partnership tax liability from partners, or the application of *United States v. Craft* (i.e., collection of liability of one spouse from property held in tenancy by entireties). In cases requiring Associate Office review, the required information must be sent to Area Counsel no later than the 35th day after the complaint or petition was filed. See IRM 31.1.1-1, Issues Requiring Associate Office Review, and IRM 35.11.1-1, Issues Requiring Associate Office Review, for a list of issues requiring Associate Office review.

- (10) If required data or documents are located in a campus or other area office, the office receiving the request for such data or documents will expeditiously initiate action to secure it and will be responsible for providing it to the requester.

25.3.3.6 (09-06-2023) **Subpoenas and Requests for IRS Personnel to Testify or Produce Records**

- (1) Subpoenas and requests for IRS personnel to testify or to produce records in all cases not involving the administration of Internal Revenue laws should be routed as quickly as possible to the Disclosure Officer to whom the employee is assigned, or in matters involving Headquarters employees, to the Office of Privacy, Governmental Liaison, and Disclosure (PGLD). Contacts may be found on the PGLD Knowledge Base. A link to that knowledge base can be found on the PGLD website *PGLD*. It is important that this information be provided without delay so that necessary authorization can be obtained within the time allowed. If timing is urgent, the matter should also be reported by telephone to the Disclosure Officer or the Office of Privacy, Governmental Liaison, and Disclosure, as appropriate. For further guidelines, see IRM 11.3.35, Disclosure of Official Information Handbook, Requests and Demands for Testimony and Production of Documents.
- (2) Requests by a government attorney (Area Counsel or the Department of Justice) for IRS personnel to testify or produce records on behalf of the government in referred tax cases or Tax Court cases may be complied with and do not require prior approval.
- (3) Subpoenas and requests not served on behalf of the government for IRS personnel to testify or produce records in referred tax cases or Tax Court cases require authorization and must be routed as quickly as possible to Area Counsel so that necessary authorization can be obtained. Area Counsel may need to coordinate with the Office of the appropriate Associate Chief Counsel depending upon the nature of the case.

Note: The need for immediate notification cannot be over-emphasized. By failing to take proper steps in the processing of demands for testimony or production of IRS information, employees may subject themselves and the IRS to sanctions such as contempt of court citations.

- (4) If necessary, it is the Disclosure Officer's responsibility to arrange for Area Counsel to assist, or an attorney of the Department of Justice (including U.S. Attorneys) to represent subpoenaed/requested employees, briefing the employees and appearing with them at the proceeding.
- (5) See Delegation Order No. 11-2 (Rev 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents, and found in IRM 1.2.2.12.2. It contains the managerial levels with the authority to determine whether an employee will be permitted to testify or produce IRS documents subpoenaed or requested in connection with judicial and administrative proceedings. If the designated official determines that the employee may not testify or produce the records subpoenaed or requested (in whole or in part), Area Counsel or the representative of the U.S. Attorney's Office will, as necessary, appear before the court with the employee and inform the court that the information may not be disclosed and explain the reason for the information being protected.
- (6) If the delegated official's instructions are not received by the time set for appearance, the employee will appear before the court, with the Disclosure Officer, Area Counsel, Department of Justice trial attorney, or the representative of the U.S. Attorney's Office, as necessary. The court should be advised that, pursuant to 26 CFR 301.9000-1 (See paragraph (i), A testimony authorization.) the employee may not testify or produce IRS documents until the delegated official has considered the contents of the subpoena or request and has authorized an IRS employee to comply. The employee or the Disclosure Officer, Area Counsel, Department of Justice trial attorney, or the representative of the U.S. Attorney's Office should request additional time in which to receive instructions. If the court does not grant the delay, the employee will decline to disclose the records or information sought. However, an attempt will be made to contact the party seeking the information prior to the appearance time so that continuance might be obtained, if appropriate.
- (7) The determination of whether employees should be allowed to testify and what records or information, if any, may be disclosed must take into account applicable statutes, privileges, and constitutional requirements. Any applicable privilege or protection under law may be asserted in response to a request or demand for testimony or disclosure of IRS records or information, including, but not limited to, the following:
 - Attorney-client privilege,
 - Attorney work product doctrine, and
 - Deliberative process (executive) privilege.
- (8) The testimony and production authorization should be specific as to the scope of the records or testimony that may be provided. See IRM 11.3.35-2, Testimony Considerations, for additional information regarding demands for testimony.

25.3.3.7
(07-20-2010)

**Types of Suits Against
the United States**

- (1) The procedures to follow when a suit is filed against the United States depend upon the type of suit that is brought against the United States.
- (2) This subsection lists the principal types of suits that may be filed against the United States and the office that is responsible for handling the case.
- (3) General assistance may be requested of CEASO Advisors as outlined in the table below.

General Assistance

Item	Action
1	NFTL refiles
2	transcripts
3	narrative report
4	coordination with stakeholders <ul style="list-style-type: none"> • DOJ or US assistant attorney • DOJ or US attorney FLU • Area Counsel • Field RO
5	References: <ul style="list-style-type: none"> • IRM 25.3.6, Open Litigation Control, Monitoring, and Closing Actions, • IRM 25.3.7, Reconciling Non-Insolvency LAMS Reports, and • IRM 25.3.8, TC 520 - W Freeze Servicewide Guide.

25.3.3.7.1
(09-06-2023)

Trust Fund Recovery Penalty (TFRP) Refund Litigation - CEASO Advisor's Actions

- (1) Secure all relevant TFRP administrative files, refund claim files, and other related files and forward them to Area Counsel.
- (2) Prepare and forward a memorandum to Area Counsel containing details and status of related assessments and a recommendation to initiate a counterclaim against the taxpayer who brought the refund suit, and a third party complaint to bring all parties into the action. See IRM 25.3.1.4, Authorization for Filing Suits, Counterclaims or Third Party Complaints.
- (3) Secure and forward necessary certified transcripts and other needed documents on the plaintiff's assessments, all related assessments, and certified transcripts and original returns for all underlying BMF liabilities.
- (4) If a tax module is in BAL DUE status, determine whether or not collection should be withheld and contact the unit/person to which the module is assigned with instructions.

Note: Under IRC 6331(i), the running of the statutory period for collection is suspended and levy action to collect a TFRP assessment or other divisible tax is not permitted after refund litigation has been filed, if the tax liability is attributable to tax periods beginning after December 31, 1998. However, levy action may be taken if the taxpayer files a written waiver allowing levy, if collection is in jeopardy, or if the levy was made prior to the taxpayer filing suit. Recording a Notice of Federal Tax Lien (NFTL) is not prohibited, and refund offsets under IRC 6402 are allowable. Similar restrictions and suspensions apply if the requirements of IRC 6672(c) are met.

- (5) References for guidance regarding the input, monitoring, and resolution of Transaction Code (TC) 520 with associated closing codes and CSED suspension closing codes, can be found in:
 - IRM 25.3.6, Open Litigation Control, Monitoring, and Closing Actions,
 - IRM 25.3.7, Reconciling Non-Insolvency LAMS Reports, and

- IRM 25.3.8, TC 520 - W Freeze Servicewide Guide.

(6) If applicable, ensure that all NFTLs are timely filed or refiled as needed.

25.3.3.7.2
(09-06-2023)

Section 2410 Suits

(1) The following types of actions may be brought in state or federal court under *28 USC 2410*:

- Quiet title.
- Foreclosure.
- Partition.
- Condemnation.
- Interpleader.

(2) The CEASO advisor is responsible for all section 2410 suits. Notices of section 2410 suits received by other functions should be forwarded immediately to the CEASO advisor.

(3) Refer to IRM 5.12.4, Judicial/Nonjudicial Foreclosures, for instructions and procedures pertaining to foreclosure actions to which the United States is made a party pursuant to *28 USC 2410*.

(4) See IRM 5.17.5.18.1, 28 USC 2410 Actions— Background, and the provisions that follow, for a discussion of the types of actions that may be brought under 28 USC 2410. These actions are generally brought in state court.

- Coordination of these actions is generally handled directly through the appropriate U.S. Attorney's Office without Area Counsel involvement. The necessary response is generally limited to the preparation of a letter to the U.S. Attorney forwarding Automated Lien System (ALS) prints of applicable liens and information regarding unrecorded liens of relevance (statutory liens, estate tax liens, etc.)
- Area Counsel needs to be involved only if non-routine issues are presented. If Area Counsel is involved, they generally require a copy of the summons, complaint, docket sheet, and other relevant documents.

Note: Area Counsel will generally be involved if a state court action is removed to federal district court.

- Control the case on ICS. The control can generally be closed after issuance of the letter to the U.S. Attorney's Office, except in cases requiring further action or monitoring.

25.3.3.7.2.1
(09-06-2023)

Interpleader Suits

(1) Open a NF OI on ICS under code 132, Suit Against USA.

(2) Immediately forward one copy of the summons and complaint to the U.S. Attorney and two copies to Area Counsel.

Note: Because there is a very short deadline for removing a case from state court to federal district court, do not wait to send copies of the summons and complaint to Area Counsel.

(3) Prepare a narrative memorandum Form 4477-B, Civil Suit Narrative Report, detailing the facts of the case and the government's lien interest, securing information from the person or unit to whom the case is assigned. Use Form 4481, Civil Suit - Advisory Transmittal, to transmit to Area Counsel the

narrative memorandum, transcripts, administrative files, reports and documents required. Documents should include certified copies of Notices of Federal Tax Lien and other evidence of IRS claims.

- (4) Include in the narrative memorandum a discussion of the nature and extent of competing creditors' interests and include documents that serve as evidence of such interests, such as copies of mortgages, financing statements, judgments, or state or local tax liens. If warranted, verify the validity of such interests. For example, a mortgage against the property held by a party related to the taxpayer may be fraudulent.
- (5) Area Counsel will recommend a course of action based upon the nature and priority of the IRS's interest in the property.

25.3.3.7.2.2
(09-06-2023)
Foreclosures

- (1) See IRM 5.12.4.3, Judicial Foreclosures, and IRM 5.12.5, Redemptions, for detailed guidance for actions to take when the United States or the IRS is joined in a suit to foreclose a mortgage or other lien under *28 USC 2410*.

25.3.3.7.2.3
(09-06-2023)
**All Other Section 2410
Actions**

- (1) Open an NF OI on ICS under code 132, Suit Against USA, for section 2410 actions other than judicial foreclosures.
- (2) Deal directly with the U.S. Attorney's Office, providing any requested documents and information.
- (3) See also IRM 25.3.6, Open Litigation Control, Monitoring, and Closing Actions.

25.3.3.7.3
(09-06-2023)
**Actions Involving
Disclosure Issues**

- (1) The following actions are the responsibility of the Disclosure Office:
 - Releasing documents in actions involving the IRS in suits arising under the Freedom of Information Act,
 - Releasing documents in actions involving the IRS in suits arising under the Privacy Act, and
 - Subpoenas for testimony or documents.
- (2) Disclosure is responsible for providing any necessary information to Area Counsel and for securing testimony authorizations and providing guidance to subpoenaed employees. See IRM 25.3.3.6, Subpoenas and Requests for IRS Personnel to Testify or Produce Records, above.
- (3) Prior to releasing any documents in actions involving the IRS, the Disclosure Office must coordinate such disclosures with Area Counsel.

25.3.3.7.4
(09-06-2023)
**Other Suits Against the
United States**

- (1) The CEASO advisor is responsible for answering Area Counsel and U.S. Attorney requests for assistance on other suits against the United States, including, but not limited to, the following types of United States district court cases:
 - a. Injunctions to restrain collection (third-party) - IRC 7426(b)(1).
 - b. Wrongful levy suits (third-party) - IRC 7426(b)(2).
 - c. Recover surplus proceeds, substituted sale proceeds, and substitution of value (third-party) - IRC 7426(b)(3-5).
 - d. Damages for unauthorized collection action (third-party) - IRC 7426(h).

- e. Damages from failure to release a lien (taxpayer) - IRC 7432.
- f. Damages from unauthorized collection action (taxpayer) - IRC 7433.
- g. Determine whether certification of being a seriously delinquent taxpayer is erroneous or that IRS failed to reverse certification (taxpayer) - IRC 7345.

(2) **References:** for additional guidance -

- Pub 5390, Instructions for Preparing Administrative Claims for Damages Under Sections 7426(h), 7432, and 7433(a-d), and Request for Costs under Section 7430 Related to these Sections.
- IRM 25.3.6, Open Litigation Control, Monitoring, and Closing Actions.

25.3.3.7.5
(09-06-2023)

IRC 7345 Right to Determine Whether Certification as a Seriously Delinquent Taxpayer is Erroneous

- (1) Taxpayers have the right to bring a civil action under IRC 7345(e), Revocation or denial of passport in case of certain tax delinquencies, against the United States in United States district court or against the IRS in the Tax Court to determine whether the Internal Revenue Service's certification as a seriously delinquent taxpayer made to the State Department was erroneous or whether the Commissioner has failed to reverse the certification when appropriate. If the court determines that such certification was erroneous or should have been reversed, then the court may order the Secretary of State be notified that the certification is reversed. For more information see:

- IRM 5.17.5.21, IRC 7345 Right to Determine Whether Certification as a Seriously Delinquent Taxpayer is Erroneous., or
- For the overall certification process under IRC 7345 see IRM 5.19.25, Passport Program.

- (2) **CEASO Advisor's Role:** The CEASO advisor may receive information that a taxpayer is pursuing a civil action under IRC 7345(e) in various ways. If the taxpayer files their action in a United States district court, then receipt of the summons and complaint may follow the format described in IRM 25.3.3.2, Receipt of Service of Summons and Complaint. If the taxpayer pursues their action in Tax Court, the CEASO advisor will not be notified and will not support the litigation.

- a. **ROLE** is a support role monitoring this type of litigation when the action is in a United States district court.
- b. **OPEN** an NF OI 132, Suits Against the United States on ICS.
- c. **DOCUMENT** in the case history whether the action is in a United States district court as well as documenting any other actions taken on the case. The CEASO advisor will not be notified of an action in Tax Court.
- d. **REQUEST** after the NF OI 132 has been opened, that the Group Manager or group secretary go into the NF OI 132:

Note: Follow the descriptions below to find the selection.

Item	Description
1	Select Entity Detail
2	Select Maintain Program Names
3	Select from the drop down menu Passport District Court

Note: ENTITY REPORT BUILDER: A manager, group secretary, or IQA may input as a program name in ICS as an identifier to create a sortable query. Instructions can be found in the ICS User Guide - Chapter 9 Program Names.

Reminder: IRC 7345 does not stop collection actions. There are no freezes on the account and thus no TC 520 is input for either the United States district court or Tax Court venue with this type of litigation.

(3) The CEASO advisor may be asked to provide account transcripts or other information identified in IRM 25.3.3.5, Information for Defense of Suits, when the action is in a United States district court.

(4) **Certified Transcript Requests:**

- a. **District Court:** When requesting certified transcripts, see IRM 3.17.243.6, Certified Documents, and any associated IRM Procedural Updates (IPUs). These can be accessed from either SERP IRM or IRM OnLine through the IPU tab at the top of the IRM screen.
- b. **Tax Court:** Area Counsel will secure transcripts for Tax Court cases.

(5) In addition to the monitoring required under IRM 25.3.6, Open Litigation Control, Monitoring and Closing Actions, for all IRC 7345(e) United States district court cases with an open NF OI 132, the CEASO advisor will check IDRS at least every 6 months and upon request by Area Counsel or the Assistant United States Attorney handling the case to determine if the certification as a taxpayer with a seriously delinquent tax debt has been reversed.

Note: Reversal of a certification occurs systematically when all certified modules have been fully satisfied (e.g. Status 12), become legally unenforceable, or meet the criteria for reversal under a statutory or discretionary criteria. While the taxpayer will receive a Computer Paragraph (CP) 508R letter to notify him of the reversal, similar notification is not given to anyone at the IRS or Area Counsel. A suit, challenging a certification as a taxpayer with a seriously delinquent tax debt, can be dismissed as moot if a reversal occurs, so it is important that a reversal be identified as soon as possible.

(6) **CASE CLOSURE:** Once the litigation is resolved, the NF OI 132 may be closed at the direction of Area Counsel or receipt of a judicial decision. Judicial decisions can be found in the Public Access to Court Electronic Records (PACER).

25.3.3.8 (09-06-2023) Pre-Litigation Claimant Requirements

(1) In most circumstances, taxpayers and third parties file administrative claims for relief or restitution with the IRS first. In fact, a judgment for damages will not be awarded by a court unless the court determines that the claimant has exhausted the administrative remedies available within the IRS. Claimants commonly submit their administrative claim to the CEASO advisor before taking judicial action against the United States. Generally, the CEASO advisor is responsible for the review and resolution of these administrative claims.

Exception: Insolvency reviews and resolves administrative claims or court ordered damages that arise from violations of a bankruptcy stay or discharge injunction. See IRC 7433(e).

- (2) **Common administrative claims:** Ones that may be made or are required include the following:
- a. Wrongful levy claims by taxpayers under IRC 6343(b) and by third-parties under IRC 7426(h). Guidance as to their processing and resolution is included in IRM 5.10.4.15, Release of Wrongful Seizures for Property Not Yet Sold, IRM 5.10.6.15, Wrongful Seizure - Payment of Claims After Sale, and IRM 5.11.2.3.2, Wrongful and Erroneous Levies.
 - b. Taxpayer claims for damages from failure to release a lien under IRC 7432. Guidance as to their processing and resolution is included in IRM 5.12.3.13, Civil Cause for Action Under IRC 7432 for Failure to Release Lien.
 - c. Taxpayer claims for damages from unauthorized collection action under IRC 7433 and by third-parties under IRC 7426(h). Guidance as to their processing and resolution is included within this IRM in the sections below.

Reminder: Pub 5390 provides instructions for taxpayers and representatives submitting claims for damage under IRC 7426(h), IRC 7432, and IRC 7433(a-d) as well as instructions for requests for costs under IRC 7430, but only as they relate to the IRC sections listed in this reminder. The request forms are included with the instructions and are available separately (Form 15237, Administrative Damage Claim Under Sections 7426(h), 7432, 7433(a-d)). They are completed by taxpayers or third-parties but most likely by their representatives and submitted per the directions in the instructions to the proper party within IRS to evaluate the claim.

25.3.3.9
(09-06-2023)

**Damages - Civil Cause
of Action for
Unauthorized Collection
Action**

- (1) **IRC 7433** allows the filing, by the taxpayer, of a damages action against the government in federal district court when, in connection with the collection of a tax, if any officer or employee of the IRS recklessly, intentionally, or negligently disregards any provision of the Internal Revenue Code or the related Treasury Regulations.

Note: Subsection 7433(e) was added by the Restructuring and Reform Act of 1998 to allow taxpayers to petition the bankruptcy court for actual, direct economic damages and costs of the action if the IRS willfully violated the automatic stay or discharge injunction. Insolvency works these claims. See IRM 5.17.8.10(8), Automatic Stay - 11 USC 362, and the IRS website *Claims for relief and damages for violations of bankruptcy automatic stay or discharge injunction*.

- (2) **IRC 7426(h)** allows the filing of a damages action against the government in federal district court when, in connection with the collection of a tax, if any officer or employee of the IRS recklessly, intentionally, or negligently disregards any provision of the Internal Revenue Code or the related Treasury Regulations. These actions may be filed by anyone:
- a. Other than the taxpayer owing the tax liabilities at issue, and
 - b. Who meets the criteria for one of the permitted actions under Section 7426(a),

- (3) **IRC 7432**, allows the filing, by the taxpayer, of a damages action if any officer or employee of the IRS knowingly or negligently fails to release a lien under IRC 6325 on property of the taxpayer.

Reminder: Instructions for working these administrative claims are in IRM 5.12.3.13, Civil Cause of Action Under IRC 7432 for Failure to Release Lien.

- (4) **Employee Protection:** Employees, acting in the performance of their duties, whose actions are challenged under the sections identified above, will not be held personally liable in such an action. See IRM 25.3.3.9.5, Notifying the Employee's Manager of a Claim of Unauthorized Collection Action, and IRC 7426(d), Limitation on Rights of Action.
- (5) **Litigation Filing Cutoff:** A suit under IRC 7433(a-d), IRC 7426(h), or IRC 7432 must be brought within two years from the date the right of action accrued. The right of action accrues when the taxpayer or third party has had reasonable opportunity to discover all essential elements of a possible cause of action for wrongful collection.
- (6) **Administrative Claim Prior to Suit:** A judgment for damages under IRC 7433(a-d), IRC 7426(h), or IRC 7432 will not be awarded unless the court determines that the plaintiff has exhausted all administrative remedies within the IRS (see 26 CFR 301.7433-1(e)).
- Under 26 CFR 301.7433-1(f), the amount sought by suit generally cannot exceed the amount sought in the administrative claim.
 - If the claim is denied, there is no appeal. The remedy provided by the statute is for the claimant to institute a suit in federal district court.
- (7) **Direct Claimants Wanting to Submit an Administrative Claim:** If someone requests information on filing an administrative claim under IRC 7433(a-d), IRC 7426(h), or IRC 7432, direct them to both:
- Pub 5390, Instructions for Preparing Administrative Claims for Damages Under Sections 7426(h), 7432, and 7433(a-d), and Request for Costs under Section 7430 Related to these Sections, and
 - Form 15237, Administrative Damage Claim Under Sections 7426(h), 7432, 7433(a-d).

Reminder: Direct claimants wanting to submit an administrative claim under **IRC 7433(e)**, to the IRS website *Claims for relief and damages for violations of bankruptcy automatic stay or discharge injunction*. Subsection 7433(e) was added by the Restructuring and Reform Act of 1998 to allow taxpayers to petition the bankruptcy court for actual, direct economic damages and costs of the action if the IRS willfully violated the automatic stay or discharge injunction.

- (8) **Recoverable Amount In A Court Action:** If successful in a court action under either IRC 7433 (a-d) or IRC 7426(h), a taxpayer or third party may recover

- The lesser of \$1,000,000 (\$100,000 for negligence) or the sum of the actual, direct economic damages suffered by the taxpayer or third party as the proximate result of the reckless, intentional or negligent action, plus
 - The cost of the action (See cost examples in IRM 25.3.3.9).
 - An award for injuries such as inconvenience, emotional distress and loss of reputation can be paid only if the injury results in a direct monetary loss.
- (9) **Litigation and Administrative Costs:** Costs of the action are not recoverable under sections 7426(h), 7432, and 7433. To recover these costs, which may include attorney's fees, the claimant may pursue recovery under IRC 7430, Awarding of costs and certain fees.

Litigation and Administrative Cost Examples

Item	Description
a.	Fees of the clerk and marshal
b.	Fees of the court reporter for all or part of any stenographic transcript necessary for use in the case
c.	Fees for filing complaint and other docket fees
d.	Fees for court appointed experts and interpreters
e.	Attorney's fees
f.	Cost of printing and witnesses
g.	Cost for securing regular as well as certified true copies of documents used in the proceeding

Note: Direct claimants, wanting to submit a cost of the action claim under IRC 7430, to both:

Item	Reference
1	Pub 5390, Instructions for Preparing Administrative Claims for Damages Under Sections 7426(h), 7432, and 7433(a-d), and Request for Costs under Section 7430 Related to these Sections.
2	Form 15237-A, Request for Section 7430 Recoverable Costs.

Note: An IRC 7430 claim is submitted in writing **on or before 90 days** after the date of the final IRS denial on the administrative claim. See IRM 25.3.3.9.4.2, Cost Reimbursement.

Reminder: IRC 7433(e) relates specifically to bankruptcy and violations of the stay. Administrative costs, incurred pursuing an administrative claim for damages under IRC 7433(e), are not recoverable under IRC 7430. Ad-

ministrative costs incurred after the date a bankruptcy petition is filed may be awarded under IRC 7430 for violations of the automatic stay or discharge injunctions.

- (10) **Litigation Claim Payment Authority:** Litigation claims arising from the sections discussed above, will be paid out of *31 USC 1304*, Judgments, awards, and compromise settlements. For cases referred to the Tax Division of the Department of Justice, the request from the *Judgment Fund* in Treasury's Bureau of Fiscal Service utilizes the Judgment Fund Internet Claim System (JFICS) will be prepared by these DOJ offices:

- By the Tax Financial Litigation Unit of the Office of Review, if the court enters a judgment or grants an award against the government; or
- By the Civil Trial Section assigned to the case, if the government concedes or agrees to a settlement.

- (11) **Administrative Claim Approving Official:** - see IRM 25.3.3.9.4, Reimbursement of Damages and Costs, below.

25.3.3.9.1
(09-06-2023)
**Administrative Claim
Procedures**

- (1) **Treasury Regulations:** 26 CFR 301.7433-1 and 26 CFR 301.7426-2 contain administrative claim procedures for IRC 7433(a-d), and IRC 7426(h).

Exception: 26 CFR 301.7433-2 contain administrative claim procedures for IRC 7433(e)

Exception: For IRC 7432 claims, see IRM 5.12.3.13, Civil Cause of Action Under IRC 7432 for Failure to Release Lien, et seq.

- Cause of Action:** A cause of action accrues under these provision when the claimant has had a reasonable opportunity to discover all essential elements - of a possible civil action for damages in federal district court - under IRC 7433 or IRC 7426(h)
- Claim Submission To:** The administrative claim is addressed to the Area Director, Attention Collection Advisory Group Manager (for the state where the claimant currently resides or, when dealing with a corporate entity, the area which includes the corporate headquarters.

Reminder: Claimants use Publication 4235, Collection Advisory Group Addresses, to identify the Collection Advisory office for submission of the documents.

- Claim Submission Style:** Submission is in writing and sent by registered or certified mail, or delivered by personal service.

Reminder: Direct claimants, wanting to submit an administrative claim, to Pub 5390, Instructions for Preparing Administrative Claims for Damages Under Sections 7426(h), 7432, and 7433(a-d), and Request for Costs under Section 7430 Related to these Sections, and Form 15237, Administrative Damage Claim Under Sections 7426(h), 7432, 7433(a-d).

Exception: Claims related to violations of the bankruptcy stay under IRC 7433(e), direct claimants to follow the instructions located on the www.irs.gov

page, *Claims for Relief and Damages for Violations of Bankruptcy Automatic Stay or Discharge Injunction*.

- (2) **Minimum Administrative Claim Requirements:** There is no requirement to use Form 15237, Administrative Damage Claim Under Sections 7426(h), 7432, 7433(a-d), in preparing a claim. However to ensure administrative claims contain the required information and documentation, direct claimants or their representatives to Pub 5390, Instructions for Preparing Administrative Claims for Damages Under Sections 7426(h), 7432, and 7433(a-d), and Request for Costs under Section 7430 Related to these Sections. It provides the instructions and contains Form 15237, Administrative Damage Claim Under Sections 7426(h), 7432, 7433(a-d). The publication and form guide the claimant through the process. It encourages that claims be timely and complete for evaluation. Required information, whether included on Form 15237 or not, includes:
- a. The name, current address, current home and work telephone numbers and any convenient times to be contacted, and the taxpayer identification number of the taxpayer making the claim.
 - b. The grounds, in reasonable detail, for the claim, including a complete description of the unauthorized collection action and copies of available substantiating documentation or correspondence with the Internal Revenue Service.
 - c. A description of the injuries incurred by the taxpayer filing the claim, including copies of any available substantiating documentation or evidence.
 - d. The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (including copies of any available substantiating documentation or evidence).
 - e. The signature of the taxpayer or the taxpayer's duly authorized representative.
- (3) **Claim Evaluation Time Frames:** Evaluation and determination of a processable administrative claim should be completed as soon as possible but must be completed within 6 months of receiving the processable administrative claim. The claimant may bring suit either when:
- Final determination provided for the administrative claim - or - 6 months after submission of a processable administrative claim where no determination provided. - OR -
 - If the claimant submits an administrative claim within the last 6 months of the 2 year period of limitations for filing suit, the claimant may file suit any time after submission of the administrative claim and before the expiration of the period of limitations.
- (4) **Claimant Notifications:** These are the letters used to notify the claimant of the administrative claim determination:
- Letter 2730, Non-processable Claim for Damages Letter, notifies claimant of the deficiencies in the claim,
 - Letter 2731, Transfer of Claim for Damages. This informs claimant their administrative claim was sent to the wrong office and is being forwarded to the correct office.
 - Letter 2732, Notification of Full or Partial Denial of Claim for Civil Damages, and

- Letter 2733, Notification of Full or Partial Allowance of Claim for Civil Damages. Include also Treasury's Form 197, Judgment Fund Voucher for Payment requesting claimant's signature. Form 197 can be downloaded from *Judgment Fund Form*. The form is available at the bottom of the web page and must be signed by the claimant on page 2.

Note: If only a portion of the claim is being approved, both Letter 2732 and Letter 2733 will be sent to the claimant at the same time.

25.3.3.9.2
(09-06-2023)
**Evaluation of a Claim for
Damages Under IRC
7433 (a-d) and IRC
7426(h)**

(1) **Advisor's Initial Action:**

- Open an NF OI 185 on ICS indicating the code section of claim submission.
- Review** each claim to ensure the submission is in writing, by the appropriate delivery method, to the correct party and includes at a minimum items (a - e) in (2) above. See elements of the review in IRM 25.3.3.9.2.
- Claim Not Processable - Respond in writing:** Within 14 days of receipt of a claim, if it does not include the information requested in (2) above. Include a list of the claim's deficiencies and advise that the claim is not processable. See (6) below for letter notifying claimant how to cure the deficiencies in their claim.

Caution: This is not considered a rejection of the claim because a claim meeting the requirements of 26 CFR 301.7433-1 or 26 CFR 301.7426-2 has not yet been submitted.

- (2) **Date stamp the claim upon receipt.** The advisor should complete the initial review of the claim within 30 days of receipt.
- (3) **Open an NF OI on ICS under 185 - Claim Other.** The type of claim should be noted in the comments section of the NF OI. Review the closed files for any prior claims.
- (4) **Review for Processability:** The statutory elements contained in IRC 7433 (a-d) or IRC 7426(h) must be applied to each claim received to determine processability.

Caution: If not processable: When the claim is not processable, see both IRM 25.3.3.9.1(3) c, Claim Not Processable - Respond in writing, and (6), Claimant Notifications.

- (5) **If Processable - Review for Determination:** In determining whether a claim is administratively allowable the reviewer must follow the steps below to make a determination.

Steps Determining If Claim Allowable

Step	Review Element
1	The facts and circumstances of each case must be evaluated.
2	Determine if the alleged infraction did, in fact, take place.

Step	Review Element
3	Determine whether or not the infraction was a reckless, intentional, or negligent disregard of the law. Example: Did an officer or employee of the IRS intentionally, negligently, or recklessly disregarded any legal or regulatory provision of the Internal Revenue Code in connection with the collection of any federal tax.
4	Ascertain when, in time, the taxpayer became aware of the violation or should have become aware of the violation. <ul style="list-style-type: none"> • Claims filed more than two years after the violation must receive special scrutiny. • The claimant's two year limitation to bring suit begins at the point when the claimant has had a reasonable opportunity to discover all essential elements in a possible cause of action. • The reviewer must determine when the claimant knew or should have known of the violation. Note: Claims filed outside the two year limitation will be rejected.
5	Determine whether the claimant sustained direct, economic damages as a proximate result of the alleged infraction.

- (6) **Claim Rejection:** If the claim cannot be fully or partially substantiated, or is untimely, the claim will be submitted to Counsel for partial or full rejection. Follow the steps in the table below.

Caution: The deadline for making this determination is 6 months after submission of a processable administrative claim.

Reminder: Where no determination provided 6 months after submission of a processable administrative claim the claimant may initiate a suit in federal district court. Also, if a claimant submits an administrative claim within the last 6 months of the 2 year period of limitations for filing suit, the claimant may file suit any time after submission of the administrative claim and before the expiration of the period of limitations.

Claim Rejection Steps

Step	Action
1	Prepare rejection justification memo addressed to Counsel including in the package the claimant's submission and documentation. In the memo confirm or contradict the claimant's position. Also include Letter 2732, Notification of full or partial Denial of claim for civil Damages, prepared for Territory Manager signature. Reminder: If a claim is partially allowable, follow the actions for acceptance in addition to the actions for rejection.
2	Send the file to Counsel for concurrence with the rejection determination.
3	Submit Counsel concurrence with the rejection justification package to the Territory Manager for signature of Letter 2732.

Step	Action
4	Upon receipt of the Territory Manager signed Letter 2732, send Letter 2732 to the claimant with a copy to their representative, if the claimant has one.
5	<p>Close the NF OI 185.</p> <p>Reminder: The claimant cannot initiate a federal district court case for an amount exceeding the dollar amount sought in the administrative claim whether already incurred or estimated (e.g., cost of the action). Exceptions exist for newly discovered evidence not reasonably discoverable when the administrative submitted, or for allegation and proof of intervening facts relating to the amount of the claim.</p> <p>Caution: The claimant has 90 days after the date of the IRS denial to submit a claim for costs of the action under IRC 7430. If an IRC 7430 claim is received, reopen the NFOI 185 for consideration of the claim. Generally, receipt of an IRC 7430 claim indicates the claimant will be filing suit and is estimating their costs for that court action. See Pub 5390, page 4 and Form 15237-A, Request for Section 7430 Recoverable Costs.</p> <p>Note: If the claimant initiates a suit, open an NF OI 132 and assist Counsel and DOJ when and as requested.</p>

- (7) **Claim Acceptance:** If the claim can be fully or partially substantiated and is timely, the claim will be submitted to Counsel for partial or full acceptance concurrence (See Step 6 in table below). Follow the steps in the table, IRM 25.3.3.9.2, Claim Acceptance Steps, below.
- Claim Decision Deadline:** The deadline for making this determination is 6 months after submission of a processable administrative claim.
 - No Decision Made:** Where no determination provided 6 months after submission of a processable administrative claim the claimant may initiate a suit in federal district court.
 - Claim Received 6 Months Before Filing Deadline:** If a claimant submits an administrative claim within the last 6 months of the 2 year period of limitations for filing suit, the claimant may file suit any time after submission of the administrative claim and before the expiration of the period of limitations.

Claim Acceptance Steps

Step	Action
1.	Prepare determination justification memo for Counsel. In the memo confirm or contradict the claimant's position. Include the acceptance criteria and amount in step 2 below.
2.	<p>Identify in the memo the criteria used to determine the amount of the administrative settlement:</p> <ol style="list-style-type: none"> Reduce the amount of the award by the damages that reasonably could have been avoided by the claimant. Only actual, direct economic damages are recoverable in an administrative claim. The actual, direct economic damage reimbursement can not exceed \$1,000,000 (\$100,000 in the case of negligence).

Step	Action
3.	<p>Do not include any Litigation and Administrative costs as these are not recoverable during the administrative claim IRM 25.3.3.9.4, Claim Cost and Treatment.</p> <p>Reminder: While litigation costs, including attorneys' fees incurred in pursuing litigation may ultimately be recoverable by a claimant under IRC 7430 as described in 26 CFR 301.7433-1(h), those costs would not generally be incurred until the matter has been referred to DOJ, and settlement authority would lie with DOJ. See Pub 5390, page 1 FAQs.</p>
4.	<p>Prepare Letter 2733, Notification of Full or Partial Allowance of Claim for Civil Damages, prepared for CEASO Director's signature.</p> <p>Reminder: If a claim is partially rejected, follow the actions for rejection in addition to the actions for acceptance and prepare Letter 2732 and Letter 2733 at the same time.</p>
5.	<p>Download from Treasury's Bureau of Fiscal Services Judgment Fund site and prepare, <i>FMS Form 197 (Rev. August 2020) - Judgment Fund Voucher for Payment</i>. The claimant may have to complete their banking information to ensure direct deposit.</p> <p>Caution: If the claim amount is greater than \$200,000, the Judgment Fund requires a final judgment or a standard DOJ Stipulation For Compromise Settlement And Release.</p>
6.	<p>Send Administrative Claim package to Counsel for review and concurrence with the acceptance determination:</p> <ol style="list-style-type: none"> Counsel memo, ICS history, Claimant's administrative claim and documentation, Letter 2733, and <i>FMS Form 197 (Rev. August 2020) - Judgment Fund Voucher for Payment</i>. <p>Note: If a portion of the claim is approved, include both Letter 2732 and Letter 2733.</p>
7.	<p>With a Counsel concurrence, submit to the Territory Manager:</p> <ol style="list-style-type: none"> Counsel concurrence with the acceptance justification, Administrative Claim package (i.e., step 6), and Letter 2733, requesting signature on the letter and concurrence with submitting claim to CEASO Director for approval and reimbursement authorization. <p>Note: If a portion of the claim is approved, include both Letter 2732 and Letter 2733.</p>
8.	<p>Send to claimant:</p> <ol style="list-style-type: none"> Signed Letter 2733, and <i>FMS Form 197 (Rev. August 2020) - Judgment Fund Voucher for Payment</i>., requesting claimant's signature on page 2. <p>Note: If a portion of the claim is approved, issue Letter 2732 and Letter 2733 at the same time.</p>

Step	Action
9.	Upon receipt of claimant signed <i>FMS Form 197 (Rev. August 2020) - Judgment Fund Voucher for Payment.</i> , go to IRM 25.3.3.9.4, Reimbursement of Damages and Costs, for instructions on submitting claim for reimbursement.

25.3.3.9.3
(09-06-2023)
**Frivolous Damage
Claims**

- (1) Advisory must process and respond to all claims that appear to be brought under IRC 7433, whether or not they appear to be frivolous. Follow the procedures set forth in IRM 25.3.3.9.1, Administrative Claim Procedures, above, for any correspondence received from a taxpayer that indicates in some fashion that the taxpayer is attempting to file a claim for damages for unauthorized collection action.
- (2) If a claim for unauthorized collection action appears to contain frivolous arguments, send the following documents/information to the Ogden Frivolous Return Program (also known as the Frivolous Filer Unit) **after the claim is processed and a response is sent to the taxpayer.**
 - Copies of the first two or three pages of the claim (or a sufficient number of pages to show that the claim is frivolous);
 - The date of receipt of the claim (this should be shown by a date stamp on the claim);
 - The claimant's name, address, and any taxpayer identification information that may be provided in the claim; and
 - A copy of the response sent to the claimant.
- (3) Prepare and include Form 3210, Document Transmittal, and follow the instructions in IRM 5.19.11.10.5(7), Frivolous Communications.
- (4) Direct any questions as to whether a claim is being asserted under IRC 7433 or IRC 7426(h) and should be processed under these procedures to Area Counsel.

25.3.3.9.4
(09-06-2023)
**Reimbursement of
Damages and Costs**

- (1) Reimbursement for both damages and costs is obtained only through Treasury's Judgment Fund Internet Claims System or JFICS. The approving official for Advisory JFICS requests is the Director, CEASO and access to JFICS for Advisory is through the CEASO Director's staff.
 - For Damage reimbursement see IRM 25.3.3.9.4.1.
 - For Cost reimbursement see IRM 25.3.3.9.4.2.

25.3.3.9.4.1
(09-06-2023)
Damage Reimbursement

- (1) After the advisor has the claimant's signature on page 2 of FMS Form 197, the final steps for obtaining reimbursement are in the table below.

Approved Claim to Director's Staff

Item	Description
1.	After the advisor receives the claimant signed FMS Form 197, they submit the package to the CEASO Director's Staff. Reminder: The advisor keeps a copy in their file of any forms sent to the Judgment Fund and documents any information received from the Director's staff or FMS regarding payment to the claimant on ICS.
2.	The CEASO Director's staff presents the package and claimant signed FMS Form 197 to the Director.
3.	If the Director approves reimbursement, the Director, as the approving official, signs the FMS Form 197/
4.	The CEASO Director's staff sends the claimant and the advisor a copy of the signed FMS Form 197.
5.	The CEASO Director's staff then submits the reimbursement request with FMS Form 197 to Treasury through the <i>Judgment Fund</i> in Treasury's Bureau of Fiscal Service utilizing JFICS.
6.	The CEASO Director's staff follows up as necessary to determine reimbursement status and informs the advisor of the status.
7.	<i>Contact Treasury</i> with any questions.

25.3.3.9.4.2
(09-06-2023)

Cost Reimbursement

- (1) An IRC 7430 administrative claim for costs of the action may be submitted in writing **on or before 90 days** after the date of the final IRS denial on the administrative claim. An administrative claim for costs of the action is submitted in the same manner as the administrative claims for damage.
- (2) **Requirements:** Neither the claim for damages, nor underlying substantive issues have ever been presented to any United States court (including the Tax Court or United States Court of Federal Claims) for consideration and payment. See pages 4 and 5 of Pub 5390, and Form 15237-A.

Administrative Cost Examples

Item	Description
1.	Any costs incurred pursuing administrative claim
2.	Any administrative fees or similar charges imposed by the IRS
3.	Expenses of expert witnesses

Item	Description
4.	Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding
5.	Fees paid or incurred for the services of attorneys (representative or specially qualified representative) or other individuals authorized to practice before the IRS

- (3) **Claim Consideration:** Follow the steps in IRM 25.3.3.9.2, Evaluation of a Claim for Damages Under IRC 7433 (a-d) and IRC 7426(h), and IRM 25.3.3.9.4.1, Damage Reimbursement.

25.3.3.9.5
(07-20-2010)
**Notifying the
Employee's Manager of
a Claim of Unauthorized
Collection Action**

- (1) Advisors, with the approval of the Advisory Group Manager, should inform the manager of the employee named in the damage claim that a claim of unauthorized collection action has been received. Follow up contact will be made to advise the manager of the final results of the investigation of the claim.
- (2) Provide copies of supporting documentation obtained during the investigation of the claim to the employee's manager.
- (3) Discussions regarding the findings will be held by the employee's immediate supervisor and the employee.
- (4) The employee's manager will determine if NTEU representation is necessary.

25.3.3.10
(09-06-2023)
**Claims for Damages by
Third Parties**

- (1) Under IRC 7426(h), recovery of damages is permitted by a third party if it is determined that any officer or employee of the IRS recklessly, intentionally or by reason of negligence, disregarded the provisions of the Code. The liability for damages is in an amount equal to the lesser of \$1,000,000 (\$100,000 in the case of negligence) or the sum of:
 - a. Actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless, intentional or negligent disregard by the officer or employee (reduced by the amount of any recovery under subsection (b) of section 7426), and
 - b. The costs of the action.
- (2) Evaluate a claim for damages brought under IRC 7426(h) in the same manner as other damage claims. See
 - IRM 25.3.3.9, Damages - Civil Cause of Action for Unauthorized Collection Action,
 - IRM 25.3.3.9.1, Administrative Claim Procedures,
 - IRM 25.3.3.9.2, Evaluation of a Claim for Damages Under IRC 7433 (a-d) and IRC 7426(h),
 - IRM 25.3.3.9.4, Reimbursement of Damages and Costs,
 - Pub 5390, Instructions for Preparing Administrative Claims for Damages Under Sections 7426(h), 7432, and 7433(a-d), and Request for Costs under Section 7430 Related to these Sections,
 - IRM 5.17.5.17.1, Wrongful Levy, and

- Pub 4528, Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b).

25.3.3.10.1
(09-06-2023)

Actions Permitted by Third Parties

- (1) Any claim for damage under IRC 7426(h) must relate to the types of actions described in IRC 7426(a).

IRC	Description
7426(a)(1)	Wrongful levy: Where a levy was made on property or property sold pursuant to a levy and a person, other than the taxpayer, claims an interest or lien on the property such that the property was wrongfully levied upon.
7426(a)(2)	Surplus proceeds: Where property is sold pursuant to a levy and a person, other than the taxpayer, claims an interest or lien on the property junior to the United States legally entitling them to the surplus proceeds of such sale.
7426(a)(3)	Substituted sale proceeds: Where property is sold pursuant to an IRC 6325(b)(3) agreement, relating to substitution of proceeds of sale, and a person claims to be legally entitled to any or all of the amount held as a fund pursuant to such agreement.
7426(a)(4)	Substitution of value: Where a certificate of discharge is issued to any person under IRC 6325(b)(4) for property and there is a disagreement with the United States' valuation of the property.

- (2) Third parties may separately adjudicate the actions described above pursuant to IRC 6343(b) or IRC 7426(b) without first submitting an administrative claim. See the following references:

- IRM 5.17.5.17, IRC 7426 Suits against United States - General, et seq.
- IRM 5.11.2.3.2.1(6), Wrongful Levy, and Pub 4528, Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b).

Note: A taxpayer would pursue an administrative return of property levied claim pursuant to IRC 6343(d) utilizing the instructions in Pub 5149, Making an Administrative Return of Property Claim Under Internal Revenue Code (IRC) Section 6343(d).

- IRM 5.12.10.3.4, Substitution of Proceeds of Sale.
- IRM 5.12.10.3.5, Right of Substitution of Value, IRC 6325(b)(4), et seq.