Department of the Treasury	Internal Revenue Service	Office of Chief Counsel	**Notice**

CC-2009-004

October 17, 2008

Subject:	Failure to Exhaust Administrative Remedies under Section 7433	**Cancel Date**:	Upon incorporation into the CCDM

This Notice provides instructions to Chief Counsel attorneys for determining whether a taxpayer, who filed an action for damages under section 7433, previously filed an administrative claim for these damages.

Section 7433(a) allows a taxpayer to bring an action for damages against the United States in a district court of the United States if, in connection with the collection of a federal tax, an officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of the Internal Revenue Code or any regulation promulgated under the Code. The taxpayer is not entitled to an award of damages under section 7433(a) unless he has exhausted his administrative remedies. I.R.C. § 7433(d)(1). Treasury Regulation § 301.7433-1(a) requires the taxpayer to submit an administrative claim for damages to the Service before filing an action with the district court. If the government can show that a taxpayer did not file an administrative claim for damages before filing his action with the district court, the court will dismiss the action. *Conforte v. United States,* 979 F.2d 1375, 1377 (9th Cir. 1993); *Turner v. United States*, 429 F.Supp.2d 149 (D.D.C. 2006).

If a civil action for damages is filed under section 7433, the assigned Counsel attorney must contact the local Advisory, Insolvency and Quality office to research the Integrated Collection System (ICS) regarding the existence of any administrative claim filed by the taxpayer. If the information ascertained from ICS does not reflect that the taxpayer has filed a section 7433 administrative claim, the Counsel attorney should advise the Department of Justice attorney assigned to the litigation that "the Service has no record of the plaintiff having filed an administrative claim." The Counsel attorney must fully describe for the Department of Justice attorney the efforts made by the Service to locate an administrative claim and include a reference to IRM 25.3.3.5.1 and IRM 25.3.3.5.2. The reference to these IRM provisions is necessary to show that, had the taxpayer filed an administrative claim, a record of the claim would have been found because the Service opens a non-field other investigation under action code 185 on ICS for all administrative claims for damages for unauthorized collection actions.

Questions regarding this Notice should be directed to Procedure and Administration, Branch 5 at (202) 622-3620.

/s/
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(Procedure & Administration)

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