

## Suing the Internal Revenue Service for Improper Tax Collection Actions

It has always been difficult to sue the IRS over unjustified collection actions because it is an agency of the U.S. government and as such, is immune to claims under the doctrine of sovereign immunity. According to the doctrine of sovereign immunity, a taxpayer may sue the U.S. government (in place of the IRS) only if the government has specifically waived its sovereign immunity.

The federal government waives its sovereign immunity when an officer or employee of the IRS recklessly, intentionally or negligently disregards any provision of the tax law in connection with the collection of any federal tax. If an IRS employee engages in this type of unauthorized collection action, the taxpayer may sue the U.S. government (but not the IRS Commissioner, an IRS agent, or any other individual) in a federal district court. Before filing such a suit, however, a taxpayer must first exhaust all administrative remedies within the IRS. If the taxpayer fails to do so, a court cannot award damages. Further, the court may reduce any damage award to the extent the taxpayer could have, but did not, take steps to reduce the damages himself.

Taxpayers may also institute litigation in response to unfair collection actions in other circumstances:

- A civil action for damages against the U.S. government in a federal district court where an IRS officer or employee knowingly, or through negligence, fails to release a federal tax lien on the taxpayer's property. As a prerequisite to filing suit, however, a taxpayer must first exhaust all administrative remedies within the IRS.
- An action against a federal employee in his or her individual capacity for violating a taxpayer'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 the IRS to refrain from collecting a federal tax), which must either meet very narrow statutory criteria, or clearly show that the IRS will not prevail on its federal tax claim.
- A suit to quiet title to property on which the U.S. government has a lien. While quiet title actions can be used to challenge procedural irregularities in the assessment

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process, a taxpayer cannot use them to attack the validity of an underlying federal tax assessment.

Although possible, the doctrine of sovereign immunity along with strict statutory guidelines, make it very difficult to sue the IRS for improperly attempting to collect a tax liability. Because of these limiting factors, and the complexity surrounding litigation directly implicating the IRS, taxpayers are advised to seek competent, experienced legal counsel to ensure their matter is prosecuted properly and effectively.

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