

*Example 1.* Taxpayer A receives a notice of proposed deficiency (30-day letter). A requests and is granted Appeals office consideration. The administrative file contains certain documents provided by A as substantiation for the tax matters at issue. Appeals determines that the information submitted is insufficient. Appeals then issues a notice of deficiency. After receiving the notice of deficiency but before the 90-day period for filing a petition with the Tax Court has expired, and before filing a petition with the Tax Court, A convinces Appeals that the information previously submitted and reviewed by Appeals is sufficient and, therefore, the notice of deficiency is incorrect and A owes no additional tax. Pursuant to section 6212(d), the notice of deficiency is rescinded. Appeals then closes the case showing a zero deficiency and mails A a notice to this effect. Assuming that Appeals did not rely on any new information provided by A in rescinding the notice of deficiency and that all of the other requirements of section 7430 are satisfied, A may recover reasonable administrative costs incurred after the date of the 30-day letter (the administrative proceeding date as defined in Treas. Reg. § 301.7430-3(c)). To recover these costs, A must file a request for administrative costs with the Appeals office personnel who settled A's tax matter, or if that person is unknown to A, with the Area Director of the area that considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that A owes no additional tax.

*Example 2.* Taxpayer B files a request for an abatement of interest pursuant to section 6404 and the regulations thereunder. The Area Director issues a notice of proposed disallowance of the abatement request (akin to a 30-day letter). B requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of disallowance of the abatement request. B does not file suit in the Tax Court, but instead contacts the Appeals office within 180 days after the mailing date of the notice of disallowance of the abatement request to attempt to reverse the decision. B convinces the Appeals office that the notice of disallowance is in error. The Appeals office agrees to abate the interest and mails the taxpayer a notification of this decision. The mailing date of the notification from Appeals of the decision to abate interest commences the 90-day period from which the taxpayer may request administrative costs. Assuming that Appeals did not rely on any new information provided by B in reversing its notice of disallowance, and that all of the other requirements of section 7430 are satisfied, B may recover reasonable administrative costs incurred after the date the Area Director issued the notice of proposed disallowance of the abatement request (the ad-

ministrative proceeding date as defined in Treas. Reg. § 301.7430-3(c)). To recover these costs, B must file a request for costs with the Appeals office personnel who settled B's tax matter, or if that person is unknown to B, with the Area Director of the area that considered the underlying matter within 90 days after the date of mailing of the Office of Appeals' final decision that B is entitled to abatement of interest.

*Example 3.* Taxpayer C receives a notice of proposed adjustment and employment tax 30-day letter. C requests and is granted Appeals office consideration. The administrative file contains certain documents provided by C to support C's position in the tax matters at issue. Appeals determines that the documents submitted are insufficient. Appeals then issues a notice of determination of worker classification. After receiving the notice of determination of worker classification but before the 90-day period for filing a petition with the Tax Court has expired, C convinces Appeals that the documents previously submitted and reviewed by Appeals adequately support its position and, therefore, C owes no additional employment tax. Appeals then closes the case showing a zero tax adjustment and mails C a no-change letter. Assuming that Appeals did not rely on any new information provided by C in reversing its notice of determination of worker classification, and that all of the other requirements of section 7430 are satisfied, C may recover reasonable administrative costs incurred after the date of the notice of proposed adjustment and 30-day letter (the administrative proceeding date as defined in Treas. Reg. § 301.7430-3(c)). To recover these costs, C must file a request for administrative costs with the Appeals office personnel who settled C's tax matter, or if that person is unknown to C, with the Area Director of the area that considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that C owes no additional tax.

[T.D. 8542, 59 FR 29360, June 7, 1994, as amended by T.D. 8725, 62 FR 39118, July 22, 1997; T.D. 9050, 68 FR 14320, Mar. 25, 2003; T.D. 9756, 81 FR 10484, Mar. 1, 2016]

### § 301.7430-3 Administrative proceeding and administrative proceeding date.

(a) *Administrative proceeding.* For purposes of section 7430, an administrative proceeding generally means any procedure or other action before the Internal Revenue Service that is commenced after November 10, 1988. However, an administrative proceeding does not include—

(1) Proceedings involving matters of general application, including hearings

## Internal Revenue Service, Treasury

## § 301.7430-3

on regulations, comments on forms, or proceedings involving revenue rulings or revenue procedures;

(2) Proceedings involving requests for private letter rulings or similar determinations;

(3) Proceedings involving technical advice memoranda, except those submitted after the administrative proceeding date (as defined in paragraph (c) of this section); and

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under section 7432 or 7433, except proceedings brought under section 7433(e) and §301.7433-2 or proceedings otherwise described in §301.7430-8(c). See §301.7430-8.

(b) *Collection action.* A collection action generally includes any action taken by the Internal Revenue Service to collect a tax (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) or any action taken by a taxpayer in response to the Internal Revenue Service's act or failure to act in connection with the collection of a tax (including any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax). A collection action for purposes of section 7430 and this section includes any action taken by the Internal Revenue Service under Chapter 64 of Subtitle F to collect a tax. Collection actions also include collection due process hearings under sections 6320 and 6330 (unless the underlying tax liability is properly at issue), and those actions taken by a taxpayer to remedy the Internal Revenue Service's failure to release a lien under section 6325 or to remedy any unauthorized collection action as described by section 7433, except those collection actions described by section 7433(e). An action or procedure directly relating to a claim for refund after payment of an assessed tax is not a collection action.

(c) *Administrative proceeding date*—(1) *General rule.* For purposes of section 7430 and the regulations thereunder, the term *administrative proceeding date* means the earlier of—

(i) The date of the receipt by the taxpayer of the notice of the decision of

the Internal Revenue Service Office of Appeals;

(ii) The date of the notice of deficiency; or

(iii) The date on which the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.

(2) *Notice of the decision of the Internal Revenue Service Office of Appeals.* For purposes of section 7430 and the regulations thereunder, a notice of the decision of the Internal Revenue Service Office of Appeals is the final written document, mailed or delivered to the taxpayer, that is signed by an individual in the Office of Appeals who has been delegated the authority to settle the dispute on behalf of the Commissioner, and states or indicates that the notice is the final determination of the entire case. A notice of claim disallowance issued by the Office of Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals. Solely for purposes of determining the administrative proceeding date, a notice of deficiency issued by the Office of Appeals is not a notice of the decision of the Internal Revenue Service Office of Appeals.

(3) *Notice of deficiency.* A notice of deficiency is a notice described in section 6212(a), including a notice rescinded pursuant to section 6212(d). For purposes of determining reasonable administrative costs under section 7430 and the regulations thereunder, the following will be treated as a notice of deficiency:

(i) A notice of final partnership administrative adjustment described in section 6223(a)(2).

(ii) A notice of determination of worker classification issued pursuant to section 7436.

(iii) A final notice of determination denying innocent spouse relief issued pursuant to section 6015.

(4) *First letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Office of Appeals.* Generally, the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Office of Appeals

is the first letter issued to the taxpayer that describes the proposed adjustments and advises the taxpayer of the opportunity to contact the Office of Appeals. It also may be a claim disallowance or the first letter of determination that allows the taxpayer an opportunity for administrative review in the Office of Appeals.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

*Example 1.* Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the Appeals conference no agreement is reached on the tax matters at issue. The Office of Appeals then issues a notice of deficiency. Upon receiving the notice of deficiency, A does not file a petition with the Tax Court. Instead, A pays the deficiency and files a claim for refund. The claim for refund is considered by the Internal Revenue Service and the Area Director issues a notice of proposed claim disallowance. A requests and is granted Appeals office consideration. A convinces Appeals that A's claim is correct and Appeals allows A's claim. A may recover reasonable administrative costs incurred on or after the date of the notice of proposed deficiency (30-day letter), but only if the other requirements of section 7430 and the regulations thereunder are satisfied. A cannot recover costs incurred prior to the date of the 30-day letter because these costs were incurred before the administrative proceeding date.

*Example 2.* Taxpayer B files an individual income tax return showing a balance due. No payment is made with the return and the Internal Revenue Service assesses the amount shown on the return. The Internal Revenue Service issues a Notice Of Intent to Levy And Notice Of Your Right To A Hearing pursuant to sections 6330(a) and 6331(d). B timely requests and is granted a Collection Due Process (CDP) hearing. In connection with the CDP hearing, B enters into an installment agreement as a collection alternative. The costs that B incurred in connection with the CDP hearing were not incurred in an administrative proceeding, but rather in a collection action. Accordingly, B may not recover those costs as reasonable administrative costs under section 7430 and the regulations thereunder.

[T.D. 8542, 59 FR 29362, June 7, 1994, as amended by T.D. 9050, 68 FR 14320, Mar. 25, 2003; T.D. 9756, 81 FR 10485, Mar. 1, 2016]

#### § 301.7430-4 Reasonable administrative costs.

(a) *In general.* For purposes of section 7430 and the regulations thereunder, reasonable administrative costs are any costs described in paragraph (b) of this section that are incurred in connection with an administrative proceeding (as defined in § 301.7430-3(a)) and incurred on or after the administrative proceeding date (as defined in § 301.7430-3(c)).

(b) *Costs described—*(1) *In general.* The costs described in this paragraph are the reasonable and necessary amount of costs incurred by the taxpayer to present the taxpayer's position with respect to the merits of the tax controversy or the recovery of reasonable administrative costs. These costs include—

(i) Any administrative fees or similar charges imposed by the Internal Revenue Service;

(ii) Reasonable expenses of expert witnesses;

(iii) Reasonable costs of any study, analysis, engineering report, test or project that is necessary for, and incurred in preparation of, the taxpayer's case; and

(iv) Reasonable fees paid or incurred for the services of a representative (as defined in paragraph (b)(2) of this section) in connection with the administrative proceeding.

(2) *Representative and specially qualified representative—*(i) *Representative.* A representative is a person compensated for services rendered in connection with the administrative proceeding, who is authorized to practice before the Internal Revenue Service or the Tax Court.

(ii) *Specially qualified representative.* For purposes of paragraphs (b)(3)(iii) and (c)(2)(ii) of this section, a specially qualified representative is a representative (as defined in paragraph (b)(2)(i) of this section) possessing a distinctive knowledge or a unique and specialized skill that is necessary to adequately represent the taxpayer in the proceeding. Examples of a unique and specialized skill or distinctive knowledge would be an identifiable practice specialty such as patent law or knowledge of a foreign law or language where that specialty or knowledge is necessary to