The Power of $1: New Cases Showing Qualified Offers as a Tax Dispute Strategy

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I. Introduction

People of a certain age are fond of saying that $1 does not buy what it used to. That might be true in many contexts, but $1 still has tremendous power when it comes to tax disputes. One problem is that lots of taxpayers and tax professionals are oblivious to this reality. Specifically, they are unaware of a tool called the "Qualified Offer," and even if they know of its existence, they do not appreciate the tricky substantive and procedural details. Among other things, they have not heard of two cases, one decided as recently as November 2024, holding that taxpayers can submit Qualified Offers of merely $1 in an effort to convince the Internal Revenue Service ("IRS") or Department of Justice ("DOJ") to settle a case before litigation. This article, which builds on several earlier ones by the same author, describes the principal mechanisms taxpayers can use to seek fee reimbursement and explores two key cases analyzing the validity of nominal Qualified Offers.[1]

II. General Method for Cost Recovery—Be the Prevailing Party

Taxpayers who defeat the IRS ordinarily escape additional taxes, penalties, and interest. Depending on the circumstances, they also might recoup from the government some of the costs of defending themselves. This possibility derives from Code Sec. 7430, several aspects of which are described below.

A. Purpose

Legislative history indicates that the objective of Code Sec. 7430 is to "deter abusive actions or overreaching by the [IRS] and ... enable individual taxpayers to vindicate their rights, regardless of their economic circumstances."[2] In other

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words, Congress wanted to prevent the IRS from surpassing its authority and give taxpayers the ability to make the IRS pay, literally and figuratively, for its excesses.

B. Overview

Code Sec. 7430 generally provides that the "prevailing party" in any administrative proceeding before the IRS, or in any litigation brought by or against the government in connection with the determination, collection, or refund of any tax, penalty, or interest may be awarded reasonable administrative and/or litigation costs.[3]

C. Standards

To recoup costs under the normal rules, taxpayers must be the "prevailing party." This generally means the party in any tax-related administrative proceeding or litigation that has largely succeeded with respect to *either* the amount in dispute *or* the most significant issue, *and* has a net worth that does not exceed certain thresholds.[4]

D. Administrative Remedies

A taxpayer might not be able to recover costs from the government, even if it prevails and meets the net worth requirement. Other obstacles exist. The taxpayer, for instance, must exhaust all administrative remedies available.[5] According to the IRS, this duty mandates that a taxpayer participate in a conference with the Appeals Office if offered, regardless of the stage at which this occurs.[6] IRS guidance explains the following on this topic:

> If appeal rights are given prior to the [notice of deficiency] then the [taxpayer] must request a conference with Appeals prior to filing a petition with the tax court to exhaust administrative remedies. If for varying reasons the [taxpayer] is not given appeal rights prior to the [notice of deficiency] then the [taxpayer] is excused from exhausting administrative remedies prior to petitioning the tax court.
>
> However, if after filing a petition with the tax court counsel refers the case to Appeals or gives the [taxpayer] the opportunity to go to Appeals, then the [taxpayer] must participate in an Appeals conference to exhaust administrative remedies.[7]

E. Delays

To preserve eligibility for cost recovery, the taxpayer cannot "unreasonably protract" the proceedings with the government.[8]

F. Substantial Justification

As explained earlier, the term "prevailing party" normally means a party in any tax-related administrative proceeding or litigation that has been victorious when it comes to either the amount in dispute or the most significant issue and has an acceptable net worth.[9] Even if the taxpayer meets these criteria, it nonetheless will *not* be the "prevailing party" in situations where the government establishes that its positions were "substantially justified."[10] Put differently, in cases where the government manages to prove that its positions, although losers, were substantially justified, the taxpayer cannot recover costs. Figuring out what "substantially justified" means for purposes of Code Sec. 7430, therefore, is critical. Details follow.

1. Evolution Favoring Taxpayers

The burden initially was on the taxpayer to demonstrate that the government's position was *not* substantially justified. This changed with the enactment of the Taxpayer Bill of Rights 2, which shifted the responsibility to the government.[11] According to legislative history, "the successful taxpayer will receive an award of attorney's fees unless the IRS satisfies its burden of proof."[12]

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The Taxpayer Bill of Rights 2 introduced another major change. It stated that a position adopted by the IRS during a dispute would be unjustified if it was contrary to guidance disseminated to the general public or to private guidance supplied to a particular taxpayer.[13] Now, there is a rebuttable presumption that the government's position is *not* substantially justified if it fails to follow its "applicable published guidance."[14] This includes temporary or final regulations, revenue rulings, information releases, notices, and announcements.[15] It also encompasses various items issued to the specific taxpayer involved in a dispute, such as private letter rulings, technical advice memoranda, and determination letters.[16]

Congress introduced additional measures favoring taxpayers when it passed the Taxpayer Bill of Rights 3.[17] That legislation empowered the courts to take into account

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whether the government has lost on similar issues in appellate courts for other circuits.[18] Congressional reports highlight the purpose for this increased pressure: Congress was concerned that the IRS would continue to litigate issues in multiple circuits with hopes of obtaining a positive outcome somewhere.[19] That practice, say the reports, places an undue burden on taxpayers.[20]

2. Standards Reflected Regulations and Cases

The regulations help clarify what constitutes a substantial justification. Specifically, they explain that the government's position passes muster only if it has a reasonable basis in both fact and law.[21] A significant factor in making this determination is whether the taxpayer presented all relevant information under its control to the appropriate IRS personnel.[22]

Caselaw, likewise, is helpful in identifying what represents a substantial justification when it comes to cost recovery under Code Sec. 7430. Certain courts have developed a non-exhaustive list of items to evaluate. Among them are the (i) stage at which the issue or litigation is resolved, (ii) opinions of other courts on the same issue, (iii) legal merits of the government's position, (iv) clarity of applicable law, (v) foreseeable length and complexity of the litigation, and (vi) consistency of the government's position.[23] Other courts have utilized a different approach, scrutinizing whether the position taken by the IRS was reasonable.[24] These courts hold that a position is adequate if it is "justified to a reasonable degree that could satisfy a reasonable person or that has a reasonable basis in both law and fact."[25] Still other courts employ a different test. They frame the question as whether the government knew, or should have known, that its position was invalid.[26]

3. Looking at the Entire Picture

Another key issue is whether, when dealing with a tax dispute involving *multiple* claims by the IRS, a court should evaluate the IRS' position as a whole or on an issue-by-issue basis. Several cases have held that the latter method is best.[27] One noteworthy case is *Johnson*, where the government filed suit in the District Court to collect federal estate taxes from the children of a deceased taxpayer based on several legal theories.[28] The District Court initially ruled for the children on the substantive issues, while also awarding them legal fees.

The fighting continued, and the Tenth Circuit Court of Appeals later held for the government in certain respects and for the children in others. When it came to the question of fee recoupment, the first chore for the Tenth Circuit was determining whether the term "position," as used in Code Sec. 7430, means the government's "overall contention" or the "individual arguments" it makes as to each underlying theory. The Tenth Circuit concluded that the District Court had erred "by improperly focusing on the correctness of the government's argument on each claim for relief, rather than properly focusing on whether there was a reasonable basis both in law and fact for the government's overall position in the litigation." The Tenth Circuit went on to explain that, in a multi-issue lawsuit, the holistic approach requires considering the reasonableness of the government's position in initiating and continuing litigation, not merely the government's success or failure on a particular theory.

III. Special Method for Cost Recovery—Make a Qualified Offer

The preceding segment of this article explained how a taxpayer, who becomes the "prevailing party" and meets other criteria, might recover costs from the government. There is another way to seek reimbursement; it starts with making a Qualified Offer.

A. Overview

In a nutshell, a Qualified Offer is a written settlement proposal, made by the taxpayer, to the government, during the so-called "Qualified Offer period," which specifies the amount offered (by stating either a precise dollar amount or a percentage of the proposed adjustments at issue), and is properly designated.[29]

B. Duration

A Qualified Offer remains open for acceptance by the government during a period that starts when it is made and ends when the government rejects the offer, the trial starts, or 90 days pass, whichever happens first.[30]

C. Demands on Taxpayer Diminished

A taxpayer ordinarily is treated as the prevailing party if his liability, as determined by a court, is the same as or less than the liability the taxpayer would have incurred if the IRS had just accepted the Qualified Offer in the first place.[31] Thus, a taxpayer who is deemed the victor because he made a Qualified Offer does not need to win on the amount in dispute or the most significant issue. Moreover, whether the government's positions during the audit, administrative appeal, or litigation were "substantially justified" is irrelevant.[32]

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D. Dispute Involving Taxes

The Qualified Offer rule does not apply to a proceeding in which the amount of a tax liability is not an issue, such as court actions to obtain a declaratory judgment, enforce or quash a summons, *etc.*[33]

E. Resolution Through Litigation

The Qualified Offer rule is also inapplicable where parties settle a case before the court issues its judgment.[34] Stated differently, taxpayers can only recoup fees from the government if they make a Qualified Offer, the government ignores or rejects it, and the case is resolved later through litigation, with the court issuing a decision. Thus, making a Qualified Offer might convince the government to reevaluate the strength of its position and agree to a pre-trial settlement. In such circumstances, the taxpayer would enjoy a lower tax liability, but not necessarily fee recoupment, too.[35] The regulations contain an example describing this situation:

> Taxpayer D receives a notice of proposed deficiency (30-day letter) proposing to disallow both a personal interest deduction in the amount of $10,000 (Adjustment 1), and a charitable contribution deduction in the amount of $2,000 (Adjustment 2), and to include in income $4,000 of unreported interest income (Adjustment 3). D timely files a protest with Appeals. At the Appeals conference, D presents substantiation for the charitable contribution and presents arguments that the interest paid was deductible mortgage interest and that the interest received was held in trust for Taxpayer E. At the conference, D also provides the Appeals officer assigned to D's case a written offer to settle the case for a deficiency of $2,000, exclusive of interest. The offer states that it is a qualified offer for purposes of Section 7430(g) and that it will remain open for acceptance by the IRS for a period in excess of 90 days. After considering D's substantiation and arguments, the Appeals Officer accepts the $2,000 offer to settle the case in full. Although D's offer is a qualified offer, because all three adjustments contained in the qualified offer were settled, the qualified offer rule is inapplicable.[36]

F. Court Ruling Followed by Settlement

The regulations raise a related issue, which is what happens when there is a court ruling on a substantive tax issue, followed by a settlement by the parties. This would happen, for example, where a court grants a Motion for Partial Summary Judgment resolving a tax issue covered by a Qualified Offer, but leaves open a key matter, such as valuation. The preamble to the regulations provides the following guidance for these types of situations:

> [I]f one or more adjustments covered by a Qualified Offer are settled following a ruling by the court that substantially resolves those adjustments, then those adjustments will *not* be treated as having been settled prior to the entry of the judgment by the court and *instead* will be treated as amounts included in the judgment as a result of the court's determinations.[37]

G. Multiple Qualified Offers

Where a taxpayer makes more than one Qualified Offer during a dispute, the analysis is based on the last Qualified Offer, and the bills do not start accumulating against the government until after the date of the last Qualified Offer.[38]

H. Period for Seeking Settlement

The "Qualified Offer period" starts the date on which the "first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review" is sent. This normally means when the Revenue Agent issues an Examination Report, or when the Revenue Agent or Appeals Officer issues a Notice of Deficiency, depending on the circumstances. The Qualified Offer period ends 30 days before the date on which the case is first set for trial.[39] The preamble to the proposed regulations elucidates the Qualified Offer period, as follows:

> The qualified offer period ends on the date which is thirty days before the date the case is first set for trial. In cases that are pending in the United States Tax Court, cases are placed upon a calendar for trial. Each case appearing on a trial calendar is to be called at the time and place scheduled. In determining when the qualified offer period ends for cases in the Tax Court and other courts of the United States using calendars for trial, a case is considered to be set for trial on the date scheduled for the calendar call. Cases may be removed from a trial calendar at any time. Thus, a case may be removed from a calendar before the date that precedes by thirty days the date scheduled for that calendar. To promote the settlement of such cases, the qualified offer period does not end until the case remains on a calendar for trial on the date that precedes by 30 days the scheduled date of the calendar call for that trial session.[40]

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IV. Size Does Not Matter

It is time to get to the good stuff. Unbeknownst to many taxpayers and their advisors, the Qualified Offer rules do not require a minimum amount, do not define the size of a reasonable offer, do not mandate that an offer be for a certain percentage of the proposed liability, *etc.* Consequently, when taxpayers are confident that they ultimately will persuade a court that their liability is $0 or that they are due a refund, they can make a Qualified Offer of merely $1. This reality has been confirmed by just two cases, one very recent. These critical rulings are summarized below.

A. First Case

The first case, which involved the legendary Son-of-BOSS transaction, was *BASR Partnership*.[41]

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The partnership engaged in the relevant transaction, the IRS audited and issued a notice of final partnership administrative adjustment ("FPAA"), the partnership filed a Complaint in federal court arguing that the IRS could not pursue the partnership because it issued the FPAA after the assessment-period had expired, and the court ruled in favor of the partnership.[42] Later, the partnership filed a Motion for litigation costs under Code Sec. 7430, maintaining that it made a Qualified Offer of $1, the government rejected it, and the partnership ultimately won, with the court ruling that the tax liability was $0.

The DOJ presented several counterarguments to the partnership's demand for fees. One was that the supposed Qualified Offer, of merely $1, was a "sham," specifically made for purposes of shifting litigation costs to the government, and not done in good faith. The court rebuffed the DOJ's contention. In doing so, it emphasized that the applicable tax provision only demands that the ultimate tax liability be equal to, or less than, the amount of the Qualified Offer.[43] It explained the following:

> [Section 7430] does not require any minimum amount or define the parameters of a "reasonable" offer, nor does it require that an offer be for a certain percentage of the taxpayer's purported tax liability... Indeed, the government has offered no amount that [the partnership] could have offered that would have been "reasonable." In this case, the final judgment of the court not to sustain the FPAA on the basis that the FPAA was untimely issued resulted in $0 tax liability for [the] partners. Because $1 is more than $0, the court has determined that [the partnership's] "qualified offer" complied with [Section 7430].

The DOJ elevated matters to the appropriate Court of Appeals.[44] It raised five challenges, among them that the trial court allegedly abused its discretion when it awarded litigation costs to the taxpayer based on an offer of $1 that "was not made in a good faith attempt to produce a settlement." The Court of Appeals, like the trial court before it, held in favor of the taxpayer. It explained that, in order to reach an abuse of judicial discretion, the government would have to prove that the earlier decision by the trial court was clearly unreasonable, arbitrary, fanciful, or based on findings of fact or law that were patently erroneous. That did not occur.

B. Second Case

The most recent case addressing the classification of minimal offers is *Mann Construction, Inc.*[45] It was decided in November 2024. The dispute was procedurally complex, with issues going before the trial court, federal court of appeals, a magistrate judge, and back again. Getting into the nitty gritty is unnecessary for the purposes of this article. The crux of the matter was that the IRS penalized the taxpayer for not filing a Form 8886 (*Reportable Transaction Disclosure Statement*) to reveal its participation in a particular employee-benefit plan identified as a "listed transaction" in Notice 2007-83.

At a relatively early point in the dispute, shortly after the IRS asserted penalties and the taxpayer reluctantly paid them and filed a Claim for Refund, the taxpayer offered to settle matters for $1. The IRS, confident (yet wrong) in its position, did not respond. In other words, the IRS ignored the settlement offer and allowed the Qualified Offer period of 90 days to lapse.

The case eventually made its way to the court of appeals. It held that the IRS could not sanction the taxpayer because, well, the IRS had messed up years ago. In particular, it failed to comply with the requirements of the Administrative Procedures Act ("APA") when it issued Notice 2007-83. The logic was that if the so-called "listing

notice" was invalid from inception, the IRS could not castigate taxpayers for ignoring it.[46]

The taxpayer, riding the wave of this victory, filed a Motion seeking reimbursement of the legal fees associated with this long battle. The court of appeals referred the matter to a magistrate judge. She issued a Report and Recommendation ("R&R"), suggesting that the taxpayer did not tender a valid Qualified Offer because an amount of $1 was not reasonable. The taxpayer objected to the reasoning in the R&R and sought review by the court of appeals, as was its right.

The court began by announcing that the parties had conceded various points, such that only a couple of items remained in dispute. Among the contentious issues was whether the taxpayer's bid of $1 constituted a Qualified Offer for purposes of Code Sec. 7430.

The court first turned to the tax provision describing the term Qualified Offer. It determined that the proposal of $1 met the statutory definition because it was done in writing, submitted to the IRS, made during the Qualified Offer period, specified a particular amount, and labeled itself a Qualified Offer. The court quickly arrived at the following conclusion: "The statute's definition requires nothing else for Qualified Offers—not a minimum amount nor a good faith reasonableness requirement—full stop, end of inquiry." It later added that a "settlement offer must satisfy those elements—nothing more, nothing less."

The court next noted that the IRS and the R&R do not challenge the fact that the $1 proposal met the statutory definition. Instead, they simply grumble about the consequences. The R&R suggested that the court add a "reasonableness" requirement into the existing definition "to avoid tax litigants gaming the Qualified Offer rule with nominal offers." It warned that, if the court were unwilling to make such an addition, widespread chaos would ensue. The R&R admonished that a plain reading of the text of Code Sec. 7430 would make it "in the best interest of every taxpayer to immediately make a nominal Qualified Offer as soon as [the taxpayer] receives a Notice of Deficiency." The IRS, likewise, predicted that accepting "$1 sham offers" would create "an incentive for every taxpayer to make a $1 offer under Code Sec. 7430 as soon as any audit or tax litigation begins." In support of their position, the IRS and R&R could only point to *dicta* from the Supreme Court case, which dealt with an entirely different fee-shifting provision found in the Federal Rules of Civil Procedure.

The court of appeals acknowledged the concerns raised by the IRS and the R&R, but explained that they "do not warrant disregarding the text Congress chose in enacting Code Sec. 7430 and reading a reasonableness or good-faith requirement into the statute." The court then put some meat on the bones, so to speak, expanding on its reasoning. First, it explained that the dire warnings by the IRS and R&R that "every" taxpayer will be motivated to file an offer of $1 is misguided and overstated. Because a taxpayer must obtain a judgment equal to or less than the Qualified Offer as a precondition to recovery, it is incentivized to submit a "realistic settlement," and "rational taxpayers" will only make nominal offers when they anticipate a court judgment with a very low tax liability. The court concluded that the supposed "ruinous risk of sham offers" simply does not exist under Code Sec. 7430.

Second, the Supreme Court decision to which the IRS and R&R refer actually works against them. Why? That ruling was issued in 1981, and Code Sec. 7430 was not inserted into the Internal Revenue Code until seven years later. Congress, which presumably was aware of all relevant judicial precedent, did not include a "reasonableness" requirement in Code Sec. 7430. The court explained that such omission must have been intentional.

Third, even if the court agreed with the concerns highlighted by the IRS and R&R about the benefit of a "reasonableness" requirement, it does not have the authority to rewrite the text of Code Sec. 7430. The court vaguely alluded to the separation-of-powers doctrine, noting that it is part of the judicial branch, not the legislative one. It also cited another case to support the idea that "no amount of policy talk can overcome a plain statutory command."

Fourth, the court declined the invitation by the IRS to ignore the explicit language of Code Sec. 7430 and use its discretion instead. The court pointed out that the IRS supplied no evidence of bad faith by the taxpayer, other than the fact that its offer was $1. The court also emphasized that the taxpayer made the $1 offer because it believed, and the court later confirmed, that it had no tax liability whatsoever.

Finally, the court stated that accepting the IRS' invitation would cause it to be hypocritical, explaining that "it would at once admonish potential statutory gamesmanship of the Qualified Offer rule [by taxpayers] while expressly using its [judicial] discretion to circumvent Code Sec. 7430's statutory definition of a Qualified Offer."

Based on the logic outlined above, the IRS not only was unable to assert penalties for an unfiled Form 8886, but it also had to reimburse the taxpayer approximately $222,000 in fees and costs.

V. Conclusion

Qualified Offers have always been a powerful tool for taxpayers; making them puts significant pressure on

the IRS and DOJ, forces them to candidly analyze the strength of their case, and positions taxpayers for potential victory and fee reimbursement. This article shows that Qualified Offers are more formidable than previously thought because the courts have confirmed the validity of settlement proposals of just $1. Serious tax controversy attorneys already file Qualified Offers, early and often, as part of their overall strategy to achieve the best possible result for their taxpayer-clients. The two recent decisions, particularly *Mann Construction, Inc.*, likely will cause this practice to increase in the future.

ENDNOTES

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[1] For earlier coverage of various Qualified Offer issues, *see* Hale E. Sheppard, *New Tax Court Case Explores Boundaries of "Qualified Offers" to the IRS*, 24, 2 J. TAX PRACT. PROC. 19 (2022); republished in 100, 7 TAXES 41 (2022); Hale E. Sheppard, *Partnerships, "Qualified Offers," and Conservation Easement Disputes: Analyzing Problems with the IRS's Positions, Now and Later*, 22, 4 J. TAX PRACT. PROC. 33 (2020); Hale E. Sheppard, *Making "Qualified Offers" in Partnership Disputes: Extreme Positions by the IRS in Conservation Easements Cases Might Backfire*, 22, 5 J. PASSTHROUGH ENTITIES 71 (2019).

[2] H.R. Rep. No. 97-404, 97th Cong., 1st Sess. at 11 (1981).

[3] Code Sec. 7430(a).

[4] Code Sec. 7430(c)(4)(A).

[5] Code Sec. 7430(b)(1).

[6] CCA 200919037 (May 8, 2009).

[7] *Id.*

[8] Code Sec. 7430(b)(3).

[9] Code Sec. 7430(c)(4)(A).

[10] Code Sec. 7430(c)(4)(B)(i).

[11] P.L. 104-168.

[12] H.R. Rept. 104-506, 104th Cong., 2d Sess. 1996, pg. 37.

[13] P.L. 104-168, §701; H.R. Rept. 104-506, 104th Cong., 2d Sess. 1996, pgs. 36 and 37.

[14] Code Sec. 7430(c)(4)(B)(ii).

[15] Code Sec. 7430(c)(4)(B)(iv)(I); Reg. §301.7430-5(c)(3).

[16] Code Sec. 7430(c)(4)(B)(iv)(II); Reg. §301.7430-5(c)(3).

[17] P.L. 105-206.

[18] P.L. 105-206, §3101, codified as Code Sec. 7430(c)(4)(B)(iii).

[19] H.R. Rept. 105-364, 105th Cong., 1st Sess. 1997, pg. 58; Sen. Rept. 105-174, 105th Cong., 2d Sess., 1998, pg.48.

[20] H.R. Rept. 105-364, 105th Cong., 1st Sess. 1997, pg. 58; Sen. Rept. 105-174, 105th Cong., 2d Sess., 1998, pg.48.

[21] Reg. §301.7430-5(c)(1).

[22] Reg. §301.7430-5(c)(1); Reg. §301.7430-5(h) Ex. 1.

[23] *National Federation of Republican Assemblies*, DC-AL, 2003-1 USTC ¶50,249, 263 FSupp2d 1372, 1378.

[24] *R.C. Kennedy, Sr.*, 89 TC 98, Dec. 44,046 (1987) (holding that the IRS' position was unreasonable where it was contrary to its own regulations, inconsistent with case law, and lacking factual support).

[25] *N.R. Wilkes, Jr.*, CA-11, 2002-1 USTC ¶60,438, 289 F3d 684, 688.

[26] *See, e.g., M.J. Downing*, 89 TCM 1009, Dec. 55,983(M), TC Memo. 2005-73.

[27] *See, e.g., Roanoke River Basin Associates v. North Carolina et al.*, CA-4, 991 F2d 132 (1993), *S. Johnson*, CA-10, 920 F3d 639 (2019), and *J.C. Morreale*, 122 TCM 80, Dec. 61,902(M), TC Memo. 2021-90.

[28] *S. Johnson*, CA-10, 920 F3d 639 (2019).

[29] Code Sec. 7430(g)(1); Reg. §§301.7340-7(c)(1) and 301.7430-7(c).

[30] *Id.*

[31] Code Sec. 7430(c)(4)(E)(i); Reg. §§301.7430-7(a), 301.7430-7(b)(1), and 301.7430-7(b)(2).

[32] T.D. 8922 (Jan. 4, 2001), Preamble (emphasis added); *See also* Reg. §301.7430-7(b)(1).

[33] Code Sec. 7430(c)(4)(E)(ii); Reg. §301.7430-7(a).

[34] T.D. 8922 (Jan. 4, 2001), Preamble; *See also* Code Sec. 7430(c)(4)(E)(ii); Reg. §301.7430-7(a).

[35] Reg. §301.7430-7(e), Example 8.

[36] *Id.*

[37] T.D. 9106 (Dec. 24, 2003), Preamble (emphasis added). Court rulings relating to discovery, admissibility of evidence, and burden of proof are not treated as rulings that substantially resolve adjustments covered by a Qualified Offer. *Id.*

[38] Code Sec. 7430(c)(4)(E)(iii).

[39] Code Sec. 7430(g)(2); Reg. §301.7430-7(c)(7); T.D. 8922 (Jan. 4, 2001), Preamble.

[40] T.D. 8922 (Jan. 4, 2001), Preamble.

[41] *BASR Partnership*, FedCl, 2017-1 USTC ¶50,144, 130 FedCl 286, 119 AFTR 2d 2017-614.

[42] *BASR Partnership*, FedCl, 2013-2 USTC ¶50,527. 113 FedCl 181, 112 AFTR 2d 2013-6313.

[43] The court referenced Code Sec. 7430(c)(4)(E)(i).

[44] *BASR Partnership*, CA-FC, 2019-1 USTC ¶50,152, 915 F3d 771 (2019).

[45] *Mann Construction, Inc.*, Dist. Ct., Eastern District of Michigan, Northern Division, Case No. 1:20-cv-11307, Opinion and Order (Nov. 1, 2024); Erin McManus, "Mann Construction Gets Attorney Fees in Listed Transaction Case," 2024 Tax Notes Today Federal 213-6 (Nov. 5, 2024).

[46] *Mann Construction, Inc.*, CA-6, 2022-1 USTC ¶50,122, 27 F4th 1138.

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