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Tax Regs in Plain English

# IRS Restructuring and Reform Act of 1998

## 3101 - Expansion of Authority to Award Costs and Certain Fees

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### Section 3101

**A. Provision covered:** Section 3101 (Expansion of Authority to Award Costs and Certain Fees)

**B. Background:** Under prior law taxpayers who prevailed in litigation or administrative proceedings (defined as beginning with the earliest of the receipt by the taxpayer of the final decision of the Office of Appeals or the issuance of the statutory notice), where the position of the United States was not substantially justified, could receive an award of reasonable litigation and administrative costs.

**C. Changes:** The bill allows for recoveries of reasonable administrative costs back to the date of the first letter of proposed deficiency that allows a taxpayer an opportunity of administrative review in the Office of Appeals. The Act also raises the hourly rate cap to the amount provided in the Equal Access to Justice Act; expands the reasons available for exceeding that hourly rate cap; considers losses in other circuits to be relevant to the issue of substantial justification; allows for the recovery of fees by pro bono representatives; and imposes a rule awarding litigation and administrative costs where the Service rejects a "qualified offer" during the "qualified offer period" and later recovers less than the amount offered.

**D. Impact:** The provision will have the most impact on Appeals Officers and Counsel

attorneys. Previously, the impact of section 7430 was not to be considered when settling cases. The issue of such an award would be faced only in the rare instances where fees had been incurred in an administrative proceeding. Now awards can include fees incurred from the date on which the first letter of proposed deficiency is sent that allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. Furthermore, the period during which "qualified offers" may be made includes the period of Appeals consideration. Thus, Appeals Officers and Counsel attorneys will need to be conversant in the details of calculating awards under section 7430 in order to appropriately consider such offers as well as evaluating claims for such fees incurred which would be outside the scope of a "qualified offer."

**E. Necessary Actions:**

- Update the IRM and CCDM to reflect these changes to section 7430. Likewise, the regulations under section 7430 will need to be revised.
- Appeals Officers and Counsel attorneys should be instructed on the scope and applicability of the new provision.

**F. Other Special Comments:** None.[Questions and Answers](#)

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