

retary shall expeditiously (and, to the extent practicable, within 14 days after such determination) issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.

(Added Pub. L. 100-647, title VI, § 6238(a), Nov. 10, 1988, 102 Stat. 3743.)

PRIOR PROVISIONS

A prior section 6326 was renumbered 6327 of this title.

EFFECTIVE DATE

Section 6238(d) of Pub. L. 100-647 provided that: "The amendments made by this section [enacting this section] shall take effect on the date which is 60 days after the date regulations are issued under subsection (b) [set out below]."

REGULATIONS

Section 6238(b) of Pub. L. 100-647 required Secretary of the Treasury or Secretary's delegate to prescribe regulations necessary to implement administrative appeal provided for in amendment made by subsection (a) [enacting this section] within 180 days after Nov. 10, 1988.

§ 6327. Cross references

(1) For lien in case of tax on distilled spirits, see section 5004.

(2) For exclusion of tax liability from discharge in cases under title 11 of the United States Code, see section 523 of such title 11.

(3) For recognition of tax liens in cases under title 11 of the United States Code, see sections 545 and 724 of such title 11.

(4) For collection of taxes in connection with plans for individuals with regular income in cases under title 11 of the United States Code, see section 1328 of such title 11.

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have a claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see section 3713(a) of title 31, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 782, § 6326; Pub. L. 94-455, title XIX, § 1906(a)(20), Oct. 4, 1976, 90 Stat. 1825; Pub. L. 96-589, § 6(i)(10), Dec. 24, 1980, 94 Stat. 3411; Pub. L. 97-258, § 3(f)(7), Sept. 13, 1982, 96 Stat. 1064; renumbered § 6327, Pub. L. 100-647, title VI, § 6238(a), Nov. 10, 1988, 102 Stat. 3743.)

AMENDMENTS

1982—Par. (6). Pub. L. 97-258 substituted "section 3713(a) of title 31, United States Code" for "R.S. 3466 (31 U.S.C. 191)".

1980—Par. (2). Pub. L. 96-589, § 6(i)(10)(A), substituted "cases under title 11 of the United States Code, see section 523 of such title 11" for "bankruptcy, see section 17 of the Bankruptcy Act, as amended (11 U.S.C. 35)".

Par. (3). Pub. L. 96-589, § 6(i)(10)(A), redesignated par. (4) as (3) and substituted "cases under title 11 of the United States Code, see sections 545 and 724 of such title 11" for "proceedings under the Bankruptcy Act, see section 67(b) and (c) of that act, as amended (11 U.S.C. 107)". Former par. (3), which provided cross reference to section 93 of title 11 for limit on amount allowed in bankruptcy proceedings on debts owing to the United States, was struck out.

Par. (4). Pub. L. 96-589, § 6(i)(10)(A), redesignated par. (5) as (4) and substituted "plans for individuals with

regular income in cases under title 11 of the United States Code, see section 1328 of such title 11" for "wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added by the act of June 22, 1938 (11 U.S.C. 1080)". Former par. (4) redesignated (3).

Pars. (5) to (7). Pub. L. 96-589, § 6(i)(10)(A), (B), redesignated pars. (6) and (7) as (5) and (6), respectively. Former par. (5) redesignated (4).

1976—Pars. (2) to (5). Pub. L. 94-455 struck out parenthetical references to "52 Stat. 851"; "52 Stat. 867"; "52 Stat. 867-877"; and "52 Stat. 938;" preceding parenthetical references to sections of title 11.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

Subchapter D—Seizure of Property for Collection of Taxes

Part

- I. Due process for collections.
- II. Levy.

AMENDMENTS

1998—Pub. L. 105-206, title III, § 3401(b), July 22, 1998, 112 Stat. 747, added part analysis.

PART I—DUE PROCESS FOR COLLECTIONS

Sec.

- 6330. Notice and opportunity for hearing before levy.

AMENDMENTS

1998—Pub. L. 105-206, title III, § 3401(b), July 22, 1998, 112 Stat. 747, added part heading and analysis consisting of item 6330.

§ 6330. Notice and opportunity for hearing before levy

(a) Requirement of notice before levy

(1) In general

No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) Time and method for notice

The notice required under paragraph (1) shall be—

- (A) given in person;
- (B) left at the dwelling or usual place of business of such person; or
- (C) sent by certified or registered mail, return receipt requested, to such person's last known address;

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(3) Information included with notice

The notice required under paragraph (1) shall include in simple and nontechnical terms—

- (A) the amount of unpaid tax;
- (B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

- (i) the provisions of this title relating to levy and sale of property;
- (ii) the procedures applicable to the levy and sale of property under this title;
- (iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;
- (iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and
- (v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

(b) Right to fair hearing

(1) In general

If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.

(2) One hearing per period

A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) Impartial officer

The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

(c) Matters considered at hearing

In the case of any hearing conducted under this section—

(1) Requirement of investigation

The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

(2) Issues at hearing

(A) In general

The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

- (i) appropriate spousal defenses;
- (ii) challenges to the appropriateness of collection actions; and
- (iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(B) Underlying liability

The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did

not otherwise have an opportunity to dispute such tax liability.

(3) Basis for the determination

The determination by an appeals officer under this subsection shall take into consideration—

- (A) the verification presented under paragraph (1);
- (B) the issues raised under paragraph (2); and
- (C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

(4) Certain issues precluded

An issue may not be raised at the hearing if—

- (A)(i) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and
- (ii) the person seeking to raise the issue participated meaningfully in such hearing or proceeding; or
- (B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).

This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

(d) Proceeding after hearing

(1) Judicial review of determination

The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

(2) Jurisdiction retained at IRS Office of Appeals

The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

- (A) collection actions taken or proposed with respect to such determination; and
- (B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

(e) Suspension of collections and statute of limitations

(1) In general

Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstand-

ing the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.

(2) Levy upon appeal

Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

(f) Exceptions

If—

(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy,

(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund,

(3) the Secretary has served a disqualified employment tax levy, or

(4) the Secretary has served a Federal contractor levy,

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

(g) Frivolous requests for hearing, etc.

Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

(h) Definitions related to exceptions

For purposes of subsection (f)—

(1) Disqualified employment tax levy

A disqualified employment tax levy is any levy in connection with the collection of employment taxes for any taxable period if the person subject to the levy (or any predecessor thereof) requested a hearing under this section with respect to unpaid employment taxes arising in the most recent 2-year period before the beginning of the taxable period with respect to which the levy is served. For purposes of the preceding sentence, the term “employment taxes” means any taxes under chapter 21, 22, 23, or 24.

(2) Federal contractor levy

A Federal contractor levy is any levy if the person whose property is subject to the levy (or any predecessor thereof) is a Federal contractor.

(Added Pub. L. 105-206, title III, §3401(b), July 22, 1998, 112 Stat. 747; amended Pub. L. 106-554, §1(a)(7) [title III, §313(b)(2)(A), (d)], Dec. 21, 2000,

114 Stat. 2763, 2763A-642, 2763A-643; Pub. L. 109-280, title VIII, §855(a), Aug. 17, 2006, 120 Stat. 1019; Pub. L. 109-432, div. A, title IV, §407(b), Dec. 20, 2006, 120 Stat. 2961; Pub. L. 110-28, title VIII, §8243(a), (b), May 25, 2007, 121 Stat. 200; Pub. L. 111-240, title II, §2104(a)-(c), Sept. 27, 2010, 124 Stat. 2565.)

AMENDMENTS

2010—Subsec. (f). Pub. L. 111-240, §2104(c), substituted “Exceptions” for “Jeopardy and State refund collection” in heading.

Subsec. (f)(4). Pub. L. 111-240, §2104(a), added par. (4).

Subsec. (h). Pub. L. 111-240, §2104(b), substituted “Definitions related to exceptions” for “Disqualified employment tax levy” in heading, inserted introductory provisions and par. (1) designation and heading, substituted “A disqualified employment tax levy is” for “For purposes of subsection (f), a disqualified employment tax levy is”, and added par. (2).

2007—Subsec. (f)(3). Pub. L. 110-28, §8243(a), added par. (3).

Subsec. (h). Pub. L. 110-28, §8243(b), added subsec. (h). 2006—Subsec. (b)(1). Pub. L. 109-432, §407(b)(3), substituted “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing” for “under subsection (a)(3)(B)”.

Subsec. (c)(4)(A), (B). Pub. L. 109-432, §407(b)(2), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), in cl. (ii) substituted “; or” for period at end, and added subpar. (B).

Subsec. (d)(1). Pub. L. 109-280, §855(a), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: “The person may, within 30 days of a determination under this section, appeal such determination—

“(A) to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter); or

“(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.”

Subsec. (g). Pub. L. 109-432, §407(b)(1), added subsec. (g).

2000—Subsec. (d)(1)(A). Pub. L. 106-554, §1(a)(7) [title III, §313(d)], substituted “with respect to” for “to hear”.

Subsec. (e)(1). Pub. L. 106-554, §1(a)(7) [title III, §313(b)(2)(A)], inserted at end “Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-240, title II, §2104(d), Sept. 27, 2010, 124 Stat. 2565, provided that: “The amendments made by this section [amending this section] shall apply to levies issued after the date of the enactment of this Act [Sept. 27, 2010].”

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-28, title VIII, §8243(c), May 25, 2007, 121 Stat. 200, provided that: “The amendments made by this section [amending this section] shall apply to levies served on or after the date that is 120 days after the date of the enactment of this Act [May 25, 2007].”

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to submissions made and issues raised after the date on which

the Secretary first prescribes a list under section 6702(c) of this title, see section 407(f) of Pub. L. 109-432, set out as a note under section 6320 of this title.

Pub. L. 109-280, title VIII, § 855(b), Aug. 17, 2006, 120 Stat. 1019, provided that: “The amendment made by this section [amending this section] shall apply to determinations made after the date which is 60 days after the date of the enactment of this Act [Aug. 17, 2006].”

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title III, § 313(b)(2)(A)] of Pub. L. 106-554 effective Dec. 21, 2000, and amendment by section 1(a)(7) [title III, § 313(d)] of Pub. L. 106-554, effective as if included in the provisions of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, to which such amendment relates, see section 1(a)(7) [title III, § 313(f)] of Pub. L. 106-554, set out as a note under section 6015 of this title.

EFFECTIVE DATE

Section applicable to collection actions initiated after the date which is 180 days after July 22, 1998, see section 3401(d) of Pub. L. 105-206, set out as a note under section 6320 of this title.

PART II—LEVY

- Sec. 6331. Levy and distraint.
- 6332. Surrender of property subject to levy.
- 6333. Production of books.
- 6334. Property exempt from levy.
- 6335. Sale of seized property.
- 6336. Sale of perishable goods.
- 6337. Redemption of property.
- 6338. Certificate of sale; deed of real property.
- 6339. Legal effect of certificate of sale of personal property and deed of real property.
- 6340. Records of sale.
- 6341. Expense of levy and sale.
- 6342. Application of proceeds of levy.
- 6343. Authority to release levy and return property.
- 6344. Cross references.

AMENDMENTS

1998—Pub. L. 105-206, title III, § 3401(b), July 22, 1998, 112 Stat. 749, added part heading.

1966—Pub. L. 89-719, title I, § 104(j), Nov. 2, 1966, 80 Stat. 1138, inserted “and return property” in item 6343.

§ 6331. Levy and distraint

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be law-

ful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property

The term “levy” as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive seizures

Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) Requirement of notice before levy

(1) In general

Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) 30-day requirement

The notice required under paragraph (1) shall be—

- (A) given in person,
- (B) left at the dwelling or usual place of business of such person, or
- (C) sent by certified or registered mail to such persons’s last known address,

no less than 30 days before the day of the levy.

(3) Jeopardy

Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

(4) Information included with notice

The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms—

- (A) the provisions of this title relating to levy and sale of property,
- (B) the procedures applicable to the levy and sale of property under this title,
- (C) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,
- (D) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),
- (E) the provisions of this title relating to redemption of property and release of liens on property, and
- (F) the procedures applicable to the redemption of property and the release of a lien on property under this title.