

## AMENDMENTS

1996—Subsec. (e). Pub. L. 104-316 struck out “shall so report to the Comptroller General who” after “unenforceable, such officer” in second sentence.

1991—Subsec. (c). Pub. L. 102-83 substituted “section 3720 of title 38” for “section 1820 of title 38”.

1990—Subsec. (c). Pub. L. 101-647 inserted at end “In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.”

1986—Subsec. (d). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1966—Subsec. (a). Pub. L. 89-719 substituted “subject matter—

- “(1) to quiet title to,
- “(2) to foreclose a mortgage or other lien upon,
- “(3) to partition,
- “(4) to condemn, or
- “(5) of interpleader or in the nature of interpleader with respect to,”

for “subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon”.

Subsec. (b). Pub. L. 89-719 substituted “complaint or pleading shall set forth” for “complaint shall set forth”, and inserted sentence requiring the complaint or pleading, in actions or suits involving liens arising under the internal revenue laws, to include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed.

Subsec. (c). Pub. L. 89-719 substituted “judgment or decree in such action” for “judicial sale in such action”, “discharge of the property from the mortgage or other lien” for “discharge of the property from liens and encumbrances”, and “place where the court is situated” for “place where the property is situated”, and inserted provisions requiring an action to foreclose a mortgage or other lien, in which the United States is named as a party under this section, to seek a judicial sale, providing that the period of redemption where a sale is made with respect to a lien arising under the internal revenue laws is 120 days or the period allowable for redemption under State law, whichever is longer, and prohibiting the right of redemption in any case which, under the provisions of section 1701k of Title 12 and section 1820(d) of Title 38, the right to redeem does not arise.

Subsecs. (d), (e). Pub. L. 89-719 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (b). Pub. L. 86-507 inserted “or by certified mail,” after “registered mail,”.

1958—Subsec. (a). Pub. L. 85-508 struck out provisions which extended section to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1949—Subsec. (b). Act May 24, 1949, conformed section with that of prior law with respect to service of process and complaint upon the United States in suits brought in State courts.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101-647, set out as an Effective Date note under section 3001 of this title.

## EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, see section 203 of Pub. L. 89-719, set out as a note under section 1346 of this title.

## EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc.

No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

**§ 2411. Interest**

In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the overpayment rate established under section 6621 of the Internal Revenue Code of 1986 upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.

(June 25, 1948, ch. 646, 62 Stat. 973; May 24, 1949, ch. 139, § 120, 63 Stat. 106; Pub. L. 93-625, § 7(a)(2), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 97-164, title III, § 302(b), Apr. 2, 1982, 96 Stat. 56; Pub. L. 99-514, § 2, title XV, § 1511(c)(18), Oct. 22, 1986, 100 Stat. 2095, 2746.)

## HISTORICAL AND REVISION NOTES

## 1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 765, 931(a), 932, Mar. 3, 1877, ch. 359, § 10, 24 Stat. 507; Feb. 13, 1925, ch. 229, § 8, 43 Stat. 940; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; Aug. 2, 1946, ch. 753, §§ 410(a), 411, 60 Stat. 843, 844.

Section consolidates section 765 with provisions of sections 931(a) and 932, all of title 28, U.S.C., 1940 ed., relating to interest on judgments, the latter two sections being applicable to judgments in tort claims cases. For other provisions of said sections 931(a) and 932, see Distribution Table. Said section 932 made the provisions of said section 765 applicable to such judgments, therefore the provisions of said section 931(a) that “the United States shall not be liable for interest prior to judgment” was omitted as covered by the language of said section 765 providing that interest shall be computed from the date of the judgment.

Provisions of section 765 of title 28, U.S.C., 1940 ed., that when the findings of fact and the law applicable thereto have been filed in any case as provided in “section 763” [764] of title 28, U.S.C., 1940 ed., and the judgment or decree is adverse to the Government, it shall be the duty of the district attorney to transmit to the Attorney General of the United States certified copies of all the papers filed in the cause, with a transcript of the testimony taken, the written findings of the court, and his written opinion as to the same, that, whereupon, the Attorney General shall determine and direct whether an appeal shall be taken or not, and that, when so directed, the district attorney shall cause an appeal to be perfected in accordance with the terms of the statutes and rules of practice governing the same were omitted as unnecessary and covered by section 507 of this title which provides for supervision of United States attorneys by the Attorney General.

Words of section 765 of title 28, U.S.C., 1940 ed., “Until the time when an appropriation is made for the payment of the judgment or decree” were omitted and words “up to, but not exceeding, thirty days after the date of approval of any appropriation act providing for

payment of the judgment” were substituted. Substituted words clarify meaning and are in accord with congressional procedure in annual deficiency appropriation acts for payment of judgments against the United States. The substituted words will obviate necessity of repeating such provisions in appropriation acts.

Changes were made in phraseology.

#### 1949 ACT

This section amends section 2411 of title 28, U.S.C., by restoring the provisions of section 177 of the former Judicial Code for the payment of interest on tax refunds.

### Editorial Notes

#### REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in text, is classified to section 6621 of Title 26, Internal Revenue Code.

#### AMENDMENTS

1986—Pub. L. 99-514, §1511(c)(18), substituted “the overpayment rate established under section 6621” for “an annual rate established under section 6621”.

Pub. L. 99-514, §2, substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1982—Pub. L. 97-164 struck out “(a)” before “In any judgment” and struck out subsec. (b) which provided that, except as otherwise provided in subsection (a) of this section, on all final judgments rendered against the United States in actions instituted under section 1346 of this title, interest was to be computed at the rate of 4 per centum per annum from the date of the judgment up to, but not exceeding, thirty days after the date of approval of any appropriation Act providing for payment of the judgment.

1975—Subsec. (a). Pub. L. 93-625 substituted “an annual rate established under section 6621 of the Internal Revenue Code of 1954” for “the rate of 6 per centum per annum”.

1949—Act May 24, 1949, restored provisions relating to payment of interest on tax refunds.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99-514, set out as a note under section 6621 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

### § 2412. Costs and fees

(a)(1) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount

equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(c)(1) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this sub-