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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

TD 9213

RIN 1545-AV01

Return of Property in Certain Cases

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulation.

SUMMARY: This document contains final regulations relating to the return of property in certain cases. The regulations reflect changes made to section 6343 of the Internal Revenue Code of 1986 by the Taxpayer Bill of Rights 2. The regulations also reflect changes affecting levies enacted by the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations affect taxpayers seeking the return of property from the IRS.

EFFECTIVE DATE: These regulations are effective on the date final regulations are published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 622-3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the return of property under section 6343 of the Internal Revenue Code (Code). Section 501(b) of the Taxpayer Bill of Rights 2 (TBOR2), Public Law 104-168 (110 Stat. 1452), amended section 6343 to authorize the IRS to return property in certain cases. The purpose of this provision is, to the extent possible, to return the taxpayer to the position the taxpayer would have been in had the levy not been issued. No interest shall be paid under this provision. These proposed regulations reflect the amendments made by section 501(b) of TBOR2.

These regulations also reflect modifications made by the Internal Revenue Service Restructuring and Reform Act (RRA 1998), Public Law 105-206 (112 Stat. 685), which added new sections 6331(i) and (j) to the Code, prohibiting the issuance of levies during the pendency of proceedings for refund of divisible taxes or prior to completion of an investigation of the status of property (effective for unpaid tax attributable to tax periods beginning after December 31, 1998). RRA 1998 also added section 6331(k), prohibiting levies during the period an offer-in-compromise or an installment agreement is pending or in effect (effective for offers-in-compromise pending on or made after December 31, 1999, and for installment agreements submitted after July 22, 1998). In addition, RRA 1998 added section 6330, which provides in certain circumstances for notice and an opportunity for a hearing prior to the imposition of a levy.

On February 14, 2001 a notice of proposed rulemaking reflecting these changes was published in the **Federal Register** (66 FR 10249). The IRS did not receive any comments on these regulations. The final regulations are published with no changes.

Comments on the Proposed Regulation

None

Modifications of Proposed Regulation

None

Special Analysis

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the preceding notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Associate Chief Counsel (Procedure and Administration), Collection Bankruptcy & Summons Division, CC:PA:CBS, IRS.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6343-3 is added to read as follows:

<u>§301.6343-3 Return of property in certain cases</u>.

(a) <u>In general</u>. If money has been levied upon and applied toward the taxpayer's liability, or property has been levied upon and sold, and the receipts have been applied toward the taxpayer's liability, or property has been levied upon and purchased by the United States and the United States still possesses the property, and the Commissioner determines that any of the conditions in paragraph (c) of this section exist, the Commissioner may return--

(1) An amount of money equal to the amount of money levied upon;

(2) An amount of money equal to the amount of money received by the United States from a sale of the property; or

(3) The specific property levied upon and purchased by the United States.

(b) <u>Return of levied upon property in possession of the Internal Revenue Service (IRS) pending sale under section 6335.</u> Other than as provided in §301.6343-1(b) or in paragraph (d) of this section, the Commissioner, in his or her discretion, may return levied upon property that is in the possession of the United States pending sale under section 6335.

(c) Conditions authorizing the return of property. The Commissioner may return property upon determining that one of the following conditions exist:

(1) Premature or not in accordance with administrative procedures. The levy was premature or otherwise not in accordance with the administrative procedures of the Secretary.

(2) Installment agreement. Subsequent to the levy, the taxpayer enters into an agreement under section 6159 to satisfy the liability for which the levy was made by means of installment payments. If, however, the agreement specifically provides that already levied upon property will not be returned under section 6343(d), the Commissioner may not grant a request for return of property under this paragraph (c)(2).

(3) Facilitate collection. The return of property will facilitate the collection of the tax liability for which the levy was made.

(4) Best interests of the United States and the taxpayer--(i) In general. The taxpayer or the National Taxpayer Advocate (or his delegate) has consented to the return of property, and the return of property would be in the best interest of the taxpayer, as determined by the National Taxpayer Advocate (or his delegate), and in the best interest of the United States, as determined by the Commissioner.

(ii) Best interest of the taxpayer. The National Taxpayer Advocate (or his delegate) generally will determine whether the return of property is in the best interest of the taxpayer. If, however, a taxpayer requests the Commissioner to return property and has not specifically requested the National Taxpayer Advocate (or his delegate) to determine the taxpayer's best interest, a finding by the Commissioner that the return of property is in the best interest of the taxpayer will be sufficient to support the return of property. Only the National Taxpayer Advocate (or his or her delegate) may determine that a return of property is not in the best interest of the taxpayer.

(5) Examples. The following examples illustrate the provisions of this paragraph (c):

Example 1. A owes $1,000 in Federal income taxes. The IRS levies on a broker with respect to a money market account belonging to the taxpayer and receives payment from the broker which it applies to the taxpayer’s outstanding liability. However, the IRS failed to follow procedure provided by the Internal Revenue Manual (but not required by statute) with regard to managerial approval prior to the making of the levy. The Commissioner may return an amount of money equal to the amount of money the IRS levied upon and applied toward the taxpayer’s tax liability.

Example 2. B owes $1,000 in Federal income taxes. The IRS levies on a bank with respect to a savings account belonging to the taxpayer and receives funds from the bank, which it applies to the taxpayer’s liability. Subsequent to the levy, B enters into an installment agreement, under which B will pay timely installments to satisfy the entire liability. The installment agreement does not by its terms preclude the return of levied upon property. The revenue officer verifies that B is financially capable of paying the entire liability, including accruals, in the agreed-upon installment payments. The Commissioner may return an amount of money equal to the amount of money levied upon and applied toward the taxpayer’s liability.

Example 3. C owns a house that is deteriorating and in unsalable condition. C is in the process of renovating the house for sale when the IRS levies upon C's bank account for the payment of a $20,000 outstanding Federal tax liability and receives funds in the amount of $3,000, which it applies toward C's liability. A notice of federal tax lien is the only lien encumbrancing the house. C requests that an amount of money equal to the amount seized from the bank account be returned so that C can complete the renovations on the house. Without the funds, C will be unable to complete the renovations and sell the house. Upon examination, the Commissioner determines that the IRS will be able to collect the entire tax liability if C's house is restored to salable condition. If the National Taxpayer Advocate, or the Commissioner in lieu of the National Taxpayer Advocate, determines that the return of the seized money is in the taxpayer's best interest, the Commissioner may return an amount of money equal to the amount seized from the bank account in the best interest of the taxpayer and the United States.

(d) Best Interests of the United States and the taxpayer to release levy and return of property where levy made in violation of law--(1) In General. If the Internal Revenue Service (IRS) makes a levy in violation of the law, it is in the best interest of the United States and the taxpayer to release the levy and the IRS will return to the taxpayer any property obtained pursuant to the levy. For example, the IRS will release the levy and return the taxpayer's property if the levy was made--

(i) Without giving the requisite thirty-day notice of the right to a hearing under section 6330;

(ii) During the pendency of a proceeding for refund of divisible tax in violation of section 6331(i);

(iii) Before investigation of the status of levied upon property in violation of section 6331(j);

(iv) During the pendency of offers-in-compromise in violation of section 6331(k)(1); or

(v) During the period an offer to enter into an installment agreement is pending (or for 30 days following the rejection of an offer, or, if the rejection is timely appealed, during the period that the appeal is pending) or during the period an installment agreement is in effect (or during the 30 days following a termination or, if a timely appeal of termination is filed, during the period the appeal is pending) in violation of section 6331(k)(2).

(2) Property may not be credited to outstanding liability without the taxpayer's permission. When the release of a levy and the return of property are required under this paragraph (d), the property or the proceeds from the sale of the property received by the IRS pursuant to the levy must be returned to the taxpayer unless the taxpayer requests otherwise. The property or proceeds of sale may not be credited to any outstanding tax liability of the taxpayer, including the one with respect to which the IRS made the levy, without the written permission of the taxpayer.

(e) Time of return. Levied upon property in possession of the IRS (other than money) may be returned under paragraphs (c) and (d) of this section at any time. An amount of money equal to the amount of money levied upon or received from a sale of property may be returned at any time before the expiration of 9 months from the date of the levy. When a request for the return of money filed in accordance with paragraph (h) of this section is filed before the expiration of the 9-month period, or a determination to return an amount of money is made before the expiration of the 9-month period, the money may be returned within a reasonable period of time after the expiration of the 9-month period if additional time is necessary for investigation or processing.

(f) Purchase by the United States. For purposes of paragraph (a)(2) of this section, if property is declared purchased by the United States at a sale pursuant to section 6335(e)(1)(C), the United States will be treated as having received an amount of money equal to the minimum price determined by the Commissioner before the sale.

(g) Determinations by the Commissioner. The Commissioner must determine whether any of the conditions authorizing the return of property exists if a taxpayer submits a request for the return of property in accordance with paragraph (h) of this section. The Commissioner also may make this determination independently. If the Commissioner determines that conditions authorizing the return of property are not present, the Commissioner may not authorize the return of property. If the Commissioner determines that conditions authorizing the return of property are present, the Commissioner may (but is not required to, unless the reason for the return of property is that the levy was made in violation of law and is governed by paragraph (d) of this section) authorize the return of property. If the Commissioner decides independently to return property under paragraph (c)(4) of this section based on the best interests of the taxpayer and the United States, the taxpayer or the National Taxpayer Advocate (or his delegate) must consent to the return of property.

(h) Procedures for request for the return of property--(1) Manner. A request for the return of property must be made in writing to the address on the levy form.

(2) Form. The written request must include the following information--

(i) The name, current address, and taxpayer identification number of the person requesting the return of money (or property purchased by the United States);

(ii) A description of the property levied upon;

(iii) The date of the levy; and

(iv) A statement of the grounds upon which the return of money is being requested (or property purchased by the United States).

(i) No interest. No interest will be paid on any money returned under this section.

(j) Administrative collection upon default. If the Commissioner returns property under this section, and the taxpayer fails to pay the previously assessed liability for which the levy was made on the returned property, the Commissioner may administratively collect the liability. Collection may include levying again on the returned property as long as statutory and administrative requirements are followed.

(k) Effective date. This section is applicable on **[INSERT THE DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Deputy Commissioner for Services and Enforcement.

Approved: Acting Assistant Secretary of the Treasury (Tax Policy).