

(b) *Date of sale.* In the case of a nonjudicial sale subject to the provisions of 26 U.S.C. 7425(b), in order to compute any period of time determined with reference to the date of sale, the date of sale shall be determined in accordance with the following rules:

(1) In the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred.

(2) In the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and

(3) In the case of divestment of junior liens on property not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law. For provisions relating to the right of redemption of the United States, see 26 U.S.C. 7425(d) and § 70.206 of this part.

(26 U.S.C. 7425(b))

§ 70.205 Discharge of liens; special rules.

(a) *Notice of sale requirements*—(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (c) of this section, a notice (as described in paragraph (d) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of § 70.204(b) of this part), to the appropriate ATF officer. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this paragraph.

(2) *Postponement of scheduled sale*—(i) *Where notice of sale is given.* In the event that notice of a sale is given in accordance with paragraph (a)(1) of this section, with respect to a sched-

uled sale which is postponed to a later time or date, the seller of the property is required to give notice of the postponement to the appropriate ATF officer, in the same manner as is required under local law with respect to other secured creditors. For example, assume that in State M local law requires that in the event of a postponement of a scheduled foreclosure sale of real property, an oral announcement of the postponement at the place and time of the scheduled sale constitutes sufficient notice to secured creditors of the postponement. Accordingly, if at the place and time of a scheduled sale in State M an oral announcement of the postponement is made, the Bureau is considered to have notice of the postponement for the purpose of this paragraph (a)(2).

(ii) *Where notice of sale is not given.* In the event that:

(A) Notice of a nonjudicial sale would not be required under paragraph (a)(1) of this section, if the sale were held on the originally scheduled date,

(B) Because of a postponement of the scheduled sale, more than 30 days elapse between the originally scheduled date of the sale and the date of the sale, and

(C) A notice of lien with respect to the property to be sold is filed more than 30 days before the date of the sale, notice of the sale is required to be given to the appropriate ATF officer in accordance with the provisions of paragraph (a)(1) of this section. In any case in which notice of sale is required to be given with respect to a scheduled sale, and notice of the sale is not given, any postponement of the scheduled sale does not affect the rights of the United States under 26 U.S.C. 7425(b).

(b) *Consent to sale*—(1) *In general.* Notwithstanding the notice of sale provisions of paragraph (a) of this section a nonjudicial sale of property shall discharge or divest the property of the lien or title of the United States if the appropriate ATF officer consents to the sale of the property free of the lien or title. Pursuant to 26 U.S.C. 7425(c)(2), where adequate protection is afforded the lien or title of the United States, the appropriate ATF officer

may, in that officer's discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be effective only if given in writing and shall be subject to such limitations and conditions as the appropriate ATF officer may require. However, the appropriate ATF officer may not consent to a sale of property under this section after the date of sale, as determined under § 70.204(b) of this part. For provisions relating to releasing a lien or discharging property subject to a tax lien, see 26 U.S.C. 6325 and § 70.150 of this part.

(2) *Application for consent.* Any person desiring the appropriate ATF officer's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the appropriate ATF officer a written application, in triplicate, declaring that it is made under penalties of perjury, and requesting that such consent be given. The application shall contain the information required in the case of a notice of sale, as set forth in paragraph (d)(1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(c) *Sale of perishable goods—(1) In general.* A notice (as described in paragraph (d) of this section) of a nonjudicial sale of perishable goods (as defined in paragraph (c)(2) of this section) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale, to the appropriate ATF officer. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last days falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same man-

ner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph and if the appropriate ATF officer asserts a claim to the proceeds within 30 days after the date of sale, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the appropriate ATF officer of the postponement. For provisions relating to releasing a lien or discharging property subject to a tax lien, see 26 U.S.C. 6325 and § 70.150 of this part.

(2) *Definition of perishable goods.* For the purpose of this paragraph, the term "perishable goods" means any tangible personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

(d) *Forfeiture of land sales contract.* For purposes of paragraph (a) of this section, a nonjudicial sale of property includes any forfeiture of a land sales contract.

(e) *Content of notice of sale—(1) In general.* With respect to a notice of sale described in paragraph (a) or (c) of this section, the notice will be considered adequate if it contains the information described in paragraph (d)(1) (i), (ii), (iii), and (iv) of this section.

(i) The name and address of the person submitting the notice of sale;

(ii) A copy of each Notice of Federal Tax Lien (ATF Form 5651.2) affecting the property to be sold, or the following information as shown on each such Notice of Federal Tax Lien:

(A) The initiating office named thereon,

(B) The name and address of the taxpayer, and

(C) The date and place of filing of the notice;

(iii) With respect to the property to be sold the following information:

(A) A detailed description, including location of the property affected by the notice (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title),

(B) The date, time, place, and terms of proposed sale of the property, and

(C) In case of a sale of perishable property described in paragraph (c) of this section, a statement of the reasons why the property is believed to be perishable; and

(iv) The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

(2) *Inadequate notice.* Except as otherwise provided in this subparagraph, a notice of sale described in paragraph (a) of this section which does not contain the information described in paragraph (d)(1) of this section shall be considered inadequate by the appropriate ATF officer. If the appropriate ATF officer determines that the notice is inadequate, that officer will give written notification of the items of information which are inadequate to the person who submitted the notice. A notice of sale which does not contain the name and address of the person submitting such notice shall be considered to be inadequate for all purposes without notification of any specific inadequacy. In any case where a notice of sale, does not contain the information required under paragraph (d)(1)(ii) of this section with respect to a Notice of Federal Tax Lien, the appropriate ATF officer may give written notification of such omission without specification of any other inadequacy and such notice of sale shall be considered inadequate for all purposes. In the event the appropriate ATF officer gives notification that the notice of sale is inadequate, a notice complying with the provisions of this section (including the requirement that the notice be given not less than 25 days prior to the sale in the

case of a notice described in paragraph (a) of this section) must be given. However, in accordance with the provisions of paragraph (b)(1) of this section, in such a case the appropriate ATF officer may, in that officer's discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is given less than 25 days prior to the sale. In any case where the person who submitted a timely notice which indicates the person's name and address does not receive, more than 5 days prior to the date of the sale, written notification from the appropriate ATF officer that the notice is inadequate, the notice shall be considered adequate for purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (a) or (c) of this section is submitted in duplicate to the appropriate ATF officer with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the appropriate ATF officer. The acknowledgment by the appropriate ATF officer will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The appropriate ATF officer is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of this section insofar as disclosure is authorized under 26 U.S.C. 6103. Any person desiring this information should submit to the appropriate ATF officer a written request which clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request.

(26 U.S.C. 7425(c))

[T.D. ATF-301, 55 FR 47634, Nov. 14, 1990, as amended by T.D. ATF-450, 66 FR 29027, May 29, 2001]

§ 70.206 Discharge of liens; redemption by United States.

(a) *Right to redeem*—(1) *In general.* In the case of a nonjudicial sale of real property to satisfy a lien prior to the tax lien or a title derived from the enforcement of a tax lien, the appropriate