

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-101520-97]

RIN 1545-AV01

Return of Property in Certain Cases

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

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

DATES: Written comments and requests for a public hearing must be received by May 15, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-101520-97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:M&S:RU (REG-101520-97), room 5226, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Taxpayers may also submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to

the IRS Internet site at http://www.irs.gov/prod/tax_regs/regslst.html.

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

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed 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 and, to the extent possible, but without payment of interest, return the taxpayer to the same position as if the levy had not been issued. These proposed regulations reflect the amendments made by section 501(b) of TBOR2.

These proposed 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) of 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 is pending 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, the 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.

Explanation of Provisions

Section 6343(b) provides for the return of levied upon property, including levied upon money and money received from the sale of levied upon property, if the property was wrongfully levied upon. Section 501(b) of TBOR2 enacted section 6343(d) of the Code authorizing the IRS to return levied upon property to the taxpayer in certain other prescribed circumstances. Property returned under new section 6343(d) will be returned in accordance with section 6343(b) of the Code as if the property had been wrongfully levied upon, except that no interest will be allowed. The provision is designed to permit the IRS, to the extent possible, to restore the taxpayer to a pre-levy position. These proposed regulations provide guidance on the circumstances under which levied upon property will be returned by the IRS and the manner in which a request for return of property must be made.

The proposed regulations apply to the return of (1) levied upon money that has been applied toward the taxpayer's liability, (2) money received from the sale of levied upon property under section 6335 of the Code, and (3) levied upon property that the United States has purchased in a sale under section 6335 of the Code. This property may be returned if one of the conditions enumerated in paragraph (c) of the proposed regulations exists.

The regulations also clarify that, other than as provided in §301.6343-1(b) and

paragraph (d) of this section, the IRS, in its discretion, may return levied upon property in its possession pending sale. The return of levied upon property in the IRS's possession pending sale is not limited by these proposed regulations. The IRS has the authority to determine what property of the taxpayer to levy. As part of that authority, the IRS may release a levy and return levied upon property in its possession pending sale.

Under paragraph (c) of the proposed regulations, the Commissioner may return levied upon property if one of the following conditions exist: (1) the levy was premature or otherwise not in accordance with the administrative procedures of the IRS; (2) the taxpayer has entered into an agreement under section 6159 of the Code to satisfy the liability for which the levy was imposed by means of installment payments, unless the agreement provides otherwise; (3) the return of property will facilitate collection of the tax liability; or (4) the return of property is in the best interest of the taxpayer, as determined by the National Taxpayer Advocate, and in the best interest of the United States, as determined by the Commissioner.

Section 6343(d)(2)(D) authorizes the return of property if it is in the best interests of both the United States and the taxpayer. Therefore, two distinct determinations must be made before the Commissioner may return property based on these grounds. Under the proposed regulations the Commissioner (or his delegate) will determine whether the return of property is in the best interest of the United States. The National Taxpayer Advocate (or his delegate) generally will determine whether the return of property is in the best interest of the taxpayer; however, a finding by the

Commissioner (or his delegate) that the return of property is in the best interest of the taxpayer, as well as the United States, will be sufficient to support the return of property. Only the National Taxpayer Advocate (or his delegate) is authorized to determine that the return of property is not in the taxpayer's best interest.

Additionally, the proposed regulations provide that it is in the best interests of the United States and the taxpayer to release levies made in violation of the law. Any property received pursuant to a levy made in violation of the law will be returned unless the taxpayer gives permission to the IRS to keep the property. For example, section 6331(k)(2) of the Internal Revenue Code of 1986 prohibits levies during the period an offer to enter into an installment agreement is pending (and for a 30-day period after rejection of the offer or while a timely appeal from the rejection of an offer to enter into an installment agreement is pending) and during the period an installment agreement is in effect. If property has been received by the IRS as the result of a levy that is prohibited under section 6331(k)(2), the IRS will return the property to the taxpayer pursuant to section 6343(d)(2)(D). It may, however, be advantageous for a taxpayer in some circumstances to allow the IRS to keep the levied upon property and apply the proceeds of that levy to the taxpayer's outstanding tax liabilities. These proposed regulations allow the taxpayer to give permission to the IRS to retain the levied upon property and apply the proceeds of that levy to the taxpayer's outstanding tax liabilities. Absent taxpayer consent, the IRS is required to return the levied upon property (or the proceeds if the property had been sold) to the taxpayer.

Pursuant to the requirement of section 6343(d) that property to be returned

under this provision be treated as if it were wrongfully levied upon, the proposed regulations also provide that if the United States purchases property, it will be treated as having received an amount of money equal to the minimum price determined by the Commissioner before the sale.

Property other than money may be returned at any time. Money may be returned any time within 9 months after the date of the levy. In addition, when a timely request for the return of money is filed in accordance with these regulations, 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 9-month period if additional time is necessary for investigation or processing. This will ensure that if a timely request has been made, or the IRS timely decides to return money on its own initiative, the IRS will have sufficient time for necessary investigation or processing.

Under the proposed regulations a taxpayer may request the return of property by writing to the address on the levy form or to the Commissioner (marked for the attention of the Chief, Special Procedures Function) of the IRS office in which the levy was made. A written request for the return of property must include: (1) the name, current address, and taxpayer identification number of the taxpayer requesting the return of property; (2) a description of the property levied upon; (3) the date of the levy; and (4) the grounds upon which the return of property is being requested.

The Commissioner must consider each taxpayer's request for the return of property, determine whether any of the conditions authorizing the return of property

exist, and decide whether to return the property. The Commissioner also may return the property based on information received from a source other than the taxpayer. A decision to return the property is within the Commissioner's discretion, unless the levy was in violation of law, in which case the Commissioner must return the property.

If the Commissioner returns property, 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 provided statutory and administrative requirements are followed.

Special Analyses

It has been determined that this notice of proposed rulemaking 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) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely

(preferably a signed original and eight (8) copies) to the IRS. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/prod/tax_reg/regslist.html. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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 proposed to be 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:

§301.6343-3 Return of property in certain cases.

(a) In general. 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) Return of levied upon property in possession of the Internal Revenue Service (IRS) pending sale under section 6335. 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 it 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 taxpayers 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 intent to levy 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 the date final regulations are published in the **Federal Register**.

Robert E. Wenzel

Deputy Commissioner of Internal Revenue