

attorney". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Note thereunder.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

**§ 1613. Disposition of proceeds of forfeited property**

**(a) Application for remission of forfeiture and restoration of proceeds of sale; disposition of proceeds when no application has been made**

Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, aircraft, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court

and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(3) The residue shall be deposited in the general fund of the Treasury of the United States.<sup>1</sup>

**(b) Disposition of proceeds in excess of penalty assessed under section 1592**

If merchandise is forfeited under section 1592 of this title, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a)(1) and (2) of this section or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title incurred in such sale shall be returned to the person against whom the penalty was assessed.

**(c) Treatment of deposits**

If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 1605 of this title, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

**(d) Expenses**

In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.

(June 17, 1930, ch. 497, title IV, § 613, 46 Stat. 756; June 25, 1938, ch. 679, § 29, 52 Stat. 1089; 1946 Reorg. Plan No. 3, §§101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 95-410, title I, § 110(c), Oct. 3, 1978, 92 Stat. 896; Pub. L. 98-473, title II, §§316, 321, Oct. 12, 1984, 98 Stat. 2054, 2056; Pub. L. 98-573, title II, § 213(a)(10), Oct. 30, 1984, 98 Stat. 2986; Pub. L. 99-570, title III, § 3124, Oct. 27, 1986, 100 Stat. 3207-88.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 613, 42 Stat. 986. That section was superseded by section 613 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions authorizing applications to the Secretary of the Treasury for remission of forfeitures and restoration of the proceeds of sales, and provisions substantially the same as those in this section concerning the granting of such applications, were contained in R.S. § 3078. R.S. § 3079 provided that if no application was made within three months the proceeds should be distributed in the same manner as if the property had been condemned and sold under a decree of court. R.S.

<sup>1</sup> See 1984 Amendment note below.

§3090, as amended by act Feb. 27, 1877, ch. 69, §1, 19 Stat. 248, also specified how the proceeds of fines, penalties, and forfeitures incurred under customs laws, should be applied and distributed. All these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

#### AMENDMENTS

1986—Subsecs. (c), (d). Pub. L. 99-570 added subsecs. (c) and (d).

1984—Subsec. (a). Pub. L. 98-573, §213(a)(10)(A), and Pub. L. 98-473, §321, inserted reference to aircraft in provisions preceding par. (1).

Subsec. (a)(3). Pub. L. 98-573, §213(a)(10)(B), substituted “in the general fund of the Treasury of the United States” for “with the Treasurer of the United States as a customs or navigation fine”.

Pub. L. 98-473, §316, which directed the substitution of “The residue shall be deposited in the Customs Forfeiture Fund” for “The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine” was not executed to text in view of the later amendment by section 213(a)(10)(B) of Pub. L. 98-573.

Subsec. (b). Pub. L. 98-573, §213(a)(10)(C), inserted “or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title”.

1978—Subsec. (a). Pub. L. 95-410, §110(c)(1), designated existing provisions as subsec. (a) and substituted “Except as provided in subsection (b) of this section, any” for “Any”.

Subsec. (b). Pub. L. 95-410, §110(c)(2), added subsec. (b).

1970—Pub. L. 91-271 substituted reference to appropriate customs officer for reference to collector.

1938—Act June 25, 1938, inserted “and” at end of subd. (2), struck out subd. (3), and redesignated subd. (4) as (3).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

#### EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury

transferred to Secretary of Transportation by Pub. L. 89-670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, was an officer in Department of the Treasury. Functions of Coast Guard and Commandant of Coast Guard excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14, Coast Guard.

By Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5, Government Organization and Employees, functions of Secretary of Commerce relating to remission and mitigation of fines, penalties and forfeitures incurred for violation of navigation laws were transferred to Commandant of Coast Guard and Commissioner of Customs, subject to direction and control of Secretary of the Treasury, except as otherwise required by law with respect to United States Coast Guard whenever it operates as a part of Navy. Accordingly, references to Commandant of Coast Guard and Commissioner of Customs substituted in text for “the Secretary of Commerce”.

#### APPROPRIATIONS

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title “Proceeds of goods seized and sold (Customs) (2x322)” effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

#### § 1613a. Repealed. Pub. L. 99-514, title XVIII, § 1888(7), Oct. 22, 1986, 100 Stat. 2925

Section, act June 17, 1930, ch. 497, title IV, §613a, as added and amended Oct. 12, 1984, Pub. L. 98-473, title II, §§317, 2304, 98 Stat. 2054, 2193; Oct. 27, 1986, Pub. L. 99-570, title I, §1152(b)(1), 100 Stat. 3207-12; July 11, 1987, Pub. L. 100-71, title I, §101, 101 Stat. 438, related to establishment, purpose, etc. of the Customs Forfeiture Fund. See section 1613b of this title.

Section 1152(b)(1) of Pub. L. 99-570, which amended this section subsequently to repeal by Pub. L. 99-514, was repealed by section 101 of Pub. L. 100-71, which also provided in part that section 1152(b) of Pub. L. 99-570 be treated as though it had never been enacted.

#### § 1613b. Customs Forfeiture Fund

##### (a) In general

(1) There is established in the Treasury of the United States a fund to be known as the “Customs Forfeiture Fund” (hereafter in this section referred to as the “Fund”), which shall be available to the United States Customs Service, subject to appropriation, with respect to seizures and forfeitures by the United States Customs Service and the United States Coast Guard under any law enforced or administered by those agencies for payment, or for reimbursement to the appropriation from which payment was made, for—

(A) all proper expenses of the seizure (including investigative costs incurred by the United