

## Internal Revenue Service, Treasury

## § 403.30

a bond to the United States in the penal sum of \$250, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation. The District Director shall transmit such claim, together with the duplicate list or description of the property seized, to the United States Attorney for the district in which such property was seized. Both the claim and the cost bond should be executed in quadruplicate.

(b) *Judicial condemnation.* Personal property seized as subject to forfeiture under the internal revenue laws and this part which has an appraised value of more than \$2,500 and such seized property which has an appraised value of \$2,500 or less with respect to which a bond has been filed pursuant to paragraph (a)(4) of this section, shall be forfeited to the United States in judicial condemnation proceedings, as authorized by the Director, General Legal Services Division, Office of Chief Counsel, Internal Revenue Service, or his delegate.

(Sec. 7323, 7325, 7326, 7401, 68A Stat. 869, 870, 873, 72 Stat. 1429, as amended; (26 U.S.C. 7323, 7325, 7326(a), 7401))

[T.D. 7433, 41 FR 39312, Sept. 15, 1976, as amended by T.D. 7525, 42 FR 64344, Dec. 23, 1977]

### § 403.27 Type and conditions of cost bond.

The cost bond filed by a claimant pursuant to § 403.26(a)(4) shall be a corporate surety bond. However, upon a showing to the satisfaction of the Commissioner or his delegate that such claimant is unable to furnish a corporate surety bond, such claimant may file a cost bond with individual sureties acceptable to the Commissioner or his delegate or, in lieu of such cost bond with corporate or individual sureties, he may deposit collateral pursuant to § 403.29.

### § 403.28 Corporate surety bonds.

A corporate surety bond may be filed only if the surety company issuing such bond holds a certificate of authority from the Secretary of the Treasury certifying that such company is an acceptable surety on Federal bonds, sub-

ject to the limitations prescribed by Treasury Department Circular 570 as amended.

(Sec. 6, 61 Stat. 648, as amended, sec. 7101, 68A Stat. 847, as amended; (6 U.S.C. 6, 26 U.S.C. 7101))

### § 403.29 Deposit of collateral.

Cash, postal money orders, certified or cashiers' or treasurers' checks, and bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by claimants as collateral security in lieu of corporate surety bonds in accordance with the provisions of Treasury Department Circular No. 154, revised (31 CFR part 225).

(Sec. 15, 61 Stat. 650, sec. 7101, 68A Stat. 847, as amended; (6 U.S.C. 15, 26 U.S.C. 7101))

### § 403.30 Special disposition of perishable goods.

The proceedings to enforce forfeiture of perishable goods shall, as is the case with proceedings to enforce forfeiture of nonperishable goods, be in the nature of proceedings in rem in the United States District Court for the district wherein such seizure is made. When any seized property is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense, the Commissioner or his delegate shall advise the owner, when known, of the seizure thereof. The owner of the seized property may apply to the District Director of the internal revenue district in which the property was seized to examine the property at any time prior to referral of the property to the U.S. Marshal for disposition. If, in the opinion of the Commissioner or his delegate it is necessary that such property be sold to prevent waste or expense, the Commissioner or his delegate shall cause the property to be appraised in accordance with the procedures set forth in § 403.26(a)(2). The owner shall have such property returned to him upon giving a corporate surety bond pursuant to § 403.28 in an amount equal to the appraised value of the property, to abide the final order, decree, or judgment of the court having cognizance of the case. The bond shall be

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conditioned to pay the amount of the appraised value to the Commissioner or his delegate, the U.S. Marshal, or otherwise, as may be ordered and directed by the court. The bond shall be filed by the Commissioner or his delegate with the U.S. Attorney for the district in which the proceedings may be commenced. If the owner of such property neglects or refuses to give such bond within a reasonable time considering the condition of the property, the Commissioner or his delegate shall request the U.S. Marshal to proceed to sell the property at public sale as soon as practicable and to pay the proceeds of sale, less reasonable costs of the seizure and sale, to the court to abide its final order, decree, or judgment.

(Sec. 7322, 7323, 7324, 68A Stat. 869, 870, as amended; (26 U.S.C. 7322, 7323, 7324))

### Subpart D—Remission or Mitigation of Forfeitures

#### § 403.35 Laws applicable.

Remission or mitigation of forfeitures shall be governed by the customs laws applicable to remission or mitigation of penalties as contained in 19 U.S.C. 1613 and 19 U.S.C. 1618.

(Sec. 613, 46 Stat. 756, as amended, sec. 618, 46 Stat. 757, as amended, sec. 7327, 68A Stat. 871; (19 U.S.C. 1613, 1618, 26 U.S.C. 7327))

#### § 403.36 Interest claimed.

Any person claiming an interest in property seized by an officer of the Internal Revenue Service as subject to administrative forfeiture under this part may file a petition addressed to the District Director of the internal revenue district in which the property was seized for remission or mitigation of the forfeiture of such property.

#### § 403.37 Form of the petition.

There is no standardized form provided or required by the Department of the Treasury for use in filing a petition for remission or mitigation of forfeiture. However, the petition should be typewritten on legal size paper; and must be executed under oath, prepared in triplicate, and addressed to the District Director of the internal revenue district in which the property was seized. All copies of original documents

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submitted as exhibits in support of allegations of the petition should be certified as true and accurate copies of originals. Each copy of the petition must contain a complete set of exhibits.

#### § 403.38 Contents of the petition.

(a) *Description of the property.* The petition should contain such a description of the property and such facts of the seizure as will enable the Commissioner or his delegate to identify the property.

(b) *Statement regarding knowledge of seizure.* In the event the petition is filed for the restoration of the proceeds derived from sale of the property pursuant to an administrative forfeiture, it should contain, or be supported by, satisfactory proof that the petitioner did not know and could not have known of the seizure prior to the declaration of forfeiture. (See also § 403.39)

(c) *Interest of petitioner.* The petition should clearly and concisely indicate the nature and amount of his interest in the property on the date the petition is filed, and the facts relied upon to show that the petitioner was not willfully negligent and did not intend that the property be involved or used in violation of the internal revenue laws. Such petition may allege such other circumstances which in the opinion of the petitioner would justify the remission or mitigation of the forfeiture.

(d) *Petitioner innocent party.* If the petitioner did not commit the act which caused the seizure of his property, the petition should state how the property came into the possession of the person whose act did cause the seizure, and it should also state that the petitioner had no knowledge or reason to believe that the property would be involved or used in violation of the internal revenue laws. If the petitioner knows, at the time he files the petition, that the person in whose possession the seized property was at the time of the seizure had a record or reputation for committing commercial crimes, the petitioner should state in the petition whether the petitioner knew of such record or reputation before the petitioner acquired his interest in the property or before such other person came into possession of the property, whichever