

expedited determination of whether a condition requiring release of the levy exists.

(2) *Essential business property defined.* For purposes of this section, *essential business property* means tangible personal property used in carrying on the trade or business of the taxpayer which when levied upon prevents the taxpayer from continuing to carry on the trade or business.

(3) *Seizure of perishable goods.* The provisions of this paragraph do not apply in the case of a seizure of perishable goods. Those seizures are governed by the provisions of section 6336 and § 301.6336-1.

(e) *Effect of a release of levy.* If property has not yet been surrendered to the director in response to a levy, a release of the levy under section 6343(a) will relieve the possessor of any obligation to surrender the property. Otherwise, a release of a levy under section 6343(a) will cause the property to be returned to the custody of the person or persons legally entitled thereto. The release of a levy on any property under this section does not prevent any subsequent levy on the property. Section 301.6343-2, dealing with return of wrongfully levied upon property, is subject to section 6402 which prohibits the Internal Revenue Service from refunding a payment of money that has been deposited in the Treasury and credited to the taxpayer's liability unless there is an overpayment.

(f) *Effective date.* This section is effective as of December 30, 1994.

[T.D. 8587, 59 FR 35, Jan. 3, 1995]

**§ 301.6343-2 Return of wrongfully levied upon property.**

(a) *Return of property—(1) General rule.* If the Internal Revenue Service (IRS) determines that property has been wrongfully levied upon, the IRS may return—

- (i) The specific property levied upon;
- (ii) An amount of money equal to the amount of money levied upon; or
- (iii) An amount of money equal to the amount of money received by the United States from a sale of the property.

(2) *Time of return.* If the United States is in possession of specific property, the property may be returned at any

time. An amount equal to the amount of money levied upon or received from a sale of the property may be returned at any time before the expiration of 9 months from the date of the levy. When a request described in paragraph (b) of this section is filed for the return of property before the expiration of 9 months from the date of levy, an amount of money may be returned after a reasonable period of time subsequent to the expiration of the 9-month period if necessary for the investigation and processing of such request.

(3) *Specific property.* In general the specific property levied upon will be returned whenever possible. For this purpose, money that is specifically identifiable, as in the case of a coin collection which may be worth substantially more than its face value, is treated as specific property.

(4) *Purchase by United States.* For purposes of paragraph (a)(1)(iii) of this section, if property is declared purchased by the United States at a sale pursuant to section 6335(e), the United States is treated as having received an amount of money equal to the minimum price determined by the IRS before the sale or, if larger, the amount received by the United States from the resale of the property.

(b) *Request for return of property.* A written request for the return of property wrongfully levied upon must be given to the IRS official, office and address specified in IRS Publication 4528, "Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b)," or any successor publication. The relevant IRS publications may be downloaded from the IRS internet site at <http://www.irs.gov>. Under this section, a request for the return of property wrongfully levied upon is not effective if it is given to an office other than the office listed in the relevant publication. The written request must contain the following information—

- (1) The name and address of the person submitting the request;
- (2) A detailed description of the property levied upon;
- (3) A description of the claimant's basis for claiming an interest in the property levied upon; and

(4) The name and address of the taxpayer, the originating IRS office, and the date of the levy as shown on the notice of levy form, or levy form, or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

(c) *Inadequate request.* A request for the return of property wrongfully levied upon will not be considered adequate unless it is a written request containing the information required by paragraph (b) of this section. However, unless a notification is mailed by the IRS to the claimant within 30 days of receipt of the request to inform the claimant of the inadequacies, any written request will be considered adequate. If the IRS timely notifies the claimant of the inadequacies of his request, the claimant has 30 days from the receipt of the notification of inadequacy to supply in writing any omitted information. Where the omitted information is so supplied within the 30-day period, the request will be considered to be adequate from the time the original request was made for purposes of determining the applicable period of limitation upon suit under section 6532(c).

(d) *Payment of interest.* Interest is paid at the overpayment rate established under section 6621—

(1) In the case of money returned under paragraph (a)(1)(ii) of this section, from the date the IRS received the money to a date (to be determined by the IRS) preceding the date of return by not more than 30 days; or

(2) In the case of money returned under paragraph (a)(1)(iii) of this section, from the date of the sale of the property to a date (to be determined by the IRS) preceding the date of return by not more than 30 days.

(e) *Effective/applicability date.* These regulations are effective on July 8, 2008.

[T.D. 8587, 59 FR 37, Jan. 3, 1995, as amended by T.D. 9344, 72 FR 39739, July 20, 2007; T.D. 9410, 73 FR 38916, July 8, 2008]

### § 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 or her delegate) has consented to the return of property, and the return of property would be in the