responding to this notice were received. No public hearing was requested or held. After consideration of all the comments, the proposed regulations under section 6343 are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The notice of proposed rulemaking provided different rules with respect to levies made prior to July 1, 1989, and levies made on or after that date. It was decided that separate rules concerning levies made prior to July 1, 1989 are not necessary. Accordingly, they have been eliminated. These final regulations are prospective in nature and are effective as of December 30, 1994. In addition, for ease of administration, it was decided that the authority to release levies should be extended by regulation to service center and compliance center directors. These final regulations has been revised to confer this authority on service center and compliance center directors.

The written comments received made several suggestions for changes to the proposed regulations. The comments suggested that the regulations provide an appeal procedure for taxpayers when a request for a release of levy is denied. These final regulations do not adopt this suggestion. A taxpayer who believes an IRS employee is not properly applying these regulations has the right to appeal to that person's supervisor. Thus, a formal appeals procedure would add a layer of bureaucracy to the process while providing little or no benefit to the taxpayer.

The comments also suggested revising an example in the proposed regulations governing when a levy may be released to facilitate collection. The comment suggested that the example provide that a release of levy must be made if that release would increase the fair market value of the property (and, presumably, the amount that would be bid) if the taxpayer were to sell that property, irrespective of whether the proceeds from that sale would satisfy the taxpayer's outstanding federal tax liabilities. This suggestion has been adopted in modified form. The final regulations provide that a levy may be released even though the proceeds of the sale would not fully satisfy the taxpayer's outstanding federal tax liabilities, but only on a case by case basis at the discretion of a district director. The IRS is not required to release a levy merely because a taxpayer alleges that a sale by the taxpayer would produce a higher bid than if the sale were made by the IRS.

Another suggestion was that the regulations provide an example of situations where the fair market value of the property exceeds the liability for which the levy was made and the release of levy can be made on only a part of a taxpayer's property without hindering the collection of the liability. This suggestion has been adopted in the final regulations.

The comments suggested that an example be given of ''essential business property'' qualifying for expedited determination of whether a levy should be released. The issue of what constitutes ''essential business property'' will necessarily turn on the unique facts of an individual case. An item of property that may be essential to the carrying on of one business may not be essential in the carrying on of another business. Thus, any example given in the regulations could not provide specific guidance as to what specific items of property would be considered essential in all cases. Conversely, any example given in the regulations could be erroneously construed as requiring a certain fact pattern or degree of effect on the operation of a business that would not be necessary in all cases in order for a specific item of property to be considered ''essential business property.'' Accordingly, this suggestion has not been adopted in these final regulations.

The comments also suggested that the final regulations require a district director to return the specific property levied upon if it is still in the possession of the United States Government. This suggestion was adopted in part. It is the practice of the IRS, generally, to return specific property still in its possession to its rightful owner if the property has been wrongfully seized. However, this general rule is not appropriate in all cases. For instance, the property seized may be found to include items which may be illegal under State or Federal law. This type of property will not be returned to its owner. The final regulations indicate that the IRS will normally return specific property in its possession when that property has been wrongfully levied upon.

Another suggestion was that the proposed regulations be revised to require the IRS to return property within 10 days after it is determined that such property was wrongfully levied upon. This suggestion is not adopted in these final regulations. Although section 6343 does not mandate a time period within which the property must be returned, property is normally returned as expeditiously as possible. There do occur, however, situations where conflicting claims are made for the return of wrongfully levied upon property. Cases where conflicting claims to the property are received require greater time and, in some instances, litigation to resolve who is rightfully entitled to the return of the property. A requirement that the IRS return property in 10 days in all cases could adversely affect the rights of other claimants to the property and would not benefit either those claimants or the IRS.

The comments also suggested that final regulations require a person requesting the return of wrongfully levied upon property to include a copy of the levy itself if it is available. This suggestion was not adopted in these final regulations. Based on the experience of the IRS, the actual submission of a copy of the levy or notice of levy has not been necessary. Thus, the addition of a new requirement for the submission of a copy of either of those two forms in all cases could be potentially burdensome for some taxpayers and prove to be of no benefit to the IRS.

It has also been suggested that the proposed regulations be revised in order to prevent a taxpayer from making a request for a release of levy by telephone because such requests lack proper documentation and make it difficult for the IRS to determine if the taxpayer has complied with the statutory provisions. The regulations follow current IRS procedures and are designed to provide the taxpayer with the most expeditious method to initiate a request for release. The regulations, however, also provide that the IRS may request any documentation necessary before making a determination on whether a condition requiring release has been met. Thus, although the request for a determination may be made orally, the IRS is not required to make the determination based on insufficient information.

Another comment interpreted the proposed regulations as creating an inconsistency in that a request for release of property, in ordinary circumstances, could be made as little as six days prior to a scheduled sale of that property, while the IRS was generally allowed up to 30 days to make a determination concerning a request for release. The commentator indicated its belief that these two rules could be read to allow a sale to take place without a determination being made concerning a request for release.

The commentator's concern is unfounded. The period between the date of seizure and the date notice of sale is given is used by the IRS to determine whether the property seized