

should be sold or released. This determination is made whether or not a request for release has been received. Because this initial determination concerning sale or the possible release of the levy is made prior to the issuance of the notice of sale, a subsequent determination in response to an actual request for release of levy made by a taxpayer can be accomplished, in most of these cases, prior to the scheduled sale date if at least five days remain prior to the sale date. It is only in unusual cases where a determination cannot be made prior to the date of the scheduled sale if a request for release is made more than five days prior to the scheduled sale date. In those cases, the sale is postponed, but a determination is normally made within 30 days of the date of the request for release.

To clarify this issue, however, these final regulations have been revised to state that if a request for release is made more than five days prior to a scheduled sale, the IRS is to make a determination on any request for release of property before that property can be sold. In addition, the final regulations state that the IRS is not required to consider a request for release or an expedited determination made within five or fewer days prior to a scheduled sale. The IRS has the discretion, however, to consider such requests.

In § 301.6343-1(b)(3) of these final regulations, the phrase "there is an intervening judgment lien creditor" has been added to the example indicating when the IRS is not required to release a levy when an installment agreement has been entered into if the release will jeopardize the secured status of the United States. The final regulations also clarify that the lack of a filed notice of federal tax lien does not by itself warrant a finding that the secured status of the United States is jeopardized in all situations where no notice of such tax lien has been filed. Finally, the final regulations provide that, for the purposes of determining a reasonable amount for basic living expenses, a taxpayer may furnish, and the IRS may consider, information concerning his or her current employment status, as well as past employment history.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and

therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Jerome D. Sekula, Office of the Assistant Chief Counsel (General Litigation), IRS. However, personnel from other offices of 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.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 is amended by adding entries to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6343-1 also issued under 26 U.S.C. 6343.

Section 301.6343-2 also issued under 26 U.S.C. 6343 * * *

Par. 2. Section 301.6343-1 is revised to read as follows:

§ 301.6343-1 Requirement to release levy and notice of release.

(a) *In general.* A district director, service center director, or compliance center director (*director*) must promptly release a levy upon all, or part of, property or rights to property levied upon and must promptly notify the person upon whom the levy was made of such a release, if the director determines that any of the conditions in paragraph (b) of this section (conditions requiring release) exist. The director must make a determination whether any of the conditions requiring release exist if a taxpayer submits a request for release of levy in accordance with paragraph (c) or (d) of this section; however, the director may make this determination based upon information received from a source other than the taxpayer. The director may require any supporting documentation as is reasonably necessary to determine whether a condition requiring release exists.

(b) *Conditions requiring release.* The director must release the levy upon all

or a part of the property or rights to property levied upon if he or she determines that one of the following conditions exists—

(1) *Liability satisfied or unenforceable*—(i) *General rule.* The liability for which the levy was made is satisfied or the period of limitations provided in section 6502 (and any period during which the period of limitations is suspended as provided by law) has lapsed. A levy is considered made on the date on which the notice of seizure provided in section 6335(a) is given. A levy that is made within the period of limitations provided in section 6502 does not become unenforceable simply because the person who receives the levy does not surrender the subject property within the period of limitations. In this case, the liability remains enforceable to the extent of the value of the levied upon property. However, a levy made outside the period of limitations (normally ten years without suspensions) must be released unless—

(A) The taxpayer agreed in writing to extend the period of limitations as provided in section 6502(a)(2) and § 301.6502-1; or

(B) A proceeding in court to collect the liability has begun within the period of limitations.

(ii) *Special situations.* A continuing levy on salary or wages made under section 6331(e) must be released at the end of the period of limitations in section 6502. However, a levy on a fixed and determinable right to payment which right includes payments to be made after the period of limitations expires does not become unenforceable upon the expiration of the period of limitations and will not be released under this condition unless the liability is satisfied.

(2) *Release will facilitate collection.* The release of the levy will facilitate collection of the liability. A director has the discretion to release the levy in all situations, including those where the proceeds from the sale will not fully satisfy the tax liabilities of the taxpayer, under terms and conditions as he or she determines are warranted.

(i) *Example.* The following example illustrates the provisions of this paragraph (b)(2):

Example. A and B each own machines which, when used together, produce widgets. A owes delinquent federal taxes. A notice of federal tax lien is properly filed against all property or rights to property belonging to A. A's machine is seized to satisfy A's delinquent tax liability. The fair market value of A's property is greater than the expenses of seizure and sale, but less than the amount of A's tax liability. A and B find a buyer who