

in district court after the deficiency has been collected. This in no way diminishes the right of the possessor of cash to petition the United States Tax Court to challenge the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash.

The true owner of cash may maintain an action under section 7429 for administrative and judicial review of the deficiency notice issued to the possessor. However, the true owner may only institute the section 7429 action concerning the notice of deficiency issued to the possessor by making a request for review within 30 days from the date the possessor is given the written statement of information required under section 7429(a)(1). After the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may bring an action in federal district court, within the time frame specified in section 6532(c), to recover the cash, as provided in section 7426, relating to civil actions by persons other than taxpayers. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor as possessor of the cash.

Section 301.6867-1(f) of the final regulations incorporates the definitions contained in § 301.6867-1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several other items have been identified and added to the list of specific cash equivalents. Section 301.6867-1T will be removed on August 3, 1995.

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 Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jerome D. Sekula, Office

of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

Lists 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 citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6867-1 is added to read as follows:

§ 301.6867-1 Presumptions where owner of large amount of cash is not identified.

(a) *General rule.* For purposes of section 6851 (relating to termination assessments) and section 6861 (relating to jeopardy assessments), if cash in excess of \$10,000 is found in the physical possession of an individual who does not claim either ownership of that cash or ownership by some other person whose identity the Commissioner can readily ascertain and who acknowledges ownership of that cash as of the date the cash was found, then, it shall be presumed that—

(1) The cash represents gross income of an unknown single individual; and

(2) That the collection of tax on that income will be jeopardized by delay.

(b) *Rules for assessment.* The Commissioner may make an assessment pursuant to section 6851 or section 6861, as appropriate, using the rules for assessment specified in this paragraph. In the case of any assessment resulting from the application of paragraph (a) of this section—

(1) The entire amount of cash is treated as taxable income for the taxable year in which the cash is found;

(2) The income is treated as taxable at the highest rate of tax specified in section 1 of the Internal Revenue Code; and

(3) Except as provided in paragraph (c), the possessor of the cash is treated (solely with respect to that cash) as the taxpayer for purposes of chapters 63 and 64 and section 7429(a)(1) of the Internal Revenue Code.

(c) *Effect of later substitution of true owner—(1) In general.* If an assessment resulting from the application of

paragraph (a) of this section is later abated and replaced by an assessment against the true owner of the cash, the later assessment is treated for purposes of all laws relating to lien, levy, and collection as relating back to the date of the original assessment.

Notwithstanding the preceding sentence, any notice and review provided for by section 7429 and the notice of deficiency issued to the true owner relative to the later assessment are to be made within the prescribed time limits, using the actual date of the later assessment against the true owner.

(2) *Example.* The provisions of paragraph (c)(1) of this section may be illustrated by the following example:

Example. On June 5, 1994, A is found in possession of a bag, containing \$200,000, which A claims he was holding for a friend whose name A cannot remember. Because A does not claim ownership of the cash and does not provide the name of the true owner so that the Commissioner can identify the true owner and have that person acknowledge ownership of the cash, it is presumed that the cash represents gross income of an individual for calendar year 1994, and that the collection of tax on that gross income will be jeopardized by delay. Accordingly, on June 17, 1994, a termination assessment under section 6851 is made against A, in his capacity as possessor of the cash. On June 21, 1994, the written statement of information provided for by section 7429(a)(1) is given to A. No request for review under section 7429(a)(2) is made by the true owner within 30 days after the day on which A was furnished the written statement provided for in section 7429(a)(1). Subsequently, individual B comes to the Service and states that he is the owner of the cash. On September 2, 1994, the Service determines that B was the true owner of the cash on June 5, 1994. On September 9, 1994, the Service abates the termination assessment made against A solely as possessor of cash and, after determining that jeopardy exists, replaces it with a termination assessment under section 6851 against B. The lien against B that arises under section 6321 is treated as arising on June 17, 1994. However, within 5 days after September 9, 1994, the Service must give B the written statement of information required by section 7429(a)(1) so that B can make a request for review under section 7429(a)(2). In addition, a notice of deficiency must be sent to B within 60 days after the later of the due date or the actual filing of B's tax return for 1994, as required by section 6851(b).

(d) *Rights of possessor of cash—(1) Action permitted.* Section 6867 provides that the possessor of cash is treated as the taxpayer for purposes of chapter 63 (relating to assessment) and chapter 64 (relating to collection) of the Internal Revenue Code. Accordingly, the possessor of cash may file a petition with the United States Tax Court, within the applicable time limits,