

§ 1.1502–76 Taxable year of members of group.

(a) *Taxable year of members of group.* The consolidated return of a group must be filed on the basis of the common parent's taxable year, and each subsidiary must adopt the common parent's annual accounting period for the first consolidated return year for which the subsidiary's income is includible in the consolidated return. If any member is on a 52–53-week taxable year, the rule of the preceding sentence shall, with the advance consent of the Commissioner, be deemed satisfied if the taxable years of all members of the group end within the same 7-day period. Any request for such consent shall be filed with the Commissioner of Internal Revenue, Washington, DC 20224, not later than the 30th day before the due date (not including extensions of time) for the filing of the consolidated return.

(b) * * *

(2) * * *

(ii) * * *

(D) *Election—(1) Statement.* The election to ratably allocate items under this paragraph (b)(2)(ii) must be made in a separate statement entitled, “THIS IS AN ELECTION UNDER § 1.1502–76(b)(2)(ii) TO RATABLY ALLOCATE THE YEAR'S ITEMS OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF THE MEMBER].” The election must be filed by including a statement on or with the returns including the items for the years ending and beginning with S's change in status. If two or more members of the

same consolidated group, as a consequence of the same plan or arrangement, cease to be members of that group and remain affiliated as members of another consolidated group, an election under this paragraph (b)(2)(ii)(D)(1) may be made only if it is made by each such member. Each statement must also indicate that an agreement, as described in paragraph (b)(2)(ii)(D)(2) of this section, has been entered into. Each party signing the agreement must retain either the original or a copy of the agreement as part of its records. See § 1.6001–1(e).

(2) *Agreement.* For each election under this paragraph (b)(2)(ii), the member and the common parent of each affected group must sign and date an agreement. The agreement must—

(i) Identify the extraordinary items, their amounts, and the separate or consolidated returns in which they are included;

(ii) Identify the aggregate amount to be ratably allocated, and the portion of the amount included in the separate and consolidated returns; and

(iii) Include the name and employer identification number of the common parent (if any) of each group that must take the items into account.

* * * * *

(d) *Effective/applicability date—(1) Taxable years of members of group effective date.* (i) *In general.* Paragraph (a) of this section applies to any original consolidated Federal income tax return due (without extensions) after July 20, 2007.

(ii) *Prior law.* For original consolidated Federal income tax returns due (without extensions) after April 25, 2006, and on or before July 20, 2007, see § 1.1502–76T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before April 25, 2006, see § 1.1502–76 as contained in 26 CFR part 1 in effect on April 1, 2006.

(2) *Election to ratably allocate items effective date—(i) In general.* Paragraph (b)(2)(ii)(D) of this section applies to any original consolidated Federal income tax return due (without extensions) after July 20, 2007.

(ii) *Prior law.* For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before July 20, 2007, see § 1.1502–76T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see § 1.1502–76 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.1502–76T [Removed]

■ **Par. 5.** Section 1.1502–76T is removed.

§ 1.502–35 [Amended]**§ 1.502–76 [Amended]**

■ **Par. 6.** For each entry in the “Location” column of the following table, remove the language in the “Remove” column and add the language in the “Add” column in its place:

Location	Remove	Add
§ 1.1502–35(c)(4)(ii)(B)	§ 1.1502–76T(b)(2)(ii)(D)	§ 1.1502–76(b)(2)(ii)(D).
§ 1.1502–76(b)(2)(ii)(A)(2)	paragraph (b)(2)(ii)(D) of § 1.1502–76T	paragraph (b)(2)(ii)(D) of this section.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 16, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 301**

[TD 9344]

RIN 1545–BG24

Change to Office to Which Notices of Nonjudicial Sale and Requests for Return of Wrongfully Levied Property Must Be Sent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the discharge of liens under section

7425 and return of wrongfully levied upon property under section 6343 of the Internal Revenue Code (Code) of 1986. These temporary regulations clarify that such notices and claims should be sent to the IRS official and office specified in the relevant IRS publications. The temporary regulations will affect parties seeking to provide the IRS with notice of a nonjudicial foreclosure sale and parties making administrative requests for return of wrongfully levied property. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective/applicability Date:* These regulations are effective August 20, 2007.

FOR FURTHER INFORMATION CONTACT: Robin M. Ferguson, (202) 622-3610 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the giving of notice of nonjudicial sales under section 7425(b) of the Code. Final regulations (TD 7430) were published on August 20, 1976, in the **Federal Register** (41 FR 35174). This document also contains amendments to the Procedure and Administration Regulations relating to requests for return of wrongfully levied property under section 6343(b) of the Code. Final regulations (TD 8587) were published on January 3, 1995, in the **Federal Register** (60 FR 33).

For notices of nonjudicial foreclosure sale under Section 7425(b) and requests for return of property wrongfully levied upon under Section 6343(b), the existing regulations direct the notices and requests to be sent to the "district director (marked for the attention of the Chief, Special Procedures Staff)." The offices of the district director and Special Procedures were eliminated by the IRS reorganization implemented pursuant to the IRS Restructuring and Reform Act of 1998, Public Law 105-206 (RRA 1998), creating uncertainty as to the timeliness of notices and requests under these provisions.

Explanation of Provisions

Section 7425(b) provides for the discharge of a junior federal tax lien by a nonjudicial sale, if proper notice is provided to the IRS. Treas. Reg. § 301.7425-2(a). Notice of a nonjudicial sale is required if notice of the federal tax lien has been properly filed more than 30 days before the nonjudicial sale. Section 7425(b)(1). A party holding a nonjudicial sale must provide written notification to the IRS at least 25 days prior to the scheduled sale of the property or the federal tax lien remains on the property after the sale. Section 7425(c)(1). When the notice is properly sent, and the federal tax lien discharged, the IRS may redeem the property within 120 days from the date of sale or any longer period allowed under state law. Section 7425(d). If the notice is not properly sent, the nonjudicial sale is made subject to and without disturbing the federal tax lien. Section 7425(b); Treas. Reg. § 301.7425-2(a); *Tompkins v. United States*, 946 F.2d 817, 820

(11th Cir. 1991); *Simon v. United States*, 756 F.2d 696, 697-98 (9th Cir. 1985).

Treas. Reg. § 301.7425-3(a)(1) specifies that notice "shall be given, in writing by registered or certified mail or by personal service * * * to the district director (marked for the attention of the chief, special procedures staff) for the Internal Revenue district in which the sale is to be conducted." The regulation further provides that such notice of sale is not effective if given to a district director other than the district director for the Internal Revenue district in which the sale is to be conducted.

In light of the IRS reorganization subsequent to RRA 1998, the district and special procedures offices referenced in the regulations no longer exist. Notices of sale, if addressed to an office other than that stated in the regulation, may be misdirected. As a result, the IRS office responsible for evaluating notices of nonjudicial sale may not receive notice of the sale and the IRS may not have the opportunity to timely redeem. In *Glasgow Realty, LLC v. Withington*, 345 F. Supp. 2d 1025 (E.D. Mo. 2004), the court held that the federal tax lien was discharged by a nonjudicial sale under section 7425(b) where the notice of sale was addressed to a local IRS taxpayer assistance center rather than the district director's office. *Glasgow Realty* demonstrates the confusion that resulted from attempts to comply with the current regulation in light of the IRS reorganization. An amendment is necessary to both assist the public so as to prevent further confusion on where to send notices of nonjudicial foreclosure sales, and to prevent the possible loss of proceeds that the IRS could acquire from redemptions if the proper office has timely notice of the sale.

Similar problems arise with respect to requests for return of wrongfully levied property under section 6343(b). Requests for the return of the amount of money levied upon or received from the sale of property must be filed within nine months from the date of the levy. Treas. Reg. § 301.6343-2(a)(2). The nine month period for filing a wrongful levy suit is extended by the filing of a timely administrative claim. Section 6532(c).

As is the case with notices of nonjudicial sale, the regulations specify that the request for return of wrongfully levied property be addressed to the district director (marked for the attention of the Chief, Special Procedures Staff) for the Internal Revenue district in which the levy is made. Treas. Reg. § 301.6343-2(b). The elimination of these offices by the IRS reorganization can similarly result in misdirected requests. An amendment is

necessary to assist the public in filing timely requests with the proper office.

In order to account for the IRS's current organizational structure and to allow for future reorganizations of the IRS, the temporary regulations remove the title "district director" throughout Treas. Reg. §§ 301.7425-3 and 301.6343-2. The title is not replaced with any specific official or office. Instead, the public is directed to refer to the current relevant IRS publications or their successor publications for where to send notices or claims. The temporary regulations provide the web address for the IRS Internet site which may be used to obtain copies of IRS publications. The current publications for nonjudicial foreclosure sales are IRS Publication 786, "Instructions for Preparing a Notice of Nonjudicial Sale of Property and Application for Consent to Sale," and IRS Publication 4235, "Technical Services (Advisory) Group Addresses." According to Publication 786, the application or notice should be addressed to the Technical Services Group Manager for the area in which the notice of federal tax lien was filed. Publication 786 then instructs the reader to use Publication 4235 to determine where to mail the request. Publication 4235 lists the addresses for the Technical Services offices. The current publication for requests for return of wrongfully levied property is IRS Publication 4528, "Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b)." According to Publication 4528, the claim should be marked for the attention of the Advisory Territory Manager for the area where the taxpayer whose tax liability was the basis for the levy or seizure resides. Publication 4528 then instructs the reader to use Publication 4235 to locate the mailing address for the appropriate Advisory Territory Manager.

Effective Date

These temporary regulations apply to any notice of sale filed or request for return of property made after August 20, 2007.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the

Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robin M. Ferguson, Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

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 301.6343–2 is amended as follows:

■ 1. Paragraphs (a)(1) introductory text and (b) introductory text are revised.

■ 2. Paragraphs (a)(4), (c), (d)(1), and (d)(2) are amended by removing the language “director” and adding the language “IRS” in its place wherever it appears.

■ 3. Paragraph (b)(4), is amended by removing the language “Internal Revenue district” and adding the language “IRS office” in its place.

■ 4. Paragraph (e) is revised.

The revisions and addition read as follows:

§ 301.6343–2 Return of wrongfully levied upon property.

(a) * * * (1) [Reserved]. For further guidance, See § 301.6343–2T(a) introductory text.

* * * * *

(b) [Reserved]. For further guidance, See § 301.6343–2T(b) introductory text.

* * * * *

(e) [Reserved]. For further guidance, See § 301.6343–2T(e).

■ **Par. 3.** Section 301.6343–2T is added to read as follows:

§ 301.6343–2T 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—

(a)(1)(i) through (a)(4) [Reserved]. For further guidance, see § 301.6343–2(a)(1)(i) through (a)(4).

(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 its 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—

(b)(1) through (d)(2) [Reserved]. For further guidance see § 301.6343–2(b)(1) through (d)(2).

(e) *Effective/applicability date.* This section applies to any request for return of wrongfully levied property that is filed after August 20, 2007.

■ **Par. 4.** Section 301.7425–3 is amended as follows:

■ 1. Paragraphs (a)(1), (b)(1), (b)(2), (c)(1), (d)(2), (d)(3), and (d)(4) are revised.

■ 2. Paragraphs (a)(2)(i), (a)(2)(ii)(C), and (a)(2)(iii) *Examples 1, 2, and 3* are amended by removing the language “district director” and adding the language “IRS” in its place wherever it appears.

■ 3. Paragraph (d)(1)(ii)(A) is amended by removing the language “internal revenue district” and adding the language “IRS office” in its place.

■ 4. Paragraph (e) is added.

The revisions and addition read as follows:

§ 301.7425–3 Discharge of liens; special rules.

(a) * * * (1) [Reserved]. For further guidance, See § 301.7425–3T(a)(1).

* * * * *

(b) * * * (1) [Reserved]. For further guidance, See § 301.7425–3T(b)(1).

* * * * *

(2) [Reserved]. For further guidance, See § 301.7425–3T(b)(2).

(c) * * * (1) [Reserved]. For further guidance, See § 301.7425–3T(c)(1).

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(d) * * * (2) [Reserved]. For further guidance, See § 301.7425–3T(d)(2).

(3) [Reserved]. For further guidance, See § 301.7425–3T(d)(3).

(4) [Reserved]. For further guidance, See § 301.7425–3T(d)(4).

(e) [Reserved]. For further guidance, See § 301.7425–3T(e).

■ **Par. 5.** Section 301.7425–3T is added to read as follows:

§ 301.7425–3T Discharge of liens; special rules.

(a) *Notice of sale requirements*—(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (c) of this section, a notice (as described in paragraph (d) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of § 301.7425–2(b)), to the Internal Revenue Service (IRS) official, office and address specified in IRS Publication 786, “Instructions for Preparing a Notice of Nonjudicial Sale of Property and Application for Consent to Sale,” or its successor publication. The relevant IRS publications may be downloaded from the IRS Internet site at <http://www.irs.gov>. Under this section, a notice of sale is not effective if it is given to an office other than the office listed in the relevant publication. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph.

(a)(2) [Reserved]. For further guidance, see § 301.7425–3(a)(2).

(b) *Consent to sale*—(1) *In general.* Notwithstanding the notice of sale provisions of paragraph (a) of this section, a nonjudicial sale of property shall discharge or divest the property of the lien and title of the United States if the IRS consents to the sale of the property free of the lien or title. Pursuant to section 7425(c)(2), where adequate protection is afforded the lien or title of the United States, the IRS may, in its discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be effective only if given in writing and shall be subject to such limitations and conditions as the IRS may require. However, the IRS may not consent to a sale of property under this section after the date of sale, as determined under § 301.7425–2(b). For provisions relating to the authority of the IRS to release a lien or discharge property subject to a tax lien, see section 6325 and the section 6325 regulations.

(2) *Application for consent.* Any person desiring the IRS’s consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the IRS, at the office and address specified in the relevant IRS publications, a written application, in triplicate, declaring that it is made

under penalties of perjury, and requesting that such consent be given. The application shall contain the information required in the case of a notice of sale, as set forth in paragraph (d)(1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(c) *Sale of perishable goods*—(1) *In general.* A notice (as described in paragraph (d) of this section) of a nonjudicial sale of perishable goods (as defined in paragraph (c)(2) of this section) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale, to the IRS official and office specified in the relevant IRS publications, at the address specified in such publications. Under this section, a notice of sale is not effective if it is given to an office other than the office listed in the relevant publication. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph, the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph and if the IRS asserts a claim to the proceeds within 30 days after the date of sale, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the IRS of the postponement. For provisions relating to the authority of the IRS to release a lien or discharge property subject to a tax lien, see section 6325 and the regulations.

(c)(2) through (d)(1) [Reserved]. For further guidance, see § 301.7425–3(c)(2) through (d)(1).

(d)(2) *Inadequate notice.* Except as otherwise provided in this paragraph, a notice of sale described in paragraph (a) of this section which does not contain the information described in paragraph (d)(1) of this section shall be considered inadequate by the IRS. If the IRS determines that the notice is inadequate, the IRS will give written notification of the items of information which are inadequate to the person who submitted the notice. A notice of sale which does not contain the name and address of the person submitting such notice shall be considered to be inadequate for all purposes without notification of any specific inadequacy. In any case where a notice of sale does not contain the information required under paragraph (d)(1)(ii) of this section with respect to a Notice of Federal Tax Lien, the IRS may give written notification of such omission without specification of any other inadequacy and such notice of sale shall be considered inadequate for all purposes. In the event the IRS gives notification that the notice of sale is inadequate, a notice complying with the provisions of this section (including the requirement that the notice be given not less than 25 days prior to the sale in the case of a notice described in paragraph (a) of this section) must be given. However, in accordance with the provisions of paragraph (b)(1) of this section, in such a case the IRS may, in its discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is given less than 25 days prior to the sale. In any case where the person who submitted a timely notice which indicates his name and address does not receive, more than 5 days prior to the date of sale, written notification from the IRS that the notice is inadequate, the notice shall be considered adequate for purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (a) or (c) of this section is submitted in duplicate to the IRS with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the IRS. The acknowledgment by the IRS will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The IRS is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of this section. Any person desiring this information should submit to the IRS a

written request which clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request. The request should be submitted to the IRS official, office and address specified in IRS Publication 4235, “Technical Services (Advisory) Group Addresses,” or its successor publication. The relevant IRS publications may be downloaded from the IRS internet site at <http://www.irs.gov>.

(e) *Effective/applicability date.* This section applies to any notice of sale that is filed after August 20, 2007.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 11, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 650

Environmental Protection and Enhancement

AGENCY: Department of the Army, DoD.

ACTION: Final rule; removal.

SUMMARY: This action removes 32 CFR part 650, Environmental Protection and Enhancement, published in the **Federal Register**, December 29, 1977 (42 FR 65026). The rule is being removed because it is now obsolete and does not affect the general public.

DATES: Effective July 20, 2007.

ADDRESSES: Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, ATTN: DAIM–ED, 600 Army Pentagon, Washington, DC 20310–0600.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Warnock, (703) 601–1573.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Chief of Staff for Installation Management, is the proponent for the regulation represented in 32 CFR part 650, and has concluded this regulation is obsolete. This regulation has been extensively revised and has been determined that the procedures prescribed in the regulation are for Army officials, and not intended to be enforced against any member of