

electing partnership may deduct an amount equal to the lesser of the amount of the organizational expenses of the partnership, or \$5,000 (reduced (but not below zero) by the amount by which the organizational expenses exceed \$50,000). The remainder of the organizational expenses is deductible ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses of the partnership are considered in determining whether the organizational expenses exceed \$50,000, including expenses incurred on or before October 22, 2004.

(2) *Time and manner of making election.* A partnership is deemed to have made an election under section 709(b) to amortize organizational expenses as defined in section 709(b)(3) and § 1.709-2(a) for the taxable year in which the partnership begins business. A partnership may choose to forgo the deemed election by clearly electing to capitalize its organizational expenses on a timely filed Federal income tax return (including extensions) for the taxable year in which the partnership begins business. The election either to amortize organizational expenses under section 709(b) or to capitalize organizational expenses is irrevocable and applies to all organizational expenses of the partnership. A change in the characterization of an item as an organizational expense is a change in method of accounting to which sections 446 and 481(a) apply if the partnership treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the partnership begins business also is treated as a change in method of accounting if the partnership amortized organizational expenses for two or more taxable years.

(3) *Liquidation of partnership.* If there is a winding up and complete liquidation of the partnership prior to the end of the amortization period, the unamortized amount of organizational expenses is a partnership deduction in its final taxable year to the extent provided under section 165 (relating to losses). However, there is no partnership deduction with respect to its capitalized syndication expenses.

(4) *Examples.* The following examples illustrate the application of this section:

Example 1. Expenditures of \$5,000 or less. Partnership X, a calendar year taxpayer, incurs \$3,000 of organizational expenses after October 22, 2004, and begins business on July 1, 2009. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore,

Partnership X may deduct the entire amount of the organizational expenses in 2009, the taxable year in which Partnership X begins business.

Example 2. Expenditures of more than \$5,000 but less than or equal to \$50,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of \$41,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct \$5,000 and the portion of the remaining \$36,000 that is allocable to July through December of 2009 ($\$36,000/180 \times 6 = \$1,200$) in 2009, the taxable year in which Partnership X begins business.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Partnership X realizes in 2011 that Partnership X incurred \$10,000 for an additional organizational expense erroneously deducted in 2009 under section 162 as a business expense. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2009, including the additional \$10,000 of organizational expenses. Partnership X is using an impermissible method of accounting for the additional \$10,000 of organizational expenses and must change its method under § 1.446-1(e) and the applicable general administrative procedures in effect in 2011.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2010, Partnership X deducted the organizational expenses allocable to January through December of 2010 ($\$36,000/180 \times 12 = \$2,400$). In addition, in 2011 it is determined that Partnership X actually began business in 2010. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2010. Partnership X impermissibly deducted organizational expenses in 2009, and incorrectly determined the amount of organizational expenses deducted in 2010. Therefore, Partnership X is using an impermissible method of accounting for the organizational expenses and must change its method under § 1.446-1(e) and the applicable general administrative procedures in effect in 2011.

Example 5. Expenditures of more than \$50,000 but less than or equal to \$55,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of \$54,500. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct \$500 ($\$5,000 - 4,500$) and the portion of the remaining \$54,000 that is allocable to July through December of 2009 ($\$54,000/180 \times 6 = \$1,800$) in 2009, the taxable year in which Partnership X begins business.

Example 6. Expenditures of more than \$55,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of \$450,000. Under paragraph (b)(2) of this section, Partnership

X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct the amounts allocable to July through December of 2009 ($\$450,000/180 \times 6 = \$15,000$) in 2009, the taxable year in which Partnership X begins business.

(5) *Effective/applicability date.* This section applies to organizational expenses paid or incurred after September 8, 2008. However, taxpayers may apply all the provisions of this section to organizational expenses paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (b)(2) of this section is deemed made has not expired. Otherwise, for organizational expenses paid or incurred prior to September 8, 2008, see § 1.709-1 in effect prior to that date (§ 1.709-1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

(6) *Expiration date.* This section expires on July 7, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2008.

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 9410]

RIN 1545-BF54

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 regulations and removal of temporary regulations.

SUMMARY: This document contains final 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 regulations revise regulations currently published under sections 7425 and 6343. These regulations clarify that such notices and claims should be sent to the IRS official and office specified in the relevant IRS publications. The 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.

DATES: *Effective Date:* These regulations are effective on July 8, 2008.

Applicability Date: See §§ 301.6343–2 and 301.6343–3.

FOR FURTHER INFORMATION CONTACT: Robin M. Ferguson, (202) 622–3630 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending 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. This document also contains final regulations amending the Procedure and Administration Regulations relating to requests for return of wrongfully levied property under section 6343(b) of the Code. On July 20, 2007, temporary regulations (TD 9344) were published in the **Federal Register** (72 FR 39737). A notice of proposed rulemaking (REG–148951–05) cross-referencing the temporary regulations was published in the **Federal Register** on the same day (72 FR 39771). No written comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested, scheduled or held. The proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed.

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.

Comments on the Proposed Regulations

None.

Modifications of the Proposed Regulations

None, other than minor grammatical revisions.

Effective/Applicability Date

These regulations are effective on July 8, 2008.

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. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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).

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 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. Paragraph (e) is revised.

The revisions read as follows:

§ 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—

* * * * *

(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—

* * * * *

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

§ 301.6343–2T [Removed].

■ **Par. 3.** Section 301.6343–2T is removed.

■ **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. Paragraph (a)(2)(iii) *Example 2* is amended by removing the language “district director” and adding the language “IRS” in its place wherever it appears.

■ 3. Paragraph (e) is revised.

The revisions and additions read as follows:

§ 301.7425–3 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 any 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.

* * * * *

(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.

* * * * *

(d) * * *

(2) *Inadequate notice.* Except as otherwise provided in this paragraph, a notice of sale described in paragraph (a) of this section that 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 that 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 that 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 any successor publication. The relevant IRS publications may be downloaded from the IRS Internet site at <http://www.irs.gov>.

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

§ 301.7425-3T [Removed].

■ **Par. 5.** Section 301.7425-3T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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