

judgment in any civil action or suit described in subsection (a) of 28 U.S.C. 2410 (relating to joinder of the United States in certain proceedings), or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of 26 U.S.C. If the United States is improperly named as a party to a judicial proceeding, the effect is the same as if the United States were not joined.

(2) *Notice of lien filed when the proceeding is commenced.* Where the United States is not properly joined as a party in the court proceeding and a notice of lien has been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, a judgment or judicial sale pursuant to such a judgment shall be made subject to and without disturbing the lien of the United States.

(3) *Notice of lien not filed when the proceeding is commenced.* Where the United States is not joined as a party in the court proceeding and either a notice of lien has not been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, or the law makes no provision for that filing, a judgment or judicial sale pursuant to such a judgment shall have the same effect with respect to the discharge or divestment of the lien of the United States as may be provided with respect to these matters by the local law of the place where the property is situated.

(4) *Proceeds of a judicial sale.* If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of 26 U.S.C., the United States may claim the proceeds of the sale (exclusive of costs) prior to the time that distribution of the proceeds is ordered. The claim of the United States in such a case is treated as having the same priority with respect to the proceeds as the lien had with respect to the property which was discharged from the lien by the judicial sale.

(26 U.S.C. 7425(a))

§ 70.204 Discharge of liens; nonjudicial sales.

(a) *In general.* Title 26 U.S.C. 7425(b) contains provisions with respect to the effect on the interest of the United States in property in which the United States has or claims a lien, or a title derived from the enforcement of a lien, of a sale made pursuant to:

(1) An instrument creating a lien on the property sold.

(2) A confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or

(3) A statutory lien on the property sold.

For purposes of this section, such a sale is referred to as a "nonjudicial sale." The term "nonjudicial sale" includes, but is not limited to, the divestment of the taxpayer's interest in property which occurs by operation of law, by public or private sale, by forfeiture, or by termination under provisions contained in a contract for a deed or a conditional sales contract. Under 26 U.S.C. 7425(b)(1), if a notice of lien is filed in accordance with 26 U.S.C. 6323(f) or (g), or the title derived from the enforcement of a lien is recorded as provided by local law, more than 30 days before the date of sale and the appropriate ATF officer is not given notice of the sale (in the manner prescribed in § 70.205 of this part), the sale shall be made subject to and without disturbing the lien or title of the United States. Under 26 U.S.C. 7425(b)(2)(C), in any case in which notice of the sale is given to the appropriate ATF officer not less than 25 days prior to the date of sale (in the manner prescribed in 26 U.S.C. 7425(c)(1)), the sale shall have the same effect with respect to the discharge or divestment of the lien or title as may be provided by local law with respect to other junior liens or other titles derived from the enforcement of junior liens. A nonjudicial sale pursuant to a lien which is junior to a tax lien does not divest the tax lien, even though notice of the nonjudicial sale is given to the appropriate ATF officer. However, under the provisions of 26 U.S.C. 6325(b) and § 70.150 of this part, designated officers may discharge the property from a tax lien, including a tax lien which is senior to another lien upon the property.

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(b) *Date of sale.* In the case of a nonjudicial sale subject to the provisions of 26 U.S.C. 7425(b), in order to compute any period of time determined with reference to the date of sale, the date of sale shall be determined in accordance with the following rules:

(1) In the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred.

(2) In the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and

(3) In the case of divestment of junior liens on property not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law. For provisions relating to the right of redemption of the United States, see 26 U.S.C. 7425(d) and § 70.206 of this part.

(26 U.S.C. 7425(b))

§ 70.205 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 § 70.204(b) of this part), to the appropriate ATF officer. The provisions of 26 U.S.C. 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 legal holiday) apply in the case of notices required to be made under this paragraph.

(2) *Postponement of scheduled sale*—(i) *Where notice of sale is given.* In the event that notice of a sale is given in accordance with paragraph (a)(1) of this section, with respect to a sched-

uled sale which is postponed to a later time or date, the seller of the property is required to give notice of the postponement to the appropriate ATF officer, in the same manner as is required under local law with respect to other secured creditors. For example, assume that in State M local law requires that in the event of a postponement of a scheduled foreclosure sale of real property, an oral announcement of the postponement at the place and time of the scheduled sale constitutes sufficient notice to secured creditors of the postponement. Accordingly, if at the place and time of a scheduled sale in State M an oral announcement of the postponement is made, the Bureau is considered to have notice of the postponement for the purpose of this paragraph (a)(2).

(ii) *Where notice of sale is not given.* In the event that:

(A) Notice of a nonjudicial sale would not be required under paragraph (a)(1) of this section, if the sale were held on the originally scheduled date,

(B) Because of a postponement of the scheduled sale, more than 30 days elapse between the originally scheduled date of the sale and the date of the sale, and

(C) A notice of lien with respect to the property to be sold is filed more than 30 days before the date of the sale, notice of the sale is required to be given to the appropriate ATF officer in accordance with the provisions of paragraph (a)(1) of this section. In any case in which notice of sale is required to be given with respect to a scheduled sale, and notice of the sale is not given, any postponement of the scheduled sale does not affect the rights of the United States under 26 U.S.C. 7425(b).

(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 or title of the United States if the appropriate ATF officer consents to the sale of the property free of the lien or title. Pursuant to 26 U.S.C. 7425(c)(2), where adequate protection is afforded the lien or title of the United States, the appropriate ATF officer