

§ 70.167

or control of any books or records containing evidence or statements relating to the property or rights to property subject to levy, shall, upon demand of the appropriate TTB officer who has made or is about to make the levy, exhibit such books or records to such officer.

(26 U.S.C. 6333)

§ 70.167 Authority to release levy and return property.

(a) *Release of levy*—(1) *Authority.* An appropriate TTB officer may release the levy upon all or part of the property or rights to property levied upon as provided in paragraphs (a)(2), (3) and (4) of this section. A levy may be released under paragraph (a)(3) of this section only if the delinquent taxpayer complies with such of the conditions thereunder as an appropriate TTB officer may require and if the appropriate TTB officer determines that such action will facilitate the collection of the liability.

(2) *Conditions for mandatory release.* (i) An appropriate TTB officer shall release the levy as authorized under paragraph (a)(1) of this section, if any of the following conditions exist:

(A) The liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) Release of such levy will facilitate the collection of such liability,

(C) The taxpayer has entered into an agreement under 26 U.S.C. 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise (an appropriate TTB officer is not required to release the levy in this case if release of such levy would jeopardize the secured creditor status of the United States).

(D) An appropriate TTB officer has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) The fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

(ii) In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the appropriate TTB officer shall provide for an expedited determination

under paragraph (a)(2)(i) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) *Conditions for discretionary release.* An appropriate TTB officer may release the levy as authorized under paragraph (a)(1) of this section, if:

(i) *Escrow arrangement.* The delinquent taxpayer offers a satisfactory arrangement, which is accepted by an appropriate TTB officer, for placing property in escrow to secure the payment of the liability (including the expenses of levy) which is the basis of the levy.

(ii) *Bond.* The delinquent taxpayer delivers an acceptable bond to an appropriate TTB officer conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. Such bond shall be in the form provided in 26 U.S.C. 7101 and § 70.281 of this part.

(iii) *Payment of amount of U.S. interest in the property.* There is paid to an appropriate TTB officer an amount determined by TTB to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(iv) *Assignment of salaries and wages.* The delinquent taxpayer executes an agreement directing the taxpayer's employer to pay to an appropriate TTB officer amounts deducted from the employee's wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with an appropriate TTB officer, until the full amount of the liability is satisfied, and such agreement is accepted by the employer.

(v) *Extension of statute of limitations.* The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with 26 U.S.C. 6502(a)(2) and § 70.224 of this part.

(4) Release where value of interest of United States is insufficient to meet expenses of sale. An appropriate TTB officer may release the levy as authorized under paragraph (a)(1) of this section if that officer determines that the value of the interest of the United States in the seized property, or in the part of the seized property to be released is insufficient to cover the expenses of the sale of such property.

(b) *Return of property*—(1) *General rule.* If an appropriate TTB officer determines that property has been wrongfully levied upon, the appropriate TTB officer may return:

- (i) The specific property levied upon,
- (ii) An amount of money equal to the amount of money levied upon (together with interest thereon at the overpayment rate from the date TTB receives the money to a date not more than 30 days before the date of return), or
- (iii) An amount of money equal to the amount of money received by the United States from a sale of the property (together with interest thereon at the overpayment rate from the date of the sale of the property to a date not more than 30 days before the date of return).

If the United States is in possession of specific property, the property may be returned at any time. An amount equal to the amount of money levied upon or received from a sale of the property may be returned at any time before the expiration of 9 months from the date of the levy. When a request described in paragraph (b)(2) of this section is filed for the return of property before the expiration of 9 months from the date of levy, an amount of money may be returned after a reasonable period of time subsequent to the expiration of the 9-month period if necessary for the investigation and processing of such request. In cases where money is specifically identifiable, as in the case of a coin collection which may be worth substantially more than its face value, the money will be treated as specific property and, whenever possible, this specific property will be returned. For purposes of paragraph (b)(1)(iii) of this section, if property is declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335(e), the United States is treated as having received an amount of money equal to the minimum price determined by the appropriate TTB officer before the sale or, if larger, the amount received by the United States from the resale of the property.

(2) *Request for return of property.* A written request for the return of property wrongfully levied upon shall be addressed to the officer who authorized

the levy. The written request shall contain the following information:

- (i) The name and address of the person submitting the request,
- (ii) A detailed description of the property levied upon,
- (iii) A description of the claimant's basis for claiming an interest in the property levied upon, and
- (iv) The name and address of the taxpayer, the originating TTB office, and the date of lien or levy as shown on the Notice of Tax Lien, Notice of Levy, or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

(3) *Inadequate request.* A request shall not be considered adequate unless it is a written request containing the information required by paragraph (b)(2) of this section. However, unless a notification is mailed by the officer who received the request to the claimant within 30 days of receipt of the request to inform the claimant of the inadequacies, any written request shall be considered adequate. If the officer who received the request timely notifies the claimant of the inadequacies of the request, the claimant shall have 30 days from the receipt of the notification of inadequacy to supply in writing any omitted information. Where the omitted information is so supplied within the 30-day period, the request shall be considered to be adequate from the time the original request was made for purposes of determining the applicable period of limitation upon suit under 26 U.S.C. 6532(c).

(26 U.S.C. 6343)

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-450, 66 FR 29026, May 29, 2001]

§ 70.168 Redemption of property.

(a) *Before sale.* Any person whose property has been levied upon shall have the right to pay the amount due, together with costs and expenses of the proceeding, if any, to the appropriate TTB officer at any time prior to the sale of the property. Upon such payment the appropriate TTB officer shall restore such property to the owner and all further proceedings in connection with the levy on such property shall cease from the time of such payment.