

with respect to the release of the right of redemption.

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

[T.D. ATF-301, 55 FR 47634, Nov. 14, 1990, as amended by T.D. ATF-450, 66 FR 29027, May 29, 2001]

**§ 70.207 Civil actions by persons other than taxpayers.**

(a) *Actions permitted*—(1) *Wrongful levy.* If a levy has been made on property, or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim:

(i) That the person has an interest in, or a lien on, such property which is senior to the interest of the United States; and

(ii) That such property was wrongfully levied upon.

No action is permitted under 26 U.S.C. 7426(a)(1) unless there has been a levy upon the property claimed.

(2) *Surplus proceeds.* If property has been sold pursuant to levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon the claim that the person:

(i) Has an interest in or lien on such property junior to that of the United States; and

(ii) Is entitled to the surplus proceeds of such sale.

(3) *Substituted sale proceeds.* Any person who claims to be legally entitled to all or any part of the amount which is held as a fund from the sale of property pursuant to an agreement described in 26 U.S.C. 6325(b)(3) may bring a civil action against the United States in a district court of the United States to obtain the relief provided by 26 U.S.C. 7426(b)(4). It is not necessary that the claimant be a party to the agreement which provides for the substitution of the sale proceeds for the property subject to the lien.

(b) *Adjudication*—(1) *Wrongful levy.* If the court determines that property has

been wrongfully levied upon, the court may:

(i) Grant an injunction to prohibit the enforcement of such levy or to prohibit a sale of such property if such sale would irreparably injure rights in the property which are superior to the rights of the United States in such property; or

(ii) Order the return of specific property if the United States is in possession of such property; or

(iii) Grant a judgment for the amount of money levied upon, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date that the officer who made the levy receives the money wrongfully levied upon to the date of payment of such judgment, or

(iv) Grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property (which, in the case of property declared purchased by the United States at a sale, shall be the greater of the minimum amount determined pursuant to 26 U.S.C. 6335(e) or the amount received by the United States from the resale of such property), or the fair market value of such property immediately before the levy, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date of the sale of the property to the date of payment of such judgment.

For purposes of paragraph (b)(1) of this section, a levy is wrongful against a person (other than the taxpayer against whom the assessment giving rise to the levy is made), if the levy is upon property exempt from levy under 26 U.S.C. 6334, or the levy is upon property in which the taxpayer had no interest at the time the lien arose or thereafter, or the levy is upon property with respect to which such person is a purchaser against whom the lien is invalid under 26 U.S.C. 6323 or 6324(a)(2) or (b), or the levy or sale pursuant to levy will or does effectively destroy or otherwise irreparably injure such person's interest in the property which is senior to the Federal tax lien. A levy may be wrongful against a holder of a

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senior lien upon the taxpayer's property under certain circumstances although legal rights to enforce the holder's interest survive the levy procedure. For example, the levy may be wrongful against such a person if the property is an obligation which is collected pursuant to the levy rather than sold and nothing thereafter remains for the senior lienholder, or the property levied upon is of such a nature that when it is sold at a public sale the property subject to the senior lien is not available for the senior lienholder as a realistic source for the enforcement of the holder's interest. Some of the factors which should be taken into account in determining whether property remains or will remain a realistic source from which the senior lienholder may realize collection are: The nature of the property, the number of purchasers, the value of each unit sold or to be sold, whether, as a direct result of the distraint sale, the costs of realizing collection from the security have or will be so substantially increased as to render the security substantially valueless as a source of collection, and whether the property subject to the distraint sale constitutes substantially all of the property available as security for the payment of the indebtedness to the senior lienholder.

(2) *Surplus proceeds.* If the court determines that the interest or lien of any party to an action under 26 U.S.C. 7426 was transferred to the proceeds of a sale of the property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale. The term "surplus proceeds" means property remaining after application of the provisions of 26 U.S.C. 6342(a).

(3) *Substituted sale proceeds.* If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in 26 U.S.C. 6325(b)(3), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(26 U.S.C. 7426)

## 27 CFR Ch. I (4-1-08 Edition)

### § 70.208 Review of jeopardy assessment or jeopardy levy procedures; information to taxpayer.

Not later than 5 days after the day on which an assessment is made under 26 U.S.C. 6862 or when a levy is made less than 30 days after the notice and demand described in 26 U.S.C. 6331(a), the officer who authorized the assessment or levy shall provide the taxpayer a written statement setting forth the information upon which that official relies in authorizing such assessment or levy.

(26 U.S.C. 7429(a)(1))

### § 70.209 Review of jeopardy assessment or levy procedures; administrative review.

(a) *Request for administrative review.* Any request for the review of a jeopardy assessment or levy provided for by 26 U.S.C. 7429(a)(2) shall be filed with the officer who authorized the assessment or levy, within 30 days after the statement described in § 70.208 of this part is given to the taxpayer. However, if no statement is given within the 5-day period described in § 70.208, any request for review of the jeopardy assessment shall be filed within 35 days after the date the assessment is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the reviewing officer to make the redetermination described in 26 U.S.C. 7429(a)(3).

(b) *Administrative review.* In determining whether the assessment or levy is reasonable and the amount assessed appropriate, the reviewing officer shall take into account not only information available at the time the assessment is made but also information which subsequently becomes available.

(26 U.S.C. 7429(a)(2))

### § 70.210 Review of jeopardy assessment or levy procedures; judicial action.

(a) *Time for bringing judicial action.* An action for judicial review described in 26 U.S.C. 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of: