

## 26 U.S. Code § 6343. Authority to release levy and return property

U.S. Code      Notes

### (a) RELEASE OF LEVY AND NOTICE OF RELEASE

**(1) IN GENERAL** Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

**(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 section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

**(D)** the Secretary 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.

For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

### (2) EXPEDITED DETERMINATION ON CERTAIN BUSINESS PROPERTY

In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the Secretary shall provide for an expedited determination under paragraph (1) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

### (3) SUBSEQUENT LEVY

The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property.

**(b) RETURN OF PROPERTY** If the Secretary determines that property has been wrongfully levied upon, it shall be lawful for the Secretary to return—

**(1)** the specific property levied upon,

**(2)** an amount of money equal to the amount of money levied upon, or

**(3)** an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 2 years from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United

States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

**(c) INTEREST** Interest shall be allowed and paid at the overpayment rate established under section 6621

**(1)** in a case described in subsection (b)(2), from the date the Secretary receives the money to a date (to be determined by the Secretary) preceding the date of return by not more than 30 days, or

**(2)** in a case described in subsection (b)(3), from the date of the sale of the property to a date (to be determined by the Secretary) preceding the date of return by not more than 30 days.

**(d) RETURN OF PROPERTY IN CERTAIN CASES** If—

**(1)** any property has been levied upon, and

**(2)** the Secretary determines that—

**(A)** the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

**(B)** the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

**(C)** the return of such property will facilitate the collection of the tax liability, or

**(D)** with the consent of the taxpayer or the National Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c).

**(e) RELEASE OF LEVY UPON AGREEMENT THAT AMOUNT IS NOT COLLECTIBLE**

In the case of a levy on the salary or wages payable to or received by the taxpayer, upon agreement with the taxpayer that the tax is not collectible, the Secretary shall release such levy as soon as practicable.

**(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC.<sup>[1]</sup> ON RETIREMENT PLAN**

**(1) IN GENERAL** If the Secretary determines that an individual's account or benefit under an eligible retirement plan (as defined in section 402(c)(8)(B)) has been levied upon in a case to which subsection (b) or (d)(2)(A) applies and property or an amount of money is returned to the individual—

**(A)** the individual may contribute such property or an amount equal to the sum of—

**(i)** the amount of money so returned by the Secretary, and

**(ii)** interest paid under subsection (c) on such amount of money,

into such eligible retirement plan if such contribution is permitted by the plan, or into an individual retirement plan (other than an endowment contract) to which a rollover contribution of a distribution from such eligible retirement plan is permitted, but only if such contribution is made not later than the due date (not including extensions) for filing the return of tax for the taxable year in which such property or amount of money is returned, and

**(B)** the Secretary shall, at the time such property or amount of money is returned, notify such individual that a contribution described in subparagraph (A) may be made.

**(2) TREATMENT AS ROLLOVER** The distribution on account of the levy and any contribution under paragraph (1) with respect to the return of such distribution shall be treated for purposes of this title as if such distribution and contribution were described in section 402(c), 402A(c)(3), 403(a)(4), 403(b)(8), 408(d)(3), 408A(d)(3), or 457(e)(16), whichever is applicable; except that—

**(A)** the contribution shall be treated as having been made for the taxable year in which the distribution on account of the levy occurred, and the interest paid under subsection (c) shall be treated as earnings within the plan after the contribution and shall not be included in gross income, and

**(B)** such contribution shall not be taken into account under section 408(d)(3)(B).

**(3) REFUND, ETC., OF INCOME TAX ON LEVY**

**(A) In general**

If any amount is includible in gross income for a taxable year by reason of a distribution on account of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover contribution under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

**(B) Exception**

Subparagraph (A) shall not apply to a rollover contribution under this subsection which is made from an eligible retirement plan which is not a Roth IRA or a designated Roth account (within the meaning of section 402A) to a Roth IRA or a designated Roth account under an eligible retirement plan.

**(4) INTEREST**

Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.

**(5) TREATMENT OF INHERITED ACCOUNTS**

For purposes of paragraph (1)(A), section 408(d)(3)(C) shall be disregarded in determining whether an individual retirement plan is a plan to which a rollover contribution of a distribution from the plan levied upon is permitted.

(Aug. 16, 1954, ch. 736, 68A Stat. 789; Pub. L. 89-719, title I, § 104(i), Nov. 2, 1966, 80 Stat. 1138; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-167, § 4(a), Dec. 29, 1979, 93 Stat. 1275; Pub. L. 99-514, title XV, § 1511(c)(10), Oct. 22, 1986, 100 Stat. 2745; Pub. L. 100-647, title VI, § 6236(f), Nov. 10, 1988, 102 Stat. 3740; Pub. L. 104-168, title V, § 501(b), July 30, 1996, 110 Stat. 1460; Pub. L. 105-206, title I, § 1102(d)(1)(B), title III, § 3432(a), July 22, 1998, 112 Stat. 704, 759; Pub. L. 115-97, title I, § 11071(a), Dec. 22, 2017, 131 Stat. 2091; Pub. L. 115-123, div. D, title II, § 41104(a), Feb. 9, 2018, 132 Stat. 155.)

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