

**TITLE 26 - INTERNAL REVENUE CODE****Subtitle F - Procedure and Administration****CHAPTER 76 - JUDICIAL PROCEEDINGS****Subchapter B - Proceedings by Taxpayers and Third Parties****§ 7426. 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, and any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary.

**(2) Surplus proceed**

If 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) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

**(3) Substituted sale proceeds**

If property has been sold pursuant to an agreement described in section 6325 (b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

**(4) Substitution of value**

If a certificate of discharge is issued to any person under section 6325 (b)(4) with respect to any property, such person may, within 120 days after the day on which such certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary. No other action may be brought by such person for such a determination.

**(b) Adjudication**

The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

**(1) Injunction**

If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

**(2) Recovery of property**

If the court determines that such property has been wrongfully levied upon, the court may—

- (A) order the return of specific property if the United States is in possession of such property;
- (B) grant a judgment for the amount of money levied upon; or
- (C) if such property was sold, grant a judgment for an amount not exceeding the greater of—
  - (i) the amount received by the United States from the sale of such property, or
  - (ii) the fair market value of such property immediately before the levy.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335 (e) (relating to manner and conditions of sale), the

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United States shall be treated as having received an amount 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.

**(3) Surplus proceeds**

If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such 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.

**(4) 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 section 6325 (b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

**(5) Substitution of value**

If the court determines that the Secretary's determination of the value of the interest of the United States in the property for purposes of section 6325 (b)(4) exceeds the actual value of such interest, the court shall grant a judgment ordering a refund of the amount deposited, and a release of the bond, to the extent that the aggregate of the amounts thereof exceeds such value determined by the court.

**(c) Validity of assessment**

For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

**(d) Limitation on rights of action**

No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

**(e) Substitution of United States as party**

If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

**(f) Provision inapplicable**

The provisions of section 7422 (a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

**(g) Interest**

Interest shall be allowed at the overpayment rate established under section 6621—

- (1) In the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary receives the money wrongfully levied upon to the date of payment of such judgment;
- (2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment; and
- (3) in the case of a judgment pursuant to subsection (b)(5) which orders a refund of any amount, from the date the Secretary received such amount to the date of payment of such judgment.

**(h) Recovery of damages permitted in certain cases**

**(1) In general**

Notwithstanding subsection (b), if, in any action brought under this section, there is a finding that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason

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of negligence, disregarded any provision of this title the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$1,000,000 (\$100,000 in the case of negligence) or the sum of—

- (A) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent disregard of any provision of this title by the officer or employee (reduced by any amount of such damages awarded under subsection (b)); and
- (B) the costs of the action.

**(2) Requirement that administrative remedies be exhausted; mitigation; period**

The rules of section 7433 (d) shall apply for purposes of this subsection.

**(3) Payment authority**

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

**(i) Cross reference**

For period of limitation, see section 6532 (c).

(Added Pub. L. 89–719, title I, § 110(a), Nov. 2, 1966, 80 Stat. 1142; amended Pub. L. 93–625, § 7(a)(2)(E), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, § 350(a), Sept. 3, 1982, 96 Stat. 639; Pub. L. 99–514, title XV, § 1511(c)(16), Oct. 22, 1986, 100 Stat. 2745; Pub. L. 105–206, title III, §§ 3102(b), 3106 (b)(1), (2), July 22, 1998, 112 Stat. 730, 733.)

**Amendments**

1998—Subsec. (a)(4). Pub. L. 105–206, § 3106(b)(1), added par. (4).

Subsec. (b)(5). Pub. L. 105–206, § 3106(b)(2)(A), added par. (5).

Subsec. (g)(3). Pub. L. 105–206, § 3106(b)(2)(B), added par. (3).

Subsecs. (h), (i). Pub. L. 105–206, § 3102(b), added subsec. (h) and redesignated former subsec. (h) as (i).

1986—Subsec. (g). Pub. L. 99–514 substituted “the overpayment rate established under section 6621” for “an annual rate established under section 6621”.

1982—Subsec. (b)(2)(C). Pub. L. 97–248 inserted “if such property was sold,” before “grant a judgment” and “the greater of—” after “not exceeding”, redesignated remaining provisions as cl. (i), and added cl. (ii).

1976—Pub. L. 94–455 struck out “or his delegate” after “Secretary” wherever appearing.

1975—Subsec. (g). Pub. L. 93–625 substituted “an annual rate established under section 6621” for “the rate of 6 percent per annum”.

**Effective Date of 1998 Amendment**

Pub. L. 105–206, title III, § 3102(d), July 22, 1998, 112 Stat. 731, provided that: “The amendments made by this section [amending this section and section 7433 of this title] shall apply to actions of officers or employees of the Internal Revenue Service after the date of the enactment of this Act [July 22, 1998].”

Amendment by section 3106(b)(1), (2) of Pub. L. 105–206 effective July 22, 1998, see section 3106(c) of Pub. L. 105–206, set out as a note under section 6325 of this title.

**Effective Date of 1986 Amendment**

Amendment by Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

**Effective Date of 1982 Amendment**

Section 350(b) of Pub. L. 97–248 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to levies made after December 31, 1982.”

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### **Effective Date of 1975 Amendment**

Amendment by Pub. L. 93-625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93-625, set out as an Effective Date note under section 6621 of this title.

### **Effective Date**

Section applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which section would impair a priority held by any person other than United States holding a lien or interest prior to Nov. 2, 1966, operate to increase liability of such person, or shorten time of bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114 (a)-(c) of Pub. L. 89-719, set out as Effective Date of 1966 Amendments note under section 6323 of this title.