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## Section 6334.—Property Exempt From Levy

26 CFR 301.6334–1: *Property exempt from levy.*

T.D. 8725

DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Parts 1 and 301

Miscellaneous Sections Affected  
by the Taxpayer Bill of Rights 2  
and the Personal Responsibility  
and Work Opportunity  
Reconciliation Act of 1996

AGENCY: Internal Revenue Service  
(IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains  
final regulations relating to joint returns,

property exempt from levy, interest, penalties, offers in compromise, and the awarding of costs and certain fees. The regulations reflect changes to the law made by the Taxpayer Bill of Rights 2 and a conforming amendment made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The regulations affect taxpayers with respect to filing of returns, interest, penalties, court costs, and payment, deposit, and collection of taxes.

DATES: These regulations are effective July 22, 1997.

For dates of applicability of these regulations, see §§301.6334–1(e) and (f), 301.6601–1(f)(3) and (4), 301.6651–1(a)(3) and (g)(2), 301.6656–3(c), 301.7122–1(e)(2), 301.7430–2(c)(3)-(i)(B), 301.7430–4(b)(3)(ii), 301.7430–5(a) and (c)(3), and 301.7430–6.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman, (202) 622-4940 regarding joint returns and penalties; Robert A. Miller, (202) 622-3640 regarding levy; Donna J. Welch, (202) 622-4910 regarding interest; Thomas D. Moffitt, (202) 622-7900 regarding court costs; and Kevin B. Connelly, (202) 622-3640 regarding compromises (not toll-free numbers).

## SUPPLEMENTARY INFORMATION:

### *Paperwork Reduction Act*

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1356. Responses to this collection of information are required to obtain an award of reasonable administrative costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from 10 minutes to 30 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collec-

tion of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103

### *Background*

This document contains amendments to the Income Tax Regulations and the Regulations on Procedure and Administration (26 CFR parts 1 and 301, respectively) relating to joint returns under section 6013, levy under section 6334, interest under section 6601, the failure to file penalty under section 6651, the failure to deposit penalty under section 6656, compromise under section 7122, and awards of costs and certain fees under section 7430. These sections were amended by the Taxpayer Bill of Rights 2 (TBOR2) (Public Law 104–168, 110 Stat. 1452 (1996)) and section 110(l)(6) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193, 110 Stat. 2105, 2173 (1996)). The changes made by TBOR2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are reflected in the final regulations.

A notice of proposed rulemaking was published in the **Federal Register** for January 2, 1997 (62 FR 77). One written comment was received in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations under sections 6013, 6334, 6601, 6651, 6656, 7122, and 7430 are adopted by this Treasury decision with minor revisions, which are discussed below.

### *Explanation of Revisions and Summary of Comments*

The IRS received one comment regarding the proposed regulations. The commentator remarked that §301.6601–1(f)(3) of the proposed regulations is unclear because, as drafted, the regulation implies that interest on all additions to tax, including those covered by section 6601(e)-(2)(B), runs from the date of the notice and demand. Therefore, the final regulations clarify that interest on any addition to tax, except additions to tax described in section 6601(e)(2)(B), begins to run from the date of the notice and demand.

The commentator also requested clari-

fication for purposes of computing the \$100,000 threshold in §§301.6601–1(f)(3) and (4) and 301.6651–1(a)(3). Sections 303(a) and (b) of TBOR2 extend the interest-free period to 21 calendar days or 10 business days if the amount for which the notice and demand is made equals or exceeds \$100,000. The commentator suggested that the \$100,000 threshold should include tax, interest, and penalties. The language in the statute supports this interpretation. Under section 303(b)(1) of TBOR2, the 10 day period specifically applies to a notice and demand for interest and penalties. Therefore, the final regulations clarify that 10 business days is the applicable interest-free period if the total amount assessed, including tax, penalties, and interest, and shown on the notice and demand equals or exceeds \$100,000.

In addition, §301.6651–1(a)(3), regarding the failure to pay penalty, has been clarified by cross-referencing the definitions of calendar day and business day in §301.6601–1(f)(5).

### *Effective Dates*

These regulations are applicable on July 31, 1996, except that §301.7122–1(e) is applicable on July 30, 1996, and §301.6334–1(a)(2), (a)(3), (a)(11)(i), and (e), §301.6601–1(f)(3), (f)(4), and (f)(5), §301.6651–1(a)(3), and §301.7430–4(b)(3)(ii) are applicable on January 1, 1997.

### *Special Analyses*

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Moreover, it is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past only an average of 38 taxpayers per year, the majority of whom were individuals, have filed a request to recover administrative costs. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Inter-

nal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small business.

### *Drafting Information*

The principal authors of these regulations are Beverly A. Baughman and Donna J. Welch, Office of Assistant Chief Counsel (Income Tax and Accounting), Robert A. Miller and Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation), and Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service). However, other personnel from the IRS and Treasury Department participated in their development.

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### *Adoption of Amendments to the Regulations*

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.6013–2(b)(1) is amended by removing the language “Unless” and adding “Beginning on or before July 30, 1996, unless” in its place.

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 4. Section 301.6334–1 is amended by:

1. Revising paragraph (a)(2).
2. Removing the language “\$1,100 (\$1,050 for levies issued prior to January 1, 1990)” from paragraph (a)(3) and adding “\$1,250” in its place.
3. Removing the language “(relating to aid to families with dependent children)” from paragraph (a)(11)(i).
4. Revising paragraph (e).
5. Adding paragraph (f).

The additions and revisions read as follows:

§301.6334–1 *Property exempt from levy.*

(a) \* \* \*

(2) *Fuel, provisions, furniture, and personal effects.* So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed \$2,500 in value.

\* \* \* \* \*

(e) *Inflation adjustment.* For any calendar year beginning after December 31, 1997, each dollar amount referred to in paragraphs (a)(2) and (3) of this section will be increased by an amount equal to the dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (substituting "calendar year 1996" for "calendar year 1992" in section 1(f)(3)(B)). If any dollar amount as adjusted is not a multiple of \$10, the dollar amount will be rounded to the nearest multiple of \$10 (rounding up if the amount is a multiple of \$5).

(f) *Effective date.* Generally, these provisions are applicable with respect to levies made on or after July 1, 1989. However, any reasonable attempt by a taxpayer to comply with the statutory amendments addressed by the regulations in this section prior to February 21, 1995, will be considered as meeting the requirements of the regulations in this section. In addition, paragraphs (a)(2), (3), (11)(i) and (e) of this section are applicable with respect to levies issued after December 31, 1996.

Par. 5. Section 301.6601-1 is amended by:

1. Revising paragraphs (f)(3) and (f)(4).
2. Redesignating paragraph (f)(5) as paragraph (f)(6) and adding new paragraph (f)(5).

The additions and revisions read as follows:

§301.6601-1 *Interest on underpayments.*

\* \* \* \* \*

(f) \* \* \*

(3) Interest will not be imposed on any assessable penalty, addition to the tax (other than an addition to tax described in section 6601(e)(2)(B)), or additional amount if the amount is paid within 21 calendar days (10 business days if the amount assessed and shown on the notice and demand equals or exceeds \$100,000) from the date of the notice and demand. If interest is imposed, it will be imposed

only for the period from the date of the notice and demand to the date on which payment is received. This paragraph (f)(3) is applicable with respect to any notice and demand made after December 31, 1996.

(4) If notice and demand is made after December 31, 1996, for any amount and the amount is paid within 21 calendar days (10 business days if the amount assessed and shown on the notice and demand equals or exceeds \$100,000) from the date of the notice and demand, interest will not be imposed for the period after the date of the notice and demand.

(5) For purposes of paragraphs (f)(3) and (4) of this section—

(i) The term *business day* means any day other than a Saturday, Sunday, legal holiday in the District of Columbia, or a statewide legal holiday in the state where the taxpayer resides or where the taxpayer's principal place of business is located. With respect to the tenth business day (after taking into account the first sentence of this paragraph (f)(5)(i)), see section 7503 relating to time for performance of acts where the last day falls on a statewide legal holiday in the state where the act is required to be performed.

(ii) The term *calendar day* means any day. With respect to the twenty-first calendar day, see section 7503 relating to time for performance of acts where the last day falls on a Saturday, Sunday, or legal holiday.

\* \* \* \* \*

Par. 6. Section 301.6651-1 is amended by:

1. Revising paragraph (a)(3).
2. Adding paragraph (g).

The addition and revision read as follows:

§301.6651-1 *Failure to file tax return or to pay tax.*

(a) \* \* \*

(3) *Failure to pay tax not shown on return.* In the case of failure to pay any amount of any tax required to be shown on a return specified in paragraph (a)(1) of this section that is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of the notice and demand (10 business days if the amount assessed and shown on the notice and demand equals or exceeds \$100,000) with respect

to any notice and demand made after December 31, 1996, there will be added to the amount stated in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the district director or the director of the service center to be due to reasonable cause and not to willful neglect. The amount added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. For purposes of this paragraph (a)(3), see §301.6601-1(f)(5) for the definition of *calendar day* and *business day*.

\* \* \* \* \*

(g) *Treatment of returns prepared by the Secretary—*(1) *In general.* A return prepared by the Secretary under section 6020(b) will be disregarded for purposes of determining the amount of the addition to tax for failure to file any return pursuant to paragraph (a)(1) of this section. However, the return prepared by the Secretary will be treated as a return filed by the taxpayer for purposes of determining the amount of the addition to tax for failure to pay the tax shown on any return and for failure to pay the tax required to be shown on a return that is not so shown pursuant to paragraphs (a)(2) and (3) of this section, respectively.

(2) *Effective date.* This paragraph (g) applies to returns the due date for which (determined without regard to extensions) is after July 30, 1996.

Par. 7. Section 301.6656-3 is added to read as follows:

§301.6656-3 *Abatement of penalty.*

(a) *Exception for first time depositors of employment taxes—*(1) *Waiver.* The Secretary will generally waive the penalty imposed by section 6656(a) on a person's failure to deposit any employment tax under subtitle C of the Internal Revenue Code if—

- (i) The failure is inadvertent;
- (ii) The person meets the requirements referred to in section 7430(c)(4)(A)(ii) (relating to the net worth requirements applicable for awards of attorney's fees);
- (iii) The failure occurs during the first

quarter that the person is required to deposit any employment tax; and

(iv) The return of the tax is filed on or before the due date.

(2) *Inadvertent failure.* For purposes of paragraph (a)(1)(i) of this section, the Secretary will determine if a failure to deposit is inadvertent based on all the facts and circumstances.

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository.

(c) *Effective date.* This section applies to deposits required to be made after July 30, 1996.

Par. 8. n §301.7122-1, paragraph (e) is revised to read as follows:

§301.7122-1 *Compromises.*

\* \* \* \* \*

(e) *Record*—(1) *In general.* If an offer in compromise is accepted, there will be placed on file the opinion of the Chief Counsel of the IRS with respect to the compromise, with the reasons for the opinion, and including a statement of—

- (i) The amount of tax assessed;
- (ii) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and
- (iii) The amount actually paid in accordance with the terms of the compromise.

(2) *Exception.* For compromises accepted on or after July 30, 1996, no opinion will be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than \$50,000. However, the compromise will be subject to continuing quality review by the Secretary.

\* \* \* \* \*

Par 9. Section 301.7430-0 is amended by adding entries for §§301.7430-1(b)(4) and 301.7430-5(c)(3) to read as follows:

§301.7430-0 *Table of contents.*

\* \* \* \* \*

§301.7430-1 *Exhaustion of administrative remedies.*

\* \* \* \* \*

(b) \* \* \*

(4) Failure to agree to extension of time for assessments.”.

\* \* \* \* \*

§301.7430-5 *Prevailing party.*

\* \* \* \* \*

(c) \* \* \*

(3) *Presumption.*

\* \* \* \* \*

Par. 10. Section 301.7430-1 is amended by adding paragraph (b)(4) to read as follows:

§301.7430-1 *Exhaustion of administrative remedies.*

\* \* \* \* \*

(b) \* \* \*

(4) Failure to agree to extension of time for assessments. Any failure by the prevailing party to agree to an extension of the time for the assessment of any tax will not be taken into account for purposes of determining whether the prevailing party has exhausted the administrative remedies available to the party within the Internal Revenue Service.

\* \* \* \* \*

Par. 11. Section 301.7430-2 is amended by:

- 1. Removing the language “7430(c)-(4)(B)(ii)” from the third sentence of paragraph (b)(2) and adding “7430(c)(4)-(C)(ii)” in its place.
- 2. The introductory text of paragraph (c)(3) is amended by removing the colon and adding a dash in its place.
- 3. Revising paragraph (c)(3)(i)(B).
- 4. Removing the language “If more than \$75” from paragraph (c)(3)(ii)(C) and adding “In the case of administrative proceedings commenced after July 30, 1996, if more than \$110” in its place.

The revision reads as follows:

§301.7430-2 *Requirements and procedures for recovery of reasonable administrative costs.*

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) A clear and concise statement of the reasons why the taxpayer alleges that the position of the Internal Revenue Service in the administrative proceeding was not substantially justified. For administrative proceedings commenced after July 30, 1996, if the taxpayer alleges that the Internal Revenue Service did not follow any applicable published guidance, the statement must identify all applicable published guidance that the taxpayer alleges that the Internal Revenue Service did not follow. For purposes of this paragraph (c)(3)(i)(B), the term applicable published guidance means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if issued to the taxpayer, private letter rulings, technical advice memoranda, and determination letters. Also, for purposes of this paragraph (c)(3)(i)(B), the term administrative proceeding includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in §301.7430-3(c);

\* \* \* \* \*

Par. 12. Section 301.7430-4 is amended by:

- 1. Removing the language “\$75” from paragraph (b)(3)(i) and adding “, in the case of proceedings commenced after July 30, 1996, \$110” in its place.
- 2. Revising paragraph (b)(3)(ii).
- 3. Removing the language “\$75” from the first, second, and third sentences of paragraph (b)(3)(iii)(B) and adding “\$110” in its place.
- 4. Removing the language “\$75” from the first sentence of paragraph (b)(3)-(iii)(C) and adding “\$110” in its place.
- 5. Removing the language “\$75” from the third sentence of the example in paragraph (b)(3)(iii)(D) and adding “\$110” in its place.
- 6. Removing the language “\$75” from the second and third sentences of paragraph (c)(2)(ii) and adding “\$110” in its place.

The revision reads as follows:

§301.7430-4 *Reasonable administrative costs.*

\* \* \* \* \*

- (b) \* \* \*
- (3) \* \* \*

(ii) Cost of living adjustment. The Internal Revenue Service will make a cost of living adjustment to the \$110 per hour limitation for fees incurred in any calendar year beginning after December 31, 1996. The cost of living adjustment will be an amount equal to \$110 multiplied by the cost of living adjustment determined under section 1(f)(3) for the calendar year (substituting "calendar year 1995" for "calendar year 1992" in section 1(f)(3)(B)). If the dollar limitation as adjusted by this cost of living increase is not a multiple of \$10, the dollar amount will be rounded to the nearest multiple of \$10 (rounding up if the amount is a multiple of \$5).

\* \* \* \* \*

Par. 13. Section 301.7430-5 is amended by:

1. Revising paragraph (a).
2. Adding paragraph (c)(3).

The addition and revision read as follows:

*§301.7430-5 Prevailing party.*

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430 in the case of administrative proceedings commenced after July 30, 1996, a taxpayer is a prevailing party only if—

(1) The position of the Internal Revenue Service was not substantially justified;

(2) The taxpayer substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(3) The taxpayer satisfies the net worth and size limitations referenced in paragraph (f) of this section.

\* \* \* \* \*

(c) \* \* \*

(3) *Presumption.* If the Internal Revenue Service did not follow any applicable published guidance in an administrative proceeding commenced after July 30, 1996, the position of the IRS, on those issues to which the guidance applies and for all periods during which the guidance was not followed, will be presumed not to be substantially justified. This presumption may be rebutted. For purposes of this paragraph (c)(3), the term applicable published guidance means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if issued to the taxpayer, private letter rulings, technical advice memoranda, and determination letters (see §601.601(d)(2) of this chapter). Also, for purposes of this paragraph (c)(3), the term administrative proceeding includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in §301.7430-3(c).

\* \* \* \* \*

Par. 14. Section 301.7430-6 is revised to read as follows:

*§301.7430-6 Effective dates.*

Sections 301.7430-2 through 301.7430-6, other than §§301.7430-2(b)(2), (c)(3)(i)(B), (c)(3)(ii)(C), and (c)(5); §§301.7430-4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and §§301.7430-5(a) and (c)(3), apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430-2(c)(5) is applicable March 23, 1993. Section 301.7430-2(b)(2), (c)(3)(i)(B), and (c)(3)(ii)(C); 301.7430-4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and 301.7430-5(a) and (c)(3) are applicable for administrative proceedings commenced after July 30, 1996.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved June 27, 1997.

Donald C. Lubick,  
*Acting Assistant Secretary of  
the Treasury.*

(Filed by the Office of the Federal Register on July 21, 1997, 8:45 a.m., and published in the issue of the Federal Register for July 22, 1997, 62 F.R. 39115)