

163(e)(5), because the corporate partner would deduct its distributive share of the interest on obligations that would have been deferred until paid or disallowed had the corporation issued its share of the obligation directly. Thus, under paragraph (e)(1) of this section, PRS is properly treated as an aggregate of its partners for purposes of applying section 163(e)(5) (regardless of whether any party had a tax avoidance purpose in having PRS issue the obligation). Each partner of PRS will therefore be treated as issuing its share of the obligations for purposes of determining the deductibility of its distributive share of any interest on the obligations. See also section 163(i)(5)(B).

Example 2. Aggregate treatment of partnership appropriate to carry out purpose of section 1059. (i) Corporations X and Y are partners in partnership PRS, which for several years has engaged in substantial bona fide business activities. As part of these business activities, PRS purchases 50 shares of Corporation Z common stock. Six months later, Corporation Z announces an extraordinary dividend (within the meaning of section 1059). Section 1059(a) generally provides that if any corporation receives an extraordinary dividend with respect to any share of stock and the corporation has not held the stock for more than two years before the dividend announcement date, the basis in the stock held by the corporation is reduced by the nontaxed portion of the dividend. PRS, X, and Y take the position that section 1059(a) is not applicable because PRS is a partnership and not a corporation.

(ii) Section 1059(a) does not prescribe the treatment of a partnership as an entity for purposes of that section. The purpose of section 1059(a) is to limit the benefits of the dividends received deduction with respect to extraordinary dividends. The treatment of PRS as an entity could result in corporate partners in the partnership receiving dividends through partnerships in circumvention of the intent of section 1059. Thus, under paragraph (e)(1) of this section, PRS is properly treated as an aggregate of its partners for purposes of applying section 1059 (regardless of whether any party had a tax avoidance purpose in acquiring the Z stock through PRS). Each partner of PRS will therefore be treated as owning its share of the stock. Accordingly, PRS must make appropriate adjustments to the basis of the corporation Z stock, and the partners must also make adjustments to the basis in their respective interests in PRS under section 705(a)(2)(B). See also section 1059(g)(1).

Example 3. Prescribed entity treatment of partnership; determination of CFC status clearly contemplated. (i) X, a domestic corporation, and Y, a foreign corporation, intend to conduct a joint venture in foreign Country A. They form PRS, a bona fide domestic general partnership in which X owns a 40% interest and Y owns a 60% interest. PRS is properly classified as a partnership under §§ 301.7701-2 and 301.7701-3. PRS holds 100% of the voting stock of Z, a Country A entity that is classified as an association taxable as a corporation for federal tax purposes under § 301.7701-2. Z conducts its business operations in Country A. By investing in Z

through a domestic partnership, X seeks to obtain the benefit of the look-through rules of section 904(d)(3) and, as a result, maximize its ability to claim credits for its proper share of Country A taxes expected to be incurred by Z.

(ii) Pursuant to sections 957(c) and 7701(a)(30), PRS is a United States person. Therefore, because it owns 10% or more of the voting stock of Z, PRS satisfies the definition of a U.S. shareholder under section 951(b). Under section 957(a), Z is a controlled foreign corporation (CFC) because more than 50% of the voting power or value of its stock is owned by PRS. Consequently, under section 904(d)(3), X qualifies for look-through treatment in computing its credit for foreign taxes paid or accrued by Z. In contrast, if X and Y owned their interests in Z directly, Z would not be a CFC because only 40% of its stock would be owned by U.S. shareholders. X's credit for foreign taxes paid or accrued by Z in that case would be subject to a separate foreign tax credit limitation for dividends from Z, a noncontrolled section 902 corporation. See section 904(d)(1)(E) and § 1.904-4(g).

(iii) Sections 957(c) and 7701(a)(30) prescribe the treatment of a domestic partnership as an entity for purposes of defining a U.S. shareholder, and thus, for purposes of determining whether a foreign corporation is a CFC. The CFC rules prevent the deferral by U.S. shareholders of U.S. taxation of certain earnings of the CFC and reduce disparities that otherwise might occur between the amount of income subject to a particular foreign tax credit limitation when a taxpayer earns income abroad directly rather than indirectly through a CFC. The application of the look-through rules for foreign tax credit purposes is appropriately tied to CFC status. See sections 904(d)(2)(E) and 904(d)(3). This analysis confirms that Congress clearly contemplated that taxpayers could use a bona fide domestic partnership to subject themselves to the CFC regime, and the resulting application of the look-through rules of section 904(d)(3). Accordingly, under paragraph (e) of this section, the Commissioner cannot treat PRS as an aggregate of its partners for purposes of determining X's foreign tax credit limitation.

(g) *Effective date.* Paragraphs (a), (b), (c), and (d) of this section are effective for all transactions involving a partnership that occur on or after May 12, 1994. Paragraphs (e) and (f) of this section are effective for all transactions involving a partnership that occur on or after December 29, 1994.

(h) *Application of nonstatutory principles and other statutory authorities.* The Commissioner can continue to assert and to rely upon applicable nonstatutory principles and other statutory and regulatory authorities to challenge transactions. This section does not limit the

applicability of those principles and authorities.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 20, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-32331 Filed 12-29-94; 8:45 am]

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26 CFR Part 301

[TD 8587]

RIN 1545-AN48

Authority to Release Levy and Return Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the authority to release a levy and to return property. The Technical and Miscellaneous Revenue Act of 1988 sets forth certain conditions under which the IRS must release a levy. In addition, the Internal Revenue Code was amended in 1979 to provide for the payment of interest in certain circumstances in which wrongfully levied upon property is returned. These final regulations describe the conditions under which a levy will be released and the procedures for obtaining such a release. Lastly, these final regulations also conform the existing regulations regarding the return of wrongfully levied upon property to provide for the payment of interest in certain circumstances.

EFFECTIVE DATE: These regulations are effective December 30, 1994.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, 202-622-3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6343 of the Internal Revenue Code. These regulations reflect the amendment of section 6343 by section 6236(f) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647), section 4(a) of Act of Dec. 29, 1979 (Pub. L. 96-167), and section 1511(c)(10) of the Tax Reform Act of 1986 (Pub. L. 99-514).

On October 16, 1991 a notice of proposed rulemaking concerning the authority to release and return property was published in the **Federal Register** (56 FR 51857). Written comments

responding to this notice were received. No public hearing was requested or held. After consideration of all the comments, the proposed regulations under section 6343 are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The notice of proposed rulemaking provided different rules with respect to levies made prior to July 1, 1989, and levies made on or after that date. It was decided that separate rules concerning levies made prior to July 1, 1989 are not necessary. Accordingly, they have been eliminated. These final regulations are prospective in nature and are effective as of December 30, 1994. In addition, for ease of administration, it was decided that the authority to release levies should be extended by regulation to service center and compliance center directors. These final regulations has been revised to confer this authority on service center and compliance center directors.

The written comments received made several suggestions for changes to the proposed regulations. The comments suggested that the regulations provide an appeal procedure for taxpayers when a request for a release of levy is denied. These final regulations do not adopt this suggestion. A taxpayer who believes an IRS employee is not properly applying these regulations has the right to appeal to that person's supervisor. Thus, a formal appeals procedure would add a layer of bureaucracy to the process while providing little or no benefit to the taxpayer.

The comments also suggested revising an example in the proposed regulations governing when a levy may be released to facilitate collection. The comment suggested that the example provide that a release of levy must be made if that release would increase the fair market value of the property (and, presumably, the amount that would be bid) if the taxpayer were to sell that property, irrespective of whether the proceeds from that sale would satisfy the taxpayer's outstanding federal tax liabilities. This suggestion has been adopted in modified form. The final regulations provide that a levy may be released even though the proceeds of the sale would not fully satisfy the taxpayer's outstanding federal tax liabilities, but only on a case by case basis at the discretion of a district director. The IRS is not required to release a levy merely because a taxpayer alleges that a sale by the taxpayer would produce a higher bid than if the sale were made by the IRS.

Another suggestion was that the regulations provide an example of situations where the fair market value of the property exceeds the liability for which the levy was made and the release of levy can be made on only a part of a taxpayer's property without hindering the collection of the liability. This suggestion has been adopted in the final regulations.

The comments suggested that an example be given of "essential business property" qualifying for expedited determination of whether a levy should be released. The issue of what constitutes "essential business property" will necessarily turn on the unique facts of an individual case. An item of property that may be essential to the carrying on of one business may not be essential in the carrying on of another business. Thus, any example given in the regulations could not provide specific guidance as to what specific items of property would be considered essential in all cases. Conversely, any example given in the regulations could be erroneously construed as requiring a certain fact pattern or degree of effect on the operation of a business that would not be necessary in all cases in order for a specific item of property to be considered "essential business property." Accordingly, this suggestion has not been adopted in these final regulations.

The comments also suggested that the final regulations require a district director to return the specific property levied upon if it is still in the possession of the United States Government. This suggestion was adopted in part. It is the practice of the IRS, generally, to return specific property still in its possession to its rightful owner if the property has been wrongfully seized. However, this general rule is not appropriate in all cases. For instance, the property seized may be found to include items which may be illegal under State or Federal law. This type of property will not be returned to its owner. The final regulations indicate that the IRS will normally return specific property in its possession when that property has been wrongfully levied upon.

Another suggestion was that the proposed regulations be revised to require the IRS to return property within 10 days after it is determined that such property was wrongfully levied upon. This suggestion is not adopted in these final regulations. Although section 6343 does not mandate a time period within which the property must be returned, property is normally returned as expeditiously as possible. There do occur, however,

situations where conflicting claims are made for the return of wrongfully levied upon property. Cases where conflicting claims to the property are received require greater time and, in some instances, litigation to resolve who is rightfully entitled to the return of the property. A requirement that the IRS return property in 10 days in all cases could adversely affect the rights of other claimants to the property and would not benefit either those claimants or the IRS.

The comments also suggested that final regulations require a person requesting the return of wrongfully levied upon property to include a copy of the levy itself if it is available. This suggestion was not adopted in these final regulations. Based on the experience of the IRS, the actual submission of a copy of the levy or notice of levy has not been necessary. Thus, the addition of a new requirement for the submission of a copy of either of those two forms in all cases could be potentially burdensome for some taxpayers and prove to be of no benefit to the IRS.

It has also been suggested that the proposed regulations be revised in order to prevent a taxpayer from making a request for a release of levy by telephone because such requests lack proper documentation and make it difficult for the IRS to determine if the taxpayer has complied with the statutory provisions. The regulations follow current IRS procedures and are designed to provide the taxpayer with the most expeditious method to initiate a request for release. The regulations, however, also provide that the IRS may request any documentation necessary before making a determination on whether a condition requiring release has been met. Thus, although the request for a determination may be made orally, the IRS is not required to make the determination based on insufficient information.

Another comment interpreted the proposed regulations as creating an inconsistency in that a request for release of property, in ordinary circumstances, could be made as little as six days prior to a scheduled sale of that property, while the IRS was generally allowed up to 30 days to make a determination concerning a request for release. The commentator indicated its belief that these two rules could be read to allow a sale to take place without a determination being made concerning a request for release.

The commentator's concern is unfounded. The period between the date of seizure and the date notice of sale is given is used by the IRS to determine whether the property seized

should be sold or released. This determination is made whether or not a request for release has been received. Because this initial determination concerning sale or the possible release of the levy is made prior to the issuance of the notice of sale, a subsequent determination in response to an actual request for release of levy made by a taxpayer can be accomplished, in most of these cases, prior to the scheduled sale date if at least five days remain prior to the sale date. It is only in unusual cases where a determination cannot be made prior to the date of the scheduled sale if a request for release is made more than five days prior to the scheduled sale date. In those cases, the sale is postponed, but a determination is normally made within 30 days of the date of the request for release.

To clarify this issue, however, these final regulations have been revised to state that if a request for release is made more than five days prior to a scheduled sale, the IRS is to make a determination on any request for release of property before that property can be sold. In addition, the final regulations state that the IRS is not required to consider a request for release or an expedited determination made within five or fewer days prior to a scheduled sale. The IRS has the discretion, however, to consider such requests.

In § 301.6343-1(b)(3) of these final regulations, the phrase "there is an intervening judgment lien creditor" has been added to the example indicating when the IRS is not required to release a levy when an installment agreement has been entered into if the release will jeopardize the secured status of the United States. The final regulations also clarify that the lack of a filed notice of federal tax lien does not by itself warrant a finding that the secured status of the United States is jeopardized in all situations where no notice of such tax lien has been filed. Finally, the final regulations provide that, for the purposes of determining a reasonable amount for basic living expenses, a taxpayer may furnish, and the IRS may consider, information concerning his or her current employment status, as well as past employment history.

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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and

therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Jerome D. Sekula, Office of the Assistant Chief Counsel (General Litigation), IRS. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 is amended by adding entries to read as follows:

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

Section 301.6343-1 also issued under 26 U.S.C. 6343.

Section 301.6343-2 also issued under 26 U.S.C. 6343 * * *

Par. 2. Section 301.6343-1 is revised to read as follows:

§ 301.6343-1 Requirement to release levy and notice of release.

(a) *In general.* A district director, service center director, or compliance center director (*director*) must promptly release a levy upon all, or part of, property or rights to property levied upon and must promptly notify the person upon whom the levy was made of such a release, if the director determines that any of the conditions in paragraph (b) of this section (conditions requiring release) exist. The director must make a determination whether any of the conditions requiring release exist if a taxpayer submits a request for release of levy in accordance with paragraph (c) or (d) of this section; however, the director may make this determination based upon information received from a source other than the taxpayer. The director may require any supporting documentation as is reasonably necessary to determine whether a condition requiring release exists.

(b) *Conditions requiring release.* The director must release the levy upon all

or a part of the property or rights to property levied upon if he or she determines that one of the following conditions exists—

(1) *Liability satisfied or unenforceable—(i) General rule.* The liability for which the levy was made is satisfied or the period of limitations provided in section 6502 (and any period during which the period of limitations is suspended as provided by law) has lapsed. A levy is considered made on the date on which the notice of seizure provided in section 6335(a) is given. A levy that is made within the period of limitations provided in section 6502 does not become unenforceable simply because the person who receives the levy does not surrender the subject property within the period of limitations. In this case, the liability remains enforceable to the extent of the value of the levied upon property. However, a levy made outside the period of limitations (normally ten years without suspensions) must be released unless—

(A) The taxpayer agreed in writing to extend the period of limitations as provided in section 6502(a)(2) and § 301.6502-1; or

(B) A proceeding in court to collect the liability has begun within the period of limitations.

(ii) *Special situations.* A continuing levy on salary or wages made under section 6331(e) must be released at the end of the period of limitations in section 6502. However, a levy on a fixed and determinable right to payment which right includes payments to be made after the period of limitations expires does not become unenforceable upon the expiration of the period of limitations and will not be released under this condition unless the liability is satisfied.

(2) *Release will facilitate collection.* The release of the levy will facilitate collection of the liability. A director has the discretion to release the levy in all situations, including those where the proceeds from the sale will not fully satisfy the tax liabilities of the taxpayer, under terms and conditions as he or she determines are warranted.

(i) *Example.* The following example illustrates the provisions of this paragraph (b)(2):

Example. A and B each own machines which, when used together, produce widgets. A owes delinquent federal taxes. A notice of federal tax lien is properly filed against all property or rights to property belonging to A. A's machine is seized to satisfy A's delinquent tax liability. The fair market value of A's property is greater than the expenses of seizure and sale, but less than the amount of A's tax liability. A and B find a buyer who

wants to buy both machines together. The buyer will only buy the machines together. A's property has a greater value as part of the package than it does by itself. The larger value, as shown in the sale contract, is enough to pay A's tax liability in full. In this situation a release of the levy will facilitate collection because the sale of both machines can be completed and A's liability will be paid in full at the settlement.

(ii) *Compliance with other conditions.* The director may find that collection will be facilitated by the taxpayer's compliance with conditions other than immediate payment, such as:

(A) The delinquent taxpayer delivers a satisfactory arrangement, which is accepted by the director, for placing property in escrow to secure the payment of the liability (including the expenses of the levy) which is the basis of the levy.

(B) The delinquent taxpayer delivers an acceptable bond to the director conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. This bond shall be in the form provided in section 7101 and § 301.7101-1.

(C) There is paid to the director an amount determined by the director to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(D) The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with section 6502(a)(2) and § 301.6502-1.

(iii) *Expenses of sale exceed the government's interest.* If the director determines that the value of the United States' interest in the seized property does not exceed the expenses of sale of the property, a release of the levy will be deemed to facilitate collection of the liability even though the fair market value of property which has been seized exceeds the expenses of seizure and sale.

(3) *Installment agreement.* The taxpayer has entered into an agreement under section 6159 to satisfy the liability by means of installment payments, unless the agreement provides otherwise. However, the director is not required to release the levy under this condition if a release of the levy will jeopardize the secured creditor status of the United States, e.g., where there is an intervening judgment lien creditor and a notice of tax lien has not been filed.

(4) *Economic hardship*—(i) *General rule.* The levy is creating an economic hardship due to the financial condition of an individual taxpayer. This condition applies if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay

his or her reasonable basic living expenses. The determination of a reasonable amount for basic living expenses will be made by the director and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.

(ii) *Information from taxpayer.* In determining a reasonable amount for basic living expenses the director will consider any information provided by the taxpayer including—

(A) The taxpayer's age, employment status and history, ability to earn, number of dependents, and status as a dependent of someone else;

(B) The amount reasonably necessary for food, clothing, housing (including utilities, home-owner insurance, home-owner dues, and the like), medical expenses (including health insurance), transportation, current tax payments (including federal, state, and local), alimony, child support, or other court-ordered payments, and expenses necessary to the taxpayer's production of income (such as dues for a trade union or professional organization, or child care payments which allow the taxpayer to be gainfully employed);

(C) The cost of living in the geographic area in which the taxpayer resides;

(D) The amount of property exempt from levy which is available to pay the taxpayer's expenses;

(E) Any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster; and

(F) Any other factor that the taxpayer claims bears on economic hardship and brings to the attention of the director.

(iii) *Good faith requirement.* In addition, in order to obtain a release of a levy under this subparagraph, the taxpayer must act in good faith. Examples of failure to act in good faith include, but are not limited to, falsifying financial information, inflating actual expenses or costs, or failing to make full disclosure of assets.

(5) *Fair market value exceeds liability.* The fair market value of the property exceeds the liability for which the levy was made and release of the levy on a part of the property can be made without hindering the collection of the liability. The following example illustrates the provisions of this paragraph (b)(5):

Example. The Internal Revenue Service levies upon ten widgets which belong to the taxpayer to satisfy the taxpayer's outstanding tax liabilities. Subsequent to the levy, the taxpayer establishes that market conditions

have increased the aggregate fair market value of widgets so that the value of seven widgets equals the aggregate anticipated expenses of sale and seizure and the tax liabilities for which the levy was made. The director must release three widgets from the levy and return them to the taxpayer.

(c) *Request for release of levy*—(1) *Information to be submitted by taxpayer.* A taxpayer who wishes to obtain a release of a levy must submit a request for release in writing or by telephone to the district director for the Internal Revenue district in which the levy was made. The taxpayer making the request must provide the following information—

(i) The name, address, and taxpayer identification number of the taxpayer;

(ii) A description of the property levied upon;

(iii) The type of tax and the period for which the tax is due;

(iv) The date of the levy and the originating Internal Revenue district, if known; and

(v) A statement of the grounds upon which the request for release of the levy is based.

(2) *Time for submission.* Except in extraordinary circumstances, a request for release of a levy must be made more than five days prior to a scheduled sale of the property to which the levy relates.

(3) *Determination by director*—(i) *When required.* The director must promptly make a determination concerning release prior to sale in all cases where a request for release of a levy is made except those where the request for release is made five or fewer days prior to a scheduled sale of the property to which the levy relates.

(ii) *Time for making required determination.* The determination will be made, generally, within 30 days of a request for release made 30 or more days prior to a scheduled sale of the property to which the levy relates. If a request for release is made less than 30 days prior to the scheduled sale but more than 5 days before the scheduled sale, a determination must be made prior to the scheduled sale. If necessary the director may postpone the scheduled sale in order to make this determination.

(iii) *Discretionary determination.* The director has the discretion, but is not required, to make a determination concerning release prior to sale in cases where a request for release of a levy is made five or fewer days prior to a scheduled sale of the property to which the levy relates.

(4) *Notification to taxpayer of determination.* The director must promptly notify the taxpayer if the levy is released. If the director determines

that none of the conditions requiring release of the levy exist, the director must promptly notify the taxpayer of the decision not to release the levy and the reason why the levy is not being released.

(d) *Expedited determination with respect to certain business property*—(1) *General procedure*—(i) *Submission by taxpayer*. If a levy is made on essential business property as is described in paragraph (d)(2) of this section, the taxpayer may obtain an expedited determination of whether any of the conditions requiring release of the levy exist. In order to obtain an expedited determination, the taxpayer must submit, within the time frame specified in paragraph (c)(2) of this section, the information required in paragraph (c)(1) of this section and include with the information an explanation of why the property levied upon qualifies for an expedited determination of whether a condition requiring release of the levy exists.

(ii) *Time for making required determination*. The director must make such a determination by the later of 10 business days from the time the director receives the request for release, or 10 business days from the time the director receives any necessary supporting documentation, if 10 or more business days remain before a scheduled sale of the property to which the levy relates. An expedited determination concerning release must be made prior to sale in all cases where a request for release of a levy is made within the time frame specified in paragraph (c)(2) of this section. If necessary the director may postpone the scheduled sale in order to make this determination.

(iii) *Discretionary determination*. The director has the discretion, but is not required, to make an expedited determination concerning release in cases where the taxpayer does not submit, within the time frame specified in paragraph (c)(2) of this section, the information required in paragraph (c)(1) of this section and include with the information an explanation of why the property levied upon qualifies for an expedited determination of whether a condition requiring release of the levy exists.

(2) *Essential business property defined*. For purposes of this section, *essential business property* means tangible personal property used in carrying on the trade or business of the taxpayer which when levied upon prevents the taxpayer from continuing to carry on the trade or business.

(3) *Seizure of perishable goods*. The provisions of this paragraph do not apply in the case of a seizure of

perishable goods. Those seizures are governed by the provisions of section 6336 and § 301.6336-1.

(e) *Effect of a release of levy*. If property has not yet been surrendered to the director in response to a levy, a release of the levy under section 6343(a) will relieve the possessor of any obligation to surrender the property. Otherwise, a release of a levy under section 6343(a) will cause the property to be returned to the custody of the person or persons legally entitled thereto. The release of a levy on any property under this section does not prevent any subsequent levy on the property. Section 301.6343-2, dealing with return of wrongfully levied upon property, is subject to section 6402 which prohibits the Internal Revenue Service from refunding a payment of money that has been deposited in the Treasury and credited to the taxpayer's liability unless there is an overpayment.

(f) *Effective date*. This section is effective as of December 30, 1994.

Par. 3. Section 301.6343-2 is added to read as follows:

§ 301.6343-2 Return of wrongfully levied upon property.

(a) *Return of property*—(1) *General rule*. If the district director, service center director, or compliance center director (the *director*) determines that property has been wrongfully levied upon, the director may return—

- (i) The specific property levied upon;
- (ii) An amount of money equal to the amount of money levied upon; or
- (iii) An amount of money equal to the amount of money received by the United States from a sale of the property.

(2) *Time 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) 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.

(3) *Specific property*. In general the specific property levied upon will be returned whenever possible. For this purpose, money that is specifically identifiable, as in the case of a coin collection which may be worth substantially more than its face value, is treated as specific property.

(4) *Purchase by United States*. For purposes of paragraph (a)(1)(iii) of this section, if property is declared purchased by the United States at a sale pursuant to section 6335(e), the United States is treated as having received an amount of money equal to the minimum price determined by the director before the sale or, if larger, the amount received by the United States from the resale of the property.

(b) *Request for return of property*. A written request for the return of property wrongfully levied upon must be addressed to the district director (marked for the attention of the Chief, Special Procedures Staff) for the Internal Revenue district in which the levy was made. The written request must contain the following information—

- (1) The name and address of the person submitting the request;
- (2) A detailed description of the property levied upon;
- (3) A description of the claimant's basis for claiming an interest in the property levied upon; and
- (4) The name and address of the taxpayer, the originating Internal Revenue district, and the date of the levy as shown on the notice of levy form, or levy form, or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

(c) *Inadequate request*. A request for the return of property wrongfully levied upon will not be considered adequate unless it is a written request containing the information required by paragraph (b) of this section. However, unless a notification is mailed by the director to the claimant within 30 days of receipt of the request to inform the claimant of the inadequacies, any written request will be considered adequate. If the director timely notifies the claimant of the inadequacies of his request, the claimant has 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 will 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 section 6532(c).

(d) *Payment of interest*. Interest is paid at the overpayment rate established under section 6621—

- (1) In the case of money returned under paragraph (a)(1)(ii) of this section, from the date the director received the money to a date (to be determined by the director) preceding the date of return by not more than 30 days; or
- (2) In the case of money returned under paragraph (a)(1)(iii) of this

section, from the date of the sale of the property to a date (to be determined by the director) preceding the date of return by not more than 30 days.

(e) *Effective date.* This section is effective as of December 30, 1994.

Approved: December 13, 1994.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-31665 Filed 12-30-94; 8:45 am]

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 16

[A.G. Order No. 1943-94]

Fee for Production of Identification Record

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: The cost for production of a Federal Bureau of Investigation (FBI) identification record has increased from \$17 to \$18. This final rule will permit the FBI to increase the fee from \$17 to \$18 for the production of identification records for the subjects of such records.

EFFECTIVE DATE: February 2, 1995.

FOR FURTHER INFORMATION CONTACT:

Bennie F. Brewer, FBI, Criminal Justice Information Services Division, Programs Support Section, Washington, D.C. 20535, telephone number (202) 324-2607.

SUPPLEMENTARY INFORMATION: A proposed rule to increase the fee for the production of identification records to the subjects of such records was published for notice and comment in the **Federal Register** on August 29, 1994 (59 FR 44383). Interested persons were allowed 30 days to submit comments on the proposal. No comments were received.

Departmental Order 556-73 (38 FR 32806, November 28, 1973) directed that the FBI publish rules for dissemination of arrest and conviction records upon request. That order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and conviction records from having access to those records. In accordance with the Attorney General's directive, the FBI has been releasing copies of identification records to the subjects of such records upon submission of a written request, a set of rolled-inked fingerprint

impressions, and the appropriate processing fee. Based on current cost analysis, the cost for production of an FBI identification record has increased from \$17 to \$18.

This regulation has been drafted and reviewed in accordance with Executive Order No. 12866, Section 1(b), Principles of Regulation. The Attorney General has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509 and 510, and 5 U.S.C. 301, Part 16 of Title 28 of the CFR is amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.33 is revised to read as follows:

§ 16.33 Fee for production of identification record.

Each written request for production of an identification record must be accompanied by a fee of \$18 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigency.

Dated: December 20, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94-32197 Filed 12-30-94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 96-1-6799a FRL-5130-9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of direct final rulemaking.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern negative declarations from the Mojave Desert Air Quality Management District (MDAQMD) for two source categories that emit volatile organic compounds (VOC): Natural Gas or Gasoline Processing Equipment and Chemical Processing and Manufacturing. The MDAQMD has certified that these source categories are not present in the District and this information is being added to the federally approved State Implementation Plan. The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these negative declarations serves as a final determination that the finding of nonsubmittal for these source categories has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on March 6, 1995 unless adverse or critical comments are received by February 2, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105