

of the Tax Court which has become final, then any unpaid portion, the collection of which has been stayed by bond as provided in section 6863(b) shall be collected as part of the tax upon notice and demand from the Secretary, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 6402, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the Secretary.

(g) Abatement if jeopardy does not exist

The Secretary may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with the Tax Court, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the 10th day after the day on which such jeopardy assessment is abated.

(h) Cross references

(1) For the effect of the furnishing of security for payment, see section 6863.

(2) For provision permitting immediate levy in case of jeopardy, see section 6331(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 834; Pub. L. 93-406, title II, §1016(a)(24), Sept. 2, 1974, 88 Stat. 931; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

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

1974—Pub. L. 93-406 substituted “, gift, and certain excise taxes” for “and gift taxes” in section catchline.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

§ 6862. Jeopardy assessment of taxes other than income, estate, gift, and certain excise taxes

(a) Immediate assessment

If the Secretary believes that the collection of any tax (other than income tax, estate tax, gift tax, and the excise taxes imposed by chapters 41, 42, 43, and 44) under any provision of the internal revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying

such tax has expired, immediately assess such tax (together with all interest, additional amounts, and additions to the tax provided for by law). Such tax, additions to the tax, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Secretary for the payment thereof.

(b) Immediate levy

For provision permitting immediate levy in case of jeopardy, see section 6331(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 836; Pub. L. 93-406, title II, §1016(a)(25), Sept. 2, 1974, 88 Stat. 931; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-222, title I, §108(b)(1)(C), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96-223, title I, §101(f)(9), Apr. 2, 1980, 94 Stat. 253; Pub. L. 100-418, title I, §1941(b)(2)(N), Aug. 23, 1988, 102 Stat. 1324.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-418 substituted “and 44” for “44, and 45”.

1980—Subsec. (a). Pub. L. 96-223 which directed the substitution of “the excise taxes imposed by chapters 41, 42, 43, 44, and 45” for “certain excise taxes” was executed by inserting reference to chapter 45 in view of the amendment by Pub. L. 96-222.

Pub. L. 96-222 substituted “the taxes imposed by chapters 41, 42, 43, and 44” for “certain excise taxes”.

1976—Subsec. (a). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1974—Pub. L. 93-406 substituted “, gift, and certain excise taxes” for “, and gift taxes” in section catchline and “gift tax, and certain excise taxes” for “and gift tax” in subsec. (a).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

Amendment by Pub. L. 96-222 effective as if included in the provisions of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, see section 108(b)(4) of Pub. L. 96-222, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

§ 6863. Stay of collection of jeopardy assessments

(a) Bond to stay collection

When an assessment has been made under section 6851, 6852,¹ 6861 or 6862, the collection of the whole or any amount of such assessment may be stayed by filing with the Secretary, within such time as may be fixed by regulations prescribed by the Secretary, a bond in an amount equal to

¹ So in original.

the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed, at the time at which, but for the making of such assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of such assessment is abated, the bond shall, at the request of the taxpayer, be proportionately reduced.

(b) Further conditions in case of income, estate, or gift taxes

In the case of taxes subject to the jurisdiction of the Tax Court—

(1) Prior to petition to Tax Court

If the bond is given before the taxpayer has filed his petition under section 6213(a), the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this paragraph.

(2) Effect of Tax Court decision

The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the Tax Court which has become final. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(3) Stay of sale of seized property pending Tax Court decision

(A) General rule

Where, notwithstanding the provisions of section 6213(a), an assessment has been made under section 6851, 6852, or 6861, the property seized for the collection of the tax shall not be sold—

(i) before the expiration of the periods described in subsection (c)(1)(A) and (B),

(ii) before the issuance of the notice of deficiency described in section 6851(b) or 6861(b), and the expiration of the period provided in section 6213(a) for filing a petition with the Tax Court, and

(iii) if a petition is filed with the Tax Court (whether before or after the making of such assessment), before the expiration of the period during which the assessment of the deficiency would be prohibited if neither sections 6851(a), 6852(a), nor 6861(a) were applicable.

Clauses (ii) and (iii) shall not apply in the case of a termination assessment under sec-

tion 6851 if the taxpayer does not file a return for the taxable year by the due date (determined with regard to any extensions).

(B) Exceptions

Such property may be sold if—

(i) the taxpayer consents to the sale,

(ii) the Secretary determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or

(iii) the property is of the type described in section 6336.

(C) Review by Tax Court

If, but for the application of subparagraph (B), a sale would be prohibited by subparagraph (A)(iii), then the Tax Court shall have jurisdiction to review the Secretary's determination under subparagraph (B) that the property may be sold. Such review may be commenced upon motion by either the Secretary or the taxpayer. An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court.

(c) Stay of sale of seized property pending district court determination under section 7429

(1) General rule

Where a jeopardy assessment has been made under section 6862(a), the property seized for the collection of the tax shall not be sold—

(A) if a civil action is commenced in accordance with section 7429(b), on or before the day on which the district court judgment in such action becomes final, or

(B) if subparagraph (A) does not apply, before the day after the expiration of the period provided in section 7429(a) for requesting an administrative review, and if such review is requested, before the day after the expiration of the period provided in section 7429(b), for commencing an action in the district court.

(2) Exceptions

With respect to any property described in paragraph (1), the exceptions provided by subsection (b)(3)(B) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 836; Pub. L. 94-455, title XII, §1204(c)(7)-(9), title XIX, §1906(a)(38), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1698, 1830, 1834; Pub. L. 100-203, title X, §10713(b)(2)(E), Dec. 22, 1987, 101 Stat. 1330-470; Pub. L. 100-647, title VI, §6245(a), Nov. 10, 1988, 102 Stat. 3750; Pub. L. 101-239, title VII, §7822(d)(2), Dec. 19, 1989, 103 Stat. 2425.)

AMENDMENTS

1989—Subsec. (b)(3)(A)(iii). Pub. L. 101-239 made technical correction to Pub. L. 100-203, §10713(b)(2)(E)(iii), see 1987 Amendment note below.

1988—Subsec. (b)(3)(C). Pub. L. 100-647 added subpar. (C).

1987—Subsec. (a). Pub. L. 100-203, §10713(b)(2)(E)(i), substituted "6851, 6852," for "6851".

Subsec. (b)(3)(A). Pub. L. 100-203, §10713(b)(2)(E)(ii), substituted "6851, 6852, or 6861" for "6851 or 6861".

Subsec. (b)(3)(A)(iii). Pub. L. 100-203, §10713(b)(2)(E)(iii), as amended by Pub. L. 101-239, substituted "6851(a), 6852(a), nor 6861(a)" for "6851(a) nor 6861(a)".

1976—Subsec. (a). Pub. L. 94-455, §1204(c)(7), 1906(b)(13)(A), inserted reference to section 6851, sub-

stituted “an assessment” for “a jeopardy assessment”, struck out “or his delegate” after “Secretary”, and substituted “such assessment” for “the jeopardy assessment”.

Subsec. (b)(3)(A). Pub. L. 94-455, §1204(c)(8), substituted “an assessment has been made under section 6851 or 6861,” for “a jeopardy assessment has been made under section 6861” in provisions preceding cl. (i), added cl. (i), redesignated former cl. (i) as (ii) and substituted “before the issuance of the notice of deficiency described in section 6851(b) or 6861(b), and the expiration of the period” for “if section 6861(b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time”, redesignated former cl. (ii) as (iii) and substituted “assessment), before the expiration” for “jeopardy assessment under section 6861), prior to the expiration” and “if neither sections 6851(a) nor 6861(a) were applicable” for “if section 6861(a) were not applicable”, and inserted provisions following cl. (iii).

Subsec. (b)(3)(B)(ii). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(3)(C). Pub. L. 94-455, §1906(a)(38), struck out subpar. (C) which had limited the applicability of subpars. (A) and (B) to jeopardy assessments made on or after Jan. 1, 1955, with respect to taxes imposed by this title, and with respect to taxes imposed by the Internal Revenue Code of 1939.

Subsec. (c). Pub. L. 94-455, §1204(c)(9), added subsec. (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 7823 of Pub. L. 101-239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6245(b) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section] shall take effect on the 90th day after the date of the enactment of this Act [Nov. 10, 1988].”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1204(c)(7)-(9) of Pub. L. 94-455 applicable with respect to action taken under section 6851, 6861, or 6862 of this title where notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

Amendment by section 1906(a)(38), (b)(13)(A) of Pub. L. 94-455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

§ 6864. Termination of extended period for payment in case of carryback

For termination of extensions of time for payment of income tax granted to corporations expecting carrybacks in case of jeopardy, see section 6164(h).

(Aug. 16, 1954, ch. 736, 68A Stat. 837.)

PART III—SPECIAL RULES WITH RESPECT TO CERTAIN CASH

Sec. 6867. Presumptions where owner of large amount of cash is not identified.

§ 6867. Presumptions where owner of large amount of cash is not identified

(a) General rule

If the individual who is in physical possession of cash in excess of \$10,000 does not claim such cash—

(1) as his, or

(2) as belonging to another person whose identity the Secretary can readily ascertain and who acknowledges ownership of such cash,

then, for purposes of sections 6851 and 6861, it shall be presumed that such cash represents gross income of a single individual for the taxable year in which the possession occurs, and that the collection of tax will be jeopardized by delay.

(b) Rules for assessing

In the case of any assessment resulting from the application of subsection (a)—

(1) the entire amount of the cash shall be treated as taxable income for the taxable year in which the possession occurs,

(2) such income shall be treated as taxable at the highest rate of tax specified in section 1, and

(3) except as provided in subsection (c), the possessor of the cash shall be treated (solely with respect to such cash) as the taxpayer for purposes of chapters 63 and 64 and section 7429(a)(1).

(c) Effect of later substitution of true owner

If, after an assessment resulting from the application of subsection (a), such assessment is abated and replaced by an assessment against the owner of the cash, such later assessment shall be treated for purposes of all laws relating to lien, levy and collection as relating back to the date of the original assessment.

(d) Definitions

For purposes of this section—

(1) Cash

The term “cash” includes any cash equivalent.

(2) Cash equivalent

The term “cash equivalent” means—

- (A) foreign currency,
- (B) any bearer obligation, and
- (C) any medium of exchange which—
 - (i) is of a type which has been frequently used in illegal activities, and
 - (ii) is specified as a cash equivalent for purposes of this part in regulations prescribed by the Secretary.

(3) Value of cash equivalent

Any cash equivalent shall be taken into account—

- (A) in the case of a bearer obligation, at its face amount, and
- (B) in the case of any other cash equivalent, at its fair market value.

(Added Pub. L. 97-248, title III, §330(a), Sept. 3, 1982, 96 Stat. 619; amended Pub. L. 100-647, title I, §1001(a)(1), Nov. 10, 1988, 102 Stat. 3349.)

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100-647 substituted “the highest rate of tax specified in section 1” for “a 50-percent rate”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which