

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-331 effective Oct. 1, 1997, see section 3(d) of Pub. L. 104-331, set out as an Effective Date note under section 1296 of this title.

**§ 2403. Intervention by United States or a State; constitutional question**

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(June 25, 1948, ch. 646, 62 Stat. 971; Pub. L. 94-381, § 5, Aug. 12, 1976, 90 Stat. 1120.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 401 (Aug. 24, 1937, ch. 754, § 1, 50 Stat. 751).

Word "action" was added before "suit or proceeding", in view of Rule 2 of the Federal Rules of Civil Procedure.

Since this section applies to all Federal courts, the word "suit" was not required to be deleted by such rule.

"Court of the United States" is defined in section 451 of this title. Direct appeal from decisions invalidating Acts of Congress is provided by section 1252 of this title.

Changes were made in phraseology.

## AMENDMENTS

1976—Pub. L. 94-381, § 5(b), inserted "or a State" after "United States" in section catchline.

Subsecs. (a), (b). Pub. L. 94-381, § 5(a), designated existing provisions as subsec. (a) and added subsec. (b).

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-381 not applicable to any action commenced on or before Aug. 12, 1976, see section 7 of Pub. L. 94-381, set out as a note under section 2284 of this title.

**§ 2404. Death of defendant in damage action**

A civil action for damages commenced by or on behalf of the United States or in which it is

interested shall not abate on the death of a defendant but shall survive and be enforceable against his estate as well as against surviving defendants.

(June 25, 1948, ch. 646, 62 Stat. 971.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 780a (June 16, 1933, ch. 103, 48 Stat. 311).

Substitution of parties, see rule 25(a) of the Federal Rules of Civil Procedure.

Changes in phraseology were made.

**§ 2405. Garnishment**

In any action or suit commenced by the United States against a corporation for the recovery of money upon a bill, note, or other security, the debtors of the corporation may be summoned as garnishees. Any person so summoned shall appear in open court and depose in writing to the amount of his indebtedness to the corporation at the time of the service of the summons and at the time of making the deposition, and judgment may be entered in favor of the United States for the sum admitted by the garnishee to be due the corporation as if it had been due the United States. A judgment shall not be entered against any garnishee until after judgment has been rendered against the corporation, nor until the sum in which the garnishee is indebted is actually due.

When any garnishee deposes in open court that he is not and was not at the time of the service of the summons indebted to the corporation, an issue may be tendered by the United States upon such deposition. If, upon the trial of that issue, a verdict is rendered against the garnishee, judgment shall be entered in favor of the United States, pursuant to such verdict, with costs.

Any garnishee who fails to appear at the term to which he is summoned shall be subject to attachment for contempt.

(June 25, 1948, ch. 646, 62 Stat. 971.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 748, 749, and 750 (R.S. §§ 935, 936, 937).

Changes were made in phraseology.

**§ 2406. Credits in actions by United States; prior disallowance**

In an action by the United States against an individual, evidence supporting the defendant's claim for a credit shall not be admitted unless he first proves that such claim has been disallowed, in whole or in part, by the Government Accountability Office, or that he has, at the time of the trial, obtained possession of vouchers not previously procurable and has been prevented from presenting such claim to the Government Accountability Office by absence from the United States or unavoidable accident.

(June 25, 1948, ch. 646, 62 Stat. 972; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 774 (R.S., §§ 236, 951; June 10, 1921, ch. 18, §§ 304, 305, 42 Stat. 24).

Word "action" was substituted for "suits", in view of Rule 2 of the Federal Rules of Civil Procedure.

Section 774 of title 28, U.S.C., 1940 ed., provided that “no claim for a credit shall be admitted, upon trial”, etc. This was changed to “evidence supporting the defendant’s claim for a credit shall not be admitted”, to clarify the meaning of the section. The case of *U.S. v. Heard*, D.C.Va. 1940, 32 F.Supp. 39, reviews the conflicting decisions on the question whether compliance with the section must be pleaded, and offers persuasive argument that it need not be, and that the section was designed as a rule of evidence. The wording of the remainder of the section also supports this conclusion, as pointed out by Judge Learned Hand in *U.S. v. Standard Aircraft Corp.*, D.C.N.Y. 1926, 16 F.2d 307, followed in the Heard case.

Changes in phraseology were made.

#### AMENDMENTS

2004—Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in two places.

### § 2407. Delinquents for public money; judgment at return term; continuance

In an action by the United States against any person accountable for public money who fails to pay into the Treasury the sum reported due the United States, upon the adjustment of his account the court shall grant judgment upon motion unless a continuance is granted as specified in this section.

A continuance may be granted if the defendant, in open court and in the presence of the United States attorney, states under oath that he is equitably entitled to credits which have been disallowed by the Government Accountability Office prior to the commencement of the action, specifying each particular claim so rejected, and stating that he cannot safely come to trial.

A continuance may also be granted if such an action is commenced on a bond or other sealed instrument and the court requires the original instrument to be produced.

(June 25, 1948, ch. 646, 62 Stat. 972; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 781 (R.S. § 957; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Word “action” was substituted for “suit”, in view of Rule 2 of the Federal Rules of Civil Procedure.

Words “court requires the original instrument to be produced” were substituted for “defendant pleads non est factum, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper certified in the affidavit”. The plea of non est factum is obsolete under Rule 7(c) of the Federal Rules of Civil Procedure. Furthermore, the words deleted are superfluous, since a court would not require the production of an original instrument unless the proper procedure were taken to require such production.

Changes were made in phraseology.

#### AMENDMENTS

2004—Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in second par.

### § 2408. Security not required of United States

Security for damages or costs shall not be required of the United States, any department or agency thereof or any party acting under the direction of any such department or agency on the

issuance of process or the institution or prosecution of any proceeding.

Costs taxable, under other Acts of Congress, against the United States or any such department, agency or party shall be paid out of the contingent fund of the department or agency which directed the proceedings to be instituted.

(June 25, 1948, ch. 646, 62 Stat. 972.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 870 (R.S. § 1001; Mar. 3, 1911, ch. 231, §§ 117, 289, 36 Stat. 1131, 1167; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; June 19, 1934, ch. 653, § 7, 48 Stat. 1109).

Section 870 of title 28, U.S.C., 1940 ed., applied only to the Supreme Court and district courts. The revised section applies to all courts.

Words “process or the institution or prosecution of any proceeding” were substituted for “appeal, or other process in law, admiralty, or equity.”

Word “agency” was substituted for “any corporation all the stock of which is beneficially owned by the United States, either directly or indirectly”, in view of the creation of many independent governmental agencies since the enactment of the original law on which this section is based.

Changes were made in phraseology.

### § 2409. Partition actions involving United States

Any civil action by any tenant in common or joint tenant owning an undivided interest in lands, where the United States is one of such tenants in common or joint tenants, against the United States alone or against the United States and any other of such owners, shall proceed, and be determined, in the same manner as would a similar action between private persons.

Whenever in such action the court orders a sale of the property or any part thereof the Attorney General may bid for the same in behalf of the United States. If the United States is the purchaser, the amount of the purchase money shall be paid from the Treasury upon a warrant drawn by the Secretary of the Treasury on the requisition of the Attorney General.

(June 25, 1948, ch. 646, 62 Stat. 972.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 766 (May 17, 1898, ch. 339, §§ 1, 2, 30 Stat. 416).

Provisions relating to service or commencement of the action and duty of United States attorneys to appear, defend, and file answer were omitted as surplusage and covered by Rules 2, 3, and 4 of the Federal Rules of Civil Procedure and section 507 of this title.

Words “shall proceed, and be determined, in the same manner as would a similar action between private persons” were substituted for “shall proceed as other cases for partition by courts of equity, and in making such partition the court shall be governed by the same principles of equity that control courts of equity, in partition proceedings between private persons,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

### § 2409a. Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or