

Words “other than said corporation,” after “same defendants,” were omitted as superfluous. Obviously a corporation would not be suing itself.

Changes were made in phraseology.

#### § 1402. United States as defendant

(a) Any civil action in a district court against the United States under subsection (a) of section 1346 of this title may be prosecuted only:

(1) Except as provided in paragraph (2), in the judicial district where the plaintiff resides;

(2) In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the judicial district in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or principal office or agency in any judicial district (A) in the judicial district in which is located the office to which was made the return of the tax in respect of which the claim is made, or (B) if no return was made, in the judicial district in which lies the District of Columbia. Notwithstanding the foregoing provisions of this paragraph a district court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other district or division.

(b) Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action.

(d) Any civil action under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States shall be brought in the district court of the district where the property is located or, if located in different districts, in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 85-920, Sept. 2, 1958, 72 Stat. 1770; Pub. L. 89-719, title II, § 202(b), Nov. 2, 1966, 80 Stat. 1149; Pub. L. 92-562, § 2, Oct. 25, 1972, 86 Stat. 1176; Pub. L. 97-164, title I, § 131, Apr. 2, 1982, 96 Stat. 39.)

##### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 762, 931(a) (Mar. 3, 1887, ch. 359, § 5, 24 Stat. 506; Aug. 2, 1946, ch. 753, § 410(a), 60 Stat. 843).

Section consolidates the venue provisions of section 762 of title 28, U.S.C., 1940 ed., with the venue provisions of section 931(a) of such title, the latter provisions relating to tort claims cases. The jurisdictional provisions of such section 931(a) are incorporated in section 1346(b) of this title. For other provisions thereof, see Distribution Table.

Provisions of section 762 of title 28, U.S.C., 1940 ed., relating to the verification and contents of a petition filed against the United States were omitted as unnecessary. Section 265 of title 28, U.S.C., 1940 ed., relative to the petition in cases filed in the Court of Claims was also omitted from the revised title. (See, also, Rule 11 of the Federal Rules of Civil Procedure.)

Words “civil action” were substituted for “suit” in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

##### AMENDMENTS

1982—Subsec. (a). Pub. L. 97-164 inserted “in a district court” after “civil action” in introductory provisions preceding par. (1). The phrase “civil action” also appeared in par. (2), but no change was made to reflect the probable intent of Congress as indicated on page 79 of House Report No. 97-312.

1972—Subsec. (d). Pub. L. 92-562 added subsec. (d).

1966—Subsec. (c). Pub. L. 89-719 added subsec. (c).

1958—Subsec. (a). Pub. L. 85-920 provided for venue and change of venue in tax refund suits by corporation.

##### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

##### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, see section 203 of Pub. L. 89-719, set out as a note under section 1346 of this title.

#### § 1403. Eminent domain

Proceedings to condemn real estate for the use of the United States or its departments or agencies shall be brought in the district court of the district where the land is located or, if located in different districts in the same State, in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 937.)

##### HISTORICAL AND REVISION NOTES

Based on section 257 of title 40, U.S.C., 1940 ed., Public Buildings, Property, and Works (Aug. 1, 1888, ch. 728, § 1, 25 Stat. 357; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Section constitutes the first clause of the second sentence of section 257, of title 40, U.S.C., 1940 ed. The revised section is expressive of the purpose of such section 257 with necessary changes in phraseology.

The jurisdiction provision of section 257 of title 40, U.S.C., 1940 ed., is incorporated in section 1358 of this title.

The remainder of section 257 of title 40, U.S.C., 1940 ed., is retained in said title 40.

Provision with respect to property in different districts was added to conform with section 1392 of this title.

See, also, section 1392 of this title which fixes venue of an action involving property in different districts in the same State.

#### § 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

(c) A district court may order any civil action to be tried at any place within the division in which it is pending.

(d) Transfers from a district court of the United States to the District Court of Guam, the

District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section, the term “district court” includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term “district” includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 87-845, § 9, Oct. 18, 1962, 76A Stat. 699; Pub. L. 104-317, title VI, § 610(a), Oct. 19, 1996, 110 Stat. 3860; Pub. L. 112-63, title II, § 204, Dec. 7, 2011, 125 Stat. 764.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 119, 163 (Mar. 3, 1911, ch. 231, § 58, 36 Stat. 1103; Sept. 8, 1916, ch. 475, § 5, 39 Stat. 851).

Section consolidates sections 119 and 163 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology and substance.

Section 119 of title 28, U.S.C., 1940 ed., related only to transfer of cases from one division to another on stipulation of the parties.

Subsection (a) was drafted in accordance with the doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see *Baltimore & Ohio R. Co. v. Kepner*, 1941, 62 S.Ct. 6, 314 U.S. 44, 86 L.Ed. 28, which was prosecuted under the Federal Employer's Liability Act in New York, although the accident occurred and the employee resided in Ohio. The new subsection requires the court to determine that the transfer is necessary for convenience of the parties and witnesses, and further, that it is in the interest of justice to do so.

Sections 143, 172, 177, and 181 of title 28, U.S.C., 1940 ed., relating to the district courts of Arizona, Montana, New Mexico, and Ohio, contained special provisions similar to subsection (b), applicable to those States. To establish uniformity, the general language of such subsection has been drafted and the special provisions of those sections omitted.

Subsection (b) is based upon section 163 of title 28, U.S.C., 1940 ed., which applied only to the district of Maine. This revised subsection extends to all judicial districts and permits transfer of cases between divisions. Criminal cases may be transferred pursuant to Rules 19-21 of the new Federal Rules of Criminal Procedure, and the criminal provisions of said section 163 are therefore omitted.

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 112-63, § 204(1), inserted “or to any district or division to which all parties have consented” before period at end.

Subsec. (d). Pub. L. 112-63, § 204(2), substituted “Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section,” for “As used in this section,”.

1996—Subsec. (d). Pub. L. 104-317 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “As used in this section, ‘district court’ includes the United States District Court for the District of the Canal Zone; and ‘district’ includes the territorial jurisdiction of that court.”

1962—Subsec. (d). Pub. L. 87-845 added subsec. (d).

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-63 effective upon the expiration of the 30-day period beginning on Dec. 7, 2011, and applicable to any action commenced in a United States district court on or after such effective date, and to any action removed from a State court to a

United States district court that had been commenced, within the meaning of State law, on or after such effective date, see section 205 of Pub. L. 112-63, set out as an Effective Date note under section 1390 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-317, title VI, § 610(c), Oct. 19, 1996, 110 Stat. 3861, provided that: “The amendments made by this section [amending this section and section 1406 of this title] apply to cases pending on the date of the enactment of this Act [Oct. 19, 1996] and to cases commenced on or after such date.”

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-845 effective Jan. 2, 1963, see section 25 of Pub. L. 87-845, set out as a note under section 414 of this title.

### § 1405. Creation or alteration of district or division

Actions or proceedings pending at the time of the creation of a new district or division or transfer of a county or territory from one division or district to another may be tried in the district or division as it existed at the institution of the action or proceeding, or in the district or division so created or to which the county or territory is so transferred as the parties shall agree or the court direct.

(June 25, 1948, ch. 646, 62 Stat. 937.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 121 (Mar. 3, 1911, ch. 231, § 59, 36 Stat. 1103).

Enforcement of liens in like circumstances is provided by section 1656 of this title.

Remainder of section 121 of title 28, U.S.C., 1940 ed., is incorporated in section 3240 of revised title 18, Crimes and Criminal Procedure (H.R. 1600, 80th Cong.). Changes were made in phraseology.

### § 1406. Cure or waiver of defects

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(c) As used in this section, the term “district court” includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term “district” includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; May 24, 1949, ch. 139, § 81, 63 Stat. 101; Pub. L. 86-770, § 1, Sept. 13, 1960, 74 Stat. 912; Pub. L. 87-845, § 10, Oct. 18, 1962, 76A Stat. 699; Pub. L. 97-164, title I, § 132, Apr. 2, 1982, 96 Stat. 39; Pub. L. 104-317, title VI, § 610(b), Oct. 19, 1996, 110 Stat. 3860.)

#### HISTORICAL AND REVISION NOTES

##### 1948 ACT

Subsection (a) provides statutory sanction for transfer instead of dismissal, where venue is improperly laid.

Subsection (b) is declaratory of existing law. (See *Panama R.R. Co. v. Johnson*, 1924, 44 S.Ct. 391, 264 U.S. 375, 68 L.Ed. 748.) It makes clear the intent of Congress that venue provisions are not jurisdictional but may be waived.