

rity, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

STATE FISH AND WILDLIFE PERMITS

Pub. L. 105-206, title III, §3445(c), July 22, 1998, 112 Stat. 763, provided that:

“(1) IN GENERAL.—With respect to permits issued by a State and required under State law for the harvest of fish or wildlife in the trade or business of an individual taxpayer, the term ‘other assets’ as used in section 6334(e)(2) of the Internal Revenue Code of 1986 shall include future income which may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

“(2) CONSTRUCTION.—Paragraph (1) shall not be construed to invalidate or in any way prejudice any assertion that the privilege embodied in permits described in paragraph (1) is not property or a right to property under the Internal Revenue Code of 1986.”

§ 6335. Sale of seized property

(a) Notice of seizure

As soon as practicable after seizure of property, notice in writing shall be given by the Secretary to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) Notice of sale

The Secretary shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places. Such notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof. Whenever levy is made without regard to the 10-day period provided in section 6331(a), public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to sale of perishable goods) is applicable.

(c) Sale of indivisible property

If any property liable to levy is not divisible, so as to enable the Secretary by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of such property shall be sold.

(d) Time and place of sale

The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under subsection (b). The place of sale shall be within the county in which the

property is seized, except by special order of the Secretary.

(e) Manner and conditions of sale

(1) In general

(A) Determinations relating to minimum price

Before the sale of property seized by levy, the Secretary shall determine—

(i) a minimum price below which such property shall not be sold (taking into account the expense of making the levy and conducting the sale), and

(ii) whether, on the basis of criteria prescribed by the Secretary, the purchase of such property by the United States at such minimum price would be in the best interest of the United States.

(B) Sale to highest bidder at or above minimum price

If, at the sale, one or more persons offer to purchase such property for not less than the amount of the minimum price, the property shall be declared sold to the highest bidder.

(C) Property deemed sold to United States at minimum price in certain cases

If no person offers the amount of the minimum price for such property at the sale and the Secretary has determined that the purchase of such property by the United States would be in the best interest of the United States, the property shall be declared to be sold to the United States at such minimum price.

(D) Release to owner in other cases

If, at the sale, the property is not declared sold under subparagraph (B) or (C), the property shall be released to the owner thereof and the expense of the levy and sale shall be added to the amount of tax for the collection of which the levy was made. Any property released under this subparagraph shall remain subject to any lien imposed by subchapter C.

(2) Additional rules applicable to sale

The Secretary shall by regulations prescribe the manner and other conditions of the sale of property seized by levy. If one or more alternative methods or conditions are permitted by regulations, the Secretary shall select the alternatives applicable to the sale. Such regulations shall provide:

(A) That the sale shall not be conducted in any manner other than—

(i) by public auction, or

(ii) by public sale under sealed bids.

(B) In the case of the seizure of several items of property, whether such items shall be offered separately, in groups, or in the aggregate; and whether such property shall be offered both separately (or in groups) and in the aggregate, and sold under whichever method produces the highest aggregate amount.

(C) Whether the announcement of the minimum price determined by the Secretary may be delayed until the receipt of the highest bid.

(D) Whether payment in full shall be required at the time of acceptance of a bid, or whether a part of such payment may be deferred for such period (not to exceed 1 month) as may be determined by the Secretary to be appropriate.

(E) The extent to which methods (including advertising) in addition to those prescribed in subsection (b) may be used in giving notice of the sale.

(F) Under what circumstances the Secretary may adjourn the sale from time to time (but such adjournments shall not be for a period to exceed in all 1 month).

(3) Payment of amount bid

If payment in full is required at the time of acceptance of a bid and is not then and there paid, the Secretary shall forthwith proceed to again sell the property in the manner provided in this subsection. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the Secretary, the sale may be declared by the Secretary to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b) and (c) and this subsection. In the event of such readvertisement and sale any new purchaser shall receive such property or rights to property, free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited.

(4) Cross reference

For provision providing for civil damages for violation of paragraph (1)(A)(i), see section 7433.

(f) Right to request sale of seized property within 60 days

The owner of any property seized by levy may request that the Secretary sell such property within 60 days after such request (or within such longer period as may be specified by the owner). The Secretary shall comply with such request unless the Secretary determines (and notifies the owner within such period) that such compliance would not be in the best interests of the United States.

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

For restrictions on sale of seized property pending Tax Court decision, see section 6863(b)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 785; Pub. L. 89-719, title I, §104(d), Nov. 2, 1966, 80 Stat. 1137; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title XV, §1570(a), Oct. 22, 1986, 100 Stat. 2764; Pub. L. 100-647, title VI, §6236(g), Nov. 10, 1988, 102 Stat. 3740; Pub. L. 105-206, title III, §3441(a), (b), July 22, 1998, 112 Stat. 761.)

AMENDMENTS

1998—Subsec. (e)(1)(A)(i). Pub. L. 105-206, §3441(a), substituted “a minimum price below which such prop-

erty shall not be sold” for “a minimum price for which such property shall be sold”.

Subsec. (e)(4). Pub. L. 105-206, §3441(b), added par. (4). 1988—Subsecs. (f), (g). Pub. L. 100-647 added subsec. (f) and redesignated former subsec. (f) as (g).

1986—Subsec. (e)(1). Pub. L. 99-514 amended par. (1) generally. Prior to amendment, par. (1) “Minimum price” read as follows: “Before the sale the Secretary shall determine a minimum price for which the property shall be sold, and if no person offers for such property at the sale the amount of the minimum price, the property shall be declared to be purchased at such price for the United States; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the Secretary shall take into account the expense of making the levy and sale.”

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

1966—Subsec. (b). Pub. L. 89-719 inserted an alternative to the publication of notice of sale to allow publication in a newspaper generally circulated within the county in which the property is seized even though the newspaper is not published in such county.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3441(c), July 22, 1998, 112 Stat. 761, provided that: “The amendments made by this section [amending this section] shall apply to sales made after the date of the enactment of this Act [July 22, 1998].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable to requests made on or after Jan. 1, 1989, see section 6236(h)(2) of Pub. L. 100-647, set out as a note under section 6331 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XV, §1570(b), Oct. 22, 1986, 100 Stat. 2765, provided that: “The amendment made by subsection (a) [amending this section] shall apply to—

“(1) property seized after the date of the enactment of this Act [Oct. 22, 1986], and

“(2) property seized on or before such date which is held by the United States on such date.”

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)-(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

UNIFORM ASSET DISPOSAL MECHANISM

Pub. L. 105-206, title III, §3443, July 22, 1998, 112 Stat. 762, provided that: “Not later than the date which is 2 years after the date of the enactment of this Act [July 22, 1998], the Secretary of the Treasury or the Secretary’s delegate shall implement a uniform asset disposal mechanism for sales under section 6335 of the Internal Revenue Code of 1986. The mechanism should be designed to remove any participation in such sales by revenue officers of the Internal Revenue Service and should consider the use of outsourcing.”

§ 6336. Sale of perishable goods

If the Secretary determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and—

(1) Return to owner

If the owner of the property can be readily found, the Secretary shall give him notice of