

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 affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(f) A civil action against the United States under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Fed-

eral agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be—

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(l) For purposes of this section, the term “tide or submerged lands” means “lands beneath navigable waters” as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

(Added Pub. L. 92-562, § 3(a), Oct. 25, 1972, 86 Stat. 1176; amended Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-598, Nov. 4, 1986, 100 Stat. 3351.)

#### REFERENCES IN TEXT

Section 208 of the Act of July 10, 1952, referred to in subsec. (a), is section 208(a) to (d) of act July 10, 1952,