

## Subchapter C.—Forfeitures

## PART I.—PROPERTY SUBJECT TO FORFEITURE

## § 7301. Property subject to tax.

## CROSS REFERENCES

Firearms subject to internal revenue seizure and forfeiture provisions, see section 924(c) of title 18, Crimes and Criminal Procedure.

## PART II.—PROVISIONS COMMON TO FORFEITURES

## § 7326. Disposal of forfeited or abandoned property in special cases.

## (a) Coin-operated gaming devices.

Any coin-operated gaming device as defined in section 4462 upon which a tax is imposed by section 4461 and which has been forfeited under any provision of this title shall be destroyed, or otherwise disposed of, in such manner as may be prescribed by the Secretary or his delegate.

(As amended June 21, 1965, Pub. L. 89-44, title VI, § 601(j), 79 Stat. 155.)

## AMENDMENTS

1965—Subsec. (a). Pub. L. 89-44 substituted “section 4462” for “section 4462(a)(2)”.

## EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 601 of Pub. L. 89-44 to take effect in a manner consistent with the effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89-44, set out as a note under section 6103 of this title.

## Chapter 76.—JUDICIAL PROCEEDINGS

## Subchapter B. Proceedings by Taxpayers and Third Parties.

## AMENDMENTS

1966—Pub. L. 89-719, title I, § 110(d)(3), Nov. 2, 1966, 80 Stat. 1145, inserted “and Third Parties” in the heading of Subchapter B.

Subchapter A.—Civil Actions by the United States  
§ 7402. Jurisdiction of district courts.

## (e) To quiet title.

The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

## (f) General jurisdiction.

For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.

(As amended Nov. 2, 1966, title I, § 107(a), Nov. 2, 1966, 80 Stat. 1140.)

## AMENDMENTS

1966—Subsec. (e). Pub. L. 89-719 added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 89-719 redesignated former subsec. (e) as (f).

## EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United

States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89-719, set out as a note under section 6323 of this title.

## § 7403. Action to enforce lien or to subject property to payment of tax.

## (c) Adjudication and decree.

The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sales according to the findings of the court in respect to the interests of the parties and of the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs.

(As amended Nov. 2, 1966, Pub. L. 89-719, title I, § 107(b), 80 Stat. 1140.)

## AMENDMENTS

1966—Subsec. (c). Pub. L. 89-719 inserted sentence permitting the United States, if the property is sold to satisfy a first lien held by the United States, to bid at the sale such sum, not more than the amount of such lien with expenses of sale, as the Secretary or his delegate directs.

## EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89-719, set out as a note under section 6323 of this title.

## Subchapter B.—Proceedings by Taxpayers and Third Parties

## AMENDMENTS

1966—Pub. L. 89-719, title I, § 110(d)(1), Nov. 2, 1966, 80 Stat. 1145, inserted “and Third Parties” in the heading of Subchapter B.

## Sec.

7424. Intervention.

7425. Discharge of liens.

7426. Civil actions by persons other than taxpayers.

7427. Cross references.

## AMENDMENTS

1966—Pub. L. 89-719, title I, § 110(d)(2), Nov. 2, 1966, 80 Stat. 1145, substituted “Intervention” for “Civil action to clear title to property” in item 7424, added items 7425 and 7426, and redesignated former item 7425 as 7427.

**§ 7421. Prohibition of suits to restrain assessment or collection.**

**(a) Tax.**

Except as provided in sections 6212 (a) and (c), 6213(a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

\* \* \* \* \*

(As amended Nov. 2, 1966, Pub. L. 89-719, title I, § 110(c), 80 Stat. 1144.)

**AMENDMENTS**

1966—Subsec. (a). Pub. L. 89-719 inserted reference to section 7426(a), (b)(1), and words "by any person, whether or not such person is the person against whom such tax was assessed."

**EFFECTIVE DATE OF 1966 AMENDMENT**

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89-719, set out as a note under section 6323 of this title.

**§ 7422. Civil actions for refund.**

\* \* \* \* \*

**(e) Stay of proceedings.**

If the Secretary or his delegate prior to the hearing of a suit brought by a taxpayer in a district court or the Court of Claims for the recovery of any income tax, estate tax, gift tax, or tax imposed by chapter 42 (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer's suit, the proceedings in taxpayer's suit shall be stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter. If the taxpayer files a petition with the Tax Court, the district court or the Court of Claims, as the case may be, shall lose jurisdiction of taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court of the subject matter of taxpayer's suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer's suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwithstanding that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issues raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by a taxpayer which, prior to the date of

enactment of this title, is commenced, instituted, or pending in a district court or the Court of Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes).

**(f) Limitation on right of action for refund.**

**(1) General rule.**

A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative. Such suit or proceeding may be maintained against the United States notwithstanding the provisions of section 2502 of title 28 of the United States Code (relating to aliens' privilege to sue).

**(2) Misjoinder and change of venue.**

If a suit or proceeding brought in a United States district court against an officer or employee of the United States (or former officer or employee) or his personal representative is improperly brought solely by virtue of paragraph (1), the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action commenced, upon proper service of process on the United States. Such suit or proceeding shall upon request by the United States be transferred to the district or division where it should have been brought if such action initially had been brought against the United States.

**(g) Special rules for certain excise taxes imposed by chapter 42.**

**(1) Right to bring actions.**

With respect to any act (or failure to act) giving rise to liability under section 4941, 4942, 4943, 4944, or 4945, payment of the full amount of tax imposed under section 4941(a) (relating to initial taxes on self-dealing), section 4942(a) relating to initial tax on failure to distribute income), section 4943 (a) relating to initial tax on excess business holdings), section 4944(a) (relating to initial taxes on investments which jeopardize charitable purpose), section 4945 (a) (relating to initial taxes on taxable expenditures), section 4941(b) (relating to additional taxes on self-dealing), section 4942(b) (relating to additional tax on failure to distribute income), section 4943(b) (relating to additional tax on excess business holdings), section 4944(b) (relating to additional taxes on investments which jeopardize charitable purpose), or section 4945(b) (relating to additional taxes on taxable expenditures) shall constitute sufficient payment in order to maintain an action under this section with respect to such act (or failure to act).

**(2) Limitation on suit for refund.**

No suit may be maintained under this section for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, or 4945 with respect to any act (or failure to act) giving rise to liability for tax under such sections, unless no other suit has been maintained for credit or refund of, and no petition has been filed in the Tax Court with respect to a deficiency in, any other tax imposed by such sections with respect to such act (or failure to act).

## (3) Final determination of issues.

For purposes of this section, any suit for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, or 4945 with respect to any act (or failure to act) giving rise to liability for tax under such sections, shall constitute a suit to determine all questions with respect to any other tax imposed with respect to such act (or failure to act) under such sections, and failure by the parties to such suit to bring any such question before the Court shall constitute a bar to such question.

## (h) Cross references.

(1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund), and chapter 66 (relating to limitations).

(2) For duty of United States attorneys to defend suits, see section 507 of Title 28 of the United States Code.

(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.

(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.

(As amended Nov. 2, 1966, Pub. L. 89-713, § 3(a), 80 Stat. 1108; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(i), (j) (56), 83 Stat. 525, 532.)

## AMENDMENTS

1969—Subsec. (e). Pub. L. 91-172, § 101(j) (56), inserted reference to chapter 42 taxes.

Subsec. (g). Pub. L. 91-172, § 101(i), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 91-172, § 101(i), redesignated former subsec. (g) as (h).

1966—Subsec. (f). Pub. L. 89-713 added subsec. (f). Former subsec. (f) redesignated as subsec. (g).

Subsec. (g). Pub. L. 89-713 redesignated former subsec. (f) as subsec. (g).

## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

## EFFECTIVE DATE OF 1966 AMENDMENT

Section 3(d) of Pub. L. 89-713 provided that: "The amendments made by subsections (a) and (b) [redesignating former subsec. (f) of this section as subsec. (g), and adding section 2502(b) of Title 28] shall apply to suits brought against officers, employees, or personal representatives referred to therein which are instituted 90 days or more after the date of the enactment of this Act [Nov. 2, 1966]. The amendment made by subsection (c) [amending section 7482(b)(1) of this title] shall apply to all decisions of the Tax Court entered after the date of enactment of this Act."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7426 of this title.

## § 7424. Intervention.

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien. (As amended Nov. 2, 1966, Pub. L. 89-719, title I, § 108, 80 Stat. 1140.)

## REFERENCES IN TEXT

Sections 1444 and 2410 of title 28 of the United States Code, referred to in text, are sections 1444 and 2410 respectively of Title 28, Judiciary and Judicial Procedure.

## AMENDMENTS

1966—Pub. L. 89-719 substituted "Intervention" for "Civil action to clear title to property" as the section catchline and substituted provisions, set out in a single paragraph, granting the government authority to intervene in a court proceeding to assert any lien arising under this title on property which is the subject of a civil action or suit to which the government is not a party with the same procedural rules to apply as where the government is initially joined properly as a party and with the proceedings to have no effect on the government's lien if the application to intervene is denied, for provisions, formerly set out in three subsections, setting out a procedure by which a person having a lien upon or interest in property referred to in section 7403 could file a civil action to clear title to the property and obtain an adjudication of the matter involved in the same manner as in the case of a civil action filed under section 7403.

## EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89-719, set out as a note under section 6323 of this title.

## CIVIL ACTIONS TO CLEAR TITLE TO PROPERTY COMMENCED BEFORE NOV. 2, 1966

Section 114(d) of Pub. L. 89-719 provided that: "If before the date of enactment of this Act [Nov. 2, 1966], any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 [this section] as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act."

## § 7425. Discharge of liens.

## (a) Judicial proceedings.

If the United States is not joined as a party a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

**(b) Other sales.**

Notwithstanding subsection (a) a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c) (1); or

(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

(B) the law makes no provision for such filing, or

(C) notice of such sale is given in the manner prescribed in subsection (c) (1).

**(c) Special rules.**

**(1) Notice of sale.**

Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary or his delegate.

**(2) Consent to sale.**

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

**(3) Sale of perishable goods.**

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, to the Secretary or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held

as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

**(d) Redemption by United States.**

**(1) Right to redeem.**

In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under the local law, whichever is longer.

**(2) Amount to be paid.**

In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

**(3) Certificate of redemption.**

**(A) In general.**

In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

**(B) Filing.**

The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

**(C) Effect.**

A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property.

(Added Pub. L. 89-719, title I, § 109, Nov. 2, 1966, 80 Stat. 1141.)

**REFERENCES IN TEXT**

Section 2410 of title 28 of the United States Code, referred to in text, is section 2410 of Title 28, Judiciary and Judicial Procedure.

**EFFECTIVE DATE**

Section applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by

a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the section would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time of bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in title 26 section 7810.

**§ 7426. Civil actions by persons other than taxpayers.**

**(a) Actions permitted.**

**(1) Wrongful levy.**

If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

**(2) Surplus proceeds.**

If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

**(3) Substituted sale proceeds.**

If property has been sold pursuant to an agreement described in section 6325(b) (3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

**(b) Adjudication.**

The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

**(1) Injunction.**

If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

**(2) Recovery of property.**

If the court determines that such property has been wrongfully levied upon, the court may—

(A) order the return of specific property if the United States is in possession of such property;

(B) grant a judgment for the amount of money levied upon; or

(C) grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) relating to manner and conditions of sale, the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

**(3) Surplus proceeds.**

If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

**(4) Substituted sale proceeds.**

If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b) (3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

**(c) Validity of assessment.**

For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

**(d) Limitation on rights of action.**

No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

**(e) Substitution of United States as party.**

If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

**(f) Provision inapplicable.**

The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

**(g) Interest.**

Interest shall be allowed at the rate of 6 percent per annum—

(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the money wrongfully levied upon to the date of payment of such judgment; and

(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

## (h) Cross reference.

For period of limitation, see section 6532(c).

(Added Pub. L. 89-719, title I, § 110(a), Nov. 2, 1966, 80 Stat. 1142.)

## EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the section would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time of bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89-719, set out as a note under section 6323 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6503, 6532, 7421 of this title.

## § 7427. Cross references.

Section 7425 redesignated 7427 by Pub. L. 89-719, title I, § 109, Nov. 2, 1966, 80 Stat. 1141.

## Subchapter C.—The Tax Court

## PART I.—ORGANIZATION AND JURISDICTION

## § 7441. Status.

There is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court. (As amended Dec. 30, 1969, Pub. L. 91-172, title IX, § 951, 83 Stat. 730.)

## AMENDMENTS

1969—Pub. L. 91-172 substituted provisions establishing Tax Court as a Constitutional court, and enumerating the members that comprise its bench, for provisions continuing the Board of Tax Appeals, known as the Tax Court, as an independent agency in the Executive Branch of Government and enumerating the members that comprise its bench.

## EFFECTIVE DATE OF 1969 AMENDMENT

Section 962(a) of Pub. L. 91-172 provided that: "The amendments made by sections 951, 953, 954 (c) and (e), 955, 956, 958, and 960 (c), (d), (e), (g), and (j) [amending this section and sections 7443(c), 7447(a), (g), 7448, 7456, 7471, and 7701 of this title] shall take effect on the date of enactment of this Act [Dec. 30, 1969]."

## CONTINUATION OF STATUS

Section 961 of Pub. L. 91-172 provided that: "The United States Tax Court established under the amendment made by section 951 [amending this section] is a continuation of the Tax Court of the United States as it existed prior to the date of enactment of this Act [Dec. 30, 1969], the judges of the Tax Court of the United States immediately prior to the date of enactment of this Act [Dec. 30, 1969] shall become the judges of the United States Tax Court upon the enactment of this Act [Dec. 30, 1969], and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Tax Court of the United States before the date of enactment of this Act [Dec. 30, 1969] shall result from the enactment of this Act [Dec. 30, 1969]."

## § 7443. Membership.

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## (b) Appointment.

Judges of the Tax Court shall be appointed by the President, by and with the advice and consent

of the Senate, solely on the grounds of fitness to perform the duties of the office. No individual shall be a judge of the Tax Court unless he is appointed to that office before attaining the age of 65.

## (c) Salary.

(1) Each judge shall receive salary at the same rate and in the same installments as judges of the district courts of the United States.

(2) For rate of salary and frequency of installment see section 135, title 28, United States Code, and section 5505, title 5, United States Code.

\* \* \* \* \*

## (e) Term of Office.

The term of office of any judge of the Tax Court shall expire 15 years after he takes office.

\* \* \* \* \*

(As amended Dec. 30, 1969, Pub. L. 91-172, title IX, §§ 952, 953, 83 Stat. 730.)

## AMENDMENTS

1969—Subsec. (b). Pub. L. 91-172, § 952(a), provided that an individual may not be appointed a judge of the Tax Court after reaching age 65.

Subsec. (c). Pub. L. 91-172, § 953, substituted provisions fixing salary of Tax Court judges at the same rate and same installments as District Court judges, for provisions that each judge of the Tax Court receive a salary of \$30,000 per annum, to be paid in monthly installments.

Subsec. (e). Pub. L. 91-172, § 952(b), substituted provisions that a term in office of any Tax Court judge would expire 15 years after he takes office, for provisions that a term in office of any Tax Court judge would expire 12 years after the expiration of the term for which his predecessor was appointed, and any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed would be appointed only for the unexpired term of his predecessor.

## EFFECTIVE DATE OF 1969 AMENDMENT

Section 962(b) and (e) of Pub. L. 91-172 provided that:

"(b) The amendment made by section 952(a) [amending subsec. (b) of this section] shall apply to judges appointed after the date of enactment of this Act [Dec. 30, 1969].

"(c) The amendment made by section 952(b) [amending subsec. (e) of this section] shall take effect on the date of enactment of this Act [Dec. 30, 1969], except that—

"(1) the term of office being served by a judge of the Tax Court on that date shall expire on the date it would have expired under the law in effect on the date preceding the date of enactment of this Act [Dec. 30, 1969]; and

"(2) a judge of the Tax Court on the date of enactment of this Act [Dec. 30, 1969] may be reappointed in the same manner as a judge of the Tax Court hereafter appointed."

Amendment of subsec. (c) by section 953 of Pub. L. 91-172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

## CERTIFICATION BY JUDGE OF TRAVELING EXPENSES

Pub. L. 91-74, title IV, § 401, Sept. 29, 1969, 83 Stat. 123, provided in part: "That travel expenses of the judges shall be paid upon the written certificate of the judge."

Similar provisions were contained in the following prior appropriation acts:

1968—June 19, 1968, Pub. L. 90-350, title IV, § 401, 82 Stat. 196.

1967—July 7, 1967, Pub. L. 90-47, title IV, § 401, 81 Stat. 116.

1966—June 29, 1966, Pub. L. 89-474, title IV, § 401, 80 Stat. 228.

1965—June 30, 1965, Pub. L. 89-57, title IV, § 401, 79 Stat. 203.

1964—Aug. 1, 1964, Pub. L. 88-392, title IV, § 401, 78 Stat. 375.

1963—June 13, 1963, Pub. L. 88-30, title IV, § 401, 77 Stat. 65.  
 1962—Aug. 6, 1962, Pub. L. 87-575, title V, § 501, 76 Stat. 317.  
 1961—Aug. 21, 1961, Pub. L. 87-159, title III, § 301, 75 Stat. 398.  
 1960—June 30, 1960, Pub. L. 86-561, title III, § 301, 74 Stat. 283.  
 1959—June 11, 1959, Pub. L. 86-39, title III, § 301, 73 Stat. 70.  
 1958—Mar. 28, 1958, Pub. L. 85-355, title III, § 301, 72 Stat. 66.  
 1957—May 31, 1957, Pub. L. 85-37, title III, § 301, 71 Stat. 41.  
 1956—Apr. 2, 1956, ch. 101, title III, § 301, 70 Stat. 98.  
 1955—June 1, 1955, ch. 113, title III, § 301, 69 Stat. 78.

#### 1960 INCREASE IN SALARY

Salary of judge increased from \$30,000 to \$40,000 per annum, commencing February 14, 1960, upon recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

#### § 7447. Retirement.

##### (a) Definitions.

For purposes of this section—

(1) The term "Tax Court" means the United States Tax Court.

\* \* \* \* \*

(4) Repealed. Pub. L. 91-172, title IX, § 954 (e)(1), Dec. 30, 1969, 83 Stat. 732.)

(5) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as judge, as judge of the Tax Court of the United States, or as a member of the Board of Tax Appeals.

##### (b) Retirement.

(1) Any judge shall retire upon attaining the age of 70.

(2) Any judge who has attained the age of 65 may retire any time after serving as judge for 15 years or more.

(3) Any judge who is not reappointed following the expiration of the term of his office may retire upon the completion of such term, if (A) he has served as a judge of the Tax Court for 15 years or more and (B) not earlier than 9 months preceding the date of the expiration of the term of his office and not later than 6 months preceding such date, he advised the President in writing that he was willing to accept reappointment to the Tax Court.

(4) Any judge who becomes permanently disabled from performing his duties shall retire.

Section 8335(a) of title 5 of the United States Code (relating to automatic separation from the service) shall not apply in respect to judges.

\* \* \* \* \*

##### (d) Retired pay.

Any individual who—

(1) retires under paragraph (1), (2), or (3) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period as the number of years he has served as judge bears to 10; except that the rate of such retired pay

shall not be more than the rate of such salary for such period; or

(2) retires under paragraph (4) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate—

(A) equal to the rate of the salary payable to a judge during such period if before he retired he had served as a judge not less than 10 years; or

(B) one-half of the rate of the salary payable to a judge during such period if before he retired he had served as a judge less than 10 years.

Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more.

##### (g) Coordination with civil service retirement.

###### (1) General rule.

Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as a judge (together with other service as an officer or employee to whom such civil service retirement laws apply) as if this section had not been enacted.

###### (2) Effect of electing retired pay.

In the case of any individual who has filed an election to receive retired pay under subsection (d)—

(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as judge or otherwise);

(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to him under subsection (d) or from any other salary, pay, or compensation payable to him, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331(8) of title 5 of the United States Code upon making application therefor with the Civil Service Commission.

##### (h) Retirement for disability.

(1) Any judge who becomes permanently disabled from performing his duties shall certify to the President his disability in writing. If the chief judge retires for disability, his retirement shall not take effect until concurred in by the President. If

any other judge retires for disability, he shall furnish to the President a certificate of disability signed by the chief judge.

(2) Whenever any judge who becomes permanently disabled from performing his duties does not retire and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President shall declare such judge to be retired.

(As amended Feb. 2, 1966, Pub. L. 89-354, § 1, 80 Stat. 5; Dec. 30, 1969, Pub. L. 91-172, title IX, §§ 954, 960 (c), (d), 83 Stat. 730, 734.)

#### REFERENCES IN TEXT

The civil service retirement laws, referred to in subsec. (g) (2) (A), are classified generally to section 8301 et seq. of Title 5, Government Organization and Employees.

The Civil Service Retirement and Disability Fund, referred to in subsec. (g) (2) (B), is provided for in section 8343 of Title 5.

#### AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 954(e)(1), repealed par. (4) which defined the term "Civil Service Retirement Act".

Subsec. (a) (1). Pub. L. 91-172, § 960(c), substituted "United States Tax Court" for "Tax Court of the United States".

Subsec. (a) (5). Pub. L. 91-172, § 960(d), inserted reference to service as a judge of the Tax Court of the United States.

Subsec. (b). Pub. L. 91-172, § 954(a), substituted provisions authorizing retirement at age 70, or age 65 after serving 15 years, or when any judge has become permanently disabled, authorizing any judge not reappointed who has served 15 years or more to retire under enumerated condition, and rendering section 8335(a) of Title 5 not applicable to judges, for provisions authorizing retirement after a judge has served 18 years, requiring anyone who served as a judge for 10 years or more and attained the age of 70 years to retire no later than the close of the third month beginning after the month in which he attained 70 years or the month completing the tenth year of service or August 1953, and rendering section 2(a) of the Civil Service Retirement Act not applicable to judges.

Subsec. (d). Pub. L. 91-172, § 954(b), substituted provisions specifying methods of computation of retirement pay under subsec. (b) of this section so as to conform such provisions to subsec. (b) (relating to conditions for retiring), for provisions specifying methods of computation for retirement pay under former subsec. (b) of this section (relating to conditions for retiring).

Subsec. (g) (1). Pub. L. 91-172, § 954(e) (2), substituted "civil service retirement laws" and "such civil service retirement laws apply" for "Civil Service Retirement Act" and "such Act applies", respectively.

Subsec. (g) (2). Pub. L. 91-172, § 954(c), substituted provisions that any individual electing to receive retirement pay under subsec. (d) of this section is not to receive any payment under the civil service retirement laws, and no deduction is to be made for the Civil Service Retirement and Disability Fund, and a lump-sum credit computed under section 8331(8) of Title 5 is to be paid, for provisions which enumerated the effects and conditions of electing retirement pay under former subsec. (d) of this section.

Subsec. (g) (3). Pub. L. 91-172, § 954(c), struck out subsec. (g) (3) which enumerated the conditions and effects of waiving civil service benefits in lieu of retirement pay under former subsec. (d) of this section.

Subsec. (g) (4). Pub. L. 91-172, § 954(c), struck out subsec. (g) (4) which provided that section (6) (4), (6) of the Civil Service Retirement Act would be applicable to retirement pay accruing under former subsec. (d) of this section.

Subsec. (h). Pub. L. 91-172, § 954(d), added subsec. (h).

1966—Subsec. (d). Pub. L. 89-354 substituted "during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period" for "at a rate which bears the same ratio to the rate of the salary payable to him as judge at the time he ceases to be a judge" and "the rate of such salary for such period" for "the rate of such salary" wherever appearing.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Section 962(d) of Pub. L. 91-172 provided that: "The amendments made by subsections (a), (b), and (d) of section 954 [amending subsecs. (b), (d), and (h) of this section] shall apply to—

(1) all judges of the Tax Court retiring on or after the date of enactment of this Act [Dec. 30, 1969], and

(2) all individuals performing judicial duties pursuant to section 7447(e) [subsec. (c) of this section] or receiving retired pay pursuant to section 7447(d) [subsec. (d) of this section] on the day preceding the date of enactment of this Act—[this section] [Dec. 30, 1969].

Any individual who has served as a judge of the Tax Court for 18 years or more by the end of one year after the date of the enactment of this Act [Dec. 30, 1969] may retire in accordance with the provisions of section 7447 of the Internal Revenue Code of 1954 [this section] as in effect on the day preceding the date of the enactment of this Act—[Dec. 30, 1969]. Any individual who is a judge of the Tax Court on the date of the enactment of this Act [Dec. 30, 1969] may retire under the provisions of section 7447 of such Code [this section] upon the completion of the term of his office. If he is not reappointed as a judge of the Tax Court and gives notice to the President within the time prescribed by section 7447(b) of such Code [subsec. (b) of this section] (or if his term expires within 6 months after the date of enactment of this Act [Dec. 30, 1969], gives notice to the President before the expiration of 3 months after the date of enactment of this Act [Dec. 30, 1969]), and shall receive retired pay at a rate which bears the same ratio to the rate of the salary payable to a judge as the number of years he has served as a judge of the Tax Court bears to 15; except that the rate of such retired pay shall not exceed the rate of the salary of a judge of the Tax Court. For purposes of the preceding sentence the years of service as a judge of the Tax Court shall be determined in the manner set forth in section 7447(d) of such Code [subsec. (d) of this section]."

Amendment of subsecs. (a) (4) and (g) of this section by section 954(c), (e), of Pub. L. 91-172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89-354 provided that: "The amendments made by the first section of this Act [to subsec. (d) of this section and section 1106(d) of I.R.C. 1939] shall apply with respect to retired pay accruing under section 1106 of the Internal Revenue Code of 1939 or section 7447 of the Internal Revenue Code of 1954 [this section] on or after the first day of the first calendar month which begins after the date of enactment of this Act [Feb. 2, 1966]."

#### § 7448. Annuities to widows and dependent children of judges.

##### (a) Definitions.

For purposes of this section—

(1) The term "Tax Court" means the United States Tax Court.

\* \* \* \* \*

##### (b) Election.

Any judge may by written election filed while he is a judge (except that in the case of an individual who is not reappointed following expiration of his term of office, it may be made at any time before the day after the day on which his successor takes office) bring himself within the purview of this section. In the case of any judge other than the chief judge

the election shall be filed with the chief judge; in the case of the chief judge the election shall be filed as prescribed by the Tax Court.

\* \* \* \* \*

(d) Deposits in survivors annuity fund.

Each Judge electing under subsection (b) shall deposit, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the survivors annuity fund, a sum equal to 3 percent of his judge's salary and of his basic salary, pay, or compensation for service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, and for any other civilian service within the purview of section 8332 of title 5 of the United States Code. Each such judge may elect to make such deposits in installments during the continuance of his service as a judge in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the widow of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge, unless such widow shall elect to eliminate such service entirely from credit under subsection (n), except that no deposit shall be required from a judge for any year with respect to which deductions from his salary were actually made under the civil service retirement laws and no deposit shall be required for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

\* \* \* \* \*

(h) Entitlement to annuity.

In case any judge electing under subsection (b) shall die while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made—

(1) if such judge is survived by a widow but not by a dependent child, there shall be paid to such widow an annuity beginning with the day of the death of the judge or following the widow's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m); or

(2) if such judge is survived by a widow and a dependent child or children, there shall be paid to such widow an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed \$900 per year divided by the number of such children or \$360 per year, whichever is lesser; or

(3) if such judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of

each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (2) of this subsection had she survived, but not to exceed \$480 per year.

The annuity payable to a widow under this subsection shall be terminable upon such widow's death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of 18 years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a widow of a judge leaving a dependent child or children of the judge surviving her, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

\* \* \* \* \*

(m) Computation of annuities.

The annuity of the widow of a judge electing under subsection (b) shall be an amount equal to the sum of (1)  $1\frac{1}{4}$  percent of the average annual salary received by such judge for judicial service and any other prior allowable service during the last 5 years of such service prior to his death, or prior to his receiving retired pay under section 7447(d), whichever first occurs, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 2107 of title 5 of the United States Code, and (2) three-fourths of 1 percent of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed  $37\frac{1}{2}$  percent of such average annual salary and shall be further reduced in accordance with subsection (d), if applicable.

(n) Includihle service.

Subject to the provisions of subsection (d), the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a member of the United States Board of Tax Appeals, as a judge of the Tax Court of the United States, and as a judge of the Tax Court, his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and

his years of any other civilian service within the purview of section 8332 of title 5 of the United States Code.

\* \* \* \* \*

(r) Waiver of civil service benefits.

Any judge electing under subsection (b) shall, at the time of such election, waive all benefits under the Civil Service Retirement Act. Such a waiver shall be made in the same manner and shall have the same force and effect as an election filed under section 7447(e).

\* \* \* \* \*

(As amended Pub. L. 91-172, title IX, §§ 955, 960 (c), (e), Dec. 30, 1969, 83 Stat. 732, 734.)

AMENDMENTS

1969—Subsec. (a) (1). Pub. L. 91-172, § 960(c), substituted “United States Tax Court” for “Tax Court of the United States.”

Subsec. (b). Pub. L. 91-172, § 955(a), substituted provisions authorizing a judge to file notice of election to take benefits relating to survivor annuities while a judge, and if not reappointed, authorizing such election at any time before the day after the day on which his successor takes office, for provisions authorizing a judge to file within 6 months after he takes office or is reappointed, or within 6 months after he becomes eligible for retirement under former section 7447(b) of this title, or within 6 months after Oct. 4, 1961.

Subsec. (d). Pub. L. 91-172, § 955(d) (1), (2), substituted “civil service retirement laws” for “Civil Service Retirement Act” and “section 8332 of title 5 of the United States Code” for “section 3 of the Civil Service Retirement Act (5 U.S.C. 2253).”

Subsec. (h). Pub. L. 91-172, § 955(b) (1), substituted “civil service retirement laws” for “Civil Service Retirement Act.”

Subsec. (m). Pub. L. 91-172, § 955(b) (3), substituted “section 2107 of title 5 of the United States Code” for “section 1(c) of the Civil Service Retirement Act (5 U.S.C. 2251(c)).”

Subsec. (n). Pub. L. 91-172, §§ 955(b) (2), 960(e), substituted “section 8332 of title 5 of the United States Code” for “section 3 of the Civil Service Retirement Act (5 U.S.C. 2253)” and inserted reference to service as a judge of the Tax Court of the United States.

Subsec. (r). Pub. L. 91-172, § 955(b) (1), (4), substituted “civil service retirement laws” for “Civil Service Retirement Act” and substituted “an election filed under section 7447(e)” for “a waiver filed under section 7447(g) (3).”

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91-172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

PART II.—PROCEDURE

Sec.

7463. Disputes involving \$1,000 or less.

7464. Provisions of special application to transferees.

AMENDMENTS

1969—Pub. L. 91-172, title IX, § 957(b), Dec. 30, 1969, 83 Stat. 733, added item 7463 and redesignated former item 7463 as 7464.

§ 7453. Rules of practice, procedure, and evidence.

Except in the case of proceedings conducted under section 7363, the proceedings of the Tax Court and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia. (As amended Dec. 30, 1969, Pub. L. 91-172, title IX, § 960 (f), 83 Stat. 734.)

AMENDMENTS

1969—Pub. L. 91-172 inserted reference to the exception in the case of proceedings conducted under section 7463 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91-172, set out as a note under section 7463 of this title.

§ 7454. Burden of proof in fraud, foundation manager, and transferee cases.

(a) Fraud.

In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary or his delegate.

(b) Foundation managers.

In any proceeding involving the issue whether a foundation manager (as defined in section 4946(b)) has “knowingly” participated in an act of self-dealing (within the meaning of section 4941), participated in an investment which jeopardizes the carrying out of exempt purposes (within the meaning of section 4944), or agreed to the making of a taxable expenditure (within the meaning of section 4945), the burden of proof in respect of such issue shall be upon the Secretary or his delegate.

(c) Cross reference.

For provisions relating to burden of proof as to transferee liability, see section 6902(a).

(As amended Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j) (57), 83 Stat. 532.)

AMENDMENTS

1969—Pub. L. 91-172 added “foundation manager” cases to section catchline.

Subsec. (b). Pub. L. 91-172 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 91-172 redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

§ 7456. Administration of oaths and procurement of testimony.

\* \* \* \* \*

(c) Commissioners.

The chief judge may from time to time appoint commissioners who shall proceed under such rules and regulations as may be promulgated by the Tax Court. Each commissioner shall receive the same compensation and travel and subsistence allowances provided by law for commissioners of the United States Court of Claims.

(d) Incidental powers.

The Tax Court and each division thereof shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

It shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. (As amended Dec. 30, 1969, Pub. L. 91-172, title IX, §§ 956, 958, 83 Stat. 732, 734.)

#### AMENDMENTS

1969—Subsec. (c). Pub. L. 91-172, § 958, provided that commissioners be compensated at rates identical to those of commissioners of the United States Court of Claims, and substituted provisions authorizing the chief judge of the Tax Court to appoint Commissioners for provisions authorizing attorneys from the legal staff of the Tax Court to act as Commissioners.

Subsec. (d). Pub. L. 91-172, § 956, added subsec. (d).

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91-172 to take effect on Dec. 30, 1969, see section 962(e) of Pub. L. 91-172, set out as a note under section 7441 of this title.

#### § 7463. Disputes involving \$1,000 or less.

##### (a) In general.

In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) \$1,000 for any one taxable year, in the case of the taxes imposed by subtitle A and chapter 12, or

(2) \$1,000, in the case of the tax imposed by chapter 11,

at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

##### (b) Finality of decisions.

A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any other court and shall not be treated as a precedent for any other case.

##### (c) Limitation of jurisdiction.

In any case in which the proceedings are conducted under this section, notwithstanding the provisions of sections 6214(a) and 6512(b), no decision shall be entered redetermining the amount of a deficiency, or determining an overpayment, except with respect to amounts placed in dispute within the limits described in subsection (a) and with respect to amounts conceded by the parties.

##### (d) Discontinuance of proceedings.

At any time before a decision entered in a case in which the proceedings are conducted under this section becomes final, the taxpayer or the Secretary or his delegate may request that further proceedings under this section in such case be discontinued. The Tax Court, or the division thereof hearing such case, may, if it finds that (1) there are reasonable grounds for believing that the amount of the deficiency placed in dispute, or the amount of an overpayment, exceeds the applicable jurisdictional amount described in subsection (a), and (2) the

amount of such excess is large enough to justify granting such request, discontinue further proceedings in such case under this section. Upon any such discontinuance, proceedings in such case shall be conducted in the same manner as cases to which the provisions of sections 6215(a) and 6512(b) apply.

##### (e) Amount of deficiency in dispute.

For purposes of this section, the amount of any deficiency placed in dispute includes additions to the tax, additional amounts, and penalties imposed by chapter 68, to the extent that the procedures described in subchapter B of chapter 63 apply. (Added Pub. L. 91-172, title IX, § 957(a), Dec. 30, 1969, 83 Stat. 733.)

#### EFFECTIVE DATE

Section 962(e) of Pub. L. 91-172 provided that: "The amendments made by sections 957 [enacting this section] and 960 (a), (b), (f), and (i) [amending sections 6214 (a), 6512(b), 7453, and 7487 of this title] shall take effect one year after the date of enactment of this Act [Dec. 30, 1969]."

#### § 7464. Provisions of special application to transferees.

Section 7463 renumbered 7464 by Pub. L. 91-172, title IX, § 957(a), Dec. 30, 1969, 83 Stat. 733.

### PART III.—MISCELLANEOUS PROVISIONS

#### § 7471. Employees.

\* \* \* \* \*

##### (c) Commissioners.

For compensation and travel and subsistence allowances of commissioners of the Tax Court, see section 7456(c).

(As amended Dec. 30, 1969, Pub. L. 91-172, title IX, § 960(g), 83 Stat. 734.)

#### AMENDMENTS

1969—Subsec. (c). Pub. L. 91-172 inserted reference to the compensation of commissioners.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

#### Subchapter D.—Court Review of Tax Court Decisions

Sec.

7483. Notice of appeal.

7487. Cross references.

#### AMENDMENTS

1969—Pub. L. 91-172, title IX, §§ 959(b), 960(1)(2), Dec. 30, 1969, 83 Stat. 734, 735, substituted "Notice of appeal" for "Petition for review" in item 7483 and substituted "Cross references" for "Cross reference" in item 7487.

#### § 7481. Date when Tax Court decision becomes final.

##### (a) Reviewable decisions.

Except as provided in subsection (b), the decision of the Tax Court shall become final—

##### (1) Timely notice of appeal not filed.

Upon the expiration of the time allowed for filing a notice of appeal, if no such notice has been duly filed within such time; or

##### (2) Decision affirmed or appeal dismissed.

(A) Petition for certiorari not filed on time.

Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Tax Court has been affirmed or the appeal

dismissed by the United States Court of Appeals and no petition for certiorari has been duly filed; or

**(B) Petition for certiorari denied.**

Upon the denial of a petition for certiorari, if the decision of the Tax Court has been affirmed or the appeal dismissed by the United States Court of Appeals; or

**(C) After mandate of Supreme Court.**

Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Tax Court be affirmed or the appeal dismissed.

\* \* \* \* \*

**(b) Nonreviewable decisions.**

The decision of the Tax Court in a proceeding conducted under section 7463 shall become final upon the expiration of 90 days after the decision is entered. (As amended Dec. 30, 1969, Pub. L. 91-172, title IX, § 960(h)(1), 83 Stat. 734.)

**AMENDMENTS**

1969—Subsec. (a). Pub. L. 91-172, § 960(h)(1)(A)–(C), designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, inserted reference to the exception provided for in subsec. (b), substituted “notice of appeal” for “petition for review” in par. (1), and substituted references to dismissal of appeal for references to dismissal of petition for review in par. (2).

Subsec. (b). Pub. L. 91-172, § 960(h)(1)(D), added subsec. (b).

**EFFECTIVE DATE OF 1969 AMENDMENT**

Amendment by Pub. L. 91-172 to take effect 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91-172, set out as a note under section 7483 of this title.

**§ 7482. Courts of review.**

\* \* \* \* \*

**(b) Venue.**

**(1) In general.**

Except as otherwise provided in paragraph (2), such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

(A) in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner,

(B) in the case of a corporation seeking redetermination of tax liability, 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 circuit, then the office to which was made the return of the tax in respect of which the liability arises.

If for any reason neither subparagraph (A) nor (B) applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court.

**(c) Powers.**

**(1) To affirm, modify, or reverse.**

Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

**(2) To make rules.**

Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2072 of title 28 of the United States Code.

**(3) To require additional security.**

Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

**(4) To impose damages.**

The United States Court of Appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the notice of appeal was filed merely for delay.

(As amended Nov. 2, 1966, Pub. L. 89-713, § 3(c), 80 Stat. 1109; Dec. 30, 1969, Pub. L. 91-172, title IX, § 960(h)(2), 83 Stat. 735.)

**AMENDMENTS**

1969—Subsec. (c). Pub. L. 91-172 substituted “section 2072 of title 28” for “section 2074 of title 28” in par. (2) and struck out provision for the applicability of rules adopted under authority of section 1141 (c)(2) of the Internal Revenue Act of 1939 until such time as rules prescribed by the Supreme Court under section 2072 of title 28 become effective and, in par. (4), substituted “notice of appeal” for “petition”.

1966—Subsec. (b)(1). Pub. L. 89-713 substituted provisions requiring that appeals from Tax Court decisions be made to the Court of Appeals for the circuit in which the taxpayer resides, in the case of a taxpayer other than a corporation, and, in the case of appeals by corporations, to the Court of Appeals for the circuit in which the corporation has its principal place of business or principal office or agency for provisions prescribing review by the Court of Appeals for the circuit in which was located the office to which was made the return of the tax in respect of which the liability arose, and added provision for the time of determining legal residence, place of business, or principal office or agency.

**EFFECTIVE DATE OF 1969 AMENDMENT**

Amendment by Pub. L. 91-172 to take effect 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91-172, set out as a note under section 7483 of this title.

**EFFECTIVE DATE OF 1966 AMENDMENT**

Amendment of subsec. (b)(1) by section 3(c) of Pub. L. 89-713 applicable to all decisions of the Tax Court entered after Nov. 2, 1966, see section 3(d) of Pub. L. 89-713, set out as a note under section 7422 of this title.

**§ 7483. Notice of appeal.**

Review of a decision of the Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered. (As amended Dec. 30, 1969, Pub. L. 91-172, title IX, § 959 (a), 83 Stat. 734.)

**AMENDMENTS**

1969—Pub. L. 91-172 substituted references to the notice of appeal for references to the petition for review and otherwise generally altered the section to as to time for appeal and terminology in order to conform section to the form of the Federal Rules of Appellate Procedure.

**EFFECTIVE DATE OF 1969 AMENDMENT**

Section 962(f) of Pub. L. 91-172 provided that: "The amendments made by sections 959 and 960(h) [amending this section and sections 7481, 7482, and 7485 of this title] shall take effect 30 days after the date of the enactment of this Act [Dec. 30, 1969]. In the case of any decision of the Tax Court entered before the 30th day after the date of the enactment of this Act [Dec. 30, 1969], the United States Courts of Appeals shall have jurisdiction to hear an appeal from such decision, if such appeal is filed within the time prescribed by Rule 12(a) of the Federal Rules of Appellate Procedure or by section 7483 of the Internal Revenue Code of 1954 [this section] as is in effect at the time the decision of the Tax Court was entered."

**§ 7485. Bond to stay assessment and collection.****(a) Upon notice of appeal.**

Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, the review under section 7483 shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Tax Court unless a notice of appeal in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer—

(1) on or before the time his notice of appeal is filed has filed with the Tax Court a bond in a sum fixed by the Tax Court not exceeding double the amount of the portion of the deficiency in respect of which the notice of appeal is filed, and with surety approved by the Tax Court, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or

(2) has filed a jeopardy bond under the income or estate tax laws.

If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Tax Court is paid after the filing of the appeal bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

\* \* \* \* \*

(As amended Dec. 30, 1969, Pub. L. 91-172, title IX, § 960(h)(3), 83 Stat. 735.)

**AMENDMENTS**

1969—Subsec. (a). Pub. L. 91-172 substituted "notice of appeal" for "petition for review" and "appeal bond" for "review bond".

**EFFECTIVE DATE OF 1969 AMENDMENT**

Amendment by Pub. L. 91-172 to take effect 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91-172, set out as a note under section 7483 of this title.

**§ 7487. Cross references.**

(1) Nonreviewability.—For nonreviewability of Tax Court decisions in small claims cases, see section 7483(b).  
 (2) Transcripts.—For authority of the Tax Court to fix fees for transcript of records, see section 7474.

(As amended Dec. 30, 1969, Pub. L. 91-172, title IX, § 960(i)(1), 83 Stat. 735.)

**AMENDMENTS**

1969—Pub. L. 91-172 inserted reference to section 7482 (b) for nonreviewability of Tax Court decisions in small claims cases.

**EFFECTIVE DATE OF 1969 AMENDMENT**

Amendment by Pub. L. 91-172 to take effect one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91-172, set out as a note under section 7483 of this title.

**Chapter 77.—MISCELLANEOUS PROVISIONS**

Sec.

7502. Timely mailing treated as timely filing and paying.  
 7505. Sale of personal property acquired by the United States.

**AMENDMENTS**

1966—Pub. L. 89-719, title I, § 111(c)(2), Nov. 2, 1966, 80 Stat. 1145, substituted "acquired" for "purchased" in item 7505.

Pub. L. 89-713, § 5(b), Nov. 2, 1966, 80 Stat. 1111, added "and paying" at the end of item 7502.

§ 7502. Timely mailing treated as timely filing and paying.

**(a) General rule.****(1) Date of delivery.**

If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

**(2) Mailing requirements.**

This subsection shall apply only if—

(A) the postmark date falls within the prescribed period or on or before the prescribed date—

(i) for the filing (including any extension granted for such filing) of the return, claim, statement, or other document, or

(ii) for making the payment (including any extension granted for making such payment), and

(B) the return, claim, statement, or other document, or payment was, within the time prescribed in subparagraph (A), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return, claim, statement, or other document is required to be filed, or to which such payment is required to be made.

**(b) Postmarks.**

This section shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations prescribed by the Secretary or his delegate.