



INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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MEMORANDUM FOR DIRECTOR, COLLECTION APPEALS

FROM: Steven M. Martin /s/ *Steven. M. Martin*
Director, Operations Support

SUBJECT: Prohibited levies in Collection Due Process hearings

This memorandum issues guidance until IRM 8.22.5 is published on finding and remedying statutorily prohibited levies issued by Small Business/Self-Employed (SB/SE) Collection in violation of the IRC 6330 stay on enforcement action. Please distribute this information to all affected employees within your organization.

Purpose: To provide guidance regarding revised Appeals procedures relating to identifying and remedying levies that were inappropriately executed while enforced collection was statutorily prohibited by IRC 6330.

Background/Source(s) of Authority: Except for levies identified in IRC 6330(f), IRC 6330 requires enforced collection action to be suspended on periods that are the subject of the hearing as of the date a taxpayer requests a timely Collection Due Process (CDP) hearing. Per IRM 8.22.5.4.2, appeals officers must conduct a preliminary review of the taxpayer's case file. Case reviews found occurrences of levies issued after timely requests for a CDP hearing ("prohibited levies"). Further, a portion of these prohibited levies attached to funds that were applied to the taxpayer's account. In these instances, Appeals did not consistently document the discovery and disposition of the erroneously levied proceeds.

Procedural Change: As part of initial case analysis, appeals officers will review the transcripts of tax periods that are the subject of the CDP hearing for evidence of prohibited levies. If found, employees will document the discovery in the Case Activity Record (CAR) as well as the Appeals Case Memorandum (ACM) and follow this guidance to address the disposition of proceeds, if any, from the prohibited levy.

Effect on Other Documents: This guidance will be incorporated into the affected IRM within two years from the date of this memorandum.

Effective Date: This guidance is effective as of the date of this memorandum.

Contact: Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on How to Contact an Analyst.

Attachment

cc: www.irs.gov

Revisions to the Appeals IRM:

8.22.5.4.3 (MM-DD-YYYY) Prohibited Levies

- (1) A prohibited levy is one that was issued after the taxpayer requested a timely Collection Due Process (CDP) levy hearing. Except for levies identified in IRC 6330(f), IRC 6330 requires enforced collection action to be suspended on periods that are the subject of the hearing as of the date a taxpayer requests a timely CDP hearing. For levies identified in IRC 6330(f), taxpayers are given the opportunity for a hearing after the levy occurs. The types of levies excepted under IRC 6330(f) are:
 - jeopardy
 - state tax refund (SITLP)
 - disqualified employment tax levy (DETL)
 - federal contractor (FEDCON)
- (2) During your initial analysis of the case, review the transcript of tax periods that are the subject of the CDP levy hearing and determine the correct hearing request received date. For CDP hearings solely on the levy, this will be indicated by TC 520 cc 77. Hearings on both a lien and levy will be indicated by TC 520 cc 76 accompanied by TC 971 AC 630. Document that you completed this review and the presence or absence of prohibited levies in the Case Activity Record (CAR) and in the Appeals Case Memorandum (ACM). Include the transcript reviewed as part of the administrative record. Be aware that if the cycle posting date of the TC 520 and/or TC 971 AC 630 is more than 30 days after the transaction code date, this may increase the possibility of a prohibited levy.

Note: TC 971 AC 630 distinguishes combination lien/levy CDP hearings from those requested solely in response to a filed Notice of Federal Tax Lien in which levy is not statutorily prohibited.
- (3) Identify those levies, if any, that were issued during the timeframe when a CDP levy hearing was open. Additionally, review the taxpayer's account for TC 670 with any of the following Designated Payment Codes (DPC):
 - 05 – Notice of Levy (used only for levy proceeds received from a third party in response to a Notice of Levy and does not include payments from the taxpayer as a result of a levy).
 - 15 – Other payment caused by levy but not levy proceeds (e.g., payment received with Form 8519, Taxpayer's Copy of Notice of Levy).
 - 16 – Federal Electronic Funds Transfer levy payment.
 - 18 – Federal Payment Levy Program (FPLP) payment for the Primary Taxpayer Identification Number (TIN). Payments received electronically via Electronic Federal Tax Payment System (EFTPS) from the Bureau of the Fiscal Service (BFS).
 - 19 – FPLP payment for the Secondary TIN. Payments received electronically via EFTPS from BFS.

- 22 – Alaska Permanent Fund Dividend Levy Program (AKPFD) receipt – systemically applied.
 - 23 – AKPFD receipt (used exclusively for manually applied payments).
 - 30 – Identifies a payment for the Municipal Income Tax Levy (MTLP).
- a) Proceeds resulting from non-automated levies will post to IDRS with TC 670 and DPC 05, 15, or 16.
- b) Automated levies are issued systemically and generate TC 971 with Action Code 662, 677, or 762. Proceeds post to IDRS with TC 670 and DPC 18, 19, 22, 23, or 30. See IRM 5.11.7, Automated Levy Programs, for more information. Note that DETL, State Levy, and Federal Contractors are excluded under IRC 6330 (f).
- (4) If a **prohibited** levy is found, annotate the CAR and the ACM. Instruct Collection to review and, if necessary, take steps to return levy proceeds. You must document the prohibited levy and action taken in the CAR and in the ACM, which the Appeals Team Manager (ATM) reviews per IRM 1.4.28.8.1, Extent of Case Work Reviews.

Reminder: Money may not be returned if the request for its return is made more than two years after the levy takes place. See IRC 6343(b)(3).

- (5) To resolve the prohibited levy, send a secure e-mail advising the ATM of the prohibited levy. Identify the taxpayer in the e-mail by name, TIN, and date of the levy. Use the following verbiage and format: “(Taxpayer Name), (TIN), requested a CDP levy hearing on (MM-DD-YYYY). (\$ amount) of levy proceeds posted to tax period (MFT/YYYYMM) on (MM-DD-YYYY). IRC 6330 prohibits enforced collection levy action when the taxpayer has requested a timely CDP levy hearing.” The ATM will forward the information to the appropriate Collection employee(s) in the originating function (Automated Collection System (ACS) or Field Collection).
- a) If the CDP levy case is Campus-sourced, provide the name of the ACS Coordinator, which can be found on the Servicewide Electronic Research Program (SERP) SharePoint under the Who/Where Directory and the ACS CDP Coordinators link. The ATM will send the e-mail to the ACS CDP Coordinator and follow-up within 14 days if no response was received.
- b) If the CDP levy case is from Field Collection, provide the names of the revenue officer (RO) who issued the prohibited levy and the RO’s manager. The ATM will send the e-mail to the group manager with a "cc" to the RO and follow-up within 14 days if no response was received.
- (6) Per 26 CFR 301.6343-3, when the release of a levy and the return of property are required, the property or proceeds of sale of property may not be credited to any outstanding tax liability without the written permission of the taxpayer. If the taxpayer would like prohibited levy proceeds applied to the tax liability, Collection must secure a written request from the taxpayer. This written request must be included in the

administrative file. In the absence of a written request, the taxpayer's property must be returned.

- (7) If a prohibited levy occurred, then upon issuing a substantive contact letter, include the statement, "Appeals found evidence of IRS taking levy action to collect your tax debt after you requested a Collection Due Process hearing. This action may be prohibited, and we will discuss the matter during your hearing."