



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.24.2

MAY 1, 2014

EFFECTIVE DATE

(05-01-2014)

PURPOSE

- (1) This transmits IRM 8.24.2, Jeopardy Levy Appeals.

MATERIAL CHANGES

- (1) This transmittal reissues existing procedures. Editorial changes have been made throughout this IRM. Website addresses, legal references, code sections and IRM references were reviewed and updated accordingly.

EFFECT ON OTHER DOCUMENTS

This IRM section supersedes IRM 8.24.2, dated September 25, 2012.

AUDIENCE

Appeals Employees

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8.24.2
Jeopardy Levy Appeals

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8.24.2.1
(10-01-2012)
Jeopardy Levy Appeals Overview

- (1) This Internal Revenue Manual provides instructions for Settlement Officers, Appeals Officers, Appeals Account Resolution Specialists and Account and Processing Support (APS) employees working jeopardy levy appeals cases.
- (2) Part 5 (Collection Process) of the IRM and the Internal Revenue Code are the primary authorities for the legal and procedural requirements that Appeals must follow in making determinations on jeopardy levy appeals cases.

8.24.2.2
(05-01-2014)
Jeopardy Levy Appeals - Background

- (1) Normally, the notices and waiting periods described in IRC 6331 and Collection's IRM 5.11.1 - *Notice of Levy, Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions*. must be adhered to before property can be levied. However, if collection is in jeopardy, property can be levied sooner. One of two situations will be in effect.
- (2) There may be a jeopardy or termination assessment occurring also. See IRM 8.7.1 - *Guidelines for Cases with Special Issues*. If so, there is an immediate notice and demand, which is followed by a jeopardy levy. In this instance the taxpayer is often also appealing the assessment.
- (3) Or there may already be an assessment before collection is identified as being in jeopardy. Normally the jeopardy is not identified until the case is being worked by a revenue officer.

Note: In every situation where a jeopardy levy occurs without a jeopardy or termination assessment, the Service has already assessed the tax liability through normal procedures.

Example: There may be a prompt assessment on a voluntarily filed return. Then, the taxpayer starts transferring or dissipating assets to place them beyond the reach of the government. Property can be levied, even though the usual waiting periods after notices have not expired.

- (4) A jeopardy levy without a jeopardy or termination assessment can happen;
 - After tax is assessed, but before the notice and demand normally required by IRC 6331(a) is issued, provided immediate notice and demand is given to the taxpayer;
 - After the notice and demand is issued, but before ten days have passed;
 - After the ten day notice and demand period ends, but before the 30 day notice of intent to levy and notice of a right to a hearing have been issued; or
 - After the notice of intent to levy and notice of a right to a hearing have been issued, but before the 30 days for the taxpayer to request a hearing have passed.

Note: The taxpayer may request an administrative or judicial review of the jeopardy levy action under IRC 7429 during any of these periods. If a jeopardy levy occurs before the IRC 6330(a) notice is given, the Service will issue a CDP notice under IRC 6330(f) within a reasonable period of time to give the taxpayer an opportunity to seek CDP appeal rights under that section.

- (5) In general, no levy can be made in the following circumstances:
 - On the appearance date of a summons,
 - When there is a pending or active installment agreement,

- For 30 days following the termination of an installment agreement and during an appeal of the termination,
- When a rejected installment agreement can be appealed or is being appealed,
- While an offer in compromise is pending,
- While a rejected offer in compromise can be appealed or is being appealed, or
- A CDP hearing is pending.

Exception: However, in the circumstances listed in (4), if collection is in jeopardy a jeopardy levy may be issued.

- (6) If collection is believed to be in jeopardy, a jeopardy levy may be issued any time after assessment but before 30 days from the notice and demand. The jeopardy levy requires the approval of the Chief Counsel or his/her delegate. However, this type of jeopardy levy will be very rare as it is normally possible only if a Revenue Officer or other Service employee secures a taxpayer's return and subsequently discovers that a jeopardy situation exists, after assessment but before the end of the required waiting period. Normally, a Revenue Officer would not receive a taxpayer's delinquent account until well after the expiration of the required notice period. See IRM 5.1.4 and IRM 5.11.3 for Collection jeopardy levy procedures.

Note: The notice and demand gives the taxpayer 10 days to pay. See IRM 5.11.1 - *Notice of Levy, Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions*.

- (7) Jeopardy and termination assessments require a notice and demand before levy but there is no waiting period for levy after the notice and demand has been made. Under the authority of IRC 7429(a), administrative appeals with judicial review are now available for jeopardy levies following regular assessments, or for jeopardy levies following jeopardy or termination assessments.
- (8) Jeopardy levy determinations basically have the same criteria as jeopardy assessments, (i.e., is the collection in jeopardy?), as described in Policy Statement P-4-88. See IRM 1.2.13. Appeals determines if the levy was reasonable under the circumstances. The time frames for working cases, indicated in IRM 8.7.1 should be followed in working jeopardy levy cases also. Jeopardy levy appeals will be received from Collection on a Form 3210, Document Transmittal. Collection Advisory and Insolvency (AI) - Advisory acts as liaison for these cases. Local Appeals and Collection offices may work out their own transmittal and liaison procedures for faster case processing.
- (9) The Collection file, related to the jeopardy levy, received by Appeals should indicate the status of the levy proceeds. Collection sends a letter with each jeopardy levy that instructs the recipient to hold the levy proceeds for 45 days, to allow the taxpayer time to appeal. If a taxpayer immediately appeals a jeopardy levy, Collection can request that the levied entity continue to hold the levy proceeds until Appeals has made its determination on whether or not the jeopardy levy was "reasonable under the circumstances". Also, in a separate requirement, IRC 6332(c) requires banks to hold levy proceeds for 21 days after service of a levy, prior to giving the proceeds to the Service. This 21 day hold period applies to all levies on banks.

8.24.2.2.1
(05-01-2014)
Procedures

- (10) IRC 6343(d) provides the authority for the IRS to return property in certain cases. Therefore, Appeals now has the authority to refund money if it is determined that the jeopardy levy being appealed was not reasonable under the circumstances.
- (1) A jeopardy levy requires the same conditions that would allow a jeopardy assessment. See IRS policy statement P-4-88 in IRM 1.2.13, regarding jeopardy assessments, and for the conditions under which a jeopardy assessment will be made.
- (2) Collection's IRM 5.11.3, *Jeopardy Levy without a Jeopardy Assessment*, explains the administrative, legal and approval procedures that must be followed before a jeopardy level can be issued.
- (3) IRC 7429 specifies that jeopardy levies may be administratively appealed and challenged in court. Statutory authority to levy is contained in IRC 6331. For normal, non-jeopardy assessments, which are in balance due status, there is generally a series of notices, prior to the delinquent account being issued to the Automated Collection System (ACS) or to a Revenue Officer. The first notice under IRC 6331(a) is a 21 calendar day (10 business days if the amount is \$100,000 or more) notice and demand notice. The notice under IRC 6331(d) is the 30 day intent to levy notice. See IRM 5.11.1 for additional information regarding notice and demand procedures. In the case of jeopardy levy, notification of the right of appeal and right to review under IRC 6330 is available.
- (4) In order for a taxpayer to be entitled to an administrative appeal and judicial review under IRC 7429 the following conditions must have been met:
- The jeopardy levy was issued within the 30 days from notice and demand (assessment and first notice),
 - The taxpayer must file a written protest with the Area Director within 30 days of the date on Letter 2439, *Notice of Jeopardy Levy and Right of Appeal*, requesting a redetermination of whether the levy is reasonable under the circumstances, and
 - The written protest must be sent to the address listed on the Letter 2439.
- (5) The issue is whether the jeopardy levy is reasonable under the circumstances (collection is truly in jeopardy). If the appeal is rejected, the taxpayer can obtain judicial review of the jeopardy levy. If any of the liabilities on the jeopardy levy were being considered in Tax Court before the making of the jeopardy levy, the taxpayer can obtain judicial review of the jeopardy levy by the Tax Court.
- (6) If the jeopardy levy was issued after 30 days from the notice and demand and the taxpayer has not already been issued appeal rights under IRC 6330, then Collection must notify the taxpayer of their appeal rights under IRC 6330. See IRM 5.11.3. The taxpayer has 30 days from the date of the Letter 2439A(CG) to request a Collection Due Process (CDP) hearing. The taxpayer must timely request a CDP hearing under IRC 6330 in order to be entitled to judicial review under that section. See IRM 8.22, *Collection Due Process*, for additional information about taxpayers' rights to appeal under IRC 6330.
- (7) If the taxpayer appeals or states that a suit is being filed, Collection will contact AI-Advisory and seek advice from Counsel, as needed. The local Appeals Office will handle the administrative appeal. Collection will also advise the levy

recipient(s) to delay paying over the funds while the appeal is considered using Letter 2438(CG), Jeopardy Levy Letter to Third Party Recipient.

- (8) **If the taxpayer has received all the pre-levy notices and the waiting periods have passed, the taxpayer can appeal under the Collection Appeals Program (CAP) or request an equivalent hearing. The taxpayer cannot go to court if the taxpayer disagrees with Appeals' decision in a CAP or equivalent hearing.** See IRM 5.1.9, *Collection Appeal Rights*, IRM 8.24.1.2, *Collection Appeals Program (CAP)*, and IRM 8.22, *Collection Due Process*, for additional information on CAP and equivalent hearings.