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From:
Sent: Wednesday, June 09, 2010 2:12:48 PM
To:
Cc:
Subject: FW: FPLP Levies v. paper levies -

1. In response to your question about use of FPLP v. a paper levy: we agree that the Service is authorized to continue to receive payments under Treas. Reg. 301.6343-1(b)(1)(ii) even after the CSED, because we timely levied on a fixed and determinable stream of payments.

We do take the position that we are not limited to the 15% cap for a FPLP levy under section 6331(h), merely because the type of payment is a type which could be leviable under section 6331(h). Rather, we can use a paper levy to collect the entire existing obligation to make a series of payments.

We argued this position in Hines v. United States, 658 F.Supp.2d 139, 145-147 (D.D.C. 2009). The court agreed that the 15% cap on continuous levies under section 6331(h) did not apply to a levy on a taxpayer's social security retirement benefits because the obligation to pay these benefits existed when the levies attached under section 6331(b). Thus, the levy was not a continuous levy subject to the 15% limitation.

The court distinguished continuing levies, under section 6331(h), which, like section 6331(e) continuous wage levies, attach to new rights as they arise. The court noted that section 6331(h) expanded the rights to collect from property previously exempt from levy, but did not limit the IRS' existing rights to attach levies. Section 6331(h) has permissive language giving discretion, but not requiring, its use even where the type of property might be eligible for FPLP levy.

In this case, as in Hines, the levy reached a fixed obligation to make payments. As such, levy under section 6331(a) was proper without the 15% limitation.

FYI--someone in our office is currently reviewing the 5.19 IRM provision cited below to ensure it is correct.

[redacted]

We are continuing to look into this issue but wanted to get back to you on your primary question in the meanwhile. I apologize for the delays.