ID: CCA_2010022611061654 Number: **201036016**
Release Date: 9/10/2010

Office:

UILC: 6331.18-00

From:
Sent: Friday, February 26, 2010 11:06:17 AM
To:
Cc:
Subject: CCA Email: Parties which must be served with a notice of levy with respect to an Individual Retirement Account

Office:

IRS:

UILC:

6331.18-00

Issue:

Whether any party beyond the custodian of an Individual Retirement Account (IRA) must be served with a notice of levy in order to effectuate a levy upon a taxpayer's IRA.

Conclusion:

Unless any documents or other pieces of evidence reflect that the IRA has more than one custodian, no additional parties beyond the IRA custodian need to be served with the notice of levy.

Background:

Based upon a phone conversation between attorney and attorney , we understand the following facts to be present:

A revenue officer (RO) is attempting to levy upon the IRA of a particular taxpayer (the TP) with federal tax or penalty liabilities. Based upon copies of IRA withdrawal requests executed by the TP, the RO discovered that the TP owns an IRA managed by . These same withdrawal requests reflect that serves as the IRA custodian. However, the actual funds of the IRA are maintained in a financial clearinghouse account with , which is owned by .

The RO attempted to serve a notice of levy upon in order to effectuate the levy and obtain the IRA funds. Shortly after the RO served the notice of levy upon

, a representative of contacted the RO and requested that a second or amended notice of levy be served on it before it would authorize to liquidate the IRA account and honor the levy. The representative acknowledged to the RO that if the TP wanted to make a withdrawal from his IRA, he need only contact to do so.

The RO referred the issue to . contacted the representative and requested any and all documents that reflect that is the custodian or co-custodian of the IRA. The representative replied that no such documents exist. The source of

concern appears to be the TP, which the RO believes may be contacting financial institutions with respect to his accounts and threatening them with civil lawsuits if they comply with any IRS levy.

Analysis:

Because a federal tax lien is not self-executing, the Service must take affirmative measures to collect the delinquent taxes. United States v. Nat'l Bank of Commerce, 472 U.S. 713, 720 (1985). Federal law provides a provisional remedy to the Service for the collection of delinquent taxes which requires no judicial intervention. See I.R.C. § 6331-43. This remedy is known as an administrative levy, and is justified by "the need of the government promptly to secure its revenues." Nat'l Bank of Commerce, 472 U.S. at 720-21.

Ten days after notice and demand to the taxpayer, the Service may levy "upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien ... for the payment of such tax." I.R.C. § 6331(a). This includes "any property in the custody of a third party." State Farm Life Ins. Co. v. Howell, 76 F.3d 216, 217 (8th Cir. 1996). The Service begins the levy process "by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy." Treas Reg. § 301.6331-1(a)(1). The Service effectuates a levy upon tangible property through (1) notice of levy, and (2) seizing, posting, or tagging the property. See G.M. Leasing Corp. v. United States, 429 U.S. 338, 350 (1977). The IRS effectuates a levy upon intangible property by the sole act of serving notice of levy upon the third party "holding the property or rights to [the] property." See G.M. Leasing Corp., 429 U.S. at 350. An IRA is an example of intangible property, i.e. property which is not subject to physical seizure, posting, or tagging. See Kane v. Capital Guardian Trust Co., 145 F.3d 1218, 1223 (10th Cir. 1998)(taxpayer's individual retirement account is intangible property); In re Crosier, 1991 WL 353282 at *6 (Bankr. C.D. Cal. 1991)(taxpayer's individual retirement account is intangible property). Upon service of the notice of levy, the Service "steps into the shoes of the taxpayer and acquires 'whatever' rights to the property the taxpayer possessed." United States v. Bell Credit Union, 860 F.2d 365, 369 (10th Cir. 1988). The levy is considered made on the date on which the notice of seizure is given to the property's owner. I.R.C. § 6502(b).

Neither I.R.C. § 6331 nor the supporting regulations place any additional requirements on the Service with respect to service of the notice of levy beyond identifying and serving the holder of

the property or rights to the property. In the case of an IRA, where one party is the custodian and through this custodian the taxpayer may deposit or withdraw his IRA funds, the custodian is the holder of the rights to that property. The facts in this matter suggest that the RO determined that is the custodian of the TP's IRA based on copies of the TP's withdrawal requests, which apparently reflect that the TP requested a withdrawal of IRA funds from and thereafter did receive those funds. Because levy authorizes the Service to "step into the shoes of the taxpayer and acquire whatever rights to the property the taxpayer possess[es]" the Service should also be able to reach the IRA upon service of the notice of levy upon . Bell Credit Union, 860 F.2d at 369. [redacted]

, on the other hand, acknowledges that it is not the custodian of the funds. Instead, it appears to be merely the financial institution in which the IRA funds reside. Neither I.R.C. § 6331 nor the supporting regulations require that the Service serve a notice of levy upon any parties beyond the taxpayer and a party "in possession of, or obligated with respect to" that account—in this case the IRA custodian, . Treas. Reg. § 301.6331-1(a)(1). No evidence suggests that is obligated with respect to the IRA funds; indeed, past records reflect that the TP requests withdrawals from his IRA through , not .

An analogy to a levy on a taxpayer's salary provides a good illustration as to why need not be served with the notice of levy: When a levy on a taxpayer's salary is made, the notice of levy is served upon the taxpayer's employer as the source of earned but unpaid wages. I.R.C. § 6331(e). Unless the taxpayer's employer is a financial institution, it is unlikely that the employer itself physically maintains the funds used to pay the taxpayer; typically, the employer has a payroll account with a bank or other financial institution. Neither I.R.C. § 6331 nor the supporting regulations envision that when serving a notice of levy on an employer, the Service must also serve a notice of levy on that employer's bank as the actual physical location of the employer's payroll account. Likewise , which as custodian is the party through which the taxpayer may deposit or withdraw funds from the IRA, actually maintains the IRA funds in a financial institution such as . Unless is a co-custodian, its role as the IRA clearinghouse is similar to that of the financial institution which keeps the employer's payroll account. In other words, it is , not , which is "obligated with respect to" the TP's IRA funds. Treas. Reg. § 301.6331-1(a)(1).

[redacted]