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From: [redacted]
Sent: Monday, February 10, 2020 9:26:22 AM
To: [redacted]
Cc: [redacted]
Bcc:
Subject: Bank Levy Inquiry

You have asked whether it is the date or the specific time that matters when determining whether a person has failed to honor a levy. Specifically, the question is whether a bank must surrender amounts in a taxpayer's account that the taxpayer deposited on the same day on which the levy was made, but at a time that was after the levy was made.

Internal Revenue Code section 6332(c) provides that a bank must surrender taxpayer property only after 21 days after service of the levy. Accordingly, the concern is that a bank might look retrospectively to the closing balance of a particular account as of the date of service, but not at a particular time on such date. However, pursuant to the statute, a bank is only required to surrender taxpayer property that was in its possession at the specific time when the levy was made. Section 6331(b) explicitly provides "[e]xcept as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing <u>at the time thereof</u>" (emphasis added). Accordingly, a bank would not be required to surrender amounts that were deposited after a levy was made. And you may contrast bank levies with continuing levies on taxpayers' wages or salaries, which would attach to future earnings.

Conversely, a bank would incur personal liability under section 6332(d)(1) to the extent that it allows a taxpayer to withdraw money from an account on the same day but after a levy is made. And there would also be the potential for imposition of the 50% penalty under paragraph (d)(2). In practice, the specific time at which a particular levy was made or that an amount was withdrawn may not easily be determined. However, if the time of levy is determinable, for example if the levy is made by fax, and if the specific time of withdrawal occurs several hours later, then the bank would incur personal liability pursuant to section 6332(d)(1) to the extent that the amount withdrawn was needed to satisfy the amount of the levy.

Therefore, the answer to your specific question is that a bank would not be required to surrender amounts in a taxpayer's account that the taxpayer deposited on the same day on which the levy was made, but at a time that was after the levy was made. Rather, such amounts would represent taxpayer property that was not in the bank’s possession for purposes of that particular levy. And this is important both because a bank would want to avoid section 6332(d) liability, but also because a bank would want the protection afforded by section 6331(e), which might indemnify the bank vis-à-vis the taxpayer, and which would not be afforded to the bank to the extent that it remitted taxpayer property that was not subject to the levy.

I hope this helps. Feel free to call me directly if you have any questions or further want to discuss.

Regards,