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#7**TAXPAYER RIGHTS: Toll the Time Period for Financially Disabled Taxpayers to Request Return of Levy Proceeds to Better Protect Their Right to a Fair and Just Tax System****TAXPAYER RIGHTS IMPACTED¹**

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Appeal the IRS Decision in an Independent Forum*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

PROBLEM

Under Internal Revenue Code (IRC) § 6331, the IRS is authorized to collect outstanding tax by levying against a taxpayer's nonexempt property and rights to property. If the IRS wrongfully levies the property of a third person (*i.e.*, property in which the taxpayer has no rights and that is not otherwise subject to the federal tax lien), it is lawful for it to return such property to that person within certain time periods. The IRS also may return levied property to the taxpayer if certain conditions are met, and it must return levied property to a taxpayer, however, only if the levy was in violation of the law.² Under IRC § 6343(b), the IRS may only return money levied upon or money received from sale of property nine months from the date of levy.³ A person other than a taxpayer (*i.e.* a third party) may file a civil suit against the United States for a wrongful levy under IRC § 7426, but under IRC § 6532(c), the civil suit must be brought by the third party within nine months from the date of the levy that gave rise to the action.⁴ However, a taxpayer who is requesting the return of levied property generally may not bring suit if the IRS denies the taxpayer's request to return the property.⁵ Therefore, if a third party or taxpayer files a request with the IRS, or if a third party files a civil suit under IRC § 7426 for return of levied proceeds without first filing a request for return of the property under IRC § 6343(b) after the nine-month period has expired, neither the IRS nor the court has authority to consider the claim.

1 See Taxpayer Bill of Rights, *available at* <http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights>.

2 See IRC §§ 6343(b) and (d); Treas. Reg. § 301.6343-3(d). The IRS is required to return the levied upon property if the levy was wrongful, premature, or in violation of the law. The IRS has discretion to return levied upon property if "(A) the levy was not in accordance with administrative procedures of the Secretary, (B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise, (C) the return of such property will facilitate the collection of the tax liability, or (D) with the consent of the taxpayer or the National Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States."

3 IRC § 6343(b); Treas. Reg. § 301.6343-3.

4 IRC § 6532(c); Treas. Reg. § 301.6532-3. This nine-month period can be extended if the taxpayer files a claim for return of levy proceeds with the IRS within nine months of the date of the levy. It will be extended to the shorter of 12 months from the date of filing by a third party of a written request for the return of the property wrongfully levied upon, or six months from the date of mailing a notice of disallowance. A request which does not meet the requirements under Treas. Reg. § 301.6343-2(b)(3) is not considered adequate and will not extend the nine-month period.

5 A taxpayer may file suit for certain unauthorized collection actions that violated the law or a regulation under IRC § 7433, but the suit must be filed within two years of the date that the right of action accrues.

Unlike IRC § 6511(h), which suspends the running of the period for filing a claim for refund when a taxpayer can show that he or she was financially disabled,⁶ neither IRC § 6343, the relevant Treasury Regulations (Treas. Reg.), or IRC § 6532(c) provides for any such suspension.⁷ The absence of a suspension of the nine-month time period when a taxpayer or an individual who is a third party, that is financially disabled fails to protect the *rights to pay no more than the correct amount of tax, to appeal an IRS decision in an independent forum, to privacy, and to a fair and just tax system*, and for financially disabled taxpayers or individuals who are third parties who lack the capacity to file a claim during that short time period. Even if Congress extends the nine-month period to two years, as recommended previously by the National Taxpayer Advocate and as proposed in several bills,⁸ the running of the two-year period should be suspended for the person's disability, because the same arguments apply — and especially because IRC § 6511 has the same two-year timeframe.

EXAMPLES

Example One: A Levy Wrongfully Served on a Third-Party's Bank Account

Fred and Mary Jones reside in a non-community property state. Fred Jones owes delinquent tax for taxable year (TY) 2007, when his filing status was single. In addition, Fred and Mary Jones owe delinquent tax for returns they filed jointly for TYs 2008 and 2009. In 2010, the IRS mistakenly levies Mary's bank for all three taxable years. This results in money from Mary's bank account being used to pay liabilities for all taxable years, including Fred's separate TY 2007 liability. In the beginning of 2010, Fred and Mary separated due to financial stress. As a result of the separation and financial stress, Mary was suffering from severe clinical depression, which impaired her ability to complete day-to-day tasks and manage her financial affairs. Mary's illness prevented her from submitting a request for return of levy proceeds until 18 months from the time the levy attached to the bank account. The IRS rejected Mary's late-filed request for the return of the wrongly levied property because it was not submitted within the nine-month time period. Mary is barred from filing a civil suit for return of the wrongfully levied proceeds because IRC § 6532(c)(1) prohibits a suit once the nine-month period has expired if there was not a timely-filed claim.

Example Two: A Levy Was Filed Prematurely

John Doe suffers from Post-Traumatic Stress Disorder (PTSD) following his active combat duty. John Doe had tax liabilities for TYs 2008 and 2009. On January 1, 2010, the IRS filed a levy against his bank account. However, the IRS had not issued Mr. Doe a notice of intent to levy and his right to a collection due process hearing prior to filing the levy under IRC § 6330. During 2010, John Doe continued to suffer from severe PTSD, which crippled his ability to hold down a job, manage his financial affairs, and maintain personal relationships. In January 2011, with the assistance of a close family member, John Doe

6 Congress was concerned about similar unfair outcomes and has acted with legislation to address inequities associated with taxpayers' inability to manage financial affairs, and to strike a better balance between the tax system's need for finality and taxpayer's *right to a fair and just tax system*. Pub. L. No. 105-206 (July 1998) amended IRC § 6511, adding subsection (h), which provides that a person is financially disabled when he or she is "unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months."

7 National Taxpayer Advocate 2013 Annual Report to Congress 302-10 (Legislative Recommendation: *Broaden Relief from Timeframes for Filing a Claim for Refund for Taxpayers with Physical or Mental Impairments*).

8 National Taxpayer Advocate 2001 Annual Report to Congress 202. A bill was recently introduced in the United States Senate that included the National Taxpayer Advocate's recommendation and would extend the nine-month period in IRC § 6532(c) to two years. Taxpayer Bill of Rights Enhancement Act of 2015, S.1578, 114th Cong. (2015). Senator Cornyn and Representative Thornberry introduced companion bills that would extend the nine-month period in IRC § 6532(c) to three years. S. 949, 114th Cong. (2015) and H.R. 1828, 114th Cong. (2015).

was able to file a request for return of levy proceeds. Because the request was filed more than nine months from the date of levy, the IRS would be barred from considering his claim.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that Congress:

- Amend IRC § 6343(b) to suspend the period in which the IRS has to return levy proceeds during any period in which a taxpayer or a third party who is an individual is financially disabled. A taxpayer or a third party who is an individual will not be considered to be financially disabled unless proof of the existence of a physical or mental disability is furnished in such a form and manner as the Secretary may require.
- Amend IRC § 6532(c) to suspend the period in which a third party who is an individual can file a civil suit for return of wrongfully levied proceeds during any period within that time in which that individual is financially disabled. An individual will not be considered to be financially disabled unless proof of the existence of a physical or mental disability is furnished in such form and manner as the Secretary may require.
- Adopt the National Taxpayer Advocate's definition of financial disability:⁹
 - Replace the existing requirement that the individual impairment be medically determinable with a provision that it be determined by a qualified medical or mental health professional. For this purpose, Congress should specify that a qualified medical or mental health professional is an individual who is licensed by the state in which he or she practices to provide direct medical or mental health treatment to another individual.
 - Replace the existing requirement that the impairment leave the individual unable to manage his financial affairs with the requirement that the impairment materially limit the management of those affairs.

The National Taxpayer Advocate reiterates her recommendation that the nine-month period for requesting return of levied property under IRC § 6343(b) should be extended to two years.¹⁰

PRESENT LAW

Under IRC § 6331, the IRS is authorized to collect outstanding tax by levying against the taxpayer's nonexempt property and rights to property. In certain situations, however, under IRC § 6343 and the regulations, levies must be released, and levied property may, or in some situations must, be returned to its owner. The IRS is authorized to return levy proceeds to either a taxpayer when the levy was erroneous (*i.e.*, in violation of law or IRS administrative procedures) or a third party whose property has been wrongfully levied (*i.e.*, property in which the taxpayer has no rights and that is not otherwise subject to the Federal tax lien).

Return of Wrongfully Levied Amounts to Third Parties Under IRC § 6343(b)

Under this provision, the IRS may return levied property or money when the levy incorrectly attaches to property belonging to a third party in which the taxpayer has no property rights and that is not otherwise

⁹ National Taxpayer Advocate 2013 Annual Report to Congress 302.

¹⁰ National Taxpayer Advocate 2006 Annual Report to Congress 547.

subject to the federal tax lien.¹¹ This is commonly known as a “wrongful levy.” An individual can bring a civil suit against the IRS for return of the levied proceeds under IRC § 7426. Under IRC § 6532, this suit is barred from beginning no later than nine months from the date of the levy if no timely administrative request is first made by the third party.¹²

Return of Taxpayer’s Erroneously Levied Proceeds Under IRC § 6343(d)

Under this provision, the IRS may return levied property or money in the following situations:

- A levy that is premature or not in accordance with administrative procedures;
- An installment agreement is made for a liability included on the levy, unless the agreement provides otherwise;
- Returning levy proceeds facilitates collection; and
- With the consent of the taxpayer or the National Taxpayer Advocate, returning the levy proceeds is in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States.¹³

Return of Taxpayer’s Erroneously Levied Property or Money Under Treasury Regulation § 301.6343-3(d)

Under Treas. Reg. § 301.6343-3(d), the IRS must return property or money that was levied in violation of law.¹⁴ For example, under this regulation, the IRS must return property or money that is levied:

- Without giving the requisite 30-day notice of the right to a Collection Due Process hearing if required;¹⁵
- During the pendency of a proceeding for refund of divisible tax;¹⁶
- Before investigation of the status of levied upon property;¹⁷ and
- During the pendency of an offer in compromise.¹⁸

Time Period Under IRC § 6343(b) in Which the IRS Can Return Levied Property or Money to Taxpayer or Third Party

In all the situations above, levied upon property other than money can be returned to a taxpayer or third party at any time.¹⁹ However, the Treasury Regulations require a written request (described below) for return of levied money or money received from a sale of property within nine months from the date of the levy.²⁰

11 IRC §§ 6343(b) and 6331(a).

12 National Taxpayer Advocate 2001 Annual Report to Congress 202. Several bills were recently introduced in the United States Congress that included the National Taxpayer Advocate’s recommendation and would extend the nine-month period in IRC § 6532(c) to two or three years. See S.1578, 114th Cong. (2015), S. 949, 114th Cong. (2015), and H.R. 1828, 114th Cong. (2015).

13 IRC § 6343(d).

14 Treas. Reg. § 301.6343-3(d).

15 See IRC § 6330(a)(1).

16 IRC § 6331(i).

17 IRC § 6331(j).

18 IRC § 6331(k)(1).

19 IRC § 6343(b)(1); Treas. Reg. § 301.6343-3(e).

20 Treas. Reg. §§ 301.6343-2 and 301.6343-3.

Time Period in Which a Third Party Who Has Had Property Wrongfully Seized and/or Sold by the IRS Can File Suit Under IRC § 7426

Under IRC § 7426, a third party may file suit against the United States in the Federal District Court to enjoin the IRS from proceeding with enforcement of the levy, to return the specific property, or to grant a judgment.²¹ For a suit under IRC § 7426 to be timely, IRC § 6532 requires that it must be commenced from within nine months from the date of the levy if no request was made for the return of the levied property.²² However, if a written request for return of wrongfully levied property or money is submitted to the IRS within nine months from the date of the levy, the nine-month period will be extended 12 months from the date of filing the written request for the return of property wrongfully levied upon, or six months from the date of mailing the notice of disallowance, whichever is shorter.²³ A request which does not meet the requirements under Treas. Reg. § 301.6343-2(b)(3) is not considered adequate and will not extend the nine-month period.

The Doctrine of Equitable Tolling

The doctrine of equitable tolling prevents a statute of limitations from barring a claim if the claimant, despite diligent efforts, did not discover the injury until after the expiration of the limitations period or under the circumstances, could not reasonably be expected to file the claim within the designated time period.²⁴ In *Irwin v. Dept. of Veterans Affairs*,²⁵ the Court held that when Congress has waived the government's sovereign immunity, thereby subjecting it to lawsuits, equitable tolling should be made applicable in the same way that it is applicable to private suits.

Applying the holding in the *Irwin* decision, the 9th Circuit recently reaffirmed its prior interpretation that equitable tolling applies to the time limitation for filing a wrongful levy suit under IRC § 6532(c).²⁶ In *Volpicelli v. U.S.*, the plaintiff had filed a wrongful levy suit under IRC § 7426(a)(1) about eight years after the nine-month period for bringing a suit under IRC § 6532(c) had expired.²⁷ The plaintiff alleged when he was ten years old, the IRS had levied on checks that represented gifts from his great-grandmother to be used for his college attendance. The IRS applied the funds instead to the plaintiff's father's unrelated tax bill. Nearly a year after the plaintiff turned 18 (the age of majority), he brought the wrongful levy suit in Nevada district court. That court threw out the suit, holding that the nine-month period was not subject to equitable tolling.²⁸ The 9th Circuit reversed the district court, contrary to other courts including the 3rd Circuit,²⁹ holding that the nine-month period in IRC § 6532(c) is not jurisdictional

21 IRC § 7426(b). The court can grant an amount of money levied upon or judgment in an amount not to exceed what the IRS received for the sale of the property.

22 IRC § 7426(i) cross references IRC § 6532(c) for period of limitations for filing a suit.

23 IRC § 6532(c).

24 Black's Law Dictionary (10th ed. 2014).

25 498 U.S. 1075 (1991).

26 Prior to *Volpicelli v. U.S.*, 777 F.3d 1042 (9th Cir. 2015), the 9th Circuit in *Supermail Cargo, Inc. v. U.S.*, 68 F.3d 1204, 1206-07 (9th Cir. 1995) and *Capital Tracing, Inc. v. U.S.* 63 F.3d 859, 861-62 (9th Cir. 1995) applied the then-recent Supreme Court opinion in *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89 (1990), which held that the same rebuttable presumption in suits among private litigants that statutory periods of limitations could be subject to equitable tolling applied in analogous suits involving the United States. The 9th Circuit made two separate holdings: first, IRC § 6532(c) is not "jurisdictional", such as the 90-day period, or 150 days if the statutory notice of deficiency was sent outside the United States, for petitioning the United States Tax Court. Second, IRC § 6532(c) was a common statutory period of limitation, and there was nothing to rebut the *Irwin* presumption in favor of tolling.

27 *Volpicelli v. U.S.*, 777 F.3d 1042 (9th Cir. 2015).

28 *Volpicelli v. U.S.*, 108 A.F.T.R.2d 2011-7409.

29 *Becton Dickinson and Co. v. Wolckenhauer*, 215 F.3d 340 (3d Cir. 2000).

and is subject to equitable tolling.³⁰ The 9th Circuit remanded the case to the district court to decide, in the first instance, whether tolling was justified.

Equitable tolling has been found not applicable to other statutory time periods in tax administration. The Supreme Court in *U.S. v. Brockamp* and the 4th Circuit in *Webb v. U.S.* declined to toll IRC § 6511.³¹ In *Brockamp*, the taxpayer, who was 93 years old and demonstrating early signs of dementia, mailed a check to the IRS for \$7,000 instead of \$700, along with an application for an automatic extension of time to file his 1983 tax return. The taxpayer never sent in the 1983 return. The taxpayer died intestate more than two years after this payment. His daughter, administrator of the estate, discovered the \$7,000 overpayment and requested in a letter to the IRS that the overpayment be refunded. In the letter she characterized her father as “senile” and stated that he had mistakenly sent the check for \$7,000 rather than \$700. The claim for refund was denied by the IRS on the basis that the statutory period of limitations under IRC § 6511 expired.³²

In *Webb*, the taxpayer was physically and mentally abused and drugged by trusted caretakers (*i.e.*, her personal physician and an attorney hired by the physician) who coerced the taxpayer into granting them power of attorney over her finances.³³ The caretakers ultimately stole money from the taxpayer and filed gift tax returns reporting the stolen money as a gift to the caretakers from the taxpayer. With the assistance of a friend, the taxpayer eventually broke free of the abusive caretakers and filed a refund claim seeking a return of the paid gift taxes. The IRS denied claims for amounts beyond three years of the filing of the gift tax return because the statutory period of limitations under IRC § 6511 had expired.

Despite these taxpayers’ inability to comply with the statutory limitations period due to impairments, both the Supreme Court and the 4th Circuit held that equitable tolling did not apply because the requirements of IRC § 6511 were already set out with specificity. It was in response to these cases that Congress enacted IRC § 6511(h).³⁴

The amendment in IRC § 6511(h) suspended the running of the three- or two-year time period in IRC § 6511(a) during any period in which a taxpayer is financially disabled. The amendment states that a person is financially disabled:

[I]f such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

REASONS FOR CHANGE

The law, as currently written, prevents the IRS and the courts from returning levied property in situations where the taxpayer or a third party who is an individual, due to a physical or mental impairment, does not file a request for return of levied money or petition the court until after the nine-month period. As mentioned above, Congress has already expressed concerns about similar outcomes in other provisions

30 *Volpicelli v. U.S.*, 777 F.3d 1042 (9th Cir. 2015).

31 *U.S. v. Brockamp*, 519 U.S. 347 (1997), and *Webb v. U.S.*, 66 F.3d 691 (4th Cir. 1995).

32 *U.S. v. Brockamp*, 519 U.S. 347 (1997).

33 *Webb v. U.S.*, 66 F.3d 691 (4th Cir. 1995).

34 After the *Webb* and *Brockamp* cases, both Congress and the White House realized a legislative fix was needed. See Office of the White House Secretary, Press Release, Jan. 31, 1996; S. Rep. No. 105-174, at 60 (1998); H.R. Rep. No. 105-364, at 62 (1997). Both the House and the Senate reports show the Committees believed “that in cases of severe disability, equitable tolling should be considered in the application of the statutory limitations on the filing of tax refund claims.”

relating to statutory periods of limitation. Specifically, under IRC § 6511(h), the running of the three- or two-year time period for filing a claim for refund is suspended during any period in which a taxpayer is financially disabled. By passing IRC § 6511(h), Congress ensured that taxpayers who were impaired from filing a timely claim for refund would not lose the opportunity to file such a claim altogether.

The current nine-month time period in IRC §§ 6343(b) and 6532(c) creates the same potential for harm that was experienced by the taxpayers in the *Webb* and *Brockamp* cases. As with IRC § 6511(h), to ensure that an impaired third party or who is an individual or a taxpayer is able to have his or her request for return of levy proceeds considered by either the IRS or the courts, the nine-month period should be tolled if the third party who is an individual or taxpayer can show that he or she was financially disabled during such period. Without this change, a taxpayer or other third party who is an individual who is impaired, and therefore prevented from requesting the return of a levied amount, will lose that amount, even though the levy may have been wrongful, violated the law, or damaged the taxpayer's ability to pay the debt. Tolling the period for filing a claim during the period in which a taxpayer or third party who is an individual is financially disabled would strike a better balance between finality for the IRS and the taxpayer's *right to a fair and just tax system*. This would also better protect a taxpayer's *rights to privacy, to pay no more than the correct amount of tax, and to appeal an IRS decision in an independent forum*.

Although IRC § 6511(h) provided relief for financially disabled taxpayers and is a helpful guide for amending IRC §§ 6343(b) and 6532(c) its narrow definition of financial disability leaves unprotected a number of third parties who are individuals and taxpayers who lack the capacity to manage financial affairs.³⁵

To ensure the provision protects all taxpayers and third parties who are individuals who lack the capacity to manage their financial affairs, Congress should adopt the definition of financial disability recommended by the National Taxpayer Advocate in her 2013 Annual Report to Congress when amending IRC §§ 6343(b) and 6532(c).³⁶

This definition of financial disability would provide relief to those who can complete certain tasks but are prevented by their disability from completing others. More specifically, in many cases a disability can materially limit particular aspects of an individual's conduct, which may cause the taxpayer or third party who is an individual to fail to file the request within the nine-month period. For instance, for an individual suffering from clinical depression, a simple, routine task may pose little anxiety, while a more difficult and complex task (*e.g.*, filing a refund claim) may trigger severe anxiety and be avoided entirely.³⁷

35 National Taxpayer Advocate 2013 Annual Report to Congress 302.

36 *Id.*

37 Andrew M. Busch, Jonathan W. Kanter, Sara J. Landes, and Cristal E. Weeks, *The Nature of Clinical Depression: Symptoms, Syndromes, and Behavior Analysis*, *Behav. Anal.* 31(1): 1-21 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2395346/> (stating that "[d]epression is characterized as much by increased escape and avoidance repertoires as by reduced positive repertoires"). As the fields of psychiatry and mental health have advanced, we have learned that some mental illnesses, such as PTSD, may bring about neurochemical changes in the brain which may have biological, psychological, and behavioral effects on an individual's health. See U.S. Department of Veterans Affairs, National Center for PTSD, available at <http://www.ptsd.va.gov/professional/co-occurring/ptsd-physical-health.asp>. See also Jonathan E. Sherin, MD, PhD and Charles B. Nemeroff, MD, PhD, *Post-Traumatic Stress Disorder: The Neurobiological Impact of Psychological Trauma*, *Dialogues Clin. Neurosci.* 2011 Sep; 13(3): 263-78.

EXPLANATION OF RECOMMENDATION

Add a Provision to IRC §§ 6343 and 6532(c) Requiring Tolling for Claims of Financially Disabled Taxpayers

The nine-month period in IRC §§ 6343(b) and 6532(c) has no tolling period for financially disabled taxpayers or third parties who are individuals.³⁸ Suspending the nine-month period in which a taxpayer or a third party who is an individual can request the IRS to return levy proceeds or to bring a civil action in courts would expand protections available to those taxpayers or third party individuals who are financially disabled, and make these protections consistent with the suspension of the statutory period of limitations in a refund context under IRC § 6511(h). The concerns that led Congress to enact IRC § 6511(h) are equally applicable to the requests for return of levy proceeds.³⁹

Expand the Protections Available to Financially Disabled Individuals

As discussed in the National Taxpayer Advocate's 2013 Annual Report to Congress, taxpayers with disabilities often experience difficulty proving financial disability under IRC § 6511(h), due to its narrow definition of financial disability and medical professionals' ability to designate a taxpayer as financially disabled.⁴⁰ In brief, the IRS interpretation and guidance for what documentation the IRS can consider in evaluating a "qualified impairment" is unduly restrictive and may lead the IRS to dismiss otherwise compelling evidence, thereby resulting in the denial of relief to taxpayers who lacked the capacity to file a refund claim.⁴¹ A better articulated exception with more breadth than the current definition will more readily protect individuals suffering from clinical depression, anxiety, PTSD, and other mental afflictions.⁴² Therefore, Congress should adopt the National Taxpayer Advocate's 2013 recommendation to broaden the definition of financial disability under IRC § 6511(h) when defining financial disability for the purpose of tolling the statutory time period for filing under IRC §§ 6343 and 6532.

The National Taxpayer Advocate has previously submitted legislative recommendations to broaden relief from timeframes for filing a refund claim⁴³ and to extend the refund statute expiration date under IRC § 6511.⁴⁴ Even if Congress adopts the two years, the issue of tolling still exists, as it does with the three-year/two-year statutory limitations period for refund claims.⁴⁵ The National Taxpayer Advocate reaffirms these proposals and now recommends the nine-month period in which the IRS is authorized to return levy proceeds, or the court can hear a suit for return of levy proceeds, be suspended when the taxpayer is financially disabled.

38 See 26 U.S.C. § 6343.

39 S. REP. No. 105-174, at 60 (1998); H.R. REP. No. 105-364, at 62 (1997).

40 National Taxpayer Advocate 2013 Annual Report to Congress 302-10.

41 National Taxpayer Advocate 2013 Annual Report to Congress 303. In *Kurko v. Commissioner*, Docket No. 24040-13L, a Collection Due Process hearing, the taxpayer argued that an amended return claiming an overpayment was timely because the time period for filing a claim was tolled under IRC § 6511(h). The taxpayer presented the Settlement Officer with a letter from a licensed psychologist stating that the taxpayer had a mental health disability that made her financially disabled for purposes of IRC § 6511(h)'s provision tolling the credit or refund claim period under (a). The Settlement Officer did not accept the letter from the licensed psychologist because Rev. Proc. 99-21, 1999-1 C.B. 960, required the letter to come from a doctor of medicine or osteopathy as defined in IRC § 1395x(r)(1). The taxpayer petitioned the United States Tax Court and in an order issued on March 20, 2015, Judge Gustafson instructed the parties to brief the issue of the validity of Rev. Proc. 99-21, 1999-1 C.B. 960. After reading Judge Gustafson's questions in his March 20 order, the IRS decided to sign a stipulated decision providing that the overpayment was timely claimed, notwithstanding that the letter was not from a "physician" – thereby settling the case and rendering the issue moot for purposes of the *Kurko* case.

42 See Rev. Proc. 99-21; T. Keith Fogg & Rachel E. Zuraw, *Financial Disability for All*, 62 Cath. U. L. Rev. 965, 994-1004 (2013).

43 National Taxpayer Advocate 2013 Annual Report to Congress 302.

44 National Taxpayer Advocate 2001 Annual Report to Congress 202.

45 *Id.* A bill was recently introduced in the United States Senate that included the National Taxpayer Advocate's recommendation and would extend the nine-month period in IRC § 6532(c) to two or three years. See S.1578, 114th Cong. (2015), S. 949, 114th Cong. (2015); H.R. 1828, 114th Cong. (2015).