

#20 TOLL THE TIME PERIODS FOR REQUESTING THE RETURN OF LEVY PROCEEDS WHILE THE TAXPAYER OR A PERTINENT THIRD PARTY IS FINANCIALLY DISABLED

Present Law

Under IRC § 6331, the IRS is authorized to collect outstanding tax by levying against a taxpayer's nonexempt property and rights to property. In certain circumstances, under IRC § 6343 and the related regulations, levies must be released and levied property may, or in some situations must, be returned to its owner.

An administrative wrongful levy claim under IRC § 6343(b) is a request, made by a person other than the taxpayer who owes the taxes, for the return of property believed to be wrongfully levied upon or seized. Generally, the person making the request (the third party) believes the levy is wrongful because the property levied belongs to him, or he believes he has a superior claim to the property that is not being recognized by the IRS.

IRC § 6343(b) provides that if the IRS wrongfully levies on specific property, it may return the property at any time. With regard to the return of money wrongfully levied upon, however, there are strict time constraints. Under IRC § 7426, the third party may file an administrative claim for the return of the levied property or bring a civil action against the United States in a U.S. district court. If the third party files an administrative claim for the return of levied property, IRC § 6532(c) requires that the claim be made in writing to the appropriate IRS office within two years from the date of the levy. If the third party brings a civil action against the United States without having first filed an administrative claim, the third party has two years from the date of the levy to file the suit. If the third party files an administrative claim and the IRS rejects it, the third party can still file suit. In this circumstance, the time period for filing suit will be extended for the shorter of the following two periods:

- (1) A period of 12 months from the date of filing the request, or
- (2) A period of 6 months from the date a notice of disallowance is mailed to the third party by registered or certified mail.

If a taxpayer (as opposed to a third party) seeks the return of money levied upon, the taxpayer may request return of the levy proceeds under IRC § 6343(d). Generally, the taxpayer making the request believes the IRS should return the levied property because one of the conditions in IRC § 6343(d)(2) has been met. IRC § 6343(d) provides that the provisions of IRC § 6343(b) shall apply in the same manner as if the property had been wrongfully levied, except that no interest shall be allowed. Thus, a taxpayer seeking return of levied property faces the same time constraints as a third party (two years from the date of the levy) to file a written administrative claim. Unlike a third party, however, a taxpayer has no right to seek judicial review if a request for the return of levy proceeds is denied by the IRS under IRC § 6343(d).

Reasons for Change

The law, as currently written, prevents the IRS from returning levied funds in situations where a taxpayer who is an individual, due to a physical or mental impairment, does not file a request for the return of levied money until after the two-year period. Likewise, a district court lacks jurisdiction over a wrongful levy suit filed by a third party if the deadline for filing the suit is missed due to a health problem of the third party.

To ensure that an impaired taxpayer or third party (who is an individual) can have his or her request for return of levy proceeds considered by either the IRS or the courts, the two-year period should be tolled if the taxpayer or third party can show that he or she was financially disabled during the period. Without this

change, an impaired taxpayer or other third party who is prevented due to the impairment from requesting the return of levied funds in a timely manner will not be able to get back levy proceeds that otherwise would be eligible for return under IRC §§ 6343(b) and 6343(d), even in cases where the IRS violated the law.

Recommendation

Amend IRC §§ 6343(b) and 6532(c) to toll the time periods for filing a claim for the return of levy proceeds, a wrongful levy claim, and a wrongful levy suit during any period in which an individual is financially disabled.