

#19 CLARIFY WHEN THE TWO-YEAR PERIOD FOR REQUESTING RETURN OF LEVY PROCEEDS BEGINS

Present Law

Internal Revenue Code (IRC) § 6331(a) allows the IRS to levy on a taxpayer's property and rights to property that exist at the time the levy is served. Rights to property include fixed and determinable obligations to which the levy attaches, even if receipt of a payment arising from the obligation is deferred until a later date.

IRC § 6331(e) allows the IRS to serve a levy on the taxpayer's salary or wages that continues from the date the levy is first made until the levy is released under IRC § 6343.

IRC § 6331(h) allows the IRS to serve a levy on federal payments specified under that provision, such as Social Security benefits, which continues from the date the levy is first made until the levy is released. This levy is made by electronic means under the Federal Payment Levy Program (FPLP).

IRC § 6343(b) authorizes the IRS to return money levied upon or money received from the sale of levied property to third parties when it determines the levy was wrongful within the meaning of IRC § 7426(a)(1) if the third party requests the return within two years from the "date of levy."

IRC § 6343(d) authorizes the IRS to return money levied upon or money received from the sale of levied property to the taxpayer when it determines one of the circumstances specified in IRC § 6343(d)(2) exists if the taxpayer requests the return within two years from the "date of levy."⁹⁵ Neither IRC § 6343 nor the Treasury regulations promulgated thereunder define the term "date of levy."

However, the IRS takes the position that the "date of levy" for levies delivered by hand is the date of delivery.⁹⁶ Treasury Regulation § 301.6331-1(c) defines the term "date of levy" for mailed levies as the date the levy is delivered to the person in possession of the property. The Treasury regulations under IRC § 6331 do not define the term "date of levy" when the levy occurs through electronic means as used in the FPLP. The IRS has adopted a policy to return all or a portion of the FPLP proceeds it received during the two-year period preceding the date of request for their return.⁹⁷

Reasons for Change

The IRS may issue levies to attach a taxpayer's assets, such as wages, pension benefits, annuities, or Social Security benefits, that result in multiple payments over many years. The IRS has the authority to return levy proceeds to a third party or the taxpayer if the person requests the proceeds within two years of the date of levy. The IRS generally interprets the "date of levy" to mean the date the IRS delivers by mail or by hand a notice of levy to the person in possession of the property levied. In the case of a continuous levy under IRC § 6331(e), the date of levy is the date the notice of levy is first served by hand or by mail on the person in possession of the taxpayer's salary or wages. If the taxpayer requests return of levy payments more than two years after the date the notice of levy was served, the IRS is not authorized to return any payments. In the case of FPLP levies under IRC § 6331(h), however, the IRS will return a levied payment if the payment was made

⁹⁵ IRC § 6343(b) & (d) permits the IRS to return specific property levied upon at any time.

⁹⁶ *Cf. American Honda Motor Co., Inc. v. United States*, 363 F. Supp. 988, 991-992 (S.D.N.Y. 1973) (holding that date of levy for purposes of timely filing suit under IRC § 6532(c)(1) is the date when the notice of levy is served upon the person in possession of the taxpayer's property).

⁹⁷ See Internal Revenue Manual (IRM) 5.11.7.2.7, Returning FPLP Levy Proceeds (Oct. 3, 2018); IRM 5.19.9.3.8, Return of FPLP Levy Proceeds (Oct. 3, 2018).

within the two-year period before the date of the request for return. This interpretation results in similarly situated persons being treated differently and infringes upon a third party's or taxpayer's *right to a fair and just tax system*.

To illustrate, assume the IRS issues a continuous levy under IRC § 6331(e) to the taxpayer's employer in Year One, and the employer withholds and pays over to the IRS a portion of the taxpayer's paychecks for each month of the next four years. Then in Year Four, the taxpayer's dependent becomes ill, and as a result, his living expenses increase significantly due to large medical bills. The levy is now causing an economic hardship to the taxpayer. The taxpayer asks the IRS to release the levy and return a portion of the levy proceeds, and the IRS agrees that it is in the best interests of the taxpayer and the government to do so. However, the IRS is prohibited from returning the levy proceeds to the taxpayer because more than two years have elapsed since the date the levy was served on the employer. Contrast this result with a taxpayer whose Social Security benefits are levied under the FPLP. The IRS may return up to the last two years of levy payments even if the request occurs more than two years after the FPLP levies began.

Recommendation

- Amend IRC § 6343(b) to strike the term "date of such levy" and substitute "each date the IRS receives money from the levy or the date the IRS receives the money from the sale of levied property."