

Legislative Recommendation #21

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 money already levied upon may, or in some cases must, be returned to its owner. When the IRS has seized tangible property and it is in the IRS's possession, it can be returned at any time. With respect to the return of levied money, however, time limitations apply.

IRC § 6511(h) provides that the running of periods of limitation on claims for refund or credit is suspended during periods when an individual is financially disabled. An individual is considered financially disabled "if 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 and which has lasted or can be expected to last for a continuous period of not less than 12 months." The use of the term "medically determinable" has been interpreted to require a determination by a licensed physician. *See* Rev. Proc. 99-21.

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

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

There are strict time constraints for third parties to request the return of money upon which the IRS wrongfully levied. The third party may file an administrative claim for the return of the levied money 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 money, the claim must 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 suit. If the third party files an administrative claim and the IRS rejects it, the third party may still file suit. In this circumstance, IRC § 6532(c)(2) provides that the deadline 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 six months from the date a notice of disallowance is mailed to the third party by registered or certified mail.

Return of Levied Money to the Taxpayer Under IRC § 6343(d)

If a taxpayer (as opposed to a third party) seeks the return of money levied upon, the taxpayer may request return of the levied money under IRC § 6343(d). Generally, the taxpayer making the request believes the

IRS should return the levied money because one of the conditions in IRC § 6343(d)(2) has been met. These conditions include: (A) the levy was premature or otherwise not in accordance with administrative procedures; (B) the taxpayer has entered into an installment agreement to satisfy the liability for which the levy was imposed (unless the agreement provides otherwise); (C) the return of the levy proceeds will facilitate the collection of the tax liability; or (D) with the consent of the taxpayer or the National Taxpayer Advocate, return of the levy proceeds would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States.

A taxpayer seeking return of levied money 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 levied money is denied by the IRS under IRC § 6343(d).

REASONS FOR CHANGE

Current law prevents the IRS from returning levied funds in cases where a taxpayer is financially disabled due to a physical or mental impairment and 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 physical or mental impairment 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 levied money considered by either the IRS or the courts, the two-year period should be tolled if the taxpayer or third party can show that the individual was materially limited in managing his or her financial affairs due to a physical or mental impairment.¹ 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 levied money that otherwise would be eligible for return under IRC § 6343(b) and (d), even in cases where the IRS violated the law.

RECOMMENDATIONS

- Amend IRC §§ 6343(b) and 6532(c) to toll the time periods for filing a claim for the return of levied money, a wrongful levy claim, and a wrongful levy suit during any period in which an individual is financially disabled.
- Amend IRC § 6511(h)(2)(A) to provide that an individual is “financially disabled” if the individual is “materially limited” in managing his or her financial affairs by reason of a physical or mental impairment 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, as determined by a qualified medical or mental health professional.

¹ See National Taxpayer Advocate 2013 Annual Report to Congress 302-310 (Legislative Recommendation: *Broaden Relief from Timeframes for Filing a Claim for Refund for Taxpayers With Physical or Mental Impairments*). TAS recommended that IRC § 6511(h)(2) be amended to allow qualified medical and mental health professionals (rather than only licensed medical professionals) to determine whether an individual is physically or mentally impaired and to change the requirement that a physical or mental impairment must render the individual “unable” to manage his or her financial affairs to a requirement that “the individual is materially limited in managing his or her financial affairs.” The purpose of this recommendation was to broaden relief to include taxpayers who are financially disabled, but who may be able to manage some, but not all, of their financial affairs. For example, a taxpayer in the early stages of Alzheimer’s disease may be unable to consistently manage his or her financial affairs, even if the individual is not at the point of being entirely unable to do so. Relief in this situation may be prudent and should be determinable not only by a licensed physician but also by a licensed mental health professional, such as a psychologist.