

**Legislative Recommendation #22****Clarify When the Two-Year Period for Requesting Return of Levy Proceeds Begins****SUMMARY**

- *Problem:* The IRS is authorized to return levy proceeds to a taxpayer in certain circumstances, or to a third party in the case of a wrongful levy, if a request for return is made within two years from the “date of levy.” For levies delivered by hand or mail (paper levies), the “date of levy” is the date the notice of levy was served. For levies issued electronically, the IRS considers the date on which it received the levied proceeds to be the “date of levy.” This inconsistency means that parties subject to electronic levies are sometimes able to recover levied funds that parties subject to paper levies may not recover.
- *Solution:* Allow the IRS to return qualifying levy proceeds if the funds were *received* by the IRS within the preceding two years, regardless of the date the original levy was *served*.

**PRESENT LAW**

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 a levy on a taxpayer’s salary or wages that is continuous from the date the levy is first made until the levy is released under IRC § 6343.

IRC § 6331(h) allows the IRS to levy on certain specified federal payments, such as Social Security benefits, which levy is continuous 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).<sup>1</sup>

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 if the third party requests the return within two years from the “date of such levy.”<sup>2</sup>

IRC § 6343(d) authorizes the IRS to return money levied upon or money received from the sale of levied property to *the taxpayer* as if the property had been wrongfully levied upon 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 such levy.”<sup>3</sup>

For levies delivered by hand, the “date of levy” is the date of delivery. For mailed levies, Treas. Reg. § 301.6331-1(c) similarly defines the “date of levy” as the date the levy is delivered to the person in possession of the property. By contrast, for levies imposed by electronic means through the FPLP, the IRS has adopted a policy, set forth in the Internal Revenue Manual (IRM), to return all or a portion of the FPLP proceeds it received during the two-year period preceding the date of request for return without regard to the date the

1 The FPLP is an automated process used by the IRS to systemically levy federal payments owed to taxpayers. See IRS, Federal Payment Levy Program, <https://www.irs.gov/businesses/small-businesses-self-employed/federal-payment-levy-program> (last visited Nov. 17, 2023).

2 Under IRC § 7426(a)(1), a third party may bring a suit against the United States to recover amounts wrongfully levied. IRC § 6532(c) requires that a wrongful levy suit be brought within two years of the “date of the levy” unless a timely request for return of property was made pursuant to IRC § 6343(b).

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

initial levy was delivered.<sup>4</sup> However, the IRM is simply a set of instructions to help IRS employees do their jobs. Neither the IRS nor taxpayers may rely on it in court.

## 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 to the taxpayer if the person requests the proceeds within two years of the date of levy. The "date of levy" is generally the date the IRS delivers a notice of levy by mail or by hand 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.<sup>5</sup> If a party 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 IRM provides that the IRS will return a levied payment if the payment was made within the two-year period before the date of the request for return. This results in similarly situated persons being treated differently and infringes upon a third party or taxpayer's *right to a fair and just tax system*.

*Example:* 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 for the taxpayer.

The taxpayer asks the IRS to release the levy and return the portion of the levy proceeds that were taken during the time in which the taxpayer was experiencing economic hardship, 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.

We emphasize that the IRC authorizes the IRS to release levies only in limited circumstances, such as where the levy was wrongful, where the liability has been satisfied, where the levy is creating an economic hardship for the taxpayer, or where release of the levy would facilitate the collection of tax. As such, we believe the authorizing statute should give the IRS additional flexibility to return levy proceeds in these cases.

## 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."

4 See IRM 5.11.7.3.7(2), Returning FPLP Levy Proceeds (July 1, 2022), [https://www.irs.gov/irm/part5/irm\\_05-011-007r](https://www.irs.gov/irm/part5/irm_05-011-007r) (providing for return within two years from the "date of such levy payment"); IRM 5.19.9.3.7(5), Returning SITLP Payments (June 23, 2022), [https://www.irs.gov/irm/part5/irm\\_05-019-009r](https://www.irs.gov/irm/part5/irm_05-019-009r) (providing for return within two years from the "date of such levy payment").

5 Such a levy is issued via Form 668-W, Notice of Levy on Wages, Salary, and Other Income, and is generally a "paper" levy. A paper levy is defined as "either a manual or systemic levy on Form 668-A, or Form 668-W, that is prepared and issued by an RO." This differs from an FPLP levy, which is an automated levy. Automated levies are "levies issued through the Automated Levy Programs. These levies are transmitted electronically. The proceeds are also received electronically." IRM 5.11.5.1.6, Terms/Definitions/Acronyms (June 13, 2018), [https://www.irs.gov/irm/part5/irm\\_05-011-005](https://www.irs.gov/irm/part5/irm_05-011-005).