

Legislative Recommendation #23

Clarify When the Two-Year Period for Requesting Return of Levy Proceeds Begins

SUMMARY

- *Problem:* The IRS can 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 paper levies, the date of levy is the date the notice of levy was served. For electronic levies, the IRS considers the date of levy to be the date on which it received the levy proceeds. This means parties subject to paper levies may not be able to recover funds that parties subject to electronic levies may recover.
- *Solution:* Allow the IRS to return 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 authorizes the IRS to levy on a taxpayer’s property and rights to property that exist at the time a levy is served in order to collect unpaid tax liabilities. The levy attaches to fixed and determinable obligations even if receipt of a payment arising from the obligation is deferred until a later date. A levy on a taxpayer’s salary or wages is continuous from the date the levy is first made until the levy is released.¹ A levy on certain specified federal payments such as Social Security benefits is also continuous² and is made electronically under the Federal Payment Levy Program (FPLP).³

IRC § 6343(b) authorizes the IRS to return money levied upon or money received from the sale of levied property (levy proceeds) 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.⁴ The IRS may also return levy proceeds to taxpayers 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.⁵

Paper levies. For paper levies delivered by hand or mail, the date of levy is the date the levy is delivered to the person in possession of the property.⁶ 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.⁷

1 IRC § 6331(e).

2 IRC § 6331(h).

3 The FPLP is an automated process used by the IRS to systemically levy federal payments owed to taxpayers. See IRS, Federal Payment Levy Program (Mar. 1, 2024), <https://www.irs.gov/businesses/small-businesses-self-employed/federal-payment-levy-program>.

4 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).

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

6 Treas. Reg. § 301.6331-1(c).

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

Electronic levies. For electronic levies through the FPLP, the IRS has adopted a policy to return all or a portion of the levy proceeds it received during the two-year period preceding the date of the request for return without regard to the date the initial levy was delivered.⁸ While this policy is included in the Internal Revenue Manual (IRM), 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

IRS levies on assets, such as wages, pension benefits, annuities, or Social Security benefits, may 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 under certain circumstances. If a party requests return of levy payments more than two years after the date of such levy, the IRS is not authorized to return the payments.

For paper levies, the IRS can return levy proceeds if the request for return is received within two years of the date that the levy was first served. In the case of FPLP levies under IRC § 6331(h), however, the IRM provides that the IRS can return a levied payment if the payment was made within the two-year period before the date of the request for return. These differing rules cause the IRS to treat similarly situated persons differently and infringe upon a third party or taxpayer's *right to a fair and just tax system*.

Example: Assume the IRS issues a continuous levy to a taxpayer's employer in Year One. In Year Three, the taxpayer's living expenses increase significantly due to large medical bills, and the levy causes an economic hardship for the taxpayer. In Year Four, the taxpayer asks the IRS to release the levy and return the levy proceeds that the IRS received during the time in which the taxpayer was experiencing economic hardship. 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.

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 “the date the Secretary received such amount.”

⁸ 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 (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 (providing for return within two years from the date of such levy payment).