



Part 5. Collecting Process

Chapter 11. Notice of Levy

Section 1. Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions

5.11.1 Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions

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Manual Transmittal

December 07, 2015

Purpose

(1) This transmits a editorial based revision to IRM 5.11.1, *Notice of Levy, Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions*, to incorporate editorial changes based on ACA Provision 1501.

Material Changes

(1) Added reference to the mirrored Shared Responsibility Payment (SRP) Master File Tax Code (MFT) 65 assessment.

- *IRM 5.11.1.3.3(4)*, note is revised to add that ICS is programed to not accept mirrored SRP/MFT 65 modules on Letter 1058.
- *IRM 5.11.1.4.14*, is revised to add for the ACA that no levy will be issued on mirrored SRP/MFT 65 .

(2) Editorial changes were made throughout this IRM to update website addresses, legal references, and IRM references.

Effect on Other Documents

This IRM supersedes IRM 5.11.1 dated November 12, 2014.

Audience

This material is used by SB/SE revenue officers and AI - Advisory.

Effective Date

(01-01-2016)

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5.11.1.1 (08-01-2014) Notice of Levy Overview

1. This Internal Revenue Manual (IRM) section provides revenue officers and advisors an overview of the levy process including the following:
 - A. Background on levy authority and appeals provided.
 - B. Pre-levy actions and approvals required before a notice of levy can be issued.
 - C. Restrictions on levy based on legal and policy considerations.
 - D. Post-levy actions to identify and prepare Disqualified Employment Tax Levy.
 - E. Post-levy actions to identify and prepare Federal Contractor Levy.

5.11.1.2 (08-01-2014) Background

1. This section contains background information on notices of levy.

5.11.1.2.1 (08-01-2014) Legal Authority

1. The Internal Revenue Code (IRC) authorizes levies to collect delinquent tax. See IRC6331. Any property or right to property that belongs to the taxpayer or on which there is a Federal tax lien can be levied, unless it is exempt. See *IRM 5.11.1.4* for restrictions on levy issuance. All references to property in this subsection include rights to property.

5.11.1.2.2 (08-01-2014) Notice of Levy vs. Seizure

1. There is no legal distinction between levy and seizure.

- Generally, use a notice of levy (Form 668-A(c)(DO)/668-W(c)(DO)) to take a taxpayer's property held by someone else if it can be turned over by writing a check.
- If the taxpayer is holding the property, use the procedures in IRM 5.10, *Seizure and Sale*.
- If a third party is holding property that cannot be turned over by writing a check, use seizure procedures. Also, give a Form 668-A, Notice of Levy, to the third party holding the property. This is the demand to turn over the taxpayer's property. See IRM 5.10.3.6, *Seizing the Property*.

Example:

Notice of Levy is often used to take a taxpayer's bank account, wages, other income, or accounts receivables.

Example:

Seizure procedures are used to take a taxpayer's car, house, or business property.

Example:

If a taxpayer's car is seized in a commercial parking lot, seizure procedures include giving the attendant a Form 668-A(c)(DO), Notice of Levy, to demand that the car be turned over.

2. There is no required sequence for levying. Generally, though, levy funds that are held by a third party first. This is usually less time consuming.

5.11.1.2.3 (08-01-2014)

Appeals

1. Generally, taxpayers are entitled to a Collection Due Process (CDP) hearing under IRC 6330, or an equivalent hearing. See IRM 5.1.9.3.1(5) regarding the exception for child support obligations. See IRM 5.1.9.3, *Collection Due Process*.
2. Notices of levy can also be appealed under the Collection Appeals Program (CAP) regardless of whether the taxpayer can appeal under IRC 6330. CAP was created to give taxpayers a chance for administrative review that is independent from the Collection function. See IRM 5.1.9.4, *Collection Appeals Program*.

5.11.1.3 (08-01-2014)

Pre-Levy Actions

1. This subsection contains guidance on pre-levy actions.

5.11.1.3.1 (08-01-2014)

Pre-Levy Considerations

1. Taxpayers have the right to a fair and just tax system. That is, taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. See Pub 1, Taxpayer Bill of Rights #10.
2. Accordingly, levy determinations are made on a case-by-case basis and Revenue Officers must exercise good judgment in making the determination to levy. When determining if a levy is appropriate consider the following:
 - The taxpayer's financial condition, including information discussed in IRM 5.1.12.20.1.1 related to economic hardship determinations

Note:

When determining whether the financial information available is sufficient to establish an economic hardship each levy should be considered independently. In general, it will be necessary for the taxpayer to provide information for this determination to be made. However, if the Revenue Officer can verify from the information available that the levy will cause an economic hardship, the levy will not be issued, because if there is economic hardship, the levy must be released under IRC 6343(a)(1)(D).

- The taxpayer's responsiveness to attempts at contact and collection
- The taxpayer's filing and paying compliance history
- The taxpayer's effort to pay the tax
- Whether current taxes are being paid

Note:

There is no requirement that taxpayers experiencing economic hardship be in filing or payment compliance before a levy is released. See *Vinatieri v. Commissioner*, 133 T.C. 392 (2009). Thus, when the Service determines that the levy will create an economic hardship, do not issue the levy as a means to secure other compliance, e.g., missing tax returns.

5.11.1.3.2 (08-01-2014)

Required Notices

1. Before property can be levied, the taxpayer must be given a
 - Notice and demand
 - Notice of intent to levy, and
 - Notice of a right to a Collection Due Process (CDP) hearing

Note:

When a notice of levy is issued to a third party, it is a third party contact, but the Service takes the position that CDP notices sent to the taxpayer pursuant to IRC 6330 constitute reasonable advance notice that contacts with third parties may be made in order to effectuate a levy. See *Treas. Reg. 301.7602-1(d)(2)*. Further, advance notice of third party contacts may not be required in jeopardy situations, pursuant to section 7602(c)(3)(B). See IRM 25.27.1, *Third Party Contact Program*, for further discussions of third party contact requirements.

Note:

It is the legal position of the Service that notice and demand and third party contact notification issued in the name and EIN of a limited liability company (LLC) are legally sufficient when the owner of the LLC is the liable taxpayer.

2. The notice and demand required by IRC 6303(a) must be left at the taxpayer's home or business, or mailed to the taxpayer's last known address. This is normally taken care of by a master file notice mailed shortly after there is an assessment. The taxpayer has 10 days to pay the amount that is owed. If the taxpayer neglects or refuses to pay the amount due, the Federal tax lien arises.

Note:

If the amount specified in the notice and demand is paid within 21 calendar days after the date of the notice and demand (10 business days if the amount reflected is \$100,000 or more), interest is not imposed for the period after the notice and demand on the amount so paid. IRC 6601(e)(3).

3. In addition, the taxpayer must be given a notice of intent to levy at least 30 days prior to the date of the levy. The taxpayer has 30 days to pay the amount that is owed before property can be levied. See IRC 6331(d). This notice must be:

- A. Given in person
- B. Left at the taxpayer's home or business, or
- C. Sent to the taxpayer's last known address by certified or registered mail

Note:

Use registered mail only if the taxpayer is outside the United States. There is no international certified mail. See IRM 5.1.9.3.1(3), *Notice of Collection Due Process (CDP) Hearing Rights*.

Exception:

If collection is in jeopardy, property can be levied immediately if the taxpayer has been provided notice and demand for immediate payment. See IRM 5.11.3, *Jeopardy Levy Without a Jeopardy Assessment*.

4. Generally, the Service will give taxpayers 10 days to pay the tax liability following issuance of the IRC 6303 notice of assessment and demand for payment, before issuing the IRC 6331 notice of intent to levy and IRC 6330 notice of a right to a CDP hearing. Both the IRC 6331 notice of intent to levy and the IRC 6330 notice of a right to a CDP hearing must be given at least 30 days before the day of the first levy for that tax liability. Treas. Reg. 301.6331-2(a)(1) permits the Service, in satisfying the 30 day requirement of IRC 6331(d), to issue the IRC 6331 notice of intent to levy at the same time as the IRC 6303 notice of assessment and demand for payment. Also, the Service may issue the IRC 6330 notice of a right to a CDP hearing at that same time. The IRC 6330 and/or 6331 notices should not generally be issued simultaneously with the section 6303 notice or during the section 6303 time frame.

However the Service may determine that waiting 10 days after issuing the IRC 6303 notice and demand before issuing the IRC 6331 notice of intent to levy and/or the IRC 6330 notice of a right to a CDP hearing is not in the government's interest if one or more of the circumstances listed below has occurred. The IRC 6330 and /or 6331 notices may be issued simultaneously with the section 6303 notice or during the section 6303 time frame if the taxpayer:

- is pyramiding employment taxes (in business, not current with FTDs, and two or more trust fund modules assigned to a revenue officer);
- has made to the Service, for two or more periods, frivolous arguments which are listed in Notice 2010–33, 2010–17 IRB 609, or subsequent updates. See Notice 2010–33 at <http://www.irs.gov/pub/irs-irbs/irb10-17.pdf>;
- has failed to file required returns for two successive periods or three non-consecutive periods, for which the Service has prepared substitutes for return (and issued a deficiency notice where applicable), at least one of which is included in current or proposed notices. See IRM 5.1.18.12.2.4, *Verify Possible New Addresses Received from Asset Locator Research* when a new address is received from asset locator research.

Note:

The taxpayer has 30 days in which to request a CDP hearing. Allow 15 days after the 30 day period for receipt of a timely mailed request for CDP hearing.

5. When a levy is to be served, the taxpayer must also be given a notice of a right to a hearing per IRC 6330. **See (6) below.** The taxpayer has 30 days after this notice is given or mailed to ask for a hearing, before property can be levied. This notice is given to the taxpayer in the same manner as the notice of intent to levy, except that if it is mailed, a request for certified or registered mail return receipt **MUST** be included. See IRM 5.1.9.3, *Collection Due Process*, for instructions about the taxpayer's right to a hearing, including whether the taxpayer can appeal, when the taxpayer can appeal, and the consequences of asking for an appeal.

Note:

The taxpayer can waive the right to a hearing. IRM 5.11.1.3.3.11, *Waiver of Notice of Intent to Levy/Notice of a Right to a Hearing*.

Note:

There is no right to a hearing when child support obligations are being collected. IRM 5.11.1.3.3.12, *Issuing Notice of Intent to Levy for Child Support Obligation Bal Dues*.

6. There are 4 **exceptions** to the pre-levy notice requirements of IRC 6330.
- A. When the collection of tax is in jeopardy under section 6331(a). See IRM 5.1.9.3.14, *Jeopardy Levy, State Income Tax Levy Program (SITLP), and Federal Payment Levy Program (FPLP)* and IRM 5.11.3, *Jeopardy Levy without Jeopardy Assessment*.
 - B. A levy is served on a State to collect a Federal tax liability from a State tax refund, referred to as the State Income Tax Levy Program (SITLP). A taxpayer's state tax refund can be levied, even though the taxpayer may not have already been sent a notice or a right to a hearing. See IRM 5.1.9.3.14, *Jeopardy Levy, State Income Tax Levy Program (SITLP), and Federal Payment Levy Program (FPLP)*.
 - C. A disqualified employment tax levy is served. See IRM 5.1.9.3.15, *Disqualified Employment Tax Levy*.
 - D. A Federal Contractor Levy is served. A Federal contractor levy is any levy if the person whose property is subject to the levy (or any predecessor thereof) is a Federal contractor. See IRM 5.11.1.6, *Post-Levy Actions - Federal Contractor Levy*.

Note:

In each of the above situations, the taxpayer will be given the opportunity for a CDP hearing within a reasonable period of time **AFTER** the levy; i.e., generally within 10 days.

7. When counting the 10 day or 30 day periods, do not count the day that the notice is given or mailed to the taxpayer. Then, when the time to pay has run out, the next action can be taken on the following day.

Caution:

As long as a request for a hearing is correctly addressed and postmarked timely, it is timely. Allow 15 additional days after the 30 day period ends before levying in case the taxpayer mails a request for a hearing on the 30th day.

Example:

A notice of a right to a hearing is given to the taxpayer on March 1. The taxpayer has until the close of business on March 31 to pay or request a CDP hearing. On April 1, the Code allows property to be levied, unless something has happened to prevent it, e.g., payment, request for a hearing, installment agreement made or pending, etc. However, counting the additional 15 days, property will not be levied until April 16.

Exception:

After 30 days, if the taxpayer confirms that no hearing has been requested, there is no need to wait the additional 15 days.

Exception:

If the notice was unclaimed, returned undeliverable, or delivery was refused, there is no need to wait the additional 15 days, as long as the notice has only been sent to one address that is the taxpayer's last known address. If multiple notices have been sent, as described in *IRM 5.11.1.3.2.1*, wait the additional 15 days, unless all of them are returned undeliverable, unclaimed, or refused.

Exception:

If collection is in jeopardy, a notice of levy can be served without waiting the additional 15 days. The notice of levy must be approved by the territory manager or an AI - Advisory territory manager. Consult with counsel before the levy is served. The appeal process in *IRM 5.11.3.6, Appealing the Jeopardy Levy*, does not apply because the 30 day waiting period has passed. A CDP hearing will be held if the taxpayer mailed or delivered the request for a CDP hearing before the 30 days ran out. If a CDP hearing request is not made, the taxpayer can still discuss the levy with the group manager or the Taxpayer Advocate Service, as well as discussing it with Appeals under the Collection Appeals Program after speaking with the group manager.

8. The required notices must be sent for each module included on a levy.

Caution:

If the required notices for a module have been issued, and then additional tax, accuracy related filing or a payment delinquency penalty is assessed, a new notice offering a CDP hearing for the additional assessment must be issued before that additional assessment may be included in a levy. A new CDP notice does not need to be issued for accruals of a penalty or interest as long as a prior CDP notice for the penalty has been issued. There is no requirement to divide out the original and the new assessment amount on the L-1058. The balance on the L-1058 is for the full amount owed, even though CDP rights apply only to the subsequent assessment. Document the ICS history regarding the basis for the new CDP notice and note this information on the document sent to Appeals. When necessary, explain to the taxpayer that the appeal is only for the subsequent assessed amount, and document the ICS history to note that such explanation was provided to the taxpayer. Appeals will confirm the assessment being appealed in the initial discussion with the taxpayer.

Example:

A module has a TC 150 dated June 01, 2007. The CDP levy notice listing the TC 150 and appropriate penalties is issued on December 31, 2007. A TC 300 assessment is made on 03/31/2009. A new Notice of Intent to Levy and Notice of Your Right to a Hearing must also be issued for this additional assessment before it can be included in a notice of levy.

Example:

A module has a TC 150 assessment date June 01, 2007. A CDP levy notice listing only the TC 150 amounts is issued on December 31, 2007. The CDP levy notice does not include any assessed or accrued failure to pay penalty. Before any levy action to collect the failure to pay penalty can occur, a CDP levy notice for the failure to pay penalty must be issued (unless a post-levy CDP notice is applicable). If any accrual of the penalty, even one month, is included on the CDP notice, then the taxpayer is not entitled to another CDP notice when the Service wishes to collect by levy later assessed additional accruals of the penalty. In addition, the listing of an accrual on a CDP notice, even if not assessed, is sufficient to satisfy the CDP notice requirement with respect to the penalty.

9. See *IRM 5.11.6.12.2, Notice to the Non-Liable Spouse*, when a levy is to be served on a non-liable spouse in a community property state.

5.11.1.3.2.1 (08-01-2014)

Last Known Address

1. Generally, the last known address is the master file address that posted from the most recently filed and properly processed return. A list of returns that are used to update this address is in Rev. Proc. 2010-16. This revenue procedure also describes how taxpayers can give a new address to the Service.
2. A last known address may be obtained or changed by information received from the United States Postal Service National Change of Address database (NCOA database). As provided in Treas. Reg. § 301.6212-2(b)(2), an address obtained from the NCOA database becomes the taxpayer's last known address unless the taxpayer provides clear and concise notification of a change of address (as set out in Rev. Proc. 2010-16) or the Service properly processes a taxpayer's federal income tax return with a different address.
3. If a third party provides a new address for the taxpayer, this is not the taxpayer's last known address, unless the taxpayer verifies it and requests it be used as such by the Service.
4. When a Notice of Intent to Levy and Notice of Your Right to a Hearing (L1058) is mailed to the taxpayer, it must be sent to the last known address. If other addresses have been received from third parties without a change to the official last known address, send a copy of the L1058 and the enclosures to the taxpayer at these other addresses on the same date that the L1058 is sent to the last known address. Use regular mail for the copies sent to other addresses.

Note:

There is no need to check for additional taxpayer addresses before sending the L1058, unless there is reason to believe that the last known address is not valid, e.g., mail has already been returned undeliverable, information gathered during a field call raises doubt that the address is valid, etc. Checking third party sources that are reasonably available at the office where the case is assigned is a normal part of skip tracing to try to locate the taxpayer. Try to find a valid address before sending the L1058 to a last known address that is not current.

5. If the taxpayer has already been sent an L1058 and another address is found later, do not send an additional L1058 for the same Bal Dues to this new address, as long as the original notice was correctly sent to the address that was the last known address when it was mailed. If another written notice to the taxpayer at this new address is needed, use Letter 3174(CG), New Warning of Enforcement, or 3174-A(CG), New Warning of Enforcement for Joint Filers.

Example:

The L1058 was mailed and was returned unclaimed, but it was correctly sent to the taxpayer's last known address. While working the account later, a new address for the taxpayer was found. Attempts to contact the taxpayer at the new address to demand payment are unsuccessful. Letter 3174(CG) or Letter 3174-A(CG) may be sent or left at the new address to try to get the taxpayer to pay the amount owed or to contact the revenue officer.

6. If a mailed L1058 is mistakenly not sent to the last known address, request input of a TC 972 AC 069 to reverse that notice. See *IRM 5.11.1.3.3.9, Invalid Collection Due Process Notice and Rescinding a Valid Collection Due Process Notice*. Issue an L1058 to the taxpayer at the correct last known address. Release any levies that had been served for liabilities included in the improperly mailed L1058. Also see *IRM 5.11.2.4, Returning Levied Property to the Taxpayer*.

5.11.1.3.3 (01-01-2016)

Satisfying the Notice Requirements

1. Generally, a notice and demand is sent before a revenue officer receives a Bal Due account. However, if there are existing Bal Dues assigned on ICS, notice modules will be accelerated to Bal Due status resulting in the notice and demand being sent by the campus at the time of ICS assignment.
2. The campus sends the taxpayer the notice and demand, unless there is a jeopardy, quick, termination, or prompt assessment.
3. The Notice of Intent to Levy and Notice of Your Right to a Hearing (L1058) is usually issued on initial contact with a BMF or combination BMF/IMF taxpayer when a deadline is set for the taxpayer to take specific action, e.g., provide proof of payment, proof of Federal Tax Deposits, financial statement information, substantiation for a request for abatement or adjustment, etc. Use of Form 9297, Summary of Taxpayer Contact, is required to establish what is due and the deadline for receipt.

Note:

It is not necessary to have a levy source at the time the L1058 is issued.

Note:

To avoid an incorrect FTP penalty computation on L1058s issued on ICS, the date for the penalty and interest computation will systemically default to 10 days from the date of the L1058. If the 504 notice (status 58) has been issued on every module to be included on the letter, then, if you so choose, 10 days can be overridden and 30 days used. See IRC 6651(d) and IRC 6331(d).

Reminder:

L1058 and L1058-A are available in Spanish.

4. Use discretion when issuing the L1058 on initial contact with an IMF only balance due taxpayer. Consider the circumstances of the case and the compliance history of the taxpayer in determining whether to issue the L1058.

Note:

ICS programming will automatically exclude the individual shared responsibility payment modules (MFT 35 or MFT 65) from the L1058. See IRM 5.11.1.4.14, *Affordable Care Act's (ACA) Individual Shared Responsibility Payment (SRP)*.

5.11.1.3.3.1 (08-01-2014)

Recognizing if ACS Issued Notice of Intent to Levy/Notice of a Right to a Hearing

1. ACS also issues a Notice of Intent to Levy/Notice of a Right to a Hearing.
2. If the ACS transcript shows action code LT11 on or after 1–19–1999 for the same liabilities that a revenue officer will be levying to collect, do not issue an L1058. An LT11 issued before 1–19–1999 was only a notice of intent to levy. It did not include the notice of a right to a hearing.

Exception:

The ACS case transcript may show LT11, but the notice may have been stopped before it was sent.

If	And	Then
Action Code CLnn (nn is a two digit number) is on the ACS transcript. This Code is the same date as the LT11.		The LT11 was not sent.
Action Code MCLT is on the transcript.	The LT11 is the most recent LTnn (nn is a two digit number) before the MCLT.	The LT11 was not sent.

3. Another way to recognize if the notice has been issued already is to see if there is a Transaction Code (TC) 971, Action Code (AC) 069 on the module. This is input after the campus mails the ACS notice. Then, the results of mailing the notice, if known, are shown by a second TC 971.

- AC 066 - the return receipt was signed (not necessarily by the taxpayer) , so the notice was delivered. See second **Note** in IRM 5.11.1.3.3.3
- AC 067 - delivery was refused or the notice was unclaimed
- AC 068 - the notice was returned, undelivered

Note:

Action Codes 066–069 cannot be input on Individual Retirement Account File (IRAF) modules.

5.11.1.3.3.2 (08-01-2014)

Recognizing if Automated Levy Programs Issued Notice of Intent to Levy/Notice of a Right to a Hearing

1. The Automated Levy Programs (ALPs) also issue a Notice of Intent to Levy/Notice of a Right to a Hearing.
2. The ALPs are divided into three categories, the Federal Payment Levy Program (FPLP), State Income Tax Levy Program (SITLP) and Alaska Permanent Fund Dividend Levy Program (AKPFD).
3. The ALPs check the cases selected to determine if a CDP notice was issued, when required Master File will systemically generate a CDP final notice based on the requirement of each program , and post a TC 971 AC 069 on the module. An unreversed TC971 AC69 is sufficient to meet an assessment's IRC 6330 pre/post levy/seizure notice requirement.
4. The ALP and type of case involved will determine which Computer Paragraph (CP) generated CDP notice (from the list below) will be issued.

- CP 77 *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing*, AKPFD pre-levy notice.
- CP 90 (IMF) or 297 (BMF) - *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing*, FPLP pre-levy notice.
- CP 92 (IMF), *Notice of Levy on Your State Tax Refund Notice of Your Right to a Hearing*, SITLP post levy notice.
- CP 242 (BMF), *Notice of Levy on Your State Tax Refund Notice of Your Right to a Hearing*, SITLP post levy notice.
- CP 297A (BMF), *Notice of Levy, Notice and Your Right to a Hearing*, is issued after a FPLP DETL, post levy notice.
- CP 90C (IMF) or 297C (BMF), *Notice of Levy, Notice of Your Right to a Hearing*, is issued after a FPLP FEDCON levy, post levy notice.

5. For detailed procedures on the notice process for FPLP & SITLP, see IRM 5.11.7, *Automated Levy Programs* and for AKPFD IRM 5.19.9, *Automated Levy Programs*.

5.11.1.3.3.3 (08-01-2014)

Issuing Notice of Intent to Levy/Notice of a Right to a Hearing in CFF

1. When, on initial contact, a deadline is set for a BMF or BMF/IMF combination taxpayer to take specific action, the L1058 will be issued with all required enclosures. Allow 15 additional days after the 30 day period ends before levying in case the taxpayer mails a request for a hearing on the 30th day. IRM 5.11.1.2.1. for additional guidance. Explain to the taxpayer:

A. If they do not meet the deadline, the enforcement action warned of may take place after 30 days, and

B. That only by making a request for a CDP hearing, preferably using Form 12153, Request for a Collection Due Process or Equivalent Hearing, within the next 30 days, will the right to go to court be preserved.

Note:

If the taxpayer does request a hearing, continue to work with the taxpayer pursuant to IRM 5.1.9.3.3, *Processing CDP and EH Requests*.

2. When the L1058 is delivered in person, input ICS Delivery Method as "Hand Delivered". This will upload IDRS Transaction Code (TC) 971, Action Code (AC) 069 and TC 971, AC 066 on the same date.
3. If no contact is made on the attempted initial contact, the L1058 and all required enclosures may be left in an envelope at the taxpayer's home or business or mailed certified the same business day. Note *Caution* in (4) below.
4. When the L1058 is left at the taxpayer's home or business, input ICS Delivery Method as "Left at Home/Business." This will upload IDRS TC 971, AC 069 and TC 971 AC 067 on the same date.

Caution:

The date on the L1058 must be the date it is given to, left for, or mailed (return receipt requested) to the taxpayer.

5. If initial contact is made with the authorized representative only and a deadline is set for specific action to be taken, provide a copy of the L1058 to the representative and mail the original and all required enclosures to the taxpayer by certified or registered mail, return receipt requested. Input TC 971, AC 069, and follow-up with the appropriate transaction code per *IRM 5.11.1.3.3.1* when the results of the delivery are known.
6. When extenuating circumstances exist such as assigned inventory covering a large geographical area, and initial contact with the taxpayer is not in the field, L1058 should still be issued if a deadline is set for the taxpayer to take specific action.
7. Issuing L1058 in any case is not appropriate or may not be appropriate when:
 - A. Levy action is prohibited, such as when the taxpayer requests an installment agreement on initial contact or the pending installment agreement transaction code has already posted
 - B. A levy would not be issued if the taxpayer did not comply with the deadline, e.g., the taxpayer is in a hardship situation or there is doubt as to the correctness of the liability
 - C. Information obtained during the attempted contact indicates the taxpayer may no longer be at the last known address
 - D. IMF accounts have been in a suspended status, e.g., assigned to the Queue or reported currently not collectible for more than 12 months
 - E. The taxpayer satisfactorily demonstrates that the deadline set will be complied with, e.g., the taxpayer provides documentation that a loan is in process to full pay the liability
8. Because taxpayers only have the right to one Collection Due Process hearing for each taxable period and assessment, do not list liabilities on L1058 that have already been included in such a notice. Issuing more than one notice for a taxable period may give taxpayers the impression they can have another CDP hearing for that liability.

Reminder:

None of the campus IDRS notices are notices of a right to a hearing.

Reminder:

If the L1058 is mailed, it must be sent by certified or registered mail **WITH A RETURN RECEIPT**.

9. When the delivery results are known, update the Mail Receipt Response in ICS by choosing one of the following:
 - A. Accepted delivery
 - B. Unclaimed/refused
 - C. Undelivered

This will upload the AC 066, 067, or 068 as shown in *IRM 5.11.1.3.3.1* For modules that are not in status 26 or when the TC 971, AC 069, should be input for a date that is more than 30 days before the current date, prepare Form 4844, Request for Terminal Action, for manual terminal input to IDRS. Ask the terminal operator to input the date the action took place, rather than the date of the input. If the delivery results cannot be determined, no additional input is required.

Example:

The L1058 is mailed on March 10. The TC 971, AC 069, is input on March 12. The date of the TC is March 10.

Note:

Inputting AC 067 on the same date as the AC 069 shows the notice was left at the taxpayer's home or business. Refused delivery is distinguished from this by the AC 067 being a later date than the AC 069.

Note:

If the return receipt comes back unsigned, but the envelope is not attached, use AC 066. If there is a postmark date on the receipt, use that as the date of the transaction. If there is no postmark date, use the date that the return receipt is received.

Note:

In the past, if an IDRS 504 notice (status 58) had never been issued for a module, TC 971 Action Code 35 was input to increase the failure to pay rate to 1% after L1058 was issued. Action Code 069 now causes this change. If the higher rate has not already gone into effect because of a 504 notice, Action Code 35 is not necessary.

10. If the L1058 was not issued on initial contact, do not issue it when, after consultation with the Fraud Technical Advisor (FTA), it is determined that a firm indication of fraud has been established. (See IRM 25.1.3.2, *Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases*).

11. Except in cases involving a taxpayer identified as an in-business repeater trust fund taxpayer (IRM 5.7.8.2, *Identifying Repeater Taxpayers*), or pyramiding trust fund taxpayer (IRM 5.7.8.3 *Pyramiding Taxpayers*) avoid issuing the L1058 if you have issued a Collection summons to the same taxpayer for the same tax periods and the summons is still pending. Issuing the notice while the summons is pending could conflict with the taxpayer's opportunity in CDP to resolve any issues or disputes.

12. A summons is considered pending when:

- Issuance of the summons will occur during the 30 days the taxpayer has to exercise CDP rights
- Compliance with the summons will occur during the 30 days the taxpayer has to exercise CDP rights
- Referral of the summons will occur during the 30 days the taxpayer has to exercise appeal rights
- The taxpayer exercises the right to a hearing and the compliance date for the summons will occur during the time the hearing is pending in Appeals

Note:

The L1058 may be issued when the pending summons was issued to a third party.

5.11.1.3.3.4 (08-01-2014)

Issuing Notice of Intent to Levy/Notice of a Right to a Hearing for Joint IMF Bal Due account

1. If there are Bal Dues for jointly filed income tax returns, prepare two copies of L1058-A, because the Service is required to send notices relating to joint returns separately to each taxpayer.

A. If they are not delivered in separate envelopes in person or left at the taxpayers' home or business, mail them in separate envelopes to the taxpayers. Address one envelope to the primary taxpayer and one to the secondary taxpayer, although both taxpayers' names will be on each of the notices. Do not use a window envelope. Do this regardless of whether the taxpayers live at the same address or different addresses. If there are joint and separate liabilities, be careful that taxpayers are not sent a notice for taxes they do not owe.

Example:

John and Mary Doe owe tax for their 2005 joint income tax return. John Doe also owes tax for his single return for 2004. John must be sent a notice for both years, but only send Mary a notice for 2005.

B. If the notices are going to different addresses, do not reveal one person's address to the other.

Example:

William and Barbara White owe tax for a joint income tax return. They now have different addresses. ICS users must make two passes of the application to generate two letters, one pass to generate a letter for William and a second pass to generate a letter for Barbara. "William and Barbara White" will appear next to, "For Account of" in the upper right hand corner of the letter.

C. Before sending the L1058-A to joint taxpayers living at different addresses, try to contact both of them, so the letter is not a surprise to either of them. If one of the taxpayers is living in a different jurisdiction, try to get a telephone number to call this person before sending the L1058-A. If a number cannot be found or the attempted call fails, the letters can still be sent.

2. Before sending the L1058-A to the secondary taxpayer, check master file on-line to find out if this person has filed a return with a different address since the joint return(s) that generated the Bal Dues. This step is not necessary when there has been contact with the taxpayers confirming the secondary taxpayer's address or when the Bal Dues are for the most recent tax year.

Example:

There are Bal Dues for Steven and Marcia Brown for their joint income tax return for 2000. The revenue officer has not been able to contact the taxpayers but has found a joint levy source, so two L1058-As are going to be sent. Before sending them, the revenue officer uses master file on line to check Marcia Brown's social security number and finds that she has filed a more recent return with a married filing separate filing status and a different address. The L1058-A issued to Marcia is mailed to the address on her most recent return rather than the same address where Steven Brown's L1058-A will be mailed.

3. If levy on one of the taxpayer's property is prohibited, use the L1058 rather than the L1058-A and do not issue a separate L1058 to the prohibited person. Instead, prepare a notice with both taxpayers' names on it, and deliver or mail it in an envelope addressed to the taxpayer whose property can be levied. When the condition that prohibits levy no longer exists, an L1058 can be issued to that person. Also, see IRM 5.11.2.2.2(4), *Preparing the Notice of Levy*.

Example:

John and Mary Doe owe tax for a joint return. They are separated, and Mary is making payments on an installment agreement for the joint liability. John is not a party to the installment agreement. The L1058 will have both names on it, but it will only be issued to John. Issuing an L1058 to Mary would be improper, because her installment agreement prevents levy on her property. Later, Mary defaults on her agreement; she has the right to appeal the default. She must also be issued an L1058 giving her the right to a CDP hearing if she has not already received that right for each liability. During her appeal and during the 30 days she has to request a CDP hearing, collection can continue against John.

4. However, when separate notices are sent for joint assessments on ICS, when entering the Delivery Method and Mail Receipt Response, select "Primary, Secondary, or Both" as appropriate. If the L1058 is not input through ICS, Form 4844 should be prepared including the secondary taxpayer's SSN as "X-Ref XXX-XX-XXXX" in the "Remarks" on the Form 4844 for inputting the record of that person's notice. This will distinguish the primary and secondary taxpayer's ACs.

Example:

John and Mary Doe's notices for their joint 2004 income tax return are both mailed on 1-29-2006. John's return receipt comes back signed, but Mary's is returned undeliverable. There will be two TC 971s with AC 069 on 1-29-2006. One will have Mary's X-Ref SSN. The other will have no X-Ref SSN. There will also be a TC 971 AC 066 with no X-Ref SSN for John's notice and a TC 971 AC 068 with Mary's X-Ref SSN for Mary's notice.

5. Separate notices do not have to be issued when CFF is collecting the same liabilities for which ACS already issued its LT11, Notice of Intent to Levy/Notice of Your Right to a Hearing. While working the Bal Dues in CFF, you may discover that the taxpayers were separated, and one of them was not living at the last known address when the LT11 was sent. As long as that was the person's last known address when the notice was sent, it was a legally valid notice of a right to a hearing. IRM 5.11.1.2.1.1. Nevertheless, it may be inequitable to take this person's property without notice. Give Letter 3174(CG) to the taxpayer who was not living at the address before serving additional notices of levy on that person's property, and release notices of levy that have been served on that person's property.

6. You may send two L1058-As for a joint Bal Due and discover later that one of the taxpayers was living at a different address when the letters were sent. Although the notice is legally valid if it is sent to the last known address, it has been administratively determined that Letter 3174(CG) will be sent to this taxpayer before serving additional notices of levy on that person's property, and notices of levy that have already been served on that person's property will be released.

Note:

Because of procedures in (2), above, this should only be an issue if the secondary taxpayer has not reported a new address.

7. In a situation where you determine that you have erred by only mailing one L1058 to each spouse listed on the jointly filed income tax return (e.g., in an envelope addressed to both of them), a substitute Letter 1058 (Letter 1058-A) must be issued to each spouse who has not timely requested a CDP hearing from the one L1058. The Letter 1058-A should be dated the day it is issued. If one or both spouses timely request a CDP hearing prior to your discovering the inadvertent error, the CDP hearing request(s) should be processed per IRM 5.1.9. The invalidity of the improperly sent notice is cured by the timely hearing request. If neither taxpayer has requested a CDP hearing, the notice is invalid as to both taxpayers, send separate Letter 1058-A to each, and release notices of levies that have been served on either spouse's property based on the invalid notice. When the notice is substituted, input Transaction Code (TC) 972, Action Code 069, to reverse each TC 971 that has already been input for the invalid letter. The input date for each TC 972 must be the same as the date for the TC 971 it is reversing.

5.11.1.3.3.5 (08-01-2014)

Issuing Notice of Intent to Levy/Notice of a Right to a Hearing for Deceased Taxpayers

- Generally, if a taxpayer has died, a proof of claim may be filed to collect delinquent tax from the estate. Some circumstances may call for the issuance of a notice of levy.

Example:

The estate or certain assets may not be going through probate.

Example:

For a joint return, the assets of the surviving spouse may be levied to collect the delinquent tax.

- AI - Advisory and/or Associate Area Counsel may need to be consulted to determine whether a notice of levy can be served.
- If a notice of levy will be issued, L1058 must be sent to the estate administrator or executor. Research probate records to obtain the name of the estate administrator or executor. See IRM 5.5.3.4, *Field Collection Actions*, for procedures to be followed in investigations involving a deceased taxpayer.
- For single liabilities

IF	THEN
There is no estate administrator or executor	Send the L1058 to: Estate of John Smith (Dec'd) John Smith's Last Known Address
IF	THEN
There is an estate administrator or executor	Send the L1058 to: Estate of John Smith Charles Jones, Administrator (or Executor or Personal Representative) Charles Jones' Last Known Address

Note:

Consider sending a copy to the address of the attorney for the estate.

- For joint IMF liabilities, one spouse deceased

IF	THEN
There is no estate administrator or executor	Send two L1058s. Address both to: Mary Doe and Estate of James Doe Use James's last known address on his L1058 and Mary's last known address on hers. Put James's L1058 in a non-window envelope addressed only to him at his last known address. Put Mary's L1058 in a non-window envelope addressed only to her at her last known address or issue it to Mary on initial contact.
IF	THEN
There is an estate administrator or executor	Send two L1058s. Address one to: Mary Doe and Estate of James Doe William Green, Administrator (or Executor) Estate of John Doe Last Known Address Put the L1058 in a non-window envelope addressed the same way as the letter, except delete Mary's name. Address the other L1058 to: Mary Doe and Estate of James Doe Mary Doe's Last Known Address Put the L1058 in a non-window envelope addressed the same way as the letter, except delete James' name. The L1058 can also be delivered on initial contact with Mary.

Note:

Consider sending a copy to the address of the attorney for the estate.

5.11.1.3.3.6 (08-01-2014)

Issuing Notice of Intent to Levy/Notice of a Right to a Hearing for Partnership Liability

- The Service may levy on the property of a partnership or the general partner's property and rights to property to collect the employment tax liability of the partnership.
- If the Service intends to levy on the partnership assets to collect the partnership liability, send the L1058 to the last known address of the partnership. Do not send additional L1058s to the partners at their addresses.

Exception:

If the partnership is no longer operating, or there is another reason to know the last known address is not current, the L1058 must still be sent to this address. Also send a copy of the letter and the enclosures to any general partners whose addresses are known, e.g., partners who provide their addresses when contacted about the taxes, and partners whose addresses are found through normal skip tracing when a partnership is no longer at its last known address. Use regular mail for the copies sent to the partners.

- If the Service intends to levy on the property or rights to property of an individual general partner to collect the employment tax liability of the partnership, send the L1058 to the individual general partner whose property the Service intends to levy and to the partnership. Use regular mail for the copy sent to the partnership.
- If the Service intends to levy on the partnership assets and an individual general partner assets to collect the partnership liability, send an L1058 to the last known address of the partnership and the individual partner.

5. ICS generally reflects the partnership name as it appeared when it was established on IDRS. It may contain the name of the partnership, its trade name and/or the names(s) of its general partners. Before generating the L1058 to the individual general partner, you must

- A. Identify the general partner,
- B. Document the ICS case history,

Note:

Enter "Individual Gen Ptr, see history MMDDYYYY" in the MISC INFO section on the IDRS MAILING ADDRESS screen on ICS. This provides a central location for others reviewing a case to locate the history entry that identifies the individual general partner.

- C. Create a new name line on ICS to identify the individual general partner,

Note:

Create it as an OTHER ADDRESS, and select it when requesting administrative collection actions

- D. Create a separate name line for each individual general partner, if the identity of the individual general partner changes from one period to the next, and

- E. Clarify the tax periods attributed to each individual general partner in your summarizing ICS history entry

Note:

Select the correct name line created to generate the L1058 through ICS.

Note:

Include only the name and TIN(s) of the individual general partner on the L1058.

5.11.1.3.3.7 (08-01-2014)

Issuing Notice of Intent to Levy/Notice of a Right to a Hearing for Limited Liability Company (LLC)

- 1. Prior to issuing L1058, for employment taxes assessed in the name of the LLC, determine the liable taxpayer for each tax period; i.e., whether the LLC or the single-member owner is liable and input appropriate TC 971 action codes on each module:

- A. AC 364 (LLC is the liable taxpayer)
- B. AC 365 (LLC owner is the liable taxpayer)
- C. AC 366 (liable taxpayer changed during this period)

Note:

See IRM 5.1.21, *Collecting from Limited Liability Companies (LLCs)*, for guidance.

- 2. When the LLC is the liable taxpayer, the L1058 is issued in the name of the LLC and the LLC, itself, has the right to a hearing.
- 3. When the owner of the LLC is the liable taxpayer, the L1058 must be issued in the name of the owner, and the owner has the right to a hearing.

Note:

If the L1058 is mailed, it must be sent to the **owner's** last known address. If the L1058 is hand delivered then it must be either given in person or left at the dwelling or usual place of business of the **owner**.

- 4. When a husband and wife, as sole owners of an LLC owned as community property under the laws of a state, chose to treat it as a disregarded for federal tax purposes, the Service will accept that position. See IRM 5.1.21.10.2, *Community Property Considerations*. The L1058 should be sent to each spouse separately following the steps set forth in *IRM 5.11.1.3.3.4*. This is only true if the owners is liable for the employment taxes. After Jan. 1 2009, the LLC is always liable for the employment taxes.
- 5. If the identity of the liable taxpayer changes due to changes in classification or regulations, issue one notice to the LLC for the tax period(s) when the LLC is liable and a separate notice to the owner for the tax period(s) when the owner is liable.
- 6. If the L1058 was originally issued to an incorrect liable taxpayer or address, issue a new notice to the last known address of the correct liable taxpayer. Input TC 972 AC 69 to reverse each TC 971 relating to the incorrect notice(s).

Note:

The input date for each TC 972 must be the same as the date for the TC 971 it is reversing.

5.11.1.3.3.8 (08-01-2014)

Timeliness of Notice

- 1. The purpose of the Notice of Intent to Levy described in *IRM 5.11.1.3.2* is to warn the taxpayer that failure to respond may result in imminent enforcement. When a long time has passed since the notice was issued and there has not been enforcement action or a warning of enforcement, the notice loses its effectiveness as a warning.
- 2. A Notice of Intent to Levy is legally sufficient to support subsequent collection action by levy regardless of its age. However, it has been administratively determined that the taxpayer will get a new warning of enforcement action before a notice of levy is issued if there has been no other enforcement action or warning of enforcement for at least 180 days.

- A. This warning must be documented in the case file and should be determined by the specific facts of the case. It may be given orally (in person or by phone) by telling the taxpayer that there is a deadline, e.g., 15 days, 30 days after which there will be enforcement action. If the taxpayer cannot be contacted in person or by telephone, then the warning may be given in writing. Use Letter 3174(CG), New Warning of Enforcement. Use Letter 3174-A(CG), New Warning of Enforcement for Joint Filers, when the letter is issued to both spouses for joint income taxes. Allow a minimum of 15 days for mail delivery of Letter 3174 before taking enforcement action.

Note:

Do not issue another L1058 to give the taxpayer a timely warning. For each liability the taxpayer gets the opportunity only once for a CDP hearing described in that letter. Issuing another L1058 will give the incorrect impression that the taxpayer can have a CDP hearing again for the same liability.

- B. Exceptions to a new warning of enforcement include the following :

- Collection is at risk. The territory manager or an AI - Advisory territory manager must approve the levy. The taxpayer can discuss the levy with the group manager, the Taxpayer Advocate Service, and the Appeals Officer in a Collection Appeals Program proceeding.
- Computer matching programs in which files of liabilities are matched against files of assets/income resulting in immediate payment, e.g., State Income Tax Levy Program, Federal Payment Levy Program.
- The taxpayer previously requested a CDP hearing for the liability being collected. The Notice of Determination in CDP constitutes a warning of imminent enforcement if the levy is supported.
- The taxpayer is a trust fund repeater or pyramider. See IRM 5.7.8.2, *Identifying Repeater Taxpayers*, and IRM 5.7.8.3, *Pyramiding Taxpayers*.
- Enforcement action has taken place within the last 180 days or a warning of enforcement has been given in the last 180 days. Enforcement action only includes seizures and notices of levy where the taxpayer should realize there has been enforcement.

Example:

A notice of levy is sent to an employer and it is returned because the taxpayer no longer works there. This notice of levy does not start the count for a new 180 day period because the taxpayer would be unaware of the levy.

Example:

A levy is sent to a bank and a copy is sent to the taxpayer. Even if no proceeds are received, the taxpayer would be aware of the levy action.

C. This new warning of enforcement is in addition to the notices described in *IRM 5.11.1.3.2, Required Notices*, that are required by law and must have been sent at some point. An oral warning to pay is not adequate to allow a notice of levy to be served if there has never been a 30 day Notice of Intent to Levy and Notice of Your Right to a Hearing.

D. If the most recent warning of enforcement or enforcement action is over 180 days old, give the taxpayer a new warning before taking enforcement. This means that over the life of the liability, there may be a need to give this warning more than once.

Example:

An L1058 is issued to a taxpayer, followed by a notice of levy. After 180 days pass with no additional enforcement action or warning of enforcement, a new warning needs to be given before another notice of levy or a seizure, unless one of the exceptions in (b) exists. Then, a new 180 day count begins from the notice of levy if the notice of levy is sent to the taxpayer.

3. The required notices in *IRM 5.11.1.3.2* must have been sent for every taxable period or module that is included in a notice of levy. **The taxpayer has had timely notice as long as there has been a recent warning of enforcement or enforcement action for at least one liability included in a notice of levy within the last 180 days.** In other words, the requirement for the notices in *IRM 5.11.1.3.2* must be met for each liability included in a notice of levy, but **the new warning of enforcement is for the entity rather than each liability.**

Example:

The required notices (Notice and Demand, Notice of Intent to Levy and Notice of Your Right to a Hearing) have been sent for all modules included in the notice of levy. They are over 180 days old and there has been no enforcement action or warning of enforcement, so the taxpayer is given a new oral warning of enforcement. After the 15 day deadline passes, a new module is received for which a notice of intent to levy and notice of the right to a hearing had been sent more than 30 days ago, so the legal requirement for this module has been met. A new warning is not necessary, even if the notice of intent to levy and notice of the right to a hearing for this new module had been sent more than 180 days earlier, because the taxpayer was warned of enforcement within the last 180 days.

4. If the taxpayer cannot be located, the required notices still must have been sent to the last known address. However, additional notices for these liabilities do not have to be sent to the last known address just to meet the timeliness requirement.

5.11.1.3.3.9 (08-01-2014)

Invalid Collection Due Process Notice and Rescinding a Valid Collection Due Process Notice

1. If a Collection Due Process Notice (CDP) levy notice is invalid, a substitute notice must be issued, so that the taxpayer will be entitled to elect a hearing. Situations warranting the issuance of a substitute CDP notice because the CDP levy notice was invalid include when the taxpayer:
 - A. Did not receive a CDP notice or made an untimely hearing request because the notice was not sent to the taxpayer's last known address (in which case the notice is invalid). If the taxpayer makes a timely hearing request from the invalid notice, a substitute notice need not be issued.
 - B. Is in bankruptcy and the automatic stay in effect prohibits the issuance of collection notices and collection by levy (in which case the CDP notice is treated as void and is invalid). Issue the substitute CDP notice when the automatic stay is no longer in effect. Contact AI - Insolvency for assistance in determining whether the automatic stay is in effect as to certain property.
 - C. Did not receive a CDP notice because it was not sent individually to each joint filer. A notice may be valid as to one or both of the joint filer(s) if there is proof that person actually received the notice or that person timely requested a CDP hearing. If the taxpayer makes a timely hearing request from the invalid notice, a substitute notice need not be issued.
2. If a taxpayer makes a timely hearing request from a CDP notice that is invalid because it was not sent to the last known address or not sent individually to a joint filer, treat the request as timely. By making a timely hearing request, the taxpayer is deemed to have waived any defect in the issuance of the CDP notice.
3. If the taxpayer submits a CDP hearing request in response to a CDP levy notice issued during the automatic stay, notify the taxpayer that he/she is not entitled to a hearing because the notice is invalid and that a substitute notice will be issued if the Service intends to levy after the automatic stay is no longer in effect. A taxpayer is not entitled to a CDP hearing pursuant to a CDP levy notice issued in violation of the automatic stay.
4. A valid CDP levy notice issued in error can be rescinded but only if:
 - A. the rescission is accomplished before the expiration of the time period in which the taxpayer may request a CDP hearing; and
 - B. the taxpayer has not requested a CDP hearing.
5. You should rescind a valid CDP notice during the 30-day period for requesting a CDP hearing, before you receive a taxpayer's hearing request, if you learn that the notice was issued when the case is in a status in which levy action is prohibited. Rescission is not permitted once the 30-day period expires or the taxpayer makes a timely hearing request. See *IRM 5.1.9.3.2.4, Invalid CDP Notices and rescinding a Valid CDP Notice*.

Note:

Situations where levy action is prohibited include a pending installment agreement (IA) request, pending offer-in-compromise (OIC), pending innocent spouse claim and while an installment agreement is in effect.

6. The time period for requesting a hearing is suspended during and for an additional 180 days (Section 7508 statute) after:

- A. the taxpayer is in a combat zone
- B. part of a contingency operation away from the taxpayer's permanent duty station, or
- C. recuperating during a qualified hospitalization.

Note:

Because the time period for requesting a hearing is extended when the taxpayer is in section IRC 7508 status, the time period for rescinding the IRC section 6330 notice is also extended.

Note:

Check IDRS for any TC 500 that may extend the 30-day period for requesting a hearing. See IRM 5.1.7.9, *Accounts of Taxpayers Who Serve in a Combat Zone*.

Note:

The time for requesting a hearing resumes when the section 7508 status ends (e.g. combat zone exit date plus 180 days). CDP requests that appear untimely may in fact be timely if made by taxpayers who were in section 7508 status at the time of the original CDP notice issuance or during the time period for requesting a hearing. Look for prior TC 500s and their reversals on all untimely requests and compare those dates to the CDP notice dates. The TC 500 indicates the date the taxpayer entered section 7508 status and its reversal the date of exit from a combat zone, contingency operation, or qualified hospitalization. All requests received in that time-frame or during the following 180 days should be honored as timely, with an explanation on the case when sent to Appeals.

Caution:

If the taxpayer has requested a hearing, the Service cannot rescind the CDP notice but the Service shall delay the CDP hearing in accordance with IRC section 7508.

7. Use Letter 3876, *Rescission of Collection Due Process Levy Notice*, to notify the taxpayer. The letter explains the Notice of Intent to Levy and Notice of Your Right to a Hearing is rescinded and as a result any CDP hearing request submitted after the date of the letter is disregarded. It also explains that the taxpayer's CDP hearing rights are preserved.
8. If you receive a properly-addressed timely hearing request after sending the Letter 3876, check the dates to see which was mailed first (check postmark date on request). If the taxpayer's request pre-dates the dates of the Letter 3876, the Letter 3876 is ineffective and the CDP rights cannot be rescinded. the request must be forwarded and resolved by Appeals.

Note:

If the timely hearing request was not properly addressed, use the date of the receipt of the request. The CDP levy notice is rescinded if the Letter 3876 was mailed before the hearing request was received.

9. When the notice is rescinded or invalid, input Transaction Code (TC) 972, Action Code (AC) 069, to reverse each TC 971 that has already been input for the rescinded letter or invalid notice. The input date for each TC 972 must be the same as the date for the TC 971 it is reversing.

Note:

The TC 971 AC 069 need not be reversed if the taxpayer has submitted a timely hearing request from an invalid CDP levy notice sent to an address other than the last known address or not mailed to a joint filer individually.

10. Once a taxpayer requests a CDP hearing following a valid notice that has not been previously rescinded, Appeals must conduct the hearing and issue the notice of determination, unless the taxpayer withdraws the hearing request. Pending OICs, requests for IAs or innocent spouse relief and combat zone CDP hearing requests should be worked by Appeals in the CDP or equivalent hearing if the taxpayer requests a hearing.

Note:

IRM 8.22.5.4.2.4.2(2) *Corrective Actions on Improperly Issued CDP Notices and Notices Issued in Error* provides the procedures Appeals should follow if the taxpayer requests a CDP hearing when collection by levy is prohibited

5.11.1.3.3.10 (08-01-2014)

Verification of Notice of Intent to Levy/Notice of a Right to a Hearing

1. A record will be made in the ICS history showing when and how the Notice of Intent to Levy and Notice of Your Right to a Hearing is given to the taxpayer. This will be automatically generated by ICS when the input described in IRM 5.11.1.3.3.3 is done.
2. If the notice is mailed, the Postal Service's rubber stamp imprint on a Certified Mail Receipt (Postal Service Form PS 3800) or a Certified Mail Book (Form PS 3877) is desirable to verify the mailing. However, getting the form stamped may not be practical, e.g., the nearest Post Office may be many miles from a remote post of duty. Even if the postal stamp is not obtained, keep the unstamped Certified Mail Receipt in the case file.
3. If the notice is delivered by the Postal Service, the return receipt (PS Form 3811) should come back. If the notice is not delivered, the envelope with the attached return receipt should come back.

Keep the return receipt or the undelivered envelope (with the attached return receipt) in the case file. These can serve as proof that the notice was mailed. When neither the return receipt nor the envelope is returned, verification can be made within six months through the Postal Service's web site at <http://www.usps.com/>. The Track and Confirm information at this website should be printed and maintained in the file to show the Postal Service's receipt of the certified mailing, delivery attempts, delivery result, and return of the mail item where delivery was not accomplished.

5.11.1.3.3.11 (08-01-2014)

Waiver of Notice of Intent to Levy/Notice of a Right to a Hearing

1. Occasionally, a taxpayer may want the Service to issue a notice of levy quickly.

Example:

The taxpayer is expecting another creditor to attach assets. The taxpayer may want the assets levied before the other creditor can attach them.

2. Normally, a levy cannot be issued until an L1058 has been issued, and the waiting period has passed. However, in this situation, the taxpayer may have an incentive to waive the waiting period and the right to a hearing, so the notice of levy can be issued promptly.
3. Waiver of this right must be informed and voluntary, or it is not a valid waiver. The waiver must be in writing.
4. First, give the taxpayer an L1058, including all the enclosures so they have an opportunity to understand the rights they are waiving. Discuss those rights with the taxpayer and document the case history accordingly. Then, have the taxpayer sign Form 13207, Waiver of Right to Receive a Collection Due Process Hearing under IRC 6330.

5. If this form does not fit the situation, discuss the need for some alternative language with AI - Advisory, which may consult with Associate Area Counsel. The right to Collection Due Process must be waived in its entirety. Do not accept a proposed waiver that is restricted to allowing levy only on a specific asset or class of assets.

6. Input the appropriate codes shown in *IRM 5.11.1.3.3.3*

5.11.1.3.3.12 (08-01-2014)

Issuing Notice of Intent to Levy for Child Support Obligation Bal Dues

1. IRC 6305 provides that federal courts have no jurisdiction to restrain or review the assessment and collection of Child Support Obligation (CSO) Bal Dues. It also says that the assessment and collection are not, "...subject to review by the Secretary in any proceeding...."
2. This means that Collection Due Process does not apply to these liabilities, so no notice of a right to a hearing (L1058) will be issued when CSO Bal Dues are being collected. Similarly, the taxpayer can neither request review under the Collection Appeals Program nor by the Taxpayer Advocate Service.
3. Before a notice of levy can be issued to collect a CSO liability, there must be a
 - Notice and demand, and
 - Notice of intent to levy
4. The notice and demand is issued at the campus when the liability is assessed.
5. Use Letter 3524, Final Notice - Notice of Intent to Levy, Please Respond Immediately, instead of L1058. This is the notice of intent to levy for CSO Bal Dues. It is available as an ICS template. This must be given to the taxpayer, as described in *IRM 5.11.1.3.2* If it is mailed, no return receipt is required.
6. If the person who owes child support also owes tax, give L1058 to the taxpayer for delinquent tax modules, but do not include the child support obligation on this letter. Letters 1058 and 3524 can be mailed in the same envelope, but if that is done, a return receipt is required.
7. Because L1058 has not been issued for the CSO Bal Dues, ICS will not allow the revenue officer to issue a notice of levy. Instead, this must be done by the group manager.

Note:

See *IRM 5.11.1.4.2, Property Exempt from Levies Used to Collect Child Support Bal Dues*

5.11.1.3.3.13 (08-01-2014)

Issuing Notice of Intent to Levy/Notice of a Right to a Hearing for Consolidated Groups

1. A consolidated group is an affiliated group of corporations connected through stock ownership in a parent-subsidiary relationship as defined in IRC § 1504 that has elected to file a consolidated income tax return to offset income and losses of the affiliates.
2. Treas. Reg. § 1.1502-6(a) imposes on the common parent and each subsidiary that was a member of the consolidated group during any part of the consolidated return year several liability for the tax of the consolidated group for that year. The Service may levy on the property of a subsidiary corporation for unpaid income tax liability of the consolidated group in these situations. Under certain limited circumstances, the Commissioner may make assessment and collection from a subsidiary that has left the group based on such subsidiary's allocable portion of the consolidated group's deficiency under Treas. Reg. § 1.1502-6(b).
3. When the determination is made to collect the income tax liability from the assets of the subsidiaries, the common parent and the subsidiaries must be listed on the L1058.
4. ICS generally reflects the common parent name as it appeared when it was established on IDRS. Before generating the L1058 to the common parent, you must identify all the subsidiaries. Document the ICS case history.
5. The name of the common parent and all the subsidiaries must be listed on the L1058. ICS limits the number of name lines that can be generated on the L1058; if the number of subsidiaries exceeds the number of name lines provided, the Service can list the names of the subsidiaries on an attachment to the L1058.
6. The L1058 must be mailed to the common parent's last known address. The common parent is the only entity authorized to act for the subsidiary with respect to its several liability for the consolidated tax year. The common parent is the only entity with the right to participate in a CDP hearing on behalf of a subsidiary member of the group.

5.11.1.3.4 (08-01-2014)

Delegation Orders

1. See Servicewide Delegation Order 5-3 (Rev. 1), Levy on Property in the Hands of a Third Party (not to include Levy Form 668-B) at *IRM 1.2.44.4, Delegation Order 5-3 (Rev. 1)*.

5.11.1.3.5 (08-01-2014)

Managerial Approval

1. Certain notices of levy must be approved by managers. See Servicewide Delegation Order 5-3 (Rev. 1).
2. When submitting a notice of levy for approval, include the following information:
 - A summary of any information the taxpayer has provided that may affect the decision to levy, e.g., claims that the assessment is wrong
 - If the taxpayer has submitted such information, explain your analysis of that information and why the notice of levy should still be served
 - Verification that the amount is still owed, e.g., IDRS confirms the amount is still unpaid
 - An explanation that the notice of levy is appropriate in consideration of the amount owed and any circumstances that are known about the taxpayer and the liability
 - Other collection alternatives considered and rejected
3. Consider the information in *IRM 5.11.1.3.1, Pre-Levy Considerations* when determining if the levy is appropriate.

Example:

A 35-year-old self-employed salesperson has accumulated unpaid income taxes over multiple tax periods and will not make adequate estimated tax payments to prevent future delinquencies. The taxpayer is unresponsive since your initial contact and the only asset located is an Individual Retirement Account (IRA), which will satisfy the tax liability if levied. You determine the taxpayer does not depend on the money in the retirement account for necessary living expenses. Document the case history accordingly and submit for IRA levy for managerial approval.

Example:

A self-employed service contractor submits a financial statement that reflects his only asset is a whole life insurance policy with a \$900 cash surrender value. The financial statement also reflects the business can make current FTD but has no ability to make payments on the tax liability. The RO determines to allow the taxpayer to retain the asset without requiring him to borrow or sell the policy because the taxpayer has few assets, and the policy has a face value below \$1000. Document the case history accordingly.

- This information must be in writing, but the format can be at local management discretion.
- The approval must also be in writing, but the method can be at local management discretion. Either the manager must write the approval in the ICS history, or a copy of the manager's written approval must be kept in the case file. Electronic signature by the approving official is an acceptable method of written approval.

Example:

The revenue officer and manager are at the same location, so the notice of levy is turned in to the group manager who signs the levy. A copy of the notice of levy, with the manager's signature on it, is put in the case file.

Example:

The revenue officer and manager are at the same location, so the revenue officer signs the notice of levy and turns it in to the manager who initials it to show it has been approved. A copy of the notice of levy, with the manager's initials on it, is put in the case file.

Example:

The revenue officer and manager are at different locations. The revenue officer writes an explanation of why the notice of levy should be approved on a copy of the first page of the levy form, includes an "Approved" line on it, and faxes this to the manager. The manager signs on the "Approved" line, and faxes this back to the revenue officer who puts this in the case file to document the approval, and then the revenue officer signs the notice of levy.

Example:

The revenue officer and manager are at different locations. The revenue officer faxes a copy of the first page of the notice of levy to the manager who signs it and faxes it back to the revenue officer. The revenue officer places this in the case file to document the approval, and then the revenue officer signs the notice of levy.

Example:

The revenue officer sends the manager an encrypted E-mail message asking for approval of the notice of levy. The manager accesses the ICS case and records a decision in the ICS history. The manager's ICS case access generates a notification alerting the revenue officer of the manager's action. If approved, the revenue officer will print and sign the notice of levy.

- A notice of levy that requires the approval of the SB/SE Collection Area Director must include a memo explaining the information in (2). If all levels approve the notice of levy, but the Director rejects it, the rejection must be in writing and explain the reason(s). Maintain copies of all approvals and rejections in the case file including a printed copy of the electronically executed form.
- If a courtesy levy is involved, indicate the required manager has approved of the notice of levy.

5.11.1.3.6 (08-01-2014)

Approval of Alter Ego and Nominee Notices of Levy

- Notices of levy that name alter egos or nominees often involve complex issues and are likely to result in litigation.
- See IRM 5.12.7.6.1, *Nominee Lien Notices*, and IRM 5.12.7.6.2, *Alter-Ego Lien Notices*, as well as, IRM 5.17.2.5.7.1, *Alter Ego Liens*, and IRM 5.17.2.5.7.2, *Nominee Liens*, for guidance about whether the facts support such a determination.
- Request for Alter Ego and Nominee Notices of Levy require group manager approval. Forward group manager approved request to AI - Advisory for review. AI - Advisory will review and forward the group manager approved request to Area Counsel or Associate Area Counsel (SBSE) for concurrence.

Note:

If the group manager determines the case requires expedited treatment and either an expedited AI - Advisory review is not available or counsel was previously involved in the case then forward group manager approved request to Area Counsel or Associate Counsel (SBSE) for concurrence and provide AI - Advisory with a copy of the manager approved request and the counsel approval or disapproval.

- With Counsel concurrence, the notice of levy can be issued by GS-09 and above Revenue Officers, GS-12 AI - Insolvency employees and AI - Advisors. See Servicewide Delegation Order 5-3 (Rev. 1) at IRM 1.2.44.4, *Delegation Order 5-3 (Rev. 1)* for the complete list of employees with the delegated authority to issue such levies.
- Do not issue notices of levy listing alter egos or nominees without first getting legal review, advice, **written direction, and approval** from Associate Area Counsel (SBSE) as to the,
 - Issuance of the levy
 - Language to be included on pre-levy notices and the notice of levy

Note:

The Notice of Federal Tax Lien (NFTL) filed in a nominee situation must contain a statement on the face of the NFTL that identifies the specific property that the lien attaches to. An NFTL in an alter ego situation will not be limited to certain identified property. See IRM 5.12.7.6 *Special Condition NFTLs (Nominee, Alter Ego, Transferee)*.

5.11.1.4 (08-01-2014)

Restrictions on Levy

- This subsection contains restrictions on levy. See IRM 5.1.9.3.5, *Levy Action during the Period of the CDP or E H*, regarding restrictions on levy during CDP hearings.

5.11.1.4.1 (08-01-2014)

Property Exempt from Levy

- IRC 6334(a) describes property that is exempt from levy. The exempt levy sources include:
 - Unemployment benefits
 - Certain annuity and pension payments, including payments under the Railroad Retirement Act, Railroad Unemployment Insurance Act, Special Pensions for Medal of Honor Winners, and Retired Serviceman's Family Protection Plan and Survivor Benefit Plan
 - Workers Compensation
 - Judgments for support of minor children, if the judgment is before the date of the levy
 - Certain military service-connected disability payments
 - Certain public assistance payments
 - Assistance under the Job Training Partnership Act

Note:

IRS 6331(h) allows for levy on 15% of certain previously exempt government payments only under the Federal Payment Levy Program. See IRM 5.11.7.2, *Federal Payment Levy Program*, and IRM 5.11.7.2.2 for additional information about levies issued under IRC 6331(h).

2. In addition to these exempt sources of income, a portion of a taxpayer's wages, salary, and other income is exempt from levy under IRC 6334. See IRM 5.11.5.4, *Exempt Amount*, for additional information about this exemption.
3. See IRC 6334(a) for information about other property types exempt from levy.
4. Other than property listed in IRC 6334(a), no property is exempt from levy. No state or local law can exempt property from levy to collect federal tax. See, however, *IRM 5.11.1.4.3*, regarding property in the hands of the courts.

Example:

Even if property is exempt under a state homestead exemption law, it is not exempt from federal levy.

5.11.1.4.2 (08-01-2014)**Property Exempt from Levies Used to Collect Child Support Bal Dues**

1. When child support Bal Dues are being collected, three of the items in *IRM 5.11.1.4.1* are not exempt from levy IRC 6305(a)(2). They are:
 - Unemployment benefits
 - Certain annuity and pension payments
 - Amount of income needed to pay a judgment for the support of minor children, however, income withheld for a judgment for child support is not levied, if the judgment is dated before the levy.
2. Use Letter 1696(CG), Property Exempt From Levy Levied to Collect Child Support, to explain the exemptions that do not apply for child support levies.
3. *IRM 5.11.1.3.3.12, Issuing Notice of Intent to Levy for Child Support Obligation Bal Dues*

5.11.1.4.3 (08-01-2014)**Property in the Custody/Control of the Courts**

1. IRC 6332(a) provides that property subject to attachment or execution under any judicial process is not subject to levy. Also, the IRS generally does not levy on assets in the custody or control of a court because that would interfere with the court proceeding. However, if the court is expected to order the distribution of property under its control, a levy may be served on the court clerk to ensure the levy attaches to the property when the distribution order is entered.
2. If a taxpayer is in bankruptcy or the subject of other federal or state insolvency proceedings do not levy assets in the custody/control of the court to collect the tax owed without the advice of AI-Insolvency or AI-Advisory.

Note:

The IRS may issue and execute a notice of intent to levy on a bankruptcy trustee (or debtor-in-possession) to collect amounts owed by such debtor to a creditor that also owes tax. Such notice would not violate the bankruptcy automatic stay because the IRS is not attempting to collect against the debtor but against the non-debtor creditor.

Example:

Fred Green is a delinquent taxpayer who files bankruptcy. Fred's assets are in the hands of the court to determine which of Fred's creditors will be paid and how much. While this is underway, generally, a levy will not be served on the court in an attempt to take any of these assets to collect Fred's tax. However, Joe Blue is one of Fred's creditors, and Joe also owes delinquent tax. A levy can be served on the trustee to attach Joe's fixed and determinable right to assets that may be distributed to him.

Caution:

Do not levy without getting advice from AI - Insolvency when there is a current bankruptcy condition or the taxpayer states taxes were discharged in a prior bankruptcy. Bankruptcy laws allow debtors to sue the Service for damages and attorney fees when the automatic stay or discharge injunction is violated. Information on the Insolvency employee to contact can be found at SERP, Who/Where, Insolvency (Bankruptcy) National Field/Centralized Site Directory,

http://serp.enterprise.irs.gov/databases/who-where.dr/inslvncy-bnkrptcy/national_insolvency_field.htm

Caution:

Contact AI - Advisory regarding levy on property that is or may be in the control of a probate court.

3. Property may have been seized before the taxpayer began court proceedings. In non-bankruptcy cases, this may affect whether the property can be sold. Contact AI - Advisory for advice. In bankruptcy cases, property that has not been sold may have to be turned over to the bankruptcy estate. Contact AI - Insolvency in your territory for advice.
4. Even if property is being used as evidence in a criminal court, it can be levied.
 - A. Serve the levy on the official responsible for holding and releasing the property, e.g., police property clerk.
 - B. Advise this person not to surrender the property until the court releases it.

5.11.1.4.3.1 (08-01-2014)**Cash Deposited as Security for Bail**

1. Issue a notice of levy on cash deposited as security for bail only if collection is at risk. The territory manager or an AI - Advisory territory manager must approve the levy.
2. If a levy is served, tell the Court Clerk to respond when the taxpayer no longer requires a bond.
3. If collection is not at risk, do not levy. Instead, ask the Court Clerk to notify IRS when the bond is no longer required. Then decide whether to levy the bond before it is returned to the taxpayer.

5.11.1.4.3.2 (08-01-2014)**Forfeited Property**

1. Sometimes, property used in a crime or acquired through crime is forfeited.

Example:

Criminal Investigation may seize money used in violating the law. This may be subject to judicial forfeiture.

- If property can be forfeited in a federal proceeding, it will not be levied. However, Criminal Investigation may alert Collection to levy property if the property will not be forfeited. In a state or local forfeiture, contact Associate Area Counsel to determine whether the federal tax lien encumbers the property under IRC 6323(i)(3), which would allow the IRS to levy the property.

5.11.1.4.4 (08-01-2014)

Property Outside the United States

- Notices of levy should only be served within the United States, including the District of Columbia and U.S. territories (also known as possessions), collectively referred to as the "U.S."
- If the taxpayer is outside the U.S., but there are assets within the U.S., the assets can be levied.
- A notice of levy shall never be served outside the U.S. or outside the U.S. possessions or territories. Also, never serve a levy at the embassy, consulate, or mission of another country, even if it is physically located within the U.S. See IRM 5.11.6.9, *United Nations (UN) Employees' Income*, for levies served at the United Nations.
- A notice of levy can be served at the U.S. branch of a foreign bank and can reach funds held there. In limited circumstances, the levy may also reach funds in branches outside the U.S., but only when the notice of levy specifies that such funds are intended to be reached. See 26 CFR 301.6332-1(a)(2). Contact AI - Advisory and Associate Area Counsel for advice. See IRM 5.21.3.2, *Levy on a Domestic Branch of a Financial Institution*
- Chapter 15 of the United States Bankruptcy Code provides a procedural framework for the administration of cross-border insolvency. In particular, Chapter 15 provides foreign debtors and their representatives, who have filed bankruptcy in another country, with access to U.S. courts in the administration of their U.S. assets. See IRM 5.9.7.2, *Chapter 15 - Ancillary and Other Cross-Border Cases*.
- The U.S. treaties with Canada, Denmark, France, Netherlands, and Sweden permit the United States and the other country to collect taxes on behalf of each other. See IRM 5.1.8.7.7, *Incoming Mutual Collection Assistance Requests* and IRM 5.1.12.25, *Outgoing Mutual Collection Assistance Requests*. In addition, on January 24, 2013, the United States and Japan signed a new Protocol to the income tax treaty between the United States and Japan which contains a provision to permit the United States and Japan to collect taxes on behalf of each other. However, collection assistance will not occur until this new Protocol is ratified by both the United States and Japan. Please check the Department of State's Treaty Affairs webpage which contains a searchable electronic publication *Treaties in Force*. This publication will provide the most up to date ratification information regarding this new Protocol."

5.11.1.4.5 (08-01-2014)

Appearance Date of Summons

- Do not levy on the day the taxpayer must appear for a summons that was issued to secure information to collect delinquent tax. For example, when a taxpayer is summoned to provide information to complete a Collection Information Statement. See IRC 6331(g).
- Even if a summons is issued for another reason, e.g., an examination summons issued to assist a RO to prepare an unfiled return do not levy on the appearance date. For example, there may be Bal Dues and Del Rets on the same taxpayer. The summons could be issued for the unfiled return.
- You are not expected to contact other divisions to ask if they have summoned the taxpayer.
- If collection is in jeopardy, a levy can be issued on the summons appearance date. Collection is only in jeopardy if one of the conditions allowing a jeopardy assessment exists. See Policy Statement P-4-88 at IRM 1.2.13.1.27.
 - The territory manager or an AI - Advisory territory manager must approve the jeopardy levy. Also secure the concurrence of the responsible Area Counsel or Associate Area Counsel.
 - If the notices described in IRM 5.11.1.3.2 have been sent, and the time periods for them have passed, the appeal process in IRM 5.11.3.6, *Appealing the Jeopardy Levy*, does **not** apply. The taxpayer can discuss the levy with the group manager, the Taxpayer Advocate Service, or Appeals.
 - If the notice requirements have not been satisfied, see IRM 5.11.3, *Jeopardy Levy Without a Jeopardy Assessment*, for required procedures and approval level.

5.11.1.4.6 (08-01-2014)

Repeated Levies on the Same Source

- Exercise caution when levying repeatedly on the same source
- Per Policy Statement P-5-28, at IRM 1.2.14.1.5, while the Code allows for the service of as many successive levies on the same source as necessary to satisfy the tax liability, judgment should be exercised to avoid undue hardship on the taxpayer and/or the taxpayer's family.

5.11.1.4.7 (08-01-2014)

Government Training Allowances

- Some individuals receive payment for government training programs to develop skills so they can get jobs. Except for payments under the Job Training Partnership Act, these payments are not exempt from levy; however, levying them would defeat the purpose of the programs so these payments will not be levied.
- See Policy Statement P-5-33 at IRM 1.2.14.1.7.

5.11.1.4.8 (08-01-2014)

Pending & Active Installment Agreements

- If the taxpayer makes an offer to pay a liability through installments, no levies can be served while the proposal is pending.

Note:

An unreversed Transaction Code (TC) 971, Action Code (AC) 043 means there is a pending installment agreement. This can be reversed by a TC 972, AC 043. If the pending agreement becomes an active agreement, there will also be a TC 971, AC 063, in which case both the pending and active installment agreement coding are reversed by a TC 971, AC 163.

Exception:

A levy can be served if the taxpayer waives the restriction in writing.

Exception:

A levy can be served if collection is in jeopardy. Collection is only in jeopardy if one of the conditions allowing a jeopardy assessment exists. See Policy Statement P-4-88 at IRM 1.2.13.1.27.

- The territory manager or an AI - Advisory territory manager must approve the jeopardy levy.
- Secure Area Counsel or Associate Area Counsel (SBSE) concurrence before issuing the levy
- If this happens while a rejected installment agreement is being appealed, notify Appeals of the jeopardy determination.

- If the required notices have been sent, and the time periods for them have passed, the appeal process in IRM 5.11.3.6, *Appealing the Jeopardy Levy*, does not apply. The taxpayer can still discuss the levy with the group manager, the Taxpayer Advocate Service, or the Appeals Officer in a Collection Appeals Program hearing.
- If the notice requirements in IRM 5.11.1.3.2 have not been satisfied, see IRM 5.11.3, *Jeopardy Levy Without a Jeopardy Assessment*, for required procedures and approval level.

Caution:

To avoid potential prohibited ex parte communication, contact should be between the Collection group manager and the Appeals manager and remain strictly factual. For example, "We are proceeding with levy action based upon a jeopardy determination by Collection and Counsel. All jeopardy levy protocols were followed." Avoid any discussion about extraneous details such as the accuracy of the facts or positions presented by the taxpayer, or Collection's views on the demeanor or credibility of the taxpayer or representative. See IRM 5.1.9.5 for more information on communications with Appeals.

2. In addition to the period that an offer of an installment agreement is pending, no levy can be served,

- For 30 days after an offer of an installment agreement is rejected
- While a rejection of a proposed agreement is being appealed
- While an agreement is in effect
- For 30 days after notifying a taxpayer that an agreement has been defaulted and will be terminated, i.e., CP523 or Letter 2975, Notice of Defaulted Installment Agreement Under IRC 6159(b)
- For an additional 30 days after an agreement is terminated
- While termination (or proposed termination) of an agreement is being appealed.

Caution:

Before levying, wait an additional 15 days after each of these 30 day periods to allow for receipt of a timely mailed appeal.

Note:

Status 60 or an unreversed TC 971, AC 063 means there is an active installment agreement. This is reversed by TC 971, AC 163.

Exception:

The same as in (1), above.

3. If a levy is served and then the taxpayer requests an installment agreement, the levy does not have to be released while installment agreement is pending. Once the parties enter into an installment agreement, however, the levy must be released, unless the installment agreement provides otherwise. See IRC 6343(a)(1)(C)..

4. If an offer of an installment agreement is made merely to delay collection, levies can be served to collect the tax (Treas. Reg. 301.6331-4(a)(4)).

A. If the notices described in IRM 5.11.1.3.2 have been issued, and the time periods after them have passed, jeopardy is not required, and the appeal process in IRM 5.11.3.6, *Appealing the Jeopardy Levy*, does not apply. The taxpayer can discuss the levy with the group manager, the Taxpayer Advocate Service, or Appeals in a Collection Appeals Program hearing.

B. If the notice requirements in IRM 5.11.1.3.2, have not been satisfied, the jeopardy levy procedures in IRM 5.11.3, *Jeopardy Levy Without a Jeopardy Assessment*, must be followed.

Caution:

The determination that the offer of an installment agreement is merely to delay collection must be apparent to any impartial observer, i.e., there is clearly no reality to the offer. The Revenue Officer must secure group manager concurrence regarding the solely to delay collection determination. See IRM 5.14.3.2(5).

Example:

The taxpayer offers to make a periodic, token payment such as \$1 a month.

Example:

A taxpayer offers to make installment payments. The agreement is rejected. The taxpayer then offers to increase the proposed agreement by a token amount, such as \$1.

5.11.1.4.9 (08-01-2014)

Refund Litigation

1. Responsibility for refund litigation depends on who is suing and the type of tax involved.

A. AI - Advisory is responsible for refund litigation if a suit is filed by a third party regarding a Trust Fund Recovery Penalty assessment.

B. The campus refund litigation unit is responsible for all other refund litigation.

2. For tax periods that began before January 1, 1999, if the taxpayer files a suit for a refund of divisible taxes, AI - Advisory or the campus refund litigation unit determines whether collection is suspended during the suit. For further information about refund suits, see IRM 25.3, *Litigation and Judgments*.

A. Divisible taxes include employment taxes, trust fund recovery penalties, excise taxes (except chapters 41-44 taxes), and abusive tax shelter penalties.

B. Unlike other taxes where full payment is required in order to sue for a refund, the taxpayer need pay only a portion of the amount owed before filing suit for refund, so this refund litigation happens while there still is an amount owed.

C. Collection does not have to be in jeopardy, as long as the pre-levy notice requirements of IRM 5.11.1.3.2 (but not including a CDP levy notice because such a notice was not required before January 1, 1999) have been satisfied. Get Associate Area Counsel's approval because of their ongoing involvement in the case and keep AI - Advisory apprised of case developments. The territory manager or an AI - Advisory territory manager must also approve the levy.

3. Generally, for tax periods beginning after December 31, 1998, no levy can be served to collect certain divisible taxes that are included in a suit for refund.

A. This change only applies to employment taxes and trust fund recovery penalties for employment taxes.

B. For trust fund recovery penalties for other taxes, continue to follow (2), above.

4. If collection is in jeopardy, levies can be issued to collect the tax.

A. If the notice requirements of *IRM 5.11.1.3.2* have not been satisfied, see *IRM 5.11.3, Jeopardy Levy Without a Jeopardy Assessment*, for required procedures and approval level of the jeopardy levy

B. If the notice requirements of *IRM 5.11.1.3.2* have been satisfied, the jeopardy levy must be approved by the territory manager or an AI - Advisory territory manager. It must also be approved by Associate Area Counsel. Keep AI - Advisory apprised of case developments. The appeal process in *IRM 5.11.3.6, Appealing the Jeopardy Levy*, does not apply. The taxpayer can still discuss the levy with the group manager, the Taxpayer Advocate Service, or Appeals in a Collection Appeals Program hearing.

Exception:

If the taxpayer waives the restriction on levy in writing, levies can be issued to collect the tax.

Note:

If collection is in jeopardy or the taxpayer waives the restriction on levy in writing, notify AI - Advisory Review that collection is not being withheld.

5. A levy that was issued before the suit was filed does not have to be released. Contact Associate Area Counsel (SBSE) for advice about whether to release the notice of levy. If necessary, tell the person who received the levy to delay sending any proceeds until Counsel's advice is received. Keep AI - Advisory apprised of case developments.

**5.11.1.4.10 (08-01-2014)
Due Process for Lien Filing**

1. Generally, within five business days after a Notice of Federal Tax Lien (NFTL) is filed, Letter 3172(DO), Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320, is sent to taxpayers to tell them about the NFTL and allow them a chance for a CDP hearing about the lien. See *IRM 5.12.6, Federal Tax Liens, Appeals Processes Involving Liens*.
2. If the notice requirements in *IRM 5.11.1.3.2* have been satisfied, Letter 3172(DO) does not create a new waiting period before a notice of levy can be issued. However, once the taxpayer appeals the lien filing, generally as a matter of policy, no notices of levy will be issued during the administrative or judicial appeal. See *IRM 5.1.9.3.5, Levy Action during the Period of the CDP or EH*, for a description of when property can be levied during the appeal of an NFTL filing.

Example:

On April 5, 2009, a Notice of Federal Tax Lien is filed, and Letter 3172(DO) is sent to the taxpayer on April 7. The taxpayer appeals the NFTL on April 29. Until April 29, as long as the notice requirements in *IRM 5.11.1.3.2* have been satisfied, a notice of levy can be issued to collect the amount that is owed, including the periods that are included in Letter 3172(DO).

**5.11.1.4.11 (08-01-2014)
Offers in Compromise**

1. Notices of levy cannot be served while an offer in compromise is pending, within 30 days after an offer is rejected, or while a rejected offer is being appealed. Ensure that the offer in compromise has been closed before issuing the levy.

Caution:

After the 30 days run out following rejection of the offer, before levying allow an additional 15 days for receipt of a timely mailed appeal.

Exception:

Notices of levy can be served if collection is in jeopardy. If this happens while a rejected offer is being appealed, notify Appeals of the jeopardy determination.

Caution:

To avoid potential prohibited ex parte communication, contact should be between the Collection group manager and the Appeals manager and remain strictly factual.

- The territory manager or an AI - Advisory territory manager must approve the jeopardy levy.
- Secure Area Counsel or Associate Area Counsel (SBSE) concurrence before issuing the levy
- If the notices described in *IRM 5.11.1.3.2* have been sent, and the time periods have passed, the appeal process in *IRM 5.11.3.6, Appealing the Jeopardy Levy*, does not apply. The taxpayer can discuss the levy with the group manager, the Taxpayer Advocate Service, or Appeals in a Collection Appeals Program hearing.
- If the notice requirements in *IRM 5.11.1.3.2* have not been satisfied, see *IRM 5.11.3, Jeopardy Levy Without a Jeopardy Assessment*, for required procedures and authority level.

Exception:

Notices of levy can be served if the taxpayer waives the restriction in writing.

2. See *IRM 5.8.3.13.1, Offers Submitted Solely to Delay Collection per Forms 657*.

3. If an offer in compromise is made solely to delay collection, levies can be served to collect the tax. The provisions in *IRM 5.11.1.3.9* also apply to such levies.

**5.11.1.4.12 (08-01-2014)
Special Treasury Fund**

1. Members of the military and Public Health Service employees may deposit money in a Special Treasury Fund, while they are outside the U.S. and its possessions.
2. Get advice from Associate Area Counsel (SBSE) before attempting to levy money in the Special Treasury Fund. Keep AI - Advisory informed in light of the potential for litigation and wrongful levy actions.

Note:

Refer Counsel to Subsection 1035 of Title 10 of the U.S. Code.

**5.11.1.4.13 (08-01-2014)
Indian Tribal Governments**

1. When a determination is made to levy the assets of a tribal government the employee should coordinate as required with the Indian Tribal Government (ITG) specialist. See *IRM 5.1.12.24.2, Indian Tribal Government Procedures*.
2. The Service must comply with Presidential Executive Orders regarding Tribal Sovereignty and the ITG specialist can assist the employee with case-related technical issues specific to Indian tribes.

5.11.1.4.14 (01-01-2016)

Affordable Care Act's (ACA) Individual Shared Responsibility Payment (SRP)

1. Starting in 2014, the individual shared responsibility provision of IRC 5000A(b) calls for each individual to have minimum essential health coverage (known as minimum essential coverage (MEC)) for each month, qualify for a coverage exemption, or make a SRP when filing their Federal income tax return.
2. Per IRC 5000A(g)(2)(B)(ii) and Treas. Reg. 1.5000A-5, if a taxpayer fails to pay the shared responsibility payment imposed by this section and Treas. Reg. 1.5000A-1 through 1.5000A-4, the Secretary will not levy on any property of the taxpayer for the failure.
3. The individual SRP assessments (shown as MFT 35 or mirrored MFT 65) are processed on the Individual Master file (IMF).

5.11.1.5 (08-01-2014)

Post-Levy Actions - Disqualified Employment Tax Levy

1. This section contains guidance on post-levy actions for a disqualified employment tax levy.

5.11.1.5.1 (08-01-2014)

Legal Authority

1. The Small Business and Work Opportunity Tax Act of 2007 modified the collection due process (CDP) procedures for certain employment tax liabilities. This Act amended IRC 6330(f) and IRC 6330(h) to permit issuance of a Disqualified Employment Tax Levy (DETL) for collection of certain employment taxes without first giving the taxpayer pre-levy CDP notice. This amendment is effective for such levies served on or after September 22, 2007 and relates to Forms 941, 943, 944, 945, 940, and CT-1.

6330(h) DISQUALIFIED EMPLOYMENT TAX LEVY. —For purposes of subsection (f), a disqualified employment tax levy is any levy in connection with the collection of employment taxes for any taxable period if the person subject to the levy (or any predecessor thereof) requested a hearing under this section with respect to unpaid employment taxes arising in the most recent 2-year period before the beginning of the taxable period with respect to which the levy is served. For purposes of the preceding sentence, the term employment taxes means any taxes under chapter 21, 22, 23, or 24.

5.11.1.5.2 (08-01-2014)

Disqualified Employment Tax Levy (DETL)

1. IRC 6330(h) describes a DETL, as any levy for the collection of employment taxes for a taxable period that is within the two-year period after an employment tax period for which the taxpayer or predecessor timely requested a hearing under IRC 6330. Generally, employment taxes include FICA, FUTA, and withheld income taxes.

When a DETL is served, the taxpayer will be given post-levy CDP rights. The taxpayer may seek Tax Court judicial review of the determination resulting from the post-levy hearing.

2. A DETL is comprised of these three components:

- A. Levy served to collect employment taxes,
- B. Taxpayer or its predecessor previously requested a CDP levy hearing relating to employment taxes,

Note:

See IRM 5.1.9.3.15 (3), *Disqualified Employment Tax Levy*, for help in determining if the taxpayer requested a prior CDP levy hearing involving unpaid employment taxes.

- C. The prior CDP hearing included unpaid employment taxes that arose within the two-year period prior to the beginning of the period for which the levy is served.

Note:

See IRM 5.1.9.3.15 (4), *Disqualified Employment Tax Levy*, for help in determining if the hearing request involved employment taxes arising and ending within the two-year period before the beginning of the taxable period for which the DETL is served.

5.11.1.5.3 (08-01-2014)

Predecessor Determination

1. Determine whether a business is a predecessor business for the purpose of IRC 6330(h) by applying the following factors:
 - A. The taxpayer has substantially the same owner(s) or shareholder(s) and the same officer(s) as the prior business.
 - B. The same individual(s) are actively involved in running the taxpayer that were actively involved in running the prior business, regardless of whether they are officially listed as the owners/shareholders/ officers.
 - C. There is no evidence that the taxpayer's owner(s) or shareholder(s), if different than before, acquired the business in an arms-length transaction for fair market value.
 - D. The taxpayer provides substantially the same product(s), service(s), or function(s) as the prior business.
 - E. The taxpayer has substantially the same customers as the prior business.
 - F. The taxpayer has substantially the same assets as the prior business.
 - G. The taxpayer has the same location/telephone number/fax number, etc. as the prior business.

Caution:

No one factor is determinative. A tax-avoidance motivation for the change is not a requirement.

2. A business will not be considered a predecessor if there has been a genuine change in control and ownership of the business. A genuine change in control and ownership of the business is present if :
 - It was acquired in an arm's length transaction for fair market value, and
 - The previous owner(s) has (have) ceased all involvement in running the business
3. If the previous owner serves for a limited period as a consultant to the new business solely in an advisory capacity, then the prior owner should not be deemed to have any involvement in running the new business.

Example:

Pike Company, in the business of selling equipment, was owned by John Doe. After Pike Company failed to pay employment taxes for several quarters in 2007, the Service sent Pike Company a CDP notice. Pike Company requested a CDP hearing. After the CDP hearing, John Doe formed Robin Inc., which also sold equipment. Robin Inc. used the same supervisors, sold the same equipment, was in the same location and had the same phone number, as Pike Company. Pike Company is a predecessor of Robin Inc.

Example:

Salmon Company, in the business of storage, was owned by John Q. Public. After Salmon Company failed to pay employment taxes for several quarters in 2008, the Service sent a CDP notice to Salmon Company. Salmon Company requested a CDP hearing. After the CDP hearing, John Q. Public sold the assets of Salmon Company to Mary Doe for fair market value in an arm's length transaction. Mary Doe used these assets to form Trout Inc., which also engaged in the storage business and used the same employees and maintained the same customers, location, and phone number as Salmon Company. Mary Doe was not involved in the operation of Trout Inc. Salmon Company is not a predecessor of Trout Inc.

Example:

Tuna Company, in the business of providing childcare, was owned by Roberta Granite. After Tuna Company failed to pay employment taxes for several quarters in 2007, the Service sent a CDP notice to Tuna Company. Tuna Company requested a CDP hearing. After the CDP hearing, Roberta Granite's daughter, Tammy Granite, formed Guppy Inc., which also provided childcare. Roberta Granite was actively involved in running Guppy Inc. Guppy Inc. used the same supervisors, cared for the same children, was in the same location and had the same phone number, as Tuna Company. Tuna Company is a predecessor of Guppy Inc.

4. Contact AI – Advisory for advice on questions regarding whether the taxpayer has meet the factors to be considered a “predecessor”. AI – Advisory will consult with Associate Area Counsel, as needed.
5. When it is determined that a predecessor previously requested a CDP levy hearing relating to employment taxes, the revenue officer will document the ICS history with the factors that supported the determination. The group manager or an AI – Advisory group manager must approve the determination of “predecessor” in the ICS History. The group manager signature on the levy is not required. See *IRM 5.11.1.3.5 Managerial Approval*.

5.11.1.5.4 (08-01-2014)

Issuing Notice of Levy/Notice of a Right to a Hearing in CFF

1. When warranted, the Service may exercise its discretion to issue a pre-levy CDP notice for DETL periods; i.e., even where a taxpayer's employment tax liabilities meet DETL criteria.

Example:

If there has been no contact with the taxpayer within the last 180 days the issuance of a pre-levy notice might be advisable to resolve this issue.

2. If the tax period meets the criteria for issuing a DETL and levy action is determined to be appropriate:

- Make sure the IRC 6331(d), Notice of Intent to Levy, was properly issued.

Note:

This is the CP 504 notice or the "Status 58" notice. If the CP 504 notice was not issued, issue the pre-levy CDP notice, L1058. This meets the IRC 6331(d) and IRC 6330 requirement. If the CP 504 notice was not issued the DETL can only be issued 30 days after issuance of the L1058 per IRC 6331(d)

Example:

Tax period 01-200709 meets criteria for issuing a DETL but CP 504 was not issued prior to assignment to revenue officer Pike. Revenue officer Pike issues L1058 providing pre-levy CDP hiring rights to meet the requirement for IRC 6331(d) and issues a DETL on the 31st day.

- Document the ICS case history regarding the DETL determination, and

Example:

DETL to be issued for tax periods 01-200606 and 01-200609. TP qualifies for a DETL based on CDP levy hearing requested on 07/27/2007 for tax periods 01-200512 and 01 200603

- Prepare and issue the DETL

Note:

ICS will block revenue officer issuance of the DETL unless the revenue officer answering yes when ICS prompts with the following: "Final Notice Delivery Date is not 30 days prior to levy. Is this a DETL levy? (Yes or No)?" This is a requirement because there is no TC 971 AC 069 on the module.

3. If a DETL is served, send the post-levy CDP notice with the taxpayer's copy of the levy. Letter 1058-D, Notice of Levy and Notice of Your Right to a Hearing, is used to provide post-levy CDP rights.

Caution:

If the taxpayer received a pre-levy CDP notice (L1058) for the employment tax period(s) being levied, do **not** issue a post-levy CDP notice (L1058-D).

4. Both the post-levy and/or pre-levy CDP notice must be:

- A. Given in person,
- B. Left at the taxpayer's home or business, or
- C. Sent to the taxpayer's last known address by certified or registered mail.

Note:

Use registered mail only if the taxpayer is outside the United States. There is no international certified mail.

Note:

Refer to *IRM 5.11.1.3.2.1*

Exception:

Where L1058-D has been correctly sent to the taxpayer's last known address and another address is subsequently found, do not send an additional L1058-D, relating to the same employment tax liability, to the new address.

Exception:

If L1058-D is mistakenly sent to an address other than the last known address, immediately send a new L1058-D to the correct last known address.

5. Include a copy of the levy, Publication 594, Publication 1660 and Form 12153 with the L1058-D.
6. If the L1058-D is issued more than 10-days after issuing the DETL, document the reason in the ICS history.
7. DETL post-levy hearing requests are processed similarly to other hearing requests. Refer to IRM 5.1.9, *Collection Appeal Rights*, for guidance in processing hearing requests.

Note:

A DETL may be served during a timely requested pre or post-levy CDP hearing or judicial review of such hearing to collect employment tax liabilities (DETL tax periods) subject to the hearing.

Example:

Collection is a risk (e.g., taxpayer's business is deteriorating or taxpayer is pyramiding).

Note:

See IRM 5.1.9.3.15 (7), *Disqualified Employment Tax Levy*, for help in determining actions or new information items that may affect the decision to levy.

**5.11.1.6 (08-01-2014)
Post-Levy Actions - Federal Contractor Levy**

1. This section contains guidance on post-levy actions for a federal contractor levy cases in Field Collection..

**5.11.1.6.1 (08-01-2014)
Levy Authority Amended**

1. The Small Business Jobs Act of 2010 (SBJA) section 2104, amended IRC section 6330(f) and (h)(2) to allow the collection due process (CDP) notice and hearing to occur post-levy with respect to "federal contractor levies." This term is defined in section 6330(h)(2) as "...any levy if the person whose property is subject to levy is a Federal contractor."

**5.11.1.6.2 (08-01-2014)
Federal Contractor Levy**

1. IRC section 6330(h)(2) describes a federal contractor (FEDCON) Levy, as any levy if the person whose property is subject to levy is a Federal contractor. When a FEDCON levy is served, the taxpayer will be given post-levy CDP rights. The taxpayer may seek Tax Court judicial review of the determination resulting from the post-levy hearing.
2. Federal contractors are any person or entity who currently has a contract with the federal government to sell or lease property, goods or services. This does not include a taxpayer who was in the past a federal contractor but currently is not involved in any contractual relationship with the federal government. A contract is a mutually binding legal relationship obligating the person or entity to furnish property, goods, or services and the federal executive agency to pay for those property, goods, or services.
3. Our computer systems identify some federal contractor cases on the Individual Master File (IMF) and the Business Master File (BMF). Indicators that a person or entity is a federal contractor may include the following:
 - Federal Contractor Indicator. See IRM 5.7.9.2.1, Federal Contractor Indicator (FCI) (unreversed TC 971 AC 647).
 - Federal Payment Levy Program (FPLP), TC 971 AC 062 Document Location Number (DLN). See IRM 5.7.9.2.2 and IRM Exhibit 5.11.7-5, TC 971 AC 062 (Document Location Number (DLN) Format, Miscellaneous Field, XREF Field).
 - The Federal Payment Levy Program (FPLP) can also issue Federal Contractor (FEDCON) Levies and can be identified by a TC 971 AC 677 posted to the module. See IRM 5.11.7.2.3.4(4).

Note:

Revenue officers can also identify federal contractor cases. See IRM 5.7.9.

Note:

The TC 971 AC 062 DLN positions 11 and 12 are also designated with a '03' in the payment position for Medicare payments, and positions 7, 8 & 9 will show the federal agency code of '0306' for HHS Medicare match, which are not FEDCON eligible.

4. Only the federal contractor may be listed on the FEDCON levy. For federal payments other than Social Security or RRB benefit payments, a FEDCON levy may be issued to any payment source on all BMF tax modules and IMF tax modules if the entity is identified as a Federal contractor with an unreversed TC 971 AC 647 posted on the entity. For BMF tax modules do not include or list the general partners and members of a LLC on the FEDCON levy. For IMF tax modules only include the spouse identified as the federal contractor on filing status 2, married filing joint modules.
5. A FEDCON levy may have previously been issued by FPLP. A TC 971 AC 677 will post on the module with the literals "SAL, OTH" displayed in the Miscellaneous Field. This will generate a post-levy CDP notice CP 90C (or 297C) and post a TC 971 AC 069. The taxpayer is provided their CDP appeal rights after the levy. See IRM 5.11.7.2.3.3, *FPLP Notice Process (TC 971 AC 069 or AC 169)*.
6. The FEDCON (TC 971 AC 677) levy processes occur after the expiration of the 30-day notice required by IRC 6331(d). The issuance of the CP 504 meets the 30-day pre-levy requirement of IRC 6331(d)

**5.11.1.6.3 (08-01-2014)
Issuing Notice of Intent to Levy and Notice of Your Right to a Hearing in Field Collection FEDCON Case**

1. When warranted, the Service may exercise its discretion to issue a pre-levy CDP notice on modules eligible for FEDCON levy based upon the unique case factors. Examples of unique case factors:
 - The issuance of a pre-levy notice might be advisable if there no contact with the taxpayer within the last 180 days. See *IRM 5.11.1.3.3.8, Timeliness of Notice*.
 - When the Letter 1058 is issued on initial contact with a BMF or combination BMF/IMF taxpayer when a deadline is set for the taxpayer to take specific action. See *IRM 5.11.1.3.3(3), Satisfying the Notice Requirement*.
 - When the Letter 1058 will be issued during initial contact on IMF case but a FEDCON levy is not yet appropriate. See *IRM 5.11.1.3.3(4)*.

Note:

The federal contractor exception in IRC 6330(f) applies to a FEDCON levy. Similar to a DETL levy, a FEDCON levy can be served during a timely requested pre or post-levy CDP hearing or judicial review of such hearing to collect tax liabilities (FEDCON tax periods) subject to the hearing. Prior to levying, you are required to determine if Appeals or Counsel has information that prohibits levy (OIC, IA etc.) or may affect the decision to levy. Follow the guidance in IRM 5.1.9.3.15(7) for contacting Appeals or Counsel. FEDCON levies may be issued for any levy source, not just federal payments.

2. If the tax period meets the criteria for issuing a FEDCON levy and levy action is determined to be appropriate:

- Make sure the IRC 6331(d), Notice of Intent to Levy, was properly issued at least 30 days prior to levy action.

Note:

This refers to the CP 504 notice or the "Status 58" notice. If the CP 504 notice was not issued, issue the pre-levy CDP notice, L1058. This meets the IRC 6331(d) and IRC 6330 requirement. FEDCON levy can only be issued 30 days after issuance of the L1058 per IRC 6331(d).

- Document the ICS case history regarding the FEDCON determination.

Note:

When there is no TC 971 AC 069 on the module, ICS will block revenue officer issuance of the FEDCON unless the revenue officer answers yes when ICS prompts with the following: "Final Notice Delivery Date is not 30 days prior to levy. Is this a FEDCON levy? (Yes or No)?"

3. Include Letter 1058-F, Post Levy Federal Contractor Collection Due Process with the taxpayer's copy of a FEDCON levy for post-levy CDP notices.

Caution:

If the taxpayer was issued a pre-levy CDP notice (L1058) for the FEDCON tax period(s) being levied, do not issue a post-levy CDP notice (L1058-F).

4. Both the post-levy or pre-levy CDP notice must be:

- Given in person,
- Left at the taxpayer's home or business, or
- Sent to the taxpayer's last known address by certified or registered mail return receipt requested.

Note:

Use registered mail only if the taxpayer is outside the United States. There is no international certified mail.

Note:

Where L1058-F has been correctly sent to the taxpayer's last known address and another address is subsequently found, do not send an additional L1058-F, relating to the same tax liability, to the new address.

Note:

If L1058-F is mistakenly sent to an address other than the last known address, immediately send a new L1058-F to the correct last known address.

5. Include a copy of the levy, Publication 594, Publication 1660 and Form 12153 with the L1058-F.

6. If the L1058-F is issued more than 10-days after issuing the FEDCON, document the reason in the ICS history.

7. FEDCON post-levy hearing requests are processed similarly to other hearing requests. Refer to IRM 5.1.9, *Collection Appeal Rights*, for guidance in processing hearing requests.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 11. Notice of Levy

Section 2. Serving Levies, Releasing Levies and Returning Property

5.11.2 Serving Levies, Releasing Levies and Returning Property

- 5.11.2.1 [Overview](#)
- 5.11.2.2 [Serving Notices of Levy](#)
- 5.11.2.3 [Releasing Levies](#)
- 5.11.2.4 [Returning Levied Property to the Taxpayer](#)
- 5.11.2.5 [Returning Levied Property to Someone Other Than the Taxpayer](#)
- 5.11.2.6 [Disposing of Surplus Proceeds](#)

Manual Transmittal

December 08, 2015

Purpose

(1) This transmits editorial revisions to IRM 5.11.2, Notice of Levy, *Serving Levies, Releasing Levies, and Returning Property*, to incorporate editorial changes based on ACA provision 1501.

Material Changes

(1) Added reference to the mirrored Shared Responsibility Payment (SRP) Master File Tax (MFT) Code 65 assessment.

- *IRM 5.11.2.2.2(4)*: this section has been updated for the Affordable Care Act (ACA) Provision 1501 to include instruction not to include Shared Responsibility Payment MFT 65 modules on a levy.
- *IRM 5.11.2.6(1)*: this section has been updated for the Affordable Care Act (ACA) Provision 1501 to not apply surplus levy proceeds to Shared Responsibility Payment MFT 65 modules.

(2) Editorial changes were made throughout this IRM to update website addresses, legal references, and IRM references.

Effect on Other Documents

This IRM supersedes IRM 5.11.2, dated November 20, 2015.

Audience

This material is used by SB/SE revenue officers and AI advisors.

Effective Date

(01-01-2016)

Kristen Bailey
Director, Collection Policy

5.11.2.1 (04-15-2014) Overview

1. **Purpose:** This IRM section describes the process and procedures for preparation or release of the notice of levy. Specifically, the IRM section:

- A. Describes the steps in preparing and serving levies.
- B. Provides guidance and legal basis for releasing levies including wrongful and erroneous levies.
- C. Outlines procedures for determining when levied funds may be returned to the taxpayer.
- D. Provides instruction on handling surplus levy proceeds.

2. **Audience:** This IRM is designed for use by revenue officers, Advisory & Insolvency (AI) advisors and their managers.

5.11.2.2 (04-15-2014) Serving Notices of Levy

1. This section provides procedures for serving notices of levy.

5.11.2.2.1 (04-15-2014) General

1. Serve a levy only when there is reason to believe the third party is holding the taxpayer's property.
 - A. If the taxpayer owns property with a person not liable for the tax, consider using another source.
 - B. Any property in which the taxpayer has an interest is subject to levy, even if the property is jointly owned with another person (e.g., community property, jointly owned bank accounts). However, because wrongful levy suits and claims can result from such levies, consider levying on another available source.

5.11.2.2.2 (01-01-2016)

Preparing the Notice of Levy

1. Prepare the levy form that contains the most appropriate instructions for honoring the levy. However, a notice of levy on either form attaches to a taxpayer's property or right to property held by a third party.
 - A. Use Form 668-W(ICS) or 668-W(C)DO to levy an individual's wages, salary (including fees, bonuses, commissions, and similar items) or other income. Other income is generally income owed the taxpayer as the result of personal services in a work relationship. See IRM 5.11.5.4.6 *Severance Pay*, for an example of other income. Form 668-W(ICS) and 668-W(C)(DO) are also used to levy on a taxpayer's benefit or retirement income.
 - B. Use Form 668-A(ICS) or 668-A(C)DO to levy other property that a third party is holding. For example, this form is used to levy bank accounts and business receivables.

If	And	Then
the taxpayer is an individual	the property to be levied is wages, salary, or other income,	use Form 668-W(ICS) or Form 668-W(C)(DO)
If	Or	Then
the taxpayer is not an individual	the property to be levied is not wages, salary, or other income,	use Form 668-A(ICS) or Form 668-A(C)(DO)

2. Include all appropriate TINs on the notice of levy. For example, include both the SSN and EIN of a sole proprietor, if they are known. Include both SSNs on a joint income tax liability. ICS users should enter this information in the "Remarks" field. See (4) below.
3. If additional information will help identify the taxpayer's property, include it on the levy. ICS users should enter this information in the "Remarks" field. This may include:
 - Contract Number
 - Merchant account number
 - Franchise Number or Operator
 - Co-signer's Name
 - Royalty Owner
 - Location of the branch where the taxpayer works
 - Any other descriptive information
4. When manually preparing a Notice of Levy employees must exclude any balances resulting from the individual shared responsibility payment (SRP) (shown as MFT 35 or mirrored MFT 65).

Note:

ICS programming will automatically exclude individual SRP modules from systemically prepared Notices of Levy.

5. If there is a joint assessment, and there is a restriction that prevents levy against one of the taxpayers' property, include both taxpayers' names on the notice of levy or in the "Remarks" field, but only include the SSN of the taxpayer on whose property you are levying.
 - A. State on the notice of levy or in the "Remarks" field, "This levy attaches the property and rights to property of (taxpayer's name). It does not attach the property and rights to property of (other taxpayer's name)."

Example:

Fred and Janice Blue filed a joint return and owe \$3,000. They are divorced now. Janice has filed bankruptcy and the automatic stay prohibits levy on her property. Fred is not a party to the bankruptcy. His property can be levied. When a notice of levy is prepared to collect from Fred, the taxpayer name line will still include both taxpayers' names. However, the notice of levy will also state, "This levy attaches the property and rights to property of Fred Blue. It does not attach the property and rights to property of Janice Blue."

- B. In some states, the taxpayer whose property rights are being levied may have a community property interest in the property of a spouse, and there may be a restriction which prevents levy on that spouse's property. See IRM 5.11.6.12, *Levy on Non-Liable Spouse in a Community Property State*. In the example above, other language may need to be added to the notice of levy explaining that Fred Blue's property rights that are being levied include Fred's community property interest in Janice Blue's property, although her property rights are not being levied. The result is similar to what would be levied if there were an assessment only against Fred, but his community property interest in Janice's property is being levied.

Note:

Per IRM 5.11.6.12(2), before issuing a levy on community property, contact AI-Advisory for advice on the impact of a divorce, separation and any special language or inserts/cover letters needed with the levy, unless local instructions have already been issued for how to handle these levies.

6. When levying on the property of a partnership, the levy form will reflect the name of the partnership.
7. When levying on the property of a partner for the partnership debt, you can add a statement to the "Remarks" field of the levy application such as, "This notice attaches to all property in the name of (name of partner, TIN, [general] partner)."
8. If the taxpayer's identification number is not needed by the levied party to identify the taxpayer's assets, redact it from the appropriate parts of the levy form. Examples of assets for which the taxpayer's identification number *may* not be necessary for the levied party for identification are:
 - Account or Note Receivable
 - Rental income
 - Chose in action, e.g., a right to recover money or right to pursue a lawsuit
9. A Revenue Officer is not required to physically sign a levy or a levy release. However these documents must be executed by a person acting under the authority of the Secretary of Treasury. Any signature method that reliably authenticates these documents may be used. For example, a facsimile (stamp) of a revenue officer's signature stamped by a group secretary may be effective to show a collection document is properly authorized.
10. A written signature, stamped signature, electronic signature, or systemically printed signature is an acceptable representation of the authority to issue or approve a levy or levy release.
11. When the use of an electronic signature method is determined to be appropriate during the Levy review process, the following actions should be taken:
 - A. The specific forms/letters requiring approval and/or signature must be converted/scanned and saved in .PDF format.

B. Internal use documents and forms, including Form 13719, *Pre-Seizure Checklist and Approval Request* and the memorandum required in IRM 5.11.1.3.5, *Managerial Approval* may be signed (certified with visible signature) using the approval signature method, yet any enforcement document being provided to the taxpayer should include a graphic signature in the signature block. Specific instructions on how to include an image of your handwritten signature in the digital signature selections are available via Adobe Acrobat Help, How to Sign, Create a Signature Appearance.

12. Prior to serving the notice of levy, print and retain in the Collection case file the IRS File Copy of the levy. For Form 668-(A)(ICS) or Form 668-A(c)(DO) retain part 5 and for Form 668-(W)(ICS) or Form 668-(W)(C)(DO) retain part 6.

5.11.2.2.3 (04-15-2014)

Serving Notices of Levy in Person

1. When a notice of levy is served in person, have the recipient sign for it. Write, "Receipt Acknowledged," on the form, and have the person sign after this. If the person will not sign it, leave the form anyway. Document the case file to show the levy was served. And document the recipient's refusal to sign an acknowledgement, if applicable. An acknowledgment is desirable, but it is not critical.

Note:

If the representative of a financial institution is reluctant to accept service of the levy in person, alert them to the fact that the financial institution will be liable for any withdrawals from the account after that date and time. Recurring difficulties with a particular financial institution should be addressed by local management.

2. If the levy source is a partnership or a corporation, try to serve the levy on a partner or corporate officer.
3. Try to find out how much to expect from the levy. Ask for payment when the levy is served, unless there is a reason for a delay, such as,
 - IRC 6332(c) requires banks to wait 21 days
 - A levy on wages is not paid until the taxpayer's usual pay day
4. If payment must be sent later, supply a business reply, self-addressed envelope. Supply more envelopes if there will be several payments.
5. If nothing is owed to the taxpayer, have this written on the form. Ask the person to sign it and write their title, e.g., partner, vice-president, etc.

5.11.2.2.4 (04-15-2014)

Serving Notices of Levy by Mail or Fax

1. Treasury Regulation 301.6331-1(c) permits notices of levy to be served by mail.
 - Print, "Notice of Levy," on the envelope used to mail levies. This helps large employers and banks route the levy to the right office.
 - Include a business reply, self-addressed envelope.
2. When a levy must be served quickly, a fax can be used. First, confirm the person has a fax machine and will accept the levy this way. Document that the levy source agreed to accept the levy by fax.

5.11.2.2.5 (04-15-2014)

Addresses for Mailing Notices of Levy

1. Some financial institutions, businesses, and government agencies identify one address to be used when sending levies. The financial institution, business, or agency must notify the area director in writing. Consider keeping a central index in the area for these addresses. Then, they can be distributed to all collection employees in the area.

Note:

Notification of a centralized address for notices of levy by mail does not preclude service in person. *IRM 5.11.2.2.3, Serving Notices of Levy in Person.*

2. Consider whether other areas and campuses need to know the address. Some large companies and government agencies may get levies from all over the country. Levy Source Information on the Servicewide Electronic Research Program (SERP) under Who/Where provides up-to-date levy source name and address information.
 - If a bank gives an address for its levies, ask for its EIN and its American Bankers Association (ABA) transit number.
 - Send the requests, including the EIN and ABA number, to the area office. If the area agrees the information belongs on SERP's Levy Source Information, it will be sent to Headquarters to the Director, Collection Policy, SE:S:C:HQC:P:E, Attn: Levy Analyst, 850 Trafalgar Court, Maitland, FL 32751-4141
3. A computer program uses the EIN and ABA number to overlay these addresses for many levy sources; however, it is not always able to do this. For example, the updating of the address depends on IDRS having the levy source's EIN or ABA number. Some levy sources do not have these numbers, so sources must still be checked against Levy Source Information on SERP.
4. Revenue officers can also access National Levy Source (NLS) database through shortcut folder under "ACS NLSWeb".

5.11.2.2.6 (04-15-2014)

Levy in Other Territories

1. When a taxpayer has property in another territory, either,
 - A. Mail the notice of levy
 - B. Go to the other territory if it is nearby, or
 - C. Initiate a Courtesy Investigation, see IRM 5.1.8, *Courtesy Investigations.*
2. The receiving territory may find other levy sources. If so, other levies may be served after checking with the originating territory.

5.11.2.2.7 (04-15-2014)

Notifying the Taxpayer After Serving the Levy

1. After serving a levy in person or faxing it, mail a copy to the taxpayer. Form 668-A(ICS) and Form 668-A(C)(DO) includes two taxpayer copies. Mail Part 4 to the taxpayer. Leave Part 2 with the person who receives the levy. ACS uses Form 668-A(ICS) and mails to the taxpayer Form 8519 (ACS), *Taxpayer's Copy of Notice of Levy.*
2. **If the levy is mailed, do not send the taxpayer copy immediately.** Wait long enough so the taxpayer does not get the levy before the levy source does. Consider local experience with mailing times and the promptness of a particular entity's compliance.

Note:

This is not necessary for a levy on wages, salary, or other income. The wage statement given the taxpayer by his or her employer notifies the taxpayer of the levy.

3. Also, see IRM 5.11.6.12.2, *Notice to the Non-Liable Spouse*, when a taxpayer's community property interest in a non-liable spouse's property or right to property is levied.
4. Also, see IRM 5.1.23.3.2.3, *Written Communication to a Taxpayer's Representative*, to ensure that the POA is authorized to receive taxpayer data on all modules contained in the copy of the levy you plan to send to the POA.

5.11.2.2.8 (04-15-2014)

Examination of Books and Records

1. Records about taxpayer property must be provided, if requested by the IRS, when a levy is served or is about to be served. See IRC 6333. A summons could be used, but it may be unnecessary. Sometimes, a cooperative person will show the records if something in writing is given.

Note:

If there are concerns about the completeness of an entity's compliance with the levy, follow-up with a summons for bank records to verify compliance and pursue the appropriate next action as warranted, e.g., suit for failure to honor a levy.

2. Use Form 2270, *Notice to Exhibit Books and Records*. Do not describe Form 2270 as a summons. Note the date and time the form is served. Also, note the person who receives it.

Caution:

Form 2270 can be used to solicit information from a financial institution only **when a levy is served or is about to be served**. Per IRM 34.6.3.1(3), *Summons Provisions*, the Service may employ an IRC 6333 demand to exhibit books and records, even in the Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming). Counsel takes the position in all circuits that IRC 6333 is a procedure under Title 26 and is therefore an exception to the Right to Financial Privacy Act under 12 U.S.C. sec 3413(c). Also see IRM 25.5.1.4.1, *Documents from Financial Institutions in the Tenth Circuit*, and IRM 5.17.6.6.2(3)-(4), *Notice and Waiting Period Requirements for guidance on requests for information from financial institutions other than by IRC 6333 demand to exhibit books and records, John Doe summons, or collection summons*.

5.11.2.2.9 (04-15-2014)

Refusing to Comply with a Levy

1. If a person refuses to surrender the property, advise them of the provisions of IRC 6332. IRC 6332:
 - Requires the property to be surrendered
 - Discharges the person from any liability to the taxpayer and anyone else, and
 - Describes the person's liability if the levy is not honored
2. If the person still refuses, serve Form 668-C, *Final Demand for Payment*.
3. A Notice of Federal Tax Lien is not required before serving Form 668-C. However, if a suit to enforce the levy is likely, then file the lien.
4. If Form 668-C is served in person, try to serve it on the same person who received the levy. Complete the Certificate of Service on Part 1. Try to get a signature at the bottom of the form to acknowledge it was received.
5. If Form 668-C is mailed, send it by certified mail.
6. Allow the third party 5 days to respond to Form 668-C before taking action to enforce IRC 6332.
7. Additional information can be found in IRM 5.17.4.12 *Action to Enforce a Levy*, IRM 3.17.243.8.1 *Monies Collected by the Department of Justice* and IRM 25.3.5.4 *Advisory Procedures for Judgments for Assessed and Unassessable Liabilities*, for processing the penalty recoverable under section 6332(d)(1).

5.11.2.3 (04-15-2014)

Releasing Levies

1. This section provides procedures for releasing notices of levy.

5.11.2.3.1 (11-20-2014)

Legal Basis for Releasing Levies

1. IRC 6343(a)(1) requires levies to be released when the Service determines the circumstances in this section discussed below exist. Per Teas. Reg. 301.6343-1(a) the Service may require any supporting documentation as is reasonably necessary to determine whether a condition requiring release exists.
2. Release the notice of levy as soon as one of the circumstances in this section is identified to prevent payments from being received after the notice of levy should have been released. This will avoid the need to return levied property and the inconvenience this may cause for the taxpayer.

Example:

After a notice of levy has been sent to a taxpayer's employer, the taxpayer responds and shows that the notice of levy prevents her from paying for basic necessities for her family. Because the levy is causing an economic hardship, release it immediately, so the employer will not send a levy payment on the next pay day.

3. Section 362(a) of the Bankruptcy Code (Title 11) prohibits levy on the property of a taxpayer in bankruptcy. Generally levying on property when the taxpayer is in bankruptcy violates the automatic stay and the levy must be released. Employees must contact Insolvency immediately if inadvertently a levy is placed on property of a taxpayer in bankruptcy. The Service must initiate corrective actions within two workdays of learning of an actual or potential stay violation.
4. Any notice of levy that violates the Internal Revenue Code or regulations must also be released, e.g., a levy issued while the taxpayer's CDP hearing is pending.

5.11.2.3.1.1 (04-15-2014)

Liability Satisfied

1. Under IRC 6343(a)(1)(A), a levy is required to be released when the Service determines the liability is satisfied by full payment, i.e., is no longer owed.

5.11.2.3.1.2 (04-15-2014)

Statutory Collection Period Expired

1. Under IRC 6343(a)(1)(B), a levy is required to be released when the Service determines the levy was issued after the statutory collection period has expired.
2. A continuous wage levy served before the expiration of the collection statute must be released upon the expiration of the collection statute.

Caution:

When a notice of levy is served on a taxpayer's right to property, sometimes that includes the right to receive future payments (e.g., pension benefits, Social Security benefits.) If there is a fixed and determinable right to receive those future payments, the levy will attach them when they would have been paid to the taxpayer, even though it is not actually a "continuous" levy. As long as the right to property has been levied before the period for collection runs out, the notice of levy does not have to be released.

3. Generally, a levy that is not a continuous wage levy, served prior to the expiration of the collection period is enforceable and should not be released. In addition, a levy served after reducing a tax liability to a judgment is valid.

Example:

One week before the statutory collection period runs out, a notice of levy is served at the taxpayer's bank. The bank does not have to send the levy proceeds until the 21 day holding period on bank levies expires, and this will be after the period for collection runs out. This levy does not have to be released when the collection period runs out, because it was served timely.

**5.11.2.3.1.3 (04-15-2014)
Facilitate Collection**

1. Under IRC 6343(a)(1)(B), a levy is required to be released when the Service determines the release will facilitate collection of the amount that is owed.

Example:

A notice of levy is served on the taxpayer's broker. The broker is holding a certain amount of the taxpayer's cash but not enough to pay the tax liability. In addition, the broker is holding the taxpayer's stock options. The stock is worth more than when the option price was set. The cash held by the broker is enough to exercise the option on shares worth more than the tax liability. We arrange to meet the taxpayer and the broker. The release of levy is served, the taxpayer gives the broker an order to use the cash held by the broker to exercise the stock options and to immediately sell the shares. A new notice of levy is served on the broker, so the proceeds of selling the shares will be attached and pay the tax liability.

Example:

A notice of levy is served on the taxpayer's bank. The amount in the bank is less than the tax liability. The taxpayer needs the federal tax lien released and wants to post a bond to do so. The bank has a bond department, and the amount on deposit at the bank is enough to pay for the bond to get the lien released. A collateral agreement is submitted and approved. We meet the taxpayer at the bank. The notice of levy is released, and the taxpayer has the funds in the bank immediately turned over to the bond department, so the bond that assures payment of the amount owed can be issued and the lien can be released.

**5.11.2.3.1.4 (04-15-2014)
Economic Hardship**

1. Under IRC 6343(a)(1)(D), a levy is required to be released when the Service determines the levy is creating an economic hardship, i.e., the levy will cause the individual to be unable to pay their reasonable necessary living expenses.
2. In order to obtain a release of levy for economic hardship the taxpayer must act in good faith. Examples of failure to act in good faith include, but are not limited to,
 - failing to make full disclosure of assets
 - inflating actual expenses or costs
 - falsifying financial information.
3. The determination of a reasonable amount for basic living expenses will be made by the Service and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.
4. The decision to release a levy due to economic hardship requires financial analysis. The financial analysis requires sufficient financial information to confirm the levy is causing the taxpayer to be unable to meet necessary living expenses. To determine whether the financial information submitted by the taxpayer is sufficient to establish an economic hardship each levy should be considered independently.

Example:

The taxpayer missed the deadline to provide a CIS and a notice of levy is served on the taxpayer's bank account and attaches \$600.00. The taxpayer contacts you and indicates he is unemployed and his only source of income is social security which was deposited into the bank account we levied. The taxpayer provides you proof of the monthly amount received from social security and an eviction notice for his apartment that reflects \$600.00 is due tomorrow to avoid loss of his residence. The notice of levy is released as the financial information submitted by the taxpayer has established that not releasing the levy would cause the taxpayer to be unable to meet necessary living expenses.

Example:

The taxpayer missed the deadline to provide a CIS and a notice of levy is served on the taxpayer's wages. The taxpayer contacts you and indicates he will not be able to pay all his family's necessary living expenses with the \$534.62 exemption allowed from his weekly pay check. The taxpayer agrees to complete a CIS over the phone. The expense amounts are reasonable and your financial analysis of the taxpayer's CIS establish that the taxpayer can pay \$400.00 a month. You agree to fax a partial release of levy to the taxpayer employer since the financial information (CIS) established that not releasing the amount greater than \$400.00 would cause the taxpayer to be unable to meet necessary living expenses.

Note:

Per IRM 5.15.1.1(5), *Expectations* securing financial information to complete the CIS can occur by phone or correspondence. Necessary living expenses are included in allowable living expenses. See IRM 5.15.1, Financial Analysis Handbook, for guidance regarding financial analysis and allowable living expenses.

Note:

Per Treas. Reg.301.6343-1(a), the Service may require any supporting documentation as is reasonably necessary to determine whether the condition requiring release exists; including economic hardship.

5. Where the financial analysis shows that the taxpayer merits a full or partial levy release to relieve economic hardship, the taxpayer has a statutory right to enough relief to end the hardship. Document the financial analysis in the history and communicate the decision to the taxpayer. The levy release should be faxed or given to the taxpayer to provide to the levy source.

Example:

The taxpayer has defaulted on an installment agreement and his wages are levied. The amount being levied creates an economic hardship, (within the meaning of IRC 6343(a)(1)(D)), but a smaller amount would not. Release only enough of the levy to prevent an economic hardship. A release of wages less than \$X allows the taxpayer to receive an amount that will not cause a hardship. Anything earned more than that amount is sent as levy proceeds.

Caution:

When the Service determines that the levy is creating an economic hardship, do not refuse, delay or understate the release amount as a means to secure other compliance, e.g., missing tax returns. When contacted by a taxpayer claiming an inability to meet basic living expenses due to the levy and there are also open Del Rets, do not condition relief of the economic hardship upon receiving the delinquent returns. These are separate collection issues. Inform the taxpayer of the financial information needed to make a collection determination and provide relief of the hardship if appropriate. You may, as a separate issue, inform the taxpayer of the unfiled tax returns and pursue appropriate actions to resolve that separate from the hardship relief issue. You may also inform the taxpayer that before an installment agreement can be established delinquent returns must be filed.

6. Where the financial analysis shows that the taxpayer does not merit a full or partial levy release to relieve economic hardship, document the financial analysis in the history and communicate the decision to the taxpayer. The taxpayer may appeal as outlined in IRM 5.1.9, *Collection Appeal Rights*. Additionally, see IRM 5.1.9.4.1(8) for referral to Taxpayer Advocate Service.

5.11.2.3.1.5 (04-15-2014)

Fair Market Value of Property More Than Amount Owed

1. Under IRC 6343(a)(1)(E), a levy is required to be released on a portion of the levied property when the Service determines the fair market value of the levied property exceeds the amount owed and a portion of the levied property can be released without hindering collection.

5.11.2.3.1.6 (04-15-2014)

Installment Agreement

1. Under IRC 6343(a)(1)(C), a levy is required to be released if the IRS entered into an installment agreement with the taxpayer, unless the agreement allows for the levy.

Example:

In response to a bank levy, the taxpayer requests an installment agreement. If the IRS grants the agreement but the agreement expressly provides that the levy should not be released, then the levy should not be released under this statutory provision. Another basis for release under IRC section 6343 could be available.

5.11.2.3.2 (04-15-2014)

Wrongful and Erroneous Levies

1. The IRC distinguishes between "wrongful" levies and other types of improper or "erroneous" levies.
2. A "wrongful levy" is one that improperly attaches property belonging to a third party in which the taxpayer has no rights. See IRC 6343(b). The Code specifically authorizes release of wrongful levies. See *IRM 5.11.2.3.2.1* below for wrongful levy procedures.
3. An "erroneous" levy is one that properly seeks to capture a taxpayer's property (rather than a third party's property), but for example, nevertheless is served prematurely or otherwise in violation of an administrative procedure or law. See IRC 6343(d). See *IRM 5.11.2.3.2.3* below for erroneous levy procedures.

5.11.2.3.2.1 (04-15-2014)

Wrongful Levy

1. IRC section 6343(b) authorizes the return of property or money to its rightful owner (not the taxpayer) when the IRS determines that the property has been wrongfully levied.
2. Section 6343(b) provides that the IRS may return:
 - The property that was levied.
 - Amount of money equal to amount of money levied.
 - Amount of money equal to that received by United States from a sale of the property.
3. There are time limitations regarding wrongfully levied property.
 - A. Specific property (including identifiable money; coin collections) in possession of the United States may be returned anytime. See IRC 6343(b).
 - B. An amount equal to the amount of money levied or received from the tax sale may be returned anytime before the expiration of nine months from the date of levy. See IRC 6343(b).
4. Wrongful levy claims may be filed on property attached by:
 - Notices of Levy, Form 668-A and Form 668-W and/or
 - Notices of Seizure, Form 668-B.
5. A wrongful levy claim may be filed when:
 - The levied property is still in the hands of a third party (e.g., bank levy) or under seizure prior to sale
 - The levied amount has posted to the taxpayer's account, or
 - An amount of money has posted to the taxpayer's account that is equal to the amount received by the IRS from the sale of property.
6. Upon receipt of a written wrongful levy claim, send the claim to the AI-Advisory office where the levy or seizure was made. AI-Advisory will evaluate the claim. Generally, third parties file wrongful levy claims when they believe that the levy is wrongful because the property levied belongs to them, or they believe they have a superior claim to the property that is not being recognized by the IRS. If the claim is disallowed, AI- advisory should notify the third party in writing of the reason for disallowing the claim and of the right to bring suit against the government. If the claim is disallowed because it was not made within nine months from the date of the levy, AI-Advisory should send Letter 3973, *Wrongful Levy Claim Rejection Letter - Untimely Claim* via certified mail. If the claim is disallowed for another reason, AI-Advisory should send the claimant Letter 3974, *Wrongful Levy Claim Rejection Letter* via certified mail. Disallowance of the claim may be appealed through the Collection Appeals Program (CAP).

Caution:

The regulations require that the third party file the claim with the Advisory Group Manager for the area where the levy or seizure was served. If the third party submits an original claim for processing to an RO or someone other than the Advisory Group Manager, the IRS employee should notify the third party that the proper place for filing the claim is with the Advisory Group Manager for the area where the levy or seizure was made and provide the third party with the correct mailing address.

Note:

The third-party claimant may also choose to file suit under IRC § 7426(a). A claim is not required prior to filing suit. However, if the claimant is also seeking damages under IRC § 7426(h), an administrative claim must be filed first.

Note:

Third parties claiming property was wrongfully levied are entitled to CAP before the levy proceeds are turned over to the Service. Once the levy proceeds are turned over, the third party must submit an administrative claim to Advisory under the procedures described in Pub. 4528, *Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b)*. If the administrative claim is denied, the third party can request a CAP hearing about the denial.

7. If the levy source has not forwarded the levy proceeds and AI-Advisory determines that the potential levy proceeds are not the taxpayer's, then do the following:

- Process a full release of the levy as soon as possible to avoid the receipt of property that is not the taxpayer's. If levy proceeds are received because the levy is not released in sufficient time, the levied property or funds should be returned immediately. See *IRM 5.11.2.3.2.2, Certain Wrongful Levy Situations*.

Note:

For bank levies, if additional time is needed beyond the 21 day hold period to determine ownership, request the bank hold the funds. Provide the bank a specific extension date to forward the funds. If substantiation is required from the potentially wrongfully levied party or the taxpayer, provide a deadline date for providing the substantiation.

Note:

For levies that are not bank levies, the levy source may be requested to hold the levy proceeds if additional time is needed to determine ownership. Provide the levy source with a specific extension date to forward the funds. If substantiation is required from the potentially wrongfully levied party or the taxpayer, provide a deadline date for providing the substantiation.

8. If the levy source has forwarded the levy proceeds and AI-Advisory preliminarily determines that the levy proceeds are not the taxpayer's, do the following:

- Notify the third party that the IRS has determined that the levy was wrongful and that the IRS is working on returning the levy proceeds.
- Provide the wrongfully levied party Pub 4528, *Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b)*.
- Document in the ICS history that the wrongfully levied party was provided Pub 4528. Pub 4528 contains the proper procedures for a third party to make an administrative claim and file a suit under IRC 7426(a)(1) should the administrative claim be denied.

Exception:

See *IRM 5.11.2.3.2.2, Certain Wrongful Levy Situations*, for situations where the revenue officer may process a manual refund of wrongful levy proceeds, after securing proper approval.

Note:

Under IRC 6503(f), the period of limitation on collection is suspended for a period equal to the period from the date property is wrongfully seized or received to the date returned under IRC 6343(b) or the date on which a judgment is secured under IRC 7426, plus an additional 30 days. The suspension is only applicable to an amount equal to the amount of money or the value of the property returned. See *IRM 5.10.6.15, Wrongful Seizure — Payment of Claims After Sale*.

5.11.2.3.2.2 (04-15-2014) Certain Wrongful Levy Situations

1. In certain wrongful levy situations, the Revenue Officer, after consultation with AI-Advisory, may process a manual refund. These procedures apply only to the following situations:

- The Service levies on a bank account other than the taxpayer's.
- The Service sells property that does not belong to the taxpayer.
- The Service levies in ID Theft situations identified in *IRM 5.11.2.3.6, Levy Releases in Cases of Identity Theft*.

Note:

Hardship is not a factor in these situations.

Note:

See *IRM 5.10.4.4, Release of Wrongful Seizures for Property Not Yet Sold*.

2. When a wrongful levy is confirmed and the levy source already forwarded the proceeds to the Service, do the following:

- Verify with AI-Advisory the wrongfully levied party's right to the levied property. (See above).
- Document in the ICS history AI-Advisory's concurrence.
- If it is determined that returning the proceeds is appropriate, complete and process Form 5792, *Request for IDRS Generated Refund*. See *IRM 5.1.12.19, Manual Refund*, for guidance on completing and processing Form 5792.

3. The Area Director is authorized to approve manual refunds, including manual refunds via Form 5792 in wrongful levy situations per Delegation Order 3-1 (Rev. 2) contained in *IRM 1.2.42.2, Delegation Order 3-1 (Rev. 2)*.

By filing Form 14031, *Wage and Investment Customer Account Services Submission Processing*, the Area Director may designate "authorized certifying officers" to review and approve Form 5792. The signature of the Area Director's designee(s) must be on file with the Submission Processing Center before the Form 5792 is submitted for processing. (See *IRM 5.1.12.20* for information and procedures for processing Form 5792.)

Note:

The authority to make **determinations** to return levy payments and determine wrongful levy claims is delegated to SBSE Territory Managers and AI Territory Managers per Delegation Order 5-3 (Rev. 1) contained in *IRM 1.2.44.4, Delegation Order 5-3 (Rev. 1)*. However the procedure to return levy payments is through the "manual refund" process. The routing of the approval of Form 5792 through the Territory Manager to the Area Director or the Area Director's designee per *IRM 5.1.12.19, Manual Refund*, is sufficient to meet the requirements of Delegation Order 3-1 (Rev. 2) and Delegation Order 5-3 (Rev. 1).

5.11.2.3.2.3 (04-15-2014) Erroneous Levies

1. If a notice of levy is served erroneously, do the following:

- Release it immediately.
- Send Letter 4262 to the taxpayer. The taxpayer can give this to people who received levies. See *IRM 5.11.4.8, Reimbursing Bank Charges Because of Erroneous Levies*, if the taxpayer incurred a bank charge due to the erroneous levy.

Example:

A notice of levy is served. The taxpayer shows a canceled check used to full pay the tax liability. When IDRS is researched, the check is found among unidentified remittances. Release the levy. Any related bank charges may be reimbursed.

2. A taxpayer who claims that the levy is "erroneous" (Refer to *IRM 5.11.2.3.2, Wrongful and Erroneous Levies*) is entitled to a CAP before the levy proceeds are turned over to the Service. Once the levy proceeds are turned over the taxpayer is not entitled to CAP rights and the taxpayer must make an administrative claim under Treasury Reg. 301.6343-3(h). If the administrative claim is denied, the taxpayer would then have the right to request a CAP appeal about the denial.

5.11.2.3.3 (11-20-2014)

Serving Releases of Levy

1. Generally, levy releases are mailed to save resources. Sometimes, though, they may be served in person.
2. When a levy must be released quickly, it may be faxed. Confirm that the levy source has a fax machine and is willing to accept a faxed release.
3. When paper levies issued to the Social Security Administration (SSA) need expedited release, print "EXPEDITE IMMEDIATELY" on the top of the release of levy form. Fax the release to the SSA office that issued the taxpayer's social security number. See the Servicewide Electronic Research Program (SERP), Who/Where, Levy Source Information for the SSA office fax numbers <http://ts00363.tcc.irs.gov:10001/NLSD/>. Phone contacts for SSA Paper Levy issues are listed on SERP on the IRWeb, Who/Where, SSA Paper Levy Contacts, <http://serp.enterprise.irs.gov/databases/who-where.dr/ssa-paper-levy-payments.htm>.

5.11.2.3.4 (04-15-2014)

Forms Used to Release Levies

1. Use Form 668–D, *Release of Levy/Release of Property from Levy*, to release a levy served on Form 668–W(ICS), 668-W(C)DO, Form 668–A(ICS), or 668-A(C)DO. Use Form 668–E, *Release of Levy*, to release seized property when Form 2433, *Notice of Seizure*, cannot be used.
2. Form 668–D can be used to release the levy in part or in full.

Example:

A taxpayer who has defaulted on an installment agreement, ultimately has his wages levied. The amount being levied creates a hardship, but a smaller amount would not. A release of wages **less than** \$X allows the taxpayer to receive an amount that will not cause a hardship. Anything earned more than that amount is sent as levy proceeds each pay day.

Example:

After failing to respond to the CDP notice, a taxpayer's wages are levied. The taxpayer contacts the revenue officer assigned the case and a monthly payment amount is agreed to. A payroll deduction agreement to avoid default is the preferred disposition of the case, but the employer is reluctant to agree. A partial release of wages **greater than** \$X, sets a fixed amount that will be sent as levy proceeds each pay day. Anything more is paid to the taxpayer.

Example:

After pyramiding employment taxes and failing to submit a CIS a taxpayer's bank account is levied. The taxpayer contacts the revenue officer on Friday and submits all the required financial information. The taxpayer agrees to make all current FTDs by next Wednesday when a contract is paid and requests release of \$X funds to cover payroll. A partial release of bank deposits **up to the amount of** \$X is released to cover payroll and the levy continues to attach to all amounts greater than \$X.

5.11.2.3.5 (04-15-2014)

Levy Release For Credit Card Payment

1. Taxpayers can make tax payments by credit card. See *IRM 21.2.1.48.3, Payment by Credit Card or Debit Card (General)*. Credit card payments are a source of guaranteed funds; the line of credit is authorized before the confirmation number is issued.
2. If releasing a levy when the taxpayer states they paid by credit card, secure the confirmation number. The confirmation number is provided to the taxpayer by the service provider at the end of the transaction.
3. Additional payment verification can be obtained by the taxpayer on the service provider's website.
4. While rare in instances of tax payments, fraudulent use of credit cards does occur and will result in a manual refund of the payment to the processor.

5.11.2.3.6 (04-15-2014)

Levy Releases in Cases of Identity Theft

1. A person may inappropriately provide a Taxpayer Identification Number (TIN) that is not their own to an employer to secure employment. This person will be referred to in this section as the non-owner of the TIN. The legal owner of the TIN will be referred to in this section as the victim.
2. Cases involving multiple taxpayers using the same TIN are classified generally as mixed entity, Scrambled SSN cases or True Scrambled SSN cases. These cases will be referred to in this section as mixed entity cases.
3. A levy attaching the assets of the victim in a mixed entity case must be immediately released. Accounts should be adjusted and all pre-levy notices properly issued before levy re-issuance. See *IRM 5.1.28.4, Collection Activity in Identity Theft Cases*, for actions after levy release. See *IRM 25.23.4.4, Multiple Individuals Using the Same TIN*, for appropriate adjustment actions.

Exception:

If no account adjustment is required and all pre-levy notices were properly issued a levy may remain in effect unless a circumstance outlined in *IRM 5.11.2.3.1, Legal Basis for Releasing Levies*, is present. Also see *IRM 5.1.28, Identity Theft for Collection Employees* for required actions on cases involving ID Theft.

4. A levy attaching to assets of the non-owner of the TIN for which
 - the Service assessed the liability in the name of the non-owner of the TIN,
 - the Service issued all pre-levy notices properly to non-owner of the TIN,
 - the Service assessed the liability under the **TIN/SSN of the victim**,
 - the assessment is based solely on the **income of the non-owner of the TIN**,
 - and there are no credits (payment offset etc.) attributable to the victim for the assessment listed on the levy,

may remain in effect unless a circumstance outlined in *IRM 5.11.2.3.1, Legal Basis for Releasing Levies*, is present. The assessment is not invalid for the sole reason that it was made under the victim's TIN/SSN.

Note:

The assessment will need to be adjusted. See IRM 25.23.4.4, *Multiple Individuals Using the Same TIN*, for appropriate adjustment actions. However, if unable to determine if the liability of the non-owner of the TIN is satisfied then release the levy until the account can be adjusted to ensure the levy is not enforced on a satisfied liability. Also see IRM 5.1.28, *Identity Theft for Collection Employees* for required actions involving ID Theft.

5. The non-owner of the TIN may file a wrongful levy claim for return of levy proceeds (from the assets of the non-owner of the TIN) already received and processed by the Service. A wrongful levy claim may be appropriate when

- the assessment is based solely on the victim's income, since the levy improperly attaches to property belonging to a third party (the non-owner of the TIN)
- the assessment is based on the combined income of the non-owner of the TIN and the victim's, since the levy may have improperly attached to property belonging to a third party (the non-owner of the TIN).
- the assessment is based on the combined income of the non-owner of the TIN and the income of other non-owners using the TIN, or is based on the combined income of other non-owners using the TIN and the victim's income, since the levy may have improperly attached to property belonging to a third party (the non-owner of the TIN).

See IRM 5.11.2.3.2, *Wrongful and Erroneous Levies*, for appropriate action. Contact AI-Advisory to determine if the non-owner of the TIN would qualify for wrongful levy claim consideration.

6. The levy is considered an erroneous levy when a levy is served prematurely or otherwise in violation of an administrative procedure or law. If the levy is in violation of law the Service must return levy proceeds. If the levy is in violation of administrative procedure the Service may determine to return levy proceeds. Contact AI-Advisory to verify the levy is erroneous. See IRM 5.11.2.3.2, *Wrongful and Erroneous Levies*, for appropriate action.

Example:

The levy attaches to the wages of the non-owner of the TIN for an assessment in the victim's name. All pre-levy notices were sent to the victim. The assessment is based on the income of the non-owner of the TIN. The levy is premature as the assessment must be in the name of the non-owner of the TIN and all pre-levy notices must be sent to the last known address of non-owner of the TIN in order for the levy to appropriately attach to the wages of the non-owner of the TIN.

5.11.2.4 (04-15-2014)

Returning Levied Property to the Taxpayer

1. Before July 30, 1996, once levy proceeds were deposited, there was no statutory authority permitting the return to a taxpayer of monies obtained by erroneous levy, even though the levy might have been issued in violation of law or administrative procedures. Congress has since enacted such authority.

5.11.2.4.1 (11-20-2014)

Current Authority for Returning Levied Property to the Taxpayer

1. On July 30, 1996, Taxpayer Bill of Rights 2 (TBOR2) was enacted. This added subsection (d) to IRC 6343.

2. Now erroneous levy proceeds can be returned to the taxpayer **at the discretion of the Service** if:

- The levy is premature
- IRS procedures were not followed.

Example:

Some companies notify the Service of an address for mailed notices of levy. See IRM 5.11.2.2.5, *Addresses for Mailing Notices of Levy*. A levy is sent to another address by mistake. The company forwards it to the correct address, and a levy payment is sent. The taxpayer might claim the payment **must** be returned because procedures were not followed. This is not the case. It is within the discretion of the Service to determine that the error is trivial and returning the payment is unwarranted.

3. Erroneous levy proceeds will be returned to the taxpayer if the levy is in violation of the law per Treas. Reg. 301.6343-3(d). However, the Service may keep the levy proceeds if the taxpayer provides written permission to do so.

Example:

The levy occurs without giving the taxpayer notice of a right to a hearing under IRC 6330 or when an offer in compromise is pending, in violation of section 6331(k)(1).

4. Although not considered erroneous, proceeds from levies issued in the last 9 months can be returned to the taxpayer **at the discretion of the Service** if:

- An installment agreement is made for a liability included on the levy, unless the agreement provides otherwise.

Example:

Subsequent to the levy, the taxpayer enters into an installment agreement that will full pay the entire outstanding liability. The revenue officer verifies the taxpayer is financially able to meet all the terms of the agreement. An amount of money equal to the amount of money levied and applied toward the taxpayer's liability may be returned to the taxpayer.

- Returning levy proceeds facilitates collection.
- With the consent of the taxpayer or the National Taxpayer Advocate (NTA), returning the levy proceeds is in the best interests of the taxpayer (as determined by the NTA) and the government.

Example:

Taxpayer owes income tax for 2008 and 2009. IRS issues a levy to attach to social security benefits. Taxpayer responds to a levy and a collection information statement is completed that IRS determines establishes economic hardship. Further, the taxpayer's information confirms that the levy created an economic hardship for the taxpayer at the time the levy was initially issued. The IRS releases the levy on the social security benefits. Additionally, an amount equal to the amount levied and applied to the taxpayer's liability may be returned to the taxpayer unless it is determined the return of property is not in the best interest of the government. Generally, it will be in the best interest of the government to return such payments when the IRS levy created an economic hardship for a taxpayer. However, it is not in the best interest of the government to return levy proceeds received prior to the taxpayer's request for the release of the levy if the facts show that the taxpayer did not respond to IRS attempts to contact them prior to levy and the taxpayer does not have reasonable cause for not responding.

Note:

If multiple levies have been issued with respect to a taxpayer's liability and only one of the levies has been confirmed to create the economic hardship, only the proceeds from that levy should be returned.

If	Then
IRS makes a determination that return of property is in the best interest of the United States AND in the best interest of the taxpayer with taxpayer consent (no NTA involvement)	IRS will return the levied property.

IRS makes a determination that return of property is in the best interest of the United States and the NTA also determines that return of the property is in the best interest of the taxpayer	IRS will return the levied property.
IRS makes a determination that return of the property is NOT in the best interests of the United States (regardless of NTA determination or taxpayer consent)	IRS will NOT return the levied property.

5. The taxpayer can file a request for the return of levied property up to nine months from the date of the levy. Requests made after nine months cannot be considered.

Note:

The Service can refund levy proceeds without a request from the taxpayer within nine months of the date of levy, so if the taxpayer makes an oral request, the IRS may still choose to investigate the request. However, the IRS should advise the taxpayer that he or she must submit their written request within the nine months in order to comply with written requirement under the regulations. If the taxpayer makes a written request for the return of money within nine months from the date of the levy, the Service may return the money after the nine month period ends if time is needed to investigate and process the request. The money may, then, be refunded on some date after the nine month period.

Note:

IRC 6343(b) and Treas. Reg. 301.6343-3(e) provides that levied property in the possession of the IRS (other than money) can be returned (under paragraph (c) & (d) of the reg.) at any time.

5.11.2.4.2 (04-15-2014)

Factors to Consider Before Returning a Levy Payment to the Taxpayer Due to Procedural Errors

1. Except for a levy in violation of the law (*IRM 5.11.2.4.1*), there are no rigid rules for deciding whether to return a levy payment. The decision is made on a case-by-case basis. At least one of the conditions in *IRM 5.11.2.4.1(2)* must exist. Some things to consider include:
 - How significant is a procedural error? In the first example in *IRM 5.11.2.4.1(3)*, the error is harmless and insignificant.
 - The IRS released the levy because it determined that the levy was creating an economic hardship.
 - Did the person who received the levy get bad instructions about how much to send?
 - Is there an error that affects whether the levy should have been issued?
 - Is there an inequity in keeping the payment?
 - Would the levy have been released if all facts were known before the payment was received?
 - Is the taxpayer a pyramiding, delinquent trust fund repeater?

5.11.2.4.3 (04-15-2014)

Rejecting Requests for Return of Levied Property

1. When a written request is rejected, give the taxpayer Letter 3975, *Rejection of Request for Return of Levied Property*, signed by the group manager.
2. A written rejection is not required unless a written request is made.
3. The taxpayer may appeal the rejection using Collection Appeal Program (CAP) procedures, or, if Collection Due Process (CDP) rights exist under IRC 6330(f) and are timely exercised, by raising the issue at a CDP hearing or an equivalent hearing, whichever may be applicable.

Note:

When a verbal statement is received investigate whether the property should be returned to the taxpayer based on the verbal information. Advise the taxpayer they need to make a written request if you determine that none one of the conditions in IRC 6343(d) applies. The claimant must submit a written claim before the expiration of the 9-month period.

5.11.2.4.4 (04-15-2014)

Delegation of Authority to Return Levy Payments

1. The Area Director is authorized to approve manual refunds via Form 5792, including manual refunds in wrongful levy situations per Delegation Order 3-1 (Rev. 2) contained in *IRM 1.2.42.2, Delegation Order 3-1 (Rev. 2)*. By filing Form 14031, *Wage and Investment Customer Account Services Submission Processing - Manual Refund Signature Authorization Form* the Area Director may designate "authorized certifying officers" to review and approve Form 5792. The signature of the Area Director's designee(s) must be on file with the Submission Processing Center before the Form 5792 is submitted for processing.

Note:

The authority to make **determinations** to return levy payments and determine wrongful levy claims is delegated to SBSE Territory Managers and AI Territory Managers per Delegation Order 5-3 (Rev. 1) contained in *IRM 1.2.44.4, Delegation Order 5-3 (Rev. 1)*. However the procedure to return levy payments is through the "manual refund" process. The routing of the approval of Form 5792 through the Territory Manager to the Area Director or the Area Director's designee per *IRM 5.1.12.19, Manual Refund*, is sufficient to meet the requirements of Delegation Order 40 (Rev. 6) and Delegation Order 3-1 (Rev. 2).

5.11.2.4.5 (04-15-2014)

Getting the Money Refunded

1. Complete and process Form 5792, *Request for IDRS Generated Refund (IGR)* to issue a manual refund. See *IRM 5.1.12.20, Manual Refund*, for guidance on completing and processing Form 5792, *Request for IDRS Generated Refund (IGR)*.
2. Unlike money that has been wrongfully levied, no interest is paid on the refund.

5.11.2.4.6 (04-15-2014)

Effect on Penalty & Interest

1. When levy proceeds are returned, the delinquent tax is not forgiven. The taxpayer is still obligated to pay the amount owed, and the Service is obligated to collect it.
2. However, the taxpayer will not be charged a failure to pay penalty or interest during the period the Service held the money. After the payment is returned to the taxpayer, penalty and interest start to accrue again.

Example:

The taxpayer owed \$10,000.

On April 10, 2008, \$2,500 was collected as levy proceeds.
On May 4, 2010, the \$2,500 was returned.

- A. Compute accrued interest on \$10,000 through April 10, 2008. Then, compute interest on \$7,500 for the period April 11, 2008, through May 4, 2010. Assess the total interest from these two steps using transaction code (TC) 340. Have the TC 340 input with the COMP-INT-AMT and INT-TO-DT fields complete. The COMP-INT-AMT is the amount still owed, so IDRS and master file should continue computing interest on this. In this example, it would be the amount still owed on May 4, 2010. The INT-TO-DATE is the date that the interest has been computed through which in this example would be May 4. This will allow IDRS and master file to compute interest after that so it will not have to be done manually.
- B. Compute the failure to pay penalty that accrued from April 11, 2008, through May 4, 2010, on \$2,500. Input this amount using TC 271 with Reason Code 62. This will allow IDRS and master file to compute the penalty after that so it will not have to be done manually.

Note:

The example above should only be followed if the account is restricted (-I freeze) or interest and penalty needs to be manually computed.

**5.11.2.5 (04-15-2014)
Returning Levied Property to Someone Other Than the Taxpayer**

1. Generally, if levied property must be returned, it is given back to the taxpayer(s) who owed the tax that was credited with the payment. Typically, if a levy payment is applied to a liability owed by John and Mary Smith, and it must be returned later, the refund check would be in the names John and Mary Smith.
2. Sometimes the name(s) on the check can not be the same as the name(s) on the delinquent account because the money must be returned to the third party who was wrongfully levied upon.

Example:

Fred Jones owes delinquent tax for tax year 2007, when his filing status was single. In addition, Fred and Mary Jones owe delinquent tax for returns they filed jointly for tax years 2008 and 2009. One notice of levy is mistakenly issued for all three tax years showing Fred and Mary Jones as the taxpayers. This results in money from Mary's bank account being used to pay all three liabilities. The payment that is applied to tax year 2007 is for a liability owed by Fred Jones, but the refund check for that payment must be issued in the name Mary Jones. This example assumes the bank account is not community property.

Example:

Sam Wilson's Social Security benefits are levied. After five levy payments have been sent, the Social Security Administration finds out that Sam had died and was only eligible for benefits during the first three months. The other two months' levy payments must be returned to the Social Security Administration.

3. See IRM 5.1.12.20, *Manual Refund*, for instructions about how to get the manual refund check issued.
4. A wrongful levy is one in which the levy proceeds are money that belonged to someone other than the delinquent taxpayer, such as in the first example in (2), above. Or when the levy destroyed the interest of a lien senior to the federal tax lien. In these cases, the person to whom the money is returned is entitled to interest. Using the overpayment rate in IRC 6621, interest runs from the date the levy payment was received to the refund schedule date. The date the interest runs through can be no earlier than thirty days before the money is actually returned.
5. When a wrongful levy on a third party's property is not involved, as illustrated in the second example in (2), above, no interest is paid.

**5.11.2.6 (01-01-2016)
Disposing of Surplus Proceeds**

1. Every reasonable effort will be made to release a notice of levy timely. However, sometimes surplus levy proceeds are received. Surplus proceeds are payments greater than the amount still owed for the liabilities listed on the notice of levy. Surplus levy proceeds may not be applied to individual SRP modules (shown as MFT 35).

Example:

A refund posts after the levy source has already sent payment for the levy.

2. The payment should be returned to the levy source when there is no remaining balance due. Once a payment is applied to the taxpayer's account there is currently no legal provision to return the funds to the levy source.
3. If surplus proceeds are received, and taxes are owed that were not listed on the notice of levy, the surplus can be offset to those taxes, excluding SRP accounts (MFT 35 or mirrored MFT 65). In this situation, directly applying the surplus proceeds directly to the taxes, excluding SRP account, not listed on the notice of levy is still considered an offset. However, use levy proceeds to pay the taxes listed on the levy, first. The surplus may then be offset to taxes not listed on the notice of levy, even if all the notices in IRM 5.11.1.3.2, *Required Notices*, have not been given to the taxpayer for those taxes. The notice of levy must be released as soon as possible once the periods covered by the levy have been satisfied. If additional liabilities not covered by the original levy exist, a new notice of levy must be issued to collect those liabilities. Please note that all statutory requirements, such as sending of a notice of intent to levy and a right to a hearing, must be met with regard to the new notice of levy if the taxpayer has not had an opportunity for a CDP hearing under IRC 6330 for the remaining liabilities. See IRM 5.11.1.3, *Pre-Levy Actions*, for the statutory pre-levy requirements.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 11. Notice of Levy

Section 3. Jeopardy Levy without a Jeopardy Assessment

5.11.3 Jeopardy Levy without a Jeopardy Assessment

- 5.11.3.1 [Jeopardy Levy Overview](#)
- 5.11.3.2 [Required Conditions for Jeopardy](#)
- 5.11.3.3 [Getting Approval](#)
- 5.11.3.4 [Forms and Letters for a Jeopardy Levy without a Jeopardy Assessment](#)
- 5.11.3.5 [After the Jeopardy Levy Is Approved](#)
- 5.11.3.6 [Appealing the Jeopardy Levy](#)

Manual Transmittal

April 03, 2013

Purpose

(1) This transmits revised text for IRM 5.11.3, Jeopardy Levy without a Jeopardy Assessment.

Material Changes

- (1) 5.11.3.1(1) clarified purpose of guidance.
- (2) 5.11.3.1.1(1) clarified personal service of notice and demand is not always required.
- (3) 5.11.3.1.1(2) clarified when IRC 7249 appeal rights are available.
- (4) 5.11.3.1.1(3) clarified when CDP Hearing Rights must be offered.
- (5) 5.11.3.1.1(4) Clarified when CAP rights will be offered.
- (6) 5.11.3.3(2) added electronic signature as valid method to reflect approval of a jeopardy levy.
- (7) 5.11.3.3(5) clarified L2438(CG) only issued when warranted.
- (8) 5.11.3.4 paragraphs rearranged for clarity.
- (9) 5.11.3.4(5) new paragraph to explain when to issue L2438(CG).
- (10) 5.11.3.4(6) paragraph renumbered.
- (11) 5.11.3.5(3) clarified when L2438(CG) is included with levy.
- (12) 5.11.3.5(4) clarified notice and demand may be mailed to taxpayer's last known address.
- (13) 5.11.3.6 clarified when taxpayer is entitled to an administrative appeal and judicial review under IRC 7249.
- (14) Editorial changes made throughout.

Effect on Other Documents

This IRM supersedes IRM 5.11.3 dated August 20, 2010.

Audience

This material is used by SB/SE revenue officers and AI - Advisory.

Effective Date

(04-03-2013)

Signed by
Scott D Reisher, Director, Collection Policy

5.11.3.1 (04-03-2013) Jeopardy Levy Overview

1. Normally, the notices and waiting periods described in IRM 5.11.1.2.1, *Required Notices*, must be issued before property may be levied. However, if collection is in jeopardy, property may be levied sooner. This IRM provides guidance on obtaining approval for a jeopardy levy, issuing notice to the taxpayer after the levy, and on the taxpayer's appeal rights after notice is provided.

5.11.3.1.1 (04-03-2013) Jeopardy Levy Considerations

1. Generally, if collection is in jeopardy, there is a jeopardy or termination assessment. Then there is an immediate notice and demand which is followed by a jeopardy levy. Sometimes, however, there may already be an assessment before jeopardy is known and in some of those cases, collection under regular procedures may have begun before the jeopardy is known.

Note:

In every situation where a jeopardy levy occurs without a jeopardy or termination assessment, the Service has already assessed the tax liability through normal procedures. If collection is not in jeopardy, a quick assessment or prompt assessment is insufficient to support a levy immediately after issuing notice and demand. However, if collection is in jeopardy, the jeopardy situation may support an immediate levy after personal service, if practical, of the notice and demand (Form 3552).

Example:

There may be a prompt assessment on a voluntarily filed return. Then, if the taxpayer starts moving property to hide it, a revenue officer may make a jeopardy levy if collection is in jeopardy, after securing the required approvals outlined in IRM 5.11.3.3, "Getting Approval." Property may be levied, even though the usual waiting periods after notices have not passed.

Example:

If the Service makes a quick assessment to recover refunds resulting from a false Form 1099-OID, *Original Issue Discount* filing, a revenue officer may make a jeopardy levy if collection is in jeopardy, after securing the required approvals outlined in IRM 5.11.3.3, "Getting Approval."

2. A taxpayer must be offered IRC 7429 appeal rights when:

- The notice and demand described in IRC 6303 for an assessment has not been issued or the 10-day waiting period arising after the issuance of that notice has not expired; or
- A notice of intent to levy described in IRC 6331(d)(1) specifying each tax and tax period has not been issued for the property subject to levy or the waiting period described in IRC 6331(d)(2) has not expired. See IRM 5.11.1.2.1(4), *Required Notices*.

3. A taxpayer must be offered Collection Due Process (CDP) rights pursuant to IRC 6330(f) within a reasonable period of time after the levy when the taxpayer has not been offered a hearing previously for the taxable period for the type of tax subject to the levy.

4. A taxpayer will be offered an appeal under the Collection Appeals Program (CAP) when:

- An appeal was offered under either of the two preceding paragraphs, but the taxpayer did not appeal; or
- The jeopardy levy was made after the period for offering IRC 7429 appeal rights; or
- CDP rights were already offered for the taxable period for the type of tax subject to the levy.

5. Situations in which a taxpayer may request an appeal under CAP can arise in the following situations in which the Service is generally prohibited from levying, but for which an exception for jeopardy levy has been provided:

- On the appearance date of a summons,
- While an installment agreement is pending or active,
- For 30 days following the date of termination of an installment agreement and during an appeal of the termination,
- During the period a rejected installment agreement can be appealed or is being appealed,
- During the period an offer in compromise is pending, or
- During the period a rejected offer in compromise can be appealed or is being appealed.

6. Hereafter, any reference to "jeopardy levy" in this section shall refer only to a jeopardy levy without a jeopardy or termination assessment unless otherwise noted.

**5.11.3.2 (08-20-2010)
Required Conditions for Jeopardy**

1. A jeopardy levy requires a condition that would have allowed a jeopardy assessment.
2. See the IRS *Policy Statement 4-88* in IRM 1.2.13.1.27, regarding jeopardy assessments.

**5.11.3.3 (04-03-2013)
Getting Approval**

1. If the collection of an assessed tax is in jeopardy, prepare either a written report or a narrative Integrated Collection System (ICS) history entry for the territory manager requesting approval to issue a jeopardy levy. Include the same information that is needed for a jeopardy assessment. See IRM 5.1.4, *Jeopardy, Termination, Quick and Prompt Assessments*. Send the request through the group manager.
2. The managerial approval process may be accomplished by having the group manager and territory manager access ICS and document their approval with a history entry. Electronic signature by the approving official is an acceptable method of written approval. When written or electronic approval is secured, a copy of the approval must be kept in the file and the RO will document the ICS history.
3. In addition, IRC 7429(a)(1)(A) requires Counsel approval, in writing, for a jeopardy levy issued less than 30 days after notice and demand; under Treas. Reg. 301.7429-1 approval is required for levies made before the waiting period described in IRC 6331(d)(2) expires. See IRM 1.2.44.4(20) and (21) *Delegation Order 5-3 (Rev. 1)* requiring the concurrence of the responsible Area Counsel or Associate Area Counsel for a jeopardy levy issued when the pre-levy notices have not been issued and/or the waiting periods after the notices have not passed.

Note:

For SB/SE International Operations, the authority is delegated to the Deputy Associate Chief Counsel (Strategic International Programs) or this person's delegate.

Note:

See IRM 1.2.44.4(14) and (15) *Delegation Order 5-3 (Rev. 1)* requiring Counsel's concurrence for a jeopardy levy issued after such waiting periods but at a time when the issuance of a levy is generally prohibited (i.e., see the exceptions described at IRM 5.11.3.1.1(5)).

4. When all appropriate approvals for issuance of a jeopardy levy are secured, the revenue officer may generate the levy on ICS, sign, and issue it.
5. When securing written approval, include Letters 2439/2439A(CG), *Notice of Jeopardy Levy and Right of Appeal*, and when warranted 2438(CG), *Jeopardy Levy Letter to Third Party Levy Recipient*, for the territory manager's signature. If approval is secured via ICS, then sign the letter, and write "on behalf of" above the territory manager's name and title.

If	Then
The notice and demand has not been issued, or it has been issued and 10 days have not passed yet.	The taxpayer must be given an immediate notice and demand for payment. See " Note " under subsection IRM 5.11.1.2.1(2)

For joint IMF returns, prepare two Letters 2439A(CG) that include the dual notice language. If an immediate notice and demand is required, also prepare two Forms 3552, *Prompt Assessment Billing Assembly*, Parts 3 & 4. Put both taxpayers' names on the letters and on the notice and demand.

6. Use Parts 3 & 4 of Form 3552 to make immediate notice and demand. Cross out "Please return this copy with your payment to the address shown above" at the bottom of the form. If a blank Form 3552 is not available, copy the text of one on IRS letterhead stationery or print one off the Publishing website. Have the territory manager sign this, too, when the notice of levy is approved or sign for the territory manager if approval is secured via ICS.
7. See IRM 1.2.44.4 *Delegation Order 5-3 (Rev. 1)* for all position titles with the authority to issue notices of levy when collection is in jeopardy and the pre-levy notices have not been issued and/or the waiting periods after the notices have not passed or the general levy prohibition exists.
8. If time constraints or other conditions prevent securing territory manager written or systemic approval, the territory manager can approve the levy by telephone. When this occurs, write a narrative ICS history entry or a memo to file including the information that would have been in the report described in (1). Send a copy of the memo to file to the territory manager.

5.11.3.4 (04-03-2013)

Forms and Letters for a Jeopardy Levy without a Jeopardy Assessment

1. The forms and letters that are needed depend on the timing of the jeopardy levy. The process is somewhat simplified because Letters 2439/2439A(CG) allow for the selection of the appropriate appeals right information (IRC 7429, CDP, or CAP).
2. Use the ICS L2439/2439A template to choose the correct appeal rights paragraph. In some situations the Service will offer the taxpayer appeal rights under both IRC 7429 and IRC 6330 and the taxpayer will choose which procedure to use. If, however, the Service previously issued a pre-levy CDP notice for a tax period covered by the jeopardy levy, the taxpayer is not entitled to a post-levy CDP notice and hearing for that tax period.
 - If 30-day period under IRC 6331(d)(2) has not passed then select the "**Under IRC Section 7429**" paragraph. (The 30-day period applies per Treas. Reg. § 301.7429.)
 - If 30-day period under IRC 6330(d)(1) has not passed then select the "**Under IRC Section 6330**" paragraph. (See IRM 5.11.3.6(3) regarding the procedure for issuing CDP notice with the jeopardy levy notification.)
 - If the above time periods have passed and/or the taxpayer has previously had a CDP hearing, then select the "**Collection Appeals Program**" paragraph.
3. When the levy includes multiple periods ensure the appeal rights paragraph selected applies to all periods listed on the L2439/2439A. This may require issuing more than one L2439/2439A for the corresponding periods to which the appeal rights applies. For example CDP appeal rights may apply for some periods but for other periods only CAP rights apply.
4. In addition to notices of levies and federal tax liens the forms and letters needed for jeopardy levies are:

If	And	Then prepare
Tax has been assessed.	The notice and demand normally required by IRC 6331(a) has not been issued or the notice and demand has been issued but ten days have not passed.	1. IMMEDIATE NOTICE AND DEMAND (Altered Form 3552) 2. LETTER 2439/2439A (CG) 3. LETTER 2438(CG) 4. PUBLICATION 594 5. PUBLICATION 1660 6. FORM 12153
The notice and demand has been issued.	It is between 10 and 30 days since issuance of the notice and demand, or 30 days have passed but a notice of intent to levy and notice of your right to a hearing has not been issued <u>or</u> the notice was issued and it is within the 30 (+15) days to request an appeal.	1. LETTER 2439/2439A(CG) 2. LETTER 2438(CG) 3. PUBLICATION 594 4. PUBLICATION 1660 5. FORM 12153
A jeopardy levy is to be issued during the general levy prohibition (5.11.3.1.1(5))	A notice of intent to levy and notice of your right to a hearing has not been issued <u>or</u> the notice was issued and it is within the 30 (+15) days to request an appeal.	1. LETTER 2439/2439A(CG) 2. LETTER 2438(CG) 3. PUBLICATION 594 4. PUBLICATION 1660 5. FORM 12153 6. FORM 9423
A jeopardy levy is to be issued during the general levy prohibition (5.11.3.1.1(5))	A notice of intent to levy and notice of your right to a hearing was issued and the 30 (+15) days to request an appeal have passed but it is within one year since issuance of the notice of intent to levy and right to a hearing. (Taxpayer may request an Equivalent Hearing).	1. LETTER 2439/2439A(CG) 2. LETTER 2438(CG) 3. PUBLICATION 594 4. PUBLICATION 1660 5. FORM 12153 6. FORM 9423
A jeopardy levy is to be issued during the general levy prohibition (5.11.3.1.1(5))	The taxpayer previously had a CDP hearing or one year has passed since the issuance of the notice of intent to levy and notice of your right to a hearing.	1. LETTER 2439/2439A(CG) 2. LETTER 2438(CG) 3. PUBLICATION 594 4. PUBLICATION 1660 6. FORM 9423

5. When the jeopardy levy is to be issued to a third party who is in possession of the taxpayer's property or property rights, prepare Letter 2438(CG) when warranted to include with the notice of levy. Additional time may be warranted based on the unique factors of each case. This letter asks the party in receipt of the levy to delay sending payment for 45 days because the taxpayer is entitled to certain appeal rights but warns not to let the taxpayer have the funds that have been attached during that period. This allows time to see if the taxpayer appeals. If the taxpayer successfully appeals, the levy may be released rather than issuing a manual refund.

Note:

Under IRC 6332(c) a bank surrenders deposits only after 21 days after service of levy and that period may be extended per Treas. Reg. 301.6332-3(d)(2).

6. The taxpayer must be told the reason collection is in jeopardy. Use Letter 2439/2439A(CG), to communicate this. Avoid saying anything in the letter that could identify a confidential informant.

If	Then

Form 3552 is required.	Give the taxpayer Letter 2439/2439A(CG), enclosures, and Form 3552 simultaneously.
Form 3552 is not required.	Give Letter 2439/2439A(CG) and enclosures to the taxpayer within five calendar days of serving the jeopardy levy.

5.11.3.5 (04-03-2013)

After the Jeopardy Levy Is Approved

1. If an immediate notice and demand is required, give the altered Form 3552 to the taxpayer and demand immediate payment. If personal delivery is not practical, send it by certified mail to the last known address. If a field visit to deliver the form reveals the address is not good, check IDRS for a new one.
2. When the immediate notice and demand is issued, or if it is not required:
 - File a Notice of Federal Tax Lien and
 - Serve the Notice(s) of Levy.
3. When warranted, include Letter 2438(CG) with each notice of levy.
4. Try to give the letter to the taxpayer in person. If a field visit to deliver the letter reveals the address is not good, check IDRS for a new one. The Letter 2439/2439A(CG) mailing method is the same as the Letter 1058 mailing method required in IRM 5.11.1.2.2.2, *Issuing Notice of Intent to Levy/Notice of a Right to a Hearing in CFF*.

Note:

For joint IMF returns, try to deliver letters to each taxpayer in person. Also, if an immediate notice and demand is required, deliver Form 3552 to each taxpayer. If this is not practical, mail the notices as described in IRM 5.11.1.2.2.3 *Issuing Notice of Intent to Levy/Notice of a Right to a Hearing for Joint IMF Bal Due Account*.

Reminder:

If the taxpayer has a representative authorized to receive notices and communication, a copy of correspondence to the taxpayer must also be given to the representative. If mailed, use regular mail for the copy.

5. If the taxpayer has not previously had a CDP hearing for any period on the jeopardy levy, the L2439/2439A(CG) serves as the CDP notice for that period. Input the CDP notice Transaction Code (TC) 971 codes manually using Form 4844, since CDP notice TC971 codes cannot currently be input for L2439/2439A(CG) systemically through ICS. See IRM 5.11.1.2.2.2, *Issuing Notice of Intent to Levy/Notice of a Right to a Hearing in CFF*, for guidance on the correct action code to use with TC 971.

5.11.3.6 (04-03-2013)

Appealing the Jeopardy Levy

1. In certain situations a taxpayer must be offered an appeal under IRC 7429 or in CDP under IRC 6330. See IRM 5.11.3.1(2) and (3), respectively. As indicated at IRM 5.11.3.4(2), the taxpayer may have the option of obtaining an administrative and judicial determination on the jeopardy action in an expedited proceeding under IRC 7429 or in a CDP hearing under IRC 6330 that makes the determination under IRC 6330(f).
2. The issue on review under IRC 7429 is whether the jeopardy levy is reasonable under the circumstances (collection is truly in jeopardy). If Appeals sustains the jeopardy levy, the taxpayer may obtain judicial review of the jeopardy levy. The decision of the court regarding reasonableness may not be appealed to a higher court.

Note:

Generally, district courts have exclusive jurisdiction over IRC 7429; however, if any of the liabilities on the jeopardy levy were in a statutory notice of deficiency that was timely petitioned before the making of the jeopardy levy, the taxpayer may, alternatively, obtain IRC 7429 review of all periods in the jeopardy levy by the Tax Court in an expedited procedure that only considers the reasonableness of the levy. See Tax Court Rule 56.

3. The issue on review in CDP is whether the Service's finding that use of a jeopardy levy under IRC 6330(f) was appropriate, is reasonable. If Appeals sustains the jeopardy levy, the taxpayer may obtain judicial review of the jeopardy levy issue as part of the CDP proceeding.

Note:

In addition to making a determination under IRC 6330(f) in the CDP proceeding, Appeals and the Tax Court may address issues involving the seizure of the property under the broad language of Treas. Reg. 301.6330-1(e)(3) Q&A-E1.

4. If a taxpayer challenges the reasonableness of the jeopardy levy under IRC 7429, the taxpayer is precluded from raising the jeopardy action under IRC 6330(f) in the CDP proceeding.
5. If the taxpayer has not received a pre-levy CDP notice, the IRS will provide a CDP notice within a reasonable amount of time after the jeopardy levy. Treas. Reg. 301.6330-1(a)(3) A-A5. Issuance of the L2439/2439A with enclosures meets the CDP notification requirement. If Form 3552 giving notice and demand has not been given the Service will issue the L2439/2439A(CG) containing CDP rights language at the same time as issuance of Form 3552. If Form 3552 has already been issued the Service will issue the L2439/2439A(CG) containing CDP rights language within 5 days of serving the jeopardy levy notice.
6. The taxpayer has 30 days from the date of the CDP notice given in L2439/2439A(CG) to request a CDP hearing. The taxpayer must request a CDP administrative hearing in order to request judicial review. See IRM 5.1.9, *Collection Appeal Rights*, for additional information about taxpayers' rights to appeal under IRC 6330.
7. In certain situations a taxpayer may be offered an appeal under CAP. See IRM 5.11.3.1.1(5). An appeal of a jeopardy levy under CAP is limited administratively due to the appeal rights afforded specifically to jeopardy levies under IRC 7429 and in CDP. See IRM 5.1.9.4.1, Exclusions from CAP. Taxpayers may not go to court if they disagree with Appeals' decision under CAP. See IRM 5.1.9, *Collection Appeal Rights*, for additional information on CAP.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 11. Notice of Levy

Section 4. Bank Levies

5.11.4 Bank Levies

- 5.11.4.1 [Overview](#)
- 5.11.4.2 [Holding Period](#)
- 5.11.4.3 [Multiple Signature Authority for a Bank Account](#)
- 5.11.4.4 [Amount that Must be Surrendered](#)
- 5.11.4.5 [Crediting Levy Payments](#)
- 5.11.4.6 [Income Deposited in a Bank Account](#)
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- 5.11.4.8 [Schools' Bank Accounts](#)
- 5.11.4.9 [Reimbursing Bank Charges Because of Erroneous Levies](#)
- 5.11.4.10 [Deposit Secured Loans](#)
- 5.11.4.11 [Bank Compliance and the Levy Process](#)
- Exhibit 5.11.4-1 [Department of Education Regional Offices](#)

Manual Transmittal

September 26, 2014

Purpose

(1) This transmits revised IRM 5.11.4, Notice of Levy, Bank Levies.

Material Changes

- (1) *IRM 5.11.4.1* is revised to add new section giving brief overview, subsequent sections renumbered.
- (2) *IRM 5.11.4.2* is revised to delete procedures for bank liaison as position was eliminated from territories.
- (3) *IRM 5.11.4.3(1)* example is revised to clarify wrongful levy claim procedures.
- (4) *IRM 5.11.4.3(2)* reminder is revised to correct reference to Publication 4528.
- (5) *IRM 5.11.4.4* is revised to add caution regarding property the statutory lien attaches.
- (6) *IRM 5.11.4.5* is revised to update definition for DPC 05.
- (7) *IRM 5.11.4.6(2)*, is revised to add reference to e911.
- (8) *IRM 5.11.4.9.1* is revised to correct name for Form 8546 and note joint signatures requirement.
- (9) *IRM 5.11.4.9.2(4)* is revised to add instructions for disallowance letter for bank charges.
- (10) *IRM 5.11.4.9.2(5)* is revised to remove requirement for GLS Counsel review of ALL claims.
- (11) *IRM 5.11.4.10* is revised to clarify actual notice or knowledge of the existence of the lien.
- (12) *IRM 5.11.4.11(1)* is revised to clarify who is authorized to receive personal service of a levy.
- (13) Updated Exhibit 5.11.4 -1 with current addresses for Department of Education Regional Offices.
- (14) Editorial changes made throughout.

Effect on Other Documents

IRM 5.11.4 dated September 14, 2010 is superseded.

Audience

This material is used by SB/SE revenue officers and AI advisors

Effective Date

(09-26-2014)

Rocco A. Steco
Acting Director, Collection Policy

5.11.4.1 (09-26-2014)

Overview

1. **Purpose:** This IRM describes the process of serving notices of levy on delinquent taxpayers' bank accounts. Specifically, the IRM section:

- A. Describes the holding period created to settle disputes about ownership of bank accounts before money is sent.
- B. Provides guidance on the amount the bank must send from the taxpayer's account and rules governing interest and fees.

- C. Outlines procedures for handling income deposited into a bank account and special considerations for mortgage-escrow accounts, schools' bank accounts.
- D. Establishes procedures for requesting reimbursing bank charges because of erroneous levy.
- E. Provides guidance on super-priority for financial institutions that take deposit secured loans.
- F. Describes banks' requirements for complying with the levy process and tips on banks' identification of taxpayers' property and rights.

2. **Audience:** This IRM is designed for use by revenue officers, Advisory & Insolvency (AI) advisors and their managers.

**5.11.4.2 (09-26-2014)
Holding Period**

1. Under IRC 6332(c) a bank must wait 21 calendar days after a levy is served before sending payment. Then, on the next business day, it must turn over the taxpayer's money. The depositor(s) can waive this waiting period. The bank will not send money that is subject to attachment or execution under judicial process. "Bank" includes credit unions, savings and loan associations, trust companies, and others described in IRC 408(n) and Treas. Reg. §301.6332-3(b).
2. During the holding period, a levy might be released, or the amount owed could decrease.

Note:

If the bank receives no release, it must send the payment after the holding period. No additional notice is required.

3. Consider the holding period when deciding how long to project the accruals on a bank levy.

**5.11.4.3 (09-26-2014)
Multiple Signature Authority for a Bank Account**

1. A levy served to a bank attaches to funds in a bank account for which the taxpayer has an unrestricted right to withdraw funds (signature authority) - even if multiple persons have signature authority for that bank account. As noted in Treasury Regulation 301.6332-1(c)(4) the unrestricted right to withdraw funds is an interest which is subject to levy.

Example:

A bank is served with a notice of levy for an unpaid tax liability due from the taxpayer in the amount of \$2,000. The bank holds \$2,000 in a checking account in the names of a taxpayer and a third party. Although all of the deposits into the account were made by the third party, the taxpayer has an unrestricted right to withdraw the funds from the account. The bank may send the Service the entire account balance at the end of the 21 day holding period. The bank is not liable to the third party for any amount, even if the third party proves that the funds in the account did not belong to the taxpayer, because the taxpayer's unrestricted right to withdraw the funds is an interest which is subject to levy. The third party may, however, seek the return of the funds from the United States by making an administrative wrongful levy claim under IRC 6343(b) or file a suit under IRC 7426(a)(1).

2. A non-liable third party may claim ownership of funds in a bank account when multiple people hold signature authority for that bank account. Treat this dispute as a potential wrongful levy. A wrongful levy is a levy that improperly attaches property belonging to a third party in which the taxpayer has no rights. See IRM 5.11.2.3.2, *Wrongful and Erroneous Levies*, for the procedures to follow in these situations.

Reminder:

For bank levies if additional time is needed beyond the 21 day hold period to determine ownership, request the bank hold the funds. Provide the potentially wrongfully levied party a deadline date for providing substantiation and provide the bank with a specific extension date to forward the funds.

Reminder:

Provide the potentially wrongfully levied party Publication 4528, *Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b)*.

**5.11.4.4 (09-26-2014)
Amount that Must Be Surrendered**

1. The bank must send the amount in the taxpayer's accounts. A bank levy attaches to any property or rights to property that belong to the taxpayer or on which there is a Federal tax lien, unless it is exempt. See IRC 6331, *Levy and Distraint*, for legal authority to levy. However, it must send no more than the amount shown on the notice of levy.

Note:

By law, banks cannot immediately honor the IRS levy. See IRM 5.11.4.2, *Holding Period*, for guidance on the holding period after a bank levy.

Caution:

Normally, a levy attaches to the same property that the taxpayer's IRC 6321 statutory lien attaches. There are two situations where a levy may attach where there is no statutory lien; one is property exempt from the lien (See IRM 5.17.2.6.5.4(1)); and two is where the statutory lien has been inadvertently released (See IRM 5.12.3.14).

2. The notice of levy only reaches the amount on deposit when the levy is received. Money deposited later is not surrendered, including deposits during the holding period. Another levy must be served to reach this money. Also, the levy only reaches deposits that have cleared and are available for the taxpayer to withdraw.
3. Levy proceeds must not be reduced by any fee charged by the bank for processing the levy. See 5.11.4.4.3 below.

**5.11.4.4.1 (09-26-2014)
Interest on Levy Proceeds**

1. The bank must turn over the interest earned on the account(s) during the holding period using the same method for figuring the interest it normally would. Even so, the amount paid is no more than the amount shown on the levy.

If	And	Then
A bank levy for \$10,000 is served.	The taxpayer has \$5,000 in the bank.	The bank sends \$5,000 plus interest earned during the holding period.
A bank levy for \$10,000 is served.	The taxpayer has \$25,000 in the bank.	The bank sends \$10,000. No interest is sent. Only \$10,000 is frozen during the holding period.
A bank levy for \$10,000 is served.	The taxpayer has \$9,999 in the bank.	The bank sends \$10,000 if at least \$1 of interest is earned on the account during the holding period.

2. The date the bank normally credits interest to accounts does not matter. If interest is earned, it must be paid over as shown in (1).
3. To compute the interest, the bank treats the Service as though:

- The Service is the depositor.
- The money is left on deposit during the holding period.
- On the day the money is being sent, the depositor closes the account.

5.11.4.4.2 (09-26-2014)

Bank Methods Used to Avoid Paying Interest

1. Before interest was paid on levies, some banks:
 - Moved the levied money from the depositor's account to another account while the depositor was notified, and
 - Paid the depositor no interest while the money was in this "holding" account.
2. Some banks have rules that they will not pay interest to depositors during holding periods for levies.
3. Both of these methods may result in a change to the terms of the account and not treating the Service as the depositor because of the levy. These are not grounds to avoid paying interest on levy proceeds.

5.11.4.4.3 (09-26-2014)

Fees for Processing Levies

1. Many banks charge their customers a fee for processing levies. The bank is not entitled to reduce the levy proceeds to collect the fee.

If	And	Then
A levy is served for \$1000.		The taxpayer has \$1500 in the bank. The bank must send \$1000 and collect its fee from the other \$500.
A levy is served for \$1000.		The taxpayer has \$800 in the bank. The bank must send \$800 (plus interest).

2. Letter 4030(CG), *Letter to Bank to Remit Service Charge*, is available for use when you learn that the levy proceeds have been reduced by a processing fee. The letter informs the financial institution that a charge against levy proceeds is contrary to the provisions of the Internal Revenue Code and failure to remit an amount equal to the service charge may result in the Service filing a suit for failure to honor a levy.

5.11.4.5 (09-26-2014)

Crediting Levy Payments

1. Credit the levy payment on the date it is received.
2. Credit the money in the most advantageous way to the government. Generally, apply the money to the oldest assessment first. The taxpayer can not designate how the money is applied because this is not a voluntary payment.
3. Use designated payment code (DPC) 05 for levy payments received from a third party in response to a Notice of Levy that do not include payments from the taxpayer as a result of a levy.

Example:

A bank levy is served. The bank remits the levy amount after holding for the required 21 day period. Use DPC 05.

5.11.4.6 (09-26-2014)

Income Deposited in a Bank Account

1. Part of taxpayer's income is exempt from levy. See IRM 5.11.5.4 *Exempt Amount*. Once income is deposited in a bank, there is no exempt amount. On the other hand, unlike a levy on wages and salary, a bank levy is not continuous.
2. When an entire paycheck is deposited, an economic hardship may exist because all of the money is levied. If this happens, release the levy in whole or in part, as appropriate, to avoid creating an economic hardship.

Note:

See IRM 5.11.2.3.1.4, *Economic Hardship*, for assistance in determining when a release of levy is required due to economic hardship. A levy is required to be released when the Service determines the levy is creating an economic hardship, i.e., the levy will cause the individual to be unable to pay their reasonable necessary living expenses.

Note:

Refer taxpayers to the Taxpayer Advocate Service (TAS) (see IRM Part 13, *Taxpayer Advocate Service*) when the contact meets TAS criteria (IRM 13.1.7, *Taxpayer Advocate Service (TAS) Case Criteria*) and you can't resolve the taxpayer's issue the same day. The definition of "same day" is within 24 hours. "Same day" cases include cases you can completely resolve in 24 hours, as well as cases in which you have taken steps within 24 hours to *begin* resolving the taxpayer's issue. Do not refer "same day" cases to TAS unless the taxpayer asks to be transferred to TAS and the case meets TAS Criteria. Refer to IRM 13.1.7.4 *Same-Day Resolution by Operations*. When you refer cases to TAS, use Form 911 or an e911, *Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)*, and forward to TAS.

5.11.4.7 (09-26-2014)

Mortgage Escrow Accounts

1. Banks generally require a portion of property taxes and insurance to be paid with each mortgage payment. This is held in escrow until the tax and insurance are paid. As long as the taxpayer can not withdraw money in these accounts, a levy can not reach it.
2. Sometimes the account is overpaid. The taxpayer may have the option to get this refunded. A levy can reach this.
3. Also, when property is sold, there may be escrow money that will be refunded to the taxpayer. A levy can reach this, too.

5.11.4.8 (09-26-2014)

Schools' Bank Accounts

1. Bank accounts may be levied to collect taxes that colleges, universities, and other schools owe. These schools' accounts may include money belonging to the Department of Education (ED). ED gives money to some schools for student aid. This is not the school's money.
2. If the bank honors the levy process the payment and take the following actions:
 - A. Call the regional ED office, and tell them about the levy. See Exhibit 5.11.4-1. Mail a copy of the levy to the regional office.
 - B. Allow ED 60 days to look into this and certify its interest in the money. Another time period can be agreed on, as well.

C. ED will send a notice of the amount and nature of its money in the account. The letter will explain how it determined this.

D. Refund ED's money.

3. If the bank does not honor the levy because of ED funds in the account, take the following actions:

A. Call the regional ED office, and tell them about the levy. Mail a copy of the levy to the regional office.

B. Allow ED at least 60 days to look into this.

C. Release or enforce the levy after ED certifies its interest in the account.

4. A bank might not honor a levy on a school official because of ED's interest in an account. Handle this as in (3).

5.11.4.9 (09-26-2014)

Reimbursing Bank Charges Because of Erroneous Levies

1. Policy Statement P-5-39 (IRM 1.2.14.1.11) says taxpayers may be reimbursed for bank charges caused by erroneous levies.

- The Service must have caused the error.
- Taxpayers must not have contributed to continuing or compounding the error.
- Before the levy, taxpayers must have responded timely to contacts and given information requested to establish their position.

Example:

The taxpayer paid the amount owed, but the payment was not posted timely.

Example:

An installment agreement was secured, but it was not loaded on IDRS timely.

2. Reimburse the taxpayer for fees the bank charged for

- Processing the levy, and
- Bad check charges directly caused by the levy

Reminder:

See IRM 3.17.10.5, *Reimbursement of Bank Charges Due to Service Loss or Misplacement of Taxpayer Checks*.

5.11.4.9.1 (09-26-2014)

Filing the Claim

1. The claim must be filed within one year after the fees are charged.

2. The claim is filed on Form 8546, *Claim for Reimbursement of Bank Charges*.

Note:

Joint bank account levied must include both taxpayers' signatures on Form 8546.

5.11.4.9.2 (09-26-2014)

Processing the Claim

1. Approving officials are shown in IRM 1.2.40.5, *Delegation Order Number 1-4* Authority is delegated to Compliance Territory Managers and Compliance Technical Support Managers (second level).

2. The approving official may ask for a memorandum to explain what happened. This may not be needed if:

- The case file is readily available.
- An employee familiar with the case can orally brief the approving official.
- The claim is too small to warrant a memorandum.

3. A claim may be missing some of the required information. Rather than just rejecting it, try to get the missing information from the taxpayer.

Example:

Proof of the bank charges must be included with the claim.

4. If the claim does not meet all of the criteria in IRM 5.11.4.9, send a brief disallowance letter to the taxpayer indicating the reason for the disallowance.

Note:

There are no Appeal Rights for denial of Claim for Reimbursement of Bank Charges.

5.11.4.9.3 (09-26-2014)

After the Claim is Approved

1. If the amount that the taxpayer claims is approved, send Letter 2180, *Claim for Bank Charge - Amount Requested Approved* to the Beckley Finance Center (BFC), and enclose Form 8546, *Claim for Reimbursement of Bank Charges*, and Financial Management Service (FMS) Form 197. Form 8546 needs to be sent so BFC has a signed agreement from the taxpayer accepting the payment as settlement for the claim.

2. If the claim is approved for an amount that is different from what the taxpayer claimed, send Letter 2179, *Claim for Bank Charge - Approved Amount Different* to the taxpayer. Enclose three copies of FMS Form 197 with the letter. The FMS form includes a place for the taxpayer to sign accepting the amount as settlement of the claim. After the signed copies are received from the taxpayer, send Letter 2180 to BFC, and enclose the Forms 197.

3. The FMS forms are available at the web site <http://www.fms.treas.gov/judgefund/index.html>.

4. If the claim will be paid by check, rather than electronic funds transfer (EFT), enter the taxpayer's address in the space on Form 197 for, "Agency/Office Mailing Address."

Note:

Remind the taxpayer, payment by EFT is faster, safer, and more convenient.

5. Each Form 197 will be sent for payment on a Form 3210, *Document Transmittal*, and have a unique claim number. The number will be the first initial of the Business Operating Division that issues the number, then the Area Office Number, followed by the fiscal year (FY) the claim is approved and a sequential number.

Example:

The first claim approved in SBSE Area Office 23 during FY 2009 is S-23-2009-1.

6. At the Area Director's discretion, claim numbers can be issued by each territory. If that is done, the territory number will be added after the Area Office Number, so each claim will have a unique number.

Example:

The first claim approved in Territory 01 of SBSE Area Office 23 during FY 2009 is S-23-01-2009-1.

5.11.4.10 (09-26-2014) Deposit Secured Loans

- IRC § 6323(b)(10) provides a super-priority status for a financial institution as described in IRC sections 581 or 591 that takes a deposit, share, or other account, to the amount of the loan made by the institution, provided the following conditions exist,
 - The loan is made to a depositor;
 - The depositor pledged an account as collateral;
 - The institution making the loan and the institution holding the account are one and the same;
 - Even though a Notice of Federal Tax Lien has been filed, the lien shall not be valid unless the financial institution had actual notice or knowledge of the existence of the lien; and
 - The loan is a commercial loan.
- The bank is not required to have exclusive control over the deposit account; therefore, the debtor may have access to funds in the account, but the bank retains a super-priority interest to the extent of the funds on deposit.
- Despite their similarity to checking accounts, cash management accounts held by a broker are specifically excluded from provisions relating to deposit secured loans.
- The bank's super-priority is not a defense to a levy. However, the levy may be released in whole or in part if the bank satisfactorily proves the bank meets the state requirement for having a security interest and alleges that it had no actual notice or knowledge of the existence of the Federal tax lien when the loan was made. If the bank fails to honor the levy and does not prove the above points, then consider initiating a suit for failure to honor a levy.

5.11.4.11 (09-26-2014) Bank Compliance and the Levy Process

- While banks may request all notices of levy by mail be sent to a centralized address, this does not mean a notice of levy cannot be served in person at a local branch or office. A notice of levy may be served in person upon a person authorized to accept receipt. The representative of a financial institution who signs the acknowledgement for receiving the levy is considered an authorized recipient. The expectation is the authorized person will acknowledge receipt, immediately process the levy and freeze the affected accounts. If a bank employee refuses to accept service, leave the levy at the bank and inform the employee that the bank will be liable for all funds on deposit as of that date and time. See IRM 5.11.2.2.3, *Serving Notices of Levy in Person*.

Note:

"Bank" includes credit unions, savings and loan associations, trust companies, and other entities described in IRC 408(n).

- If a levy has been served or is about to be served and the bank employee refuses to provide account balance information or other records as provided by IRC 6333, consider following up the levy with a summons for information to determine if the correct amount of levy proceeds were remitted. See IRM 25.5.2.4, *Description of Information Requested*. If a lesser amount was remitted, the bank will be liable for the difference. See IRM 5.17.4.12, *Action to Enforce a Levy*.
- A summons may also be used to obtain relevant information to determine if the bank did a thorough search for all accounts belonging to the taxpayer.
- When serving a notice of levy by certified mail, return receipt requested, the date of delivery on the receipt is considered the date the levy is made.
- When serving a notice of levy by regular mail, the date and time the authorized person signs the levy form is considered the date and time the levy is made in the absence of proof to the contrary.
- Collection Field function local management should attempt to resolve recurrent compliance problems with a local bank.

5.11.4.11.1 (09-26-2014) Bank Identification of Property and Rights to Property

- The instructions on Form 668-A(c)(DO), *Notice of Levy*, require the recipient to:

"Make a reasonable effort to identify all property and rights to property belonging to this person. At a minimum, search your records using the taxpayer's name, address, and identifying number(s) shown on this form."

The instructions do not require a perfect match of all information. In the event there is a question regarding what the levy attaches, the bank should contact the revenue officer or IRS employee whose name appears on the levy.

Note:

A bank levy attaches to the property of the taxpayer named on the levy; even though the TIN on the bank account does not match the TIN on the levy. The TIN is not the sole indicator of the taxpayer's property or right to property in a bank account. Multiple factors may be considered to validate ownership, including similar names, addresses, entity types and other identifying characteristics.

- In some cases, it may be reasonable for the depository to identify an account based on a single matching identifier. In other cases, it may be appropriate for the depository to corroborate one matching identifier by matching one or more additional identifiers. In the following examples, it would be reasonable for the depository to call the contact number on the levy for guidance.

Example:

A levy is served against:
Ziegfried A. Corundum (fictitious name)
d/b/a Trout Motors
123 First St.,
Anywhere, US 11111
EIN: 10-1234567

The depository has an account under:
Ziegfried A. Corundum
d/b/a Ziggy's Pizza
456 B Ave.,
Anywhere, US 11111
EIN: 11-4567890

Reasonable Determination: The unusual name alone is sufficient for a match. If there is a question such as whether the name is a "junior" or a "senior" or whether the lack of any middle initial makes a difference, the depository should call the contact number on the levy for guidance.

Example:

A levy is served against:
B & Z Enterprises, Inc. (fictitious name)
123 First St.,
Anywhere, US 11111
EIN: 10-1234567

The depository has an account under:
B & Z Enterprises, Inc.
123 First St.,
Anywhere, US 11111
EIN: 11-3456789

Reasonable Determination: The different EIN numbers do not invalidate a positive identification where the name is uncommon and the address is the same. If the depository still needs additional guidance, a call should be made to the contact number on the levy.

Example:

A levy is served against:
X & Z Enterprises (fictitious name)
123 First St., Anywhere, US 11111
EIN: 10-1234567

The depository has an account under:
X & Z Enterprises, Inc. (fictitious name)
123 First St., Anywhere, US 11111
EIN: 10-1234567

< br/>Reasonable Determination: The presence of "Inc." on the account should not invalidate a match without a telephone call to the contact number on the levy for clarification.

Example:

A levy is served against:
Calcite Magic Cleaners (fictitious name)
123 First St.,
Anywhere, US 11111
EIN: 10-1234567

The depository has an account under:
John Doe
Calcite Magic Cleaners
P.O. Box 456,
Anywhere, US 11112
EIN: 10-1234567

Reasonable Determination: In light of the identical names of the business, it would be reasonable for the depository to call the contact number on the levy for clarification.

3. Consult with your manager, AI Advisors, and/or area counsel if the taxpayer's property or right to property in the bank account is in question. After consulting with your GM to determine the appropriate action, review IRM 5.11.2.2.9 , *Refusing to Comply with a Levy*, for guidance.

**Exhibit 5.11.4-1
Department of Education Regional Offices**

(Reference 5.11.4.7)

Region I : CT, MA, ME, NH, RI, VT
Regional Director/Institutional Review Branch Chief
U. S. Department of Education
Federal Student Aid
POCH Building, 5 Post Office Square, 9th Floor, Room 24
Boston, MA 02110
(617) 289-0100

Region II: ?NJ, NY, PR, VI
Regional Director/Institutional Review Branch Chief
U. S. Department of Education
Federal Student Aid
32 Old Slip, 25th Floor
New York, NY 10005
(646)-428-3906

Region III: DE, DC, MD, PA, VA, WV
Regional Director/Institutional Review Branch Chief
U. S. Department of Education
Federal Student Aid
The Wanamaker Building,
100 Penn Square East, Suite 505
Philadelphia, PA 19107
(215) 656-6010

Region IV: AL, FL, GA, KY, MS, NC, SC, TN
Regional Director/Institutional Review Branch Chief
U. S. Department of Education
Federal Student Aid
61 Forsyth Street, SW
Suite 19T40
Atlanta, GA 30303
(404) 974-9450

Region V: IL, IN, MI, MN, OH, WI
Regional Director/Institutional Review Branch Chief
U. S. Department of Education
Federal Student Aid
500 W Madison
Room 1427
Chicago, IL 60661
(312) 730-1700

Region VI: AR, LA, NM, OK, TX
Regional Director/Institutional Review Branch Chief
U. S. Department of Education
Federal Student Aid
1999 Bryan Street, Suite 1510
Dallas, TX 75201-3136
(404) 974-9450

Region VII: IA, KS, MO, NE
Regional Director/Institutional Review Branch Chief
U. S. Department of Education
Federal Student Aid
1010 Walnut, Suite 452
Kansas City, MO 64106
(816) 268-0404

Region VIII: CO, MT, ND, SD, UT, WY
Regional Director/Institutional Review Branch Chief
U.S. Department of Education
Federal Student Aid
1244 Speer Boulevard, Suite 615
Denver, CO 80204-3582
(303) 844-3544

Region IX: AZ, CA, HI, NV, the Pacific Islands of Guam, Micronesia, Marshall Islands, Northern Marianas, Palau, American Samoa
Regional Director/Institutional Review Branch Chief
U.S. Department of Education
Federal Student Aid
50 Beale St
Suite 9700
San Francisco, CA 94105-1863
(415) 486-5700

Region X: AK, ID, OR, WA
Regional Director/Institutional Review Branch Chief
U.S. Department of Education
Federal Student Aid
915 2nd Avenue, Room 3362
Seattle, WA 98174-1099
(206) 607-1655

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Part 5. Collecting Process

Chapter 11. Notice of Levy

Section 5. Levy on Wages, Salary, and Other Income

5.11.5 Levy on Wages, Salary, and Other Income

- 5.11.5.1 [Overview](#)
- 5.11.5.2 [Employer Threatens to Fire Taxpayer Because of a Levy](#)
- 5.11.5.3 [Continuous Effect of Levy on Salary and Wages](#)
- 5.11.5.4 [Exempt Amount](#)
- 5.11.5.5 [Levy Payments](#)
- 5.11.5.6 [Continuous Levy](#)
- 5.11.5.7 [Defaulted/Terminated Systemically Monitored Levy Received in the Field](#)

Manual Transmittal

December 07, 2015

Purpose

(1) This transmits editorial revision to IRM 5.11.5, Notice of Levy, *Levy on Wages, Salary, and Other Income*, to incorporate editorial changes based on ACA provision 1501.

Material Changes

(1) Added reference to the mirrored Shared Responsibility Payment (SRP) Master File Tax Code (MFT) 65 assessment.

- *IRM 5.11.5.5(2)*, this section has been updated for the Affordable Care Act (ACA) Provision 1501 to not apply surplus levy proceeds to Shared Responsibility Payment (SRP) mirrored MFT 65 modules.

(2) Editorial changes were made throughout this IRM to update website addresses, legal references, and IRM references.

Effect on Other Documents

This IRM supersedes IRM 5.11.5, dated November 26, 2014.

Audience

This material is used by SB/SE Collection Field function revenue officers and tax examining technicians in SB/SE Collections Centralized Case Processing.

Effective Date

(01-01-2016)

Kristen Bailey
Director, Collection Policy

5.11.5.1 (09-26-2014)

Overview

1. An individual's wages, salary, and other income can be levied. Wages, salary, and other income include payment for personal services in a work relationship. This IRM section provides revenue officers an overview of the levy on wages, salary, and other income including the following:
 - A. Threats of loss of employment because of levy
 - B. Authority for continuing levy on salary and wages per IRC 6331(e)
 - C. Procedures for determining an individual taxpayer's wages, salary, and other income, that are exempt from levy
 - D. Crediting levy payments to the taxpayers account
 - E. Processing continuous levies for disposition

5.11.5.2 (01-01-2006)

Employer Threatens to Fire Taxpayer Because of a Levy

1. Sometimes an employer threatens to fire an employee to avoid handling a levy. This might be a violation of 15 USC 1674.
2. If the employer fires the taxpayer because of this, the employer might be fined not more than \$1000 or imprisoned for not more than one year, or both.
3. Refer the taxpayer to the Wage and Hour Division of the Department of Labor (DOL). DOL, not IRS, must decide if the employer violated the law.

5.11.5.3 (09-26-2014)

Continuous Effect of Levy on Salary and Wages

1. Unlike other levies, a levy on a taxpayer's wages and salary has a continuous effect. It attaches to future payments, until the levy is released. Wages and salary include fees, bonuses, commissions, and similar items. Except for levies on specified payments listed in IRC 6331(h) all other levies only attach to property and rights to property that exist when the levy is served. See *IRM 5.17.3.9.20, Salary*.

Example:

If a bank account is levied, it only reaches money in the account when the levy is served. It does not reach money deposited later.

Example:

For periodic payments made on a recurring basis to a partner as compensation for services rendered to the partnership will constitute "salary or wages" subject to a continuous levy.

- 2. When other income is levied, the levy reaches payment the taxpayer has a fixed and determinable right to. If the taxpayer's right to that payment is not dependent upon the performance of future services, then the levy will reach the future payments as well. Also see IRM 5.11.6.1, *Retirement Income*.

Example:

A Form 668-A is issued to levy an author's royalties. The author has a fixed and determinable right to royalties for books that have already been published. The levy reaches royalties for sales of those books in the future. The levy does not reach royalties for books that are written and published later. A new levy must be served to take those royalties.

Example:

A Form 668-W is issued to levy a taxpayer's retirement income. The taxpayer has a fixed right to the future payments; therefore, the levy remains in effect until it is released.

- 3. Also, see IRM 5.11.6.12, *Levy on Non-Liable Spouse in a Community Property State* for guidance when the wage levy on the non-liable spouse is not continuous.

5.11.5.4 (09-14-2010)

Exempt Amount

- 1. Part of the individual taxpayer's wages, salary, (including fees, bonuses, commissions and similar items) and other income, as well as retirement and benefit income, is exempt from levy.
- 2. The weekly exempt amount is:
 - A. The total of the taxpayer's standard deduction and the amount deductible for exemptions on an income tax return for the year the levy is served.
 - B. Then, this total is divided by 52.
- 3. Income that is not paid weekly is prorated, so the same amount is exempt.
- 4. In addition, the amount the taxpayer needs to pay court ordered child support entered prior to the levy is exempt.

Note:

The support order can originate from a court or administrative process under the laws and procedures of a state, territory or possession.

Reminder:

If support is allowed, the same child can not be claimed as an exemption for figuring the exempt amount. *IRM 5.11.5.4(2)* above.

If	Then
The taxpayer has already shown proof of the required child support payment	Write on the levy form, "Under section 6334 (a)(8) of the Internal Revenue Code, \$ _____ is exempt from this levy."
The taxpayer shows proof of the child support after the levy is served	Release enough of the levy so the support can be paid.

- 5. The taxpayer is not entitled to the support exemption unless the support is being paid.
 - Consider getting the taxpayer to have the child support payment withheld and sent directly to the person with custody.
 - Or, the taxpayer may make the child support payment through the Service, and the Service will forward the payment. When there is no open assignment, have the payments sent through Submission Processing. This may happen if the payments are being monitored in the campus.

5.11.5.4.1 (09-26-2014)

Claiming the Exempt Amount

- 1. The Notice of Levy on Wages, Salary, and Other Income (Form 668-W(c)(DO), Form 668-W(ICS), and Form 668-W(ACS)) was developed for use when an individual may be entitled to the minimum exemption from levy in IRC 6334(a)(9) and includes a Statement of Exemptions and Filing Status. The employer gives the statement to the taxpayer to complete and return within three days. If it is not received by then, the exempt amount is figured as if the taxpayer is married filing separate with one exemption. The taxpayer can give the statement to the employer later to change the exempt amount.

Note:

The employer needs to use this statement rather than the employee's W-4, Employee's Withholding Certificate. Taxpayers may claim different exemptions for withholding from those claimed on their return.

- 2. Publication 1494, *Tables for Figuring Amount Exempt From Levy on Wages, Salary, and Other Income - Forms 668-W(ACS), 668-W(c)(DO) and 668-W(ICS)*, is sent with the levy to help figure the exempt amount.
- 3. The taxpayer can give a new statement to the employer later to have the exempt amount recomputed.

Example:

The taxpayer's filing status or personal exemptions may change.

Example:

There may be a change in exempt rates in a new year.

- 4. The statement is completed under penalty of perjury. Generally, accept the information on the statement, unless there is reason to question it. If exemptions are disallowed, notify the employer and the taxpayer in writing. The taxpayer can provide evidence that the statement is right and request managerial review. Include a statement that the taxpayer may provide evidence to prove the statement is accurate and may request a managerial review of the disallowance.

5.11.5.4.2 (09-14-2010)

Employers with Centralized Payrolls

- 1. Some employers have a centralized payroll, so the payroll is not handled where most employees work.

2. Consider mailing the Statement of Exemptions and Filing Status directly to the taxpayer. This avoids the delay of the employer re-mailing it.

A. Send to the employer Part 1 of the levy form and Notice 484, *Instructions to Employer with Centralized Payroll System for Processing Statement of Exemptions and Filing Status*.

B. Send to the taxpayer the other parts of the levy form and Notice 483, *Instructions to Employee Paid through Central Payroll System for Submitting Statement of Exemptions and Filing Status*.

**5.11.5.4.3 (06-17-2008)
Joint Liabilities**

- For joint liabilities, generally levy the income of the spouse with the larger income.
- Levy both incomes only in flagrant cases of neglect or refusal to pay. Secure group manager approval to issue notices of levy on the income of both spouses' living in the same household. If taxpayers are separated, consider collecting from both spouses' income rather than collecting from one spouse's income.

Note:

See IRM 5.11.6.2(6) for examples of flagrant cases.

If	And	Then
The taxpayers are filing as married filing jointly	Both taxpayers' incomes are levied	Only one of them can claim the standard deduction for figuring the exempt amount.
The taxpayers are filing with any other filing status	Both taxpayers' incomes are levied	Both can claim the standard deduction for their filing status.
The taxpayers are remarried and filing as married filing jointly with the new spouses.	Both taxpayers' incomes are levied	Both can claim the standard deduction for their filing status.

- When both spouses' incomes are levied, neither spouse can claim the other one as a personal exemption.

**5.11.5.4.4 (09-26-2014)
Taxpayers with More Than One Source of Income**

- Consider income from all sources when a taxpayer has more than one income source.

If	And	Then
The taxpayer is getting the exempt amount from one source of income that is levied	Another source of income is levied, too	Include Letter 1697 with the second levy to tell the employer not to allow any exempt amount.
If the taxpayer has a source of income that is not levied	That source of income is at least as much as the exempt amount	Letter 1697 can be included with a levy on another source of income to tell the employer not to allow the exempt amount.

Note:

This section applies when there is a second source of income paying at least the exempt amount to the taxpayer named on the levy. Spousal income does not count as a second source of income in this situation.

- Use ICS templates to generate Letter 1697.

**5.11.5.4.5 (09-14-2010)
Taxpayer's Payroll Deductions**

- A levy legally attaches the taxpayer's gross income minus the exempt amount; however, see IRM 1.2.14.1.6 *Policy Statement 5-29*. By policy, a levy only attaches the taxpayer's usual take home pay.

Exception:

Voluntary deductions can be disallowed, if they are so large they defeat the levy.

- Generally, allow the taxpayer to maintain deductions they already have when the levy is served. Notify the employer and the taxpayer of deductions that must stop while the levy is in effect. The taxpayer can request managerial review.

Example:

If the taxpayer has a deduction for a savings account or used to buy shares in a mutual fund, this voluntary deduction should be stopped and those funds applied to the levy remittance.

- Generally, employers should not allow new voluntary deductions after receiving the levy. Exceptions can be allowed on a case by case basis, with the Service's approval.

Example:

The taxpayer cannot join the company insurance plan until on the job for six months. The levy is served before then. The amount of the premium is not unreasonable and is allowable.

**5.11.5.4.6 (09-26-2014)
Severance Pay**

- The taxpayer may leave a job and get severance pay.

If	Then
Severance pay is attributable to pay for a period of time	The exempt amount is based on that time period.
Severance pay is not attributable to pay for a period of time	The amount exempt for one pay period is used.

Example:

Severance pay is one week's pay for each year on the job. A taxpayer on the job for ten years gets ten weeks' severance pay. The taxpayer gets a paycheck every two weeks for ten weeks. Two weeks' exempt amount is subtracted from each check, just like the person was still working for ten weeks.

Example:

Severance pay is one week's pay for each year on the job. A taxpayer on the job for ten years gets ten weeks' severance pay. The taxpayer gets the amount in one payment after their employment has ended. The payment is attributable to ten weeks' pay. The employer is just making an "advance" payment, instead of writing a series of checks. The taxpayer gets ten weeks' exempt amount.

Example:

A taxpayer gets a lump sum that is not attributable to a period of time. This could be, for example, an incentive payment to retire early. The exempt amount is based on the taxpayer's regular pay period. If there is no regular pay period, use one week's exempt amount. Similarly, if the taxpayer gets \$1000 for each year on the job, this is not attributable to pay periods. A person getting \$10,000 for being on the job ten years does NOT get ten years' exempt amount.

2. This assumes the person is not already getting the exempt amount for a pay period at the same time. If both are being received, the taxpayer does not get the exempt amount twice.

Example:

The taxpayer is paid for both the last pay period worked and severance on the last pay day. The taxpayer only gets the exempt amount once.

**5.11.5.5 (01-01-2016)
Levy Payments**

1. Credit levy payments on the date they are received. Apply the money in the most advantageous way to the government. Generally, apply it to the oldest assessment first. The taxpayer can not designate how to apply the money because this is not a voluntary payment.
2. Surplus levy proceeds in excess of the periods covered by the levy, may be applied to liabilities not listed on the levy. If the periods listed on the original levy have been satisfied; and
 - Any surplus proceeds have been applied to any liabilities that were not listed on the levy; and
 - Liabilities remain outstanding for periods not covered by the original levy,

then release the original levy and prepare and issue a new notice of levy to the levy source for the remaining liabilities. Surplus levy proceeds may not be applied to individual SRP modules (shown as MFT 35 or MFT 65). Please note that all statutory requirements, such as the sending of a notice of intent to levy and a right to a hearing, must be met with regard to the new notice of levy if the taxpayer has not had an opportunity for a CDP hearing under IRC 6330 for the remaining liabilities. See IRM 5.11.1.3, *Pre-Levy Actions* for guidance regarding the pre-levy statutory requirements.

3. Use designated payment code (DPC) 05 for levy payments received from a third party in response to a Notice of Levy. Do not use for payments from the taxpayer as a result of a levy.
4. Because payments for levies on wages and salary may be small, determine if the amount owed should be paid from the levy proceeds. When the payments are small compared to the amount owed, though, consider other enforced collection.

If	And	Then
Payments are being monitored in CFF	One more payment is expected to pay off the amount owed	Use Form 668-D, Release of Levy/Release of Property from Levy, to give the employer a payoff figure and release the levy after that is paid.
At least two payments are received	No additional collection is warranted	Consider transferring the case for monitoring. Get managerial approval, first.

**5.11.5.6 (09-26-2014)
Continuous Levy**

1. Even though some continuous levies are monitored in status 60 on IDRS, they are not installment agreements. Do not use a continuous levy as a way to set up an unofficial installment agreement. In order to ensure a distinction is maintained between a continuous levy and an installment agreement, it is important to follow the procedures in this subsection.

**5.11.5.6.1 (09-26-2014)
Monitoring Levy Payments**

1. If a productive levy source is the only source of collection, group managers should approve the monitoring of levy payments as continuous by signing Form 4844, *Request for Terminal Action*, after ensuring the procedures outlined below have been followed. Group manager approval of the continuous wage levy In ICS is sufficient to reflect the action is authorized.
2. The following types of levies can be monitored in a campus or Centralized Case Processing (CCP).
 - A. Continuous levies on wages and salaries
 - B. Levies that reach a taxpayer's fixed right to a series of future payments, e.g., benefit and retirement income. See IRM 5.17.3.4.2, *Effect of Levy*.
3. If levy payments are received monthly, then transfer for monitoring after two consecutive levy payments have been received.

Note:

At local management option, accounts may be transferred after one remittance if payments will be of an equal amount and will be remitted monthly.

4. If levy payments are received weekly or bi-weekly, then transfer for monitoring after 60 days.
5. See IRM 5.1.11.7, *Delinquent Return Investigation Closures*, to close the ICS Del Ret module when the Bal Dues are to be resolved by a continuous levy.

Reminder:

Del Rets and Bal Dues in status 60 can coexist on IDRS. An entity can have an open Del Ret on one module and status 60 on other modules. Del Rets do not default status 60 Bal Dues.

6. Prior to transferring for systemic or manual monitoring,
 - Ensure the payor (levy source) understands the levy remains in effect after the transfer.
 - Ensure the payor understands where to send the levy payment.
For a continuous levy that will be systemically or manually monitored, payments should be sent to the campus designated for the Area. See the Servicewide Electronic Research Program (SERP), *Who/Where, Where to File – Forms and Payments, Campus Balance Due Accounts – Where to Send Payments*, http://serp.enterprise.irs.gov/databases/who-where.dr/balance_due_accounts.htm. Use the State address listed under "Without the CP521/523 Notice."
 - Instruct the payor that payments should be payable to "United States Treasury."

- Request the check or draft reflect the taxpayer name and identification number, the tax periods included on the levy form, and "Levy Proceeds."

Note:

Letter 5112, *Payment Instructions to Third Party Responding to Notice of Levy on Wages, Salary and Other Income* may be sent to third parties responding to Form 668-W(c)(DO), *Notice of Levy on Wages, Salary and Other Income*. The letter provides the recipient with response and payment instructions, as detailed in *IRM 5.11.5.6.1(6)*.

7. If the taxpayer contacts the IRS requesting a release of levy after the continuous levy has been set up follow procedures in *IRM 5.11.2.3, Releasing Levies* to determine if the levy should be released. The taxpayer may appeal as outlined in *IRM 5.1.9, Collection Appeal Rights*. Additionally, see *IRM 5.1.9.4.1(8)* for referral to Taxpayer Advocate Service.

5.11.5.6.2 (09-26-2014)

Systemic Monitoring of Continuous Levy Payments

1. Wage levies that result in regular remittances of about the same amount, may be monitored systemically if the earliest CSED is later than 18 months. Request a review date:

- No more than five years in the future,
- Levy with payment received from one levy source,
- 18 months prior to the earliest CSED if the earliest CSED is at least 24 months in the future, or
- 9 months prior to the earliest CSED if the earliest CSED is less than 24 months in the future.

Note:

If fewer than 18 months remain prior to the CSED, a continuous wage levy must be monitored manually.

Note:

Revenue officers cannot close a case module on a FPLP levy source without converting the FPLP levy to the paper levy. The FPLP excludes Status 60 modules. Status 60 is normally used for continuous levies or installment agreements. For guidance see *IRM 5.11.7.2.5.1, FPLP or Paper Levy (Form 668-A/668-W)*.

2. For all continuous levies, if the levy source sends payments on a weekly or bi-weekly (every two weeks) basis, the levy may be monitored systemically using the monthly total of these payments. In this situation, monitor payments for 60 days to ascertain the correct monthly total to be entered on the Form 4844, *Request for Terminal Action*. Do not close the case on ICS until the Form 4844 is submitted for input.

Note:

If payment amounts vary, use the lowest amount it is possible will be received monthly. That amount should not be less than \$10.

3. Do not input transaction code (TC) 971, action code (AC) 063 (Installment Agreement) on Bal Dues included in a continuous levy.
4. Document the ICS case history with "Monitor Continuous Levy as IA."
5. No TSIGN change is required for levy monitoring. Systemically monitored levies will be transferred to Compliance Service Collection Operation (CSCO) (formerly SCCB).
6. To complete the ICS template version of Form 4844 choose "Contin. Levy - ST60" in Installment Agreement, Option C-CWL on ICS. The following information will be populated into the Form 4844:

- A. Request for input of status 60;
- B. "Suppress Default and Payment Reminder Notices" ;
- C. The amount of the payment will be \$\$\$ and will be received on the date # of each month;
- D. Name of the employer/payor levied;
- E. Address of employer/payor levied;
- F. Telephone number of employer/payor levied;
- G. "Input Installment Agreement Locator Number 0208" ;

Note:

Installment Agreement Locator Number 0208 identifies these accounts as continuous wage levies on the Installment Agreement Account Listing (IAAL) in the campus. Proper identification of these accounts may result in fewer field case issuances on defaults.

- H. For wage levies that will be released when the CSED expires, request input of TC 971 AC 687, misc. 002 for each module included in the continuous levy;
- I. For other continuous levies that reach a taxpayer's right to future payment and will not be released when the CSED expires, request input of TC 971 AC 687, misc. 001 for each module included in the continuous levy. See *IRM 5.19.10.4.6.1, TC 971 AC 687, and Miscellaneous Codes for CSED* for explanation of miscellaneous codes. See *IRM 5.11.2.3.1.2, Statutory Collection Period Expired* for when levies do not have to be released.

7. When approved the information from the Form 4844 is written into the ICS history. The GM has the option to either email the approved Form 4844 or print and mail Form 4844 to CCP/General Case Processing Unit .

Reminder:

Group manager approval is required. If there is no additional collection potential on the case, group managers should approve these transfers.

8. Route the physical case file to CCP using the ICS generated Form 3210.
9. CSCO will send Form 668-D, *Release of Levy/Release of Property from Levy*, one month prior to the account being full paid advising the employer of the amount to remit to full pay the levy.
10. At the time of the review discussed in paragraph (1) above, campus Installment Agreement Account Listing (IAAL) personnel will:
 - Attempt to secure an installment agreement to fully pay the taxes;
 - Consider other avenues of collection such as offer in compromise or part pay installment agreement;

- Consider recommending the account(s) be reduced to a judgment.

5.11.5.6.3 (09-26-2014)

Manual Monitoring of Continuous Levy Payments

1. Some continuous levies cannot be transferred to CSCO for systemic monitoring in status 60. Transfer those continuous levies to Centralized Case Processing (CCP) for monitoring in the same way manually monitored installment agreements are monitored. The following types of accounts and levies must be monitored in CCP:

- A. NMF accounts;
- B. Accounts with a wage levy and fewer than 18 months remaining prior to the earliest CSED;
- C. Accounts with an unreversed TC 971, AC 065 (claim pending for joint and several liability relief under IRC section 6015);
- D. In-Business Trust Fund accounts;
- E. Levies with irregular payments dates;
- F. Levies with irregular payment amounts;
- G. Levies with payments received from multiple levy sources
- H. Levies on a spouse whose SSN is not the Bal Due account TIN;
- I. Levies on seasonal employees unless payments will satisfy the Bal Dues.

Note:

Do not request manual monitoring of continuous FPLP payments. For guidance see IRM 5.11.7.2.5.1, *FPLP or Paper Levy (Form 668-A/668-W)*.

2. Do not input TC 971 AC 063 (Installment Agreement) on Bal Dues included in a continuous levy.

3. Note the Bal Due account and document the case history, "Monitor Continuous Levy as IA."

4. To complete the ICS template version of Form 4844 choose "Contin. Levy MMIA (CCP)" in Installment Agreement, Option C-CWL on ICS. Selecting this option will set the sub code to "902," the location field in the Name and Address will set to "LEVY." The following information will be populated into the Form 4844.

- A. "Transfer to CCP for Manually Monitored Continuous Levy Payments" ;
- B. The amount of the payment will be \$\$\$ and will be received on the date # of each month;
- C. Name of the employer/payor levied;
- D. Address of employer/payor levied;
- E. Telephone number of employer/payor levied;
- F. For wage levies that will be released when the CSED expires, request input of TC 971 AC 687, misc. 002 for each module included in the continuous levy;
- G. For other continuous levies that reach a taxpayer's right to future payment and will not be released when the CSED expires, request input of TC 971 AC 687, misc. 001 for each module included in the continuous levy. See IRM 5.19.10.4.6.1, *TC 971 AC 687*, and *Miscellaneous Codes for CSED* for explanation of miscellaneous codes. See IRM 5.11.2.3.1.2, *Statutory Collection Period Expired* for when levies do not have to be released.

5. If fewer than 18 months remain in the statutory period for collection when the account(s) is being transferred to CCP and the levy will be released when the CSED expires, document the case history to include the following statement "CSED = (insert date). No suit recommended."

6. If a copy of the levy form is not available in the case file, document the case history accordingly.

7. The manager will review the case for approval and return the Form 4844 to the **requestor**. When approved the information from the Form 4844 is written into the ICS history and the manager is given option to either email or print the Form 4844, Form 3210.

Note:

Do not email the Form 4844 to CCP for Manually Monitored Continuous Levies. The ICS assignment number is automatically updated. See "Note" in paragraph (8) below.

Reminder:

Group manager approval is required. If there is no additional collection potential on the case, group managers should approve these transfers.

8. After approval, place a copy of the approved Form 4844 in the physical case file.

Note:

Choosing "Contin. Levy MMIA (CCP)" in Option C under Installment Agreements on ICS will generate Form 3210, Document Transmittal, for transmitting the physical case file to CCP. ICS will automatically update the case assignment to CCP.

9. Route the physical case file to CCP using the generated Form 3210.

10. CCP will monitor continuous levies to ensure payments are received timely. If payments are not received, CCP will follow-up with the payor.

11. CCP will send a notice of levy release one month prior to the account being full paid advising the payor of the amount due to full pay the levy. A notice of levy release will not be issued until:

- A. All Bal Dues for which the levy was made are full paid;
- B. The last CSED is about to expire so the wage levy is released far enough in advance that no payments are received for wages earned after the expiration of the CSED;
- C. One of the criteria in IRM 5.11.2.3, *Releasing Levies*, exists;

12. For CSED cases assigned for monitoring, CCP will:

- A. Not release the wage levy if one or more CSED expires, but other periods included on the levy are within the statutory period for collection;
- B. Monitor levy payments until all Bal Dues included on the levy are paid or the last CSED on a wage levy is about to expire, whichever comes first;

C. Follow the procedures in IRM 5.11.5.6.2, Systemic Monitoring of Continuous Levy Payments above if some Bal Dues are full paid or the CSED expires and the case now qualifies for systemic monitoring. Note on the copy of the levy form, "The following period(s) have expired CSEDs:" and list the applicable Bal Due periods.

Note:

If the levy form is unavailable, record this information in the case history and ensure a list of the tax periods on the original levy is included as well as the tax periods with expired CSEDs.

5.11.5.7 (09-14-2010)

Defaulted/Terminated Systemically Monitored Levy Received in the Field

1. Levy sources sometimes stop sending payments. This can be the result of intentional or unintentional actions by the taxpayer or the levy source. If the campus or CCP cannot resolve these cases, they may be transferred to the field for follow-up action.
2. Once these cases are assigned to the field:
 - A. Determine why the payments stopped;
 - B. Follow manually monitored procedures if irregular payments are being received;
 - C. Follow manually or systemically monitored procedures as appropriate if payments begin again.
3. If the levy source is the same, a new levy form is not needed. Complete Form 4844 and state why no copy of the levy is being provided and the reason why the levy defaulted.

Example:

The taxpayer was ill for a month. Wages fell to below the exempt amount.

4. If the third party refuses to comply with the levy, determine if issuance of Form 668-C, Final Demand, is appropriate. See IRM 5.11.2.2.9, *Refusing to Comply with a Levy*.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 11. Notice of Levy

Section 6. Notice of Levy in Special Cases

5.11.6 Notice of Levy in Special Cases

- 5.11.6.1 [Retirement Income](#)
- 5.11.6.2 [Funds in Pension or Retirement Plans](#)
- 5.11.6.3 [Insurance](#)
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- 5.11.6.7 [Receivables](#)
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- 5.11.6.9 [United Nations \(UN\) Employees' Income](#)
- 5.11.6.10 [Additional International Organizations](#)
- 5.11.6.11 [Mutilated Currency](#)
- 5.11.6.12 [Levy on Non-Liable Spouse in a Community Property State](#)
- 5.11.6.13 [Levy on Inheritances](#)
- 5.11.6.14 [Limited Liability Companies](#)
- 5.11.6.15 [Levies on Merchant Accounts](#)
- 5.11.6.16 [Levy on Daycare](#)
- 5.11.6.17 [Levy on Long-Term Care Facilities](#)
- 5.11.6.18 [Levy on Qualified Tuition Program](#)
- Exhibit 5.11.6-1 [Addresses often used for Levy on Federal Contracts](#)
- Exhibit 5.11.6-2 [National Labor Relations Board Addresses](#)

Manual Transmittal

July 17, 2015

Purpose

(1) This transmits a revised IRM 5.11.6, Notice of Levy, *Notice of Levy in Special Cases*.

Material Changes

- (1) IRM 5.11.6.2.1 is revised to incorporate Interim Guidance Memorandum SBSE 05-0214-0085: Thrift Savings Plan Levies, issued date 12/11/2014.
- (2) Editorial changes made throughout.

Effect on Other Documents

This material supersedes IRM 5.11.6, dated September 26, 2014, Notice of Levy, Section 6 *Notice of Levy in Special Cases*. This IRM incorporates Interim Guidance Memorandum SBSE 05-0214-0085: Thrift Savings Plan Levies, issued date 12/11/2014.

Audience

This material is used by SB/SE revenue officers and AI- Advisory.

Effective Date

(07-17-2015)

Kristen Bailey
Acting Director, Collection Policy

5.11.6.1 (01-22-2010) Retirement Income

1. Use discretion before levying retirement income. See IRM 1.2.44.4, Delegation Order 5-3 (Rev-1), which outlines the authority to levy on property in the hands of a third party (not to include Levy Form 668-B, Levy). For more information on pre-levy considerations, see IRM 5.11.1.3.1, *Pre-Levy Considerations*.
2. A notice of levy is continuous for wages and salary. Other levies only reach property a third party is holding when the levy is received.

Reminder:

References to property include rights to property.

3. As long as the taxpayer has a fixed and determinable right to property, a levy attaches that right. Therefore, a levy on retirement income can reach payments in the future whether or not the taxpayer has begun receiving payments when the levy is served. This often means that a levy on retirement income reaches future payments. Because this type of levy may begin attaching payments long after the levy is served, follow-up when the taxpayer is expected to become eligible to receive payments. Also see IRM 5.11.5.6.2(6) *Systemic Monitoring of Continuous Levy Payments* regarding input of transaction code (TC) 971 action code (AC) 687 and IRM 5.11.7.2.5.1, *FPLP and Paper Levy (Form 668-A/668-W)*, for discussion regarding the Federal Payment Levy Program (FPLP) and paper levies. Consider setting a mandatory follow-up for Bal Due accounts reported currently not collectible.
4. If the taxpayer has the right to receive future payment but has not opted to do so, the levy attaches that right.

5. A levy served while the taxpayer is receiving periodic payments reaches payments due then, as well as payments as they become due later, as long as there is already a fixed and determinable right to the future payments.
6. A levy on a fixed and determinable right to receive future payment (e.g., retirement or pension income, Social Security benefits), made within the statutory period for collection, remains enforceable to the extent of the value of the property levied even if the property itself is not turned over within the statutory period for collection. In other words, a levy prior to the expiration of the statutory period for collection on a fixed and determinable right to receive future payment is still enforceable after the expiration of the statutory period for collection.

5.11.6.1.1 (09-26-2014) Social Security

1. The Social Security Administration (SSA) makes payments for:

- Supplemental Security Income (SSI) and
- Retirement, Survivors, and Disability Insurance (RSDI).

Note:

Old-Age, Survivors, and Disability Insurance (OASDI) is used interchangeably with RSDI.

2. RSDI (or OASDI) is based on social security taxes during a person's working years. RSDI (or OASDI) payments are not based on need, and they can be levied. SSI payments are for elderly, blind, or disabled persons. The IRC 6334(a)(11) exempts from levy certain public assistance payments, including supplemental security income under XVI of the Social Security Act. For more information on pre-levy considerations, see IRM 5.11.1.3.1, *Pre-Levy Considerations*.

Note:

RSDI (or OASDI) payments are also subject to levy under FPLP. Although IRC 6331(h) permits the service to levy on up to 15 percent of SSI payments, the Service will not pursue these levy sources at this time. For further details of FPLP see IRM 5.11.7.2.1.1, *IRS/FMS Interagency Agreement - Federal Payments Subject to the FPLP*. also see IRM 5.11.7.2.5.1, *FPLP or Paper Levy (Form 668-A/668-W)*.

3. Send Part 1 of Form 668–W(ICS) or 668-W(c)(DO) to the SSA office that issued the taxpayer's social security number. See the Servicewide Electronic Research Program (SERP), Who/Where, Levy Source Information for SSA office addresses <http://serp.enterprise.irs.gov/NLSD/>. Include Notice 484, Instructions to Employer with Centralized Payroll System for Processing Statement of Exemptions and Filing Status. Send the other parts of the levy to the taxpayer with Notice 483, Instructions to Employee Paid Through a Centralized Payroll System for Submitting Statement of Exemptions and Filing Status. Make appropriate changes to Notice 483 and Notice 484.

Note:

Use discretion before levying RSDI (or OASDI) payments.

4. Once a levy is served, SSA will continue honoring it, until the levy is released. However, the taxpayer's eligibility for benefits could change. This might stop the levy proceeds. If this happens, SSA will notify the office that issued the levy not to expect more payments. However, SSA is not allowed to explain why. This would violate the privacy laws that restrict to whom SSA can disclose benefit information.

Example:

The taxpayer may get full benefits when the levy is served. Later, the person starts working. This may reduce the benefits to less than the exempt amount, so there will be no levy proceeds. If the person stops working and gets full benefits again, SSA will not automatically start sending levy payments. A new levy must be served.

Note:

RSDI (or OASDI) payments are alternatively levied at 15 percent via the FPLP. Per IRM 5.11.7.2.2.2(2), *Exclusions* the FPLP will systemically release the FPLP levy prior to the expiration of the statutory period for collection; however, a paper levy will continue to be honored until a levy release is issued.

Note:

Beginning January, 2007, SSA submits paper levy payments to IRS through the Electronic Funds Transfer Payment System (EFTPS). These payments post to IDRS as TC 670 designated payment code (DPC) 05 but are identifiable by the presence and content of an EFT-TRACE-NUM field. All SSA levy payments have values of "49" in the third and fourth positions of the EFT-TRACE-NUM.

5. A representative payee; such as a caretaker, guardian or trustee, may be designated to receive benefits on behalf of a beneficiary. Benefits payable to such a representative payee are not the property of the representative payee and are not available for levy relating to the representative payee's tax liabilities.
6. To obtain information about the receipt and application of payments resulting from a levy issued to SSA, access SERP on the IRWeb, Who/Where, SSA Paper Levy Contacts, <http://serp.enterprise.irs.gov/databases/who-where.dr/ssa-paper-levy-payments.htm>.

5.11.6.1.2 (09-26-2014) Military Retirement

1. See SERP, Who/Where, Levy Source Information, for addresses for mailing levies on military retirement. Query for "DFAS Military Retirement"
2. Expect the first payment two to three months after the notice of levy is sent.

If	Then
The levy is received by the 15th of the month.	The first payment is sent on the first business day of the second month after that.
The levy is received after the 15th of the month.	The first payment is sent on the first business day of the third month after that.

Example:

A levy is received on September 12. The first payment is sent on the first business day of November.

Example:

A levy is received on September 19. The first payment is sent on the first business day of December.

5.11.6.1.3 (09-26-2014) Civil Service Retirement

1. Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) retirement benefits are administered by the Office of Personnel Management.
2. See SERP, Who/Where, Levy Source Information, for the address for these levies <http://serp.enterprise.irs.gov/NLSD/>. Query for "U.S. Office of Personnel Management"
3. If the civil service account number is known, include it on the levy.

4. Expect the first payment in two to three months. See *IRM 5.11.6.1.2(2)* above.
5. Civil service retirement payments can also be levied at 15 percent via the Federal Payment Levy Program (FPLP). FPLP will systemically release the FPLP levy within 90 days prior to the expiration of the statutory period for collection. See *IRM 5.11.7.2.1.1, IRS/FMS Interagency Agreement - Federal Payments Subject to FPLP*. A paper levy will continue to be honored until a levy release is issued. See *IRM 5.11.5.6.2 (6)* for systemic monitoring instructions. Also see *IRM 5.11.7.2.5.1, FPLP or Paper Levy (Form 668-A/668-W)*.

5.11.6.1.4 (09-26-2014)

Railroad Benefits, Medal of Honor Winners, and Annuities for Military Families and Survivors

1. Certain annuity and pension payments are exempt from levy. See *IRC 6334*.
2. The payments exempt from levy include:
 - Railroad Retirement and Unemployment
 - Special Pensions for Medal of Honor Winners
 - Annuities under the Retired Serviceman's Family Protection Plan and Survivor Benefit Plan
3. Revenue officers will not pursue paper levy of railroad retirement and railroad unemployment payments at this time. *IRM 6331(h)* permits the Service to levy on up to 15 percent of railroad retirement and railroad unemployment payments. FPLP implemented the 15 percent levy on Railroad Retirement Board benefits since July 2011. See *IRM 5.11.7.2.1.1 (2)(i) IRS/FMS Interagency Agreement - Federal Payments Subject to the FPLP*.

5.11.6.2 (09-26-2014)

Funds in Pension or Retirement Plans

1. These instructions cover money accumulated in a pension or retirement plan, as well as Individual Retirement Arrangements (IRAs). They do not deal with levying retirement income. See section *IRM 5.11.6.1* above. Also see Delegation Order 5-3 (Rev-1) at *IRM 1.2.44.4 (23)c* and *IRM 5.17.3.9.19 Pension and Retirement Benefits*.
2. There are many employer and self-sponsored retirement vehicles that are not exempt from levy. These plans include, for example:
 - Qualified Pension, Profit Sharing, and Stock Bonus Plans under ERISA
 - IRAs
 - Retirement Plans for the Self-Employed (such as SEP-IRAs and Keogh Plans)
3. Because these retirement vehicles provide for the taxpayer's future welfare, levy on the assets in a retirement account (as contrasted with income from the account) after following the procedures set forth below.

Note:

There is an exception to the 10 percent additional tax on early distributions from retirement plans made on account of a levy on qualified plans. If an account is levied upon, the taxpayer does not owe the 10 percent additional tax. Because of the exception to the 10 percent additional tax made on account of a levy, occasionally taxpayers may ask the Service to levy the funds in the retirement accounts. Even though the taxpayer may be able to voluntarily withdraw money in a lump sum from a retirement account and apply it to the outstanding tax liability, do not levy on retirement assets at the request of the taxpayer. Instead, follow the procedures set forth below.

Note:

An imminent collection statute expiration date (CSED), alone, does not justify levying on retirement assets. Levying on assets in retirement accounts requires application of the procedures set forth below.

4. The first step in deciding whether to levy on a retirement account is to determine what property, retirement assets and non-retirement assets, is available to collect the liability. If there is property other than retirement assets that can be used to collect the liability, or if a payment agreement can be reached, consider these alternatives before issuing a levy on retirement accounts. Also consider the expense of pursuing other assets as well as the amount to be collected.
5. The second step in deciding whether to levy on a retirement account is to determine whether the taxpayer's conduct has been flagrant. If the taxpayer has not engaged in flagrant conduct, do not levy on retirement accounts. Deciding whether the taxpayer has engaged in flagrant conduct must be done on a case-by-case basis. Keep in mind, however, extenuating circumstances may exist that mitigate the taxpayer's flagrant conduct.
6. The following are some examples of flagrant conduct.

Example:

Taxpayers whose failure to pay is based on frivolous arguments which are listed in Notice 2010-33, *IRB 2010-1 C.B. 609*, or subsequent updates. See *IRB 2010-33* at http://www.irs.gov/irb/2010-17_IRB/ar13.html.

Example:

Taxpayers who continue to make voluntary contributions to retirement accounts while asserting an inability to pay an amount that is owed.

Caution:

Where a tax liability has been discharged in bankruptcy, the IRS may continue to have a valid tax lien on certain retirement assets that existed prior to the bankruptcy. See *IRM 5.11.6.2(15)*. Voluntary contributions made to such retirement assets after the bankruptcy petition was filed are not considered flagrant.

Example:

Taxpayers who voluntarily contributed to retirement accounts during the time period the taxpayer knew unpaid taxes were accruing.

Example:

Taxpayers convicted of tax evasion for the tax debt.

Example:

Taxpayers assessed with a fraud penalty for the tax debt.

Example:

Taxpayers assisting others in evading tax.

Example:

Taxpayers with liabilities based on illegal income.

Example:

Taxpayers who are in business, pyramiding unpaid trust fund taxes, and will not comply with the results of the Service's financial analysis including submission of a complete CIS, including the timely deposit of FTDs.

Example:

Individual taxpayers who are accumulating unpaid income taxes over multiple tax periods and will not adjust their withholding or make timely and adequate estimated tax payments to prevent future delinquencies.

Example:

Taxpayers against whom the Trust Fund Recovery Penalty has been asserted on more than one occasion.

Example:

Taxpayers who have demonstrated a pattern of uncooperative or unresponsive behavior, e.g., failing to meet established deadlines, failing to attend scheduled appointments, failing to respond to revenue officer attempts to contact. In such cases, determining alternatives and the taxpayer's dependence on the money in the retirement accounts (final step) may not be possible, so a levy may need to be served without making those determinations.

Example:

Taxpayers who have placed other assets beyond the reach of the government, e.g., sending them outside the country, concealing them, dissipating them, or transferring them to other people.

Example:

Taxpayers with jeopardy or termination assessments subject to collection.

7. The final step in deciding whether to levy on retirement assets is to determine whether the taxpayer depends on the money in the retirement account (or will in the near future) for necessary living expenses. If the taxpayer is dependent on the funds in the retirement account (or will be in the near future), do not levy the retirement account. In determining whether the taxpayer depends on the money (or will in the near future), use the standards in IRM 5.15, *Financial Analysis*, to establish necessary living expenses. Use the life expectancy tables in Pub 590, Individual Retirement Arrangements (IRAs), to estimate how much can be withdrawn annually to deplete the retirement account in the taxpayer's remaining life. Also, consider any special circumstances in the taxpayer's specific situation, such as extraordinary expenses or additional sources of income that will be available to pay expenses during retirement.
8. The taxpayer may be able to withdraw money in a lump sum from a retirement plan. If the taxpayer is eligible to receive such a withdrawal, then a levy can reach that right. However, remember that a levy only reaches the taxpayer's present rights under the plan. This means that a current levy can reach a taxpayer's vested present rights under a plan, but a levy does not accelerate payment and it is only enforceable when the taxpayer is eligible to receive the benefits. The terms of the plan may need to be reviewed to determine a taxpayer's present rights.

Example:

The taxpayer is fully vested in his retirement plan account balance of \$10,000. Pursuant to the terms of the plan, the taxpayer is not yet in payout status or entitled to a lump sum withdrawal until a future date. A levy may attach to the taxpayer's present right to the \$10,000, but no money can be collected until the taxpayer has a right to withdraw those funds at the future date. At such future date, the taxpayer's account may have grown to \$30,000. Without a new levy, however, only \$10,000 can be collected because this was the taxpayer's present right at the time of levy.

Example:

The taxpayer has an accrued benefit in a retirement plan but the terms of the plan do not allow for any lump sum withdrawal. The plan provides a right in the future to receive monthly payments, but the taxpayer has not yet participated in the plan long enough to qualify for any future payments (that is, the taxpayer is currently 0% vested in the accrued benefit derived from employer contributions). The taxpayer has no present property rights in the employer derived accrued benefit to which a notice of levy can attach. A notice of levy may attach to any contributions made by the taxpayer, as the taxpayer is always 100% vested in those contributions, but collection will depend on whether the taxpayer has a right under the terms of the plan to withdraw those funds.

9. The notice of levy form says it does not attach money in pension or retirement plans. When levying on these funds, sign the notice of levy in the block to the left of, "Total Amount Due."
10. Have the SB/SE Director, Collection Area approve the notice of levy by signing the form as the Service Representative or see IRM 5.11.1.3.5, *Managerial Approval*, for methods to secure managerial approval.
11. Consider discussing the case with the Employee Plans Group before issuing the levy. Their advice, as well as advice from AI - Advisory and Associate Area Counsel, may be needed to determine the present right to property. Often, a levy is served before the taxpayer's precise rights are determined. Try to get a copy of the plan instruments as soon as possible to determine the taxpayer's interests in the plan.
12. When available, review a copy of the plan prior to issuing the levy to identify the correct custodian. Unless any documents or other pieces of evidence reflect that pension or retirement account has more than one custodian, no additional parties beyond the pension or retirement custodian need be served with the levy.
13. When money is withdrawn from a retirement account, the taxpayer may be liable for income tax on the withdrawal. If the taxpayer is less than 59¹/₄ years old, a 10 percent additional tax on early distributions may be assessed. However, the taxpayer is not liable for the 10 percent additional tax on early distributions if the money was withdrawn because of a notice of levy served on the retirement account. See IRC 72(t)(2)(A) vii. There may, however, still be income tax owed for the amount withdrawn.
14. Send Letter 3257 (DO) with the notice of levy and Letter 3258 (DO) with the taxpayer's copy of the notice of levy. These letters state the withdrawal is not subject to the 10 percent additional tax on early distributions, even if the taxpayer is under 59¹/₄ years old. These letters are available as templates on the Integrated Collection System.
15. Retirement accounts that are **exempted** from the bankruptcy estate are still subject to being levied to collect taxes that are discharged in bankruptcy, where a Notice of Federal Tax Lien was filed before bankruptcy. For retirement accounts that are **excluded** from the bankruptcy estate, the Service may still levy on those accounts to collect taxes that are discharged in bankruptcy even when no Notice of Federal Tax Lien has been filed. It is only necessary that the discharged taxes were assessed, that notice and demand was given, and that the statutory lien arose before the bankruptcy was filed. Consider a levy on the retirement accounts if there is no other property that survived the bankruptcy. See IRM 5.9.17.4, *Exempt, Excluded, or Abandoned Property*, and IRM 5.9.17.4.2(4) *Collection from Exempt, Abandoned or Excluded Property* for guidance in determining whether collection action should be taken.

Note:

In this situation, the Federal Tax Lien attaches to only the taxpayer/debtor's property or rights to property held as of the bankruptcy petition date. However, the lien is not limited to the value of the property as of the petition date. Its attachment relates to any appreciation or diminution of such assets. The federal tax lien does not attach to retirement account contributions made on or after the bankruptcy petition date. Care must be taken to limit collection to only the bankruptcy pre-petition account value. Consult with AI-Insolvency or Counsel prior to issuing levies on exempted or excluded retirement accounts for assistance in determining the account value the levy attaches.

Note:

Retirement accounts that are exempt from the bankruptcy estate are not subject to being levied to collect taxes that are discharged in bankruptcy where no Notice of Federal Tax Lien was filed prior to bankruptcy. See IRM 5.9.17.4(1), for details regarding exempt assets.

5.11.6.2.1 (07-17-2015)**Thrift Savings Plan**

1. Federal employees may contribute to Thrift Savings Plan (TSP) accounts. Unlike levies on employer and self-sponsored retirement accounts, which only reach the taxpayer's present rights under the plan, the IRS can seize the balance in vested TSP accounts pursuant to 5 U.S.C. 8437(e)(3), a special statutory provision, which authorizes turnover of funds in TSP accounts to the IRS pursuant to IRS levies. The levy will attach to any TSP account that is vested, or will become vested within 30 days of the date the TSP receives the levy if the participant were to remain in Government service. The Federal Retirement Thrift Investment Board (FRTIB) has issued regulations governing TSP levies at 79 FR 53603 (Sept. 10, 2014).
2. A taxpayer might request the Service to levy his/her TSP account since the taxpayer might not be otherwise able to access the funds, or, if the taxpayer is no longer employed by the Government, the taxpayer might be seeking to avoid paying a 10 percent additional tax on early retirement plan withdrawals. Do not levy on a TSP account at the request of the taxpayer. Instead, follow the guidelines set forth below.
3. The determination to levy on a TSP account should be treated in the same way as a levy on a private pension or retirement plan or IRA. Follow the procedures set forth in *IRM 5.11.6.2 (4) through (7)* to determine whether to levy on the taxpayer's TSP account.
4. The notice of levy, Form 668-A(ICS) or Form 668-A(c)(DO), states that it does not attach to funds in pension or retirement plans, unless it is signed in the specified block. When levying on TSP accounts, sign the notice of levy in the block to the left of "Total Amount Due."
5. Have the SB/SE Area Director, Field Collection approve the notice of levy by signing the form as the Service Representative or see IRM 5.11.1.3.5, Managerial Approval, for methods to secure managerial approval.
6. The levy must be issued in the name of the participant only.
7. The levy must expressly refer to the "Thrift Savings Plan."
8. The levy must require the payment of a stated dollar amount from the TSP participant's account, up to the entire amount of the vested account balance. The levy may not request a payment at a specified date in the future nor may it request a series of payments. The levy cannot designate a specific TSP fund, source of contributions, or balance from which the payment or portions of the payment shall be made.
9. Before issuing a levy on a non-liable spouse in a community property state, consult with Advisory or Counsel to determine if the state community property laws allow the levy. If the levy is allowed, request the assistance of Counsel to draft the levy to ensure the levy will not be dishonored by the TSP because it was not issued in the name of the participant only.
10. All levies on TSP accounts should be on Form 668-A(ICS) or Form 668-A(c)(DO) and should be mailed to the following address: Thrift Savings Plan, Attn: TSP Legal Processing Unit, P.O. Box 4570, Fairfax, VA 22038-9998. If immediate delivery of the levy is necessary, the fax number, and the address for overnight delivery of IRS levies can be found at <http://www.tsp.gov> under Contact TSP page. The levy must be received by the TSP offices designated above no later than 30 days after the date on the levy form.
11. After receipt of the levy, the TSP will mail a decision letter to all parties containing the following information:
 - A determination regarding whether the levy is qualifying;
 - If the qualifying levy requires payment, the letter will provide the estimated payment amount and anticipated payment date.
12. Payment pursuant to a qualifying levy will be made 30 days after the TSP decision letter. The payment is taxable to the participant and subject to federal income tax withholding.

Note:

Once the levy is paid, the funds cannot be returned to the TSP account.

5.11.6.3 (05-05-1998)**Insurance**

1. This subsection contains instructions on levying on insurance.

5.11.6.3.1 (01-22-2010)**Cash Loan Value of Life Insurance**

1. The cash loan value of life insurance and endowment contracts can be levied. The policy does not have to be surrendered. See IRC 6332(b).

5.11.6.3.1.1 (09-26-2014)**Serving the Levy**

1. Generally, do not levy the cash loan value of life insurance if the taxpayer has:
 - few assets,
 - small income, and
 - policies with a face value below \$1000.
2. If known, write the following on the notice of levy:
 - policy number(s) followed by "and all other policies this person owns or has an interest in,"
 - date of birth, or
 - taxpayer's approximate age and spouse's name.
3. The Revenue Officer group manager, Insolvency group manager or a Technical Service Advisory group manager must approve the notice of levy per Delegation Order 5-3 contained in IRM 1.2.44.4, *Delegation Order 5-3 (Rev. 1)*. See IRM 5.11.1.3.5, *Managerial Approval*.
4. The insurance company does not have to turn over money until 90 days pass.
 - A. Compute penalty and interest through 90 days from the date of the levy.
 - B. Write, "I certify that a copy of this notice was mailed on (insert date) to the taxpayer's last known address" above the taxpayer's name and address.

C. Sign this statement.

D. Mail Part 4 to the taxpayer **before** sending the levy to the insurance company.

5.11.6.3.1.2 (01-22-2010)

Payment for a Levy on the Cash Loan Value of Life Insurance

1. If the amount owed is paid before 90 days, send the insurance company Letter 980(DO), *Notice of Levy Against Insurance Cash Value*, with a release of levy.
2. The taxpayer can ask the insurance company to pay before 90 days to save penalty and interest. A new payoff figure may be needed.
3. If the amount is not paid within 90 days, attempt contact with the insurance company and send Letter 980(DO) to the insurance company. This tells them the amount still owed. Send the letter even if the amount has not changed.
4. The insurance company must pay over the amount the taxpayer could have obtained as a loan. This amount is computed to the 90th day after the levy. Automatic premium loans and contractual interest is not paid over, if they keep the contract in force. However, an agreement to do this must be before the insurance company knew of the tax lien.

5.11.6.3.1.3 (09-26-2014)

Actual Knowledge of the Tax Lien

1. The insurance company may have to pay more than the amount in *IRM 5.11.6.3.1*. That amount is increased by the amount of any advances (including contractual interest thereon) made on or after the date the insurer had actual knowledge of the tax lien for which the levy is made, other than any advance (including contractual interest thereon) made automatically to keep the insurance contract in effect under an agreement entered into before the insurer had actual knowledge. See IRC 6331(c)(2).
2. Give the insurance company a copy of the Notice of Federal Tax Lien or a letter to give actual notice of the lien. This stops the taxpayer from taking loans as equity builds up in the policy.

Note:

Do not try to give notice by serving a new levy. This starts the 90 day period again.

5.11.6.3.2 (01-22-2010)

Foreclosure on the Policy

1. There is also a right to foreclose on the policy, if necessary. Consult with AI - Advisory and Associate Area Counsel for advice. See *IRM 5.17.3.9.12, Legal Reference Guide for Revenue Officers - Insurance*, for discussion of the differences between foreclosing on the policy to obtain the cash surrender value and levying to obtain the cash loan value.

5.11.6.3.3 (05-05-1998)

Department of Veterans Affairs Insurance Policies

1. Dividends payable in cash and the cash loan value of Department of Veterans Affairs (VA) insurance policies can be levied.

Exception:

If the dividends are applied to pay future premiums, they can not be levied.

5.11.6.3.3.1 (01-22-2010)

Levy on Dividends of VA Policies

1. Before serving a notice of levy on VA insurance policy dividends, contact the VA to obtain and/or confirm the following insurance information:

- Insurance File Number
- Policy Number
- Anniversary Date
- Date of Policy, and
- Office that pays the dividends

The VA contact point for insurance benefits is: Dept. of Veterans Affairs Insurance Center, PO Box 13399, Philadelphia, PA 19101. Phone (215) 842-2000 ext. 4260 Fax (215)381-3502

2. Dividends are payable on:

- United States Government Life Insurance Policies
- National Service Life Insurance Policies

Exception:

Policies with a number preceded by RH do not pay dividends.

3. To levy dividends, mail Form 668-A(ICS) or 668A-(c)(DO) thirty days before the policy's anniversary date.

- A. Write, "Levy is only on dividends," on the levy form.
- B. Write, "Policy Number _____," above the taxpayer's name and address.

Exception:

If the policy number and file number are different, write, "Policy No. _____(File No. _____)," on the form.

5.11.6.3.3.2 (01-22-2010)

Levy on Cash Loan Value of VA Insurance Policies

1. Many VA insurance policies have cash loan value. This can be levied like other life insurance policies. Some policies are term life insurance. These have no cash loan value.
2. Write, "Levy is only against cash loan value," on the levy. Also, include the policy number. Use other procedures in *IRM 5.11.6.3.1*, above. For example, send Letter 980 (DO), Notice of Levy Against Insurance Cash Value, after 90 days.

5.11.6.3.4 (06-29-2001)

Insurance Company Employees

1. To levy an insurance company employee's income, send Form 668-W(ICS) or 668-W(c)(DO). Write on the form that it is levying the person's income. This may prevent confusion between these and levies on policies.
2. Contact the insurance company to determine where to send the levy.

5.11.6.3.5 (01-22-2010)

Death Benefits

1. Death benefits from an insurance company or a government agency (Veterans Administration, Social Security Administration, etc.) can be levied. However, only use this source in flagrant cases. See *IRM 5.11.6.2(6)*. Consider whether the levy will cause a hardship and whether it may prevent the taxpayer from paying the funeral expenses of the person who died.
2. Because of the sensitive nature, have the SB/SE Director, Collection Area approve the notice of levy. See *IRM 5.11.1.3.5, Managerial Approval*, for methods to secure managerial approval.

5.11.6.4 (09-26-2014)

Government Employees

1. The income of federal, state and local government officers and employees can be levied. This includes:
 - Civilian Employees
 - Military Personnel
 - Elected Officials
 - Appointed Officials
2. If the taxpayer increases voluntary deductions after a levy is served, tell the employer that this is not allowed.

Note:

Comptroller General's Decision B-45105 explains this to federal payroll offices. This decision is dated January 21, 1955, and amended April 18, 1955.

3. Certain government employee salaries are included in the Federal Payment Levy Program. See *IRM 5.11.7.2, FMS Interagency Agreement*, and *IRM Exhibit 5.11.7-1, FPLP - Federal Employee Salary Paying Agencies: NFC, NBC, GSA, DFAS*.

Note:

See *IRM 5.1.7.7, Federal Employee/Retiree Delinquency Initiative (FERDI)* for additional guidance.

5.11.6.4.1 (09-26-2014)

Military Personnel on Active Duty

1. If a taxpayer is in a Combat Zone (CZ) or has been granted military deferment under the Servicemembers Civil Relief Act of 2003, no levy action is to be taken. This includes issuance of L1058, Notice of Intent to Levy and Notice of Your Right to a Hearing. See *IRM 5.1.7.9, Accounts of Taxpayers Who Serve in a Combat Zone*, and *IRM 5.1.7.12, Military Deferment*, for additional clarification.
2. Combat Zone (CZ) accounts, identified by a -C freeze, indicate a taxpayer who is or was serving in a designated combat zone area.

Note:

The -C freeze stays on the account even after the taxpayer is no longer in the CZ. When working an account that contains a -C freeze, additional research is required to determine the taxpayer's CZ status. Research CC IMFOLE for the Combat indicator on Line 11.

Combat Indicator	Defined
1	The taxpayer is still serving in a combat zone. Any compliance activity such as assessing or collecting tax is prohibited. However, if the taxpayer has other issues or requests information, you may work these other issues and contact the taxpayer if needed.
2	The taxpayer is no longer a combat zone participant. Follow normal IRM procedures to work the case.

3. A levy on the income of active military personnel attaches to wages, salary, and the following:

- Payments for Quarters
- Subsistence
- Travel
- Clothing and Uniform Allowances
- Personal Money and Overseas Allowances
- Reimbursement for Shipment of Household Goods
- Lump Sum Leave Payments
- Retirement Income (Including Disability Payments)
- Re-enlistment Bonuses
- Severance Pay
- Mustering Out Pay
- Savings Deposits

Exception:

See *IRM 5.11.1.4.1, Property Exempt from Levy*.

4. See SERP, Who/Where, Levy Source Information for addresses to mail these notices of levy.

If	And	Then
The taxpayer is in the Air Force or Marines	The taxpayer is on active duty or is in the reserves	Include the taxpayer's military service address on the levy, if it is known, e.g. Andrews Air Force Base.

5. Use Letter 1096(DO), Follow-up to Form 668-W, to follow up on military levies.

If	Then
The taxpayer is overseas	Follow up 10 weeks after the levy is acknowledged.
The taxpayer is in the United States, except for Air Force	Follow up four weeks after the levy is acknowledged.
The taxpayer is in the United States and is in the Air Force	Follow up eight weeks after the levy is acknowledged.

6. A response should be received to Letter 1096(DO) within 30 days. If not, call the finance center or send a new notice of levy.

7. The taxpayer may pay the amount owed before the levy proceeds are received. If the release does not stop the proceeds in time, a payment for the levy will be received. Do not return the check to the finance center. Credit the money, so the overpayment will generate a refund. If a hardship exists, request a manual refund. See IRM 5.1.12, *Cases Requiring Special Handling*.

**5.11.6.4.2 (05-05-1998)
Military Class Q Allotments**

1. Class Q allotments are for dependents of military personnel. They can be levied to collect tax from the dependent.

**5.11.6.4.3 (06-29-2001)
Health and Human Services Employees**

1. The Department of Health and Human Services maintains a central payroll office. See SERP, Who/Where, Levy Source Information. These payroll records include:

- HHS in metropolitan Washington, DC
- HHS Regional Offices
- Public Health Service
- Food and Drug Administration

2. Send the Statement of Exemptions and Filing Status directly to the taxpayer. See IRM 5.11.5.4.2, *Employers with Centralized Payrolls*.

**5.11.6.4.4 (09-26-2014)
Postal Service Employees and Vendors**

1. For levies on postal employees and vendors, include the following on the levy form, if known:

- Postal Service Employee Number,
- Type of employment, and
- The town where the employee works, if it is different from where the employee lives.

2. Send notices of levy on postal employees to:

U.S. Postal Service
Accounting Service Center
Minneapolis Information Service Center
Involuntary Deduction Unit
2825 Lone Oak Pkwy.
Eagan, MN 55121-9650

3. Send notices of levy on transportation; Contract Postal Unit (CPU); or Lease Vehicles:

U.S. Postal Service
St. Louis Accounting Service Center
Transportation Section
PO Box 80191
St Louis MO 63180-9191

4. Send notices of levy on Misc. Supplies, Services, and Repair Parts; Facilities; and other types not listed above.

U.S. Postal Service
San Mateo ASC
Fields Payable 2
2700 Campus Drive
San Mateo CA 94497-9432

5. Postal service employee wages can alternatively be levied at 15 percent via the Federal Levy Payment Program (FPLP). The USPS vendor/supplier payments are continuously levied at 100% for property, goods and services payments via the FPLP.

**5.11.6.5 (09-26-2014)
Federal Contractors**

1. Use Form 668-A(ICS) or 668-A(c)(DO) to levy payments owed to federal contractors. Except as described in (4) below, the levy has no continuing effect. It only reaches payments owed to the contractor when the levy is received.

Note:

Prior to levying the Federal agency with Form 668-A(ICS) or 668-A(c)(DO) on either the primary or secondary taxpayer, release or block the module from the Federal Payment Levy Program (FPLP), if necessary. See IRM 5.11.7.2.6, *Blocking or Releasing FPLP Levy*.

2. The contract number must be included on levies sent to the Department of Defense. If the number is known, include it on levies sent to other federal agencies, too. This can help them find the contract and honor the levy.

Note:

Current federal contract levy sources can be found on IDRS using cc LEVYS. The contract number may appear on the levy source's name line after, "CONTRACT #." "FC" to the right of the number means this is a federal contract.

3. See *Exhibit 5.11.6-1* for contract levy addresses at several agencies.
4. Federal contractor and vendor payments are systemically levied through the FPLP. IRC 6331(h) permits the Service to serve a continuous levy on up to 15 percent of certain federal payments. If the payments are for vendor of property, goods or services sold or leased to the Federal government, the Service may levy up to 100 percent of the payments under section 6331(h), as amended by the American Jobs Creation Act of 2011. See generally IRM 5.11.7.2, *Federal Payment Levy Program*, and specifically IRM 5.11.7.2.1.1, *IRS/FMS Interagency Agreement – Federal Payments Subject to the FPLP*, regarding implementation of the FPLP increase for certain payments.
5. Since January 2006, the FPLP matches and levies Federal payments identified under the secondary or cross-reference (X-REF) SSN on IMF joint tax liabilities and BMF sole proprietor liabilities.

5.11.6.5.1 (01-22-2010)

Department of Defense Contractors

1. Paper levies issued to attach monies due Department of Defense (DoD) contractors should be sent to:
Defense Finance and Accounting Service - Columbus Center
Attn: DFAS-BKSD/CC
Debt Management Office
P.O. Box 182317
Columbus, OH 43218-2317
2. Paper levies may be faxed to DFAS at (614) 693-2492.
3. For information about the timing of paper levy issuance, contact the DFAS Lead Accounting Technician, Tax Levy Office at (614) 693-9449.
4. For information regarding contracts and payments, send an E-mail message to CCO-IRS@DFAS.MIL.
5. As an alternative to a paper levy the Federal Payment Levy Program (FPLP) can now continuously levy DoD contractor and vendor payments paid through the Defense Finance and Accounting Service (DFAS) at 100 percent.
 - Since April 15, 2005 contractor payments paid through DFAS Mechanization of Contract Administration Services (MOCAS), have been levied at 100 percent of the payment or balance due, whichever is less.
 - Since July 18, 2005, contractor payments paid through the remaining DFAS vendor payment systems have been levied at 100 percent of the payment or balance due, whichever is less.
 - Prior to those dates, any Defense contractor/vendor payment levied through the FPLP was at 15 percent.

5.11.6.6 (05-05-1998)

Levy on Other Government Payments

1. This subsection contains instructions for levy on other government payments.

5.11.6.6.1 (09-26-2014)

Medicare Payments Paid to Beneficiaries

1. Levy Medicare payments paid to beneficiaries only in flagrant cases. Generally, see examples at *IRM 5.11.6.2(6)*. A beneficiary is "A person who has health care insurance through the Medicare programs." Medicare payments to beneficiaries are not considered to be income so use Form 668-A(ICS) or 668A(c)(DO).
2. An insurance company or carrier contracting with the Centers for Medicare and Medicaid Services (CMS) makes the Medicare payments. Serve the levy on this company, and send a copy to the CMS Regional Office. See SERP, *Who/Where, Levy Source Information for the Regional Office addresses*, <http://serp.enterprise.irs.gov/databases/who-where.dr/levy-new.dr/frames-alpha.dr/acs-levy-frames-alpha-m.htm>.
3. The insurance company or contract carrier directly pays hospitals, home health agencies, and extended care facilities. Doctors and other medical services and supplies can be paid directly, too. However, the beneficiary may have paid the expense to be reimbursed by Medicare later.
4. The territory manager must approve the notice of levy on Medicare payments paid to beneficiaries. See IRM 5.11.1.3.5, *Managerial Approval*, for methods to secure managerial approval.

5.11.6.6.2 (01-22-2010)

Medicare Payments Paid to Providers

1. Starting October 2008, the Federal Payment Levy Program (FPLP) expanded to include Medicare and Supplier Payments made to providers by an insurance company or carrier contracting with the CMS. See IRM 5.11.7.
2. Whenever the FPLP indicator is present on a module, revenue officers may decide to levy the Medicare provider payments through the FPLP -- attaching the applicable 15% of the disbursement continuously; or the levy may be converted to utilize the general levy and distraint statute, IRC 6331(a).

Note:

Levy on Medicare payments paid to providers does not require second level approval. Prior to issuing the Form 668-A(ICS) or 668-A(c)(DO), release or block the module from the FPLP, if necessary. See IRM 5.11.7.2.6, *Blocking or Releasing FPLP Levy*. Serve the levy on the insurance company or carrier, and send a copy to the CMS Regional Office. See SERP on the IRWeb, *Who/Where, Levy Source Information for the Regional Office addresses*, <http://serp.enterprise.irs.gov/databases/who-where.dr/levy-new.dr/frames-alpha.dr/acs-levy-frames-alpha-m.htm>

5.11.6.6.3 (09-26-2014)

Medicaid Payments Paid to Providers

1. The Medicaid Act, under Title XIX of the Social Security Act, is a federal-state cost-sharing program that provides medical assistance to families and individuals with insufficient income and resources. Within the bounds of federal statutory and regulatory requirements, the state enters into agreements with providers of services and establishes a level of reimbursement to be paid to providers. Upon approval of its plan, a state becomes entitled to reimbursement by the federal government for a portion of its payment to hospitals and other providers of medical assistance to Medicaid recipients. This federal contribution to a state's Medicaid expenses is termed "federal financial participation."

Note:

Those receiving Medicaid assistance are called beneficiaries.

2. Each state operates and administers its approved Medicaid plan in accordance with Centers for Medicare & Medicaid Services's (CMS) state Medicaid plan. Each state:
 - Establishes its own eligibility standards.
 - Determines the type, amount, duration and scope of services.
 - Sets the rate of payment for services.
 - Administers enrollment of providers.
3. Providers must first enroll in the Medicaid program to receive payment for services or goods provided to beneficiaries. Federal law does not prohibit providers with unpaid federal taxes from enrolling in or receiving payments from Medicaid.
4. States have traditionally provided Medicaid benefits using a fee-for-service system. The providers submit their claims to the state for payment and the state is responsible for claim processing and payment. Under fee-for-service arrangements, states pay providers directly for services.
5. Recently, many states have implemented a managed care delivery system for Medicaid benefits. In a managed care delivery system, beneficiaries get most or all of their Medicaid services from an organization under contract with the state. When considering a Medicaid provider levy, determine if the provider is paid directly by the state (fee-for service) or through a managed care program. The levy should be served on either the state or the appropriate managed care program, not both.

When states implement a managed care program, they can use any one of the following types of entities:	
Type	Defined
Managed Care Organizations (MCOs)	Similar to Health Maintenance Organizations (HMOs), these companies agree to provide most Medicaid benefits to people in exchange for a monthly payment from the state.
Limited Benefit Plans	These companies may look like HMOs, but only provide one or two Medicaid benefits (e.g., mental health or dental services).
Primary Care Case Managers	These individual providers (or groups of providers) agree to act as an individual's primary care provider, and receive a small monthly payment for helping to coordinate referrals and other medical services.

6. A Levy on Medicaid payments paid to providers is subject to IRM 1.2.44.4(5), *Delegation Order 5-3 (Rev. 1)*. Use Form 668-A(ICS) or 668-A(c)(DO) to levy payments owed to Medicaid providers. Medicaid disbursements by the federal government to the states do not qualify as "federal payments" for purpose of continuous levy. Medicaid payments paid to providers/suppliers are not subject to continuous levy under IRC§ 6331(h) or the FPLP. These payments are administered and paid out by state government agencies for CMS.

5.11.6.6.4 (09-26-2014)

U.S. Savings Bonds—Series HH/H Interest Payments

1. Series HH/H savings bonds pay interest semi-annually. Series HH U.S. Savings Bonds are no longer available for purchase. Because they are a 20-year non-marketable bond, some people still own HH bonds.
2. To levy the interest, use Form 668-W(ICS) or 668-W(c)(DO). See SERP, Who/Where, Levy Source Information for the address to mail these levies. With the levy, send a copy of the Notice of Federal Tax Lien. Also, send a letter with the levy. Include in the letter:
 - bond series,
 - serial number(s),
 - bond denomination(s), and
 - bond issue date(s).

5.11.6.6.5 (09-26-2014)

Farm Service Agency Program Payments

1. In 1994, the Agricultural Stabilization and Conservation Service (ASCS) was merged with other Agriculture agencies to create the Farm Service Agency (FSA). Serve levies on Farm Service Agency county offices to attach these program payments.

If	And	Then
The taxpayer is eligible for payment	FSA is authorized to pay the taxpayer	A levy payment will be sent.
The taxpayer is eligible for payment	FSA is not authorized to pay the taxpayer yet	FSA will complete the back of the levy and state when the payment will be made and how much it will be for. When a payment is authorized, FSA will send the amount the taxpayer was eligible for on the date of the levy. No new levy is needed.
The taxpayer is not eligible for payment		FSA will send the levy back saying no money is owed. If they know when the taxpayer will be eligible, they will say so. Another levy can be served later, if appropriate.

2. The listing of County offices for FSA can be found at the following web page <http://offices.sc.egov.usda.gov/locator/app?state=us&agency=fsa>.
3. To determine the correct counties eligible for FSA payments contact the FSA state office for assistance. The listing of state offices for FSA can be found at the following web page <http://www.fsa.usda.gov/FSA/stateOffices>.

5.11.6.6.6 (01-22-2010)

Relocation Act Payments

1. Relocation Act payments pay for displaced people's:
 - moving costs,
 - related expenses, and
 - cost of replacement housing.
2. Levy these payments only in flagrant cases. See IRM 5.11.6.2(6). The SB/SE Collection territory manager or an AI- Advisory manager (second level or above) must approve the notice of levy. See IRM 5.11.1.3.5, *Managerial Approval*.

5.11.6.6.7 (05-05-1998)

Fees for Attorneys of Social Security Claimants

1. Records of attorneys for Social Security claimants are with the claimant's files. To levy an attorney's fees, attach a list of claimants' names and SSNs. If the SSNs are not known, give anything else to identify the claimant.

Example:

Include the claimants' address and date of birth, if these are known.

- 2. Avoid sending these levies without claimants' SSNs. SSA's files, like those of IRS, are very large. There are many people with the same name.
- 3. A separate levy is not needed for each claimant's fees.

**5.11.6.6.8 (06-29-2001)
State Income Tax Refunds**

- 1. The IRS has established the State Income Tax Levy Program (SITLP) in many states. This program matches computer tapes of IRS liabilities and state refund tapes. The state tax agency sends payment with a list (or tape) of taxpayers whose refunds were taken.
- 2. Payments posted before 2000 used designated payment code (DPC) 04. Starting in 2000, these payments use DPC 20 for systemically applied payments and DPC 21 for manually applied payments. If the taxpayer says a state refund paid the amount owed, check IDRS for the payment. If it has not posted, ask for a copy of the state's letter showing the refund was taken. If the refund only pays part of the amount owed, collect the rest.
- 3. Taxpayer inquiries regarding errors with SITLP levies may require coordination with SITLP coordinator to resolve. See IRM 5.19.9.2.3 *SITLP Coordinator*.

**5.11.6.6.9 (01-22-2010)
National Labor Relations Board and Backpay Awards**

- 1. Backpay awards administered by the National Labor Relations Board (NLRB) can be attached by issuing Form 668-A(ICS) or 668-A(c)(DO), Notice of Levy, to the appropriate Regional Office of the Board. See *Exhibit 5.11.6-2* for addresses, contacts, and phone numbers for the NLRB Regional Offices. Send the levy to the office closest to the location of the taxpayer. If it is unclear which office to send the notice of levy to, then call the closest office or access www.nlr.gov and click on "Find Your Regional Office" .
- 2. Include the case name and number on the form.

If	And	Then
There has been a final nonappealable determination that the taxpayer is eligible for payment	The amount of the award has been determined	The NLRB Regional Office will forward the levy payment.
There has been a final nonappealable determination that the taxpayer is eligible for payment	The amount of the award has not yet been determined	The NLRB Regional Office will notify the contact person on the notice of levy that the amount of the backpay award and the date of distribution are unknown. NLRB will provide an estimated date, if available, when they will comply with the levy.
A levy has been served	The IRS no longer wants the NLRB to honor the levy	The IRS will issue a levy release to the NLRB Regional Office
There has been no final determination that the taxpayer is eligible for payment (case is under investigation or on appeal)		The NLRB Regional Office will complete the back of the levy form indicating no money is owed the taxpayer. If the taxpayer later becomes eligible for payment, the Regional Office will so advise the revenue officer who issued the notice of levy so that a new levy can be issued, if appropriate.

- 3. If the amount of the check for the backpay award exceeds the amount of the taxpayer's outstanding tax liability, apply the full amount of the check to the taxpayer's account and any overpayment will be refunded to the taxpayer subject to IRS overpayment/refund procedures. The refund will be systemically issued, no action is required of the RO.
- 4. If the taxpayer's employer has not withheld the taxes from the backpay award, the NLRB will withhold the taxes before issuing the levy payment.

**5.11.6.7 (03-15-2005)
Receivables**

- 1. Accounts receivable, notes receivable, and other debts owed to a taxpayer may be levied upon.
- 2. Accounts receivable are assets representing money due to a taxpayer for products and services provided on credit.

Example:

monies owed to the taxpayer by clients, customers, patients, insurance companies, rental income, funds processed by credit card companies

- 3. Consider issuing a summons to the taxpayer's bank for deposited items to obtain information on possible accounts receivable on which to levy.
- 4. A note receivable is a certain amount loaned to another that is owed and payable at a certain time to the holder of the promissory note.

Example:

money loaned to a customer, employee, or officer of the company.

- 5. A notice of levy reaches future payments, only if the taxpayer already has a right to them.
- 6. If receivables can be sold, consider seizing and selling them.

**5.11.6.7.1 (01-22-2010)
Billing Services**

- 1. Some taxpayers use billing services for receivables. The service may only prepare bills, or it may also receive payments.

If	Then
The billing service only prepares and sends the bills	Use a summons or Form 2270, Notice to Exhibit Books and Records, to review records of the taxpayer's receivables to obtain levy sources.
The billing service receives payments and forwards them to the taxpayer	Serve a levy on the billing service.

Caution:

Form 2270 must not be used to solicit information from a financial institution within the Tenth Circuit or in any circumstance where a suit can be filed against the U.S. Government within the 10th Circuit. See IRM 25.5, *Summons Handbook*, for information on those circumstances.

- 2. Tapes may include records of many of the billing service's customers. Use a summons or Form 2270 to get only the taxpayer's records. The ten calendar day response period for summonses may need to be extended to get the records extracted.

- The billing service may deduct a fee and send the difference to the taxpayer. In this case, this is all the billing service needs to pay in response to the levy. If it normally sends the entire receivable to the taxpayer, then this should be paid in response to the levy.

5.11.6.8 (01-22-2010)

Securities—Stocks, Bonds, Mutual Funds, etc.

- The taxpayer's ownership interest in securities is subject to collection. Stocks, bonds, money market accounts, mutual funds, and debentures are examples of securities.
- The levied party's compliance with the notice of levy depends on the redemption rights of the taxpayer and the liquidity of the interest.
 - Mutual funds are redeemed, not sold. The levied funds cannot be reduced by any expenses incurred in redeeming the mutual fund shares.
 - Stocks are sold, not redeemed, and are subject to the seizure and sale provisions of IRM 5.10.
 - Bonds are redeemable for cash at maturity. Prior to maturity, they are subject to seizure and sale. The collection mechanism used will depend on how close the proposed collection action is to the maturity date.
 - Dividends payable and interest due at the time of the levy are subject to levy.
- Another issue that arises with respect to securities is whether shares are certificated (represented by a certificate) or uncertificated. Generally, mutual fund shares are uncertificated and certificates cannot be issued, even if requested.

If	And	Then
The mutual fund shares are uncertificated		The levy source turns over the funds in satisfaction of the levy.
The mutual fund shares are certificated		Seize the certificates and redeem them for cash.
The taxpayer's interest in a brokerage stock account is evidenced electronically and by payer statement of account	Issuance of paper certificates is an option	Demand issuance of certificates of the shares and follow seizure and sale procedures in IRM 5.10.3.15.3.
The taxpayer's interest in a brokerage stock account is evidenced electronically and by paper statement by account	Issuance of paper certificates is not an option	Follow seizure and sale procedures in IRM 5.10.3.15.3.

- Compliance Services Campus Operations (CSCO) sometimes receives securities for ACS levies. CSCO sends these to the territory office for disposition.

5.11.6.9 (09-26-2014)

United Nations (UN) Employees' Income

- Legal processes can be served at the UN:
 - with the Secretary General's approval
 - in conditions the Secretary General approves.

Note:

This authority comes from a joint resolution of the 80th Congress.

- Consider a levy on UN employees' salary only after all other sources have failed. Send the Form 668-W(ICS) or 668-W(c)(DO) from the SB/SE Director, Collection Area to the Director of Collection Policy SE:S:ECS:CP:FORE at Headquarters. Include a memo that explains attempts to collect the tax and any other relevant information. See IRM 5.11.1.3.5, *Managerial Approval*.
- Headquarters will forward the levy to the State Department and return to the revenue officer a copy for the case file.
- Because of the restriction on legal process, the levy is used to counsel the employee.

5.11.6.10 (01-22-2010)

Additional International Organizations

- Some international organizations that have headquarters within the United States are entirely immune from service of levy and, accordingly, are under no obligation to honor a levy. Do not issue notices of levy to collect taxes owed by the employees of such organizations. At present, such organizations include:
 - The World Bank,
 - Inter-American Development Bank.

5.11.6.11 (11-05-1999)

Mutilated Currency

- Mutilated currency may be redeemed at the Department of Treasury. It can also be turned in to a bank which will send it to Treasury for redemption. This can be levied.
- The fact that mutilated currency was turned in may be found out through routine investigation. Also, if the amount is \$5000 or more, the Office of Currency Standards reports the request to IRS. Then, this may be reported to the area where the redemption was requested.

5.11.6.12 (01-22-2010)

Levy on Non-Liable Spouse in a Community Property State

- In community property states, taxpayers who are liable for delinquent tax have a community property interest in their spouse's property and rights to property. In this case, the delinquent taxpayers' property rights in their spouses' property and rights to property might be subject to levy.

Example:

Taxpayers who are liable for delinquent tax may have a community property interest in their spouses' wages, so the wages of the spouse who is not liable for the tax might be subject to levy to pay it.

- Community property laws vary from state to state. This may affect how much of a non-liable spouse's property can be attached by a levy. If you receive information or evidence, the delinquent taxpayer with a community property interest is divorced or separated contact AI - Advisory regarding impact for that location. State law may have other effects, too. Contact AI - Advisory for advice on any special language or inserts/cover letters needed with the levy, unless local instructions have already been issued for how to handle these levies. AI - Advisory will consult with Associate Area Counsel, as needed.

Note:

For further information about community property, see IRM 25.18.4, *Collection of Taxes in Community Property States*.

5.11.6.12.1 (03-15-2005)

Wages and Salary

1. Although a non-liable spouse's wages or salary might be subject to levy, the levy does not have a continuous effect. This is because the Internal Revenue Code says that a levy on a taxpayer's wages and salary is continuous. However, in this case, the **non-liable spouse's** (not the **taxpayer's**) wages or salary is being levied.
2. Although a levy on a non-liable spouse's wages or salary is not continuous, the exempt amount can still be claimed.
 - A. However, because the levy might attach only part of the non-liable spouse's income, the portion that is not attached can be treated like an income source that is not being levied when the exempt amount is figured. See IRM 5.11.5.4.4, *Taxpayers with More Than One Source of Income*.

Example:

A non-liable spouse's weekly take home pay is \$700. Assume this person is in a state where a levy attaches half of a non-liable spouse's wages, and this is the only source of income that is levied. This means \$350 is not attached by the levy. If this levy is served in 2005, and the person is filing jointly with two exemptions, \$325.38 is exempt from levy. Since the exempt amount is less than the amount that is not levied, no exempt amount is subtracted from the \$350 that the levy attaches. The employer should send a weekly check of \$350. The \$325.38 exempt amount has been accounted for by the other \$350 that is not attached.

Example:

Take the same facts as the prior example, but the person claims four exemptions, so the weekly exempt amount is \$438.46. Because this is more than the \$350 that is not attached, the person needs to be allowed an additional exempt amount from the \$350 that is attached. This is figured.

\$438.46 Exempt from Levy
- \$350.00 Not Attached by the Levy
\$ 88.46 Additional Exempt Amount to be Allowed

The employer, then, figures:

\$350.00 Attached by the Levy
- \$ 88.46 Additional Exempt Amount
\$261.54 Weekly Levy Proceeds

- B. As a practical matter, in this example, a simpler explanation may be to tell the employer to send half of the person's take home pay if the exempt amount is less than half of that, but follow the instructions on the levy form if the exempt amount is more than half of the take home pay. This will lead to the same amount of levy proceeds:

\$700.00 Take Home Pay
- \$438.46 Exempt Amount
\$261.54 Weekly Levy Proceeds

5.11.6.12.2 (09-26-2014)

Notice to the Non-Liable Spouse

1. When a taxpayer's community property interest in a non-liable spouse's property or right to property is levied, the notices in IRM 5.11.1.2.1, *Required Notices*, must have been sent to the taxpayer. However, do not send these notices to the non-liable spouse.
2. After serving the notice of levy, notify the non-liable spouse of the levy in the same manner required for taxpayer notice. See IRM 5.11.2.2.7, *Notifying the Taxpayer After Serving the Levy*.
 - A. If a notice of levy is served, e.g., on a bank account, a copy of the levy is sent to the taxpayer. Part 4 of Form 668-A(ICS) or 668A(c)(DO) is generally used for this. In this case, though, also send a photocopy of the taxpayer's copy of the levy to the non-liable spouse.
 - B. If a levy is served on wages, salary, or other income, the statement of exemptions and filing status notifies the taxpayer of the levy. Similarly, the non-liable spouse will get these copies of the levy to claim the exempt amount, and this is the notification that a levy has been served.
3. The non-liable spouse can appeal the notice of levy under the Collection Appeals Program. For referral to Taxpayer Advocate Service (TAS) see IRM 5.1.9.4.1(8).

5.11.6.13 (06-29-2001)

Levy on Inheritances

1. If a taxpayer is due an inheritance, serve the notice of levy on the administrator/executor.

5.11.6.14 (01-22-2010)

Limited Liability Companies

1. For employment taxes on wages paid prior to January 01, 2009, a single member/owner LLC that did not elect to be classified as an association taxable as a corporation is "disregarded" as an entity separate from its owner for Federal Tax purposes. However, under regulations issued in August 2007, disregarded single member/owner LLCs will be treated as entities separate from the single member/owner for employment tax purposes for wages paid on or after January 1, 2009. Therefore, if a single member/owner LLC has not elected to be classified as an association taxable as a corporation, the LLC will be liable for employment taxes on wages paid to the employees of the LLC on or after January 01, 2009 .

Note:

For the impact of regulations issued in August 2007 on certain excise taxes see IRM 5.1.21.13.6.1, *Impact of Regulations Changes on Employment and Excise Taxation for a Disregarded Entity*.

2. There is no systemic method of determining whether an assessment in the name and Employer Identification Number (EIN) of an LLC for employment taxes on wages paid prior to January 1, 2009 is the responsibility of the LLC or a single member/owner (SMO). Prior to taking levy action on these assessments, you must determine whether the LLC or the SMO is the liable taxpayer. See IRM 5.1.21, *Collecting from Limited Liability Companies*.
3. A levy will attach only to the assets of the taxpayer identified. Identify levy source type on ICS using "P" for primary when the LLC is the liable taxpayer and "S" for the secondary when the SMO is the liable taxpayer.
4. When the LLC is the liable taxpayer, a notice of levy must reflect the name, trade name, if applicable, and EIN of the LLC, and **not** the name and identification number(s) of the SMO.
5. When the SMO is the liable taxpayer, a notice of levy must reflect the name and identification number(s) of the SMO and **not** the name, trade name or identification number of the LLC.
6. If the SMO is the liable taxpayer for assessments in the name and EIN of the LLC, special care is needed when preparing a notice of levy:
 - Generate the notice of levy through ICS, selecting the appropriate Name/Address record and tax periods for the SMO.
 - Make an corrections using the edit features of Microsoft Word.

- To avoid accounts being incorrectly attached and to facilitate the posting of levy proceeds received, a disclaimer may be added to the notice of levy: "This notice attaches to all accounts in the name of (single member owner name and EIN) as owner of (name of disregarded LLC and EIN) but does not attach accounts established in the name of (name of disregarded LLC and EIN)"

7. When the LLC is liable for some tax periods and the SMO is liable for other tax periods, issue a separate notice of levy for each liable taxpayer, selecting the appropriate Name/Address record and tax periods for each levy.

5.11.6.15 (01-01-2011)

Levies on Merchant Accounts

1. This section contains guidance on levies issued on merchant accounts.

5.11.6.15.1 (01-01-2011)

Merchant Accounts

1. A merchant account is a contract between a merchant and a bank or processor. The merchant account (contract) allows the bank or processor to process and/or receive card-based payments (credit or debit payment) for goods and/or services on the merchant's behalf. This contract allows the merchant to accept card based payments.

2. In this situation, the parties are as follows:

- The merchant is the taxpayer.
- A merchant service provider is the organization responsible for directly maintaining the relationship with the merchant (taxpayer.) The merchant service provider is normally an Independent Sales Organization or Merchant Service Provider (ISO/MSP). Few banks are currently ISO/MSPs.

Example:

A taxpayer owns a restaurant and wants to accept customer credit or debit card payments. The taxpayer enters into a contract with an ISO/MSP to process card-based payments. The ISO/MSP provides a merchant account for the taxpayer to account for the funds received at the end of the payment process.

- An acquiring bank, also known as an acquirer, is the bank (or processor) that acquires the funds received on behalf of the merchant (taxpayer) at the end of the card-based payment process.
 - The issuing bank is the bank of the cardholder (customer) that purchases goods or service from the merchant (taxpayer).
3. Per the terms of the merchant account (contract), the acquiring bank (or processor) exchanges funds with issuing banks on behalf of the merchant (taxpayer), and pays the merchant for the net balance of their daily payment card activity: gross sales, minus reversals, interchange fees, and acquiring bank (or processor) fees. The acquiring bank (or processor) normally transfers a batch of payments to the merchant (taxpayer) daily.

Note:

Some debit card transactions are settled directly to the merchant's (taxpayer's) operating bank account (normally checking account) nearly instantaneously and therefore are not transferred with the daily batch.

4. The ISO/MSP sells the merchant (taxpayer) the service of processing the credit card payments from the point of sale to the funds transfer to the acquiring bank. The point of sale (POS) is when the cardholder (customer) purchases a good or service from the merchant (taxpayer). The service sold to the merchant usually includes the equipment used at the POS, the service of a processor, and the merchant account (contract).

Note:

Although card payment processing methods vary by industry, typically, taxpayers get their card-based payment processing services from an ISO/MSP. Few banks actually sell processing or function as processors. A bank business customer who wants to take credit/debit cards is usually sent to the bank's subsidiary corporation which processes credit card transactions or an ISO/MSP who works with the bank.

5. A "card network" or "interchange" is the network that acts as an intermediary between an acquiring bank and an issuing bank. VISA and MasterCard are card networks. The process of authorization, capture, and transfer of card-based payments goes through a card network or interchange.
6. A processor provides the service of processing the card-based payments through the card network. The processor may be the ISO/MSP, acquiring bank, or a financial institution that specializes in card-payment processing. Regardless of the nature of the processor, the merchant account (contract) is between the merchant (taxpayer) and the acquiring bank or processor.

Example:

For VISA/MasterCard, the merchant (taxpayer) may establish a merchant account (contract) directly with an ISO/MSP or a processor to accomplish the card-payment processing. However, for the VISA/MasterCard network, the acquiring bank must be a bank or a processor owned by a bank.

7. The acquiring bank or processor provides the merchant (taxpayer) with a monthly merchant account statement. The Merchant Account Statement is similar to a bank statement and tells the merchant (taxpayer) about daily credit card transactions, fees paid and money amounts transferred to the merchant's (taxpayer's) bank account.

5.11.6.15.2 (12-02-2011)

Determining the location of the Merchant Account

1. To determine the location of the merchant account (contract), determine the acquiring bank or processor that holds the merchant account (contract).

2. During initial contact, determine if the taxpayer accepts card payments. If the taxpayer accepts card payments, then secure:

- The name and address of the merchant service provider
- Merchant account number (this is not a Routing Transaction Number (RTN))
- The name and address of the acquiring bank (bank or processor) that holds the merchant account (contract)
- Copy of the merchant agreement
- A copy of three months of merchant account statements

3. In the event of a non-responsive taxpayer, secure the information through the taxpayer's bank holding the operating bank account (normally a checking account). The acquiring bank's RTN and the merchant account number may appear on the taxpayer's operating bank account statements.

4. If unable to otherwise secure it, secure the merchant account number by a summons to the processor or acquiring bank, specifically requesting the merchant account number.

5.11.6.15.3 (09-26-2014)

Property the Merchant Account Levy Attaches

1. IRC 6331(b) provides that a levy shall extend only to "property possessed or obligations existing at the time" of the levy. Under the terms of a merchant account, the acquiring bank or processor is obligated to pay the taxpayer for all credit card sales made. This obligation arises at the time of the sale, not when the funds are later forwarded to the acquiring bank.
2. Based upon the manner in which the processor or acquiring bank processes card-based payment sales, the acquiring bank or processor may have difficulty determining exactly which processing fees will be paid during the card-based payment process at the moment the levy is issued. The acquiring bank or processor cannot use this fact to refuse to honor the Service's levy. Since the acquiring bank or processor does not make payments to the taxpayer instantaneously, the acquiring bank or processor clearly owes the taxpayer funds at least daily.
3. The funds held by the processors and acquiring bank are not deposits within the meaning of IRC 6332(c) and the 21 day holding period does not apply to these funds. Therefore, the credit card processor makes the payment when they otherwise make payments according to the merchant contract.

Example:

The taxpayer's restaurant runs, batches, and transmits their credit card receipts daily with their processor. According to the merchant account (contract), the processor, agrees to deposit the funds into the restaurant's bank account three days after the credit card receipts are run. When complying with a Notice of Levy, the processor would remit the funds to the IRS three days after the receipt of the Notice of Levy according to the merchant account (contract). The levy funds remitted will not include the restaurant's receipts after the day the levy was served.

**5.11.6.15.4 (09-26-2014)
Issuing a Merchant Account Levy**

1. Serve levies on the acquiring bank or processor holding the merchant account (contract).
2. The contract for some processors provides that processor will process the transaction and transmit to the issuing bank notification that the amount due should be sent to the acquiring bank. For this type of contract the processor will not have the funds owed to the taxpayer. A levy must be served to the issuing bank for this type of contract.
3. Use Form 668A(ICS) or Form 668A(c)(DO), *Notice of Levy*, to levy funds held by a merchant account provider. In order to eliminate any confusion on the part of the processor and to minimize litigation on the part of the Service include the following paragraph on the levy.

"This levy attaches to the proceeds of all sales completed by the taxpayer at the time the levy is issued, irrespective of when the processor pays the taxpayer. This levy may attach to funds being maintained in a charge back account or any other account which serves a similar function."

4. Consider issuing a levy on regular intervals (i.e. daily, every other day or weekly) since credit card processor levies are not continuous. If the processor will not accept the levy via fax, forward using the mail. Do not send a batch of sequentially post-dated levies to levy daily – a new levy must be issued each day.

Note:

Issuing a card payment levy by certified mail with a return receipt requested or via a fax machine with delivery confirmation requested will assist in determining the date and time the levy was received. Retain the certified mail receipt or the fax report of receipt in the administrative case file as proof of delivery of the levy.

**5.11.6.15.5 (09-26-2014)
Collecting from Charge Back Accounts**

1. Levies issued to a processing company attach to both the credit card sales made and funds held in the "charge back accounts." Some merchant agreements alternatively identify a charge back account as a "reserve account," a "secondary account," or a "security account." Although funds held in a charge back account belong to the merchant/taxpayer, under the typical contract, they are not available to the merchant/taxpayer until a specified amount of time after the contract is terminated.
2. Depending on the merchant, the merchant agreement and the nature of the business, the size of a particular merchant charge back account may vary greatly. Review the merchant agreement to determine if the business is required to maintain a charge back account and the relative priority in these funds between the processing company and the Service.
3. The processing company may have priority over the Service with respect to the funds in the charge back account if any of the following apply:
 - A. The processing company has executed a setoff. This only applies if the processor has actually exercised the right of setoff and has evidence that it was done before the levy, otherwise funds in the charge back account still belong to the merchant and the Service's levy will attach.
 - B. The processing company has a security interest earlier in time than the filing date of the notice of federal tax lien under IRC 6323(a). The processor's priority interest in the contents of the reserve account is only valid to the extent that it has parted with "money or money's worth."
 - C. The processor may hold a superpriority under IRC 6323(b)(10). The super priority may not apply to all processors as IRC 6323(b)(10) only applies to a bank or similar institutions. Additionally the processor bank must have parted with money or money's worth, as of the date that the processor bank is served with the levy and learns of the federal tax lien. See IRM 5.17.3.9.4(4), *Bank Account*.
4. If the Service levy has priority over the funds in the charge back account the processing company will not have to turn over those funds to the Service until the time period specified in the merchant agreement has expired. The Service does not have the right to unilaterally cancel the merchant agreement and force the funds in the charge back account to be paid over immediately.

**5.11.6.16 (09-26-2014)
Levy on Daycare**

1. Daycare is a service industry populated by individuals skilled in providing child care or elder care. They can be organized in the standard business structure or as a non-profit organization and may be affiliated with churches or a community service organization. The major source of income is a combination of private payments from parents, frequently involving a contractual relationship with the daycare and government funding. The latter involves numerous state, county and local government programs.
2. Before serving a levy on the parents of children in daycare or participant in elder care (or their guardians), consider the following:
 - A. Determine if the levy on the parent/participant (or guardian) will have the most impact of available enforcement actions. Will the levy result in significant payment or positively impact the resolution of the case.
 - B. Discuss levy action with manager to identify advantages and disadvantages of the alternative method of collection. Document this discussion in the ICS history.
 - C. The decision to levy on parent/participant (or guardian) must be based on the individual facts and circumstances of each case.
 - D. Develop a plan for communicating the levy action to the parent/participant (or guardian) to alleviate confusion and address concerns. Seek counsel guidance if necessary in drafting a cover letter.

**5.11.6.17 (09-26-2014)
Levy on Long-Term Care Facilities**

1. The following information provides guidance when it may be necessary to levy the primary source of income for a long-term care (LTC) provider/facility that impacts the facilities ability to continue to operate. Levies may leave patients at risk if there is no other facility in the area.

2. These facilities are generally referred to as skilled nursing facilities (SNFs) in the Medicare program and as nursing facilities (NFs) in the Medicaid program
3. Because these types of cases involve patient welfare the determination to levy should consider whether the LTC facility is non-compliant, uncooperative pyramiding and unable to pay. Discuss the potential sensitive case issues with the manager when enforcement may be necessary and document the case with alternative methods of collection considered prior to levy. Document this discussion and managers concurrence with plan of action in the ICS history.
4. Many LTC facilities receive Medicare, Medicaid or other government-funded subsidies, through the state health services agency. Levy of the primary income source may have an adverse financial impact, compelling the owners to close the business. Levies may leave patients at risk if there is no other facility in the area. To determine if alternate facilities are available, notify the appropriate state agency in advance of potential enforcement action.
5. When contacting the state prior to levy:
 - Guard against disclosure violations and only share general information about the levy process, regardless if a Notice of Federal Tax Lien has been filed.
 - Ask the contact if there are other facilities in the area to relocate the patients.

Note:

Generally, each state has a patient relocation plan in effect. If a care facility closes, the IRS is not responsible for relocating the patients. In many cases, the state will assist with patient relocation. Furthermore, Section 6113 of the "Patient Protection and Affordable Care Act" under section, 1128I (h) mandates specific procedures in the event of a SNF or NF closure. These procedures help protect the resident, the resident's family, and visitors because they require the facility administrator to provide an organized plan to the state that allows the resident to make the necessary adjustments within a reasonable time frame. The plan must be submitted and approved by the state agency at least 60 days prior to the impending closure.

6. An additional source for LTC facilities can be found on CMS web page titled Nursing Home Compare that has detailed information about every Medicare and Medicaid-certified nursing home in the country. The web page address is <http://www.medicare.gov/nhcompare/include/datasection/questions/proximitysearch.asp?bhcp=1>.

5.11.6.17.1 (09-26-2014)

Additional Levy Considerations

1. Major sources of income for LTC can be a combination of private payments from relatives and government funding.
2. Review of LTC bank deposit items will help determine the identity of any residents for whom rent is paid by a family member directly to the SNF operator entity. A levy may be issued to those family members to attach those funds, which are generally due on a monthly basis. Follow the procedure in IRM 5.11.6.17 when determining whether to issue a levy to a family member
3. Because most patients who require LTC become insolvent at some point due to the cost, most occupy Medicaid authorized beds. The SNF operator is reimbursed on a per diem basis from the Medicaid program for care of the patient in each Medicaid authorized bed that is occupied on a particular day. These per diem funds are the primary source of income for most SNFs. In order to levy effectively and capture all of the funds being paid by Medicaid to the operator, levies need to be sent DAILY. It is highly recommended that arrangements be made in advance to fax the levies directly to the Accounts Payable Department for your state's administering agency and to confirm receipt on the same day.
4. The SNF operator bills Medicare for any medical services provided, whether for doctors on staff, rehab services, medication, or other type of medical service provided to the patient. Claims for these services are paid by Medicare Administrative Contractors referred to as MACs. Once a claim has been approved for payment, there is a minimum 14 day aging period during which the funds must be held by CMS before the payment can be released to the medical provider (14 days for claims submitted electronically and 28 days for claims submitted via paper). In order to capture all payments aging in the system and/or due to be released at any given time to medical provider, a new levy should be issued to the appropriate MAC every 14 days.
5. The CMS maintains a web page that contains locations for MACs jurisdictions, their definitions, and who holds the contract currently. The web page address is <http://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/MACJurisdictions.html>. To locate an MAC access the web page and search based upon the type of medical service the taxpayer provides, Medicare Part A/B, Home Health & Hospice, or DME/POS. Then follow the links to locate your geographic region and MAC contact information.

5.11.6.18 (09-26-2014)

Levy on Qualified Tuition Program

1. Qualified tuition programs (QTPs) are also called "529 plans." QTPs allows for either the prepayment or the contribution to an account established for paying, a student's qualified educational expenses at an eligible educational institution. The QTP designated beneficiary is usually the student or future student for whom the plan is intended to provide benefits. The tax benefit of a QTP is that no tax is due on a distribution unless the amount distributed is greater than the beneficiary's adjusted qualified education expense.

Note:

Section 530 (Coverdell education saving accounts) which, like 529 plans, are not exempt from levy, but differ in that the person setting up a Coverdell ESA does not has the right to withdraw the funds. Those funds are held for the benefit of the beneficiary

2. There are two basic types: prepaid tuition plans and savings plans. Generally, each state has its own plan and each is unique. States are permitted to offer both types. A qualified education institution can only offer a prepaid tuition type 529 plan.

Note:

While a levy attaches to either plan additional information may be required to determine the taxpayer's rights for converting a prepaid tuition plan to cash. If there are questions on liquidating a prepaid tuition plan seek advice from AI - Advisory and Associate Area Counsel.

3. Whoever purchases the QTP is the custodian and controls the funds until they are withdrawn. Prior to levying on a QTP you should determine who the custodian of the QTP plan is and what rights they have for taking a distribution. If there are questions on who owns the account levied seek advice from AI - Advisory and Associate Area Counsel.
4. Because the QTP provides for the student's qualified educational expenses, discuss the levy with appropriate manager if unique case facts or potentially sensitive issues are known that may affect the levy determination.
5. The IRC 529 does not provide a levy exception for the 10 percent additional tax on taxable distributions from a Qualified Tuition Program.
6. See Publication 970, *Tax Benefits for Education* for general information on QTP.

Exhibit 5.11.6-1

Addresses often used for Levy on Federal Contracts

(Reference IRM 5.11.6.5)

Agency for International Development

1300 Pennsylvania Ave.
Washington, DC 20523

Tel: 202-712-0000

Agriculture, Department of

1400 Independence Ave. SW
Washington, DC 20250-9303

Tel: 202-720-3035

Appalachian Regional Commission

1666 Connecticut Ave NW, Rm 730
Washington, DC 20235

Tel: 202-884-7730

Commerce, Department of

1401 Constitution Ave., NW
Washington, DC 20230

Commodity Futures Trading Commission

1155 21st Street NW
Washington, DC 20581

Tel: 202-418-5164

Consumer Product Safety Commission

4330 East West Highway
Room 522
Bethesda, MD 20814

Corporation for National and Community Service

1201 New York Ave NW, Room 7209
Washington, DC 20525

Defense, Department of

Defense Financing and Accounting Service-Columbus Center
Attn: DFAS-BKSD/CC
Debt Management Office
PO Box 182317
Columbus, OH 43218-2317

Education, U.S. Department of

Federal Building No. 6
400 Maryland Ave., SW
Washington, DC 20202

Energy, Department of

1000 Independence Ave SW
Washington, DC 20585-0001

Environmental Protection Agency

Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460

Equal Employment Opportunity Commission

National Business Center
Fiscal Services Branch
EEOC Processing
7301 W. Mansfield Ave.
Mail Stop D-2735
Denver, CO 80235

Federal Aviation Administration

Financial Systems Branch, ABA–320
800 Independence Ave SW
Washington, DC 20591

Federal Communications Commission

Chief Financial Officer
Washington, DC 20554

Federal Election Commission

999 E Street NW, Rm 819
Washington, DC 20463–0001

Federal Emergency Management Agency

500 C Street SW
Washington, DC 20472

Federal Energy Regulatory Commission

888 1st Street NE, Room 42–73
Washington, DC 20426

Federal Labor Relations Authority

500 C Street SW, Room 225
Washington, DC 20424–0001

Federal Maritime Commission

Office of Budget and Financial Management
800 North Capitol Street
Washington, DC 20573–0001

Federal Mine Safety and Health Review Commission

Attention: Administrative Office
Suite 9500
601 New Jersey Avenue, N.W.
Washington, DC 20001–2021

Federal Reserve System

Room M–1200, Mail Stop 152
20th & Constitution Ave NW
Washington, DC 20551

Fish and Wildlife Service, U.S.

Department of the Interior
U.S. Fish and Wildlife Service
FWS MS2544–MIB
Washington, DC 20240

General Accounting Office

U.S. General Accounting Office
Claims Division
Washington, DC 20548

General Services Administration

1500 East Bannister Road
Room 1011, Mail Stop 6BCT
Kansas City, MO 64131
Attn: Sheila Gadd
Tel: 816–926–7625

U.S. Geological Survey

Accounts Payable MS 270
122201 Sunrise Valley Dr.
Reston, VA 20192

Government Printing Office

North Capitol & H Streets, N.W.

Washington, DC 20401
Attn: Comptroller (Stop FME)

Health and Human Services (PRS), Department of

200 Independence Ave, SW Rm 519D S4
Washington, DC 20201

Housing and Urban Development, Department of

451 7th Street SW
Washington, DC 20410–3000

Indian Affairs, Bureau of

Department of the Interior
Bureau of Indian Affairs
BIA MS4070–MIB
Washington, DC 20240

Inter-American Foundation

Financial Management & Systems Office
901 North Stuart Street
Arlington, VA 22203

Interior, Department of

Department of the Interior
Office of Policy, Budget and Administration
Fiscal Services PMD–F MS5257–MIB
Washington, DC 20240

Internal Revenue Service

Beckley Finance Center
110 North Heber St.
Beckley, WV 25801
Attention: Accounts Payable

U.S. International Trade Commission

Office of Finance
500 E Street SW, Room 316
Washington, DC 20436

Justice, Department of

600 E Street NW, Rm 4045
Washington, DC 20530

The Kennedy Center

2700 F Street NW
Washington, DC 20566–0001

Labor, Department of

200 Constitution Ave. NW. Rm N5425
Washington, DC 20210

Land Management, Bureau of

U.S. Department of Interior
1849 C Street, NW, MS 5628
Washington, DC 20240

Merit Systems Protection Board

ATTN: Finance, Suite 500
1615 M Street, NW
Washington, DC 20036

Minerals Management Service

Department of the Interior
Minerals Management Service
1110 Herndon Parkway Bldg MS632
Herndon, VA 22070

Mines, Bureau of

Department of the Interior
Bureau of Mines
Denver Federal Center
P.O. Box 25207
Denver, CO 80225

National Aeronautics and Space Administration

Office of the Chief Financial Officer
Attn: Diana Cermak
Room 8D40
300 E Street, SW
Washington, DC 20546-0001

National Archives

8601 Adelphi Rd., Room 5200
(ADM-AQC)
College Park, MD 20740-6001

National Bureau of Standards

Washington, DC 20234

National Capitol Planning Commission

801 Pennsylvania Ave NW, Suite 301
Washington, DC 20576

National Endowment for the Arts

Finance Office - Room 624
1100 Pennsylvania Ave., NW
Washington, DC 20506

National Endowment for the Humanities

1100 Pennsylvania Ave NW
Washington, DC 20506

National Gallery of Art

2000B South Club Drive
Landover, MD 20785
Attn: TGA, Mike Chapman

National Labor Relations Board

1099 14th Street NW, Suite 6100
Washington, DC 20570

National Mediation Board

1301 K Street NW, Suite 250 East
Washington, DC 20005

National Park Service

Department of the Interior
National Park Service
1925 Isaac Newton Square MS 309
Reston, VA 22092

National Science Foundation

1800 G Street NW
Room 475
Washington, DC 20550

Nuclear Regulatory Commission

1154 Rockville Pike
Rockville, MD 20852

Occupational Safety & Health Review Commission

1120 20th Street, NW Suite 907
Washington, DC 20036

Office of Personnel Management

1900 E Street NW, Room SB427
Washington, DC 20415-9998

Peace Corps

Fiscal Services
Washington, DC 20526

Pension Benefit Guaranty Corporation

Catherine Harper, FOD-GAB
1200 K Street NW, Suite 6415
Washington, DC 20005

Postal Rate Commission

1333 H Street NW
Washington, DC 20268-0001

Postal Service

1720 Market Street
St. Louis, MO 63180-0100

President, Executive Office of the

Financial Management Division, Rm 4007
725 17th St. NW
Washington, DC 20503

Railroad Retirement Board

844 N. Rush Street
Chicago, IL 60611-2092

Reclamation, Bureau of

Department of the Interior
Bureau of Reclamation
Accounting Operations D2300
P.O. Box 27045
Denver, CO 80235-0045

Securities and Exchange Commission

6352 General Greenway, Rm 2418
Alexandria, VA 22312

Selective Service System

1515 Wilson Blvd
Arlington, VA 22209-2425

Small Business Administration

409 3rd Street, SW, Suite 3120
Washington, DC 20024

Smithsonian Institution

955 L'Enfant Plaza SW, Suite 3120
Washington, DC 20024

Social Security Administration

Office of Finance -DAP -2-B-4 ELR
6401 Security Blvd.
Baltimore, MD 21235-0001

State, Department of

M/COMP/FO/OFO
PO Box 9487
Arlington, VA 22209

Surface Mining, Reclamation, and Enforcement, Office of

Department of the Interior
Office of Surface Mining, Reclamation, and
Enforcement
Denver Federal Center
PO Box 25065
Denver, CO 80225-0065

Tennessee Valley Authority

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Knoxville, TN 37902-1499

Transportation, Department of

400 7th Street SW, Rm 9401
Washington, DC 20590

Treasury, Department of

15th & Pennsylvania Ave NW, Rm 6100
Annex
Washington, DC 20220

U.S. Arms Control and Disarmament Agency

320 21st Street NW
Washington, DC 20451

U.S. Information Agency

301 4th Street SW, Rm 668
Washington, DC 20547

U.S. Trade & Development Agency

SA-16, Room 3009
Washington, DC 20523-1602

United States Enrichment Corporation (USEC)

6903 Rockledge Drive
Bethesda, MD 20817

Veterans Affairs, Department of, OSD/BU

Financial Services Center
Attn: Liz Dykowski (104/0473A)
1615 Woodward Street
Austin, TX 78772

Exhibit 5.11.6-2

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(Reference IRM 5.11.6.6.8)

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[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 11. Notice of Levy

Section 7. Automated Levy Programs

5.11.7 Automated Levy Programs

- 5.11.7.1 [State Income Tax Levy Program](#)
- 5.11.7.2 [Federal Payment Levy Program](#)
- 5.11.7.3 [Alaska Permanent Fund Dividend Levy Program](#)
- Exhibit 5.11.7-1 [FPLP - Federal Employee Salary Paying Agencies: NFC, NBC, GSA, DFAS](#)
- Exhibit 5.11.7-2 [Table of Federal Payments Subject to FPLP](#)
- Exhibit 5.11.7-3 [FPLP Exclusion Criteria](#)
- Exhibit 5.11.7-4 [Low Income Filter Estimated Income - Information Returns Processing Master File](#)
- Exhibit 5.11.7-5 [TC 971 AC 062 \(Document Locator Number \(DLN\) Format, Miscellaneous Field, XREF Field\)](#)
- Exhibit 5.11.7-6 [Federal Payment Agency Identifier Code List](#)
- Exhibit 5.11.7-7 [CP 90 \(or 297\) Final Notice, Notice of Intent to Levy and Notice of Your Right To A Hearing \(Rev 07/2008\)](#)
- Exhibit 5.11.7-8 [CP 91 \(or 298\) Final Notice Before Levy on Social Security Benefits \(Rev 07/2010\)](#)
- Exhibit 5.11.7-9 [CP 297A Notice of Levy and Notice of Your Right To A Hearing \(Rev 07/2008\)](#)
- Exhibit 5.11.7-10 [CP 90C \(or 297C\) Notice of Levy and Notice of Your Right to a Hearing](#)
- Exhibit 5.11.7-11 [FPLP Levy Notice - Department of the Treasury Financial Management Service \(FMS\) Notice](#)

Manual Transmittal

August 28, 2012

Purpose

(1) This transmits revised **IRM 5.11.7, Notice of Levy, Automated Levy Programs**.

Scope

This IRM information pertains to the Collection automated levy programs' criteria and procedures. These programs are the State Income Tax Levy Program, Federal Payment Levy Program, and Alaska Permanent Fund Dividend Levy Program.

Material Changes

(1) IRM 5.11.7.2, *Federal Payment Levy Program*, text is updated to incorporate information from previous interim guidance memoranda, and provides additional electronic reference links and clarity. Notable changes are in the following subsections:

- A. 5.11.7.2.1, *Levy Authority and Background*, is updated to include information on the new FPLP FEDCON levy and the 100% levy expansion on vendor payments.
- B. 5.11.7.2.1.1, *IRS/FMS Interagency Agreement - Federal Payments Subject to the FPLP*, is updated to include information on the new 100% levy expansion authority on vendor payments.
- C. 5.11.7.2.2.3, *Low Income Filter (LIF) Exclusion*, is updated to provide clarity on the criterion regarding delinquent tax returns. There are no changes to the OUO sections.
- D. 5.11.7.2.3, *FPLP Systemic Processes and Indicators*, is updated throughout to provide clarity and to incorporate information the new FEDCON levy process.
- E. 5.11.7.2.3.1 (3), *Case and Module Selection Process (TC 971 AC 060)*, is updated to reflect that the GSA Central Contractor Registration (CCR) is changed to the System for Award Management (SAM).
- F. 5.11.7.2.3.3, *FPLP Notice Process (TC 971 AC 069 or AC 169)*, incorporates new information on the new FEDCON levy process, and updated to provide clarity.
- G. 5.11.7.2.3.4, *Levy Service Process (TC 971 AC 662, 762, 677)*, incorporates new information on the new FEDCON levy process, and updated to provide clarity.
- H. 5.11.7.2.3.5, *Levy Payment Process (TC 670 DPC 18 or DPC 19)*, incorporates new information on the 100% levy expansion vendor payments.
- I. 5.11.7.2.4, *FPLP Generated Notices and Appeal Rights*, is updated to provide clarity.

(2) IRM Exhibit 5.11.7-2, *Table of Federal Payments Subject to FPLP*, is updated to provide information on the 100% levy expansion on vendor payments.

(3) IRM Exhibit 5.11.7-9, *CP 297A, Final Notice Before Levy on Social Security Benefits (Rev 07/2010)*, is updated to correct the graphic's descriptor sentence.

(4) IRM Exhibit 5.11.7-10 is now the exhibit for new CP 90C (or CP 297C), *Notice of Levy and Notice of Your Right to a Hearing*. This is a new post-levy CDP notice for the FPLP FEDCON levy process. The previous IRM Exhibit 5.11.7-10, *FPLP Levy Notice - Department of the Treasury Financial Management Service (FMS) Notice*, is renumbered and is now IRM Exhibit 5.11.7-11.

Effect on Other Documents

IRM 5.11.7, Automated Levy Programs, dated August 12, 2011, is superseded.

This IRM incorporates Collection Interim Guidance Memoranda SBSE-05-1111-068 dated November 8, 2011, *Federal Payment Levy Program - Federal Contractor Post-Levy Collection Due Process* and SBSE-05-0412-033 dated March 30, 2012, *Federal Payment Levy Program 100% Levy Authority*.

Audience

SBSE Collection Employees except Campus Compliance

Effective Date

Related Resources

Information intended for Campus Compliance and other personnel can be found in IRM 5.19.9, *Liability Collection, Automated Levy Programs*.

Rennae L. Ward
Director, Collection Analytics, Automation, Inventory Selection and Delivery
Enterprise Collection Strategy
Small Business Self-Employed

5.11.7.1 (08-24-2007)

State Income Tax Levy Program

1. The State Income Tax Levy Program (SITLP) is one of three automated levy programs. SITLP matches a Master File database of delinquent taxpayers eligible to be levied against a database of state tax refunds for each state participating in SITLP.
2. Information pertaining to the SITLP criteria, process and procedures can be found under IRM 5.19.9, *Liability Collection, Automated Levy Programs*.

5.11.7.2 (08-28-2012)

Federal Payment Levy Program

1. The Federal Payment Levy Program (FPLP) is an automated levy program the IRS has implemented with the Department of the Treasury, Financial Management Service (FMS) since 2000.
2. FMS administers the Treasury Offset Program (TOP) to collect delinquent **non-tax** debts for federal agencies. The FPLP was developed to interface with FMS TOP as a systemic and efficient means for the IRS to collect delinquent taxes.
3. IRS provides a weekly file of delinquent taxpayers to FMS. FMS matches the delinquent taxpayer file against federal payment files.

5.11.7.2.1 (08-28-2012)

Levy Authority and Background

1. IRC § 6331(h), *Continuing levy on certain payments*, as prescribed by the Taxpayer Relief Act of 1997 (Public Law 105–34) Section 1024, authorizes the IRS to issue *continuous* levies on payments referred to as "specified payments."
2. The FPLP was developed as the automated means intended to administer this law; therefore, no paper levy documents (Form 668-A or Form 668-W) should be served to effectuate a levy under this statute. The federal agencies participating in this automated levy program process understand how this levy statute is administered and that the service of a paper levy document is the means of levy intended under IRC § 6331(a) and/or (e).
3. The law allows up to fifteen percent (15%) of *Specified payments* to be levied. *Specified payments* under IRC § 6331(h)(2)(A) include any federal payment other than a payment for which eligibility is based on the income and/or assets of a payee. *Specified payments*, under IRC § 6331(h)(2)(C), includes any annuity or pension under the Railroad Retirement Act, or benefit under the Railroad Unemployment Insurance Act. The payments subject to 15% in the FPLP are discussed in the next section. *IRM 5.11.7.2.1.1. IRS/FMS Interagency Agreement - Federal Payments Subject to the FPLP*.
4. IRC § 6331(h)(3) allows an increase of this continuous levy for up to one hundred percent (100%) of any specified payment due to a vendor of property, goods or services sold or leased to the Federal government. The 100% levy increase is incorporated into the FPLP for federal contractor/vendor payments. *IRM 5.11.7.2.1.1. IRS/FMS Interagency Agreement - Federal Payments Subject to the FPLP*.
5. Although *Specified payments* may include unemployment benefits, workmen's compensation, certain public assistance payments, and the minimum exemption (from the levy of) wages, salary and other income, the IRS will **not** pursue these payments at this time.
6. The FPLP administers a levy. It is not a statutory or administrative offset. There are legal distinctions between the two civil collection actions. One distinction is that a levy is often subject to IRC § 6330, *Notice and opportunity for hearing before levy* (Collection Due Process). Contact your local Area Counsel for more information.
7. Under IRC § 6330(f) and (h), the IRS can serve a levy to collect employment taxes prior to notifying the taxpayer of their right to a Collection Due Process (CDP) hearing. These levy processes are referred to as a "disqualified employment tax levy" (DETL) or a "federal contractor (FEDCON) levy". The FPLP implemented the DETL process in January 2009, and the FEDCON levy process in January 2012. The FPLP still serves these levies under IRC § 6331(h) authority, but its (post-levy) CDP process is granted under IRC § 6330(f). Additional information on the general DETL process can be found in IRM 5.1.9.3.15, *Disqualified Employment Tax Levy*. Further information on how to recognize the FPLP DETL and FEDCON levy processes are described in the subsections below.
8. In serving a notice of levy, or release of such levy, with respect to any applicable government payment, IRC § 6103(k)(8), *Confidentiality and Disclosure of certain returns and return information for tax administration purposes*, authorizes the IRS to disclose return information, including taxpayer identity information, the amount of any unpaid tax liability (including penalties and interest), and the type of tax and tax period to which the unpaid liability relates, to officers and employees of the Financial Management Service. IRC § 6103(k)(6) authorizes FMS to send levy information to non-Treasury disbursed offices such as the Defense Finance and Accounting Service (DFAS), the US Postal Service (USPS), and Centers for Medicare and Medicaid Services (CMS), to the extent that such disclosures are necessary to obtain information, which is not otherwise reasonably available, for investigatory and tax administration purposes. Furthermore, IRC § 6103(n) permits the disclosure of returns and return information to any person to the extent necessary in connection with the processing, storage, transmission and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the provisions of other services, for tax administration purposes.

5.11.7.2.1.1 (08-28-2012)

IRS/FMS Interagency Agreement - Federal Payments Subject to the FPLP

1. The interagency agreement between the IRS and FMS provides for certain federal payments disbursed or administered by FMS to be systemically and continuously levied. FMS is the levy source for all levies issued through the FPLP — *not* the federal payment agencies.
2. The following federal payments are subject to the FPLP:
 - A. **Civil Service or Federal employee retirement pension annuities** administered through the Office of Personnel Management (OPM) Civil Service Retirement System (CSRS) and Federal Employee Retirement System (FERS). The FPLP will levy 15% of the payment.

Note:

The FPLP does not levy the annuity payments in the Federal retirement Thrift Savings Plan (TSP).

- B. **Treasury disbursed Federal civilian agency (non-Defense) contractor/vendor payments**. The FPLP will levy 100% of the payment. Prior to April 8, 2012, these payments were levied for 15% of the payment.
- C. **Federal employee travel payments** - advances and reimbursements. The FPLP will levy 15% of the payment.

D. **Federal (civilian) employee salaries** administered by the salary paying agencies (SPA): United States Department of Agriculture (USDA) National Finance Center (NFC), Department of the Interior (DoI) National Business Center (NBC), USPS, General Services Administration (GSA), and Defense Finance and Accounting Service (DFAS).

Note:

DFAS, as a SPA, pays out some federal civilian employee salaries, as well the Defense civilian employee and the military uniformed active/reserve member salaries and military retiree payments. The FPLP does not include the military uniformed services members' salaries nor the military retiree payments.

Note:

Exhibit 5.11.7-1., FPLP - Federal Employee Salary Paying Agencies - NFC, NBC, GSA, DFAS, for the listing of the federal agencies whose payrolls are administered by these salary paying agencies. Federal employee salaries will be levied for 15% of the gross wages or salary remaining after current taxes, health insurance premiums, retirement contributions, and, if applicable, court ordered child support payments are deducted. There should be no other deductions taken into consideration for the 15% calculation.

E. **Social Security Administration (SSA) benefit payments under Title II of the Social Security Act**, aka Federal Old Age, Survivors and Disability Insurance (OASDI) benefits. (The exceptions are dependent child benefits, claims for lump sum payments, and payments that have partial withholding to repay an SSA benefit overpayment.) The FPLP will levy 15% of the payment.

Note:

Supplemental Security Income (SSI) payments are not subject to the FPLP.

F. **Department of Defense (DoD) contractor/vendor payments** paid through the Defense Finance and Accounting Service's (DFAS) payment systems. The FPLP will levy 100% of the payment. Prior to April 8, 2012, some of the payments may have been levied for 15% of the payment.

G. **Army Corp of Engineers (ACOE) and the United States Postal Service (USPS) contractor/vendor/supplier payments.** The ACOE payments are levied at 100% of the payment. Prior to May 9, 2012, the ACOE payments were levied for 15% of the payment. The USPS vendor/supplier payments are continuously levied at 100% for goods and services payments and 15% for non-goods and services payments.

H. **Centers for Medicare and Medicaid Services (CMS) - Medicare Parts A (hospital), B (doctor), C (managed care) and D (prescription) provider and supplier payments.** Medicare Parts A and B payments disbursed through the CMS Healthcare Integrated Government Ledger Accounting System (HIGLAS) are in the FPLP. Medicare Parts C and D payments are disbursed by the Treasury Department and are in the FPLP. The FPLP will levy 15% of the payments.

Note:

Medicare provider/supplier payments are not considered "contractor" or "vendor" payments and therefore are not subject to the 100% continuous levy increase allowance for the FPLP. This is because these providers/suppliers "enroll" to participate in the Medicare program, and are not subject to the U.S. Government Federal Acquisition Regulation (FAR) process for awarded contractors or vendors.

Note:

Medicaid provider/supplier payments are not subject to levy under IRC§ 6331(h) or FPLP. These payments are administered and paid out by state government agencies for CMS. The payments may still be subject to levy under IRC§ 6331(a).

I. **Miscellaneous Payments** - non-means tested, such as discretionary one-time payments and expenditures paid out by different Federal agencies' specialty programs. These are payments made for various federal program-related expenditures, including interagency transfers, non-means tested loans, grants, medical, emergency and other administrative obligations. Also, included are payments from the Commodity Credit Corporation, also known as farm subsidy payments. The FPLP will levy 15% of the payment.

J. **Railroad Retirement Board (RRB) Benefit Payments** - monthly annuity or pension payment under the Railroad Retirement Act (RRA), except the RRA Tier 2 benefit portion. The FPLP will levy 15% of payment.

3. Prior to 2006, on delinquent IMF joint income tax and BMF sole proprietor tax liabilities, the FPLP only levied federal payments that matched to the *primary* TIN. Starting January 2006, FPLP also began matching and levying federal payments identified for valid *secondary or cross-reference* (XREF) SSNs on those IMF and BMF accounts.
4. *Exhibit 5.11.7-2, Table of Federal Payments Subject to the FPLP*, that displays the payment types that are levied through the FPLP; the type of Master File accounts that match with a certain federal payment type; and the levy percentage, i.e. 15% or 100%.
5. If a taxpayer is receiving two or more types of federal payments that are available for levy through the FPLP, then each of those payments will be levied. The FPLP cannot selectively levy a certain payment separately for a particular taxpayer. Likewise, if both spouses on joint income tax liabilities are receiving federal payments subject to the FPLP, then both will be levied. The FPLP cannot levy only a certain spouse separately for their joint delinquent tax module.

5.11.7.2.1.2 (08-12-2011) Delegation Authority

1. The delegation authority to issue an IRC § 6331(h) levy, levy release, and return of levied property remains the same as outlined in Delegation Order 5-3. See IRM 1.2.44.4, *Levy on Property in the Hands of a Third Party*.
2. Certain Taxpayer Advocate Service (TAS) employees are delegated to release systemically generated levies such as the FPLP, but only under the procedures contained in IRM 5.11.7.2.6 (or successor provisions). See Delegation Order No. 13-2 (Rev 1.), IRM 1.2.50.3. TAS employees cannot, however, take action on a case that is open in another function. TAS employees may only generate levy releases on collection modules **not** assigned to Automated Collection System (ACS) Status 22 with an open control base only or collection field Status 26. See IRM 13.1.10.12.1.5, *Releasing Federal Payment Levies*, and IRM 13.1.4.2.3.19, *Levy Release Authority*, or refer to TAS Delegation Order authorities and successor revisions.

5.11.7.2.1.3 (08-28-2012) Third Party Notification

1. The FPLP systemic process is not subject to third party notification provisions under IRC § 7602(c), *Examination of books and records, Notice of contact of third parties*, because contact is made between electronic database(s).
2. Third-party contact provisions must be satisfied prior to any *personal* contact with FMS (or other federal agencies and third parties) about taxpayers subject to FPLP.

5.11.7.2.2 (08-12-2011)

FPLP Selection Criteria

1. The FPLP is a systemic process where all modules are first selected under certain collection statuses, but then may be excluded if certain freeze codes exist while in the status. This subsection and its exhibits describe the selection and exclusion process.
2. The following Individual and Business Master File (IMF and BMF) balance due tax accounts with the collection module status can be selected into the FPLP:
 - A. **Taxpayer Identification Number (TIN)** is a valid Social Security Number (SSN) or Employer Identification Number (EIN);
 - B. **Master File Tax Code (MFT)** is 01 through 06, 08 through 17, 29 through 31, 33, 34, 36, 37, 44, 50, 51, 55, 60, 63, 64, 67, 77, 78;
 - C. **Collection Module Status** is Master File Status 22, 23, 24, 26 or Integrated Data Retrieval System (IDRS) Transaction Code (TC) 530, with Closing Code (CC) 03, 06, 09, 10, 12, or 39.

5.11.7.2.2.1 (08-12-2011)

Business Master File (BMF) Modules Selected for the Disqualified Employment Tax Levy (DETL)

1. For a BMF employment tax module (MFT 01, 10, 11, 14 and 16) to qualify for a DETL, there must have been a CDP hearing previously requested on another BMF employment tax module no more than two years prior to that DETL-qualified module's period end date.
2. BMF employment tax modules that are selected into the FPLP, may also be subject to the DETL process. In order to select FPLP DETL periods, a new FPLP BMF entity indicator "AC 630 (YYYYMMDD) DATE" has been created. This new indicator is displayed in the BMF entity CC BMFOLE. A taxpayer's employment tax module may be selected for a FPLP DETL, if the entity indicator's action code (AC) 630 date is within the "two-year look back" period of that DETL-qualifying module's period end date.
3. The FPLP BMF entity indicator "AC 630 (YYYYMMDD) DATE" is defined as the following:
 - A. The FPLP BMF entity indicator "AC 630 YYYYMMDD" will display a date which is the tax period end date of the latest BMF employment tax module containing a posted TC 971 AC 630 (levy or levy/lien combo for CDP appeal hearing request.)
 - B. "AC 630 YYYYMMDD" can only post one employment tax module's period end date at a time. For entities that have multiple employment tax modules with a TC 971 AC 630, the FPLP and BMF will post the period end date of the latest module with a TC 971 AC 630. The DETL would be issued on balance due modules where the indicator date is within two years of the modules' period end date - which will likely be later periods. The rationale is to issue the DETL on later pyramiding tax periods/quarters.
 - C. Even if the latest employment tax period with a TC 971 AC 630 is reversed by a Withdrawal - that period's end date will still be displayed.
 - D. "AC 630 YYYYMMDD" period end date can be overlaid when a later period employment tax module posts a TC 971 AC 630. This is regardless of the TC 971 AC 630 posting date. Again, as stated, the indicator will always post from the latest period employment tax module with a TC 971 AC 630. Therefore, be aware that a DETL-qualified module may have been selected based on an earlier posted "AC 630" period end date.
4. All federal payments available in the FPLP, except SSA payments, may be subject to a FPLP DETL. (The CDP notice will be issued prior to issuing the FPLP levy on SSA payments.)
5. *IRM 5.11.7.2.3., FPLP Systemic Processes and Indicators and IRM 5.11.7.2.3.4., Levy Service Process*, for the specific transaction codes on how to recognize when an employment tax module is selected into the FPLP DETL process.

5.11.7.2.2.2 (08-12-2011)

Exclusions

1. Tax modules or the taxpayer entities that qualify for the FPLP but have certain condition and freeze codes under the primary Taxpayer Identification Number (TIN) will be excluded from FPLP selection.
2. Accounts that are generally excluded from the FPLP are those that, statutorily or operationally, should not be in levy status and are coded that way in the Master File or Taxpayer Information File. Those accounts include unable-to-pay; pending installment agreements (IA) posted prior to a FPLP levy; approved installment agreements; pending or approved Offers-in-Compromise (OIC); open Disaster Zone indicators; Combat Zone; open bankruptcies or litigation; certain pending claims and adjustments; innocent spouse modules; and certain imminent Collection Statute Expiration Date (CSED) modules. *Exhibit 5.11.7-3 FPLP Exclusion Criteria*, which displays the list and description of entity and module transaction and freeze codes that are excluded from FPLP.

Note:

If a module is in the FPLP, and subsequently moves into one of these exclusions, then the module will **systemically** reverse out of the FPLP.

Example:

If a Status 26 module, which is in the FPLP, changes to status 72 with TC 520, the module will systemically reverse out of the FPLP.

Example:

If a Status 26 module, which is in the FPLP, is closed as an unable to pay with a TC 530 CC 32, the module will systemically reverse out of the FPLP.

3. Social Security benefit payments will not be subject to the FPLP levy if either of the following exists:
 - the taxpayer enters into a repayment agreement with the Social Security Administration (SSA) because of overpaid benefits.
 - if SSA has an active IRS paper levy (Form 668-W) it is honoring. By interagency agreement, SSA may honor the paper levy instead of the FPLP levy if a taxpayer is erroneously levied with both the paper and FPLP attaching their benefits, known as a "double levy" situation. Instead of returning the paper levy, SSA will honor the it in lieu of the FPLP. The FPLP will need to be removed from the account. *IRM 5.11.7.2.5.1., FPLP or Paper Levy*.

5.11.7.2.2.3 (08-28-2012)

Low Income Filter (LIF) Exclusion

1. Delinquent Individual Master File (IMF) taxpayers who qualify for the FPLP and are reported to receive SSA benefit or Railroad Retirement Board (RRB) benefit payments, will be excluded from the program if their estimated total income falls below 250% of the Department of Health and Human Services (HHS) Poverty Level Guidelines (PLG). These taxpayers are processed through the FPLP Low Income Filter (LIF).
2. Taxpayers who have any of the following conditions are not processed through the FPLP LIF analysis and are selected into the FPLP:
 - there is a delinquent unfiled return coded as a Tax Delinquency Investigation (TDI) status 03 under the entity's primary SSN;
 - there is a BMF debt under the balance due module's primary (or spouse) SSN;
 - the current entity name line does not match with the balance due module name line;

- the entity spouse SSN is invalid;
- certain asset documents under the entity's SSN(s) are reported in IRP:
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- the SSA or RRB income under the entity SSN(s) is not reported to the Information Returns Processing (IRP) Master File.

3. =====
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Note:

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4. Taxpayer accounts that are processed through the FPLP LIF are identified with TC 971 AC 543 posted in their entity. The TC 971 AC 543 indicates that the FPLP LIF analysis processing has taken place to determine if the balance due modules should be selected or excluded from the FPLP.

5. =====

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Example:

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Example:

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6. If the TC 971 AC 543 total income amount is **below** 250% of the HHS PLG amount, then the taxpayer's balance due modules will be excluded or removed from the FPLP. If the income amount is **at or above** 250% of the PLG amount, then the taxpayer's balance due modules will be selected into the FPLP.

7. =====
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Caution:

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**5.11.7.2.2.4 (08-12-2011)
 Modules Systemically Blocked from FPLP**

1. Certain modules that may be selected into the FPLP, as discussed above, are systemically blocked from the program with TC 971 AC 061 (with the Document Locator Number (DLN) displaying a series of 8s or 9s). Under certain conditions, these accounts may be manually or systemically unblocked. *IRM 5.11.7.2.6.4. Removal (Reversal) of the FPLP Block with TC 972 AC 061.*

A. All modules moving into Status 22 (ACS) are systemically blocked.

Note:

Modules that are placed in certain ACS inventories will be systemically unblocked. See IRM 5.19.9.3.2.3, *Liability Collection Automated Levy Programs, FPLP, Modules Systemically Blocked From FPLP.*

B. State and local government entities with employment code "G" and/or "T", and Indian Tribal Governments (ITG) and Alaska Native Villages with Master File indicator "I" are systemically blocked from the FPLP with TC 971 AC 061. If it is necessary to collect the accounts through the FPLP, then collection employees may manually unblock (TC 972 AC 061) these entities' balance due modules.

Caution:

Collection employees must contact the ITG specialist assigned to the Tribe prior to reversing the FPLP block on an ITG case. Refer to IRM 5.1.12.24, *Indian Tribal Governments.*

**5.11.7.2.3 (08-28-2012)
 FPLP Systemic Processes and Indicators**

1. The FPLP has five (5) systemic processes. Each process has its own specific transaction code (TC) and/or indicators and are outlined in the following subsections.

- A. Case and Module Selection Process (TC 971 AC 060)
- B. Matching Process (TC 971 AC 062)
- C. FPLP Notice Process (TC 971 AC 069 or AC 169)

2. The table below describes, in general, the FPLP transaction codes on a module. The subsections provide more detail. These TCs are systemically generated only (unless otherwise noted as being able to manually input).

FPLP GENERATED TRANSACTION (TC 971) ACTION CODES (AC)	FPLP ACTION	POSTED DEFINITION (TC 971)	REVERSAL DEFINITION (TC 972)	REFERENCE
AC 060	SELECTION	Module selected for FPLP.	Module reversed out of FPLP. Reverses TC 971 AC 060. Also reverses TC 971 AC 662, 762, 677.	IRM 5.11.7.2.3.1
AC 061 (may be manually input)	BLOCK OR RELEASE	Module blocked from FPLP. (Systemic input is indicated when DLN displays series of 8s or 9s. Manual input is indicated when DLN displays random numbers.)	Reversal of FPLP Block on module. Reverses TC 971 AC 061 - systemic or manual.	IRM 5.11.7.2.2.4IRM 5.11.7.2.6.4
AC 062	MATCH	FPLP account matched with a federal payment, or FPLP account will be posting a levied federal payment. The DLN displays the federal agency source; the type of federal payment and that a match is found. The "XREF TIN" field may display the primary or secondary/XREF TIN that matched with the federal payment. The "Miscellaneous" field may display more federal agency source codes.	Federal payment match posted in error. Reverses TC 971 AC 062.	IRM 5.11.7.2.3.2Exhibit 5.11.7-5Exhibit 5.11.7-6
AC 069 (may be manually input)	CDP NOTICE	FPLP generated the collection due process, Final Notice, Notice of Intent to Levy & Notice of Your Right to a Hearing (CP 90 or 297) from the TC 971 AC 062 match. Or, the FPLP generated the DETL or FEDCON post-levy collection due process, Notice of Levy & Notice of Your Right to a Hearing (CP 297A, 90C or 297C) (see below). For IMF joint returns, the spouse SSN will be displayed on the XREF TIN field, including each of the SSNs on joint income tax liabilities. For BMF, no XREF TIN will display. Other CDP notices may display the TC 971 AC 069: -LT 11 : ACS issued -L1058: Field Collection issued -CP 77: Alaska Permanent Fund Dividend Levy Program (AKPPFD) issued -CP 92: State Income Tax Levy Program (SITLP) issued	CDP notice, Final Notice (Notice of Intent to Levy & Notice of Your Right to a Hearing) not mailed. Reverses TC 971 AC 069.	IRM 5.11.7.2.3.3IRM 5.11.7.2.4
AC 169	SSA NOTICE	FPLP generated Final Notice Before Levy on Social Security Benefits (CP 91/298). The XREF TIN field will display the matched SSN of either the primary or secondary/XREF SSN from the TC 971 AC 062.	Final Notice Before Levy on Social Security Benefits (CP 91/298) not mailed. Reverses TC 971 AC 169.	IRM 5.11.7.2.3.3IRM 5.11.7.2.4
AC 662	SERVICE OF LEVY	A FPLP levy is served to FMS whether or not a federal payment source is found. The account will have a FPLP federal payment source only if a TC 971 AC 062 or a TC 670 DPC 18 or 19 also posts. The "Miscellaneous" field will display the literal "SAL-OTH-RRB" (which is a levy for all federal payment types except SSA) or "SSA". For current levies issued prior to January 2009, the "Miscellaneous" field will also display the literal "PREEXISTING".	TC 972 AC 662 does not display. Reversal of this AC is known when a subsequent TC 972 AC 060 is systemically posted. FPLP levy is released. Module is removed from the FPLP.	IRM 5.11.7.2.3.4
AC 762	SERVICE OF DETL	A FPLP Disqualified Employment Tax Levy (DETL) is served to FMS whether or not a federal payment source is found. The 971 AC 762 levy will generate the DETL post-levy CDP notice (CP 297A) and posts a TC 971 AC 069. The account will have a FPLP federal payment source only if a TC 971 AC 062 or TC 670 DPC 18 or 19 posts.	TC 972 AC 762 does not display. FPLP DETL levy is released and module is removed from the FPLP when a subsequent TC 972 AC 060 is systemically posted.	IRM 5.11.7.2.3.4
AC 677	SERVICE OF FEDCON LEVY	A federal contractor (FEDCON) levy is served to FMS if there is a federal contractor indicator (TC 971 AC 647) on the entity. The 971 AC 677 generates a FEDCON post-levy CDP notice (CP 90C or 297C) and posts a TC 971 AC 069. The "Miscellaneous" field will display the literal "SAL-OTH" (which is a levy for all federal payment types except SSA or RRB.) The account will have a FPLP federal payment source only if a TC 971 AC 062 or TC 670 DPC 18 or 19 posts.	Reversal TC 972 AC 677 does not display. FPLP FEDCON levy is released and module is removed from the FPLP when a subsequent TC 972 AC 060 is systemically posted.	IRM 5.11.7.2.3.4
AC 062	LEVY HIT	FPLP account will be posting a levied federal payment. (Subsequent TC 670 to follow.) The DLN displays the federal agency source; the type of federal payment and that a levy hit was found. The "XREF TIN" field may display the primary or secondary/XREF TIN that receives the federal payment. The "Miscellaneous" field may display more federal agency source codes.	Federal payment levy hit posted in error. Reverses TC 971 AC 062.	IRM 5.11.7.2.3.2Exhibit 5.11.7-5Exhibit 5.11.7-6

OTHER FPLP TC'S	FPLP ACTION	POSTED DEFINITION	REVERSAL DEFINITION	REFERENCE
TC 670 DPC 18 or 19	FPLP LEVY PAYMENT POSTED	FPLP designated payment code. DPC 18 is from the primary TIN; DPC 19 is from the secondary or XREF SSN.	TC 672 - systemic reversal of TC 670 DPC 18 or 19. FPLP payment reversed by FMS due to non-entitlement claim initiated by federal payment agency source.	IRM 5.11.7.2.3.5

**5.11.7.2.3.1 (08-28-2012)
Case and Module Selection Process (TC 971 AC 060)**

1. All delinquent modules that meet the selection criteria will be transmitted to FMS to be matched with federal payments. IRM 5.11.7.2.2.

Note:

Although a taxpayer may never receive a federal payment, their tax module may still meet the selection criteria and will be transmitted to FMS to search for a possible future match.

Note:

If a module is selected, it remains in its original MF collection status. The module's collection status progression may continue, i.e. account going from Status 22 to Status 26.

2. When the module is selected, a TC 971 AC 060 will post. An unreversed TC 971 AC 060 generates the following account indicators:

- A. MF entity screens (IDRS cc IMFOL/BMFOL) will display the indicator FMS CD:1, and IDRS entity screens (cc ENMOD) will display FMS-CD>1, if at least one module is selected with an unreversed TC 971 AC 060. If there are no modules selected, then the indicator will display 0 or no digit.
- B. Integrated Collection System (ICS) will display a red literal " **FPLP**" indicator on the case summary screens. The red " **FPLP**" is generated from the IDRS entity screen indicator FMS CD>1.
- C. Each MF and IDRS tax module (cc IMFOLT/BMFOLT, TXMOD) and ICS module summary screen will display the following indicators:

FMS CD (VALUE) ON MODULE	DEFINITION
1	Not selected into the FPLP, but at one time was included. (Do not confuse this module value with the entity value of <i>FMS CD:1</i> described in the previous paragraph.)
3	Currently selected into the FPLP and unreversed TC 971 AC 060 present on module.

D. Other values indicate the module is blocked from FPLP:

FMS CD (VALUE) ON MODULE	DEFINITION
4, 5, 7	MANUAL FPLP block (TC 971 AC 061) present on module
8, 9, B	SYSTEMIC FPLP block (TC 971 AC 061) (DLN has a series of 8s or 9s) present on module
C, D, F	Both MANUAL and SYSTEMIC FPLP block (2 or more unreversed TC 971 AC 061) present on module

3. The FPLP cases that are sent to FMS become part of the FMS National Interactive Delinquent Debtor Database (NIDDD) of U.S. Federal debtors, which includes non-tax debtors. This FMS federal debtor database is shared with the GSA System for Award Management (SAM) database. SAM (www.sam.gov) is the Federal government's centralized registrar database of taxpayer entities who register to bid for a federal contract or grant. The SAM flags federal registrants who have federal debt in the FMS NIDDD, including FPLP tax debt. The SAM record will indicate 'yes' or 'no' for a federal debt. No other debt information is provided. If a registrant inquires about their debt flag, then FMS or GSA will refer them to the IRS to resolve their accounts. For IRS tax debts, a taxpayer's debt flag will be removed when they are removed from the FPLP.

5.11.7.2.3.2 (08-12-2011)

Matching Process (TC 971 AC 062)

- Once a tax module is selected for the FPLP, it is transmitted to FMS. If FMS identifies a Federal payment or source match, then a TC 971 AC 062 will post on the module.
- The matched TIN will be displayed under the TC 971 AC 062 XREF field for IMF accounts and BMF accounts.
- The DLN associated with TC 971 **AC 062** will include information about:

- Federal payment agency source codes
- Type of federal payment matched
- If the module identified a **match** and/or an impending **levy** payment.
Exhibit 5.11.7-5 TC 971 AC 062 Document Locator Number (DLN) Format of Federal Payment Type for the descriptive format of the TC 971 AC 062 DLN.
Exhibit 5.11.7-6 Federal Payment Agency Identifier Code List, for the type of federal payment and federal payment agency source.

Note:

The federal payment agency source for federal salaries paid by NFC and NBC will only display the codes of NFC and NBC, rather than the actual federal employer (or "suboffice" code) of the federal employee taxpayer. *Exhibit 5.11.7-1, FPLP - Federal Employee Salary Paying Agencies - NFC, NBC, GSA, DFAS*, for the list of the federal agencies whose payroll is serviced by these salary paying agencies.

- If the TC 971 AC 062 DLN indicates **match** - the TC will post on all FPLP modules. The "match" TC 971 AC 062 will generate the FPLP notice process discussed below.
- If the TC 971 AC 062 DLN indicates **levy** - then the TC will only post on the module intended for the levy payment. *IRM 5.11.7.2.3.5. Levy Payment Process*.

5.11.7.2.3.3 (08-28-2012)

FPLP Notice Process (TC 971 AC 069 or AC 169)

1. This subsection describes the FPLP notice process. *IRM 5.11.7.2.4, FPLP Generated Notices and Appeal Rights*, describes the notices in detail. The FPLP generates the following notices:

IRS Computer Paragraph (CP) Notice Number		TITLE OF NOTICE <i>IRM 5.11.7.2.4</i>	Notice Exhibit Reference
IMF	BMF		
90	297	FPLP Pre-levy CDP Notice - " <i>Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing</i> "	<i>Exhibit 5.11.7-7</i>
91	298	FPLP SSA Pre-levy Notice - " <i>Final Notice Before Levy on Social Security Benefits</i> "	<i>Exhibit 5.11.7-8</i>
N/A	297A	FPLP Post-levy CDP Notice (DETL) - " <i>Notice of Levy and Notice of Your Right to a Hearing</i> "	<i>Exhibit 5.11.7-9</i>
90C	297C	FPLP Post-levy CDP Notice (FEDCON Levy) - " <i>Notice of Levy and Notice of Your Right to a Hearing</i> "	<i>Exhibit 5.11.7-10</i>
FPLP Levy Notice		Department of the Treasury, Financial Management Service (FMS) Notice	<i>Exhibit 5.11.7-11</i>

2. If a TC 971 AC 062 **DLN match** is posted, then Master File will systemically verify if a *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing* (CDP notice) had been issued by identifying an unreversed TC 971 AC 069 on the module. If a CDP notice was not issued, then Master File will systemically generate a FPLP CDP final notice, either the Computer Paragraph notice (CP) 90 (IMF) or 297 (BMF), prior to the levy and post a TC 971 AC 069 on the module. On the IMF, the appropriate SSN(s) will be displayed on the TC 971 AC 069 XREF field.

Note:

For joint income tax liabilities on the IMF, even if the match is only on one of the spouses, both spouses will be issued the CP 90 notice. The TC 971 AC 069 will post for each spouse.

3. If the match identifies a Social Security benefit payment, and an unreversed TC 971 AC 069 had been posted for at least ten cycles (weeks), then prior to the levy, Master File will systemically generate an additional final notice to the Social Security beneficiaries, either CP 91 (IMF) or 298 (BMF), *Final Notice Before Levy on Social Security Benefits* and post a TC 971 AC 169 on the module. The TC 971 AC 169 will display the TIN of the individual that matched with the Social Security payment.

Note:

On joint income tax liability accounts, the matched spouse's SSN will receive their own CP 91 with a copy going to the joint spouse. This is because of the specific information listed on the notice. The 971 AC 169 XREF SSN will display the matched spouse.

Note:

For SSA levies issued after July 2005, the IMF will systemically generate another TC 971 AC 169 and reissue a CP 91 if 26 cycles or more have passed since a prior TC 971 AC 169.

4. The FPLP may issue systemic CDP notices after a DETL or FEDCON levy - known as post-levy CDP notices:

CP 297A, *Notice of Levy, Notice of Your Right to a Hearing*, is issued after a FPLP DETL.

CP 90C (or 297C), *Notice of Levy, Notice of Your Right to a Hearing*, is issued after a FPLP FEDCON levy.

IRM 5.11.7.2.1. and the next subsection IRM 5.11.7.2.3.4, *Levy Service Process (TC 971 AC 662, AC 762, AC 677)*.

5. Another taxpayer notice is issued by FMS when a Federal payment is levied. See IRM 5.11.7.2.3.5, *Levy Payment Process*, below.

**5.11.7.2.3.4 (08-28-2012)
Levy Service Process (TC 971 AC 662, AC 762, AC 677)**

1. The FPLP will transmit (or "serve") a levy to FMS in the following situations.

Note:

Even if FPLP levy has been served to FMS, the account will have a FPLP federal payment source only if a TC 971 AC 062 and/or the FPLP payment transaction codes, are posted, as discussed in the next section. This is so that if a federal payment does match in the future, the levy will attach to the payment at the time of disbursement. See IRM 5.11.7.2.3.5 *Levy Payment Process (TC 670 DPC 18 OR 19)*

2. **FPLP Levy (Pre-levy CDP notice issued) - TC 971 AC 662**

For federal payments *other than Social Security*, a levy will be transmitted to FMS at least ten (10) weeks from when Collection Due Process (CDP) CP 90 or 297, *Final Notice, Notice of Intent to Levy and Your Right to a Hearing*, or after any other CDP notice, such as the ACS LT 11 or field collection L1058 was issued (indicated by the unreversed TC 971 AC 069 posting cycle) and a CDP hearing was not requested. A FPLP levy **TC 971 AC 662** will post on the module with either of the literals "**SAL, OTH, RRB**" displayed in the Miscellaneous Field and TIN in the XREF TIN field. (See *Exhibit 5.11.7-2* for the levy code literal meanings.)

For **Social Security payments matched**, a FPLP levy will be transmitted to FMS at least eight (8) weeks but no more than twenty-six (26) weeks from when the CP 91 or 298, *Final Notice Before Levy on Social Security Benefits*, was issued (indicated by the unreversed TC 971 AC 169 posting cycle). A FPLP levy **TC 971 AC 662** will post on the module with the literal "**SSA**" displayed in the Miscellaneous Field and TIN in the XREF TIN field.

3. **FPLP Disqualified Employment Tax Levy (DETL) (Post-levy CDP issued) - TC 971 AC 762**

For federal payments *other than Social Security or RRB benefit payments*, a FPLP DETL levy may also be transmitted to FMS on qualified BMF employment tax modules with MFT 01, 10, 11, 14 and 16. A **TC 971 AC 762** will post on the module, which will generate a post-levy CDP notice CP 297A and post a TC 971 AC 069. The taxpayer is provided their CDP appeal rights after the levy. IRM 5.11.7.2.3.3, *FPLP Notice Process (TC 971 AC 069 or AC 169)*.

4. **FPLP Federal Contractor Levy (FEDCON) (Post-levy CDP issued) - TC 971 AC 677**

For federal payments *other than Social Security or RRB benefit payments*, a FPLP FEDCON levy may be issued to FMS on all BMF tax modules and IMF tax modules (excluding filing status 2, married filing joint modules) if the entity is identified as a Federal contractor with an unreversed TC 971 AC 647 posted on the entity. A **TC 971 AC 677** will post on the module with the literals "**SAL, OTH**" displayed in the Miscellaneous Field. This will generate a post-levy CDP notice CP 90C (or 297C) and post a TC 971 AC 069. The taxpayer is provided their CDP appeal rights after the levy. IRM 5.11.7.2.3.3, *FPLP Notice Process (TC 971 AC 069 or AC 169)*.

5. Depending on a tax module's levy qualifications, a single tax module could have any of the levy action codes at various times, particularly if the module goes in and out of the FPLP; or a taxpayer's multiple modules may each have different levy codes occurring at the same time.

6. The FPLP DETL (TC 971 AC 762) and FEDCON (TC 971 AC 677) levy processes occur after the issuance of a CP 504 on DETL modules. The issuance of the CP 504 meets the 30-day pre-levy requirement of IRC 6331(d). Also, if a tax module qualifies for both a DETL and FEDCON levy during the same cycle, then the DETL (TC 971 AC 762) will be selected first.

7. For joint income tax and sole proprietor tax liabilities, the FPLP levy cannot be issued only on one TIN of these modules. All TINs in the tax modules or entity will be levied for their appropriate matched payments. The same process will occur when releasing a FPLP levy on these particular modules. IRM 5.11.7.2.6.

8. For taxpayers who have multiple tax periods in either the IMF and/or BMF, the levy should only subject their federal payment against one tax module at a time. That taxpayer's payment will not be levied more than the appropriate FPLP levy percentage to pay more than one tax module at a time, regardless if the taxpayer's TIN is the primary, secondary and/or XREF TIN on any tax module.

Example:

Taxpayer Thomas Trout has delinquent IMF income tax liabilities under his SSN. He also owes delinquent BMF employment tax liabilities as a sole proprietor, under his EIN and XREF SSN. Both his IMF and BMF tax modules are in the FPLP, with the BMF modules in the FPLP first. Both IMF and BMF modules match with a OPM retirement payment under his SSN. After the appropriate notices, the FPLP transmits levies on the IMF and BMF tax modules. The levies will attach 15% of the retirement payment. Since the BMF module was in the FPLP first, the levy payment will apply first to the BMF module and the 15% levy payment will post on that account. The IMF module will still have the open FPLP levy, but will not be double-paid or credited from that levy payment. Levy payments will begin to post on the IMF modules after the BMF modules are fully paid.

9. If the FPLP levy is released, a TC 972 AC 060 will display to indicate the account is removed from the FPLP. A TC 972 AC 662/762/677 will not display.

**5.11.7.2.3.5 (08-28-2012)
Levy Payment Process (TC 670 DPC 18 or DPC 19)**

1. FMS has to process the various types of federal payment files within its processing cycles in order to meet the various payment or disbursement dates. The levy must be processed by the cutoff date for it to attach the payment by the payment date. The levy payment is then transmitted to the IRS and posted on the account on the taxpayer's payment date.

FEDERAL PAYMENT	PAYMENT DATE	PROCESSING CYCLE CUTOFF DATE
OPM (federal retirement income)	1st business date of each month	2 weeks before payment date
SSA (OASDI) benefits	3rd business date of each month; 2nd, 3rd & 4th Wednesday of each month	6 business days before the payment date
RRB benefits (retirement annuity except Tier 2)	1st business date of each month	5 business days before the payment date
Federal employee salaries	Biweekly	2 weeks before payment date
Defense and civilian agency contractor/vendor/supplier payments; Federal employee travel payments; "Miscellaneous" payments; CMS Medicare provider payments;	Daily	Cutoff dates vary; payments may be processed up to 30 days prior to payment date depending on invoice terms

2. FMS lets IRS know that the levy is being processed against a federal payment by a TC 971 AC 062, with its DLN indicating a levy payment processed (or "1" in the 13th DLN position) for that module. *Exhibit 5.11.7-5. TC 971 AC 062 (DLN) and Miscellaneous Field Format*, for additional specific payment agency information .
3. The payment will post on the payment date with a TC 670 DPC 18 (payment from the primary TIN) and/or DPC 19 (payment from the secondary or XREF TIN) when FMS transmits the payment to the IRS through the Electronic Federal Tax Payment System (EFTPS).

Note:

The TC 670 DPC 18 and DPC 19 are systemic transaction codes and cannot be manually input.

4. Most of the FPLP levy payments will be 15% of the federal payment (or balance due, whichever is less). The exception will be on federal contractor or vendor payments, i.e. account receivables, invoice payments, from taxpayers doing business with the government, which will be 100% of the payment. *IRM 5.11.7.2.1.1. IRS/FMS Interagency Agreement - Federal Payments Subject to the FPLP*.
5. FMS will then send a notice to the taxpayer indicating the federal payment has been reduced because of the IRS FPLP levy. *IRM 5.11.7.2.4. FPLP Generated Notices and Appeal Rights. Exhibit 5.11.7-11 FPLP Levy Notice - Department of the Treasury, Financial Management Service (FMS) Notice* .
6. Inter-agency processing and timing constraints may delay some actions in this levy payment process:
 - A. The TC 971 AC 062 may post before or after the TC 670. This is due to timing issues, because the TC 971 AC 062 is posted on a weekly basis and the TC 670s are posted on a daily basis.
 - B. Although the TC 971 AC 062 DLN that indicates a levy payment was processed for the module, the federal payment may still not be received from FMS due to programming interface constraints between the time the levy was transmitted by the FMS to the payment agency to hold the payment and when the payment had been processed for disbursement. This may be the case on Defense contractor/vendor payments.
7. FMS may systemically reverse a TC 670 DPC 18 or DPC 19 payment with **TC 672** DPC 18 or DPC 19 when the federal payment agency determines the taxpayer was not entitled to the payment.

5.11.7.2.4 (08-28-2012)

FPLP Generated Notice(s) and Appeal Rights

1. As discussed in the FPLP Notice Process section, there are five types of FPLP notices. Each notice is described in this subsection.
2. **CP 90 (IMF) or 297 (BMF) - Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing - Exhibit 5.11.7-7**
 - A. The CP 90/297 will be generated by the MF (displayed with TC 971 AC 069) and mailed certified with a return receipt (Postal Service (PS) Form 3811) through the IRS National Print Sites.
 - B. The USPS return receipt will be systemically processed and the appropriate notice response TC 971 AC 066, 067, or 068 will be posted on the account.
 - C. The CP 90/297 will display the balance due amounts and the appropriate ACS contact phone number for taxpayers to resolve the case or exercise their appeal rights.
 - D. The notice will inform taxpayers of their right to appeal. Taxpayers may exercise their appeal rights, appropriately, through the:
 - Collection Appeals Program (CAP)
 - Collection Due Process (CDP)
 - Equivalent Hearing (Appeals request made *after* the 30 day CDP period and before one year from the date of CDP notice.)

Note:

If a *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing (CP 90/297, Letter 1058, ACS LT 11)* was issued prior to the last 180 days, a new warning of enforcement action does not have to be issued because this process is a computer matching levy program. See *IRM 5.11.1.2.2.7, Timeliness of Notice*.

3. **CP 91 (IMF) or 298 (BMF), Final Notice Before Levy on Social Security Benefits - Exhibit 5.11.7-8.**
 - A. CP 91/298 is generated by the MF (displayed with TC 971 AC 169) and mailed regular mail. CP 91/298 displays the balance due amounts and provides an additional 30 days after the CDP notice time frame to resolve the tax liability. These notices will also have the appropriate 1-800 ACS contact phone number listed.
 - B. CP 91/298 specifically identifies the Social Security benefit payment that may be levied for 15% by indicating the taxpayer's Claimant's Account Number (CAN) and the Beneficiary's Own Account Number (BOAN). The BOAN is always the taxpayer's SSN. These numbers are systemically provided by FMS from SSA during the FPLP matching process to identify the taxpayer's Social Security benefit information.
 - C. Starting July 2005, the IMF CP 91 will be considered aged and a new one will be reissued again prior to the levy if the previous one is more than 26 cycles old. There is no CP 298 aging criterion for the BMF modules.
 - D. The notice will inform taxpayers of their right to appeal. Taxpayers may exercise their appeal rights through the following:
 - Collection Appeals Program (CAP)
 - Equivalent Hearing Request — if no prior CDP or Equivalent hearing on the FPLP periods.
 - E. CP 91/298 is systemically generated for the FPLP only. It should not be issued manually and is not required prior to issuing duly authorized *paper* levies pursuant to IRC 6331(a) on Social Security benefit payments.
4. **CP 297A (BMF), Notice of Levy, Notice and Your Right to a Hearing - Exhibit 5.11.7-9.**
 - A. The FPLP DETL process sends the CDP notice after the levy.

B. These notices inform the taxpayer that a levy has already been issued, and they may still exercise their appeal right as discussed for the pre-levy CDP notice CP 90 (297).

C. These notices are mailed certified, and display the ACS contact information.

5. **CP 90C (IMF) or 297C (BMF), Notice of Levy, Notice and Your Right to a Hearing - Exhibit 5.11.7-10.**

A. The FPLP FEDCON levy process sends the CDP notice after the levy.

B. These notices inform the taxpayer that a levy has already been issued, and they may still exercise their appeal right as discussed for the pre-levy CDP notice CP 90 (297).

C. These notices are mailed certified, and display the ACS contact information.

6. **FPLP Levy Notice, Department of the Treasury Financial Management Service Notice - Exhibit 5.11.7-11.**

A. This notice is generated by FMS and mailed to the taxpayer every time a payment is levied.

B. **At the top of the notice:** FMS mails the notice to the taxpayer's address provided by the IRS (for electronic disbursements) or to the address provided by the federal payment agency source (for paper check disbursements.)

C. **At the bottom of the notice:** the type of federal debt and the agency due the federal debt; the type, date and amount of the federal payment disbursement and the paying federal agency; and then the amount levied.

D. **In the middle of the notice:**

Account Number - an 18 digit number that consists of the *TIN type* (0 for SSN; 2 for EIN), *TIN (the primary TIN of the balance due tax period)*, *MFT* and *tax period* where the levied payment posted.

TIN Number - this TIN Number is displayed only in SSN format (NNN-NN-NNNN), but the **TIN can either be an SSN or EIN**. Also, the TIN Number is the matched TIN that is being levied for the payment. On joint income tax or sole proprietor liabilities, this may be either the primary or secondary/XREF SSN. To confirm the TIN Number format, and whether the TIN is the primary or secondary/XREF of the tax debt, research the **Account Number** on the notice.

E. The FMS notice informs taxpayers to contact the following ACS addresses and phone numbers to resolve their account. If a taxpayer calls the ACS phone number and the taxpayer case is assigned to a local field collection office, then ACS should refer the taxpayer to the appropriate office. Taxpayer correspondence received at these addresses should be handled according to IRM 5.19.9.3, *Liability Collection, Automated Levy Programs, FPLP*, or forwarded to the appropriate office for resolution.

(SBSE, Tax Exempt and Government Entities (TEGE), or Large Business and International (LB&I) taxpayers)
Post Office Box 8208
Bensalem PA 19020 - 8208
1-800-829-3903 or 215-516-2004 (International)

(W&I taxpayers)
Post Office Box 219236 Stop 5050
Kansas City MO 64121-9236
1-800-829-7650

7. IRS employees are to process any appeals requests according to procedures in IRM 5.1.9, *Field Collecting Procedures, Collection Appeal Rights* or IRM 5.19.8, *Liability Collection, Collection Appeal Rights*.

8. Any time during the FPLP notice and levy process, taxpayers should be referred to the Taxpayer Advocate Service (TAS) for assistance if the taxpayer's issue cannot be resolved the same day and it meets TAS case criteria (See IRM 13.1.7, *Taxpayer Advocate Case Processing, TAS Case Criteria*.) The definition of 'same day' is within 24 hours. "Same day" cases include cases that can be completely resolved in 24 hours, as well as cases in which steps have been taken within 24 hours to begin resolving the taxpayer's issue. Do not refer "same day" cases to TAS unless the taxpayer asks to be transferred to TAS and the case meets TAS criteria. Refer to IRM 13.1.7.4, *Taxpayer Advocate Case Processing, TAS Case Criteria, Same-Day Resolution by Operations*. Use Form 911, *Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)*, and forward to TAS.

Note:

If TAS has an open case and requests a collection hold on the account, it may be necessary to block or release the FPLP until a resolution is reached. *IRM 5.11.7.2.6., Blocking or Releasing FPLP Levy*. While the IRS is not prohibited from taking levy enforcement actions, generally levies will not be issued on the modules listed Form 911 that meet TAS criteria. TAS will notify the revenue officer when a Form 911 has been received and when it has been resolved. If the RO believes levy action is necessary, TAS should be contacted and advised of Collection's planned action.

9. It may be necessary to block or release the case from the FPLP if a resolution is pending through the Appeals if no other FPLP exclusionary criteria exist. (*IRM 5.11.7.2.6. Blocking or Releasing FPLP Levy*)

**5.11.7.2.5 (08-12-2011)
Recognizing and Handling a FPLP Case**

1. Revenue officers must recognize modules that have been placed in the FPLP and determine if this process will be part of their strategy to resolve the case.
2. If revenue officers decide that modules should not be part of FPLP, then they will need to block or release the modules from the FPLP. Revenue officers must seek managerial approval to block modules from being included in the FPLP. The approval request will be forwarded for managerial approval through ICS. In the event the approval request is made on a paper document, the paper document should reflect the manager's approval. *IRM 5.11.7.2.6.*

**5.11.7.2.5.1 (08-28-2012)
FPLP or Paper Levy (Form 668-A/668-W)**

1. Whenever the FPLP indicator is present on a module, revenue officers may decide to levy the federal payment source through the FPLP under IRC §6331(h) or through the traditional paper levy method using Form 668A or Form 668W under IRC 6331(a) or 6331(e). The FPLP will attach the applicable 15% or 100% of the payment continuously through FMS as the central or disbursing agent for the federal payment source. The paper levy method under IRC § 6331(a), *Levy and distraint*, or IRC § 6331(e), *Continuing levy on salary and wages*, using the *Notice of Levy*, Form 668-A or Form 668-W, respectively, will levy the federal payment source directly and attach the maximum amount allowed under those statutes. The maximum amount of levy proceeds received from either levy method will depend on the type of federal payment expected. Form 668-A or Form 668-W may not be used as a means to levy under the FPLP statute, IRC 6331(h).
2. Form 668-A or Form 668-W will have to be served or issued on the federal agency directly, not FMS. Prior to levying the federal agency with Form 668-A or Form 668-W on either the primary or secondary taxpayer, the revenue officer must release or block the module from FPLP. *IRM 5.11.7.2.6., Blocking or Releasing FPLP Levy*.

Caution:

Electronic levies through the FPLP and paper levies issued under IRC§ 6331(a) or 6331(e) should not be issued or attach to the same federal payment source for the same payment. In this 'double levy' situation, if a paper levy is issued to a federal agency while the taxpayer is being levied through the FPLP for the same payment, the federal agency will return the paper levy to the originator with the exception of Social Security Administration (SSA) payments. *IRM 5.11.7.2.2.2* Both levies should not be honored during the same time for the same payment by the federal payment agency. Only one levy tool at a time should be honored. In order for the agency to honor the paper levy, allow at least thirty (30) days after the module is removed from the FPLP (or thirty days after the TC 972 AC 060 posting date) to (re)issue a paper levy on the same federal payment source. This will ensure that FMS or the federal agency source's records no longer have the FPLP in effect and prevent a 'double levy'. If a 'double levy' does occur on the same federal payment *pay date* and the same pay date's proceeds are received from both levies, then *IRM 5.11.7.2.7*

3. Form 668-A or Form 668-W may be used as a levy tool on a case, in addition to the FPLP, as long as the Form 668A/W is not served on a federal payment source. For example, a Form 668-A may be sent to a bank account, even if the taxpayer's federal payment is subject to the FPLP. If the Form 668-A or Form 668-W is served on a federal payment source, and the taxpayer is also in the FPLP, then there is a chance the FPLP may also levy the same federal payment source - which is prohibited based on the previous paragraph.
4. Revenue officers cannot close a case module as a continuous FPLP levy using a Status 60 input. Status 60 is normally used for continuous levies or installment agreements. The FPLP excludes Status 60 modules. In order to close a case that has an active FPLP levy module, then consider the following:
 - A. If a case has an active FPLP levy, and there is no cooperation or contact from the taxpayer, then determine if a paper levy under IRC 6331(a) or (e) is necessary and convert the FPLP levy to the paper levy, as discussed above, in order to close out the case through the continuous paper levy process.
 - B. If a case has an active FPLP levy, with no further case action to be taken, and, if the taxpayer has agreed to the amount of the FPLP continuous levy, then determine if an approved installment agreement can be established on the case.
5. Continuous levies under IRC§ 6331(e) on the federal payment agency may still be issued using Form 668-W, and placed in Status 60. See *IRM 5.11.5, Notice of Levy, Levy on Wages, Salary and Other Income*.

5.11.7.2.6 (08-12-2011)

Blocking or Releasing FPLP Levy

1. The criteria and delegation authority for release of levy will not change for the FPLP. See *IRM 5.11.2, Serving Levies, Releasing Levies and Returning Property*.

Note:

There will be instances where the FPLP may be released on certain cases based on reasons not defined in *IRM 5.11.2. IRM 5.11.7.2.6.1., Requesting Assistance from the FPLP Coordinator on Certain Emergency Levy Release Situations*.

2. The FPLP levy can only be released electronically. Do not use the Form 668-D, *Release of Levy/Release of Property from Levy*, as the means to release the levy from FMS or the federal payment agency source.

Caution:

FMS and other federal agencies will not process the Form 668-D on a FPLP levy and will return it to its originator.

3. As discussed in *IRM 5.11.7.2.3.4*, both spouses' SSNs on joint income tax liabilities will be part of the FPLP, and both may be receiving federal payments that are being levied simultaneously. If a levy release is warranted on either of the spouses, then the FPLP will be released on both. The FPLP cannot levy only one or the other spouse's federal payment. Another levy tool, i.e. Form 668-W or Form 668-A, may need to be issued to attach the leviable spouse's federal payment. *IRM 5.11.7.2.5.1*.
4. **FPLP Exclusion Transaction Code:** FPLP levies can only be released by posting a transaction code (TC) that would exclude the taxpayer from the FPLP as discussed in *IRM 5.11.7.2.2.1. Exhibit 5.11.7-3. FPLP Exclusion Criteria*. Posting a FPLP exclusion TC will generate a TC 972 AC 060, which reverses the existing TC 971 AC 060, and releases the levy.

Example:

Taxpayer E. Rockfish is being levied through the FPLP. Revenue Officer I. Salmon determined that Taxpayer Rockfish's case will be resolved as Currently Not Collectible (CNC) unable to pay and inputs a CNC TC 530 CC 24. Once the TC 530 cc 24 is posted, it will generate a TC 972 AC 060 indicating the module is released from the FPLP.

5. **FPLP Block Transaction Code TC 971 AC 061:** If a FPLP exclusion TC is not yet warranted on a taxpayer's case, then input the automated levy block, TC 971 AC 061, on each appropriate module that should not be levied. Posting the TC 971 AC 061 will either generate a TC 972 AC 060 (which reverses the existing TC 971 AC 060) or blocks the module from the FPLP and not allow a TC 971 AC 060 to post. There is no need to input both a FPLP exclusion TC and TC 971 AC 061. TC 971 AC 061 can be input via ICS or Form 4844. *IRM 5.11.7.2.3.1., Case and Module Selection Process* (TC 971 AC 060), for block indicators that should display on the module.

Example:

Revenue Officer I. Wahoo has a Status 26 FPLP case module on Taxpayer E. Rockfish. Revenue Officer Wahoo is in contact with Taxpayer Rockfish, and is in the middle of making a collection determination based on the financial condition of Taxpayer Rockfish. He has asked for additional financial information and for Taxpayer Rockfish to file delinquent returns by a certain due date. Since RO Wahoo is waiting for the information and not taking any enforcement action, RO Wahoo inputs a TC 971 AC 061 on each affected module to remove (or release) the accounts from the FPLP. The TC 971 AC 061 generates a TC 972 AC 060 to indicate the module is removed/released from the FPLP.

Example:

Revenue Officer T. Snapper does not want his taxpayer's new Status 21 balance due module going into the FPLP when it changes to Status 26 because he is working with the taxpayer. After managerial approval, Revenue Officer Snapper will request or input TC 971 AC 061 on the Status 21.

Example:

Taxpayer K. Dory who has modules in the FPLP with TC 971 AC 060, requests an OIC. Revenue Officer C. Mackerel inputs a pending OIC (TC 480) on all the modules. Since TC 480 is a FPLP exclusion TC, it will generate a TC 972 AC 060; therefore TC 971 AC 061 is not necessary and must not be input.

Note:

A manually input TC 971 AC 061 will also block the module from going into the State Income Tax Levy Program (SITLP) and Alaska Permanent Fund Dividend Levy Program (AKPFD).

6. Any manually input TC 971 AC 061 will expire after 52 cycles. To keep the module blocked, another TC 971 AC 061 will need to be re-input and posted prior to the expiration of the previous TC 971 AC 061.

Example:

In cycle 200815, Revenue Officer B. Eel receives a status 26 case from status 24 queue. The case was already in the FPLP while in status 24, although no federal payments were matched or levied yet. Revenue Officer Eel does not want to use the FPLP as a collection tool yet, and after managerial approval, manually inputs a TC 971 AC 061 to hold off any possible FPLP action. In cycle 200910, Revenue Officer Eel is continuing to investigate the case and still does not want the case to go through the FPLP. The revenue officer re-inputs the TC 971 AC 061 in cycle 200910, because the TC 971 AC 061 from cycle 200815 will expire in 200914 (52 cycles).

Example:

Revenue Office Pike has been waiting for financial documents from his taxpayer, along with other internal case investigation information. There is a TC 971 AC 061 posted on his taxpayer's status 26 modules in order to prevent the FPLP. He recognizes that the TC 971 AC 061 was posted 45 cycles ago, and also realizes he will not receive the case information for another several weeks. Since the original TC 971 AC 061 will expire in 7 cycles, RO Pike requests another TC 971 AC 061 on the modules.

- 7. The exclusion TC or TC 971 AC 061 will generate the TC 972 AC 060 one cycle later. The TC 972 AC 060 must post on the account before the next payment is processed by FMS to prevent the levy on the next payment. FMS has different processing cutoff dates for each payment type:

FEDERAL PAYMENT	PAYMENT DATE	PROCESSING CUT OFF DATE
OPM (Federal retirement income)	1st business date of each month	2 weeks before payment date
SSA (OASDI) benefits	3rd business date of each month; 2nd, 3rd & 4th Wednesday of each month	6 business days before the payment date
RRB benefits (retirement annuity except Tier 2)	1st business date of each month	5 business days before the payment date
Federal employee salaries	Biweekly	14 days before payment date
Defense and civilian agency contractor/vendor/supplier payments; Federal employee travel payments; "Miscellaneous" payments; CMS Medicare provider payments	Daily	Cutoff dates vary; payments may be processed up to 30 days prior to payment date

- 8. The following eight (8) examples in the next few sections describe when the automated levy release will take effect based on the payment processing cutoff chart described above; when it may be necessary to request a FPLP coordinator to 'rescind' the levy (as discussed in the next subsection) so that the next scheduled payment for the taxpayer is not levied; and when it may be necessary to determine if the levy payment should be returned, based on timing.

Note:

Since these examples explain timing situations, note that the Master File posting cycle calendar date indicated is a Monday.

Example:

Taxpayer Sandra Salmon dba Salmon Fishing has a delinquent Form 941 (MFT 01) for 200812 in Status 26, and Form 1040 (MFT 30) for 200812 in Status 26. Taxpayer Salmon no longer owns the business, but she does receive an OPM retirement payment the 1st of each month. Her November 1 OPM payment is levied through FPLP for her MFT 01 for 200812. She calls the IRS on November 2 to request an installment agreement and gets approved for it. On November 2, the revenue officer inputs a Status 60 and/or TC 971 AC 063 on her delinquent modules, which will release the FPLP levy.

When will the automated levy release take effect?

The Status 60 (or TC 971 AC 063) posts on the Master File. Based on the Master File posting cycle calendar, this will generate and post a TC 972 AC 060 on November 12, indicating the FPLP is released. The TC 972 AC 060 will post prior to the payment processing cutoff date, which is 2 weeks prior to her next OPM payment on December 1. In this example, the cutoff off date is November 16. Taxpayer Salmon's December 1 OPM payment should not be levied since the FPLP exclusion TC (Status 60 or TC 971 AC 063) and FPLP reversal TC (TC 972 AC 060) are posted before the processing cutoff time frame stated above.

Example:

Taxpayer Harry Halibut has a delinquent Form 1040 (MFT 30) for 200812 in Status 26. Taxpayer Halibut receives a SSA benefit payment on the fourth Wednesday of each month. His March SSA payment is levied through FPLP. He calls the IRS on March 31 to request and is granted an unable to pay hardship determination. On March 31, the revenue officer inputs a TC 530 CC 25, which will release the FPLP levy.

When will the automated levy release take effect?

The TC 530 CC 25 posts on the Master File. Based on the Master File posting cycle calendar, this will generate and post a TC 972 AC 060 on April 9. The TC 972 AC 060 posting date is prior to the cut off date, which is 6 business dates before his next scheduled SSA payment (fourth Wednesday) in April. In this example, the fourth Wednesday in April is April 25, and the cutoff date is April 18. Therefore, the April SSA payment will not be levied.

Example:

Taxpayer Catch-A-Cod LLC (which is an association corporation with shareholders) has multiple delinquent Form 941s (MFT 01) for all quarters in 2006 through 2009 - all in Status 26. Catch-A-Cod receives federal contractor payments from the Department of Agriculture on various payment dates (depending on when the taxpayer submits invoices to Agriculture) since September 2010. The taxpayer's federal contractor payment disbursements due to be paid on October 5 and payment dates thereafter were levied through the FPLP. On October 15, the taxpayer's power of attorney requests a release of levy, and applies for and is able to acquire a processible offer-in-compromise from the revenue officer. On October 15, the revenue officer inputs a TC 480 on all the delinquent modules, which will release the FPLP levy.

When will the automated levy release take effect?

The TC 480 posts on the Master File. Based on the Master File posting cycle calendar, this will generate and post a TC 972 AC 060 on October 25. Since the payment dates on federal contractor payments vary (depending on the payment terms in the contract), it will be difficult to determine which federal payment that is due to the taxpayer, will not be continuously levied. Though the TC 972 AC 060 officially posted on October 25, and is removed from the FPLP, there may be invoices and payments already in process with the levy still in effect prior to October 25. The taxpayer should contact their contracting officer to see when the FPLP levy has been released from their future payments processed after October 25.

Example:

Taxpayer Tracy Trout has delinquent Form 1040s (MFT 30) for 200612 through 200912 in Status 26. Taxpayer Trout works for the State Department as a federal employee, and receives her federal salary every two weeks on Tuesday. Her May 10 salary payment was levied through the FPLP, and her next pay date is May 24. On May 13 she calls the IRS to request and is granted an installment agreement. The revenue officer inputs TC 971 AC 063 and Status 60 on her accounts on May 13, which will release the FPLP levy.

When will the automated levy release take effect?

The TC 971 AC 063 posts on the Master File. Based on the Master File posting cycle calendar, this will generate and post a TC 972 AC 060 on May 27. Taxpayer Trout's next pay date on May 24 will still be levied since the processing cutoff date chart above indicates the TC 972 060 should post at least 14 days before the next pay date to avoid the levy - in this case, it should have posted by May 14. The levy release will be in effect for her next pay date on June 7 in the process discussed in the next paragraph.

- 9. If the processing cutoff date is missed, then the automated levy release will be effective for the payments thereafter. *IRM 5.11.7.2.7. Returning FPLP Levy Proceeds*, to determine if the levied payment may be returned via the manual refund process due to these timing issues.

Example:

Taxpayer Albert Almond has a delinquent Form 1040 (MFT 30) for 200712 in Status 26. Taxpayer Almond receives a OPM benefit payment on the 1st of each month. His July 1 OPM payment is levied through FPLP. On July 15, Taxpayer Almond calls the IRS to request an installment agreement and gets approved for it. The IRS employee inputs a Status 60 on July 15, which generates and posts a TC 972 AC 060.

When will the automated levy release take effect?

The TC 972 AC 060 will post on July 29 based on the Master File posting cycle chart. Based on the payment processing cutoff date table, the TC 972 AC 060 posted on July 29 will not post in time to prevent his August 1 OPM payment from being levied. In order for the FPLP levy to not take the taxpayer's August 1 OPM payment, the TC 972 AC 060 should have been posted at least 14 business days before August 1, which is July 18. The TC 972 AC 060 will post on the module in time to prevent his September 1 OPM payment from being levied. If the taxpayer's financial situation warrants a return of levy proceeds from the August 1 OPM payment, then the criteria and procedures under IRM 5.11.7.2.7 must be followed.

Example:

Taxpayer Cathy Cashew has a delinquent Form 1040 (MFT 30) for 200812 in Status 24. Taxpayer Cashew receives a SSA benefit payment on the 3rd of each month. Her December 3rd SSA payment is levied through FPLP. She calls the IRS on January 1 to request and is approved for a hardship determination. The IRS employee inputs a TC 530 CC 32 on January 1, which will generate and post a TC 972 AC 060.

When will the automated levy release take effect?

The TC 530 CC 32 and the TC 972 AC 060 will not be posted until the Master File 'dead cycle' period is completed (which is after cycle 04, and in this example is January 23.) The TC 972 AC 060 will not be posted in time to 'save' the January 3rd SSA payment from being levied. In order for the FPLP levy to not take the taxpayer's January 3 SSA payment, the TC 972 AC 060 should have been posted at least 6 business days before January 3, which is the processing cutoff time frame discussed in the table above. In this example, the cutoff date for the January 3 payment is December 24. The TC 972 AC 060 will post on the module on January 23 which is in time to prevent her February 3 SSA payment from being levied. The cutoff date for the February 3 payment is January 26. If the taxpayer's financial situation warrants a return of levy proceeds from the January 3rd SSA payment, then the criteria and procedures under IRM 5.11.7.2.7 must be followed.

10. If the TC is not posted by the processing cutoff date or cannot be posted because of the Master File 'dead cycles' during the first two or three cycles of each year, and to avoid the next scheduled federal payment from being levied, then the FPLP levy may need to be released by the FPLP coordinator as discussed in the next section.

5.11.7.2.6.1 (08-12-2011)

Requesting Assistance from the FPLP Coordinator on Certain Emergency Levy Release Situations

1. Each SBSE Collection Advisory Insolvency and Quality (AIQ) office has a locally designated FPLP coordinator who will have real-time secured web access to the FMS database system in order to temporarily release or "rescind" a levy during certain situations discussed below. On the IRS intranet Servicewide Electronic Research Program (SERP) page, under "Who/Where", there is a current listing of the FPLP coordinators based on geographical location.
2. As discussed in the previous subsection, a FPLP levy is released by posting a FPLP exclusion TC (i.e. Status 60) or FPLP block (TC 971 AC 061) on the account. Those TCs will generate the TC 972 AC 060 indicating the FPLP levy is released. If the TC 972 AC 060 has not yet posted to release the levy and the taxpayer's next payment is imminent, then to avoid that payment from being levied, a levy release request to the local FPLP coordinator may be necessary. (See IRM 5.11.7.2.6.2, FPLP Coordinator Duties.) The FPLP coordinator may be able to 'rescind' the levy through the FMS database system in time to save the next payment from being levied but only if there is still time to input the 'rescind' action prior to the payment processing cutoff chart discussed above. **The "rescind" input must be completed before the payment cutoff date as discussed above in IRM 5.11.7.2.6 (7).** Most of the time, the FPLP coordinator 'rescind' action can be done only on payments paid 'monthly', such as the OPM retirement payments or SSA benefit payments. Since federal salaries and contractor/vendor payments are paid more often and their processing cutoff dates shortened or unknown, then the systemic levy release will usually not be effective until after 2 cycled pay dates.

Example:

Taxpayer D. Oilfish has a delinquent Form 1040 (MFT 30) for 200812 in Status 26. Taxpayer Oilfish receives an OPM retirement payment the 1st of each month. Her November 1 OPM payment is levied through FPLP. She calls the IRS on November 10 to request an installment agreement and gets approved for it. On November 10, the revenue officer inputs a Status 60 and/or TC 971 AC 063, which will release the FPLP levy.

Will the 'rescind' release the next payment from the levy?

The Status 60 (or TC 971 AC 063) should post on the Master File, and will generate and post a TC 972 AC 060 to indicate the FPLP is released. Based on the Master File posting cycle chart, the TC 972 AC 060 will post on November 21. The TC 972 AC 060 will not post in time to release the levy on her December 1 OPM payment prior to the processing cutoff date of date of November 17. The TC 972 AC 060 should have posted at least 14 days prior to the December 1 payment date. If the taxpayer wants to 'save' her December 1 OPM payment from being levied, then the revenue officer should request the FPLP coordinator 'rescind' the levy on November 10. Since November 10 'rescind' input through the FMS system is before the November 17 processing cutoff date (or more than 14 days before the December 1 payment date), then the December 1 OPM payment will not be levied. The TC 972 AC 060 will have posted in time so that the January 1 OPM payment is not levied.

Example:

Taxpayer I. Skipjack has a delinquent Form 1040 (MFT 30) for 200812 in Status 26. Taxpayer Skipjack receives a SSA benefit payment on the 3rd of each month. His March 3 SSA payment is levied through FPLP. He calls the IRS on March 16 to request and is granted an unable to pay hardship determination. The revenue officer inputs a TC 530 CC 24 on March 16, which will generate the TC 972 AC 060 and release the FPLP levy.

Will the 'rescind' release the next payment from the levy?

The TC 530 CC 25 posts on the Master File, which will generate and post the TC 972 AC 060 on March 30 based on the Master File posting cycle chart. Based on the processing cutoff date chart, the TC 972 AC 060 will not post in time to release the levy prior to the taxpayer's next SSA payment on April 3. The TC 972 AC 060 should have posted at least 6 business days prior to the April 3 payment date or which is, in this example, March 26. If the taxpayer wants to 'save' his April 3 SSA payment from being levied, then the revenue officer should request the FPLP coordinator 'rescind' the levy on March 16. Since March 16 'rescind' input through the FMS system is before the March 26 processing cutoff date (or more than 6 business days before the April 3 SSA payment date), then the April 3 SSA payment will not be levied. The TC 972 AC 060 will be posted in time so that the May 3 SSA payment is not levied.

3. The levy "rescind" on the FMS database is temporary only, and effective at the time of the input until the next time the FMS database is updated with taxpayer information from the Master File, which is usually every week. The FPLP coordinator's "rescind" input in the FMS database will not upload to IDRS or MF.

Caution:

Since the FMS database is updated weekly with the current taxpayer information from the Master File, the "rescind" action by the FPLP coordinator will only last until the database is updated again, which is usually the following week. It may take up to 3 cycles before the FMS database receives the FPLP reversal TC 972 AC 060, and it may be necessary to request the rescind as often as necessary until the TC 972 AC 060 posts. It will be the responsibility of the employee requesting the "rescind" to monitor the exclusion TC and FPLP reversal TC 972 AC 060.

4. To release a FPLP levy through the FPLP coordinator's *rescind* input in the above situations, prepare Form 4844 and send it to the FPLP coordinator. Call the FPLP coordinator to ensure receipt of Form 4844, and keep a copy of the form. Indicate on Form 4844:

- A. Under "Remarks" — **FPLP Levy Release**
- B. Taxpayer's TIN, name and address
- C. Signature of delegated official authorized to release levies

Note:

If a TC 971 AC 061 FPLP block is required on the modules and cannot be input via ICS, then use a separate Form 4844 and forward it to the appropriate area, i.e. Case Processing. Do not send this FPLP block request to the FPLP coordinator. See the subsection for the FPLP coordinator duties.

Reminder:

Do not prepare a Form 668–D, *Release of Levy/Release of Property from Levy*, for FMS or any federal payment agency to release a FPLP levy.

5. Certain case situations that may warrant a FPLP coordinator release are, but not limited to:

- A. open bankruptcy situations: Insolvency personnel should refer to IRM 5.9.4.4.4, *Common Bankruptcy Issues, Federal Payment Levy Program*. Under certain conditions, the FPLP coordinator may facilitate the release from the FMS database system. Insolvency units will also input the TC 520, which will systemically generate a TC 972 AC 060 and reverse the module out of the FPLP.
- B. wrongful or erroneous levies,
- C. economic hardship determinations as defined under Treas. Reg. § 301.6343–1(b)(4),
- D. Another situation is based on a Treasury and Defense Department (DoD) agencies' interagency agreement regarding the 100% FPLP levy on Defense contractor payments. Those levies will be considered for emergency release based on national security concerns due to the contractor's inability to perform their contract, OR that the levy will jeopardize contract performance and impose significant additional costs to the Federal government. If a taxpayer claims either of these situations, then collection field function employees should take the following actions:
 1. Inform the taxpayer to contact their DoD contracting officer (CO). The DoD CO should have pre-established communication channels within the DoD and DFAS about these issues.
 2. If necessary, DoD may inform the IRS/FPLP headquarters, in writing, of the necessity of a particular contract to be performed and not levied due to national security interest or the significant additional financial cost to the Federal government, and formally request the levy release and/or return of levy proceeds of that particular contractor/taxpayer.
 3. When DoD informs FPLP headquarters, FPLP headquarters will then contact the FPLP coordinator, based on the taxpayer location. The coordinator will initiate expedited handling of the case and direct contact from IRS to that particular contractor/taxpayer. *IRM 5.11.7.2.6.3*.
 4. Disagreements over these decisions or the need for additional financial information from the taxpayer as part of negotiating for these decisions will be handled on a case by case situation.
 5. While the taxpayer pursues this action to get the levy released, Collection should continue with standard operating procedures for collection, which may include allowing the levy to continue.

Collection or the FPLP coordinator should **not** release or block the levy **solely due** to the taxpayer's claim for these reasons. The levy release determination will be based on DoD communication through IRS/FPLP headquarters, and the case will be handled accordingly.

**5.11.7.2.6.2 (08-12-2011)
FPLP Coordinator Duties**

1. As indicated above, each SBSE Collection Advisory Insolvency and Quality (AIQ) office has a locally designated FPLP coordinator who will have on-line and real-time access to the FMS database system in order to temporarily release or "rescind" a levy during certain situations.
2. FPLP coordinators will have and should maintain their computer web access to the FMS website, known as the *FMS In Touch - Client Server* and the *Treasury Offset Program (TOP)* taxpayer database, in order to input (aka "rescind") emergency or stop-gap FPLP levy release requests. On the IRS intranet Servicewide Electronic Research Program (SERP) page, under "Who/Where" , there is a current listing of the FPLP coordinators.
3. The FPLP coordinators are not required to input the TC 971 AC 061 block/release or any other TC excluding the account from the FPLP. It is the responsibility of the operational/functional (i.e. Collection Field, TAS, TAC) employee resolving the case to input or forward it to the appropriate unit, i.e. Case Processing.
4. Form 4844 will serve as the input document for the FPLP coordinator. The coordinator will sign onto the FMS system and rescind all the modules from the levy. Coordinators should follow IRM 1.15.28.1, *Records Control Schedule for Collection*, for document retention guidelines.
5. Requests for FPLP levy rescinds must be input within one (1) workday from receipt.
6. The FPLP coordinator is not responsible for authorizing the levy release.
7. Coordinators should also provide subject matter support for the operating and functional divisions, and should also contact the FPLP headquarters staff for clarity and guidance.
8. In rare instances and under the guidance of FPLP headquarters staff, the coordinators may be delegated to coordinate FPLP case-related recovery efforts of systemic erroneous levy situations or expedited case handling. *IRM 5.11.7.2.6.3., Additional FPLP Coordinator Duties for Certain Expedited Case Handling*.

**5.11.7.2.6.3 (08-12-2011)
Additional FPLP Coordinator Duties for Certain Expedited Case Handling**

1. FPLP headquarters will initiate these necessary steps with the local FPLP coordinator, in order to facilitate expedited case handling of certain FPLP cases.
2. The local FPLP coordinator will open a NFOI 148, Lien Priority Other, note the case history and initiate a mandatory outgoing Advisory Courtesy Investigation to the collection field function (or to the assigned revenue officer of the case), in order to make contact with the taxpayer. The group manager assigning the investigation should advise the revenue officer that because of the sensitive nature of the investigation, contact with the taxpayer will generally be made within three (3) work days from receipt.
3. The following subsections outline the rare situations and procedures that require expedited case handling through the FPLP coordinator.

**5.11.7.2.6.3.1 (08-12-2011)
National Security Reasons**

1. Currently, expedited FPLP case handling has been established for national security reasons requested by the Department of Defense (DoD). *IRM 5.11.7.2.6.1. Requesting Assistance from the FPLP Coordinator on Certain Emergency Levy Release Situations*. The issuance of the mandatory NFOI should only be the case when standard operating procedures do not apply for levy relief outlined in IRM 5.11.2.2. The mandatory NFOI must include the following three objectives for this expedited case handling:
 - the levy release determination and/or processing based on DoD's mitigating reasons;
 - the return of levied proceeds determination and/or processing, if applicable;
 - and resolving the collection case.

2. FPLP headquarters will contact the local FPLP coordinator to release the FPLP levy and/or block the FPLP with TC 971 AC 061 or the appropriate exclusion TC through the appropriate Case Processing campus site, or assigned revenue officer. There may be situations where the levy will not be fully released, but where it is agreed that only a partial amount (less than 100%) may still be levied. There will be no NFOI levy release determination necessary from the collection field function; the local FPLP coordinator will open a 193 Lien/Levy module and note the case history. The levy release, as determined by IRS FPLP headquarters, should be completed within 48 hours of DoD's request.
3. For the return of levied proceeds, if applicable, IRS FPLP headquarters will request FMS to electronically return the proceeds (full or partial) to the taxpayer directly. (Standard IRS manual refund procedures of these levied proceeds will not be initiated in these situations.) There will be no NFOI determination necessary from the collection field function; the local FPLP coordinator will open a 193 Lien/Levy module and note the case history. The return of levied proceeds will be indicated with a TC 672 DPC 18 and will be electronically refunded by FMS back to the taxpayer's financial account to which it would have originally been deposited - usually within 48 hours from the time FMS receives the request from the IRS.
4. The case will still need to be resolved through the ICS mandatory NFOI by the collection field function or assigned revenue officer. This mandatory NFOI will require expedited handling to ensure resolution of the case in order to satisfy any outstanding national security and interagency concerns.

5.11.7.2.6.3.2 (08-12-2011)

Significant Additional Costs to the Federal Government (Defense Contracts)

1. Besides national security, the IRS has also agreed to review case situations requested by the DoD where the FPLP levy would jeopardize the performance of a Defense contract and produce a significant additional cost to the Federal government.
2. FPLP headquarters will contact the local FPLP coordinator to facilitate the issuance of an outgoing OI to the collection field function. The collection field function should make contact with the taxpayer generally within 48 hours of receipt of the OI, make a levy release determination and notify FPLP headquarters. The levy release determination should take into consideration the mitigating circumstances presented by the DoD due to the potential loss to the Federal government. If the levy release is warranted, then process the release. *IRM 5.11.7.2.6. Blocking or Releasing FPLP Levy.* There may be situations where the levy will not need to be fully released when it is agreed that only a partial amount (less than 100%) may still be levied. In order to receive only a partial amount of the FPLP levy payment under these reasons, the 100% FPLP payment will need to be posted, and then a partial return of levy proceeds should be processed.
3. The return of levy proceeds, if warranted, will also be considered on a case by case basis by the collection field function and if returning the (partial or full) proceeds is warranted, then process through the standard manual refund procedures within IRS. *IRM 5.11.7.2.7. Returning FPLP Levy Proceeds.*
4. The case will still need to be resolved through the mandatory OI by the collection field function. This mandatory OI will require expedited handling to ensure resolution of the case in order to satisfy any outstanding interagency concerns.

Note:

In these situations, it is the IRS contacting the taxpayer regarding the levy relief, and not the taxpayer contacting the IRS. Therefore, during the course of resolving the case in either situation, if the taxpayer does not make the concerted effort to contact and/or resolve the case with the revenue officer, it may be necessary to contact FPLP headquarters through the FPLP coordinator to determine if the FPLP should continue and to consider its impact with the DoD. Contact may be made with DoD as long as third party contact provisions are satisfied.

5.11.7.2.6.4 (08-12-2011)

Removal (Reversal) of the FPLP Block with TC 972 AC 061

1. Revenue officers may manually reverse any TC 971 AC 061 with a TC 972 AC 061, at anytime during their collection case strategy in order to place the module into the FPLP. (The DLN in the TC 972 AC 061 will display a random series of numbers.) The module should then be systemically selected into the FPLP, as long as the FPLP selection criteria is met. *IRM 5.11.7.2.2. FPLP Selection Criteria.*

Reminder:

As discussed in *IRM 5.11.7.2.2.4, Modules Systemically Blocked From FPLP*, Indian Tribal Government's delinquent accounts are systemically blocked from the FPLP. Collection employees must contact the ITG specialist assigned to the Tribe prior to reversing the FPLP block on an ITG case. Refer to *IRM 5.1.12.24, Indian Tribal Governments.*

2. There are also systemic criteria that determine when the FPLP TC 971 AC 061 block is reversed with TC 972 AC 061:

A. Expiration of manually input TC 971 AC 061 block: Any manual input of TC 971 AC 061 will systemically expire 52 cycles later. The DLN in TC 972 AC 061 will display a series of "8" s.

Note:

If the FPLP block is still needed, the collection employee will need to manually input the TC 971 AC 061 again before the TC 972 AC 061 posts.

B. Status update change: When a FPLP module that has either a systemic or manual TC 971 AC 061, moves into a non-FPLP status, i.e. Status 58 or Status 72, it is systemically reversed with TC 972 AC 061. The DLN in the TC 972 AC 061 will display a series of 9s.

Note:

If a FPLP module has a manual TC 971 AC 061 block and then updates to a non-FPLP status, then the expiration rule to systemically unblock will take precedence.

C. Certain Status 22 (ACS) inventories, including most FERDI cases. See *IRM 5.19.9.3.2.3.* The DLN in the TC 972 AC 061 will display a random series of numbers.

5.11.7.2.7 (08-28-2012)

Returning FPLP Levy Proceeds

1. FPLP payments are systemically identified with a TC 670 DPC 18 or DPC 19.
2. There may be situations where a levied payment may be returned. Returning the levied proceeds must be approved by the delegating official authorized to return levy proceeds as directed under Delegation Order 5-3 and in accordance with *IRM 5.11.2.3, Returning Levied Property to the Taxpayer.* Process the return of FPLP levy proceeds using the manual refund procedures found in *IRM 5.1.12.20, Cases Requiring Special Handling, Manual Refund.*
3. In situations due to timing issues, *where a levy has been released* and the levied payment has already been processed by FMS, but not yet transmitted to the IRS by the pay date, the levied payment may be returned to the taxpayer in accordance with *IRM 5.11.2.3.* There may be other situations, as discussed in *IRM 5.11.2.3,* where the levied proceeds that had already been received prior to the levy release may be returned to the taxpayer and a manual refund processed.

Note:

In situations where the levy was released due to a finding of economic hardship or because the taxpayer entered into an installment agreement, the levied payment may be returned to the taxpayer; generally, it is in the Government's best interest to do so. See *IRM 5.11.2.3.1 (4).* However, if the taxpayer requests that the IRS keep the funds, the IRS should follow the taxpayer's instructions.

Note:

The TC 670 DPC 18/19 payment will need to post on the account prior to taking these manual refund actions.

- In situations where a paper levy and FPLP levy attached the same federal payment simultaneously (known as a 'double levy') and both levies' proceeds from the same pay date are posted on the account, then the paper levy proceeds will need to be returned in accordance with IRM 5.11.2.3. Both levies should not be in effect on the same payment, where 15% of the payment was attached by the FPLP and the paper levy attaches the remaining amount (or however the federal payment agency calculated the payment to satisfy both the levies). Since the paper levy should not have been issued because the FPLP is indicated on the account, then the paper levy proceeds need to be refunded, as the administrative procedures were not followed to prevent simultaneous or 'double' levies. In certain situations, the FPLP levy proceeds may be returned in lieu of the paper levy proceeds, particularly if the FPLP is removed (released or blocked) from the account, and the paper levy is attaching the federal payment.

Example:

Taxpayer J. Flounder's federal employee salary payment for July 2006 was levied for 15% through the FPLP, but a paper levy was also issued by Revenue Officer L. Lemonsole, which attached the remaining amount. Revenue Officer Lemonsole did not block (TC 971 AC 061) the FPLP prior to issuing the paper levy and did not put the paper levy in continuous levy (Status 60) status to prevent the FPLP. Taxpayer Flounder's employer did not stop the paper levy disbursement, and remitted Taxpayer Flounder's salary proceeds for the paper levy while the FPLP systemically levied also. The paper levy proceeds should be returned and refunded to Taxpayer Flounder, along with releasing the paper levy.

- In the above situations, if the tax module is or will be full paid or satisfied from the delayed posting of the payment and/or from other credits regardless if the federal payment is subsequently returned, then it is necessary to ensure the applicable Notice of Federal Tax Lien is manually released even while the account adjustments are pending. See IRM 5.12.3.2.1 regarding the necessity of a manual lien release. Employees of functions with access to the Automated Lien System (ALS) will input lien release requests in these situations. For those functions that do not have access to ALS, determine the Centralized Case Processing Lien Units (CCP-LU) contact on the IRS intranet by going to:

- IRS Intranet Homepage
- SERP
- Who/Where
- Case Processing Lien Units

5.11.7.3 (08-24-2007)

Alaska Permanent Fund Dividend Levy Program

- The Alaska Permanent Fund Dividend (AKPFD) Levy Program is an automated levy program, which operates in conjunction with the State of Alaska, Department of Revenue, Permanent Fund Dividend Division (PFDD).
- Information pertaining to the AKPFD criteria, process and procedures can be found under IRM 5.19.9, *Collection, Liability Collection, Automated Levy Programs*.

Exhibit 5.11.7-1

FPLP - Federal Employee Salary Paying Agencies: NFC, NBC, GSA, DFAS

(0407) NFC PAID AGENCIES
Armed Forces Retirement Home
Agricultural Marketing Service
Architect of the Capitol
Animal and Plant Health Inspection Service
Appalachian Regional Commission
Agricultural Research Service
U.S. Architectural and Transportation Barriers Compliance Board
Alcohol, Tobacco, Firearms and Explosives
Alcohol and Tobacco, Tax and Trade Bureau
Office of the Under Secretary (B&TS)
Immigration and Customs Enforcement
Bureau of the Census
Bureau of Citizenship and Immigration Services
Federal Law Enforcement Training Center
Bureau of Economic Analysis
Bureau of Engraving and Printing
U.S. Botanic Garden
Bureau of Industry and Security
Bureau of the Public Debt
U.S. Court of Appeals for Veterans Claims
Congressional Budget Office
Congressional Executive Committee on the People's Republic of China
Child Care Development Center
Commodity Futures Trading Commission
U.S. Coast Guard (Civilian Pay)
Corporation for National and Community Service
Community Relations Service Commission on Security and Cooperation in Europe
U.S. Chemical Safety and Hazard Investigation Board
Office of the Director
Cooperative State Research, Education, and Extension Service
Bureau of Customs and Border Protection
Departmental Administration
Office for Infrastructure Analysis
Drug Enforcement Administration
Defense Nuclear Facilities Safety Board
Department of Education
Department of Labor
Department of State
Departmental Offices
Office of the Under Secretary (MGMT)

Economic Development Administration
Executive Office for Immigration Review
Office of Civil Rights
Directorate for Emergency Preparedness & Response, Office of the Under Secretary
Economic Research Service
Economics and Statistics Administration
Foreign Agricultural Service
Farm Credit Administration
Federal Air Marshals Service
Federal Communications Commission
Farm Credit System Insurance Corporation
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Emergency Management Agency
Federal Energy Regulatory Commission
Office of Federal Housing Enterprise Oversight
Federal Bureau of Investigation
Federal Maritime Commission
Federal Mediation and Conciliation Service
Financial Management Service
Federal Mine Safety and Health Review Commission
Food and Nutrition Service
Federal Prison System
Forest Service
Farm Service Agency
Farm Service Agency - County Offices
Food Safety and Inspection Service
Government Accountability Office
Grain Inspection, Packers, and Stockyards Administration
Government Printing Office
(Leased Lines for DEPNET)
Headquarters Components
Housing and Urban Development (HUD) Office of Inspector General
HUD
Office for Information Analysis
Inter-American Foundation
International Boundary & Water Commission
Interagency Council on the Homeless
Office of the Under Secretary (Information Analysis & Infrastructure Protection)
Institute of Museum and Library Services
Internal Revenue Service
International Trade Administration
Office of the Inspector General
Library of Congress
Minority Business Development Agency
Merit Systems Protection Board
National Appeals Division
National Agricultural Statistics Service
National Capital Planning Commission
National Endowment for the Arts
National Endowment for the Humanities
National Gallery of Art
National Gallery of Art (Publication Fund)
National Gallery of Art (Trust Fund)
National Institute of Standards and Technology
National Labor Relations Board
National Oceanic and Atmospheric Administration
Natural Resources Conservation Service
National Sheep Industry Improvement Center
National Telecommunications and Information Administration
National Technical Information Service
Office of Budget and Program Analysis
Office of Communications
Office of Compliance
Office of the Comptroller of the Currency
Office of the Chief Information Officer
Office of Chief Economist
Office of the Chief Financial Officer
Office of the Executive Secretariat
Office of the Inspector General
Office of the General Counsel
Office of Government Ethics
Office of Inspector General
Office of Justice Programs
Immediate Office of the Secretary

Office of the Secretary
US Office of Special Counsel
Occupational Safety and Health Review Commission
Office of Thrift Supervision
Peace Corps
U.S./Saudi Arabian Joint Commission On Economic Cooperation
Treasury's Personal Services Contractors - Foreign
Patent and Trademark Office
Pretrial Services Agency
Rural Business-Cooperative Service Rural Housing Service
Reading is Fundamental
Risk Management Agency
Rural Utilities Service
Small Business Administration
Office of the Secretary
Smithsonian Institution (Federal)
Smithsonian Institution (Trust)
U.S. Senate Restaurants
United States Secret Service
Office of the Under Secretary (S&T)
Transportation Security Administration
Technology Administration
Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Inspector General for Tax Administration
Treasury Office of the Inspector General
Treasury Technical Assistance
US Attorneys Office
US Agency for International Development
US Commission on Civil Rights
US Capitol Police
US Mint
US Marshals Service
US Trustee Program
Woodrow Wilson International Center for Scholars (Federal)
Woodrow Wilson International Center for Scholars (Trust)

(O801) NBC PAID AGENCIES

Arctic Research Commission
African Development Foundation
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Reclamation
Chemical Safety & Hazard Investigation Board
Consumer Product Safety Commission
Department of Education
Department of Transportation
Equal Employment Opportunity Commission
Federal Labor Relations Authority
Federal Trade Commission
Fish and Wildlife Service
Harry S. Truman Scholarship Foundation
Inter-American Foundation
International Trade Commission
James Madison Memorial Foundation
Millennium Challenge Corporation
Minerals Management Service
National Aeronautics Space Administration
National Labor Relations Board
National Park Service
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Office of Aircraft Services
Office of Inspector General -Dept of Interior
Office of Navajo/Hopi Indian Relocation
Office of Special Trustee for American Indians
Office of Surface Mining
Office of Secretary - Dept of Interior
Overseas Private Investment Corp
Pension Benefits Guarantee Corp
Presidio Trust
Saint Lawrence Seaway Development Corporation
Securities and Exchange Commission
Selective Service System
Social Security Administration
Surface Transportation Board

US Geological Survey
US Trade & Development Agency
Utah Reclamation Mitigation and Conservation Commission
Valles Caldera Trust

(0305) GSA PAID AGENCIES (WITH SUBOFFICE CODE)	
GS0	General Services Administration
RR0	Railroad Retirement Board Reminder: Employee salaries
OM0	Office of Personnel Management Reminder: Employee salaries
AB1 through AB6	American Battles Monuments Commission
AI0	U.S. Institute of Peace (Some employees may not be citizens and not subject to TOP)
BF0	Defense Facilities Nuclear Safety Board (paid allowances, not salaries)
BH0	Commission for the Preservation of American's Heritage Abroad
BW0	Nuclear Waste Technical Review Board
BZ0	Christopher Columbus Fellowship foundation
CO0 FN0 SC0	Superior Courts of the District of Columbia
CU0	National Credit Union Association
DA0	Delta Regional Authority
DB0	Public Interest Declassification Board
EB0	Import/Export Bank of the U.S.
EO0	Morris K. Udall Scholarship and Excellence in Nat'l Environmental Policy fund
F10	Appraisal Subcommittee/Federal Financial Institutions Exam Council
GE0	Barry M. Goldwater Scholarship and Excellence in Education Foundation
GO0	Vietnam Education Foundation
GQ0	Election Assistance Commission
HB0	Committee for Purchase From People who are Blind or Severely Disabled
HW0	U.S. Interagency Council on Homelessness
LQ0	Stennis Center for Public Service
MA0	Marine Mammal Commission
NK0	National Council on Disability
NQ0	National Archives and Records Administration
NM0	National Mediation Board
SM0	JFK Center for the Performing Arts
UJ0	Japan/U.S. Friendship Commission
WH0	Former President Annuitant (1099 income)
ZL0 ZL9	Medicare Payment Advisory Commission
ZP0	U.S. Commission on Int'l Religious Freedom
ZS0	U.S. China Economic and Security Review Commission

(0102) DFAS PAID AGENCIES (WITH SUBOFFICE CODE)	
ZPH	Department of Health and Human Services and its agencies
ZPE	Department of Energy
ZPA	Environmental Protection Agency
ZPB	Broadcasting Board of Governors
ZPV	Department of Veterans Affairs
ZKE ZFA ZFR OMA ZL0 ZGT ZKA CP1	Defense Civilian Agencies

Exhibit 5.11.7-2
Table of Federal Payments Subject to FPLP

This table is a matrix that displays what **types of federal payments** are levied in the FPLP; what the **levy type code** is displayed under Miscellaneous Field (TC 971 AC 662, 677 or 762); what **account TINs** are matched against the payments; and the **levy percentage** of the payment. For example, the SSA payments are levied for 15% against the IMF primary or secondary SSN, BMF (sole prop) XREF SSN, and BMF primary SSN. *IRM 5.11.7.2.1.1.*

FEDERAL PAYMENT TYPE	LEVY TYPE CODE		LEVY PERCENTAGE FOR				
			IMF PRIMARY SSN	IMF SECONDARY SSN	BMF PRIMARY EIN	BMF X-REF (Sole Prop) SSN	BMF PRIMARY SSN
SSA	SSA		15%	15%	N/A	15%	15%
RRB	RRB		15%	15%	N/A	15%	15%
FEDERAL (OPM) RETIREMENT	OTH		15%	15%	N/A	15%	15%
FEDERAL SALARY	SAL		15%	15%	N/A	15%	15%
FEDERAL CIVILIAN AGENCY (TREASURY DISBURSED) CONTRACTOR/VENDOR	OTH		100%	100%	100%	100%	100%
FEDERAL CIVILIAN AGENCY (NON-TREASURY DISBURSED) CONTRACTOR/VENDOR	USPS	OTH	15% or 100%	15% or 100%	15% or 100%	15% or 100%	15% or 100%
	ACOE	OTH	100%	100%	100%	100%	100%
MILITARY (DEFENSE) CONTRACTOR/VENDOR	OTH		100%	100%	100%	100%	100%
CMS MEDICARE (PARTS A & B) PROVIDER/SUPPLIER	OTH		15%	15%	15%	15%	15%
MISCELLANEOUS PAYMENTS	OTH		15%	15%	15%	15%	15%

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**Exhibit 5.11.7-5
TC 971 AC 062 (Document Locator Number (DLN) Format, Miscellaneous Field, XREF Field)**

IRM 5.11.7.2.3.2., Matching (TC 971 AC 062)

FPLP Document Locator Number Positions

1	2	3	4	5	-	6	7	8	-	9	10	11	12	13	-	14
N	N	N	N	N	-	N	0	1	-	0	8	0	2	0	-	N

The values for positions **7, 8, 9, & 10** identify the **Federal Payment Agency**.

Note:

Exhibit 5.11.7-6. for a complete list of the *Federal Payment Agency Identifier Code List*.

Example:

Office of Personnel Management: 0108

The values for positions **11 & 12** identify the **Type of Federal Payment**:

- **01** – Social Security benefit payment
- **02** – Federal retirement income
- **03** – Federal contractor/vendor/supplier/provider payment (IMF or BMF entities)
- **03** - Miscellaneous Payments. *IRM 5.11.7.2.1.1.* (IMF or BMF entities)
- **03**—Federal employee travel advance/reimbursement payment (limited to IMF only)
- **04** – Federal employee salary payment
- **05** - Railroad Retirement benefit payment

The value for position **13** identifies whether FMS matches a record for the taxpayer or if funds were levied:

- **0** — Federal disbursement **matched**
- **1** — Federal disbursement **levied**

The DLN listed above would indicate that FMS matched (position 13 = 0) records with OPM (positions 7, 8, 9 & 10) on an OPM payment (positions 11, 12 & 13).

Other examples:

Example:

TC 971 AC 062 DLN 28277-901-08020-0
Match — OPM (Federal source) on federal retirement payment.

Example:

TC 971 AC 062 DLN 28277-902-07011-0
Levy — SSA (Federal source) on Social Security benefit payment.

Example:

TC 971 AC 062 DLN 28277-904-07041-0
Levy — National Finance Center (Federal source) on federal salary payment.

Example:

TC 971 AC 062 DLN 28277-902-01050-0
Match - RRB (Federal source) on railroad retirement benefit.

Miscellaneous Field

The "Miscellaneous Field" literal may or may not display a 3 character "suboffice code" to the salary paying agency (SPA). *Exhibit 5.11.7-1.*

Caution:

Prior to July 2009, the "suboffice codes" under the SPA DFAS (Federal Paying Agency code 012), were erroneous. After July 2009, the suboffice codes display correctly for DFAS.

XREF Field

The "XREF Field" literal will display the TIN (SSN or EIN) of the matched individual or entity.

**Exhibit 5.11.7-6
Federal Payment Agency Identifier Code List**

Payment Agency Identifier	Agency Name
0000	Recent Federal contract awarded; Federal agency to be identified when levy payment identified under TC 971 AC 062 <Levy> .
0001	Office of Child Support Enforcement (OCSE) - Health and Human Services (HHS) - Aid to Families with Dependent Children (AFDC)
0002	OCSE - HHS - non-AFDC
0003	HHS
0004	Veterans Administration (VA)
0005	Department of Education (ED)
0006	Small Business Administration (SB)
0007	Department of Housing and Urban Development
0008	US Department of Agriculture (USDA) - Rural Development
0009	US Department of Justice (DOJ)
0100	Bureau of Public Debt - Treasury
0101	Department of the Treasury (DOT) - Office of the Secretary
0102	Defense Finance and Accounting Service (DFAS) - Denver/Cleveland
0103	DFAS - Columbus
0104	Federal Energy Regulatory Commission
0105	Army and Air Force Exchange Services
0106	US Consumer Product Safety Commission
0107	US Navy Exchange Service Command
0108	Office of Personnel Management
0109	US Peace Corps
0110	Navy Personnel Command
0111	Debt
0112	Department of Homeland Security
0113	Transportation Security Administration
0114	US Army Corps of Engineers
0115	US House of Representatives
0116	International Broadcasting Bureau
0117	National Endowment for the Arts
0118	American Battle Monuments Commission
0119	Overseas Private Investment Corporation
0120	Department of Health & Human Services
0121	Federal Mediation & Conciliation Service
0122	Federal Election Commission
0123	United States Tax Court
0124	Administrative Offices of the U.S. Courts
0125	DOT — Federal Motor Carriers Safety Administration
0126	Farm Credit Administration
0127	National Transportation Safety Board
0128	Occupational Safety & Health Review Commission
0129	Bureau of Engraving & Printing
0130	Valles Caldera Trust
0131	Office of Surface Mining
0132	DOJ - U.S. Marshals Service
0133	Federal Labor Relations Authority
0134	U.S. International Trade Commission
0135	Appalachian Regional Commission
0200	US Department of Energy
0201	Railroad Retirement Board
0202	Department of Interior - National Park Service
0203	US Department of State
0204	Department of Transportation - Office of the Secretary
0205	Federal Emergency Management Agency
0206	United States Customs
0207	Social Security Administration
0208	Food and Nutrition Service - USDA
0209	Patent & Trademark Office - Department of Commerce
0210	U.S. Holocaust Memorial Museum
0211	Executive Office of the President
0212	Selective Service System
0213	Defense Threat Deduction
0214	Financial Management Service
0215	National Mediation Board
0217	National Capital Planning Commission
0218	U.S. Chemical Safety and Hazard Investigation Board
0219	U.S. Office of Government Ethics
0220	Court of Appeals for Veterans Claims
0221	Merit System Protection Board

0222	Federal Mine Safety
0223	Export Import Bank of the United States
0224	Presidio Trust
0225	Denali Commission
0226	Millennium Challenge Corporation
0227	Department of Immigration Health Services
0228	U.S. Commission on Civil Rights
0229	National Security Education Program
0230	United States Capitol Police
0231	Domestic Nuclear Detection Office
0232	Court Services and Supervision Agency
0234	Department of Defense Dependent Schools
0235	U.S. Naval Hospital Naples Italy
0300	US Secret Service
0301	National Science Foundation
0302	US Department of Commerce
0303	Financial Management Service (FMS) - DMSC
0304	Environment Protection Agency
0305	General Services Administration
0306	HHS - Health Care Financing Administration
0307	Agency for International Development
0308	Smithsonian Institution
0309	Bureau of Alcohol, Tobacco, Tax, and Trade
0400	US Department of Labor
0401	United States Postal Service
0402	National Credit Union Administration
0403	Employment Standards Administration
0404	USDA - Animal Plant Health Inspection Service
0405	Central Intelligence Agency
0406	USDA - Farm Services Agency
0407	USDA - National Finance Center
0408	USDA - Risk Management Agency
0409	Federal Communications Commission
0500	DOT - Comptroller of the Currency
0501	IRS
0502	DOT - Office of Thrift Supervision
0503	DOT - US Mint
0504	Federal Law Enforcement Training Center
0505	National Labor Relations Board
0506	Federal Maritime Commission
0507	Inter-American Foundation
0508	Equal Employment Opportunity Commission
0509	Security and Exchange Commission
0600	Pension Benefit Guaranty Corp.
0601	US Information Agency
0602	Marine Corps Exchange
0603	Armed Forces Retirement Home (AFRH) - US Naval Home
0604	Architect of the Capitol
0605	Federal Housing Finance Board
0606	Commodity Futures Trading Commission
0607	General Accounting Office
0608	US Nuclear Regulatory Commission
0609	HHS - Centers for Disease Control and Prevention
0700	HHS - Food and Drug Administration
0701	HHS - National Institute of Health
0702	DOJ - Justice Management Division
0703	DOJ - Bureau of Prisons
0704	DOJ - Drug Enforcement Agency
0705	NASA Headquarters
0706	Corporation for National Service
0707	DOJ - Federal Bureau of Investigation
0708	Air Force Service Agency
0709	Army/Air Force Exchange Service
0800	Department of Interior (DOI) -US Geological Survey
0801	DOI - Bureau of Reclamation
0802	DOI - Bureau of Land Management
0803	DOI - US Fish & Wildlife Service
0804	Bureau of Indian Affairs
0805	DOI- Office of Trust Fund Management
0806	Immigration and Naturalization Services
0807	AFRH - US Soldier's and Airmen's Home
0808	International Boundary and Water Commission
0809	Department of Transportation - Bureau of Transportation Statistics
0900	Federal Aviation Administration
0901	Federal Highway Administration

0902	Federal Railroad Administration
0903	Federal Transit Administration
0904	Maritime Administration
0905	National Highway Traffic Safety Administration
0906	Volpe National Transportation
0907	Surface Transportation Board
0908	US Coast Guard
0909	FMS - Reclamations

Exhibit 5.11.7-7

CP 90 (or 297) Final Notice, Notice of Intent to Levy and Notice of Your Right To A Hearing (Rev 07/2008)

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Exhibit 5.11.7-8

CP 91 (or 298) Final Notice Before Levy on Social Security Benefits (Rev 07/2010)

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Exhibit 5.11.7-9

CP 297A Notice of Levy and Notice of Your Right To A Hearing (Rev 07/2008)

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Exhibit 5.11.7-10

CP 90C (or 297C) Notice of Levy and Notice of Your Right to a Hearing

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Exhibit 5.11.7-11

FPLP Levy Notice - Department of the Treasury Financial Management Service (FMS) Notice

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