



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTORS, FIELD COLLECTION AREA OPERATIONS
DIRECTOR, ADVISORY AND INSOLVENCY

FROM: Dretha Barham /s/ *Dretha Barham*
Director, Collection Policy

SUBJECT: Interim Guidance Memorandum for Federal Contractor Levies
Issued by Field Collection

The purpose of this memorandum is to provide guidance for Field Collection revenue officers about federal contractor levies (referred to as FEDCON levies) and related Collection Due Process (CDP) issues. Please ensure this information is distributed to all affected employees within your organization.

Background

The Small Business Jobs Act of 2010 amended IRC section 6330(f) and (h), to permit the IRS to issue any levy on a taxpayer **prior to** providing them with their Collection Due Process (CDP) notice and hearing *if the taxpayer is a federal contractor*. In addition, FEDCON levies may be served during a timely requested pre- or post-levy CDP hearing or judicial review of such hearing to collect liabilities for all outstanding balance due periods including periods that are the subject of the hearing.

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 a person or entity to furnish property, goods, or services and the federal executive agency to pay for those property, goods, or services. Attached are guidelines for FEDCON levy and CDP issues for status 26 cases.

ICS Considerations:

Field Collection (FC) revenue officers may begin to issue FEDCON levies in ICS on the issuance date of this memorandum to collect any IMF or BMF liability, for which the IRC 6331(d), Notice of Intent to Levy (CP 504 notice) period has expired, if the taxpayer is a federal contractor.

- ICS Cases in which there is an unreversed Federal Contractor Indicator (FCI) are flagged with a red literal (FCA) on the Case Summary screen.
- ICS will block revenue officer issuance of the FEDCON levy 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)?" This is a requirement because there would be no TC 971 AC 069 on the module.
- See changes listed in ICS User Guide.

See the following attachments for additional information on Federal Contractor Levies issued by Field Collection:

- Attachment 1, Guidance to be included in IRM 5.7.9, Federal Contractors.
- Attachment 2, Guidance to be included in IRM 5.11.1, Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions.

IRM 5.11.1 and 5.7.9 will be updated to incorporate these guidelines. If you have any questions, please contact me, or a member of your staff may contact Kathleen Morton, Senior Program Analyst or James Maslanka, Senior Program Analyst. Territory personnel should direct any questions, through their management staff, to the appropriate Area contact.

Attachments

cc: Director, Enterprise Collection Strategy
Director, Field Collection
www.irs.gov

Attachment 1, Guidance to be included in IRM 5.7.9, Federal Contractors

Decision Point: How to Recognize a Federal Contractor for FEDCON Levy Purposes:

If there is an unreversed TC 971 AC 647, also known as a Federal Contractor Indicator (FCI), on the taxpayer's Master File (MF) record, and the taxpayer has a current federal contract consider the taxpayer a federal contractor. See IRM 5.7.9.2.1, *Federal Contractor Indicator (FCI)*. Often, this indicator is systemically input based on a Form 8596, *Information Return for Federal Contracts*, filed with the IRS. The indicator may also be manually input. If you determine during a case investigation that a taxpayer is a federal contractor and has been awarded a contract, request input of the TC 971 AC 647.

Conditions, which support a RO finding that a taxpayer is a federal contractor subject to FEDCON levy, include:

1. Unreversed TC 971 AC 647 and current federal contract.
2. Taxpayer interview confirms they are currently a federal contractor. See IRM 5.7.9.2.3, *Federal Contractors Identified Through Case Investigation*. Request input of the TC 971 AC 647.
3. Certain FPLP cases annotated with TC 971 AC 062. The FPLP TC 971 AC 062 DLN may indicate if the taxpayer is currently receiving federal contractor or vendor payments. See IRM 5.7.9.2.2, further research may be necessary to confirm whether the taxpayer is a current contractor or vendor. Request input of TC 971 AC 647 if confirmed.
4. Taxpayer answers "yes" to question 55, *Is the business a Federal Contractor* on Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals or question 15, *Is the business a Federal Government Contractor*, on Form 433-B, Collection Information Statement for Businesses. Request input of the TC 971 AC 647.

Manual Input of TC 971 AC 647 (FCI):

Revenue officers should request input of TC 971 AC 647 (FCI) if the case investigation reflects that a taxpayer is currently in a contractual relationship with the federal government and:

- You have confirmed that the TP has been awarded a federal contract.
- The master file does not yet contain an unreversed FCI.

Exception: TC 971 AC 647 should not be input for Medicare providers/suppliers. This is because these providers/suppliers are not federal contractors under IRC section 6330.

Use the Form 4844 template in ICS to request input of the FCI. The input requires an entry in the field for "contract end date." If the contract end date is known, request input of that date. If the contract end date is not known, select a date 1 year from the input request date. Conduct further research to ascertain the correct end date.

Note: There is no requirement that an unreversed TC 971 AC 647 be present on an account before a FEDCON levy is issued but the taxpayer must currently be a federal contractor when the levy is initiated. Request input prior to issuing levy.

Reversing the TC 971 AC 647:

A systemic process posts reversals of the FCI to the Master File once a year for BMF accounts (January) and twice a year for IMF accounts (January and June) based on the expiration of the

contract end date. TC 972 AC 647 is posted when the FCI indicator is reversed. Reversals may also be manually input at any time by requesting input of TC 972 AC 647.

A manual reversal would be appropriate if you determine that the taxpayer federal contract has been completed or the end date has expired. For example:

- Case investigation and verification supports a finding that the taxpayer has not received any federal payments during the current year.
- Most recent contract end date has expired.
- RO determines that the FCI was erroneously input because the taxpayer was never a federal contractor.

Federal Payment Levy Program (FPLP) Considerations/FPLP Block:

FPLP incorporated the post-levy CDP FEDCON levy process starting in January 2012. See IRM 5.11.7.2.3.4(4), *Levy Service Process*, for more information about those cases. FPLP systemically identifies accounts with unreversed FCI annotations, including those accounts in stats 22, 24 and 26. This automated levy program may issue FEDCON levies on cases that are in ACS, the Queue and in RO inventories.

Generally it may be more effective to allow FPLP to levy the federal payment source under the provisions of IRC 6331(h)(3) rather than using a paper levy under the provisions of IRC 6331(a) because, in federal contractor cases, levies under IRC 6331(a) are not likely to be of continuing effect. FPLP would be the more effective method since IRC section 6331(h)(3) allows for continuous levy of 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

Even if FPLP remains in place, consider using a paper FEDCON levy to reach other sources.

If you contemplate using the FPLP block see IRM 5.11.2.2, *Releasing Levies*, for guidance about when levy release is appropriate. Document the ICS case history with the reasons when an FPLP block is requested. Current procedures require GM approval of FPLP block requests. See IRM 5.11.7.2.6(1) *Blocking or Releasing FPLP Levy*.

Collection Statute Considerations:

When taxpayers file a timely request for CDP hearing, the collection statute is suspended on the periods that are the subject of the CDP even if FEDCON levy action continues for those periods.

Attachment 2, Guidance to be included in IRM 5.11.1, Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions

Post-Levy Action – Federal Contractor Levy

(1) This section contains guidance on post-levy actions for Stat 26 federal contractor levy cases in Field Collection.

Levy Authority Amended

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.”

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 Exhibit 5.11.7-5, TC 971 AC 062 (*Document Locator 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 Attachment 1, Identification and General Instructions for FEDCON Levy. This information will be included in 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)

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 5.11.1.2.2.7, 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 5.11.1.2.2(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 5.11.1.2.2(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.