

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: January 3, 2011

to: Acting Director, Collection Policy
(Small Business/Self Employed)

from: Senior Technical Reviewer, Branch 4
(Procedure & Administration)

subject: Application of Federal Contractor Levy Collection Due Process Provisions

This supplements and clarifies the prior, informal guidance we provided on the application of recent amendments to I.R.C. §§ 6330(f) and (h)(2), provided in section 2104 of the Small Business Jobs Act of 2010 (SBJA 2010).

Section 2104, titled "Application of continuous levy to employment tax liability of certain Federal contractors", amends I.R.C. § 6330(f) to add to the category of cases in which the Service can levy first and give a post-levy collection due process (CDP) hearing: where "the Secretary has served a Federal Contractor levy." It amends I.R.C. § 6330(h)(2) by defining a federal contractor levy as "any levy if the person whose property is subject to levy (or any predecessor thereof) is a Federal Contractor."

You requested our view on whether the amendments to section 6330 apply specifically to continuous levies under section 6331(h) or whether they also apply to levies under the general levy authority of section 6331(a). If the amendments also apply to the general levy authority, pre-CDP levy could be made on any property of a "federal contractor", not just payments made under section 6331(h) in accordance with the federal payment levy program (FPLP). We conclude that the language of the amended provisions could be broadly construed to apply to all levies to reach any federal contractor property. Accordingly, the applicability of these amendments is ultimately a business or policy decision.

In our prior informal response to this question, we discussed the legislative history behind section 2104. The technical explanation of tax provision from the Senate Amendment 4594 to H.R. 5297, Small Business Jobs Act (SBJA) of 2010, provides in relevant part as follows:

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997 authorized the establishment of the Federal Payment Levy Program ("FPLP"),

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which allows the IRS to continuously levy up to 15 percent of certain “specified payments,” such as government payments to Federal contractors that are delinquent on their tax obligations. The levy generally continues in effect until the liability is paid or the IRS releases the levy.

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury’s Financial Management Service (“FMS”), such as certain Social Security benefits and Federal wage records. When the records match, the delinquent taxpayer is provided both notice of intention to levy and notice of the right to the CDP hearing 30 days before the levy is made. If the taxpayer does not respond after 30 days, the IRS can instruct FMS to levy its Federal payments. Subsequent payments are continuously levied until the tax debt is paid or IRS releases the levy.

Upon receipt of this information, however, the taxpayer may stay the levy action by requesting in writing a hearing before the IRS Appeals Office. Following the CDP hearing, a taxpayer has a right to seek, within 30 days, judicial review in the U.S. Tax Court of the determination of the CDP hearing to ascertain whether the IRS abused its discretion in reaching its determination. During this time period, the IRS may not proceed with its levy.

Explanation of Provision

The provision allows the IRS to issue levies prior to a CDP hearing with respect to Federal tax liabilities of Federal contractors identified under the Federal Payment Levy Program. When a levy is issued prior to a CDP hearing under this proposal, the taxpayer has an opportunity for a CDP hearing within a reasonable time after the levy.

In our prior informal response, we concluded that the language of the statute was ambiguous as to application, such that the legislative history is relevant in interpreting its proper meaning. See, e.g., Moskal v. United States, 498 U.S. 103 (1990); Florida Power & Light Co. v. Lorion, 470 U.S. 729, 737 (1985); Bob Jones University v. United States, 461 U.S. 574, 586 (1983); Watt v. Alaska, 451 U.S. 259, 266 (1981). We concluded, therefore, that the statute should be read consistently with the clear intent of the legislative history. In other words, the revisions to sections 6330(f) and 6330(h)(2) apply only to Federal tax liabilities of Federal contractors identified under the FPLP.

Upon further consideration, however, while the definition of federal contractor levy provided in section 6330(h)(2) does not materially assist us in determining its application, it is incorrect to say that the language of the statute itself is ambiguous. Rather, it is language which could be interpreted broadly to apply to all levies of any property of a federal contractor. Given this broad construction, we conclude that the question of the applicability of these provisions is ultimately a business or policy decision. We note that in the context of an “exception,” section 6330(f) does not

preclude the Service from providing pre-levy hearings even where a post-levy hearing would be permissible. Analogously, a business decision could be made to limit the use of the post-levy federal contractor CDP provisions to FPLP levies under section 6331(h).

If you have any further questions, please call Branch 4 (Procedure & Administration) at (202) 622-3630.

