



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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MEMORANDUM FOR PACIFIC NORTHWEST DISTRICT COUNSEL

FROM: Gary D. Gray  
Assistant Chief Counsel (Collection, Bankruptcy and  
Summons) CC:PA:CBS

SUBJECT: Application of Surplus Levy Proceeds to Unlevied Periods

This advice pertains to your memorandum concerning the above subject. We have reconsidered our position taken in our April 21, 2000, memorandum, CCA 200023048, and are now of the view that the surplus proceeds can be offset since a Collection Due Process notice is not required under I.R.C. § 6330(a)(1).

LEGEND:

City: N/A  
Taxpayer: N/A  
SSN: N/A  
Years: N/A  
Assessment Amount: N/A

ISSUE:

Whether the Internal Revenue Service ("Service") may apply surplus levy proceeds to a tax period not included on the levy where such tax period is a period in which the taxpayer has not received a Collection Due Process Hearing Notice ("CDP notice"), or whether the Service must refund the surplus proceeds to the taxpayer.

CONCLUSION:

The Service may apply surplus levy proceeds to a tax period not included on the levy where such tax period is a period in which the taxpayer has not received a CDP Notice.

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FACTS:

In a hypothetical factual situation, a levy served on intangibles lists a specific amount of tax liability for a specific tax period. Between the time of the levy and the receipt of the levy proceeds, a payment is posted to the tax period listed on the levy. The levy proceeds are received thereafter in an amount equal to that shown on the levy. The levy proceeds are posted to the tax period shown on the levy, and because of the intervening payment a credit now exists for the tax period. The taxpayer has another tax liability for a tax period not included on the levy in which the taxpayer has not received a CDP notice.

LAW AND ANALYSIS:

This advice concerns your advisory opinion dated February 29, 2000, addressed to the Pacific Northwest District Director, Special Procedures function, regarding the application of surplus proceeds pertaining to the upcoming Alaska Permanent Fund Dividend Levy Program. Based on the facts described above, you concluded that pursuant to I.R.C. § 6402(a) the Service is authorized to apply the credit to the unpaid tax liability for the period not included on the levy. <sup>1/</sup> After further analysis, we now agree with your conclusion.

Initially, in a memorandum to your office dated April 21, 2000, we disagreed with your conclusion. In our memorandum we concluded that pursuant to section 6330(a)(1) the Service could not apply the surplus levy proceeds to the tax period not included on the levy. We stated that the Service was in effect levying the taxpayer's property to satisfy a tax liability for a tax period in which the taxpayer had not received a pre-levy CDP notice. After reconsidering the requirements of sections 6330 and 6402, we now believe that section 6330 does not apply to the application of surplus proceeds in this case because such application is not a levy. Pursuant to section 6342(b), surplus levy proceeds constitute an overpayment. Section 6402(a) provides that the Secretary may credit "any overpayment . . . against any liability . . . ." In the hypothetical case scenario, the requirements for a

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<sup>1/</sup> Section 6402(a) provides as follows:

- (a) General Rule. – In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), and (e) refund any balance to such person.

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CDP notice in section 6330(a)(1) were satisfied for the liabilities listed on the levy. Applying the surplus levy proceeds to a tax and tax period not included on the levy does not constitute an additional levy, but rather, an offset. Accordingly, the advice given in the April 21, 2000, memorandum, IRS CCA 200023048, 2000 IRS LEXIS 39 (April 21, 2000), is rescinded.

We note that the Service has procedures in place to minimize the occurrence of situations such as the one described here. See generally IRM 5.11.2.2.1, 21.9.4.4.1.11-13, 21.9.4.4.1.16 (provide conditions for releasing levies and issuing multiple simultaneous levies). For example, IRM section 21.9.4.4.1.12 provides that a partial levy release should be issued to avoid potential over collection in situations where payments or adjustments will reduce, but not fully pay, a liability for a tax period on which a levy is outstanding. In addition, this section provides the procedures for issuing partial levy releases in situations where multiple simultaneous levies were used. Another example is IRM section 21.9.4.4.1.16 which provides the limitations and controls for issuing multiple simultaneous levies. This section provides that Customer Service Field Operations must approve all Automated Collection System ("ACS") plans governing the use of multiple simultaneous levies to ensure that the ACS support function implements and adheres to procedural safeguards that minimize instances of over collection. Moreover, this section provides that all instances of over collection resulting from multiple simultaneous levies must be reported to management in order to determine if procedural improvements are necessary.

If you have any further questions, please contact Collection, Bankruptcy and Summonses, Branch 1 at (202) 622-3610.