

ID: CCA-16841-09

Number: **200910033**

Release Date: 3/6/2009

Office:

UILC: 7122.00-00, 6334.00-00, 7403.05-
00

From:

Sent: Tuesday, January 06, 2009 8:41 AM

To:

Cc:

Subject: RE: OIC Inquiry

The Code and Regulations do not define "reasonable collection potential" (RCP). The Service created the phrase to assist revenue officers who are asked to review offers in compromise. Form 656, Offer in Compromise states "the reasonable collection potential (RCP) equals the net equity of [the taxpayer's] assets plus the amount we could collect from [the taxpayer's] future income" (page 5 under the "Doubt as to Collectibility" section). See also I.R.M. § 5.8.4.4.1, Components of Collectibility.

As you mentioned, I.R.C. § 6334(a)(10) specifically excludes from levy any amount "payable" to the taxpayer as a service-connected disability benefit. However, in this case, the Service would not attempt to levy on the amount *payable* to the taxpayer because the taxpayer already received the money as a lump-sum payment. In contrast, Congress provided an exclusion for "amounts payable *or received by*" an individual in I.R.C. § 6334(a)(9). This language does not exist in I.R.C. § 6334(a)(10).

The law does not restrict the Service from levying on the payment once received by the taxpayer. Hughes v. Internal Revenue Service, 62 F.Supp.2d 796, 799-801 (E.D.N.Y. 1999). Once received, the payment becomes part of the net equity of the taxpayer's assets. Calhoun v. United States, 61 F.3d 918 (Table), *1 (C.A. Fed. 1995) ("[T]he sums levied upon [by the IRS] were not payable to [the taxpayer] by the credit unions as service-connected disability benefits, but instead were balances in [the taxpayer's] accounts payable to him as deposits.").

Even if the Service could not levy on the \$ the taxpayer received, the Service could file a lien on the taxpayer's accounts. The exemptions from levy provided in § 6334 do not apply to federal tax liens. The Service could subsequently request the Department of Justice to file suit to reduce the lien to judgment under I.R.C. § 7403. For a discussion of the treatment this argument has received by district and appellate courts throughout the country, see Am. Trust v. Am. Cmty. Mut. Ins. Co., 142 F.3d 920, 923-25 (6th Cir. 1998).

Thus, in this case, the application of I.R.C. § 6334 does not forbid the settlement officer from including the \$ payment when calculating the taxpayer's RCP.

Please let me know if you or the settlement officer have any questions. I appreciate your patience during the holidays/vacation time. Have a terrific day!