

## IRM PROCEDURAL UPDATE

**DATE:** 01/12/2017

**NUMBER:** sbse-05-0117-0093

**SUBJECT:** Pre-Levy Considerations

**AFFECTED IRM(S)/SUBSECTION(S):** 5.11.1

**CHANGE(S):**

**IRM 5.11.1.3.1(2) is revised to clarify note on revenue officers use of good judgement in making levy determination.**

2. Levy determinations are made on a case-by-case basis and Revenue Officers must exercise good judgment in making the determination to levy. Consider the following when determining if a levy is appropriate:
  - The taxpayer's responsiveness to attempts at contact and collection

**NOTE:** Anything that is known about the taxpayer's financial condition including economic hardship. If the revenue officer has obtained sufficient information and verified that the levy would cause an economic hardship, the levy should not be issued. While third-party information may be sufficient to determine economic hardship, in some cases the revenue officer may need to contact the taxpayer to provide additional information in order to make that determination.

- The taxpayer's compliance history
- The taxpayer's effort to pay the tax
- Whether current taxes are being paid

**NOTE:** 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.

**IRM 5.11.1.3.3.3(7) is revised to add note on issuing L 1058 and L 4052 at the same time.**

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

**NOTE:** See IRM 5.14.9.7(13)(d) for guidance on issuing L 1058 and Letter 4052, *Rejection of Proposed Installment Agreement* at the same time.

- 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

**IRM 5.11.1.4.8(4) is revised to add delegation reference for non jeopardy levies on installment agreement made merely to delay collection.**

- 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). For non jeopardy levies once the group manager concurrence is received on the delay of collection determination the revenue officer may approve the levy per Delegation Order 5-3 (Rev. 1) at IRM 1.2.44.4(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.