

IRM PROCEDURAL UPDATE

DATE: 02/27/2018

NUMBER: sbse-05-0218-0349

SUBJECT: H.R.1, Tax Cuts and Jobs Act

AFFECTED IRM(S)/SUBSECTION(S): 5.11.7.2.7

CHANGE(S):

IRM 5.11.7.2.7 Returning FPLP Levy Proceeds, updated to increase the time period for taxpayer to file for a refund of a levy payment from nine months to two years.

1. FPLP payments are systemically identified with a TC 670 DPC 18 or DPC 19.
2. There may be situations where a levied payment may be returned. Returning the levied proceeds must be approved by the delegating official authorized to return levy proceeds as directed under Delegation Order 5-3 and in accordance with IRM 5.11.2.4, *Returning Levied Property to the Taxpayer*. A taxpayer must request the return of the proceeds within a statutory time period. If the date of levy was on or before March 22, 2017, the request must be made before the expiration of 9 months starting from the date of such levy. If the date of levy was on or after March 23, 2017, the request must be made before the expiration of 2 years starting from the date of such levy. The Service can return levy proceeds without a request from the taxpayer if the statutory time period for requesting return of the levy proceeds has not expired. FPLP levy payment dates should be verified before returning the payment. Process the return of FPLP levy proceeds using the manual refund procedures found in IRM 5.1.12.20, *Cases Requiring Special Handling, Manual Refund*. For cases involving Identity Theft, refer to IRM 5.1.28.4.1.1, *Returning Levied Property in Cases of Identity Theft*.
3. In situations due to timing issues, *where a levy has been released* and the levied payment has already been processed by BFS, but not yet transmitted to the IRS by the pay date, the levied payment may be returned to the taxpayer in accordance with IRM 5.11.2.4. There may be other situations, as discussed in IRM 5.11.2.4, where the levied proceeds that had already been received prior to the levy release may be returned to the taxpayer and a manual refund processed.

NOTE: In situations where the levy was released due to a finding of economic hardship or because the taxpayer entered into an installment agreement, the levied payment may be returned to the taxpayer subject to the statutory period stated in (2); generally, it is in the Government's best

interest to do so. See IRM 5.11.2.4.1 (4). However, if the taxpayer requests that the IRS keep the funds, the IRS should follow the taxpayer's instructions.

NOTE: The TC 670 DPC 18/19 payment will need to post on the account prior to taking these manual refund actions.

4. In situations where a paper levy and FPLP levy attached the same federal payment simultaneously (known as a 'double levy') and both levies' proceeds from the same pay date are posted on the account, then the paper levy proceeds will need to be returned in accordance with IRM 5.11.2.4. Both levies should not be in effect on the same payment, where 15% of the payment was attached by the FPLP and the paper levy attaches the remaining amount (or however the federal payment agency calculated the payment to satisfy both the levies). Since the paper levy should not have been issued because the FPLP is indicated on the account, then the paper levy proceeds need to be refunded, as the administrative procedures were not followed to prevent simultaneous or 'double' levies. In certain situations, the FPLP levy proceeds may be returned in lieu of the paper levy proceeds, particularly if the FPLP is removed (released or blocked) from the account, and the paper levy is attaching the federal payment.

EXAMPLE: Taxpayer J. Flounder's federal employee salary payment for March 2016 was levied for 15% through the FPLP, but a paper levy was also issued by Revenue Officer L. Lemonsole, which attached the remaining amount. Revenue Officer Lemonsole did not block (TC 971 AC 061) the FPLP prior to issuing the paper levy and did not put the paper levy in continuous levy (Status 60) status to prevent the FPLP. Taxpayer Flounder's employer did not stop the paper levy disbursement, and remitted Taxpayer Flounder's salary proceeds for the paper levy while the FPLP systemically levied also. The paper levy proceeds should be returned and refunded to Taxpayer Flounder, along with releasing the paper levy.

5. In the above situations, if the tax module is or will be full paid or satisfied from the delayed posting of the payment and/or from other credits regardless if the federal payment is subsequently returned, then it is necessary to ensure the applicable Notice of Federal Tax Lien is manually released even while the account adjustments are pending. See IRM 5.12.3.2.1 regarding the necessity of a manual lien release. Employees of functions with access to the Automated Lien System (ALS) will input lien release requests in these situations. For those functions that do not have access to ALS, determine the Centralized Case Processing Lien Units (CCP-LU) contact on the IRS intranet by going to:
 - IRS Intranet Homepage
 - SERP
 - Who/Where
 - Case Processing Lien Units