

IRM PROCEDURAL UPDATE

DATE: 02/27/2018

NUMBER: sbse-05-0218-0351

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

AFFECTED IRM(s)/SUBSECTION(s): 5.19.9.2.7 and 5.19.9.2.7.1

CHANGE(s):

IRM 5.19.9.2.7 Returning SITLP Payments. Updated to increase the time period for taxpayer to file for a refund of a levy payment from nine months to two years.

1. The state may send a state refund to IRS erroneously. When this occurs, the state will request a return of the refund through the Campus Collections SITLP Coordinator. See IRM 3.17.79.3.11, *Erroneous Receipt of Funds From State Income Tax Levy Program (SITLP)*.
2. The state representative will contact the appropriate Campus Collections SITLP Coordinator when a refund situation is identified and will prepare a memorandum requesting the required adjustment. This memorandum will be mailed, faxed or e-faxed to the Campus Collections SITLP Coordinator. The request will contain all entity information, as well as, the specific amount of the refund.
3. Wrongful levy claims are handled administratively, but non-liable spouses have the option to file a civil wrongful levy suit if the account cannot be resolved administratively. See IRM 5.19.9.2.7.1.
4. SITLP payments cannot be returned if the payment created an overpayment and was subsequently refunded to the taxpayer. Research must be performed to ensure that the money remains available to be returned. This research may involve tracking the levy proceeds from module to module.
5. The return of levy proceeds requires special handling in accordance with IRC 6343(d) and IRM 5.11.2.4, *Returning Levied Property to the Taxpayer*. The return of erroneously levied proceeds is subject to a statutory time period. If the date of levy was on or before March 22, 2017, a request for the return 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 payments may be returned by the Service without a request if the statutory time period for requesting a return of the levy proceeds has not expired. SITLP levy payment dates should be verified before returning the payment.

6. There may be other instances where the return of SITLP levy proceeds is warranted. The return of levy proceeds requires special handling. See IRM 5.19.4.4.11, *Levy Release: Returning Levied Property*.

NOTE: Only erroneous or wrongful requests should be worked by the Campus Collections SITLP Coordinator. All other requests for return of SITLP levy proceeds, including hardship requests, should be worked according to operational guidelines and *not* sent to the Campus Collections SITLP Coordinator for manual refund.

7. Do *not* refer taxpayers to any SITLP Coordinator or ACS Support Liaison.

IRM 5.19.9.2.7.1 SITLP Wrongful Levies. Updated to increase the time period for taxpayer to file suit from nine months to two years.

1. Non-liable spouses who fail to receive a portion of their state income tax refund due to the operation of the SITLP are not "injured spouses." Rather, they are third parties who believe that the IRS has made an error by levying their state income tax refund. The remedy available to the non-liable spouse is to file an administrative claim for return of "wrongfully levied" property pursuant to IRC 6343(b).

NOTE: DO NOT confuse wrongful levy with erroneous levy. See IRM 3.17.79.3.11, *Erroneous Receipt of Funds From State Income Tax Levy Program (SITLP)*.

2. Treasury Regulation Section 301.6343-2(b) provides directions for making such a claim. A written request must be made. A non-liable spouse may also file a suit for wrongful levy pursuant to IRC 7426. Making an administrative claim is not a prerequisite to filing such a suit. IRC 6532(c)(2) provides that if an administrative claim is filed, the third party has twelve months from the filing of an administrative claim or six months from the disallowance of such claim to file the suit, whichever is shorter. If no claim is filed, the third party must file suit 2 years from the date of the levy or agreement giving rise to such action. IRC 6532(c)(1).
3. The criteria shown below is to be used as a guide in determining whether a SITLP wrongful levy may have occurred. Other conditions may warrant wrongful levy consideration and accounts should be considered on a case-by-case basis.

If	Then
A joint tax liability was levied through SITLP	Determine whether the taxpayer was liable for the balance due or if the taxpayer is an ex-spouse or unrelated taxpayer

<p>The taxpayer filed an "injured spouse" claim with the IRS with respect to the refund that was levied through SITLP</p>	<p>Determine the status of the injured spouse claim with the IRS. This could be an indication that a wrongful SITLP levy may have occurred.</p>
<p>The taxpayer contacted the state taxing agency regarding a wrongful SITLP levy or a possible injured spouse situation</p>	<p>Determine the status of any state investigation, AND have the taxpayer provide documentation as to the results of the state investigation.</p>