

IRM PROCEDURAL UPDATE

DATE: 05/23/2023

NUMBER: sbse-05-0523-0651

SUBJECT: Updates for Form 668-R

AFFECTED IRM(s)/SUBSECTION(s): 5.11.2

CHANGE(s):

Audience, updated reference to Civil Enforcement Advice and Support Operations (CEASO).

IRM 5.11.2.2.2(1), updated table to list information on when to use Form 668-R.

(1) Prepare the levy form that contains the most appropriate instructions for honoring the levy. A notice of levy attaches to a taxpayer's property held by a third party as reflected on the specific levy form.

- a. Use Form 668–W, Notice of Levy on Wages, Salary, and Other Income to levy an individual's wages, salary (including fees, bonuses, commissions, and similar items) or other income. Other income is generally income owed the taxpayer as the result of personal services in a work relationship. See IRM 5.11.5.4.6, Severance Pay, for an example of other income. Form 668-W is also used to levy on a taxpayer's benefit or retirement income.
- b. Use Form 668–A, Notice of Levy, to levy other property that a third party is holding. For example, this form is used to levy bank accounts and business receivables.
- c. Use Form 668-R to levy retirement assets, as follows:

If	<u>And</u>	Then
the taxpayer is an individual	the property to be levied is wages, salary, or other income,	use Form 668-W
the taxpayer is not an individual	the property to be levied is not wages, salary, or other income,	use Form 668-A
the taxpayer is an individual	the property to be levied is the lump sum of the retirement asset	use Form 668-R

IRM 5.11.2.2.2(14), added information to keep part 5 of the Form 668-R as part of case file.

(14) Prior to serving the locally generated notice of levy, print and retain in the Collection case file the IRS File Copy of the levy. For Form 668-(A), Notice of Levy, retain part 5, for Form 668-(W), Notice of Levy on Wages, Salary, and Other Income, retain part 6 and for Form 668-R Notice of Levy on Retirement Plans, retain part 5. Systemic notice of levies mailed through CPS will print a levy copy for the case file.

Note: Levy generation is a multiple step process that ends with the local printing of the levy. When levy printing fails, ICS "VIEW LEVY" may contain an entry. Document in the ICS history if a levy is not issued due to failure or error during generation.

IRM 5.11.2.2.7(1), clarified that CPS mails Form 8519.

(1) After serving a levy in person or faxing it, mail a copy to the taxpayer. Form 668-A and Form 668-R includes two taxpayer copies. Mail Part 4 to the taxpayer. Leave Part 2 with the person who receives the levy. ACS and CPS printed ICS levies uses Form 668-A and mails to the taxpayer Form 8519, Taxpayer's Copy of Notice of Levy. Form 8519 will be printed and mailed from the CPS site within five business days of receiving the file

Note: This is not necessary for a levy on wages, salary, or other income. The wage statement given to the taxpayer by his or her employer notifies the taxpayer of the levy.

IRM 5.11.2.2.7(5), updated to clarify that ICS will send the POA a copy of the levy when printed through CPS.

(5) Also, see IRM 5.1.23.4.2.3, Written Communication to a Taxpayer's Representative, to ensure that the POA is authorized to receive taxpayer data on all modules contained in the copy of the levy you plan to send to the POA. Issue Letter 5427 Incomplete Power of Attorney when Form 2848 does not cover all periods on the levy. Systemic notice of levy mailed from CPS will generate a copy to the POA when they are able to determine if the POA is authorized for all the modules on the levy.

IRM 5.11.2.3.2, add reference to Treas. Reg. 301.7426-1(b)(1).

(1) The IRC distinguishes between "wrongful" levies and other types of improper or "erroneous" levies.

(2) A "wrongful levy" is generally one that improperly attaches property belonging to a third party in which the taxpayer has no rights. See IRC 6343(b) and Treas. Reg. 301.7426-1(b)(1). See IRM 5.11.2.3.2.1 below for wrongful levy procedures.

(3) An "erroneous" levy is one that properly seeks to capture a taxpayer's property (rather than a third party's property), but, for example, is served prematurely or otherwise in violation of an administrative procedure or law. See IRC 6343(d), IRM 5.11.2.3.2.3 and IRM 5.11.2.4.1 below for erroneous levy procedures.

IRM 5.11.2.3.2.1, updated references throughout to CEASO.

IRM 5.11.2.3.2.1(4), added reference to Form 668-R.

IRM 5.11.2.3.2.1(6) & (8), updated to add reference to Pub 5390.

(1) IRC 6343(b) authorizes the return of property or money to its rightful owner (not the taxpayer) when the IRS determines that the property has been wrongfully levied.

(2) IRC 6343(b) provides that the IRS may return:

- The property that was levied.
- Amount of money equal to amount of money levied.
- Amount of money equal to that received by United States from a sale of the property.

(3) There are time limitations regarding certain wrongfully levied property.

- a. Specific property (including **identifiable money** such as a coin collection) in possession of the United States may be returned anytime. See IRC 6343 (b).
- b. An amount equal to the amount of money levied or received from the tax sale may be returned, but there are time limitations for requesting the return of the funds. The Tax Cuts and Jobs Act section 11071, amended IRC 6343 to increase the time period for returning levied funds to a third party from 9 months to two years. Before the amendment, a third party had 9 months from the date of the levy to seek return of the levied funds. Under the new rule, the time period for seeking return of the levied funds is as follows:
 - If the date of levy was on or before March 22, 2017, the third party must request the return of money levied or the monetary proceeds from the sale of property that has been levied within 9 months of the date of such levy.
 - If the date of levy was on or after March 23, 2017, the third party must request the return of money levied or the monetary proceeds from the sale of property that has been levied within 2 years of the date of such levy.

(4) Wrongful levy claims may be filed on property attached by:

- Notices of Levy, Form 668-A, Form 668-W and Form 668-R and/or
- Notice of Seizure, Form 668-B.

(5) A wrongful levy claim may be filed when:

- The levied property is still in the hands of a third party (e.g., bank levy) or under seizure prior to sale
- The levied amount has posted to the taxpayer's account, or
- An amount of money has posted to the taxpayer's account that is equal to the amount received by the IRS from the sale of property.

(6) Upon receipt of a written wrongful levy claim, send the claim to the CEASO office where the levy or seizure was made. CEASO will evaluate the claim. Generally, third parties file wrongful levy claims when they believe that the levy is wrongful because the property levied belongs to them, or they believe they have a superior claim to the property that is not being recognized by the IRS. If the claim is disallowed, CEASO should notify the third party in writing of the reason for disallowing the claim and of the right to bring suit against the government. If the claim is disallowed because it was not made timely, CEASO should send Letter 3973, Wrongful Levy Claim Rejection Letter - Untimely Claim, via certified mail. If the claim is disallowed for another reason, CEASO should send the claimant Letter 3974, Wrongful Levy Claim Rejection Letter, via certified mail. Disallowance of the claim may be appealed through the Collection Appeals Program (CAP).

Caution: The regulations require that the third party file the claim with the CEASO group manager for the area where the levy or seizure was served. If the third party submits an original claim for processing to an RO or someone other than the CEASO group manager, the IRS employee should notify the third party that the proper place for filing the claim is with the CEASO group manager for the area where the levy or seizure was made and provide the third party with the correct mailing address.

Note: The third-party claimant may also choose to file suit under IRC 7426 (a). A claim is not required prior to filing suit. However, if the claimant is seeking damages under IRC 7426(h), the rules of IRC 7433(d), including exhaustion of administrative remedies, apply. See Pub 5390, Instructions for Preparing Administrative Claims for Damages Under Sections 7426(h), 7432, and 7433(a-d), and Request for Costs under Section 7430 Related to these Sections.

Note: Third parties claiming property was wrongfully levied are entitled to CAP before the levy proceeds are turned over to the Service. Once the levy proceeds are turned over, the third party must submit an administrative claim to Advisory under the procedures described in Pub 4528, Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b). If the administrative claim is denied, the third party can request a CAP hearing about the denial.

(7) If the levy source has not forwarded the levy proceeds and CEASO determines that the potential levy proceeds are not the taxpayer's, then do the following:

- Process a full release of the levy as soon as possible to avoid the receipt of property that is not the taxpayer's. If levy proceeds are received because the levy is not released in sufficient time, the levied property or funds should be returned immediately. See IRM 5.11.2.3.2.2, Certain Wrongful Levy Situations.

Note: For bank levies, if additional time is needed beyond the 21 day hold period to determine ownership, request the bank hold the funds. Provide the bank a specific extension date to forward the funds. If substantiation is required from the potentially wrongfully levied party or the taxpayer, provide a deadline date for providing the substantiation.

Note: For levies that are not bank levies, the levy source may be requested to hold the levy proceeds if additional time is needed to determine ownership. Provide the levy source with a specific extension date to forward the funds. If substantiation is required from the potentially wrongfully levied party or the taxpayer, provide a deadline date for providing the substantiation.

(8) If the levy source has forwarded the levy proceeds and CEASO preliminarily determines that the levy proceeds are not the taxpayer's, do the following:

- Notify the wrongfully levied party that the IRS has determined that the levy was wrongful and that the IRS is working on returning the levy proceeds.
- Provide the wrongfully levied party Pub 4528, Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b).
- Document in the ICS history that the wrongfully levied party was provided Pub 4528. Pub 4528 contains the proper procedures for a third party to make an administrative claim and file a suit under IRC 7426 (a)(1) should the administrative claim be denied. See Pub 5390.

Exception: See IRM 5.11.2.3.2.2, Certain Wrongful Levy Situations, for situations where the revenue officer may process a manual refund of wrongful levy proceeds, after securing proper approval.

Note: Under IRC 6503(f), the period of limitation on collection is suspended for a period equal to the period from the date property is wrongfully seized or received to the date returned under IRC 6343 (b) or the date on which a judgment is secured under IRC 7426, plus an additional 30 days. The suspension is only applicable to an amount equal to the amount of money or the value of the property returned. See IRM 5.10.6.15, Wrongful Seizure — Payment of Claims After Sale.

(9) Third party requests for reimbursement of bank charges incurred in responding to a wrongful levy can be considered under the discretionary authority of the Small Claims Act (SCA) by the IRS Claims Manager. See IRM 3.17.10.5(19), Reimbursement of Bank Charges Due to Service Loss or Misplacement of Taxpayer Checks.