

## IRM PROCEDURAL UPDATE

**DATE: 08/29/2017**

**NUMBER: sbse-05-0817-1280**

**SUBJECT: Role of Revenue Officers In Sales**

**AFFECTED IRM(s)/SUBSECTION(s): 5.17.3**

**IRM 5.17.3.5.2(5) updated for clarification.**

5. For purposes of determining the nine-month period under IRC § 6343(b) for the return of property, the "date of such levy" for continuous wage and salary levies under IRC § 6331(e) is the date the notice of levy is served. For federal payment levies under section 6331(h) that are transmitted electronically, The IRS should return only levy payments received during the nine-month period preceding the request for return of funds. See IRM 5.11.7.2.7, *Returning FPLP Levy Proceeds*, IRM 5.17.3.6.6, *Release of Levy and Return of Property*, and IRM 5.17.3.6.6.3, *Wrongful Levy*, below, for additional information regarding IRC § 6343.

**IRM 5.17.3.5.5 removed paren 3 based on recent revisions to Delegation Order 1-23-2.**

1. IRC § 6334(a)(13)(A) exempts from levy any real property of the taxpayer used as a residence by any individual (except for real property that is rented), if the levy amount does not exceed \$5,000.
2. In addition, IRC § 6334(e)(1) requires a court order before administrative seizure of certain principal residences owned by the taxpayer when seizure is otherwise permissible. These include the principal residence of:
  - o the taxpayer
  - o the taxpayer's spouse
  - o the taxpayer's former spouse
  - o the taxpayer's minor child
3. Written approval by the Area Director is required before seizure of any property used by the taxpayer, the taxpayer's spouse or former spouse, or the taxpayer's minor children, as a principal residence.
4. After the required approval is obtained, a suit recommendation package should be prepared for Area Counsel. The procedures for preparing a seizure recommendation package for Area Director approval and for preparing the suit recommendation package are set forth in IRM 5.10.2.3, *Judicial Approval for Principal Residence Seizures*.

5. IRC § 6334(e)(1) provides that there will be no levy on a principal residence unless approved by a judge or magistrate (in writing). At this hearing, the Service will be required to demonstrate that (1) the requirements of any applicable law or administrative procedures relevant to the levy have been met, (2) the liability is owed, and (3) no reasonable alternative for the collection of the taxpayer's debt exists.

#### **IRM 5.17.3.7.1 revised guidance regarding RO's participation in sales.**

1. Sales of seized property are conducted by Property Appraisal and Liquidation Specialists (PALS). Under section 3443 of RRA '98, the revenue officer who seized the property may not participate in the actual sale of such property.

**NOTE:** This prohibition only applies to tax sales under IRC 6335 and so does not bar revenue officers from conducting sales of perishable goods under IRC § 6336.

2. As a matter of Service policy, revenue officers who have taken any collection action **at any time** against the taxpayer whose assets have been seized have the same limitations as the seizing RO.
3. Prohibited acts by those revenue officers described in (1) and (2) above, include:
  - Grouping property prior to sale after the Form 2433 has been completed
  - Registering bidders
  - Tabulating bids
  - Assisting in collecting sales proceeds
  - Issuing certificates of sale
  - Answering sale-related questions
  - Any other sale-related activity involving interaction with anyone attending or conducting the sale
4. Revenue officers described in (1) and (2) above may perform limited ministerial acts without violating the prohibition on participation in sales.
5. Post-seizure the revenue officer continues to be responsible for the collection of the outstanding tax liability and remains in communication with the PALS as necessary. For example, the revenue officer would contact the PALS if the liability were satisfied before the sale or if the taxpayer filed bankruptcy before the sale. In addition, given the continued collection responsibility, the revenue officer may be present at the sale (or otherwise available) to address alternative methods of collection with the taxpayer.
6. As described in IRM 5.10, revenue officers do participate in post-sale procedures. For example, the revenue officer:
  - inputs the transaction code to remove a module from inventory;
  - works with the PALS to ensure that all expenses of seizure and sale are properly debited;
  - maintains the ICS case file; and

- o ensures that documents are forwarded to Advisory for inclusion in the seizure file and the permanent record.

**IRM 5.17.3.10.19(1) removed note based on new guidance related to TSP levies.**

1. The federal tax lien attaches to a participant's interest in a retirement plan, such as profit-sharing, stock bonus, pension, cash or deferred (401(k)) plans, annuity plans under IRC § 403(a) and the Federal Thrift Savings Plan, if the participant has any vested benefit under the plan. Vesting occurs when the plan participant acquires a nonforfeitable right to part or all of his accrued benefits. In other words, vesting is the plan participant's "ownership" of his accrued benefit, which results from the participant's satisfaction of service or other requirements specified under the terms of the plan. Similarly, the federal tax lien attaches to a taxpayer's individual retirement account.

**IRM 5.17.3.10.19(3) added note based on new guidance related to TSP levies.**

3. Funds in a retirement plan that are currently being paid out to the taxpayer are reachable by levy. In addition, even if the retirement plan is not in pay status, if a present right to future payment on an obligation exists, the levy reaches that present right. See Rev. Rul. 55-210, 1955-1 C.B. 544 (lien attaches to entire unqualified right to receive future benefits; only one notice of levy needs to be served to effectively reach benefits subsequently payable).

**NOTE:** The IRS can seize the entire balance in vested TSP accounts pursuant to U.S.C. 8437(e)(3), which authorizes turnover of funds in TSP accounts to the IRS pursuant to IRS levies. The levy will attach to any TSP account that is vested, or will become vested within 30 days of the date the TSP receives the levy if the participant were to remain in Government service. The Federal Retirement Thrift Investment Board (FRTIB) has issued regulations governing TSP levies at 79 FR 53603 (Sept. 10, 2014).

**IRM 5.17.3.10.22(1) updated to reflect current procedures on levy of stocks.**

1. The taxpayer's ownership interest in publicly-traded corporate securities that are held in accounts managed by a brokerage firm or bank is subject to levy, whether the interest is certificated or not certificated. The firm or bank, upon levy, is required to liquidate the interest and turn over the funds to the Service.

**NOTE:** In the unusual case where the ownership interest is represented by stock certificates, such certificates may be seized and sold at an administratively sale.

**NOTE:** Securities that are not publicly-traded must be seized and administratively sold. Alternatively, the Service may refer the case to Counsel for a lien foreclosure suit. For procedures, see IRM 5.10.3.18, *United States Marketable Securities*, and IRM 5.11.6.8, *Securities - Stocks, Bonds, Mutual Funds, etc.*