

IRM PROCEDURAL UPDATE

DATE: 02/12/2018

NUMBER: sbse-05-0218-0282

SUBJECT: Guidance for Section A11071 Extension of Time Limit for Contesting IRS Levy

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

CHANGE(s):

IRM 5.11.2.3.2.1(3) is revised to increase the time period for a taxpayer to file for a refund from nine months to two years.

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:
 - o 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.
 - o 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.

IRM 5.11.2.3.2.1(6) is revised to remove the 9 month reference.

6. Upon receipt of a written wrongful levy claim, send the claim to the Collection Advisory office where the levy or seizure was made. Collection Advisory 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, Collection Advisory 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, Collection Advisory should send Letter 3973, *Wrongful Levy Claim Rejection Letter - Untimely Claim*, via certified mail. If the claim is disallowed for another reason, Collection Advisory 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 Collection Advisory 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 Collection Advisory Group Manager, the IRS employee should notify the third party that the proper place for filing the claim is with the Collection Advisory 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), an administrative claim under the rules of IRC 7433(d) must be filed first

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.

IRM 5.11.2.4.1(2) is revised to add note that return of levy funds apply to both IRC sections.

2. Now erroneous levy proceeds can be returned to the taxpayer **at the discretion of the Service** if:
 - The levy is premature
 - IRS procedures were not followed.

EXAMPLE: Some companies notify the Service of an address for mailed notices of levy. See IRM 5.11.2.2.5, *Addresses for Mailing Notices of Levy*. A levy is sent to another address by mistake. The company forwards it to the correct address, and a levy payment is sent. The taxpayer might claim the payment **must** be returned because procedures were not followed. This is not the case. It is

within the discretion of the Service to determine that the error is trivial and returning the payment is unwarranted.

NOTE: The same procedures for making a claim for return of levy proceeds when a wrongful levy has occurred under IRC 6343(b) apply to IRC 6343(d), except interest is allowed in the case of a wrongful levy.

IRM 5.11.2.4.1(3) is revised to add to the example that the time period to refund must be meet.

3. Erroneous levy proceeds will be returned to the taxpayer if the levy is in violation of the law per Treas. Reg. 301.6343-3(d). However, the Service may keep the levy proceeds if the taxpayer provides written permission to do so.

EXAMPLE: The levy occurs without giving the taxpayer notice of a right to a hearing under IRC 6330 or when an offer in compromise is pending, in violation of IRC 6331 (k)(1). Then the levy proceeds must be returned [subject to the statutory time period addressed in (5)] as the levy violated the law.

IRM 5.11.2.4.1(4) is revised to add that the time period to refund must be meet.

4. Although not considered "erroneous", proceeds from levies s can be returned to the taxpayer **at the discretion of the Service** [subject to the statutory time period addressed in (5)] in the following situations:
 - o An installment agreement is made for a liability included on the levy, unless the agreement provides otherwise.

EXAMPLE: Subsequent to the levy, the taxpayer enters into an installment agreement that will full pay the entire outstanding liability. The revenue officer verifies the taxpayer is financially able to meet all the terms of the agreement. An amount of money equal to the amount of money levied and applied toward the taxpayer's liability may be returned to the taxpayer.

- o Returning levy proceeds facilitates collection.
- o With the consent of the taxpayer or the National Taxpayer Advocate (NTA), returning the levy proceeds is in the best interests of the taxpayer (as determined by the NTA) and the government.

EXAMPLE: Taxpayer owes income tax for 2008 and 2009. IRS issues a levy to attach to social security benefits. Taxpayer responds to a levy and a collection information statement is completed that IRS

determines establishes economic hardship. Further, the taxpayer's information confirms that the levy created an economic hardship for the taxpayer at the time the levy was initially issued. The IRS releases the levy on the social security benefits. Additionally, an amount equal to the amount levied and applied to the taxpayer's liability may be returned to the taxpayer unless it is determined the return of property is not in the best interest of the government. Generally, it will be in the best interest of the government to return such payments when the IRS levy created an economic hardship for a taxpayer. However, it is generally not in the best interest of the government to return levy proceeds received prior to the taxpayer's request for the release of the levy if the facts show that the taxpayer did not respond to IRS attempts to contact them prior to levy and the taxpayer does not have reasonable cause for not responding. In all cases, the individual case facts and circumstances should be considered when determining whether to return levy proceeds received prior to the taxpayer's request for the release of levy, which includes a request based on economic hardship.

NOTE: If multiple levies have been issued with respect to a taxpayer's liability and only one of the levies has been confirmed to create the economic hardship, only the proceeds from that levy should be returned.

If	Then
IRS makes a determination that return of property is in the best interest of the United States AND in the best interest of the taxpayer with taxpayer consent (no NTA involvement)	IRS will return the levied property.
IRS makes a determination that return of property is in the best interest of the United States and the NTA also determines that return of the property is in the best interest of the taxpayer	IRS will return the levied property.
IRS makes a determination that return of the property is NOT in the best interests of the United States (regardless of NTA determination or taxpayer consent)	IRS will NOT return the levied property.

IRM 5.11.2.4.1(5) is revised to increase the time period for a taxpayer to file for a refund from nine months to two years.

5. Specific levied property (including "identifiable money" such a coin collection) in the possession of the IRS other than money can be returned at any time. Treas. Reg. 301.6343-3(e). Money includes money levied or the monetary proceeds from the sale of property that has been levied. A taxpayer must request the return of money within a certain 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; e.g., if a levy was received by the person to be served the levy on March 12, 2017, the request must be made on or before December 11, 2017.
- 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; e.g., if a levy was received by the person to be served the levy on March 28, 2017, the request must be made on or before March 27, 2019.

NOTE: See the Tax Cuts and Jobs Act at section 11071(a), which amended IRC 6343(b) to extend the period for returning wrongfully levied money; under IRC 6343(d) the extended time period for returning money applies to erroneous levies as well.

NOTE: 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. Thus, if the taxpayer makes an oral request, the IRS may investigate the request. However, the IRS should advise the taxpayer that he or she must submit their written request within the statutory time period in order to comply with written requirement under Treas. Reg. 301.6343-3(h). If the taxpayer makes a timely written request, the Service may return the money after the statutory time period ends if time is needed to investigate and process the request. The money may, then, be returned on some date after the statutory period.

IRM 5.11.2.4.2 is revised to correct the number cited for the example.

1. Except for a levy in violation of the law (IRM 5.11.2.4.1), there are no rigid rules for deciding whether to return a levy payment. The decision is made on a case-by-case basis. At least one of the conditions in IRM 5.11.2.4.1(2) must exist. Some things to consider include:
 - How significant is a procedural error? In the first example in IRM 5.11.2.4.1(2), the error is harmless and insignificant.
 - The IRS released the levy because it determined that the levy was creating an economic hardship.
 - Did the person who received the levy get bad instructions about how much to send?
 - Is there an error that affects whether the levy should have been issued?
 - Is there an inequity in keeping the payment?
 - Would the levy have been released if all facts were known before the payment was received?
 - Is the taxpayer a pyramiding, delinquent trust fund repeater?

IRM 5.11.2.4.3 is revised to increase the time period for a taxpayer to file for a refund from nine months to two years.

1. When a written request is rejected, give the taxpayer Letter 3975, *Rejection of Request for Return of Levied Property*, signed by the group manager.
2. A written rejection is not required unless a written request is made.
3. The taxpayer may appeal the rejection using Collection Appeal Program (CAP) procedures, or, if Collection Due Process (CDP) rights exist under IRC 6330(f) and are timely exercised, by raising the issue at a CDP hearing or an equivalent hearing, whichever may be applicable.

NOTE: When a verbal statement is received investigate whether the property should be returned to the taxpayer based on the verbal information. Advise the taxpayer they need to make a written request if you determine that none of the conditions in IRC 6343(d) applies. The claimant must submit a written claim before the expiration of the two year period. See IRM 5.1.9.4(4), *Collection Appeals Program (CAP)*.