



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.11.2

MARCH 3, 2021

EFFECTIVE DATE

(03-03-2021)

PURPOSE

- (1) This transmits revisions to IRM 5.11.2, Notice of Levy, Serving Levies, Releasing Levies, and Returning Property.

MATERIAL CHANGES

- (1) IRM 5.11.2.2.2 - IPU 21U0137 Note added for action when levy fails to print during generation process.
- (2) IRM 5.11.2.2.2.1(1) - IPU 21U0290 Removed 180-day warning of enforcement requirement.

EFFECT ON OTHER DOCUMENTS

IRM 5.11.2 dated December 21, 2020 is superseded. The following IPU's are incorporated into this IRM: IPU 21U0137 & IPU 21U0290 issued 01/25/2021 through 02/22/2021.

AUDIENCE

SB/SE revenue officers, Collection advisors, and Specialty Collection Insolvency advisors.

Kareem Williams
Acting Director, Collection Policy

5.11.2

Serving Levies, Releasing Levies and Returning Property

Table of Contents

5.11.2.1 Program Scope and Objectives

- 5.11.2.1.1 Background
- 5.11.2.1.2 Authority
- 5.11.2.1.3 Responsibilities
- 5.11.2.1.4 Program Management and Review
- 5.11.2.1.5 Program Controls
- 5.11.2.1.6 Terms/Definitions/Acronyms
- 5.11.2.1.7 Related Resources

5.11.2.2 Serving the Notice of Levy

- 5.11.2.2.1 General
- 5.11.2.2.2 Preparing the Notice of Levy
 - 5.11.2.2.2.1 Preparing Manual Notice of Levy
 - 5.11.2.2.2.2 Preparing Notice of Levy when LLC is the Taxpayer
- 5.11.2.2.3 Serving Notice of Levy in Person
- 5.11.2.2.4 Serving Notice of Levy by Mail, Fax or Mailed from the CPS Sites
- 5.11.2.2.5 Addresses for Mailing Notice of Levy
- 5.11.2.2.6 Levy in Other Territories
- 5.11.2.2.7 Notifying the Taxpayer After Serving the Levy
- 5.11.2.2.8 Examination of Books and Records
- 5.11.2.2.9 Refusing to Comply with a Levy

5.11.2.3 Releasing Levies

- 5.11.2.3.1 Legal Basis for Releasing Levies
 - 5.11.2.3.1.1 Liability Satisfied
 - 5.11.2.3.1.2 Statutory Collection Period Expired
 - 5.11.2.3.1.3 Facilitate Collection
 - 5.11.2.3.1.4 Economic Hardship
 - 5.11.2.3.1.5 Fair Market Value of Property More Than Amount Owed
 - 5.11.2.3.1.6 Installment Agreement
- 5.11.2.3.2 Wrongful and Erroneous Levies
 - 5.11.2.3.2.1 Wrongful Levy
 - 5.11.2.3.2.2 Certain Wrongful Levy Situations
 - 5.11.2.3.2.3 Erroneous Levies
- 5.11.2.3.3 Serving Releases of Levy
- 5.11.2.3.4 Forms Used to Release Levies
- 5.11.2.3.5 Levy Release For Credit Card Payment

-
- 5.11.2.3.6 Levy Releases in Cases of Identity Theft
 - 5.11.2.4 Returning Levied Property to the Taxpayer - Erroneous Levies
 - 5.11.2.4.1 Current Authority for Returning Levied Property to the Taxpayer
 - 5.11.2.4.1.1 Additional Rules for Retirement Plan Levies
 - 5.11.2.4.2 Factors to Consider Before Returning a Levy Payment to the Taxpayer Due to Procedural Errors
 - 5.11.2.4.3 Rejecting Requests for Return of Levied Property
 - 5.11.2.4.4 Delegation of Authority to Return Levy Payments
 - 5.11.2.4.5 Getting the Money Refunded
 - 5.11.2.4.6 Effect on Penalty & Interest
 - 5.11.2.5 Returning Levied Property to Someone Other Than the Taxpayer
 - 5.11.2.6 Disposing of Surplus Proceeds

Exhibits

- 5.11.2-1 Acronyms

5.11.2.1 (10-26-2017) Program Scope and Objectives

- (1) **Purpose:** This IRM section describes the process and procedures for preparation or release of the notice of levy. Specifically, the IRM section:
 - a. Describes the steps in preparing and serving levies.
 - b. Provides guidance and legal basis for releasing levies including wrongful and erroneous levies.
 - c. Outlines procedures for determining when levied funds may be returned to the taxpayer.
 - d. Provides instruction on handling surplus levy proceeds.
- (2) **Audience:** This IRM is designed for use by revenue officers, collection advisors, specialty collection insolvency advisors and their managers.
- (3) **Policy Owner:** Director, Collection Policy. Collection Policy is an organization under Small Business/Self-Employed Division (SBSE), Collection.
- (4) **Program Owner:** SBSE Collection Policy, Enforcement.
- (5) **Primary Stakeholders:** SB/SE revenue officers, collection advisors, specialty collection insolvency advisors.
- (6) **Program Goals:** Enforcement is a necessary component of a voluntary assessment system, see IRM 1.2.1.6.1, Policy Statement 5-1. While we will actively assist taxpayers to comply, we will also take appropriate enforcement actions when warranted to resolve the delinquency. Levies are an important enforcement tool. This IRM section provides the fundamental knowledge and procedural guidance for revenue officers in making levy determinations. It includes processes and considerations when issuing levies to attach the taxpayer's interest in a variety of types of property. By following the processes and procedures in this IRM, employees will be able to issue levies that are procedurally and legally correct, and to release them when appropriate, to promote long-term voluntary compliance.

5.11.2.1.1 (12-21-2020) Background

- (1) The procedures in this IRM are designed to ensure that levy actions comply with law and IRS policy statements; in particular, IRC 6343 and the taxpayer bill of rights. More specifically, this IRM section provides revenue officers, collection advisors and specialty collection insolvency advisors with directions regarding how to complete levy actions. .
- (2) The Bipartisan Budget Act of 2018 allows amounts, including interest, returned to an individual from the IRS pursuant to a wrongful or erroneous levy on an IRA or employer-sponsored plan to be contributed to the IRA or employer-sponsored plan without regard to the general contribution limits. This new law is effective for amounts returned to individuals in taxable years beginning after December 31, 2017. The law added IRC 6343(f), Individuals Held Harmless on Wrongful Levy, etc. on Retirement Plan.

5.11.2.1.2 (12-21-2020) Authority

- (1) Authorities relating to this section include:
 - IRC 6330 - Notice and opportunity for hearing before levy
 - IRC 6331 - Levy and distraint
 - IRC 6332 - Surrender of property subject to levy
 - IRC 6333 - Production of books
 - IRC 6334 - Property exempt from levy

- IRC 6343 - Authority to release levy and return property
- IRC 6503 - Suspension of running of period of limitation
- Treasury Regulations 301.6330-1 - Notice and opportunity for hearing prior to levy
- Treasury Regulations 301.6331-1 - Levy and distraint
- Treasury Regulations 301.6332-1 - Surrender of property subject to levy
- Treasury Regulations 301.6332-2 - Surrender of property subject to levy in the case of life insurance and endowment contracts
- Treasury Regulations 301.6334-1 - Property exempt from levy
- Treasury Regulations 301.6343-1 - Requirement to release levy and notice of release
- Treasury Regulations 301.6343-3 - Return of property in certain cases
- Revenue Procedure 2010–16, Definition of Last Known Address
- IRM 1.2.1.6.1, Policy Statement 5-1, Enforcement is a necessary component of a voluntary assessment system
- IRM 1.2.2.4.1, Delegation Order 3-1 (Rev. 2), Credits and Refunds
- IRM 1.2.2.6.3, Delegation Order 5-3 (Rev. 1), Levy on Property in the Hands of a Third Party (not to include Levy Form 668-B)
- 11 U.S.C. § 362(a)

5.11.2.1.3
(10-26-2017)
Responsibilities

- (1) The Director, Collection Policy is responsible for all policies within the levy program.
- (2) The National Program Manager, Enforcement is responsible for development and delivery of policies within the levy program.
- (3) Managers of employees who issue levies are responsible for ensuring these procedures are followed and employee actions are timely and accurate.
- (4) Revenue officers, collection advisors and specialty collection insolvency advisors are responsible for following the procedures in this IRM.

5.11.2.1.4
(10-26-2017)
Program Management and Review

- (1) Integrated Collection System (ICS) is used by field revenue officers as a method for generating levy documents that are issued to third party levy sources.
- (2) The Collection Activity Reports (CAR) report number 5000–24 records the total number of levies issued. Total Levies are the sum of Field, SB/SE ACS and W & I ACS (monthly and cumulative). The data sources are the ACS Customer Service Activity Reports (CSAR) - Monthly Support Site Report (ACS Levies) and ICS (Field Levies). See IRM 5.2.4.11, Levy and Seizure Report (Report Symbol NO-5000-24). The IRS has determined that levy data may be made available as national statistics, provided that such data will never be used to evaluate any employee or to suggest or impose production quotas or goals. See IRM 1.5.2, Managing Statistics in a Balanced Measurement System, Uses of Section 1204 Statistics.
- (3) Levy program numbers are published yearly in the *IRS Data Book*, Enforcement: Collections, Penalties & Criminal Investigation, in Table 16 at <https://www.irs.gov/uac/enforcement-collections-penalties-criminal-investigation>
- (4) Targeted program reviews are periodically performed by Collection Policy to determine whether IRM guidance requires clarification or revision.

- (5) Management will ensure program effectiveness through managers' case reviews, operational reviews conducted by the territory, Area, and Field Collection Director, and NQRS reviews.

5.11.2.1.5 (12-21-2020) Program Controls

- (1) National Quality Review System (NQRS), attribute 417, Managerial Approvals for Enforcement provides independent collection review information from which management may draw inferences regarding overall case quality for this attribute. See IRM 5.13.1, Embedded Quality Administrative Guidelines.
- (2) Embedded Quality Review System (EQRS), Collection managers use EQRS, attribute 416, Appropriate Enforcement Tools, and attribute 607, Taxpayer Rights to complete all case reviews for revenue officers.
- (3) Certain notices of levy must be approved by managers. See IRM 1.2.2.6.3, Delegation Order 5-3 (Rev. 1), Levy on Property in the Hands of a Third Party (not to include Levy Form 668-B).
- (4) Certain manual refunds must be approved by managers. See IRM 1.2.2.4.1, Delegation Order 3-1 (Rev. 2), Credits and Refunds.
- (5) Programming safeguards are built into the ICS system to prevent a levy from being generated on a module where the required notices have not been issued.

5.11.2.1.6 (12-21-2020) Terms/Definitions/ Acronyms

- (1) Terms and acronyms associated with the field levy program include:

Term	Definition
Automated Levy	Automated levies are levies issued through the Automated Levy Programs. These levies are transmitted electronically. The proceeds are also received electronically.
Manual Levy	A manual ICS levy is a paper levy that is manually prepared and issued by an RO.
Paper levy	Either a manual or systemic levy on Form 668-A or Form 668-W, Form 668-W that is prepared and issued by an RO.
Systemic Levy	ICS systemic levies are initiated by ROs resulting in levy preparation and issuance by the ICS system.

Note: ACS methods of levy issuances are discussed in IRM 5.19.4.3.10(1), Levy Types.

- (2) See Exhibit 5.11.2-1 for list of acronyms.

5.11.2.1.7
(12-21-2020)

Related Resources

- (1) The *ICS User Guide, Chapter 10 - Levy* details all the functions necessary to maintain levy sources, issue levies and final demands, and close or release levies. See <http://mysbse.web.irs.gov/collection/collsystems/ics/guides/default.aspx>
- (2) The *National Levy Source Look-Up* web page provides up-to-date levy source name and address information. See <https://acsweb.enterprise.irs.gov/nlsweb/pages/nl08.xhtml>.
- (3) The *MySB/SE, Enforcement* web page provides access to various information and job aids related to the levy program. See <http://mysbse.web.irs.gov/Collection/toolsprocesses/Enforcement/default.aspx>.
- (4) The *Taxpayer Bill of Rights (TBOR)* links to listing of those rights that already existed in the Tax Code, putting them in simple language and grouping them into 10 broad categories. See <https://www.irs.gov/taxpayer-bill-of-rights>. For additional information see IRM 1.2.1.2.36, Policy Statement 1-236.
- (5) Below are recommended resources, which can be used to address questions on levy guidance.

IRM	Title	Guidance On
IRM 5.11.1 through IRM 5.11.7	Notice of Levy	<ul style="list-style-type: none"> • Notice of Levy, Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions • Serving Levies, Releasing Levies and Returning Property • Jeopardy Levy without a Jeopardy Assessment • Bank Levies • Levy on Wages, Salary, and Other Income • Notice of Levy in Special Cases • Automated Levy Programs

IRM	Title	Guidance On
IRM 5.17.3	Legal Reference Guide for Revenue Officers, Levy and Sale	This section discusses how the IRS administratively enforces the tax lien using its power to levy on and sell property of the taxpayer or property encumbered with a federal tax lien.

5.11.2.2
(12-21-2020)
Serving the Notice of Levy

- (1) This section provides procedures for serving notice of levy.

5.11.2.2.1
(10-26-2017)
General

- (1) Serve a levy only when there is reason to believe the third party is holding the taxpayer's property or owes a debt to the taxpayer.
- If the taxpayer owns property with a person not liable for the tax, consider using another source.
 - Any property in which the taxpayer has an interest is subject to levy, even if the property is jointly owned with another person (e.g., community property, jointly owned bank accounts). However, because wrongful levy suits and claims can result from such levies, consider levying on another available source.

5.11.2.2.2
(03-03-2021)
Preparing the Notice of Levy

- (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.
- 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.
 - 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.
 - Use Form 668-R to levy retirement assets, as follows:

If	And	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 isnot wages, salary, or other income,	use Form 668-A

- (2) Include all appropriate TINs on the notice of levy. For example, include both the SSN and EIN of a sole proprietor, if they are known. Include both SSNs on a joint income tax liability. ICS users should enter this information in the "Remarks" field. See (4) below.
- (3) When the TIN is not needed by the levied party to identify the taxpayer's assets, the TIN should be redacted from the notice of levy.

Example: Accounts or notes receivable

Example: Rental income

Example: Chose in Action e.g., a right to recover money or right to pursue a lawsuit

Note: When deciding whether to include the taxpayer's TIN, take into consideration if the TIN is necessary for the levied party to identify the taxpayer or if the inclusion of the TIN unnecessarily discloses PII.

- (4) If additional information will help identify the taxpayer's property, include it on the levy. ICS users should enter this information in the "Remarks" field. This may include:
 - Contract number
 - Merchant account number
 - Franchise number or operator
 - Co-signer's name
 - Royalty owner
 - Location of the branch where the taxpayer works
 - Any other descriptive information
- (5) ICS programming will automatically exclude individual SRP modules (MFT 35 or mirrored MFT 65) from systemically prepared Notice of Levy.
- (6) If there is a joint assessment, and there is a restriction that prevents levy against one of the taxpayers' property, include both taxpayers' names on the notice of levy or in the "Remarks" field, but only include the SSN of the taxpayer on whose property you are levying.
 - a. State on the notice of levy or in the "Remarks" field, "This levy attaches the property and rights to property of (taxpayer's name). It does not attach the property and rights to property of (other taxpayer's name)."

Example: Fred and Janice Blue filed a joint return and owe \$3,000. They are divorced now. Janice has filed bankruptcy and the automatic stay prohibits levy on her property. Fred is not a party to the bankruptcy. His property can be levied. When a notice of levy is prepared to collect from Fred, the taxpayer name line will still include both taxpayers' names. However, the notice of levy will also state, "This levy attaches the property and rights to property of Fred Blue. It does not attach the property and rights to property of Janice Blue."

- b. In some states, the taxpayer whose property rights are being levied may have a community property interest in the property of a spouse, and there may be a restriction which prevents levy on that spouse's property. See IRM 5.11.6.13, Levy on Non-Liable Spouse in a Community Property State. In the example above, other language may need to be added to the notice of levy explaining that Fred Blue's property rights that are being levied include Fred's community property interest in Janice Blue's property, although her property rights are not being levied. The result is similar to what would be levied if there were an assessment only against Fred, but his community property interest in Janice's property is being levied.

Note: Per IRM 5.11.6.13(2), before issuing a levy on community property, contact Collection Advisory for advice on the impact of a divorce, separation and any special language or inserts/cover letters needed with the levy, unless local instructions have already been issued for how to handle these levies.

- (7) When levying on the property of a partnership, the levy form will reflect the name of the partnership.
- (8) When levying on the property of a partner for the partnership debt, you can add a statement to the "Remarks" field of the levy application such as, "This notice attaches to all property in the name of (name of partner, TIN, [general] partner)."
- (9) If the taxpayer's identification number is not needed by the levied party to identify the taxpayer's assets, redact it from the appropriate parts of the levy form. Examples of assets for which the taxpayer's identification number *may* not be necessary for the levied party for identification are:
- Account or Note Receivable
 - Rental income
 - Chose in action, e.g., a right to recover money or right to pursue a lawsuit
- (10) A revenue officer is not required to physically sign a levy or a levy release. However, these documents must be executed by a person acting under the authority of the Secretary of Treasury. Any signature method that reliably authenticates these documents may be used. For example, a facsimile (stamp) of a revenue officer's signature stamped by a group secretary may be effective to show a collection document is properly authorized.

- (11) A written signature, stamped signature, electronic signature, or systemically printed signature is an acceptable representation of the authority to issue or approve a levy or levy release.
- (12) When the use of an electronic signature method is determined to be appropriate during the levy review process described in IRM 5.11.1.3.5, the following actions should be taken:
 1. The specific forms/letters requiring approval and/or signature must be converted/scanned to .PDF format..
 2. Internal use documents and forms, including Form 13719, Pre-Seizure Checklist and Approval Request, and the memorandum required in IRM 5.11.1.3.5, Managerial Approval, may be signed (certified with visible signature) using the approval signature method, yet any enforcement document being provided to the taxpayer should include a graphic signature in the signature block. Specific instructions on how to include an image of your handwritten signature in the digital signature selections are available via Adobe Acrobat Help, How to Sign, Create a Signature Appearance.
 3. The manager must either write the approval in the ICS history, or a copy of the manager's written approval must be kept in the case file. See IRM 5.11.1.3.5.
- (13) Centralized printed levies sent to Correspondence Production Services (CPS) will be generated with the revenue officer's systemically printed signature which is legally sufficient.
- (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 and for Form 668-(W), Notice of Levy on Wages, Salary, and Other Income, retain part 6. 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.

5.11.2.2.2.1
(03-03-2021)
Preparing Manual Notice of Levy

- (1) When preparing a manual levy additional care is required as ICS does not perform checks to determine if the Notice of a Right to a Collection Due Process (CDP) Hearing or Notice of Third-Party Contact have been issued. The revenue officer must confirm the following actions have been taken before issuing the levy:
 - Confirm CDP hearing has been issued on all modules or additional assessments listed on the levy. See IRM 5.11.1.3.2, Required Notices.
 - Confirm Notice of Third-Party Contact has been issued on all modules listed on the levy and that the time period described in the notice is not expired. See IRM 5.11.1.3.2(2), Required Notices.
 - Confirm the modules are not in a status that prohibits levy, such as pending installment agreements, offers in compromise, Bankruptcy, etc.. See IRM 5.11.1.4, Exempt Property and Restrictions on Levy.
 - Confirm CDP hearing is not pending for modules on the levy. See IRM 5.1.9.3.5.1, Levy Action, during the Period of the CDP or EH.

(2) Take the following actions to confirm the manual levy can be issued:

- a. Review IDRS to ensure that CDP notices have been issued on all assessments to be included on notice of levy (exceptions apply for DETL and FEDCON levies; see IRM 5.11.1.5 and IRM 5.11.1.6.) Compare the TC 971 AC 069 date on IDRS for each module to the original assessment or additional assessment date.

Caution: If the required notices for a module have been issued, and then additional tax, accuracy-related filing or a payment delinquency penalty is assessed, a new notice offering a CDP hearing for the additional assessment must be issued before that additional assessment may be included in a levy. See IRM 5.11.1.3.2(9), Required Notices

- b. Review IDRS to ensure that Notice of Third-Party Contact has been issued on modules on the levy. Carefully review each module for TC 971 AC 611 to determine if the taxpayer received advance TPC notification and that the date of TPC notification is less than one year old. See IRM 5.11.1.3.2(2), Required Notices.
- c. Review IDRS for status codes that indicate levies are prohibited.

Example: John is preparing a manual levy on modules closed on ICS. When reviewing IDRS John discovers that IDRS reflects the modules contain a TC 480 and Status 71 dated the week before. Since the OIC was not submitted to delay collection John cannot issue the manual levy.

(3) When manually preparing a Notice of Levy employees must exclude any balances resulting from the individual shared responsibility payment (SRP) (shown as MFT 35 or mirrored MFT 65).

5.11.2.2.2.2
(12-21-2020)

Preparing Notice of Levy when LLC is the Taxpayer

(1) The notice of levy must properly identify the taxpayer so that the third party who receives it can identify which assets to attach

Note: Prepare the notice of levy through ICS whenever possible. This will ensure that:

- third party contact is recorded
- a history entry of the levy is made
- a systemic follow-up is generated

(2) When the LLC is identified as the liable taxpayer, the name, including the trade name, and EIN of the LLC should appear on the levy. The name or TIN of the member/owner(s) should not appear on the levy

Note: The levy attaches only to the assets of the LLC, not to the assets of the member/owner(s).

(3) When the LLC is the taxpayer, generate a notice of levy through ICS by selecting "LLC - LLC is the Liable Address", which contains **only** the name and trade name of the LLC.

Note: Do not include the name of the member/owner(s) even if it is included on the ICS summary screen.

Note: Include only those tax periods where the LLC is identified as the liable taxpayer.

- (4) When the single member owner (SMO) is identified as the liable taxpayer, the name and EIN of the SMO should appear on the levy. Generate a notice of levy through ICS by selecting "LLC - SMO is the liable address." The name and EIN of the LLC should **not** appear on the levy.

Note: The levy may also include the SSN of the SMO if the SMO is an individual. The levy attaches only to the assets of the SMO not to assets of the LLC.

- (5) See IRM 5.11.6.15 for additional considerations when issuing a notice of levy to limited liability companies.

5.11.2.2.3

(12-21-2020)

Serving Notice of Levy in Person

- (1) When a notice of levy is served in person, have the recipient sign for it. Write, "Receipt Acknowledged," on the form, and have the person sign after this. If the person will not sign it, leave the form anyway. Document the case file to show the levy was served. And document the recipient's refusal to sign an acknowledgment, if applicable. An acknowledgment is desirable, but it is not critical.

Note: If the representative of a financial institution is reluctant to accept service of the levy in person, alert them to the fact that the financial institution will be liable for any withdrawals from the account after that date and time. Recurring difficulties with a particular financial institution should be addressed by local management.

- (2) If the levy source is a partnership or a corporation, try to serve the levy on a partner or corporate officer.
- (3) Try to find out how much to expect from the levy. Ask for payment when the levy is served, unless there is a reason for a delay, such as,
 - IRC 6332 (c) requires banks to wait 21 days
 - A levy on wages is not paid until the taxpayer's usual pay day
- (4) If payment must be sent later, supply a business reply, self-addressed envelope. Supply more envelopes if there will be several payments.
- (5) If nothing is owed to the taxpayer, have this written on the form. Ask the person to sign it and write their title, e.g., partner, vice-president, etc.

5.11.2.2.4

(12-21-2020)

Serving Notice of Levy by Mail, Fax or Mailed from the CPS Sites

- (1) Treasury Regulation 301.6331-1(c) permits notice of levy to be served by mail.
 - Print, "Notice of Levy," on the envelope used to mail levies. This helps large employers and banks route the levy to the right office.
 - Include a business reply, self-addressed envelope.
- (2) Starting in January 2018, ICS added a new feature to allow Form 668-A and Form 668-W to either generate the levy locally or print and mail from the CPS sites. Generally, notice of levy are processed by either Detroit - CPS (East) or Ogden - CPS (West). ICS generates outgoing notice of levy daily for items

requested in ICS real-time. The levy is printed and mailed from the CPS site within three business days of CPS receiving the file excluding weekends and Holidays.

Caution: Levies can only be deleted from ICS CPS dashboard on the same day the levies were generated. CPS is not able to pull individual levies from the print queue.

Note: Form 668-R is not available for CPS production. Managerial approval is required for Form 668-R and must be locally generated.

- (3) When a levy must be served quickly, a fax (either by fax machine or eFax) can be used. First, confirm the person has a fax machine and will accept the levy this way. Document that the levy source agreed to accept the levy by fax. Once the levy source agrees to accept levy by fax, that agreement applies equally whether the levy by fax is made from a legacy fax machine or by eFax.
- (4) The use of eFax is not limited to situations where a levy must be served quickly. In addition, revenue officers do not have to contact third parties that have agreed to receive delivery of levies through eFax to a centralized Fax number they have identified. The listing of third parties that have agreed to receive eFax can be found at Electronic Levy Information web page <http://mysbse.web.irs.gov/collection/toolsprocesses/Enforcement/Levy/elevy/default.aspx>. Each eFax levy will:
 - Be faxed to a centralized point of contact and fax number as directed by the third party
 - Be electronically signed by the approving IRS employee
 - Include a fax cover sheet containing the name and eFax number of the IRS employee faxing the levy

Note: Use of eFax to serve levies is preferred over regular fax and mail.

Caution: When serving a levy through eFax, do not mail a copy to the levy source. If mailed the levy source may mistake the copy for a new levy.

5.11.2.2.5 (12-21-2020) Addresses for Mailing Notice of Levy

- (1) Some financial institutions, businesses, and government agencies identify one address to be used when sending levies. The financial institution, business, or agency must notify the area director in writing. Consider keeping a central index in the area for these addresses. Then, they can be distributed to all collection employees in the area.

Note: Notification of a centralized address for notice of levy by mail does not preclude service in person. IRM 5.11.2.2.3, Serving Notice of Levy in Person.

- (2) Consider whether other areas and campuses need to know the address. Some large companies and government agencies may get levies from all over the country. Levy Source Information on the Servicewide Electronic Research Program (SERP) under Who/Where provides up-to-date levy source name and address information.
 - If a bank gives an address for its levies, ask for its EIN and its American Bankers Association (ABA) transit number.

- Send the requests, including the EIN and ABA number, to the area office. If the area agrees the information belongs on SERP's Levy Source Information, it will be sent to Headquarters to the Director, Collection Policy, SE:S:C:HQC:P:E, Attn: Levy Analyst, 2001 Butterfield Road 11th Floor, Downers Grove, IL 60515-1050

- (3) A computer program uses the EIN and ABA number to overlay these addresses for many levy sources; however, it is not always able to do this. For example, the updating of the address depends on IDRS having the levy source's EIN or ABA number. Some levy sources do not have these numbers, so sources must still be checked against Levy Source Information on SERP.
- (4) Revenue officers can also access National Levy Source (NLS) database through shortcut folder under "ACS NLSWeb" .

5.11.2.2.6
(04-15-2014)

Levy in Other Territories

- (1) When a taxpayer has property in another territory, either,
 - a. Mail the notice of levy
 - b. Go to the other territory if it is nearby, or
 - c. Initiate a Courtesy Investigation, see IRM 5.1.8, Courtesy Investigations.
- (2) The receiving territory may find other levy sources. If so, other levies may be served after checking with the originating territory.

5.11.2.2.7
(12-21-2020)

**Notifying the Taxpayer
After Serving the Levy**

- (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 centralized printed ICS levies uses Form 668-A and mails to the taxpayer Form 8519 (ACS), 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.

- (2) **If the levy is mailed locally, do not send the taxpayer copy immediately.** Wait long enough so the taxpayer does not get the levy before the levy source does. Consider local experience with mailing times and the promptness of a particular entity's compliance.
- (3) When a DETL or FEDCON levy is issued the taxpayer must be provided with a copy of the levy and the appropriate post-levy CDP rights letter. CPS does not issue the Letter 1058-D, Post Levy Collection Due Process (CDP) Notice or Letter 1058-F, Post Levy Federal Contractor Collection Due Process. When the levy is generated locally or through CPS the revenue officers must insure the post-levy CDP rights letter and levy copy is provided. See IRM 5.11.1.5, Post-Levy Actions - Disqualified Employment Tax Levy, or IRM 5.11.1.6, Post-Levy Actions - Federal Contractor Levy.
- (4) Also, see IRM 5.11.6.13.2, Notice to the Non-Liable Spouse, when a taxpayer's community property interest in a non-liable spouse's property or right to property is levied.
- (5) Also, see IRM 5.1.23.3.2.3, 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. Systemic notice of levy mailed from CPS will not generate a copy to the POA since they are unable to determine if the POA is authorized for all the modules on the levy. Therefore, levies issued through CPS will not provide a copy to the POA.

5.11.2.2.8 (12-21-2020) **Examination of Books and Records**

- (1) Records about taxpayer property must be provided, if requested by the IRS, when a levy is served or is about to be served. See IRC 6333. A summons could be used, but it may be unnecessary. Sometimes, a cooperative person will show the records if something in writing is given.

Note: If there are concerns about the completeness of an entity's compliance with the levy, follow-up with a summons for bank records to verify compliance and pursue the appropriate next action as warranted, e.g., suit for failure to honor a levy.

- (2) Use Letter 6097, Notice to Exhibit Books and Records. Do not describe Letter 6097 as a summons. Note the date and time the form is served. Also, note the person who receives it.

Caution: Letter 6097 can be used to solicit information from a financial institution only **when a levy is served or is about to be served**. Per IRM 34.6.3.1(3), Summons Provisions, the Service may employ an IRC 6333 demand to exhibit books and records, even in the Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming). Counsel takes the position in all circuits that IRC 6333 is a procedure under Title 26 and is therefore an exception to the Right to Financial Privacy Act under 12 U.S.C. sec 3413(c). Also see IRM 25.5.1.4.1, Documents from Financial Institutions in the Tenth Circuit, and IRM 5.17.6.5.2 (3)-(4), Notice and Waiting Period Requirements, for guidance on requests for information from financial institutions **other than by** IRC 6333 demand to exhibit books and records.

5.11.2.2.9 (10-26-2017) **Refusing to Comply with a Levy**

- (1) If a person refuses to surrender the property, advise them of the provisions of IRC 6332:
 - Requires the property to be surrendered
 - Discharges the person from any liability to the taxpayer and anyone else, and
 - Describes the person's liability if the levy is not honored
- (2) If the person still refuses, serve Form 668-C, Final Demand for Payment..
- (3) A Notice of Federal Tax Lien is not required before serving Form 668-C. However, if a suit to enforce the levy is likely, then file the lien.
- (4) If Form 668-C is served in person, try to serve it on the same person who received the levy. Complete the Certificate of Service on Part 1. Try to get a signature at the bottom of the form to acknowledge it was received.
- (5) If Form 668-C is mailed, send it by certified mail. Indicate NA in the Certificate of Service on Part 1 & 2.

- (6) Allow the third party 5 days to respond to Form 668-C, Final Demand for Payment, before taking action to enforce IRC 6332.
- (7) Additional information can be found in IRM 5.17.4.12, Action to Enforce a Levy, IRM 3.17.243.10.1, Monies Collected by the Department of Justice, and IRM 25.3.5.4, Advisory Procedures for Judgments for Assessed and Unassessable Liabilities, for processing the penalty recoverable under IRC 6332(d)(2).

5.11.2.3
(04-15-2014)
Releasing Levies

- (1) This section provides procedures for releasing notice of levy.

5.11.2.3.1
(12-26-2018)
**Legal Basis for
Releasing Levies**

- (1) Under IRC 6343(a)(1) requires levies to be released when the Service determines the circumstances in this section discussed below exist. Per Treas. Reg. 301.6343-1(a) the Service may require any supporting documentation as is reasonably necessary to determine whether a condition requiring release exists.
- (2) Release the notice of levy as soon as one of the circumstances in this section is identified to prevent payments from being received after the notice of levy should have been released. This will avoid the need to return levied property and the inconvenience this may cause for the taxpayer.

Example: After a notice of levy has been sent to a taxpayer's employer, the taxpayer responds and shows that the notice of levy prevents her from paying for basic necessities for her family. Because the levy is causing an economic hardship, release it immediately, so the employer will not send a levy payment on the next pay day.

Note: Employees have the option of either mailing or using e-fax to release a levy. Confirm the person has a fax machine and will accept the levy release this way.

- (3) Section 362(a) of the Bankruptcy Code (Title 11) prohibits levy on the property of a taxpayer in bankruptcy. Generally levying on property when the taxpayer is in bankruptcy violates the automatic stay and the levy must be released. Employees must contact Insolvency immediately if inadvertently a levy is placed on property of a taxpayer in bankruptcy. The Service must initiate corrective actions within two workdays of learning of an actual or potential stay violation.
- (4) Any notice of levy that violates the Internal Revenue Code or regulations must also be released, e.g., a levy issued while the taxpayer's CDP hearing is pending.

5.11.2.3.1.1
(04-15-2014)
Liability Satisfied

- (1) Under IRC 6343 (a)(1)(A), a levy is required to be released when the Service determines the liability is satisfied by full payment, i.e., is no longer owed.

5.11.2.3.1.2
(04-15-2014)
**Statutory Collection
Period Expired**

- (1) Under IRC 6343 (a)(1)(A), a levy is also required to be released when the Service determines the levy was issued after the statutory collection period has expired.

- (2) A continuous wage levy served before the expiration of the collection statute must be released upon the expiration of the collection statute.

Caution: When a notice of levy is served on a taxpayer's right to property, sometimes that includes the right to receive future payments (e.g., pension benefits, Social Security benefits.) If there is a fixed and determinable right to receive those future payments, the levy will attach to them when they would have been paid to the taxpayer, even though it is not actually a "continuous" levy. As long as the right to property has been levied before the period for collection runs out, the notice of levy does not have to be released when the collection statute expires.

- (3) Generally, a levy that is not a continuous wage levy, served prior to the expiration of the collection period is enforceable and should not be released. In addition, a levy served after reducing a tax liability to a judgment is valid.

Example: One week before the statutory collection period runs out, a notice of levy is served at the taxpayer's bank. The bank does not have to send the levy proceeds until the 21 day holding period on bank levies expires, and this will be after the period for collection runs out. This levy does not have to be released when the collection period runs out, because it was served timely.

5.11.2.3.1.3 (04-15-2014) Facilitate Collection

- (1) Under IRC 6343(a)(1)(B), a levy is required to be released when the Service determines the release will facilitate collection of the amount that is owed.

Example: A notice of levy is served on the taxpayer's broker. The broker is holding a certain amount of the taxpayer's cash but not enough to pay the tax liability. In addition, the broker is holding the taxpayer's stock options. The stock is worth more than when the option price was set. The cash held by the broker is enough to exercise the option on shares worth more than the tax liability. We arrange to meet the taxpayer and the broker. The release of levy is served, the taxpayer gives the broker an order to use the cash held by the broker to exercise the stock options and to immediately sell the shares. A new notice of levy is served on the broker, so the proceeds of selling the shares will be attached and pay the tax liability.

Example: A notice of levy is served on the taxpayer's bank. The amount in the bank is less than the tax liability. The taxpayer needs the federal tax lien released and wants to post a bond to do so. The bank has a bond department, and the amount on deposit at the bank is enough to pay for the bond to get the lien released. A collateral agreement is submitted and approved. We meet the taxpayer at the bank. The notice of levy is released, and the taxpayer has the funds in the bank immediately turned over to the bond department, so the bond that assures payment of the amount owed can be issued and the lien can be released.

5.11.2.3.1.4 (12-21-2020) Economic Hardship

- (1) Under IRC 6343 (a)(1)(D), a levy is required to be released when the Service determines the levy is creating an economic hardship, i.e., the levy will cause the individual to be unable to pay their reasonable necessary living expenses.

- (2) In order to obtain a release of levy for economic hardship the taxpayer must act in good faith. Examples of failure to act in good faith include, but are not limited to:
- failing to make full disclosure of assets
 - inflating actual expenses or costs
 - falsifying financial information.
- (3) The determination of a reasonable amount for basic living expenses will be made by the Service and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.
- (4) The decision to release a levy due to economic hardship requires financial analysis. The financial analysis requires sufficient financial information to confirm the levy is causing the taxpayer to be unable to meet necessary living expenses. To determine whether the financial information submitted by the taxpayer is sufficient to establish an economic hardship each levy should be considered independently.

Example: The taxpayer missed the deadline to provide a Collection Information Statement (CIS) and a notice of levy is served on the taxpayer's bank account and attaches \$600.00. The taxpayer contacts you and indicates he is unemployed and his only source of income is social security which was deposited into the bank account we levied. The taxpayer provides you proof of the monthly amount received from social security and an eviction notice for his apartment that reflects \$600.00 is due tomorrow to avoid loss of his residence. The notice of levy is released as the financial information submitted by the taxpayer has established that not releasing the levy would cause the taxpayer to be unable to meet necessary living expenses.

Example: The taxpayer missed the deadline to provide a CIS and a notice of levy is served on the taxpayer's wages. The taxpayer contacts you and indicates he will not be able to pay all his family's necessary living expenses with the \$534.62 exemption allowed from his weekly pay check. The taxpayer agrees to complete a CIS over the phone. The expense amounts are reasonable and your financial analysis of the taxpayer's CIS establish that the taxpayer can pay \$400.00 a month. You agree to fax a partial release of levy to the taxpayer employer since the financial information (CIS) established that not releasing the amount greater than \$400.00 would cause the taxpayer to be unable to meet necessary living expenses.

Note: Per IRM 5.15.1.2 (5), Expectations, securing financial information to complete the CIS can occur by phone or correspondence. Necessary living expenses are included in allowable living expenses. See IRM 5.15.1 , Financial Analysis Handbook, for guidance regarding financial analysis and allowable living expenses.

Note: Per Treas. Reg.301.6343-1(a), the Service may require any supporting documentation as is reasonably necessary to determine whether the condition requiring release exists; including economic hardship.

- (5) Where the financial analysis shows that the taxpayer merits a full or partial levy release to relieve economic hardship, the taxpayer has a statutory right to enough relief to end the hardship. Document the financial analysis in the history and communicate the decision to the taxpayer. The levy release should be faxed or given to the taxpayer to provide to the levy source.

Example: The taxpayer has defaulted on an installment agreement and his wages are levied. The amount being levied creates an economic hardship, (within the meaning of IRC 6343 (a)(1)(D)), but a smaller amount would not. Release only enough of the levy to prevent an economic hardship. A release of wages less than \$X allows the taxpayer to receive an amount that will not cause a hardship. Anything earned more than that amount is sent as levy proceeds.

Caution: When the Service determines that the levy is creating an economic hardship, do not refuse, delay or understate the release amount as a means to secure other compliance, e.g., missing tax returns. When contacted by a taxpayer claiming an inability to meet basic living expenses due to the levy and there are also open Del Rets, do not condition relief of the economic hardship upon receiving the delinquent returns. These are separate collection issues. Inform the taxpayer of the financial information needed to make a collection determination and provide relief of the hardship if appropriate. You may, as a separate issue, inform the taxpayer of the unfiled tax returns and pursue appropriate actions to resolve that separate from the hardship relief issue. You may also inform the taxpayer that before an installment agreement can be established delinquent returns must be filed.

- (6) When closing a case on ICS, all open levies should be addressed. If the case is being closed as a hardship per IRM 5.16.1.2.9, all open levies should be released. Any exception to this should be clearly explained in the ICS case history. When considering a levy on assets where payment is expected in the future (e.g. retirement plan, insurance settlement, lawsuit proceeds, etc.), the ICS history should be noted to explain the expected proceeds and timeframe. If current case information indicates the taxpayer will depend on those future funds to avoid economic hardship, the levy should be released at case closing.
- (7) Where the financial analysis shows that the taxpayer does not merit a full or partial levy release to relieve economic hardship, document the financial analysis in the history and communicate the decision to the taxpayer. The taxpayer may appeal as outlined in IRM 5.1.9, Collection Appeal Rights. Additionally, see IRM 5.1.9.4.1(8) for referrals to Taxpayer Advocate Service.

5.11.2.3.1.5
(04-15-2014)
**Fair Market Value of
Property More Than
Amount Owed**

- (1) Under IRC 6343(a)(1)(E), a levy is required to be released on a portion of the levied property when the Service determines the fair market value of the levied property exceeds the amount owed and a portion of the levied property can be released without hindering collection.

5.11.2.3.1.6
(10-26-2017)
Installment Agreement

- (1) Under IRC 6343 (a)(1)(C), a levy is required to be released if the IRS entered into an installment agreement with the taxpayer, unless the agreement allows for the levy. See IRM 5.14.1.5, Levy Restrictions and Installment Agreements.

Example: In response to a bank levy, the taxpayer requests an installment agreement. If the IRS grants the agreement but the agreement expressly provides that the levy should not be released, then the levy should not be released under this statutory provision. Another basis for release under IRC 6343 could be available.

5.11.2.3.2
(04-15-2014)

Wrongful and Erroneous Levies

- (1) The IRC distinguishes between “wrongful” levies and other types of improper or “erroneous” levies.
- (2) A “wrongful levy” is one that improperly attaches property belonging to a third party in which the taxpayer has no rights. See IRC 6343(b). The Code specifically authorizes release of wrongful levies. 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.

5.11.2.3.2.1
(02-12-2018)

Wrongful Levy

- (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 and Form 668-W 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 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.

(7) If the levy source has not forwarded the levy proceeds and Collection Advisory 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 Collection Advisory 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.

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.

5.11.2.3.2.2
(12-21-2020)
Certain Wrongful Levy Situations

- (1) In certain wrongful levy situations, the revenue officer, after consultation with Collection Advisory, may process a manual refund. These procedures apply only to the following situations:

- The Service levies on a bank account other than the taxpayer's.
- The Service sells property that does not belong to the taxpayer.
- The Service levies in ID Theft situations identified in IRM 5.11.2.3.6, Levy Releases in Cases of Identity Theft.

Note: Hardship is not a factor in these situations.

Note: See IRM 5.10.4.15, Release of Wrongful Seizures for Property Not Yet Sold.

- (2) When a wrongful levy is confirmed and the levy source already forwarded the proceeds to the Service, do the following:
- Verify with Collection Advisory the wrongfully levied party's right to the levied property. (See above).
 - Document in the ICS history Collection Advisory's concurrence.
 - If it is determined that returning the proceeds is appropriate, complete and process Form 5792, Request for IDRS Generated Refund. See IRM 5.1.12.20, Manual Refund, for guidance on completing and processing Form 5792.
- (3) The Area Director is authorized to approve manual refunds, including manual refunds via Form 5792, Request for IDRS Generated Refund, in wrongful levy situations per Delegation Order 3-1 (Rev. 2) contained in IRM 1.2.2.4.1, Delegation Order 3-1 (Rev. 2).

By filing Form 14031, Wage and Investment Customer Account Services Submission Processing, the Area Director may designate "authorized certifying officers" to review and approve Form 5792. The signature of the Area Director's designee(s) must be on file with the Submission Processing Center before the Form 5792 is submitted for processing. (See IRM 5.1.12.20 for information and procedures for processing Form 5792.)

Note: The authority to make **determinations** to return levy payments and determine wrongful levy claims is delegated to SBSE Territory Managers and Collection Advisory Territory Managers per Delegation Order 5-3 (Rev. 1) contained in IRM 1.2.2.6.3, Delegation Order 5-3 (Rev. 1). However the procedure to return levy payments is through the "manual refund" process. The routing of the approval of Form 5792 through the territory manager to the area director or their designee, per IRM 5.1.12.20, Manual Refund, is sufficient to meet the requirements of Delegation Order 3-1 (Rev. 2) and Delegation Order 5-3 (Rev. 1).

5.11.2.3.2.3
(04-15-2014)
Erroneous Levies

- (1) If a notice of levy is served erroneously, do the following:
- Release it immediately.

- Send Letter 4262 to the taxpayer. The taxpayer can give this to people who received levies. See IRM 5.11.4.9, Reimbursing Bank Charges Because of Erroneous Levies, if the taxpayer incurred a bank charge due to the erroneous levy.

Example: A notice of levy is served. The taxpayer shows a canceled check used to full pay the tax liability. When IDRS is re-searched, the check is found among unidentified remittances. Release the levy. Any related bank charges may be reimbursed.

- (2) A taxpayer who claims that the levy is “erroneous” (Refer to IRM 5.11.2.3.2, Wrongful and Erroneous Levies) is entitled to a CAP before the levy proceeds are turned over to the Service. Once the levy proceeds are turned over the taxpayer is not entitled to CAP rights and the taxpayer must make an administrative claim under Treasury Reg. 301.6343-3(h). If the administrative claim is denied, the taxpayer would then have the right to request a CAP appeal about the denial.

5.11.2.3.3
(12-21-2020)

Serving Releases of Levy

- (1) Generally, levy releases are mailed to save resources. Sometimes, though, they may be served in person.
- (2) When a levy must be released quickly, it may be faxed. Confirm that the levy source has a fax machine and is willing to accept a faxed release.
- (3) When paper levies issued to the Social Security Administration (SSA) need expedited release, print “EXPEDITE IMMEDIATELY” on the top of the release of levy form. Fax the release to the SSA office that issued the taxpayer’s social security number. See the Servicewide Electronic Research Program (SERP), Who/Where, Levy Source Information for the SSA office fax numbers: <https://acsweb.enterprise.irs.gov/nlsweb/pages/nl08.xhtml>. Phone contacts for SSA Paper Levy issues are listed on SERP on the IRWeb, Who/Where, SSA Paper Levy Contacts: <http://serp.enterprise.irs.gov/databases/who-where.dr/ssa-paper-levy-contacts.html>.
- (4) To reduce delay, release of levy may be issued without third-party contact notice.

5.11.2.3.4
(12-21-2020)

Forms Used to Release Levies

- (1) Use Form 668–D, Release of Levy/Release of Property from Levy, to release a levy served on Form 668-A, 668-W, or 668-R. Use Form 668–E, Release of Levy, to release seized property when Form 2433, Notice of Seizure, cannot be used.
- (2) Form 668–D can be used to release the levy in part or in full.

Example: A taxpayer who has defaulted on an installment agreement, ultimately has his wages levied. The amount being levied creates a hardship, but a smaller amount would not. A release of wages **less than** \$X allows the taxpayer to receive an amount that will not cause a hardship. Anything earned more than that amount is sent as levy proceeds each pay day.

Example: After failing to respond to the CDP notice, a taxpayer’s wages are levied. The taxpayer contacts the revenue officer assigned the case and a monthly payment amount is agreed to. A payroll deduction agreement to avoid default is the preferred disposition of the case, but the employer is

reluctant to agree. A partial release of wages **greater than** \$X, sets a fixed amount that will be sent as levy proceeds each pay day. Anything more is paid to the taxpayer.

Example: After pyramiding employment taxes and failing to submit a CIS a taxpayer's bank account is levied. The taxpayer contacts the revenue officer on Friday and submits all the required financial information. The taxpayer agrees to make all current FTDs by next Wednesday when a contract is paid and requests release of \$X funds to cover payroll. A partial release of bank deposits **up to the amount of** \$X is released to cover payroll and the levy continues to attach to all amounts greater than \$X.

- (3) Individual tax modules may be released from a levy. Use the Form 668-D, Release of Levy/Release of Property from Levy, section that is appropriate to the type of levy issued and enter the amount still due after removing the erroneous module. Add note below this section that identifies the module released.

Example: A wage levy was issued on 05/10/2016 for a taxpayer that included five tax modules with a total balance due of \$40,000. The CSED expired on the largest balance due period ending 12/31/2000 reducing the balance by \$30,000. You complete the third statement to read as, "The last payment we received from you was \$250 dated 10/15/2016. The amount the taxpayer still owes is \$10,000. When this amount is paid to the Internal Revenue Service, the levy is released. If you sent us a payment after the last payment date shown, subtract that from the amount you send now." You add note below this section that states: The Form 1040 for tax period 12/31/2000 is released from the levy on wages, salary and other income issued on 05/10/2016.

5.11.2.3.5 (12-21-2020) **Levy Release For Credit Card Payment**

- (1) Taxpayers can make tax payments by credit card. See IRM 21.2.1.48.3, Payment by Credit Card, Debit Card or Digital Wallet (General). Credit card payments are a source of guaranteed funds; the line of credit is authorized before the confirmation number is issued.
- (2) If releasing a levy when the taxpayer states they paid by credit card, secure the confirmation number. The confirmation number is provided to the taxpayer by the service provider at the end of the transaction.
- (3) Additional payment verification can be obtained by the taxpayer on the service provider's website.
- (4) While rare in instances of tax payments, fraudulent use of credit cards does occur and will result in a manual refund of the payment to the processor.

5.11.2.3.6 (12-21-2020) **Levy Releases in Cases of Identity Theft**

- (1) A person may inappropriately provide a Taxpayer Identification Number (TIN) that is not their own to an employer to secure employment. This person will be referred to in this section as the non-owner of the TIN. The legal owner of the TIN will be referred to in this section as the victim.

- (2) Cases involving multiple taxpayers using the same TIN are classified generally as mixed entity, Scrambled SSN cases or True Scrambled SSN cases. These cases will be referred to in this section as mixed entity cases.
- (3) A levy attaching the assets of the victim in a mixed entity case must be immediately released. Accounts should be adjusted and all pre-levy notices properly issued before levy re-issuance. See IRM 5.1.28.4, Collection Activity in Identity Theft Cases, for actions after levy release. See IRM 25.23.2.5.2, Statute Protection - Multiple Returns, for appropriate adjustment actions.

Exception: If no account adjustment is required and all pre-levy notices were properly issued a levy may remain in effect unless a circumstance outlined in IRM 5.11.2.3.1, Legal Basis for Releasing Levies, is present. Also see IRM 5.1.28, Identity Theft for Collection Employees, for required actions on cases involving ID Theft.

- (4) A levy attaching to assets of the non-owner of the TIN for which
- the Service assessed the liability in the name of the non-owner of the TIN,
 - the Service issued all pre-levy notices properly to non-owner of the TIN,
 - the Service assessed the liability under the *TIN/SSN of the victim*,
 - the assessment is based solely on the *income of the non-owner of the TIN*,
 - and there are no credits (payment offset etc.) attributable to the victim for the assessment listed on the levy,

may remain in effect unless a circumstance outlined in IRM 5.11.2.3.1, Legal Basis for Releasing Levies, is present. The assessment is not invalid for the sole reason that it was made under the victim's TIN/SSN.

Note: The assessment will need to be adjusted. See IRM 25.23.2.5.2, Statute Protection - Multiple Returns, for appropriate adjustment actions. However, if unable to determine if the liability of the non-owner of the TIN is satisfied then release the levy until the account can be adjusted to ensure the levy is not enforced on a satisfied liability. Also see IRM 5.1.28, Identity Theft for Collection Employees, for required actions involving ID Theft.

- (5) The non-owner of the TIN may file a wrongful levy claim for return of levy proceeds (from the assets of the non-owner of the TIN) already received and processed by the Service. A wrongful levy claim may be appropriate when
- the assessment is based solely on the victim's income, since the levy improperly attaches to property belonging to a third party (the non-owner of the TIN)
 - the assessment is based on the combined income of the non-owner of the TIN and the victim's, since the levy may have improperly attached to property belonging to a third party (the non-owner of the TIN).
 - the assessment is based on the combined income of the non-owner of the TIN and the income of other non-owners using the TIN, or is based on the combined income of other non-owners using the TIN and the victim's income, since the levy may have improperly attached to property belonging to a third party (the non-owner of the TIN).

See IRM 5.11.2.3.2, Wrongful and Erroneous Levies, for appropriate action. Contact Collection Advisory to determine if the non-owner of the TIN would qualify for wrongful levy claim consideration.

- (6) The levy is considered an erroneous levy when a levy is served prematurely or otherwise in violation of an administrative procedure or law. If the levy is in violation of law the Service must return levy proceeds. If the levy is in violation of administrative procedure the Service may determine to return levy proceeds. Contact Collection Advisory to verify the levy is erroneous. See IRM 5.11.2.3.2, Wrongful and Erroneous Levies, for appropriate action.

Example: The levy attaches to the wages of the non-owner of the TIN for an assessment in the victim's name. All pre-levy notices were sent to the victim. The assessment is based on the income of the non-owner of the TIN. The levy is premature as the assessment must be in the name of the non-owner of the TIN and all pre-levy notices must be sent to the last known address of non-owner of the TIN in order for the levy to appropriately attach to the wages of the non-owner of the TIN.

5.11.2.4
(10-26-2017)
**Returning Levied
Property to the Taxpayer
- Erroneous Levies**

- (1) Before July 30, 1996, once levy proceeds were deposited, there was no statutory authority permitting the return to a taxpayer of monies obtained by erroneous levy, even though the levy might have been issued in violation of law or administrative procedures. Congress has since enacted such authority.

5.11.2.4.1
(12-26-2018)
**Current Authority for
Returning Levied
Property to the Taxpayer**

- (1) On July 30, 1996, Taxpayer Bill of Rights 2 (TBOR2) was enacted. This added subsection (d) to IRC 6343.
- (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 notice of levy. See IRM 5.11.2.2.5, Addresses for Mailing Notice 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.

- (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.

(4) Although not considered **erroneous**, proceeds from levies 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:

- 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.

- Returning levy proceeds facilitates collection.
- 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.

- (5) Specific levied property (including **identifiable money** such as 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 dated March 12, 2017 was received by the person to be served the levy, 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 dated March 28, 2017 was received by the person to be served the levy, 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.

5.11.2.4.1.1
(12-21-2020)
**Additional Rules for
Retirement Plan Levies**

- (1) The Bipartisan Budget Act of 2018 allows amounts, including interest, returned to an individual from the IRS pursuant to a wrongful levy or a certain type of erroneous levy on an IRA or employer-sponsored plan to be contributed to the IRA or employer-sponsored plan without regard to the general contribution limits. This new law is effective for amounts returned to individuals in taxable years beginning after December 31, 2017. See IRC 6343(f), Individuals Held Harmless on Wrongful Levy, etc. on Retirement Plan.

Caution: The taxpayer must request the return of money within a certain time period as described in IRM 5.11.2.4.1.

- (2) This section applies to levied funds from an individual's account or benefit under an eligible retirement plan that are returned to the individual because the IRS determined the levy to be either wrongful under IRC 6343(b) or premature or otherwise not in accordance with IRS procedures under IRC 6343(d)(2)(A).

Note: An eligible retirement plan means a qualified trust, an individual retirement plan, an annuity plan described in IRC 403(a), an eligible deferred compensation plan described in IRC 457(b) which is maintained by an eligible employer under IRC 457(e)(1)(A), or an annuity contract described in IRC 403(b). A qualified trust is an employees' trust described in IRC 401(a) which is exempt from tax under IRC 501(a). An individual retirement plan is an individual retirement account described in IRC 408(a) or an individual retirement annuity (other than an endowment contract) described in IRC 408(b).

Note: The Thrift Savings Plan (TSP) is treated as a qualified trust. See IRC 7701(j)(1)(A).

- (3) Levy funds returned under IRC 6343(f) are treated as a rollover contribution per the applicable IRC 402(c), IRC 402A(c)(3), IRC 403(a)(4), IRC 403(b)(8), IRC 408(d)(3), IRC 408A(d)(3), or IRC 457(e)(16). The contribution is treated as having been made for the taxable year in which the distribution on account of the levy occurred, and the interest paid under (5) below shall be treated as earnings within the plan after the contribution and shall not be included in gross income, and such contribution shall not be taken into account under IRC 408(d)(3)(B) (the one IRA-to-IRA rollover per-year rule).
- (4) When wrongfully or certain types of erroneously levied retirement funds are returned, Letter 6096 is used to notify the taxpayer and explain the following:
 - a. the Service is returning (or has returned) levied retirement account funds pursuant to IRC 6343(b) and/or IRC 6343(d)(2)(A),
 - b. pursuant to IRC 6343 (f)(1)(A), the returned retirement account funds may be contributed back into the eligible retirement plan under which the individual's benefit was levied (or to an individual retirement plan) on or before the due date (not including extensions) for filing the return of tax for the taxable year in which such property or amount of money is returned.

Example: Retirement levied funds are returned to the taxpayer because the taxpayer was not provided with CDP hearing notice. TC 840 manual refund dated 02/15/2018. The taxpayer has until 4/15/2019 to contribute the funds back into a retirement account.

- (5) The IRS must pay interest in a case in which the IRS determines that IRC 6343(d)(2)(A) applies with respect to a levy upon an eligible retirement plan. See IRC 6343(f)(4), providing an exception to the rule that interest isn't allowed for an erroneous levy. Interest is allowed for a wrongful levy (which applies to any eligible retirement plan listed in (2) above).

Note: Under IRC 6343(f) also requires the IRS to abate any tax or return any amounts assessed as income tax as a result of the retirement levy if the taxpayer rolled the funds back into the account by the time for filing a return for the year in which the proceeds are returned.

5.11.2.4.2 (02-12-2018) **Factors to Consider Before Returning a Levy Payment to the Taxpayer Due to Procedural Errors**

- (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 the 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?

5.11.2.4.3 (02-12-2018) **Rejecting Requests for Return of Levied Property**

- (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).

5.11.2.4.4
(12-21-2020)
**Delegation of Authority
to Return Levy
Payments**

- (1) The area director is authorized to approve manual refunds via Form 5792, Request for IDRS Generated Refund (IGR), including manual refunds in wrongful levy situations per Delegation Order 3-1 (Rev. 2) contained in IRM 1.2.2.4.1, Delegation Order 3-1 (Rev. 2). By filing Form 14031, Wage and Investment Customer Account Services Submission Processing - Manual Refund Signature Authorization Form, the area director may designate "authorized certifying officers" to review and approve Form 5792. The signature of the area director's designee(s) must be on file with the Submission Processing Center before the Form 5792 is submitted for processing.

Note: The authority to make **determinations** to return levy payments and determine wrongful levy claims is delegated to SBSE territory managers and Collection Advisory territory managers per Delegation Order 5-3 (Rev. 1) contained in IRM 1.2.2.6.3, Delegation Order 5-3 (Rev. 1). However, the procedure to return levy payments is through the "manual refund" process. The routing of the approval of Form 5792 through the territory manager to the area director or the their designee per IRM 5.1.12.20, Manual Refund, is sufficient to meet the requirements of Delegation Order 3-1 (Rev. 2).

5.11.2.4.5
(04-15-2014)
**Getting the Money
Refunded**

- (1) Complete and process Form 5792, Request for IDRS Generated Refund (IGR), to issue a manual refund. See IRM 5.1.12.20, Manual Refund, for guidance on completing and processing Form 5792, Request for IDRS Generated Refund (IGR).
- (2) Unlike money that has been wrongfully levied, no interest is paid on the refund.

5.11.2.4.6
(04-15-2014)
**Effect on Penalty &
Interest**

- (1) When levy proceeds are returned, the delinquent tax is not forgiven. The taxpayer is still obligated to pay the amount owed, and the Service is obligated to collect it.
- (2) However, the taxpayer will not be charged a failure to pay penalty or interest during the period the Service held the money. After the payment is returned to the taxpayer, penalty and interest start to accrue again.

Example: The taxpayer owed \$10,000.

On April 10, 2008, \$2,500 was collected as levy proceeds.

On May 4, 2010, the \$2,500 was returned.

- a. Compute accrued interest on \$10,000 through April 10, 2008. Then, compute interest on \$7,500 for the period April 11, 2008, through May 4, 2010. Assess the total interest from these two steps using transaction code (TC) 340. Have the TC 340 input with the COMP-INT-AMT and INT-TO-DT fields complete. The COMP-INT-AMT is the amount still owed, so IDRS and master file should continue computing interest on this. In this example, it would be the amount still owed on May 4, 2010. The INT-TO-DATE is the date that the interest has been computed through which in this example would be May 4. This will allow IDRS and master file to compute interest after that so it will not have to be done manually.
- b. Compute the failure to pay penalty that accrued from April 11, 2008, through May 4, 2010, on \$2,500. Input this amount using TC 271 with Reason Code 62. This will allow IDRS and master file to compute the penalty after that so it will not have to be done manually.

Note: The example above should only be followed if the account is restricted (-I freeze) or interest and penalty needs to be manually computed.

5.11.2.5
(10-26-2017)
**Returning Levied
Property to Someone
Other Than the Taxpayer**

- (1) Generally, if levied property must be returned, it is given back to the taxpayer(s) who owed the tax that was credited with the payment. Typically, if a levy payment is applied to a liability owed by John and Mary Smith, and it must be returned later, the refund check would be in the names John and Mary Smith.
- (2) Sometimes the name(s) on the check can not be the same as the name(s) on the delinquent account because the money must be returned to the third party who was wrongfully levied upon.

Example: Fred Jones owes delinquent tax for tax year 2007, when his filing status was single. In addition, Fred and Mary Jones owe delinquent tax for returns they filed jointly for tax years 2008 and 2009. One notice of levy is mistakenly issued for all three tax years showing Fred and Mary Jones as the taxpayers. This results in money from Mary's bank account being used to pay all three liabilities. The payment that is applied to tax year 2007 is for a liability owed by Fred Jones, but the refund check for that payment must be issued in the name Mary Jones. This example assumes the bank account is not community property.

Example: Sam Wilson's Social Security benefits are levied. After five levy payments have been sent, the Social Security Administration finds out that Sam had died and was only eligible for benefits during the first three months. The other two months' levy payments must be returned to the Social Security Administration.

- (3) See IRM 5.1.12.20, Manual Refund, for instructions about how to get the manual refund check issued.
- (4) A wrongful levy is one in which the levy proceeds are money that belonged to someone other than the delinquent taxpayer, such as in the first example in (2), above. Or when the levy destroyed the interest of a lien senior to the federal tax lien. In these cases, the person to whom the money is returned is entitled to interest. Using the overpayment rate in IRC 6621, interest runs from the date the levy payment was received to the refund schedule date. The date the interest runs through can be no earlier than thirty days before the money is actually returned.
- (5) If the levied party sends its own property in response to the levy in error, as in example (2), no interest is paid.

5.11.2.6
(10-26-2017)
**Disposing of Surplus
Proceeds**

- (1) See IRM 5.11.5.5, Levy Payments, for additional guidance on applying levy payments.
- (2) Every reasonable effort will be made to release a notice of levy timely. However, sometimes surplus levy proceeds are received. Surplus proceeds are payments greater than the amount still owed for the liabilities listed on the notice of levy. Surplus levy proceeds may not be applied to individual SRP modules (shown as MFT 35).

Example: A refund posts after the levy source has already sent payment for the levy.

- (3) The payment should be returned to the levy source when there is no remaining balance due. Once a payment is applied to the taxpayer's account there is currently no legal provision to return the funds to the levy source.
- (4) If surplus proceeds are received, and taxes are owed that were not listed on the notice of levy, the surplus can be offset to those taxes, excluding SRP accounts (MFT 35 or mirrored MFT 65). In this situation, directly applying the surplus proceeds directly to the taxes, excluding SRP account, not listed on the notice of levy is still considered an offset. However, use levy proceeds to pay the taxes listed on the levy, first. The surplus may then be offset to taxes not listed on the notice of levy, even if all the notices in IRM 5.11.1.3.2, Required Notices, have not been given to the taxpayer for those taxes. The notice of levy must be released as soon as possible once the periods covered by the levy have been satisfied. The IRS cannot fail to release the levy to generate surplus proceeds to apply to open periods. If additional liabilities not covered by the original levy exist after any surplus levy proceeds have been applied to open periods, a new notice of levy must be issued to collect those liabilities. Please note that all statutory requirements, such as sending of a notice of intent to levy and a right to a hearing, must be met with regard to the new notice of levy if the taxpayer has not had an opportunity for a CDP hearing under IRC 6330 for the remaining liabilities. See IRM 5.11.1.3, Pre-Levy Actions, for the statutory pre-levy requirements.

Exhibit 5.11.2-1 (10-26-2017)

Acronyms

List of Acronyms and Their Definitions	
Acronyms	Definitions
ABA	American Bankers Association
ACA	Affordable Care Act
ACS	Automated Collection System
CAR	Collection Activity Reports
CAP	Collection Appeals Program
CDP	Collection Due Process
CIS	Collection Information Statement
CPS	Correspondence Production Services
CSED	Collection Statute Expiration Date
DPC	Designated Payment Code
eFAX	Enterprise Electronic Fax
EIN	Employer Identification Number
EQRS	Embedded Quality Review System
FPLP	Federal Payment Levy Program
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IGR	IDRS Generated Refund
IRC	Internal Revenue Code
LLC	Limited Liability Company
MFT	Master File Transaction
NQRS	National Quality Review System
NTA	National Taxpayer Advocate
POA	Power of Attorney
SBSE	Small Business & Self-Employed
SCA	Small Claims Act
SERP	Servicewide Electronic Research Program
SRP	Shared Responsibility Payment
SSA	Social Security Administration

Exhibit 5.11.2-1 (Cont. 1) (10-26-2017)**Acronyms**

List of Acronyms and Their Definitions	
TC	Transaction Code
TIN	Taxpayer Identification Number
TP	Taxpayer