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## Section 3 Jeopardy Levy without a Jeopardy Assessment

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page 5.11-1

3.1 (Revised text)

### Background

- (1) Normally, the notices and waiting periods described in 1.2 are required before property can be levied. However, if collection is in jeopardy, property can be levied sooner.
- (2) Generally, if collection is in jeopardy, there is a jeopardy assessment. Then, there is an immediate notice and demand which is followed by a jeopardy levy. Sometimes, however, there may already be an assessment before jeopardy is known.

**Example:** There may be a prompt assessment. Then, the taxpayer starts moving property to hide it. Property can be levied, even though the usual waiting periods after notices have not passed.

- (3) A jeopardy levy without a jeopardy assessment can happen:
  - < after tax is assessed, but before the notice and demand is issued,
  - < after the notice and demand is issued, but before ten days have passed,
  - < after the ten day notice and demand period ends, but before the thirty day notice of intent to levy and notice of right to a hearing have been issued, or
  - < after the notice of intent to levy and notice of a right to a hearing have been issued, but before the thirty days have passed.

3.2 (05/05/98)

### Conditions that Mean Jeopardy

- (1) A jeopardy levy requires a condition which would have allowed a jeopardy assessment.
- (2) See Policy **Statement P-4-88**.

3.3 (Revised Text)

### Getting Approval

- (1) If collection of assessed tax is in jeopardy, prepare a report to the Chief, Collection function. In the report, ask the Chief to sign an attached notice of levy. Include the same information in the report that is needed for a jeopardy assessment. See IRM 5.1 General. Do not include Form 2644. Send the report through the group manager and field branch chief.
- (2) Until the Chief signs the levy form, do not include the:
  - \* date
  - \* accruals
  - \* date that accruals have been computed to.
- (3) Also, include Pattern Letters 2438(P) and 2439(P) for the Chief's signature. See Exhibits 5.11.3-1 and 5.11.3-2.

IF	THEN
The notice and demand has not been issued, or it has been issued and ten days have not passed yet.	The taxpayer must be given an immediate notice and demand for payment. See note under subsection 1.2.1:(2).

For joint IMF returns, prepare two Pattern Letters 2439(P). If an immediate notice and demand is required, prepare two of them, also. Put both taxpayers' names on the Pattern Letter and on the notice and demand. See 3.5:(5).

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- (4) Use Parts 3&4 of a Prompt Assessment Billing Assembly, Form 3552, to make immediate notice and demand. If a blank Form 3552 is not available, copy the text of one on IRS letterhead stationary. Have the Chief sign this, too, when the notice of levy is approved.

\* On Parts 3 and 4, cross out, ". . .within 10 days from the date of this notice. . ."

\* Insert, ". . . which is due and payable immediately. . ."

\* Also, cross out, ". . .Please return this copy with your payment to the address shown above. . .," at the bottom of the form.

**Note:** The 1997 revision of Form 3552 does not say, "within 10 days of this notice." If this version of the form is used, cross out, ". . . upon receipt of this notice..." and insert, "...which is due and payable immediately..."

- (5) Only the Chief, Collection function, or someone above this level, can approve a jeopardy levy. See Sections 1.2.2.3, 1.3.3.1, 1.3.5, and 1.3.9 of IRM 5.11 for certain jeopardy levies that do not require the approval of the Chief, Collection function, as long as the notice requirements in 1.2.1 have been met. Instead, these jeopardy levies can be approved by one management level above the group manager.
- (6) The Chief can approve the levy by telephone, if there is not enough time for written approval. The Chief can authorize someone else to sign the forms and letters, when this happens. Write a memo to file explaining the information that would have been in the report described in (1). Send a copy to the Chief, Collection function and the person who signed the levy form and letters. Put a copy in the case file.
- (7) In addition, IRC 7429(a)(1)(A) requires Regional Counsel approval, in writing, for a jeopardy levy described in subsection 3.1:(3). This can be redelegated no lower than the Associate District Counsel.

**Note:** The authority is also delegated to the Associate District Counsel (International) who may redelegate the authority no lower than Branch Chief.

3.4 (Revised Text)  
**Forms and Pattern  
Letters for a  
Jeopardy Levy  
without a  
Jeopardy  
Assessment**

- (1) The forms and letters that are needed depend on the timing of the jeopardy levy. In addition to notice of levy and lien forms, the Forms and Pattern Letters needed for jeopardy levies are:

IF	AND	THEN
Tax has been assessed.	The notice and demand normally required by IRC 6331 (a) has not been issued.	<ol style="list-style-type: none"> <li>1. IMMEDIATE NOTICE AND DEMAND (Altered Form 3552).</li> <li>2. PATTERN LETTER 2439 WITH INSERT (a) IN THE FIRST PARAGRAPH.</li> <li>3. PATTERN LETTER 2438.</li> <li>4. PUBLICATION 1.</li> <li>5. PUBLICATION 594.</li> <li>6. PUBLICATION 1660.</li> <li>7. FORM 12153.</li> <li>8. NOTICE 609 (IMF ONLY)</li> </ol>
Tax has been assessed.	The notice and demand has been issued, but ten days have not passed.	<ol style="list-style-type: none"> <li>1. IMMEDIATE NOTICE AND DEMAND (Altered Form 3552).</li> <li>2. PATTERN LETTER 2439 WITH INSERT (a) IN THE FIRST PARAGRAPH.</li> <li>3. PATTERN LETTER 2438.</li> <li>4. PUBLICATION 594.</li> <li>5. PUBLICATION 1660.</li> <li>6. FORM 12153.</li> <li>7. NOTICE 609 (IMF ONLY).</li> </ol>
The notice and demand has been issued.	Ten days have passed, but the Notice of Intent to Levy and Notice of a Right to a Hearing have not been issued.	<ol style="list-style-type: none"> <li>1. PATTERN LETTER 2439 WITH INSERT (a) IN THE FIRST PARAGRAPH.</li> <li>2. PATTERN LETTER 2438.</li> <li>3. PUBLICATION 594.</li> <li>4. PUBLICATION 1660.</li> <li>5. FORM 12153.</li> <li>6. NOTICE 609 (IMF ONLY).</li> </ol>
The Notice of Intent to Levy and Notice of a Right to a Hearing have been issued.	Thirty days have not passed.	<ol style="list-style-type: none"> <li>1. PATTERN LETTER 2439 WITH INSERT (b) IN THE FIRST PARAGRAPH.</li> <li>2. PATTERN LETTER 2438.</li> <li>3. PUBLICATION 594.</li> <li>4. PUBLICATION 1660.</li> <li>5. FORM 12153.</li> </ol>

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3.5 (Revised Text)

**After the Jeopardy Levy is Approved**

- (1) If an immediate notice and demand is required, give the altered Form 3552 to the taxpayer and demand immediate payment. If personal delivery is not practical, send it by certified mail to the last known address. If a field visit to deliver the form reveals the address is not good, check IDRS for a new one.
- (2) When the immediate notice and demand is issued, or if it is not required:
  - \* File a Notice of Federal Tax Lien, and Serve the Notices of Levy.
- (3) Include a Pattern Letter 2438(P) with each notice of levy. This letter asks the person who gets the levy to delay sending payment for 45 days. This allows time to see if the taxpayer appeals. If the taxpayer successfully appeals, the levy can be released rather than issuing a manual refund.
- (4) The taxpayer must be told the reason collection is in jeopardy. Pattern Letter 2439(P) does this. Avoid saying anything in the letter that could identify a confidential informant.

IF	THEN
Form 3552 is required.	Give the taxpayer Pattern Letter 2439(P) at the same time.
Form 3552 is not required.	Give Pattern Letter 2439(P) to the taxpayer within five days of serving the jeopardy levy.

- (5) Try to give the Pattern Letter to the taxpayer in person. If personal delivery is not practical, send it to the taxpayer's last known address by certified mail with a return receipt. See 1.2.2.2:(3). If a field visit to deliver the letter reveals the address is not good, check IDRS for a new one.

**Note:** For joint IMF returns, try to deliver Pattern Letters 2439(P) to each taxpayer in person. Also, if an immediate notice and demand is required, deliver Form 3552 to each taxpayer. If this is not practical, mail the notices as described in 1.2.2.2:(5). Also, see 1.2.2.2:(6).

**Reminder:** If the taxpayer has an authorized representative, a copy of correspondence given to the taxpayer must also be given to the representative. However, use regular mail for the copy.

3.6 (Revised Text)

**Appealing the Jeopardy Levy**

- (1) Within thirty days after the Pattern Letter 2439(P) is given, or should have been, the taxpayer can appeal under IRC 7429. The issue is whether collection is truly in jeopardy. If the appeal is rejected, the taxpayer can also file a civil suit in District Court. If any of the liabilities on the jeopardy levy are being considered in Tax Court, the taxpayer can file a civil suit there.
  - (2) In addition, the IRS must notify the taxpayer of appeal rights under IRC 6330 within a reasonable time after the levy. Thirty days after a jeopardy levy is generally a reasonable time within which to send the notice. However, since Pattern Letter 2439(P) is used to tell the taxpayer about appeal rights under IRC 6330 as well as IRC 7429, it will be delivered within five days. See 3.5:(4). The taxpayer has thirty days from the date of the notice within which to request a Collection Due Process hearing. See Chapter 9 (Taxpayer Rights) Of IRM 5.1, General Handbook, and Exhibit 5.11.3-1 for additional information about taxpayers' rights to appeal under IRC 6330.
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- (3) If the taxpayer appeals or says a suit is being filed, contact Special Procedures. Also, get advice from counsel, as needed. The local Appeals Office will handle the administrative appeal. Tell the people who received the levies to delay paying over the funds while the appeal is considered.

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**Exhibit 5.11.3-1 (Revised Text)**  
**Pattern Letter 2439(P) (Rev. 1-99)**

(Reference 3.3)

(Type on Appropriate Letterhead. Should contain IRS Address)

Letter Date:

NOTICE OF JEOPARDY LEVY AND RIGHT OF APPEAL

Dear (taxpayer name):

As required by Section 6331 of the Internal Revenue Code (IRC), I am notifying you that I have found that you are (insert reason for the jeopardy levy) thereby putting our collection of the (insert type of tax) you owe for the tax period(s) \_\_\_\_\_ in jeopardy. Therefore, based on the information available to me at this time, I have approved the issuance of a levy to collect the amount you owe, although (*choose insert {a}* we have not provided you a notice of intent to levy and/or notice of your right to a hearing, generally required by Sections 6330 and 6331 of the IRC *or {b}* the 30 days we told you in our previous notice of intent to levy and/or notice of your right to a hearing that you had before we would issue a levy has not run out).

You now owe:

Tax Period(s)	Tax	Penalty	Interest	Total
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Under IRC Section 7429, you are entitled to request an administrative review of this action. For this review, you must file a written protest with the District Director at the above address within 30 days from the date of this letter, requesting a redetermination of whether the levy is reasonable under the circumstances.

Also, under IRC Section 6330, you are entitled to request a Collection Due Process (CDP) hearing with the IRS Office of Appeals at which you may bring up issues in addition to whether our decision that collection is in jeopardy is reasonable. For this hearing, you must submit a request in writing to the District Director within 30 days from the date of this letter. See the enclosed Publication 594, Understanding the Collection Process; Publication 1660, Collection Appeal Rights; and Form 12153, Request for A Collection Due Process Hearing. The references to notice of intent to levy in these Publications and this Form do not apply, because such notice is not required when collection is in jeopardy. If you request a hearing under both provisions, we may handle both at one hearing.

We may proceed with enforced collection action during any administrative review or appeal process, unless you make arrangements regarding collection of the amount you owe. To make such arrangements, or if you have other questions about this letter, please contact *(name of appropriate district office official)* at *(appropriate telephone number)*.

Under IRC Section 7429, you may request a judicial review of whether the determination that collection is in jeopardy is reasonable, by bringing a civil suit against the United States in the U.S. District Court in the judicial district in which you live, or in which your principal office is located. However, if you filed a timely petition with the Tax Court for a redetermination of a deficiency under IRC Section 6213(a) before we served the levy, and at least one of the taxes for one tax period included on the levy is also included in that petition, the Tax Court (in addition to the U.S. District Court) also has jurisdiction for a judicial review of the levy for all tax periods on the levy. You may also request a judicial review under IRC Section 6330 after the CDP hearing as explained in the enclosed Publication 1660.

In order to receive a judicial review of the levy under IRC Section 7429, you must first request an administrative review under that provision within 30 days from the date of this letter. You must file your suit within 90 days after the earlier of (1) the day the Service notifies you of its decision on your protest, or (2) the 16th day after you make the protest. The court will make an early determination of the same points raised in your protest to decide whether the determination that collection was in jeopardy was reasonable under the circumstances. The court's determination is final and not reviewable by any other court.

In order to receive a judicial review under IRC Section 6330, you must first request a CDP hearing under that provision within 30 days from the date of this letter. You must request the judicial review within 30 days from the date of the Notice of Determination issued by the IRS Office of Appeals at the conclusion of the hearing, as explained in Publication 1660.

Sincerely,

Chief Collection Function

Enclosures  
Publication 594  
Publication 1660  
Form 12153



**Exhibit 5.11.3-2 (Revised Text)**  
**Pattern Letter 2438(P) (Rev. 1-99)**

(Reference 3.3)

(Type on Appropriate Letterhead)

Letter Date:

Dear *(Person to Whom Levy Was sent)*:

The enclosed Form (*“668A, Notice of Levy,” or “668W, Notice of Levy on Wages, Salary, and Other Income,”*) attaches the property and rights to property of the taxpayer named on the Form. However, because this person is entitled to certain appeal rights, do not send us any payment in response to this levy sooner than 45 days from the date on the enclosed Form (*add, “regardless of the reference to the 21 day period on the Form.” if Form 668A is used*).

During this 45 day period, do not let the taxpayer have the funds that have been attached, or you could be held liable for the amount that should have been surrendered plus a penalty described in section 6332 of the Internal Revenue Code (IRC). See the back of Part (*“1 of the Form 668A” if 668A is used, or “4 of the Form 668W” if 668W is used*) for an excerpt of this section of the IRC and certain other IRC sections concerning levies.

If the taxpayer files an appeal with us, we will notify you to continue to hold any funds that this levy has attached until the taxpayer’s appeal has been considered. If we determine that you should not send any funds to us, we will give you a levy release. Otherwise, after 45 days, please send us the amount that this levy has attached.

If you have any questions, please contact *(name)* at *(telephone number)*.

Sincerely,

Chief, Collection Function