

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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date: April 02, 2015

to: Donna Stone
Group Manager
Collection Operations
Field Collection, Col SAA, Tampa
(Small Business/Self-Employed)

from: Christopher A. Pavilonis
Attorney (Jacksonville)
(Small Business/Self-Employed)

subject:

This memorandum responds to your request for assistance dated January 8, 2015.
This advice may not be used or cited as precedent.

ISSUES

CONCLUSIONS

FACTS

LAW AND ANALYSIS

Authority of the IRS to Issue a Levy Pursuant to I.R.C. § 6331(a)

If a taxpayer refuses to pay an outstanding tax liability, I.R.C. § 6331(a) allows the Service to collect taxes “by levy upon all property and rights to property . . . belonging to such person or on which there is a lien provided . . . for the payment of such tax.” Even if the taxpayer’s property is held by another, a Notice of Levy may be issued pursuant to I.R.C. § 6332(a). The Service must establish the ownership of the property held by another to ensure the taxpayer is the actual owner of that property.

A. Liability

Should a person fail to surrender any property subject to levy, that person shall be liable to the United States for the amount not surrendered. I.R.C. § 6332(d)(1). Additionally, if there is no reasonable cause for this failure, “such person shall be liable for a penalty equal to 50 percent of the amount recoverable” I.R.C. § 6332(d)(2).

See I.R.M. 5.17.4.3(2).

A levy only reaches obligations that exist when the levy is made. Obligations are in existence when the liability of the obligor is fixed and determinable, even though the right to receive payment is deferred to a later date. Treas. Reg. § 301.6331-1(a)(1). This would include, for example, a right to receive future payments under a trust or contract, provided the right to receive such payments was not contingent upon the performance of future services. Rev. Rul. 55-210. In other words, the right to future income, if it is a fixed or present right to property, is subject to levy, even though the taxpayer cannot receive the property until some future date. In re Orr, 180 F. 3d 656 (5th Cir. 1999).

B. Defenses

There are only two defenses to a failure to honor levy suit. First, the levied party was not in possession of property or rights to property of the taxpayer, and second, at the time the levy was served, the property was subject to an attachment or execution under any judicial process. I.R.C. § 6332(a); National Bank of Commerce, 472 U.S. at 721-22; see also Bank of Nevada v. United States, 251 F.2d 820, 824 (9th Cir. 1958), cert. denied, 356 U.S. 938 (1958).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS



[REDACTED]

[REDACTED]

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Attorney Christopher Pavidonis at (904) 665-1968 if you have any further questions.

A. GARY BEGUN
Associate Area Counsel (Jacksonville, Group 2)
(Small Business/Self-Employed)

By: _____
Christopher A. Pavidonis
Attorney (Jacksonville)
(Small Business/Self-Employed)