



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ASSOCIATE DISTRICT COUNSEL, KENTUCKY-
TENNESSEE DISTRICT
ATTN:ACBrown

FROM: Alan C. Levine
Chief, Branch 1 (General Litigation)

SUBJECT: Levy Payments Refund/Application

This responds to your request that we pre-review your significant Service Center advice for the general litigation issue. We have no opinion on your discussion of I.R.C. § 6511, which does not fall within the jurisdiction of our division. This document is not to be cited as precedent.

ISSUE:

When a levy payment creates an overpayment to a taxpayer's account (and there is not a balance due on any other period listed on the levy), may the overpayment be manually refunded, even though it has been over nine months since the date of the levy?

CONCLUSION:

When it has been more than nine months from the date of a levy, the overpayment may be returned under IR.C. § 6343(d) in limited situations. Specifically, money may be returned at any time within 9 months after the date of the levy. In addition, when a timely request for the return of money is filed in accordance with these regulations, or a determination to return an amount of money is made before the expiration of the 9-month period, the money may be returned within a reasonable period of time after the 9-month period if additional time is necessary for investigation or processing. This will ensure that if a timely request has been made, or the Service timely decides to return money on its own initiative, the Service will have sufficient time for necessary investigation or processing.

FACTS:

The hypothetical facts are that the Service makes a substitute for return for

\$10,000.00, and the assessment is fully paid by levy. Subsequently, the taxpayer files his return showing a tax liability of \$8,000.00, but he does not file a timely refund claim.

LAW AND ANALYSIS:

Section 6343(d) provides that the Commissioner may return property if one of the following conditions exist: (1) the levy was premature or otherwise not in accordance with the administrative procedures of the IRS; (2) the taxpayer has entered into an agreement under section 6159 of the Code to satisfy the liability for which the levy was imposed by means of installment payments, unless the agreement provides otherwise; (3) the return of property will facilitate collection of the tax liability; and (4) the return of property would be in the best interest of the taxpayer, as determined by the Taxpayer Advocate, and in the best interest of the United States, as determined by the Commissioner.

Section 6343(d) also provides that the provisions of section 6343(b) shall apply to subsection (d), except that no interest shall be allowed. In regard to the return of money, section 6343(b) states that "Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy."

We generally agree with your draft memorandum, except for the discussion at page five regarding the period for returning money under section 6343(d):

In conclusion, levied property may be returned to the party levied upon or the taxpayer, only if a claim is filed or the Service decides to return the property within nine months of the levy, unless the taxpayer can satisfy the refund period provided by I.R.C. § 6511. Further, by the express terms of I.R.C. § 6343(b) and (d)(4), a period longer than nine months is not allowed where the Service determines 'the return of the property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate),' now the National Taxpayer Advocate, and the Service under IR.C. § 6343(d).

The above discussion of the nine-month period is confusing, and we recommend that it be replaced by the following language:

Property other than may be returned at any time pursuant to section 6343(d). Money may be returned any time within 9 months after the date of the levy. In addition, when a timely request for the return of money is filed in accordance with these regulations, or a determination to return an amount of money is made before the expiration of the 9-month period, the money may be returned within a reasonable period of time after the 9-month period if additional time is necessary for investigation or processing. This will ensure

that if a timely request has been made, or the Service timely decides to return money on its own initiative, the Service will have sufficient time for necessary investigation or processing.

We think that our language clarifies the situations in which the money may be refunded after the expiration of the nine-month period.

If you have any further questions, please call the branch.

cc: Assistant Regional Counsel (GL) SER