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Advocating for Levy Release and Return of Levy Proceeds



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Vinatieri v. Comm'r *133 T.C. 392 (2009)*

- Proposed levy on bank account for 2002 liability
- Collection Due Process hearing established economic hardship
- Per IRS Appeals: 2002 account could not be placed in CNC status because 2005 and 2007 returns not filed



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Vinatieri v. Comm'r, cont'd

Tax Court held:

- Release of levy required under IRC § 6343(a)(1)(D)
- IRS abused its discretion in sustaining the levy
- The IRS should have considered collection alternatives



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Release of Levy when there are Delinquent Returns

- IRM 5.19.4.4.10 (Jan. 3, 2012), Levy Release: General Information, 4(J)
- Economic hardship - Treasury Regulation § 301.6343-1(b)(4)
- Levy release cannot be conditioned on obtaining unfiled returns



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Hardship and Levies

- IRM 5.16.1.2.9, Hardship (May 22, 2012) levy not to be used to persuade a taxpayer to file
- IRM 8.22.7.7, CNC (Nov. 5, 2013): If there is economic hardship, proposed levy action not sustained



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Practice Tips

- Gather financial information to demonstrate economic hardship
- Request levy release, referencing IRM provisions
- Request CNC status



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CNC Status and Unfiled Returns

- IRM 5.16.1.2.9, Hardship (May 22, 2012), paragraph 9
- Resolving accounts with delinquent returns by closing as little or no tax due, or income below filing requirement



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CNC status and Unfiled Returns, Appeals IRM

- IRM 8.22.7.7, Currently Not Collectible (Mar. 29, 2012)
- If economic hardship, CNC available even if there are unfiled returns.



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Federal Payment Levy Program (FPLP)

- Authorized by IRC § 6331(h)
- Permits continuous levy up to 15 percent on all federal payments subject to the provision
- Implemented by Bureau of the Fiscal Service (BFS)



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National Taxpayer Advocate Study of FPLP Levies

- National Taxpayer Advocate 2008 Annual Report to Congress, volume 2
- Findings suggested taxpayers were subject to FPLP levy even though they could not afford the levy



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FPLP Study, *cont'd*

- TAS shared study findings with IRS
- Low Income filter adopted Jan. 2011
- IRM 5.11.7.2.2.3(2), Low Income Filter (LIF) Exclusion (Aug. 28, 2012)



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Return of Levied Payments required by IRC § 6343(b) in Some Situations

- Treas. Reg. 301.6343-3(d)
- Examples:
 - No CDP notice issued before levy
 - Levy occurs while OIC is pending



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Return of Levied Payments, authorized (not required) by IRC

§ 6343(d) (2)

- (A) Premature or otherwise not in accordance with administrative procedures;
- (B) Taxpayer entered into an IA;
- (C) Facilitates collection; or
- (D) Best interests of the taxpayer and the United States.



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IRM Procedures for Returning Levied Property

- IRM 5.11.2.4.1, Current Authority for Returning Levied Property to the Taxpayer (Apr. 15, 2014)
- IRM 5.19.9, Automated Levy Program



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IRM 5.11.2.4.1 Example

- Levy on Social Security benefits
- Taxpayer provides CIS showing hardship
- The levy is released
- Before SSA receives the release, additional levy payments are received and applied to the liability



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Factors IRS May Consider

IRM 5.11.2.4.2, Factors to Consider Before Returning a Levy Payment to the Taxpayer Due to Procedural Errors

- Levy released due to economic hardship?
- Inequity in keeping the payment?
- Would the levy have been released if all facts were known before the payment was received?



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IRM Procedures for Returning FPLP Proceeds

IRM 5.11.7.2.7.3, Returning FPLP Levy
Proceeds (Aug. 28, 2012)



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Nine Month Deadline

- Treas. Reg. § 301.6343-3(e)
- With respect to a wage levy or FPLP levy must request levied funds within 9 months of the date of the levy
- Property in possession of the IRS (other than money) may be returned at any time
- Requests must be made in writing



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Supporting IRM Provisions

- IRS Policy Statement 5-28
- IRM 1.2.14.1.5 Successive seizures—
Timing to avoid undue hardship
- IRM 5.11.7.2.5 Recognizing and Handling a
FPLP Case (Aug. 12, 2011)



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Contact TAS

- Call 877.777.4778
- File Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance order)*
- Jill MacNabb, Attorney Advisor, National Taxpayer Advocate - Jill.MacNabb@irs.gov



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