



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

FEB 28 2001

Number: **200116044**
Release Date: 4/20/2001

CC:PA:CBS:B01:JDSekula
GL-129984-00
UIL: 50.00.00-00
9999.98-00

MEMORANDUM FOR ASSOCIATE AREA COUNSEL - FORT LAUDERDALE

CC:SB:3:FTL

Attention: Leonard T. Provenzale

FROM: Alan C. Levine, Chief, Branch 01, CC:PA:CBS:B01

SUBJECT: Service of Form 668C By Mail

This is in response to the question Mr. Provenzale posed in an e-mail, dated December 5, 2000. He specifically asked whether the rationale of Treas. Reg. § 301. 6331-1(c) would permit Form 668-C, Final Demand, to be served by mail. We believe the service of a Form 668-C could be accomplished by mailing if the Form 668-C were modified to reflect such service.

I.R.C. § 6332(a) requires that a person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made to surrender that property or those rights upon "demand," except for any property or rights to such property that are subject to attachment or execution under any judicial process at the time of such "demand." The "demand" described in section 6332(a) is the one made on the levy form that is used, for example, Form 668-A, Notice of Levy; Form 668-B, Levy; Form 668-W, Notice of Levy on Wages, Salary, and Other Income. Neither section 6332 nor the regulations promulgated thereunder require any further or "final" demand for payment to be made. However, in order to obtain voluntary compliance with notices of levy that are served but remain unsatisfied, the Service, as an administrative practice, issues in many cases another document entitled Final Demand (Form 668-C). Although the use of this form is not required by section 6332 or the regulations thereunder, the customary use of this form by the Service has led some commentators to believe that such a notification is required before a suit for failure to honor a levy can successfully be instituted. See, Saltzman, *IRS Practice and Procedure* ¶ 14.15 (2nd ed. 1991).

The "Certification of Service" portion of Form 668-C contains the statement "I certify that this Final Demand was served by handing a copy to." Thus, Form 668-C contemplates personal service. It seems clear that the "Certification of Service" portion of Form 668-C would have to be modified with respect to any Form 668-C which is attempted to be served by mail.

GL-129984-00

Treas. Reg. § 301. 6331-1(c) provides as follows:

(c) Service of notice of levy by mail. A notice of levy may be served by mailing the notice to the person upon whom the service of a notice of levy is authorized under paragraph (a)(1) of this section. In such a case the date and time the notice is delivered to the person to be served is the date and time the levy is made. If the notice is sent by certified mail, return receipt requested, the date of delivery on the receipt is treated as the date the levy is made. If, after receipt of a notice of levy, an officer or other person authorized to act on behalf of the person served signs and notes the date and time of receipt on the notice of levy, the date and time so noted will be presumed to be, in the absence of proof to the contrary, the date and time of delivery. Any person may, upon written notice to the district director having audit jurisdiction over such person, have all notices of levy by mail sent to one designated office. After such a notice is received by the district director, notices of levy by mail will be sent to the designated office until a written notice withdrawing the request or a written notice designating a different office is received by the district director.

Although Treas. Reg. § 301. 6331-1(c) appears to authorize the service of levy by mail in all cases, its effect is actually limited to instances in which the Service and some entity (normally a large business or governmental unit with many employees) have entered into a written agreement under which the entity has agreed to accept notices of levy by mail. Treas. Reg. § 301. 6331-1(c) does not specifically discuss Form 668-C or whether it may be served by mail. The rationale of that section, however, that an officer or other person authorized to act on behalf of an entity may, by signing and noting the date and time of receipt of a document, establish the date and time of the receipt of that document to the entity should apply to Final Demands which, with deletion of the reference to hand delivery, could be served by mail. In this regard, I would note that ACS already makes its "Final Demand" (although not titled as such) by means of an LP59 (copy attached) which is mailed to the person upon whom it mailed a Notice of Levy. It is my understanding that such mailings are by certified mail in order to establish the act of mailing. Obviously, any Final Demand sent by mail which was returned as unclaimed or undeliverable would not be effective and would have to be hand-delivered.

This matter has been discussed with an analyst in Compliance who stated that while your suggestion may be a useful modification in remote areas, the preference is to retain the method of hand delivery as the nationwide requirement. If you have any questions concerning the content of this memorandum, please contact Jerome D. Sekula, at 202-622-3610.

Attachment: LP59

GL-129984-00

LP59 Text	
PLEASE CONTACT US ABOUT THE TAXPAYER LEVY	
We recently mailed you a Notice of Levy to collect money that the taxpayer(s) named above owes as taxes. We haven't heard from you. If you already mailed the amount required or don't owe any money to the taxpayer, please complete the information below.	
You must send us the amount you owe the taxpayer(s), not to exceed the amount shown on the Notice of Levy. If you don't send us the money, you may be personally liable to us for the amount you owe the taxpayer. In addition, you can be charged a penalty of up to 50% of the tax owed by the taxpayer as allowed by Section 6332 of the Internal Revenue Code. A copy of that section is printed on the back of the Notice of Levy. If you owe the taxpayer salary or wages, this levy applies until the taxes are paid or we send a Release of Levy.	
Return this letter to us in the enclosed envelope, or if you prefer to give the information by phone, call us at the number shown above. Thank you for your help in this matter.	
<input type="checkbox"/>	1. We sent the amount to you. (Give date mailed, amount, and where sent): _____
<input type="checkbox"/>	2. We don't owe this taxpayer any money. (Please explain) _____
<input type="checkbox"/>	3. We no longer employ this taxpayer. (List taxpayer's last known address, if different from above, phone number and employer, if known, or any information to help us locate this taxpayer.) _____
CHIEF, AUTOMATED COLLECTION BRANCH	
Enclosures: Copy of this letter, Envelope	

LP59