

**Office of Chief Counsel
Internal Revenue Service**

Memorandum

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date: May 20, 2005

to: Associate Area Counsel (Greensboro)
(Small Business/Self-Employed)

from: Alan C. Levine
Chief, Branch 1 Collection, Bankruptcy & Summonses

subject: Continuous Levies on Federal Contractor Payments under IRC § 6331(h)

This Chief Counsel Advice responds to your request for assistance dated March 1, 2005. This advice may not be used or cited as precedent.

LEGEND

TP

DATE

ISSUES

1. Whether a revenue officer has been delegated the authority to serve a notice of levy under IRC § 6331(h).
2. Whether payments from the United States Postal Service (USPS) for contracted services are "Federal payments" under IRC § 6331(h)(2)(A).

CONCLUSIONS

1. Revenue officers are not authorized to make continuous levies under IRC 6331(h). At this time, the only approved method for making a continuous levy under section 6331(h) is through the FPLP.
2. Payments from the USPS for contract services are Federal payments under section 6331(h)(2)(A).

FACTS

TP entered several contracts with the USPS to perform services. The TP became delinquent on its payroll taxes and the Service issued a notice of intent to levy on the taxpayer's assets. On DATE, the revenue officer assigned to this case served a continuous levy on Form 668-W, Notice of Levy on Wages, Salary, and Other Income. After receiving a copy of the levy, TP requested a Collection Appeals Program (CAP) hearing. A hearing was held and the appeals officer issued a determination stating that under United States v. Long Island Drug Co., 115 F.2d 983 (2d Cir. 1940), the continuous levy was improper because a notice of levy does not attach to a taxpayer's right to money that is contingent upon performance of future service. As a result, the revenue officer released the levy.

LAW AND ANALYSIS

1. Ten days after notice and demand and a taxpayer's neglect or refusal to pay, the Service is entitled to collect a tax by levy upon all property and rights to property belonging to the taxpayer under IRC § 6331(a). Except for continuous levies under sections 6331(e) and 6331(h), the levy attaches only to property possessed or existing obligations owed to the taxpayer at the time the notice of levy is served. Treas. Reg. § 301.6331-1(a)(1). A continuous levy under section 6331(h) attaches to future payments until the levy is released. A continuous levy must be released at the end of the period of limitations under section 6502. Treas. Reg. § 301.6343-1(b)(1)(ii).

Section 6331(h) as enacted provided that continuous levies shall attach up to 15 percent of any specified payment due to the taxpayer. Specified payments included Federal payments other than a payment for which eligibility is based of the income or assets of a payee under section 6331(h)(2)(A). However, the American Jobs Creation Act of 2004, effective on October 22, 2004, amended section 6331(h) and increased the rate of continuous levy attachment to 100 percent of any specified payment due to a vendor of services sold to the Federal Government. For purposes of collecting Federal payments for services, United States v. Long Island Drug Co. has been overruled by section 6331(h).

We note that except for payments under the FPLP, the Service has not authorized revenue officers to collect Federal payments by continuous levy. See IRM 5.11.6.5. The Federal Payment Levy Program is an automated and paperless levy program that the Service has implemented with the Department of Treasury's Financial Management Service (FMS). IRM 5.11.7.2. Inter-agency agreements have been entered into with specific federal agencies but not the USPS to permit FMS to remit Federal payments subject to levies to the Service. See IRM 5.11.7.2.1.1. The levy source under the FPLP is FMS. Revenue officers are not authorized under the FPLP to issue a paper Form 668-W directly to an agency in order to collect Federal payments for contractor services

under IRM 5.11.7.2.5.5. Form 668-W should be used only as a continuous levy on wages and salaries under section 6331(e). Thus, unless the Service enters into an inter-agency agreement with the USPS to submit payments to FMS, continuous levies on contractor payments from the USPS under section 6331(h) are not authorized.

2. The United States Postal Service is an independent establishment of the executive branch of the Federal Government under 39 U.S.C. § 201. No Federal law dealing with public or Federal contracts shall apply to the exercise of the powers of the USPS under 39 U.S.C. § 410. However, while the USPS is subject to and exempt from some Federal statutes affecting government agencies, the United States Supreme Court does not consider it an entity existing outside the Federal Government. U.S.P.S. v. Flamingo Industries (USA) Ltd., 540 U.S. 746 (2004). We note that levies under IRC § 6331 do not affect the powers of the levy source but rather permit the Service to step "into the taxpayer's shoes." United States v. National Bank of Commerce, 472 U.S. 713, 725 (U.S. 1985) (citing United States v. Rodgers, 461 U.S. 677, 691 n.16 (1983)). Thus, payments from the USPS are "Federal payments" under section 6331(h).

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Please call (202) 622-3610 if you have any further questions.

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