

ID: CCA_2009040914495547

Number: **200922047**

Release Date: 5/29/2009

Office:

UILC: 6331.00-00, 6343.00-00, 7122.00-00

From:

Sent: Thursday, April 09, 2009 2:49:59 PM

To:

Cc:

Subject: FW: Post Review Item Related to Levies --

Hi--we have finished our post-review of your letter and we agree with the legal position set forth--the OIC did not affect our ability to collect any proceeds we may ultimately receive from the levy with respect to the non-OIC periods.

We had a few comments which do not impact this ultimate conclusion:

On page 1 of the letter, it states that the levy is valid and "cannot" be released. This is technically incorrect because we can always choose to release a levy even when we are not required to do so. Section 6343(a) lists the scenarios under which the Service "shall" release a levy, but does not provide exclusive levy release authority. For example, we would release a levy issued in violation of the automatic stay in bankruptcy even though section 6343(a) would not apply.

In a couple of places, the letter also equates the fact that the CSED has expired for some of the periods to mean that the taxpayer is no longer "personally" liable for those periods. This may not be technically correct--from the fact that we cannot personally collect the liability from the taxpayer it does not necessarily follow that the "liability" no longer exists for the taxes that remain unpaid. As a practical matter, however, we are not sure what it really means to say someone remains "liable" for the taxes if we can't collect those taxes in personam. So this is probably largely a semantical quibble.

We coordinated this post-review with Branch since this involved possible offer-in-compromise issues. Branch had the following comment: the current OIC Form 657 states at Section V(f), "The IRS may keep any proceeds from a levy served prior to submission of the offer, but not received at the time the offer is submitted." Apparently, similar language existed on the old OIC form; at footnote 1 the letter refers to the IRS keeping the proceeds of any levy served prior to the offer submission. The letter refers to this provision as "irrelevant because none of the levy periods were included in or affected by the review." I would not label this provision as irrelevant because it clearly gives the IRS the right to keep the levy proceeds.

As I said, these are minor comments which do not change the ultimate legal conclusion taken in the letter. We fully agree with the position taken in the letter that the levy to reach any proceeds from payments need not be released and the OIC for later periods had no impact on the validity of this levy.
