

ID: CCA_2011103109154247

Number: **201145021**

Release Date: 11/10/2011

Office:

UILC: 6343.00-00

From:

Sent: Monday, October 31, 2011 9:15:51 AM

To:

Cc:

Subject: FW: Levy question for assignment

Hi--my reviewer concurs in my response to your question, involving levies made without giving required CDP levy notices first. These levies are illegal. The question is whether any of the proceeds they determine to have been illegally collected need to be returned to the taxpayer. We have to return any illegally levied proceeds, provided we are within the limitations period.

The authority to return the proceeds is under IRC 6343(d). Specifically, section 6343(d)(2)(D) authorizes return of levied property where, with the consent of the taxpayer or the National Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States. Section 6343(d) further makes applicable the limitations period under 6343(b), which is 9 months from the date of levy in the case of levied money or sale proceeds.

6343(d) is generally discretionary. However, Treas. Reg. 301.6343-3(d) provides that where the Service makes a levy in violation of the law, it is in the best interest of the United States and taxpayer to release the levy and the Service will return to the taxpayer any property obtained pursuant to the levy. Failure to give CDP notice required under section 6330 is listed as a specific example of when levied property will be returned.

Treas. Reg. 301.6343-3(e) further provides that the determination to return levied proceeds must be made within 9 months from the levy, although the money may actually be returned within a reasonable amount of time after that period, if additional time is necessary for investigation or processing. Accordingly, proceeds should be returned to the taxpayers for any illegal levies which occurred in the 9-month period dating back from the discovery of the existence of the illegal levies. The proceeds should be returned as soon as is reasonably possible.

(Note that it is possible that some of the levies could be discovered to fall within one of the pre-levy CDP exceptions in section 6330(f), in which case the levies without issuance of the pre-levy CDP notice would not have been illegal and we would not have to return the levied proceeds).

Let me know if you have any further questions.