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From: [REDACTED]
Sent: Wednesday, October 23, 2013 9:23:09 AM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: levy question

A levy is only a provisional remedy that protects the government's interest until a claim to the subject property is resolved. The RO should advise the bank that there are only two defenses to its refusal to surrender property and that neither is implicated here. The first is that the bank is not in possession of the taxpayer's property, which is not the case because you have indicated that there are funds in the taxpayer's account. The second is that at the time of service of the Notice of Levy, the property was subject to attachment or execution under judicial process, which does not appear to be the case from the brief summary of facts you submitted. See *United States v. National Bank of Commerce*, 472 U.S. 713, 721-22 (1985). The RO may also advise the bank that the bank will be held harmless if it honors the levy pursuant to I.R.S. sec. 6332(e). Finally, the RO should warn the bank that its failure to honor the levy may result in independent liability as well the imposition of the 50-percent penalty for failing to surrender property without reasonable cause. See I.R.C. sec. 6332(d). The bottom line is that the section 6334 levy exemptions do not constitute third-party defenses and the bank is required by statute to surrender all of the taxpayer's property that was in its possession as of the date of levy, but not until after the section 6332(c) 21-day waiting period applicable to banks.

I would direct your attention to Lesson 11 of the 2013 GL-1 materials, which can be found on the PA website (as well as the Training website, I believe) and which has a detailed discussion of the procedures for levying banks and the available defenses to levy (as well as the section 6334 exemptions from levy).

Feel free to call me directly if you have any questions or further want to discuss.

Regards,