

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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to: Lauren N. May  
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(Small Business/Self-Employed)

from: Micah A. Levy  
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(Procedure & Administration)

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subject: I.R.C § 6334(a)(11) and

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

This writing may contain privileged information. Any unauthorized disclosure of this advice may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our view.

ISSUES

1. Whether the payments made by the \_\_\_\_\_ pursuant to the \_\_\_\_\_ are exempt from levy under I.R.C. § 6334(a)(11).
2. Whether the payments made by the \_\_\_\_\_ pursuant to the \_\_\_\_\_ are exempt from levy under \_\_\_\_\_

CONCLUSIONS

1. The payments are not exempt under I.R.C. § 6334(a)(11) because the payments are not being made to the recipients of public assistance.

2. The payments are not exempt under \_\_\_\_\_ because a state statute does not take precedence over the Service's authority to levy.

### BACKGROUND

The \_\_\_\_\_ created the \_\_\_\_\_, which provides low-income, working families with access to quality, affordable child care. To participate in \_\_\_\_\_, applicants must be eligible public assistance recipients. Once eligibility is determined, \_\_\_\_\_ makes payments (as determined by a cost-share sliding scale) directly to participating child care providers on behalf of the public assistance recipient.

The Service served a notice of levy on the \_\_\_\_\_ to collect the employment tax liabilities of \_\_\_\_\_. This day care center is a participating child care provider in \_\_\_\_\_. Upon receipt of the notice of levy, the \_\_\_\_\_ sent a letter to the Service's revenue officer responsible for this case, stating that it would not comply with the levy on the belief that state and federal law precluded it from complying with the levy. The \_\_\_\_\_ asserted that because \_\_\_\_\_ makes payments directly to the day care center as part of the administration of \_\_\_\_\_, any payments pursuant to that program made to the day care center are exempt from levy. The \_\_\_\_\_ relied on I.R.C. § 6334(a)(11) and \_\_\_\_\_ as reason for its decision not to comply with the Service's levy.

You requested our advice as to whether I.R.C. § 6334(a)(11) and \_\_\_\_\_ actually exempted the payments made to the day care center pursuant to \_\_\_\_\_ from levy.

### DISCUSSION

1. Section 6334(a)(11) does not exempt the \_\_\_\_\_ from complying with an IRS levy because the payments are not being made to the recipients of the public assistance.

Section 6331(a) grants the Service broad authority to collect unpaid federal taxes (and associated interest, penalties, and costs) by levy. See also I.R.C. § 6334(c). Any person who possesses or is obligated with respect to levied property or rights to property must surrender the property to the Service as long as the property or obligation exists at the time of the levy. I.R.C. § 6332(a); Treas. Reg. § 301.6331-1(a)(1). An obligation exists when the obligated person's liability to pay is "fixed and determinable" even if payment is not due until a later date. Treas. Reg. § 301.6331-1(a)(1).

Under section 6334, certain property is exempt from levy, including "any amount payable to an individual as a recipient of public assistance under State or local

government public assistance or public welfare programs for which eligibility is determined by a needs or income test.” I.R.C. § 6334(a)(11)(B).

In this case, the payments made to daycares under \_\_\_\_\_ are not exempt from levy pursuant to section 6334(a)(11). \_\_\_\_\_ helps low-income, working families pay for child care services. The state makes payments to the daycares directly. The daycares though, are not “recipient[s] of public assistance,” and they are not “individuals;” the low-income, working families are individuals and the recipients. Therefore, any payments from the \_\_\_\_\_ to the daycares, pursuant to \_\_\_\_\_ are not exempt from levy.

2. \_\_\_\_\_ does not exempt the \_\_\_\_\_ from complying with an IRS levy because a state statute does not take precedence over the Service’s authority to levy.

Even if a provision of law specifically placed the type of funds at issue beyond the reach of creditors, the Service’s authority to levy still takes precedence, regardless of whether the provision is found in a federal or a state statute. Federal statutory provisions are ineffective to bar a federal tax levy, except as provided by the express exceptions enumerated in section 6334(a), which are not applicable here. See I.R.C § 6334(c) (“notwithstanding any other law of the United States . . . no property or rights to property shall be exempt from levy [other than those specifically made exempt in I.R.C. § 6334(a)]”); Drye v. United States, 528 U.S. 49, 56 (1999) (“[t]he enumeration [of exceptions] contained in § 6334(a) . . . is exclusive”); Cisneros v. Alpine Ridge Grp., 508 U.S. 10, 18 (1993) (stating that generally, “the use of a ‘notwithstanding’ clause clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section”). Thus, for example, a federal statute that protects Thrift Saving Plan assets from levy except as expressly provided in that statute does not protect such assets from federal tax levies under sections 6331 and 6334. See Memorandum Opinion For The Chief Counsel, Applicability Of Tax Levies Under 26 U.S.C. § 6334 To Thrift Savings Plan Accounts (Opinions of the Office of Legal Counsel, U.S. Dep’t. of Justice, Vol. 34, May 3, 2010).

Similarly, a state statute would not take precedence over the Service’s authority to levy.

The plain language of this statute does not purport to take precedence over the Service’s authority to levy pursuant to I.R.C. § 6331(a). See also U.S. Const. art. IV, cl. 2 (“the Laws of the United States . . . shall be the supreme Law of the Land . . . any . . . Laws of the State to the contrary notwithstanding”). Even if this statute could take precedence over the Service’s authority to levy, it would not be applicable in this situation.

. While acknowledging that there is little case law

regarding this particular provision of the \_\_\_\_\_, and also that what case law there is concerns the statute's predecessor, we believe that the previously mentioned case and I.R.C. § 6334(a) jurisprudence demonstrate that \_\_\_\_\_ does not exempt the \_\_\_\_\_ payments from levy.

In sum, neither I.R.C. § 6334(a) nor \_\_\_\_\_ exempt the \_\_\_\_\_ from complying with an IRS levy in this situation.

If you have any further questions or require additional assistance in this matter, please contact Chelsey Pearson directly at (202) 317-6875