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From: [REDACTED]
Sent: Thursday, May 24, 2018 7:24:33 AM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: Question about Lien / Levy Priority

You asked whether a levy conducted via the Federal Payment Levy Program (FPLP) receives any sort of priority and primes an entity that holds a UCC-1 perfected security interest. In the situation you described, a federal government contractor owes unpaid taxes and the IRS levied on a federal contract disbursement due to the contractor from the Department of Defense. You also stated that the IRS did not file a Notice of Federal Tax Lien (NFTL) in this case. We explored whether the IRS could rely on offset priority in this context because the debt was owed to one arm of the federal government and the levied payments were payable from another arm of the federal government. We have concluded that a levy is not a setoff in this context, and the normal priorities under section 6323 apply. See Treas. Reg. § 301.7426-1(a)(1)(ii) (specifying that a suit for wrongful levy may be brought when the IRS levies on a debt owed to the taxpayer by another federal agency, but not if the IRS requests payment from another Federal agency pursuant to a request for setoff). Here, the government used levy and not setoff procedures, so the normal priorities under section 6323 apply. In this case, where the government never filed an NFTL, the third party's perfected security interest has priority over the government's claim. Please feel free to contact me if you have any questions. Thank you.