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From: [REDACTED]

Sent: Monday, May 10, 2021 2:04:48 PM

To: [REDACTED]

Cc:

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Subject: RE: Levy on Rental Income

thank you for your inquiry. Concerning your general questions relating to the proper levy procedures with respect to rental income, you asked (1) whether a Form 668-W can be used for rental income received pursuant to a rental contract, and (2) if the wrong form was used, whether the results remain the same, meaning that a continuous levy attaches to income proceeds of a rental contract. In your transmittal, you also forwarded a copy of *KMG Properties v. Internal Revenue Service*, No. 08-1544, 2009 WL 1885930, at *8 (W.D. Pa. June 30, 2009), that provides, in relevant part,

Under these facts, the levy on Plaintiff's right to receive payment under the lease with Visionquest attached to Plaintiff's present right to receive future rental payments because the right to rental payments under the lease is fixed and determinable. *See United States v. Halsey*, Civ. A. No. 85-1266, 1986 U.S. Dist. LEXIS 24130 (C.D.Ill.1986) (upholding levy on taxpayer's receipt of future rental payments under lease); *Weissman v. United States Postal Service*, 19 F.Supp.2d 254, 261 (D.N.J.1998) (party obligated to pay under lease required to forward all subsequent rent payments pursuant to a levy as they came due). The fact that lease was a month-to-month lease does not affect the levy's attachment to future payments. The levy was effective to reach future payments not by reason of the fact that it continued to operate beyond the time at which it was made, which it does not, but rather because the levy reached Plaintiff's then existing right to the future payments under the lease, not the future payments themselves. This rationale is consistent with the Treasury Regulation governing same, 26 C.F.R. 301.6331-1(a)(1), 17 and with the rule that this Court must strictly construe waivers of the United States' sovereign immunity. *Lane*, 518 U.S.at 192.

We have not located any guidance or authority expressly addressing whether a Form 668-A or a Form 668-W should be used in the context of levying current and future

rental payments. The IRM and the instructions to Form 668-W contemplate other income, so it is not necessarily limited to wages. Historically, “[t]he purpose of using Form 668-W instead of Form 668-A is to give the taxpayer an opportunity to claim exemptions pursuant to I.R.C. § 6334(a).” Private Letter Ruling 199948004, 1999 WL 1100099 (Dec. 3, 1999). To the extent that we’re not readily seeing the application of section 6334 exemptions to rental income, Form 668-A would appear acceptable. However, there doesn’t appear to be any legal authority precluding use of a Form 668-W here and we are not aware of any material harm in employing the Form 668-W in this situation.

Rental income is generally subject to a levy with continuous effect meaning that, to the extent that future rental liabilities are fixed and determinable, meaning the terms are provided for in a rental contract, the single levy reaches both current and future rental payments. Treas. Reg. § 301.6331-1(a); *KMG Properties v. Internal Revenue Service*, *supra*, at *8; Revenue Ruling 55-210 (Jan. 1, 1955) (“Where a taxpayer has an unqualified fixed right, under a trust or a contract...to receive periodic payments or distributions of property, a Federal lien for unpaid tax attaches to the taxpayer’s entire right, and a notice of levy based on such lien is effective to reach, in addition to payments or deductions then due, any subsequent payments or distributions that will become due thereunder.”).

We hope that this answers your questions. Please note that we coordinated this advice with our Procedure and Administration Counsel colleagues. Because this TAO review included a request for Chief Counsel Advice (CCA), in accordance with CCA procedures, please include a copy of the email and the attached letter with the TAS response to the taxpayer – note, while the letter references privileged and/or taxpayer-specific information, no such information was included in this email advice, so no redactions are necessary. Please feel free to reach out with any additional questions.