

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

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date: October 29, 2010

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subject: Funds Levied from State Pension Payments After Death of Taxpayer

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

LEGEND

State Pension Administrator	██████████
Taxpayer 1	██
Taxpayer 2	██████████████████████████████████████
Taxpayer 3	██████████████████████████████████████
Taxpayer 4	██████████████████████████████████
Taxpayer 5	██████████████████████████████████████
Taxpayer 6	██████████████████████████████████████
Taxpayer 7	██████████████████████████████████████



ISSUES

1. Whether the Internal Revenue Service may return wrongfully levied funds after the expiration of the 9-month period in I.R.C. § 6343(b) and the third party claiming the funds failed to submit an effective administrative request for their return within the 9-month period.
2. Whether the Service may return wrongfully levied funds when the third party claiming the funds submits an effective administrative request for their return within the 9-month period in section 6343(b), but the Service does not act on the request, and the third party does not file a wrongful levy suit within the applicable statute of limitations.

CONCLUSIONS

1. After the expiration of the 9-month period, the Service is not authorized to return wrongfully levied funds when an effective administrative claim was not submitted within the 9-month period.
2. The Service is not authorized to return wrongfully levied funds after the applicable statute of limitations for filing a wrongful levy action has expired.

FACTS

A State Pension Administrator contacted the Service to determine how to obtain reimbursement of funds levied from pension plan payments after the death of the pensioner. In the case of Taxpayers 1-8, pension payments were erroneously issued after the date of death because their deaths were not reported timely to the State Pension Administrator. Those payments were levied upon by the Service pursuant to notices of levy. Because Taxpayers 1-8 ceased to be entitled to the pension payments upon their deaths, the State Pension Administrator asserts that the taxpayers had no interest in the wrongfully issued payments to which a levy could attach. The State Pension Administrator concludes that the Service's levies on these interim payments were wrongful levies, and that an amount equal to the wrongfully levied funds should be returned to the State Pension Administrator.

The State Pension Administrator had previously mailed written requests for reimbursement to "IRS Attention: Automated Collection System Office, PO Box 24017, Fresno, CA 93749," for levies relating to Taxpayers 1-4. When the State Pension Administrator did not receive a return of funds or any response to these requests, it did not mail reimbursement requests relating to Taxpayers 5-8. Instead, requests relating to Taxpayers 5-8 were e-mailed to Mike Foreman, Wage and Investment Automated Collection System (ACS) and Automated Collection System Support, on or about

January 11, 2010, for Taxpayer 5, July 30, 2010, for Taxpayers 6-7, and September 22, 2010, for Taxpayer 8.

The chart below summarizes the facts concerning the State Pension Administrator's wrongful levy claims.

Taxpayer	Date of Death	Date Death Reported	Date(s) of Levy ¹	Amount of Wrongful Levy	Date of Reimbursement Request
1	██████████ 2007	10/17/2007	08/01/2007- 10/01/2007	██████████	12/20/2007
2	██████████ 2007	08/01/2007	08/01/2007	██████████	08/03/2007
3	██████████ 2007	05/15/2008	03/01/2007- 05/01/2008	██████████	10/10/2008
4	██████████ 2008	12/01/2008	09/01/2008- 12/01/2008	██████████	10/13/2009
5	██████████ 2008	08/12/2008	08/01/2008	██████████	01/11/2010
6	██████████ 2007	03/19/2007	02/01/2007- 04/01/2007	██████████	07/30/2010
7	██████████ 2010	03/17/2010	04/01/2010	██████████	07/30/2010
8	██████████ 2010	09/16/2010	08/01/2010- 09/01/2010	██████████	09/22/2010

LAW AND ANALYSIS

Assuming that the Taxpayers did not have any right to the pension payments after their deaths, the levies on these post-death pension payments were wrongful. Section 6343(b) gives the Service authority to return to a third party "an amount of money equal to the amount of money [wrongfully] levied upon . . . at any time before the expiration of 9 months from the date of such levy." I.R.C. § 6343(b). Although an administrative claim is not required for the return of wrongfully levied funds, if one is filed, it must be submitted within 9 months from the date of levy. *Id.*

Treas. Reg. § 301.6343-2 outlines the procedures that must be followed to administratively request the return of wrongfully levied funds. A written request for the return of the property that includes the name and address of the person submitting the request, a detailed description of the property levied upon, a description of the claimant's basis for claiming an interest in the property levied upon, the name and address of the taxpayer, the originating IRS office, and the date of the levy as shown on the notice of levy form, "must be given to the IRS official, office and address specified in IRS Publication 4528 'Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b),' or any successor publication." Treas. Reg.

¹ Each first of the month included within the date(s) of levy represents an additional month's pension payment that was levied upon.

§ 301.6343-2(b). The regulation distinguishes between deficiencies in the content of the request and deficiencies in the submission of the request. The Service must actively seek to cure deficiencies in the content of the request, or they will be deemed to be cured. Treas. Reg. § 301.6343-2(c). For deficiencies in the submission of the request, “a request for the return of property wrongfully levied upon is not effective if it is not given to the office listed in [Publication 4528].” *Id.*

Both the cross-reference to Publication 4528 and the statement of ineffectiveness were included in the predecessor temporary regulation, Treas. Reg. § 301.6343-2T(b), in effect for claims submitted after August 20, 2007, until July 8, 2008, when the final regulation became effective. 72 FR 39737 (July 20, 2007). Prior to the temporary regulation, Treas. Reg. § 301.6343-2 did not contain the statement of ineffectiveness, and directed claims to be mailed to “the district director (marked for the attention of the Chief, Special Procedures Staff) for the Internal Revenue district in which the levy was made.” 60 FR 33 (January 3, 1995). By 2007, neither the position of district director, nor the position of Chief, Special Procedures Staff existed anymore. However, Publication 4528 (Rev. 5-2006), in effect until November 2007, directed those seeking to file a wrongful levy administrative claim to send the claim to the office and address listed in Publication 4235. Since at least 2006 the publication has directed that administrative requests be mailed to the Advisory Group (or its predecessors the Collection Advisory Group or Technical Services (Advisory) Group) in Laguna Niguel, Los Angeles, or Oakland, depending upon where the levy or seizure was made.

Instead of filing an administrative claim for return of wrongfully levied funds, a third party may bring a wrongful levy action in federal district court under section 7426. The third party has 9 months from the date of the levy to file such suit. I.R.C. § 6532(c)(1). However, section 6532(c)(2) provides an extended statute of limitations for wrongful levy actions where an administrative claim for return of the wrongfully levied funds is made within 9 months of the date of the levy. “If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended” for the shorter of 12 months from the date of filing of such request or six months from the date of mailing the notice of denial of the request. I.R.C. § 6532(c)(2).

Sections 6343(b), 7426(a)(1) and 6532(c) together provide a comprehensive scheme for resolving wrongful levy claims by third parties. If an administrative claim under section 6343(b) is filed within 9 months of the levy and is not acted upon by the Service or is denied, the third party’s remedy is to bring a timely wrongful levy suit. See *Amwest Sur. Ins. Co. v. United States*, 28 F.3d 690 (7th Cir. 1994). Neither section 6343 nor the underlying regulation directly addresses the extent of the Service’s authority to return wrongfully levied funds when a timely administrative claim is submitted to the correct office but the Service fails to act upon the claim.² However, section 6343(b), read in

² Treas. Reg. § 301.6343-2(a)(2) permits money to be returned “after a reasonable period of time subsequent to the expiration of the 9-month period if necessary for the investigation and processing of the request.” The purpose of allowing a reasonable period of additional time is to enable the Service to

conjunction with sections 7426(a)(1) and 6532(c), signals congressional intent to limit the time period in which the Service is authorized to return wrongfully levied funds. While property can be returned to the third party at any time, the Service may only return funds within 9 months of the date of levy. I.R.C. § 6343(b). Similarly, the time period for filing a wrongful levy suit is limited to 9 months, although this time period is extended, as discussed above, for 12 months if the Service does not act on a timely administrative claim. The purpose behind the relatively short period of time in which the Service is authorized to return money is to provide finality to levies as soon as possible, “so the Government may pursue the taxpayer’s own property....” *Priority of Fed. Tax Liens and Levies: Hearings on H.R. 11256 and H.R. 11290 Before the Comm. on Ways and Means*, 89th Cong., 2nd Sess. 71-72 (1966); see also *Am. Bar Ass’n, 86th Cong., Final Report of the Comm. on Fed. Liens* (Comm. Print 1959). Based on the foregoing, it is reasonable to conclude that Congress did not intend to grant the Service the authority to return wrongfully levied funds after the expiration of the time period for bringing a wrongful levy suit, even if the third party timely and properly submitted an administrative claim.

The administrative wrongful levy claims relating to Taxpayers 1 and 3-8 were not effective. The State Pension Administrator submitted the claims to the wrong office, the ACS office at the Fresno Campus, instead of the office specified in Publication 4528. The temporary treasury regulation applicable to the claim relating to Taxpayer 1 and the current treasury regulation applicable to the claims for Taxpayers 3-8 are explicit that misdirected claims are ineffective. Treas. Reg. § 301.6343-2T(b) (2007); Treas. Reg. § 301.6343-2(b). Even if the administrative claims relating to Taxpayers 4-6 had been properly addressed, the funds cannot be returned because the claims were submitted more than 9 months after the wrongful levies occurred.³ For the administrative claims relating to Taxpayers 1 and 3, the time period for submitting these administrative claims to the correct office has expired. Because the State Pension Administrator did not file an effective claim within 9 months of the wrongful levies relating to Taxpayers 1 and 3-6, the Service is not authorized to return money in an amount equal to these wrongfully levied funds.

adequately investigate allegedly wrongful levies and prepare a reasoned response, thereby avoiding “a potentially unnecessary rush to litigation.” *Raymond v. United States*, 983 F.2d 63, 66 (6th Cir. 1993). The application of this provision is limited to circumstances where the Service is actively engaged in the processing and investigation of the claim when the 9-month period expires.

³ For the levies relating to Taxpayer 1, the ineffective administrative claim was timely because it was submitted within 9 months of the dates of the levies. For Taxpayer 3, the ineffective administrative claim was timely for only the last four levies: February 1, 2008, March 1, 2008, April 1, 2008, and May 1, 2008. For the 11 levies that occurred more than 9 months before the ineffective administrative claim, the State Pension Administrator could not have recovered the funds from these levies even if the administrative claim had been submitted to the correct office because the claim was untimely with respect to these levies. The one court to have addressed equitable tolling of the 9-month period ruled that it is not available to extend the statute of limitations for a wrongful levy action beyond 9 months. *Becton Dickinson v. Wolckenhauer*, 215 F.3d 340 (3d Cir. 2000).

For the wrongful levies relating to Taxpayers 7 and 8, the 9-month period to submit an administrative claim has not yet expired. The State Pension Administrator may submit an administrative claim relating to the Taxpayer 7 levies to the proper office as specified in Publication 4528 by December 1, 2010, and the Service will be authorized to return the wrongfully levied funds. The State Pension Administrator may submit an administrative claim relating to the Taxpayer 8 levies to the proper office by May 1, 2011, and the Service will be authorized to return the wrongfully levied funds.

The wrongful levy administrative claim relating to Taxpayer 2's unpaid taxes was arguably effective. The claim was timely. It was mailed August 3, 2007, two days after the levy. In addition, the claim was not governed by the temporary regulation, but by the prior regulation, which applied to claims submitted before August 20, 2007.⁴ This regulation specified that the claim should be submitted to the district director, attention Chief, Special Procedures Staff, for the district in which the levy was made. As noted above, while the positions of district director and Special Procedures Chief no longer existed in 2007, Publication 4528 notified third party claimants of the correct office to which claims should be submitted. Nevertheless, the outdated information in the regulation leaves open the possibility that the reimbursement request relating to Taxpayer 2 to the office that served the levy could be an effective claim.

However, even if the claim is effective, the Service is not authorized to return an amount equal to the funds wrongfully levied. As discussed above, the State Pension Administrator's remedy when the Service did not administratively address the wrongful levy claim was to file a wrongful levy suit in federal district court. Instead, the State Pension Administrator waited approximately two years before following up with the Service. Because the time period for bringing a wrongful levy action has expired, the State Pension Administrator is not entitled to a return of the wrongfully levied funds relating to Taxpayer 2.

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Please call (202) 622-3600 if you have any further questions.

⁴ Section 7502 applies to the submission of administrative claims under section 6343(b). The claim is deemed submitted on the date the claim is mailed and stamped with a United States postmark.