

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

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from: Mitchel S. Hyman
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subject: Bulk Electronic Levy project

This memorandum responds to your request for assistance. You submitted some preliminary questions related to the Bulk Electronic Levy, or BEL, project. The BEL project is developing a way to electronically deliver notices of levy to financial institutions and large employers who volunteer to opt into the program and to provide capability for those registered sources to respond back to the IRS with account or employment status and/or electronically transmit levy proceeds. The registration process has yet to be determined.

ISSUES

1. Can a levy on a financial institution or an employer be served electronically rather than by mailing copies of the Forms 668-A or 668-W to the levy source?
2. If a levy is made electronically on a financial institution or employer, must the taxpayer be provided a paper copy of the Form 668-A or 668-W?
3. If a levy is made electronically, can a financial institution immediately remit funds from a taxpayer's account to the Service?

CONCLUSIONS

1. The Service may electronically serve levies on financial institutions and employers in lieu of mailing Forms 668-A or 668-W to the levy source.
2. If a levy is made electronically on a financial institution or employer, the taxpayer must be provided either a paper copy of the Form 668-A or 668-W or new Form with the same information provided in the Forms 668-A or 668-W.

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3. A financial institution should not remit funds out of a taxpayer's account to the Service before the 21-day holding period expires.

DISCUSSION

1. The Service may electronically serve levies on financial institutions and employers in lieu of mailing Forms 668-A or 668-W to the levy source.

I.R.C. § 6331 gives the Service the authority to collect tax by administrative levy. Once all prerequisites are met, the Service may collect tax by levy upon all property and rights to property belonging to a taxpayer. I.R.C. § 6331(a). Levy "includes the power of distraint and seizure by any means." I.R.C. § 6331(b).

The Code does not dictate the manner or mode of service of a levy. In current practice, in addition to serving notices of levy in person, by mail and by fax (see, e.g., IRM 5.11.2.1.3 and IRM 5.11.2.1.4), levies are served electronically as part of three automated levy programs: 1) the State Income Tax Levy Program (SITLP); 2) the Federal Payment Levy Program (FPLP); and 3) other ALPs, which attach state funds other than state income tax refunds, such as the Permanent Fund Dividend distributed by Alaska, lottery payments, and vendor payments. See, e.g., IRM 5.11.7 and IRM 5.19.9.

Treas. Reg. § 301.6331-1(c) provides that a notice of levy *may* be served by mail. However, this is not an exclusive means of levying, and any means of communication that instructs the levy source to turn over the taxpayer's property will be legally sufficient under section 6331(a).

More specifically, we conclude that levies can be made on financial institutions and employers by electronic communications to the levy sources rather than the traditional means of mailing the Forms 668-A and 668-W to the levy sources. The Code does not specifically dictate what information must appear on a levy notice. Generally, any levy must provide identifying information for the person whose property is being levied upon and the amount of funds requested. The identifying and tax amount information to be provided as part of the electronic levy should mirror the information that is on the Form 668-A or 668-W.

Both the Forms 668-A and 668-W contain detailed instructions on complying with the levy in addition to relevant excerpts from the Internal Revenue Code. These instructions and excerpts may be communicated to the levy source as part of a contract governing the electronic levy process, or as part of the registration process for those third parties interested in receiving the notice of levy electronically. Having this information presented in a manner similar to a licensing agreement for software, which is accepted via a radio button during installation, would suffice.

[REDACTED] Releases can also be served electronically as per the agreement between the Service and the financial institution or employer.

[REDACTED] This will presumably be the date the electronic notice is received. The date of levy is important for many reasons. For example, a levy only reaches property in the possession of the person levied upon at the time the levy is made together with interest that accrues during the 21-day holding period provided for in I.R.C. § 6332(c) for banks. A levy made on a bank with respect to the account of a delinquent taxpayer is satisfied if the bank surrenders the amount of the taxpayer's balance at the time the levy is made. The levy has no effect upon any subsequent deposit made in the bank by the taxpayer. Subsequent deposits may be reached only by a subsequent levy on the bank. Treas. Reg. § 6331-1(a)(1). Furthermore, the 9 month period for making a wrongful levy claim or filing a wrongful levy suit starts on the date of levy. I.R.C. § 6532(c). [REDACTED]

2. If a levy is made electronically on a financial institution or employer, the taxpayer must be provided either a paper copy of the Form 668-A or 668-W or new Form with the same information provided in the Forms 668-A or 668-W.

The United States Constitution provides that no person be deprived of property without due process of law. Due process concerns dictate that taxpayers receive notice of a levy. This is in part satisfied by the pre-levy notices and rights to hearings provided to taxpayers under IRC sections 6331(d) and 6330. However, when specific property is taken, the taxpayer must again be given notice. This ensures that the taxpayer may challenge an improper levy.

Pursuant to current procedures, when a notice of levy is mailed to the financial institution, the Service directly provides a copy of the Form 668-A to the taxpayer. When a levy is made on the financial institution by electronic means, the Service will need to either provide an actual Form 668-A to the taxpayer, or draft a new form that is the functional equivalent of the Form 668-A to send to the taxpayer.

For wage levies, the Service currently provides the employer with a paper copy of the levy to provide to the taxpayer that also has instructions for claiming exemptions. An employer who receives a wage levy notice for an employee generally needs the employee/taxpayer to complete the exemption information in order to accurately comply with the levy. Therefore, the taxpayer receives notice of the levy from the employer. The Service does not directly provide the taxpayer with a copy of the notice of levy on wages. Both to comply with due process requirements and to ensure the taxpayer has an opportunity to claim exemptions, the employer must still provide a paper copy of the

Form 668-W (or a new form that is its functional equivalent) to the taxpayer. [REDACTED]

3. A financial institution should not remit funds out of a taxpayer's account to the Service before the 21-day holding period expires.

IRC § 6332(c) provides a special rule for banks, which is that deposits, including interest thereon, shall be surrendered only after 21 days after service of levy. This gives the taxpayer, bank, or other third parties an opportunity to contest any errors with respect to the levy before the funds are actually turned over to the Service. It has been suggested that a bank participating in an electronic levy program may wish to surrender funds immediately to a special account before the 21-day period expires. Presumably, the special account would be set up by the Service to temporarily hold these funds and assuming there have been no errors, the funds would be credited to the taxpayer's liability after the 21 day period has lapsed.

We conclude that this type of arrangement would be a clear violation of section 6332(c), and so the Service does not have the flexibility to temporarily hold the funds in a special account. The only exception to the holding period permitted by the regulations is where the depositor waives the holding period. Treas. Reg. Section 301.6332-3(c)(4).

Further, interest that accrues on the taxpayer's balance under the terms of the bank's agreement with the depositor is also subject to the levy; if funds are removed before the 21-day period expires, interest may not accrue properly and an incorrect amount may be surrendered. See Treas. Reg. § 301.6332-3; IRM 5.11.4.3.

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

Please contact Rachel Gregory at (202) 622-6658 with any further questions.



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