

Part 5 -- Collection Activity

Chapter 11 -- Notice of Levy

Section 1 -- Background, Pre-Levy Actions & Restrictions on Levy

5.11.1.1 (01-19-1999)

Background

1. This section contains background information.

5.11.1.1.1 (01-19-1999)

Legal Authority

1. The Internal Revenue Code (IRC) authorizes levies to collect delinquent tax. See IRC 6331. Any property or right to property can be levied, unless it is exempt. See 1.3. All references to property in this handbook include rights to property.

5.11.1.1.2 (01-19-1999)

Notice of Levy vs. Seizure

1. There is no legal distinction between levy and seizure.
 - o Generally, use a notice of levy to take a taxpayer's property held by someone else, if it can be turned over by writing a check.

EXAMPLE:

Notice of Levy is often used to take a taxpayer's bank account, wages, or receivables.

- o If the taxpayer is holding the property, use procedures in the seizure and sale handbook.

EXAMPLE:

Seizure procedures are often used to take a taxpayer's car, house, or business property.

- o If a third party is holding property that can not be turned over by writing a check, use seizure procedures. Also, give a notice of levy to the person holding the property. This is the demand to turn over the taxpayer's property.

EXAMPLE:

If a taxpayer's car is seized in a commercial parking lot, use seizure procedures. Give the attendant a notice of levy to demand that the car be turned over.

2. There is no required sequence for levying. Generally, though, levy funds that are held by a third party first. This is usually less time consuming.

5.11.1.1.3 (08-18-2000)

Appeals

1. Taxpayers may be entitled to a "Due Process" hearing, or

an equivalent hearing, under IRC 6330. See Chapter 9 (Taxpayer Rights) of IRM 5.1, General Handbook.

2. Notices of levy can also be appealed under the Collection Appeals Program (CAP), regardless of whether the taxpayer can appeal under IRC 6330. CAP was created to give taxpayers a chance for administrative review that is independent from the Collection function. See Chapter 9 (Taxpayer Rights) of IRM 5.1, General Handbook.

5.11.1.1.4 (11-05-1999)

Taxpayer Advocate Cases

1. Taxpayer Advocate Cases may be initiated because of notices of levy. See IRM 5.1 General for criteria and procedures.

5.11.1.2 (01-19-1999)

Pre-Levy Actions

1. This contains guidance on pre-levy actions.

5.11.1.2.1 (08-18-2000)

Required Notices

1. Before property can be levied, the taxpayer must be given
 - a
 - o a notice and demand,
 - o a notice of intention to levy, and
 - o a notice of a right to a Collection Due Process (CDP) hearing.

See Exhibit 5.11.1-4

NOTE:

When a notice of levy is issued, it is a third party contact. Section 3417 of the IRS Restructuring Act (IRC 7602(c)) says that taxpayers must be given reasonable notice that the Service plans to make such contacts to collect delinquent tax. Letter 3164 and Notice 1219, Notification of Potential Third Party Contact are used to give this notice. Prepare Form 12175 after the third party is contacted. See IRM 5.1.17

2. The notice and demand must be left at the taxpayer's home or business, or it must be mailed to the taxpayer's last known address. This is normally taken care of by a master file notice mailed shortly after there is an assessment. This is commonly referred to as the first notice. The taxpayer has ten days to pay the amount that is owed. See IRC 6331(a). If the taxpayer neglects or refuses to pay the amount due, a Federal tax lien arises.

NOTE:

On January 1, 1997, Taxpayer Bill of Rights 2 changed the interest free period for this notice. No interest is charged for 21 days after the notice and demand,

if less than \$100,000 is owed. If at least \$100,000 is owed, no interest is charged for ten business days. These changes did NOT affect the ten day notice and demand period before issuing a levy.

3. In addition, the taxpayer must be given a notice of intention to levy. The taxpayer has thirty days to pay the amount that is owed before property can be levied. See IRC 6331(d). This notice must be:
 - o given in person,
 - o left at the taxpayer's home or business, or
 - o sent to the taxpayer's last known address by certified or registered mail.

NOTE:

Use registered mail only if the taxpayer is outside the United States. There is no international certified mail.

EXCEPTION:

If collection is in jeopardy, only the notice and demand is required, and then property can be levied immediately. See Section 3.

4. For any levy served after January 18, 1999, the taxpayer must also be given a notice of a right to a hearing. See IRC 6330. The taxpayer has thirty days after this notice is given or mailed to ask for a hearing, before property can be levied. This notice is given to the taxpayer in the same manner as the notice of intent to levy, except that if it is mailed, a return receipt MUST be included. See 5.1.9 for instructions about the taxpayer's right to a hearing, including whether the TP can appeal, when the TP can appeal, and the consequences of asking for an appeal.

EXCEPTION:

The exception for jeopardy in (3) also applies to the notice of a right to a hearing. However, the taxpayer must still be given the opportunity for a hearing within a reasonable time AFTER the levy, if collection is in jeopardy. See Section 3.

EXCEPTION:

A taxpayer's state income tax refund can be levied, even though the TP may not have already been sent a notice of a right to a hearing. However, the taxpayer must be given the opportunity for a hearing within a reasonable time AFTER the levy.

5. When counting the ten day or thirty day periods, do not count the day that the notice is mailed or given to the taxpayer. Then, when the time to pay has run out, the next action can be taken on the following day.

CAUTION:

As long as a request for a hearing is correctly addressed and postmarked timely, it is timely. Allow at least fifteen additional days after the thirty day period ends, in case the taxpayer mails a request for a hearing on the thirtieth day.

EXAMPLE:

A notice of a right to a hearing is given to the taxpayer on March 1. The taxpayer has until the close of business on March 31 to pay or request a due process hearing. On April 1, the Code allows property to be levied, unless something has happened to

prevent it, e.g. payment, request for a hearing, installment agreement made, etc. However, counting the additional fifteen days, property will not be levied until April 16.

EXCEPTION:

After thirty days, if the taxpayer confirms that no hearing has been requested, there is no need to wait the additional fifteen days.

EXCEPTION:

If the notice was unclaimed, returned undelivered, or if delivery was refused, there is no need to wait the additional fifteen days, as long as the notice has only been sent to one address. If multiple notices have been sent, as described in 1.2.1.1:(3), wait the additional fifteen days, unless all of them are returned undelivered, unclaimed or refused.

EXCEPTION:

If collection is in jeopardy, a notice of levy can be served without waiting the additional fifteen days. The notice of levy must be approved by the group manager and by the next level manager. If possible, consult with counsel before the levy is served. The appeal process in 3.6 does not apply, because the thirty day waiting period has passed. However, if the taxpayer mailed or delivered the request for a CDP appeal before the thirty days ran out, a CDP hearing will be held. If not, the taxpayer can still discuss the levy with the group manager or the Taxpayer Advocate, as well as discussing it with Appeals under the Collection Appeals Program.

6. The required notices must be sent for each module included on a levy.

CAUTION:

If the required notices for a module have been sent, and then additional tax is assessed, new notices offering a due process hearing must be sent before that additional assessment may be included in a levy.

EXAMPLE:

The three notices have been sent for the tax owed on a taxpayer's 1996 income tax return, and nothing has happened to stop collection action for that assessment, e.g. a timely request for a due process hearing. A notice of levy can be issued to collect this tax. If a TC 290 posts on that module later, a notice and demand will be sent from the service center. However, a new notice of intent to levy and notice of a right to a hearing must also be sent for this additional assessment before it can be included in a notice of levy.

7. Also, see 6.11.2 when a levy is served on a non-liable spouse in a community property state.

5.11.1.2.2 (08-18-2000)

Satisfying the Notice Requirements

1. Generally, a notice and demand is sent before a revenue officer receives TDAs.

2. The service center sends the taxpayer the notice and demand, unless there is a jeopardy, quick, termination or prompt assessment.
3. The Notice of Intent to Levy and Notice of Your Right to a Hearing is issued only when the next planned action for ACS or a revenue officer is to levy, because offering an appeal to taxpayers for whom no levies will be issued would be inappropriate. However, when the levy is part of a computer matching program in which files of liabilities are matched against files of income/assets, the notice can be issued, although the levy is not necessarily the next planned action. Also, see 8.3(6) of IRM 5.7, Trust Fund Compliance Handbook. This means that after January 18, 1999, there is no need to check whether IDRS issued a notice of intent to levy. Regardless of whether it did, ACS or Collection Field function (Cff) must issue a notice of intent to levy/notice of a right to a hearing, referred to above, before property is levied, unless collection is in jeopardy.

5.11.1.2.2.1 (08-18-2000)

Recognizing if ACS Issued a Notice of Intent to Levy/Notice of a Right to a Hearing

1. ACS can issue a notice of intent to levy/notice of a right to a hearing.
2. If the ACS transcript shows action code LT11 on or after 1-19-1999 for the same liabilities that a revenue officer will be levying to collect, there is no need to issue this notice in Cff. An LT11 issued before this date was only a notice of intent to levy. It did not include the notice of a right to a hearing.

EXCEPTION:

The ACS transcript may show LT11, but the notice may have been stopped before it was sent.

If	And	Then
Action Code CLnn (nn is a two digit number) is on the ACS transcript.	This Code is the same date as the LT11.	The LT11 was not sent.
Action Code MCLT is on the transcript.	The LT11 is the most recent LTnn (nn is a two digit number) before the MCLT.	The LT11 was not sent.

* Another way to recognize if the notice has been issued already is to see if there is a Transaction Code (TC) 971, Action Code (AC) 069 on the module. This is input after the service center mails the ACS notice. Then, the results of mailing the notice are shown by a second TC 971.

- * AC 066 The return receipt was signed (not necessarily by the taxpayer) , so the notice was delivered. See second Note in 1.2.2.2:(6).
- * AC 067 Delivery was refused or the notice was unclaimed.
- * AC 068 The notice was returned, undelivered.

NOTE:

Action Codes 066-069 can not be input on IRAF modules.

5.11.1.2.2.2 (08-18-2000)

Issuing Notice of Intent to Levy/Notice of a Right to a Hearing in CFf

1. When levy is the next planned action, the revenue officer must first issue a notice of intent to levy/notice of a right to a hearing before a notice of levy is issued, unless collection is in jeopardy or ACS already issued an LT11 for all of the periods included in the levy. Letter 1058(DO) Rev 1-1999 or the ICS version of this letter is used for this. These letters are both a notice of a right to a hearing and a notice of intent to levy. With these letters, include:
 - o Publication 594 (Understanding the Collection Process),
 - o Publication 1660 (Collection Appeal Rights),
 - o Form 12153 (Request for a Collection Due Process Hearing), and
 - o A copy of the letter.
 - o An envelope.

CAUTION:

The date on the 1058 MUST be the date it is given to, left for, or mailed (return receipt requested) to the taxpayer.

CAUTION:

If the 1058 is sent but mistakenly is not sent to the taxpayer's last known address, issue another 1058, i.e. a substitute for the one that was not sent to the last known address. Release any levies that had been served for the liabilities included in the improperly mailed 1058. Also, see 1.2.1.1 and 2.3.

REMINDER:

If the taxpayer has an authorized representative, a copy of correspondence to the taxpayer must also be given to the representative. However, use regular mail for the copy.

NOTE:

In addition to ACS + CFf, a Collection Due Process Notice may be issued by master file for the State Income Tax Levy Program or the Federal Payment Levy Program. See 5.11.7, Automated Levy Programs.

2. For IMF taxpayers, also include Notice 609 (Privacy Act Notification) with the letter.
3. Issue the 1058 only after at least one attempt to contact the taxpayer in person, by telephone, or by sending an appointment letter.

Exceptions: An attempt to contact the taxpayer before sending a 1058 is not necessary if

 - o the taxpayer is in another country,
 - o the taxpayer is dead (however, try to contact the administrator/executor of the estate, if one can be found),
 - o there has already been an attempt to contact the taxpayer, a 1058 or LT11 was sent, and then additional modules were received,

- o the taxpayer can not be located,
 - o no telephone number can be found, and the taxpayer is either potentially dangerous or lives in a remote location, where field calls are rarely made, or
 - o the levy is issued in a computer program in which files of liabilities are matched against files of income/assets (not merely a computer match to identify levy sources) e.g. levy on state tax refunds.
4. Do not issue the 1058, unless there is a levy source, and levy is the next planned action. See 8.3(6) of IRM 5.7, Trust Fund Compliance Handbook. Also, do not issue it, if there is a restriction that would prohibit levies when the 45 day waiting period runs out. See 1.3. If the restriction has an ending date, though, the notice can be issued as long as the 45 day waiting period does not run out before the restriction ends.

EXAMPLE:

The taxpayer offers to pay the tax in installments. Because of the pending installment agreement, there is generally a restriction on levy. See 1.3.9. While the agreement is pending, the restriction does not have a specific ending date. Do not issue Letter 1058.

EXAMPLE:

The taxpayer's request for an installment agreement is rejected, and the independent reviewer sustains the rejection. The taxpayer then has thirty days to appeal the rejection, plus there is an additional fifteen day tolerance period. See 5.14.6.4. If levy is the next planned action, Letter 1058 can be issued at the same time the taxpayer is notified of the rejection, and the two 45 days periods will run concurrently.

EXAMPLE:

The taxpayer's request for an installment agreement is rejected, and the independent reviewer sustains the rejection. If Letter 1058 is not issued when the taxpayer is notified of the rejection, and the rejected agreement is appealed, a new restriction arises that does not have a specific ending date. Do not issue Letter 1058.

EXAMPLE:

The taxpayer fails to meet the terms of an agreement, so the Service proposes to terminate it. There is a 90 day restriction on levies. See IRM 5.14.8.4(3) and 5.14.8.5. When the letter is issued that proposes terminating the agreement, Letter 1058 can not be issued, because there would still be a restriction preventing levies when the 45 day waiting period for the 1058 runs out. However, when there are no more than 45 days left on the restriction, and levy is the next planned action, Letter 1058 can be issued, as long as the taxpayer has not appealed the defaulted agreement.

5. Because taxpayers only have the right to one Collection Due Process Hearing for each liability, avoid listing liabilities on Letter 1058 which have already been

included in such a notice. Sending more than one notice for a liability may give taxpayers the impression they can have another Due Process Appeal for that liability.

REMINDER:

None of the service center IDRS notices are notices of a right to a hearing.

REMINDER:

If the notice is mailed, it must be sent by certified or registered mail WITH A RETURN RECEIPT .

6. When the notice is mailed, input Transaction Code (TC) 971, Action Code (AC) 069 on modules that do not already have this on them. Then, when the results of the delivery are known, input Action Code 066, 067, or 068, as shown in 1.2.2.1. Ask the terminal operator to input the date the action took place rather than the date of the input.

EXAMPLE:

The 1058 is mailed on March 10. The TC 971, AC 069 is input on March 12. The date of the TC is March 10.

- A. If the notice is given in person instead of being mailed, input TC 971, AC 069 and TC 971, AC 066 on the same date to indicate this.
- B. If the notice is left at the taxpayer's home or business address instead of being mailed, input TC 971, AC 069, and TC 971, AC 067 on the same date to indicate this.

NOTE:

Using the AC 067 has nothing to do with delivery being refused. Inputting it the same date as the AC 069 is merely a way to show how the notice was delivered. Refused delivery is distinguished from this by the AC 067 being at a later date than the AC 069.

NOTE:

If the return receipt comes back unsigned, but the envelope is not attached, use Action Code 066. If there is a postmark date on the receipt, use that as the date of the transaction. If there is no postmark date, use the date that the return receipt is received .

NOTE:

In the past, if an IDRS 504 notice (status 58) had never been issued for a module, TC 971 Action Code 35 was input to increase the failure to pay rate to 1% after Letter 1058 was issued. However, Action Code 069 now causes this change, if the higher rate has not already gone into effect because of a 504 notice. Action Code 35 is not necessary.

5.11.1.2.2.3 (11-05-1999)

Issuing Notice of Intent to Levy/Notice of a Right to a Hearing for Joint IMF TDAs

1. If there are TDAs for jointly filed income tax returns, prepare two copies of Letter 1058.
 - A. If they are not delivered in person or left at the taxpayers' home or business, mail them in separate envelopes to the taxpayers. Address one envelope to

the primary taxpayer and one to the secondary, although both taxpayers' names will be on each of the notices. Do this regardless of whether the taxpayers live at the same address or different addresses. Do not use a window envelope. If there are changing name lines, be careful that taxpayers are not sent a notice for taxes they do not owe.

EXAMPLE:

John and Mary Doe owe tax for their 1996 joint income tax return. John Doe also owes tax for his single return for 1995. John must be sent a notice for both years, but only send Mary a notice for 1996.

- B. If the notices are going to different addresses, do not reveal one person's address to the other.

EXAMPLE:

William and Barbara White owe tax for a joint income tax return. They now have different addresses. One 1058 is printed with both names on it and William's address. This letter is put in a non-window envelope with only William's name and his address on it. A copy of the letter is printed for Barbara. Both names are also printed on her copy, but Barbara's address is used on it. Her copy of the notice is put in a non-window envelope with only Barbara's name and her address on it.

- C. Before sending the L1058 to joint taxpayers living at different addresses, try to contact both of them, so the letter is not a surprise to either of them. See 1.2.2.2:(3). If one of the taxpayers is living in a different jurisdiction, try to get a telephone number to call this person before sending the L1058s. If a number can not be found or the attempted call fails, the letters can still be sent.
2. Before sending the 1058 to the secondary taxpayer, check master file on-line to find out if this person has filed a return with a different address since the joint return(s) that generated the TDAs. This step is not necessary when there has been contact with the taxpayers confirming the secondary's address or when the TDAs are for the most recent tax year.

EXAMPLE:

There are TDAs for Steven and Marcia Brown for their joint income tax returns for 1996. The revenue officer has not been able to contact the taxpayers but has found a levy source, so two 1058s are going to be sent. Before sending them, the revenue officer uses master file on line to check Marcia Brown's social security number and finds that she has filed a more recent joint return with her second husband. The 1058 mailed to Marcia needs to be mailed to the address on her most recent return rather than the same address where Steven Brown's 1058 will be mailed.

3. If levy on one of the taxpayers' property is prohibited, do not send a separate notice to that person. Instead, prepare a notice with both taxpayers' names on it, and

mail it in an envelope addressed to the taxpayer whose property will be levied as the next, planned action. When the condition that prohibits levy no longer exists, and a levy is the next planned action to collect from the person whose property previously could not be levied, send a 1058 to that person. Also, see 2.1.2:(4).

EXAMPLE:

John and Mary Doe owe tax for a joint return. They are separated, and Mary is making payment on an installment agreement for the joint liability. John is not a party to the agreement. The revenue officer identifies the bank where John has an account and plans to send a notice of levy to the bank. Before the bank account can be levied, John must be sent a 1058, if one has not already been sent for the liabilities that will be included in the notice of levy. The notice will have both names on it, but it will only be mailed to John. Mailing a 1058 to Mary would be improper, because her installment agreement prevents levy on her property. Later, Mary defaults on her agreement, and she has the right to appeal the default. When her property is going to be levied, though, she must first be sent a 1058 giving her the right to a due process hearing. During the waiting period for her 1058 and during her appeals, collection can continue against John.

EXAMPLE:

Joseph and Marcia Smith owe tax for a joint return. Nothing prohibits levy on their property. A levy source is found for Joseph but not Marcia. As long as a levy is about to be served as the next planned action, and there is no restriction on being able to levy the property of both taxpayers, separate 1058s will be sent to both of them.

4. Input the TC 971 and ACs as explained in (3). However, when separate notices are sent for joint assessments, include the secondary taxpayer's social security number as, "X-Ref XXX-XX-XXXX," in the Remarks on the posting document for inputting the record of that person's notice. This will distinguish the primary and secondary taxpayers' ACs.

EXAMPLE:

John and Mary Doe's notices for their joint 1996 income tax return are both mailed on 1-29-1999. John's return receipt comes back signed, but Mary's is returned undelivered. There will be two TC 971s with AC 69 on 1-29-1999. One will have Mary's X-Ref SSN. The other will have no X-Ref SSN. There will also be a TC 971 AC 66 with no X-Ref SSN for John's notice and a TC 971 AC 68 with Mary's X-Ref SSN for Mary's notice.

5. When ACS issues an LT11, it will only issue one notice for joint IMF assessments, unless the taxpayers are known to be living at different addresses.. The Restructuring and Reform Act includes a standard for separate notices, "wherever practicable." Because of the volume and batch processing of these computer printed notices, ACS will not normally issue separate notices for joint assessments. The

single ACS notice is, nevertheless, notice to both taxpayers. Additional, separate notices do not have to be sent when Cff is collecting the same liabilities for which ACS already issued its Notice of Intent to Levy/Notice of a Right to a Hearing.

A. While working the TDAs in Cff, however, the revenue officer may discover that the taxpayers were separated, and one of them was not living at the last known address when the LT11 was sent. As long as that was the person's last known address when the notice was sent, however, it was a legally valid notice of a right to a hearing. See 1.2.1.1. Nevertheless, it may be inequitable to take this person's property without notice. Give Letter 3174(P) to the taxpayer who was not living at the address before serving additional notices of levy on that person's property, and release notices of levy that have been served on that person's property. See Exhibit 1-3.

EXAMPLE:

ACS had TDAs on Joe and Janet Green. An LT11 was sent to the address shown on master file for them. The revenue officer then receives the TDAs in transfer from ACS and finds out that Janet Green was not living at that address when the LT11 was sent. However, she had not reported her address change, e.g. she had not filed a return showing a new address.

B. ACS may have sent LT11 to the address shown on master file for the last joint return that the taxpayers filed. However, if they had separated, they were living at different addresses when the LT11 was sent, and the secondary had already reported a new address, that becomes that person's last known address. In this case, a 1058 (i.e., a substitute notice) needs to be sent to the secondary taxpayer before that person's property can be levied.

EXAMPLE:

ACS had TDAs on James and Sandra Jones. An LT11 was sent to the address shown on master file. The revenue officer then receives the TDAs in transfer and finds out that Sandra Smith was not living at that address when the LT11 was sent. She is filing jointly with her new husband, and they had already filed a return showing their address when the LT11 was sent.

6. By the same token, the revenue officer may send two 1058s for a joint TDA and discover later that one of the taxpayers was living at a different address when the letters were sent. Although the notice is legally valid if it is sent to the last known address, it has been administratively determined that Letter 3174(P) will be sent to this taxpayer before serving additional notices of levy on that person's property, and notices of levy that have already been served on that person's property will be released.

NOTE:

Because of procedures in (2), above, this should only be an issue if the secondary taxpayer has not

reported a new address.

5.11.1.2.2.4 (08-18-2000)

Issuing Notice of Intent to Levy/Notice of a Right to a Hearing for Deceased Taxpayers

1. Generally, if a taxpayer has died, a proof of claim may be filed to collect delinquent tax from the estate. In some circumstances, however, a notice of levy may be called for.

EXAMPLE:

The estate or certain assets may not be going through probate.

EXAMPLE:

For a joint return, the assets of the surviving spouse may be levied to collect the delinquent tax.

2. Special Procedures and/or district counsel may need to be consulted to determine whether a notice of levy can be served.
3. If a notice of levy will be served, Letter 1058 must be sent, even if the TP has died.
4. For single liabilities

IF	THEN
No estate administrator or executor is known	Send the 1058 to: John Smith (Decd) John Smith's Last Known Address

IF	THEN
An estate administrator or executor is known	Send the 1058 to: John Smith (Decd) Charles Jones, Administrator (or Executor) Charles Jones' Last Known Address

* For joint IMF liabilities

IF	THEN
No estate administrator or executor is known	Send two 1058s. Address both to: James Doe (Decd) and Mary Doe Use James' last known address on his 1058 and Mary's last known address on hers. Put James' 1058 in a non-window envelope addressed only to him at his last known address. Put Mary's 1058 in a non-window envelope addressed only to her at her last known address.

IF	THEN
An estate administrator or	Send two 1058s.

executor is known Address one to:
 James Doe (Decd) and Mary Doe
 William Green, Administrator (or
 Executor)
 William Green's Last Known
 Address
 Put this in a non-window envelope
 addressed the same way as the
 letter, except delete Mary's
 name.
 Address the other 1058 to:
 James Doe (Decd) and Mary Doe
 Mary's Last Known Address
 Put this in a non-window envelope
 addressed the same way as the
 letter, except delete James'
 name.

5.11.1.2.2.5 (08-18-2000)

Issuing Notice of Intent to Levy/Notice Of a Right to a Hearing
to Partnerships

1. When sending Letter 1058 to a partnership, send it to the last known address of the partnership. See 1.2.1.1.
2. Do not send additional 1058s to the partners at their addresses.

EXCEPTION:

If the partnership is no longer operating, or there is another reason to know that it is not at the last known address, Letter 1058 must still be sent to this address. However, send a copy of the letter and the enclosures to any general partners whose addresses are known, e.g. partners who provide their addresses when contacted about the taxes, and partners whose addresses are found through normal skip tracing when a partnership is not at its last known address. Use regular mail for the copies sent to the partners.

5.11.1.2.2.6 (08-18-2000)

Timeliness of Notice

1. The purpose of the Notice of Intent to Levy described in 1.2.1:(3) is to warn the taxpayer that continued failure to respond can be expected to result in imminent enforcement. However, when a long time passes after the notice is issued and there has not been enforcement, the notice loses its effectiveness as a warning.
2. If a notice of intent to levy is over 180 days old, it is legally valid to support subsequent collection action by levy. However, it has been administratively determined that the taxpayer will get a new warning of enforcement action before a notice of levy is issued.
 - A. This warning must be documented in the case file. It may be
 - + given orally (in person or by phone) that there is a deadline (not necessarily thirty days)

after which there will be enforcement, or
+ given in writing (see Exhibit 5.11.1-3), if the taxpayer can not be contacted.

NOTE:

Do not issue another Letter 1058 to give the taxpayer a timely warning. The taxpayer gets the opportunity only once for a pre-levy hearing described in that letter for each liability.

Sending another 1058 will give the incorrect impression that the taxpayer can do this again.

EXCEPTION:

Collection is at risk. The group manager, and the next level manager, must approve the levy.

The taxpayer can discuss the levy with the group manager, the Taxpayer Advocate, and the Appeals Officer.

EXCEPTION:

Computer matching programs in which files of liabilities are matched against files of assets/income resulting in immediate payment, e.g. levy on state tax refunds.

EXCEPTION:

Enforcement has taken place within the last 180 days. Enforcement only includes seizures and notices of levy, so the taxpayer should realize there has been enforcement. For example, if a notice of levy is sent to an employer, and it is returned because the taxpayer no longer works there, this notice of levy does not start the count for a new 180 day period. The taxpayer would have no way to realize there had been an attempt to enforce. On the other hand, if a levy were sent to a bank and a copy was sent to the taxpayer, even if there were no proceeds, the taxpayer would have been notified of the levy.

EXCEPTION:

The taxpayer is a trust fund repeater. See IRM 1.11:(1) & (2) of IRM 5.7, Trust Fund Compliance Handbook.

B. This "timeliness" warning is in addition to the notices described in 1.2.1 (notice and demand/notice of intent to levy), which are required by law and must have been sent at some point. An oral warning to pay is not adequate to allow a notice of levy to be served if there has never been a thirty day notice of intent to levy and a notice of the right to a hearing.

C. If the most recent warning of enforcement is over 180 days old, give the taxpayer a new one before taking enforcement. This means that over the life of the liability, there may be a need to give this warning more than once.

EXAMPLE:

A letter 1058 is sent to a taxpayer, followed by a notice of levy. After 180 days pass with no additional enforcement, a new warning needs to be given before another notice of levy or a seizure, unless one of the exceptions in a.

exists. Then, a new 180 day count begins.

3. The notices described in 1.2.1 must have been sent for every module that is included in a notice of levy. However, the taxpayer has had timely notice as long as there has been recent warning of enforcement for at least one module included in a notice of levy within the last 180 days. In other words, the requirement for the notices in 1.2.1 must be met for each module included in a notice of levy, but the timeliness of warning is for the entity rather than each module.

EXAMPLE:

The notices described in 1.2.1 have been sent for all modules included in the notice of levy. They are over 180 days old, so the TP is given a new oral warning of enforcement. After the deadline passes, a new module is received for which a notice of intent to levy and notice of the right to a hearing had been sent more than thirty days ago, so the legal requirement for this module has been met. A new oral warning is not necessary, even if the notice of intent to levy and notice of the right to a hearing for this new module had been sent more than 180 days earlier, because the TP has been warned of enforcement within the last 180 days.

4. If the taxpayer can not be located, the notices described in 1.2.1 still must have been sent to the last known address. However, additional notices for these liabilities do not have to be sent to the last known address just to meet the timeliness requirement.

5.11.1.2.3 (08-18-2000)

Delegation Orders

1. Regulations under IRC 6331 have delegated levy authority to district directors. To be most efficient, redelegate this to the lowest reasonable level.
2. See Exhibit 5.11.1-1 for suggested delegations.
 - A. Items in I and II of the Exhibit are suggested local delegation levels. If local conditions justify delegating otherwise, management has the discretion to address those needs by varying from the suggested delegation.

EXAMPLE:

A small post of duty (POD) has few employees at the suggested level for releasing levies. Local management, then, delegates authority to a Customer Service employee at the POD, so taxpayers who have been levied can get the levies released immediately when they bring payment to the POD.

- B. Items in III of the Exhibit, however, identify the lowest level that certain actions can be delegated. Local management will not delegate lower than this.

5.11.1.2.4 (08-18-2000)

Managerial Approval

1. Certain Notices of levy must be approved by managers. See Exhibit 5.11.1-1. Managers must approve the levies described in III of the Exhibit, as well as any levies issued by employees who have not been delegated authority to levy.
2. When the notice of levy is turned in for approval, include the following information:
 - o a summary of any information the taxpayer has provided that may affect the decision to levy, e.g. claims that the assessment is wrong;
 - o if the taxpayer has submitted such information, an explanation that the employee has reviewed the information, and why the notice of levy should still be served;
 - o verification that the amount is still owed, e.g. IDRS has confirmed the amount is still unpaid;
 - o an explanation that the notice of levy is appropriate, considering the amount owed and any circumstances that are known about the taxpayer and the liability.
 - o other collection alternatives considered or rejected.
3. Some things that might influence how appropriate the levy is may include, among other things:
 - o the taxpayer's responsiveness to attempts at contact and collection,
 - o anything that is known about the taxpayer's financial condition,
 - o the taxpayer's history of delinquency,
 - o the taxpayer's effort to pay the tax,
 - o whether current taxes are being paid,
4. This information must be written, but the format can be at local management discretion.

EXAMPLE:

A notice of levy that a group manager approves, may need no more than a history entry, and the case file can be turned in with the notice of levy. In ICS district, on the other hand, the history entry can be on ICS, and the notice of levy can include a note telling the group manager the date of the entry, so it can be retrieved on ICS.

5. The approval must also be written, but the method can be at local management discretion.

EXAMPLE:

The revenue officer and manager are at the same location, so the notice of levy is turned in to the group manager who signs the levy.

EXAMPLE:

The revenue officer and manager are at the same location, so the revenue officer signs the notice of levy and turns it in to the manager who initials it to show it has been approved.

EXAMPLE:

The revenue officer and manager are at different locations. The revenue officer writes an explanation of why the notice of levy should be approved, includes an "Approved" line on it, and faxes this to the manager. The manager signs on the "Approved"

line, and faxes this back to the revenue officer who puts this in the case file to document the approval, and then the revenue officer signs the notice of levy.

EXAMPLE:

The revenue officer and manager are at different locations. The revenue officer faxes a copy of the first page of the notice of levy to the manager who signs it and faxes it back to the revenue officer.

The revenue officer places this in the case file to document the approval, and then the revenue officer signs the notice of levy.

EXAMPLE:

The revenue officer uses the Integrated Collection System (ICS) to send an email message to the manager asking for approval of the notice of levy. The manager accesses the case and records the approval in the ICS history. The manager's access to the case generates a notification to the revenue officer who then accesses the case, sees that the levy is approved, prints the notice of levy, and signs it.

6. A notice of levy that requires the Director or Assistant Director's (DD/ADD) approval must include a memo explaining the information in (2). If all levels approve the notice of levy, but the DD/ADD rejects it, the rejection must be in writing and explain the reason(s). Keep a copy of memos asking for approval and the rejections with the case.
7. If a courtesy levy is involved, indicate that the required manager has approved of the notice of levy.

5.11.1.2.5 (08-18-2000)

Approval of Alter-Ego, Nominee, and Transferee Notices of Levy

1. Notices of levy that name alter-egos, nominees, and transferees often involve complex issues and are likely to result in litigation.
2. See 1.18.1 and 1.18.2 of the Federal Tax Liens Handbook, IRM 5.12, for guidance about whether the facts support such a determination. Also, see 14.2 of the General Handbook, IRM 5.1, for additional guidance about transferee liability.
3. See Exhibit 5.11.1-1 for approval level and 1.2.4.
4. Do not issue notices of levy listing alter-egos, nominees, or transferees without first getting legal review, advice, and written direction from Field Counsel as to:
 - o the need for a supplemental assessment
 - o the need for a new notice and demand
 - o the need for a new notice of intent to levy and notice of the right to a hearing
 - o the language to be included on pre-levy notices and the notice of levy

5.11.1.3 (11-05-1999)

Restrictions on Levy

1. This contains restrictions on levy. See 9.3.3 of IRM 5.1, General Handbook, regarding restrictions on levy during Due Process Hearings.

5.11.1.3.1 (08-18-2000)

Property Exempt from Levy

1. IRC 6334 describes property that is exempt from levy. Some are property that would be taken by seizure procedures, if not for the exemption. See seizure instructions about these. Others are income that would be taken by a notice of levy, if they were not exempt. The exempt income sources are:

- o Unemployment benefits,
- o Certain annuity and pension payments, including payments under the Railroad Retirement Act, Railroad Unemployment Insurance Act, Special Pensions for Medal of Honor Winners, and Retired Serviceman's Family Protection Plan and Survivor Benefit Plan,
- o Workers Compensation,
- o Judgment for support of minor children, if the judgment is before the date of the levy,
- o Minimum exemption for wages, salary, and other income,
- o Certain military service connected disability payments,
- o Certain public assistance payments,
- o Assistance under the Job Training Partnership Act.

NOTE:

IRC 6331(h) allows for levy on 15% of certain previously exempt government payments. However, the intent of this provision was to make a computer match possible between tax liabilities and records of payments from the government's disbursing agencies, so a flat percentage of the payments could be attached. The computer matches are being arranged by National Office. Continue refraining from issuing Forms 668A(C)(DO) and 668W(C)(DO) on the payments listed above. See 7.2 for additional information about levies issued under IRC 6331(h).

2. See IRC 6334 and the Legal Reference Guide for Revenue Officers for additional information about property exempt from levy.
3. Members of the military and Public Health Service employees may deposit money in a Special Treasury Fund. Money can be deposited while the employees are outside the U.S. and its possessions. This money can not be levied. See Subsection 1035 of Title 10 of the U.S. Code.
4. No other property is exempt from levy. No state or local law can exempt property from levy to collect federal tax.

EXAMPLE:

Even if property is exempt under a state homestead exemption law, it is not exempt from federal levy.

5.11.1.3.3.1 (08-18-2000)

Cash Deposited as Security for Bail

1. Levy cash deposited as security for bail only if collection is at risk. The group manager and the next level manager must approve the levy.
2. If a levy is served, tell the Court Clerk to respond when the taxpayer no longer requires a bond.
3. If collection is not at risk, do not levy. Instead, ask the Court Clerk to notify IRS when the bond is no longer required. Then, decide whether to levy the bond before it is returned to the taxpayer.

5.11.1.3.3.2 (01-19-1999)

Forfeited Property

1. Sometimes, property used in a crime or acquired through crime is forfeited.
EXAMPLE:
Criminal Investigation may seize money used in violating the Internal Revenue Code. This may be subject to judicial forfeiture.
2. If property can be forfeited, it will not be levied. However, Criminal Investigation may alert Collection to levy property if the court declares it is not forfeited.

5.11.1.3.4 (08-18-2000)

Property Outside the United States

1. Serve notices of levy only within the United States, including the District of Columbia and U.S. possessions and territories. All of these are referred to below simply as the U.S.
2. If the taxpayer is outside the U.S., but there are assets here, they can be levied.
3. Never serve a notice of levy outside the U.S. Also, never serve a levy at another country's embassies, consulates, or missions, even if they are within U.S. Borders. See 6.9 of this handbook for levies served at the United Nations.
4. A foreign bank may have branches in the U.S. A notice of levy can be served at U.S. branches and reach funds held there. It might also reach funds in branches outside the U.S. See 26 CFR 301.6332. Contact Special Procedures and Field Counsel for advice.
5. Several countries, including Canada, now have reciprocal tax treaties with the United States. See 42.1.7.9 in IRM 5.1 General regarding the Mutual Collection Assistance Program.

5.11.1.3.5 (08-18-2000)

Appearance Date of Summons

1. Do not levy on a day the taxpayer must appear for a summons that was issued to collect tax. For example, the taxpayer may be summoned for a Collection Information Statement. See IRC 6331(g).
2. Even if a summons is issued for another reason, though, do

not levy on the appearance date. For example, there may be TDAs and TDIs on the same taxpayer. The summons could be issued for the unfiled return.

3. You are not expected to contact other divisions to ask if they have summoned the taxpayer.

EXCEPTION:

- o If collection is in jeopardy, a levy can be issued on the summons appearance date. Collection is only in jeopardy if one of the conditions allowing a jeopardy assessment exists. See Policy Statement P-4-88.
- o The group manager and the next level manager must approve the jeopardy levy.
- o If the notices described in 1.2.1 have been sent, and the time periods for them have passed, the appeal process in 3.6 does not apply. If possible, consult with Counsel before the levy is served. The taxpayer can discuss the levy with the group manager, the Taxpayer Advocate, or the Collection Appeals Officer.
- o If the notice requirements have not been satisfied, however, see Section 3 for required procedures and approval level.

5.11.1.3.7 (08-18-2000)

Repeated Levies on the Same Source

1. If repeated levies on the same source are necessary to collect a liability, document managerial approval.
 - A. Manager's approval is required only if the same source has been levied before to collect the same liability. The age of the prior levy does not affect whether approval is needed, although it may affect how frequently the source can be levied without causing a hardship on the taxpayer.
 - B. Review the case file/ICS history to determine if the source has been levied before to collect the same liability. If an ACS transcript has been received with the case, review the transcript, too, to see if the source was already levied to collect the tax.
 - C. For cases that have been worked, closed, and then reactivated, there will not be an available file to review. For example, if the case is a reactivated CNC, there generally is no way to know whether a source was levied before to collect the same liability. There is no need to attempt to locate the earlier file in the Federal Records Center, since they are not retired in a manner that makes any given file retrievable. However, if the case was previously worked in ICS, the sources previously levied through ICS might be retrievable from the archive, depending on how long ago it was reported CNC. If it is available through the archive, check that.
 - D. If there are any new modules that were not included in the earlier levy to the same source, manager's approval is not required, because the levy is being used to collect a new liability.

EXAMPLE:

A notice of levy was issued to collect taxes

owed for Form 941 for all four quarters of 1998. Later, another notice of levy is going to be issued to the same levy source. The four quarters of 1998 are still not fully paid, but there are now also TDAs for the first two quarters of 1999. A notice of levy to collect the six TDAs does not require manager's approval, unless it is required for a reason other than the fact that it is going to the same levy source.

- E. A continuous wage levy or a levy that otherwise reaches a series of future payments, e.g. retirement payments, is not a repeated levy requiring manager's approval.
- 2. See Policy Statement P-5-28.

5.11.1.3.8 (01-19-1999)

Government Training Allowances

- 1. People attending government training programs develop skills, so they can get jobs. Except for payments under the Job Training and Partnership Act, these payments are not exempt from levy. However, levying them would defeat the purpose of the programs, so these payments will not be levied.
- 2. See Policy Statement P-5-33.

5.11.1.3.9 (08-18-2000)

Pending & Active Installment Agreements

- 1. If the taxpayer makes an offer to pay a liability through installments, no levies can be served while the proposal is pending.

NOTE:

An unreversed transaction code (TC) 971, Action Code (AC) 043 means there is a pending installment agreement. This can be reversed by a TC 972, AC 043. However, if the pending agreement becomes an active agreement, there will also be a TC 971, AC 063, in which case both the pending and active installment agreement coding are reversed by a TC 971, AC 163.

EXCEPTION:

A levy can be served if the taxpayer waives the restriction, in writing.

EXCEPTION:

A levy can be served if collection is in jeopardy.

Collection is only in jeopardy if one of the conditions allowing a jeopardy assessment exists. See Policy Statement P-4-88.

- o The group manager and the next level manager must approve the jeopardy levy.
- o If this happens while a rejected installment agreement is being appealed, notify Appeals of the jeopardy determination.
- o If the notices described in 1.2.1 have been sent, and the time periods for them have passed, the appeal

process in 3.6 does not apply. However, the taxpayer can still discuss the levy with the group manager, the Taxpayer Advocate, or the Appeals Officer. If possible, consult with Counsel before the levy is served.

- o If the notice requirements in 1.2.1 have not been satisfied, see Section 3 for required procedures and approval level.

2. In addition to the period that an offer of an installment agreement is pending, no levy can be served
 - o for thirty days after an offer of an installment agreement is rejected
 - o while a rejection of a proposed agreement is being appealed
 - o while an agreement is in effect
 - o for thirty days after notifying a taxpayer that an agreement has been defaulted and will be terminated, i.e. CP523 or Pattern Letter 2975
 - o for an additional thirty days after an agreement is terminated
 - o while termination (or proposed termination) of an agreement is being appealed.

CAUTION:

Allow an additional fifteen days after each of these thirty day periods, as discussed in 1.2.1:(5).

NOTE:

Status 60 or an unreversed TC 971, AC 063 means there is an active installment agreement. This is reversed by TC 971, AC 163.

EXCEPTION:

The same as in (1), above.

3. By contrast, if a levy was issued BEFORE an installment agreement is made, it must be released, unless the agreement provides otherwise. See IRC 6343(a)(1)(C). However, if a levy was served and then the taxpayer offers to pay in installments, the levy does not have to be released while negotiations for the installment agreement are pending.
4. If an offer of an installment agreement is made merely to delay collection, levies can be served to collect the tax. The provisions, such as approval level (group manager and next level manager), appeal, etc., under the second exception in (1) apply, in this case.

CAUTION:

The determination that the offer is merely to delay collection must be apparent to any impartial observer, i.e. there is clearly no reality to the offer.

EXAMPLE:

The taxpayer offers to make a periodic, token payment such as \$1 a month.

EXAMPLE:

A taxpayer makes an offer to make installment payments. The agreement is rejected. The taxpayer, then, offers to increase the proposed agreement by a token amount, such as \$1.

5.11.1.3.10 (08-18-2000)
Refund Litigation

1. Responsibility for refund litigation depends on who is suing and the type of tax involved.
 - A. Special Procedures is responsible for refund litigation if
 - + the suit is filed by a third party, or
 - + a trust fund recovery penalty is involved.
 - B. The service center refund litigation unit is responsible for all other refund litigation.
2. For tax periods that begin before January 1, 1999, if the taxpayer files a suit for a refund of divisible taxes, Special Procedures or the service center refund litigation unit determines whether collection is suspended during the suit. For further information about refund suits, see IRM 105.2, Litigation and Judgments Handbook.
 - A. Divisible taxes include
 - + employment taxes
 - + trust fund recovery penalties
 - + excise taxes (except chapters 41-44 taxes)
 - + abusive tax shelter penalties.
 - B. Unlike other taxes, the taxpayer can pay only a portion of the amount owed before filing suit for refund, so this refund litigation happens while there still is an amount owed.
3. Generally, however, for tax periods beginning after December 31, 1998, no levy can be served to collect divisible taxes that are included in a suit for refund.
 - A. This change only applies to employment taxes and trust fund recovery penalties for employment taxes.
 - B. For trust fund recovery penalties for other taxes, continue to follow (2), above.

EXCEPTION:

 - If collection is in jeopardy, levies can be issued to collect the tax.
 - o If the notice requirements of 1.2.1 have not been satisfied, see Section 3 for required procedures and approval level of the jeopardy levy.
 - o If the notice requirements of 1.2.1 have been satisfied, the jeopardy levy must be approved by the Chief Collection function and Field Counsel (or Associate Field Counsel), but the appeal process in 3.6 does not apply. The taxpayer can still discuss the levy with the group manager, the Taxpayer Advocate, or the Appeals Officer.

EXCEPTION:

 - If the taxpayer waives the restriction on levy in writing, levies can be issued to collect the tax.

NOTE:

 - If either of these exceptions applies, notify Special Procedures that collection is not being withheld.
4. A levy that was issued before the suit was filed does not have to be released. However, contact Field Counsel for advice about whether to release the notice of levy. If necessary, tell the person who received the levy to delay sending any proceeds until counsel's advice is received.

5.11.1.3.11 (11-05-1999)

Due Process for Lien Filing

1. Generally, within five business days after a Notice of Federal Tax Lien (NFTL) is filed, Letter 3172(DO) is sent to taxpayers to tell them about the NFTL and allow them a chance for a Collection Due Process appeal about the lien. See Section 3 of IRM 5.12, Federal Tax Liens Handbook.
2. If the notice requirements in 1.2.1 have been satisfied, Letter 3172(DO) does not create a new waiting period before a Notice of Levy can be issued. However, once the taxpayer appeals the lien filing, generally, no Notices of Levy will be issued during the administrative or judicial appeal. See 9.3.3 of IRM 5.1, General Handbook, for a description of when property can be levied during the appeal process.

EXAMPLE:

On April 5, 1999, a Notice of Federal Tax lien is filed, and Letter 3172(DO) is sent to the taxpayer on April 7. The taxpayer appeals the NFTL on April 29. Until April 29, as long as the notice requirements in 1.2.1 have been satisfied, a Notice of Levy can be issued to collect the amount that is owed, including the periods that are included in Letter 3172(DO).

5.11.1.3.12 (08-18-2000)

Offers in Compromise

1. Notices of levy can not be served while an offer in compromise is pending, within 30 days after an offer is rejected, or while a rejected offer is being appealed.

EXCEPTION:

Notices of levy can be served if collection is in jeopardy. If this happens while a rejected offer is being appealed, notify Appeals of the jeopardy determination.

EXCEPTION:

Notices of levy can be served if the taxpayer waives the restriction, in writing.

2. See 3.5 of IRM 5.8, Offer in Compromise Handbook.

Exhibit 5.11.1-1 (08-18-2000)

Delegations of Authority

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(References IRM 5.11, sections 1.2.2.3, 1.2.3, 1.2.4, 1.3.3.1, 1.3.5, 1.3.7, 1.3.9, 1.3.10, 3.3, 6.2, 6.3.1, 6.3.5, 6.6.1, 6.6.4, 6.6.6, & 6.9; IRM 5.1.9)

I. Suggested local delegations to Branch/Section/Unit Chief ACS/CSf/FSU; Revenue Officers and Bankruptcy Specialists GS 9 & above; Dyed Diesel Compliance Officers GS 9 & above; Collection and Examination Managers of these Employees

A. Notice of Levy, Form 668-A and 668-W
Benefit Income

- Retirement Income
- Social Security Income
- All Other Types, unless listed in III, below
- B. Notice to Exhibit Books and Records, Form 2270
- II. Suggested local delegations to GS-5 ACS/CSf/FSU employees, Revenue Officers, Fuel Compliance Officers, and their managers. Also, GS-7 Bankruptcy Specialists, and their managers.
 - A. Final Demand, Form 668-C
 - B. Release of Levy, Form 668-D/ACS LP-68
- III. Local delegations for the following will not be lower than the levels indicated. Portions of local or regional Delegation Orders that allow approval lower than the levels shown below are no longer valid as of the date of this transmittal. See Chapter 9 (Taxpayer Rights) of IRM 5.1, General Handbook, for the lowest delegation of levy during appeal.
 - A. Customer Service, CSf and FSU; Grade 8 in 592 & 962 Series
 - 1. Notices of Levy as described in I. A., except those in III. B., below.
 - B. Branch/ Section/Unit Chiefs in Customer Service, CSf and FSU
 - 1. Notices of Levy
 - Benefit Income
 - Retirement Income
 - Social Security Income
 - Repeated Levies on the Same Source
 - Note: Outside of Customer Service, CSf and FSU, the Authority to Levy on Benefit, Retirement, and Social Security Income may be delegated locally to employees as suggested in Section I, above.
 - C. Group Manager
 - 1. Cash Loan Value of Life Insurance Policies (See 6.3.1)
 - 2. Repeated Levies on the Same Source (See 1.3.7)
 - 3. Levy on Both Spouses' Incomes (See 5.4.3)
 - D. Chief, Collection Field function/Chief, Special Procedures function
 - 1. Relocation Act Payments (See 6.6.4)
 - 2. Foster Care Payments
 - 3. Jeopardy Levy without a Jeopardy Assessment, if the Notice Requirements in 1.2.1 have been met
 - a. Appearance Date of Summons (See 1.3.5)
 - b. Pending & Active Installment Agreements (See 1.3.9)
 - c. Pending Offer in Compromise (See 1.3.12)
 - 4. Levy when an Offer of an Installment Agreement or an Offer in Compromise is made merely to Delay Collection (See 1.3.9)
 - 5. Warning of Enforcement is over 180 Days Old (See 1.2.2.6)
 - 6. Cash Deposited as Security for Bail (See 1.3.3.1)
 - E. Special Procedures function) AND Field Counsel (or Associate Field Counsel) must approve.

1. Notice of Levy naming alter-egos, nominees, and transferees (See 1.2.5)
- F. Chief, Special Procedures Function/Chief, Collection function
 1. Medicare Payments (See 6.6.1)
 2. Collection of Taxes included in Refund Litigation for Tax Periods Beginning Before 1-1-99 (See 1.3.10)BOTH the Chief, Collection function AND Counsel (may be
- G. redelegated no lower than Associate Field Counsel) must approve.
 1. Jeopardy Levy without a Jeopardy Assessment, if the Notice Requirements in 1.2.1 have not been satisfied (See 3.3)
- H. BOTH the Chief, Collection function AND Field Counsel (or Associate Field Counsel) must approve.
 1. Jeopardy Levy without a Jeopardy Assessment, if the Notice Requirements in 1.2.1 have been satisfied, the Taxes are in Refund Litigation, and the Taxes are for Periods Beginning After 12-31-98 (See 1.3.10)
- I. District Director/Assistant Director
 1. Funds held in Pension and Retirement Plans, as well as IRAs , which the levy withdraws as a lump sum (See 6.2)
 2. Death Benefits (See 6.3.5)
 3. United Nations Employees' Salaries (See 6.9)
 4. Restitution Payments for Japanese WWII Internment (See 6.6.6)

Section 2 -- Serving Levies, Releasing Levies and Returning Property

5.11.2.1 (05-05-1998)

Serving Notices of Levy

1. This provides procedures for serving notices of levy.

5.11.2.1.1 (05-05-1998)

General

1. Serve a levy only when there is reason to believe the third party is holding the taxpayer's property.
 - o If the taxpayer owns property with a person not liable for the tax, consider using another source.
 - o Sometimes property can be levied even though someone not liable for the tax owns it, at least in part. This can come up, for example, in a community property state. However, suits and wrongful levy claims can be reduced by avoiding this, if another source is known.
2. Consider the effect that the notice of levy may have on innocent third parties.

5.11.2.1.3 (05-05-1998)

Serving Notices of Levy in Person

1. Have the person who gets the notice of levy sign for it.
Write, "Receipt Acknowledged," on the form, and have the person sign after this. If the person will not sign it, leave the form anyway. Document the case file to show the levy was served. An acknowledgment is desirable, but it is not critical.
2. If the levy source is a partnership or a corporation, try to serve the levy on someone in authority.
EXAMPLE:
A partner or a corporate officer.
3. Try to find out how much to expect for the levy. Ask for payment when the levy is served, unless there is a reason for a delay.
EXAMPLE:
IRC 6332(c) requires banks to wait 21 days. A levy on wages is not paid until the taxpayer's usual pay day.
4. If payment must be sent later, give the person a business reply, self-addressed envelope. Give the person more envelopes, if there will be several payments.
5. If the person owes nothing to the taxpayer, have this written on the form. Ask the person sign it and write a title, e.g. "Partner."

5.11.2.1.4 (05-05-1998)

Serving Notices of Levy by Mail or FAX

1. Treasury Regulation 301.6331-1(c) requires notices of levy to be accepted by mail.
 - o Print, "Notice of Levy," on the envelope used to mail levies. This helps large employers and banks route the levy to the right office.
 - o Include a business reply, self-addressed envelope.
2. When a levy must be served quickly, a FAX can be used. First, confirm the person has FAX equipment and will accept the levy this way.

5.11.2.1.5 (11-05-1999)

Addresses for Mailing Notices of Levy

1. Some large companies and government agencies identify one address for serving all levies. The company or agency must notify the district director. Consider keeping a central index in the district for these addresses. Then, they can be distributed to all collection employees in the district.
2. Consider whether other districts and service centers need to know the address. Some large companies and government agencies may get levies from all over the country. A Notice of Levy Address Directory (Document 6408) lists these levy sources. Use the address in the directory, if you are sending a levy to one of these sources.
 - o If a company or agency needs to be in the Directory, ask for its Employer Identification Number (EIN).
 - o If a bank gives an address for its levies, ask for

its EIN and its American Bankers Association (ABA) transit number.

- o Send the requests, including the EIN and ABA number, to the regional office. If the region agrees the company or agency belongs in the Directory, it will be sent to the National Director, Collection Operations, OP:CO:C, Attn: Systemic Levy Analyst. The region will also send all requests from banks to this address, even though these are generally not included in the Directory.
- 3. A computer program uses the EIN and ABA number to insert these addresses for many levy sources. However, it is not always able to do this. This depends, for example, on IDRS having the levy source's EIN or ABA number. Some levy sources do not have these numbers, so sources must still be checked against the Directory.

5.11.2.1.7 (11-05-1999)

Notifying the Taxpayer After Serving the Levy

- 1. After serving a levy in person or FAXing it, mail a copy to the taxpayer. Form 668-A(C)DO includes two taxpayer copies. Mail Part 4 to the taxpayer. Leave Part 2 with the person who receives the levy. ACS uses Form 668-A(C) and mails Form 8519 to the taxpayer.
- 2. If the levy is mailed, do not send the taxpayer copy immediately. Wait long enough, so the taxpayer does not get the levy before the levy source does.

NOTE:

This is not necessary for a levy on wages, salary, or other income. The statement of exemptions and filing status notifies the taxpayer of the levy.

- 3. Also, see 6.11.2 of IRM 5.11 when a levy is served on a non-liable spouse in a community property state.

5.11.2.1.8 (05-05-1998)

Examination of Books and Records

- 1. Records about taxpayers' property must be provided when a levy is served or is about to be served. See IRC 6333. A summons could be used, but it may be unnecessary. Sometimes, a cooperative person will show the records if something in writing is given.
- 2. Use Form 2270, Notice to Exhibit Books and Records. Do not describe this as a summons. Note the date and time the Form is served. Also, note the person who gets it.
- 3. IRC 7605(c) requires 30 days' notice before examining records of churches, church conventions, and church associations. This is only for determining a liability.

If	And	Then
Tax has already been assessed.	A levy is served or is about to be served.	IRC 6333 allows records of churches', conventions' and associations' property to be examined without the 30 days' notice.

5.11.2.1.9 (05-05-1998)

Refusing to Comply with a Levy

1. If a person refuses to surrender the property, discuss IRC 6332. This section of the IRC
 - o requires the property to be surrendered,
 - o discharges the person from any liability to the taxpayer and anyone else, and
 - o describes the person's liability if the levy is not honored.
2. If the person still refuses, serve Form 668-C, Final Demand.
3. A Notice of Federal Tax Lien is not required before serving a Final Demand. However, if a suit to enforce the levy is likely, file the lien.
4. Try to serve the Final Demand on the same person who got the levy. Fill out the Certificate of Service on Part 1. Try to get a signature at the bottom of the form to acknowledge it was received.

5.11.2.2 (05-05-1998)

Releasing Levies

1. The authority to release levies is not intended to weaken the levy.

5.11.2.2.1 (09-04-1998)

Legal Basis for Releasing Levies

1. IRC 6343 requires levies to be released in several circumstances.
 - o The liability is no longer owed.
 - o The statutory collection period has run out.
 - o The release will facilitate collection of the amount that is owed.
 - o The levy is creating an economic hardship.
 - o The fair market value of the levied property is much more than the amount owed. A portion can be released without risking collection.
 - o The taxpayer makes an installment agreement, unless the agreement allows for the levy.
2. Release the notice of levy as soon as one of the conditions in (1) is identified to prevent payments from being received after the notice of levy should have been released. This will avoid the need to return levied property and the inconvenience this may cause for the taxpayer.

EXAMPLE:

After a notice of levy has been sent to a taxpayer's employer, the taxpayer responds and shows that the notice of levy prevents her from paying for basic necessities for her family. Because the levy is causing an economic hardship, release it immediately, so the employer will not send a levy payment on the

- next pay day.
3. Section 362(a) of the Bankruptcy Code (Title 11) prohibits levy on the property of a taxpayer in bankruptcy. A levy on this property is generally illegal and must be released. Contact Special Procedures for advice if you inadvertently levy on property of a taxpayer in bankruptcy.
 4. Any notice of levy that violates the Internal Revenue Code or regulations must also be released.

5.11.2.2.2 (08-16-2000)

Releasing Wrongful and Erroneous Levies

1. A wrongful levy is one that attaches property the taxpayer has no rights to. IRC 6343 authorizes release of wrongful levies. When a claim is received, call Special Procedures, about the taxpayer's rights to the levied property.
2. See 4.5 and 6.15 of IRM 5.10 Seizure and Sale Handbook regarding wrongful levy claims. Also, see 15.8 of IRM 5.1, General Handbook.
3. If a notice of levy is served erroneously, release it immediately. Send Pattern Letter P-548 to the taxpayer. See Exhibit 5.11.2-1. The taxpayer can give this to people who received levies. See 4.8 about reimbursing bank charges for erroneous levies.

EXAMPLE:

A notice of levy is served, although the amount owed has been paid. The taxpayer shows a canceled check used to pay the tax. When IDRS is researched, the check is found among unidentified remittances.

5.11.2.2.3 (05-05-1998)

Serving Releases of Levy

1. Generally, levy releases are mailed to save resources. Sometimes, though, they may be served in person.
2. When a levy must be released quickly, it can be FAXed. Confirm that the person has a FAX machine and is willing to accept the release this way.

5.11.2.2.4 (05-05-1998)

Forms Used to Release Levies

1. Use Form 668-D to release a levy served on Form 668-A or 668-W. Form 668-E is also a release of levy. However, it is used to release seizures when Form 2433 can not be used.
2. Form 668-D can be used to release the levy in part or fully.

EXAMPLE:

The taxpayer has defaulted on an installment agreement, and his wages are levied. The amount being levied creates a hardship, but a smaller amount would not. A release of wages less than \$X allows the taxpayer to receive an amount that will not cause a

hardship. Anything earned more than that amount is sent as levy proceeds each pay day.

EXAMPLE:

The taxpayer agrees to an amount for an installment agreement. A payroll deduction agreement is desirable to avoid a default, but the employer is reluctant to agree. A wage levy with a partial release of wages more than \$X, sets a fixed amount that will be sent as levy proceeds each pay day. Anything more than that is paid to the taxpayer.

5.11.2.3 (05-05-1998)

Returning Levied Property to the Taxpayer

1. Before July 30, 1996, once levy proceeds were deposited:

If	And	Then
----	-----	------

The money was really owed.	The right person's property was levied.	There was no authority to return the money, regardless of the circumstances.
----------------------------	---	--

5.11.2.3.1 (11-05-1999)

Authority for Returning Levied Property

1. On July 30, 1996, Taxpayer Bill of Rights 2 (TBOR2) was enacted. This added subsection (d) to IRC 6343.
2. Now, levy proceeds can be returned if:
 - o The levy is premature.
 - o Procedures are not followed.
 - o An installment agreement is made for a liability included on the levy, unless the agreement provides otherwise.
 - o Returning the payment facilitates collection.
 - o With the consent of the taxpayer or the Taxpayer Advocate, returning the payment is in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the government.
3. This gives IRS discretion to return levy proceeds. It never requires levy proceeds to be returned.

EXAMPLE:

Some companies notify the Service of an address for serving notices of levy. See 2.1.5. A levy is sent to another address by mistake. The company forwards it to the correct address, and a levy payment is sent.

The taxpayer may claim the payment must be returned, because procedures were not followed. This is not the case. The error is trivial, and returning the payment is unwarranted.

EXAMPLE:

An installment agreement form gets lost and does not get loaded onto IDRS. Because of this, the liability becomes a TDA. The taxpayer's bank account is then levied. If the error is found before payment is received, the levy must be released. However, it may be found after the payment is received and deposited. Before TBOR2, there was no authority to return this

payment. Now, there is authority to correct the error, and return the money.

4. The taxpayer can file a claim up to nine months after the levy.

NOTE:

The Service can refund levy proceeds without a claim from the taxpayer. The decision to refund the payment must be within nine months of the levy. The money can, then, be refunded after nine months.

5.11.2.3.2 (05-05-1998)

Factors to Consider Before Returning a Levy Payment

1. There are no rigid rules for deciding whether to return a levy payment. The decision is on a case-by-case basis. At least one of the conditions in 2.3.1:(2) must exist, however. Some things to consider include:
 - o How significant is a procedural error? In the first example in 2.3.1:(3), the error is harmless and insignificant.
 - o Did the notice of levy violate a law?
 - o Did the person who received the levy get bad instructions about how much to send?
 - o Is there an error that affects whether the levy should have been issued?
 - o Is there an inequity in keeping the payment?
 - o Would the levy have been released if all facts were known before the payment was received?
 - o Is the taxpayer a pyramiding, delinquent trust fund repeater?

5.11.2.3.3 (05-05-1998)

Rejecting Claims

1. When a claim is rejected, give the taxpayer a written rejection. The group manager will sign this. Include in the rejection letter:
 - o the reason(s) for rejection,
 - o the right to appeal, and
 - o how to appeal.
2. A written rejection is not required, unless a written claim is filed.

5.11.2.3.4 (05-05-1998)

Delegation of Authority to Return Levy Payments

1. Until a delegation order is approved, returning levy proceeds must be approved by either:
 - o District Director
 - o Service Center Director
 - o Assistant Commissioner (International)
2. This authority can be redelegated to:
 - o Chief, Collection function
 - o Chief, Collection Field function
 - o Chief, Special Procedures function

- o Chief, Automated Collection Branch
 - o Chief, Customer Service Branch
3. The authority may not be redelegated any further.

5.11.2.3.5 (11-05-1999)

Getting the Money Refunded

1. See Chapter 15 of IRM 5.1 General for procedures to get a manual refund issued to the taxpayer.
2. Unlike money that has been wrongfully levied, no interest is paid on the refund.

5.11.2.3.6 (08-16-2000)

Effect on Penalty & Interest

1. When levy proceeds are returned, the delinquent tax is not forgiven. The taxpayer is still obligated to pay the amount owed, and the Service is obligated to collect it.
2. However, the taxpayer will not be charged failure to pay penalty and interest during the period that the Service held the money. After the payment is returned to the taxpayer, though, penalty and interest start to accrue, again. These must be manually assessed as payments are received.

EXAMPLE:

The taxpayer owed \$10,000.

On April 10, 1998, \$2,500 was collected as levy proceeds.

On May 4, 2000, the \$2,500 was returned.

- A. Compute accrued interest on \$10,000 through April 10, 1998. Then, compute interest on \$7,500 for the period April 11, 1998, through May 4, 2000. Assess the total interest from these two steps using transaction code (TC) 340. Have the 340 input with the COMP-INT-AMT and INT-TO-DT fields complete. The COMP-INT-AMT is the amount still owed, so IDRS and master file should continue computing interest on this. In this example, it would be the amount still owed on May 4, 2000. The INT-TO-DATE is the date that the interest has been computed through, i.e. in this example, May 4. This will allow IDRS and master file to compute interest after that, so it will not have to be done manually.
- B. Compute the failure to pay penalty that accrued from April 11, 1998, through May 4, 2000, on \$2,500. Input this amount using TC 271 with Reason Code 62. This will allow IDRS and master file to compute the penalty after that, so it will not have to be done manually.

5.11.2.4 (08-16-2000)

Returning Wrongfully Levied Property

1. See 15.8 of IRM 5.1 General Handbook for manual refunds of wrongfully levied bank accounts.
2. See 5.11 of IRM 5.10 Seizure and Sale Handbook for other

wrongful notices of levy.

Section 3 -- Jeopardy Levy without a Jeopardy Assessment

5.11.3.1 (01-19-1999)

Background

1. Normally, the notices and waiting periods described in 1.2 are required before property can be levied. However, if collection is in jeopardy, property can be levied sooner.
2. Generally, if collection is in jeopardy, there is a jeopardy assessment. Then, there is an immediate notice and demand which is followed by a jeopardy levy. Sometimes, however, there may already be an assessment before jeopardy is known.

EXAMPLE:

There may be a prompt assessment. Then, the taxpayer starts moving property to hide it. Property can be levied, even though the usual waiting periods after notices have not passed.

3. A jeopardy levy without a jeopardy assessment can happen:
 - o after tax is assessed, but before the notice and demand is issued,
 - o after the notice and demand is issued, but before ten days have passed,
 - o after the ten day notice and demand period ends, but before the thirty day notice of intent to levy and notice of a right to a hearing have been issued, or
 - o after the notice of intent to levy and notice of a right to a hearing have been issued, but before the thirty days have passed.

5.11.3.2 (01-19-1999)

Conditions that Mean Jeopardy

1. A jeopardy levy requires a condition which would have allowed a jeopardy assessment.
2. See Policy Statement P-4-88.

5.11.3.3 (08-16-2000)

Getting Approval

1. If collection of assessed tax is in jeopardy, prepare a report to the Chief, Collection function. In the report, ask the Chief to sign an attached notice of levy. Include the same information in the report that is needed for a jeopardy assessment. See IRM 5.1 General. Do not include Form 2644. Send the report through the group manager and field branch chief.
2. Until the Chief signs the levy form, do not include the:
 - o date
 - o accruals
 - o date that accruals have been computed to.
3. Also, include Pattern Letters 2438(P) and 2439(P) for the

Chief's signature. See Exhibits 5.11.3-1 and 5.11.3-2.

If Then

The notice and demand has The taxpayer must be given an
not been issued, or it has immediate notice and demand for
been issued and ten days payment. See note under
have not passed yet. subsection 1.2.1:(2).

For joint IMF returns, prepare two Pattern Letters 2439(P). If an immediate notice and demand is required, prepare two of them, also. Put both taxpayers' names on the Pattern Letter and on the notice and demand. See 3.5:(5).

* Use Parts 3&4 of a Prompt Assessment Billing Assembly, Form 3552, to make immediate notice and demand. If a blank Form 3552 is not available, copy the text of one on IRS letterhead stationary. Have the Chief sign this, too, when the notice of levy is approved.

* On Parts 3 and 4, cross out, ". . .within 10 days from the date of this notice. . ."

* Insert, ". . .which is due and payable immediately. . ."

* Also, cross out, ". . .Please return this copy with your payment to the address shown above. . .," at the bottom of the form.

NOTE:

The 1997 revision of Form 3552 does not say, "within 10 days of this notice." If this version of the form is used, cross out, ". . .upon receipt of this notice. . .," and insert, ". . .which is due and payable immediately. . ."

* Only the Chief, Collection function, or someone above this level, can approve a jeopardy levy. See Sections 1.3.5, 1.3.9, and 1.3.12 of IRM 5.11 for certain jeopardy levies that do not require the approval of the Chief, Collection function, as long as the notice requirements in 1.2.1 have been met. Instead, these jeopardy levies can be approved by one management level above the group manager.

* The Chief can approve the levy by telephone, if there is not enough time for written approval. The Chief can authorize someone else to sign the forms and letters, when this happens. Write a memo to file explaining the information that would have been in the report described in (1). Send a copy to the Chief, Collection function and the person who signed the levy form and letters. Put a copy in the case file.

* In addition, IRC 7429(a)(1)(A) requires Counsel approval, in writing, for a jeopardy levy described in subsection 3.1:(3). This can be redelegated no lower than the Associate FieldCounsel.

NOTE:

The authority is also delegated to the Associate Field Counsel (International) who may redelegate the authority no lower than Branch Chief.

5.11.3.4 (01-19-1999)

Forms and Pattern Letters for a Jeopardy Levy without a Jeopardy Assessment

1. The forms and letters that are needed depend on the timing of the jeopardy levy. In addition to notice of levy and lien forms, the Forms and Pattern Letters needed for jeopardy levies are:

If	And	Then
		1. IMMEDIATE NOTICE AND DEMAND (Altered Form 3552). 2. PATTERN LETTER 2439 WITH INSERT
Tax has been assessed.	The notice and demand normally required by IRC 6331(a) has not been issued.	(a) IN THE FIRST PARAGRAPH. 3. PATTERN LETTER 2438. 4. PUBLICATION 1. 5. PUBLICATION 594. 6. PUBLICATION 1660. 7. FORM 12153. 8. NOTICE 609 (IMF ONLY)
		1. IMMEDIATE NOTICE AND DEMAND (Altered Form 3552). 2. PATTERN LETTER 2439 WITH INSERT
Tax has been assessed.	The notice and demand has been issued, but ten days have not passed.	(a) IN THE FIRST PARAGRAPH. 3. PATTERN LETTER 2438. 4. PUBLICATION 594. 5. PUBLICATION 1660. 6. FORM 12153. 7. NOTICE 609 (IMF ONLY).
		1. PATTERN LETTER 2439 WITH INSERT
The notice and demand has been issued.	Notice of Intent to Levy and Notice of a Right to a Hearing have not been issued.	(a) IN THE FIRST PARAGRAPH. 2. PATTERN LETTER 2438. 3. PUBLICATION 594. 4. PUBLICATION 1660. 5. FORM 12153. 6. NOTICE 609 (IMF ONLY)
		1. PATTERN LETTER 2439 WITH INSERT
The Notice of Intent to Levy and Notice of a Right to a Hearing have been issued.	Thirty days have not passed.	(b) IN THE FIRST PARAGRAPH. 2. PATTERN LETTER 2438. 3. PUBLICATION 594. 4. PUBLICATION 1660. 5. FORM 12153.

5.11.3.5 (11-05-1999)

After the Jeopardy Levy is Approved

1. If an immediate notice and demand is required, give the altered Form 3552 to the taxpayer and demand immediate payment. If personal delivery is not practical, send it by

- certified mail to the last known address. If a field visit to deliver the form reveals the address is not good, check IDRS for a new one.
2. When the immediate notice and demand is issued, or if it is not required:
 - o File a Notice of Federal Tax Lien, and
 - o Serve the Notices of Levy.
 3. Include a Pattern Letter 2438(P) with each notice of levy. This letter asks the person who gets the levy to delay sending payment for 45 days. This allows time to see if the taxpayer appeals. If the taxpayer successfully appeals, the levy can be released rather than issuing a manual refund.
 4. The taxpayer must be told the reason collection is in jeopardy. Pattern Letter 2439(P) does this. Avoid saying anything in the letter that could identify a confidential informant.

If	Then
----	------

Form 3552 is required. Give the taxpayer Pattern Letter 2439(P) at the same time.

Form 3552 is not required. Give Pattern Letter 2439(P) to the taxpayer within five days of serving the jeopardy levy.

* Try to give the Pattern Letter to the taxpayer in person. If personal delivery is not practical, send it to the taxpayer's last known address by certified mail with a return receipt. See 1.2.2.2:(5) & 1.2.2.3:(4) . If a field visit to deliver the letter reveals the address is not good, check IDRS for a new one.

NOTE:

For joint IMF returns, try to deliver Pattern Letters 2439(P) to each taxpayer in person. Also, if an immediate notice and demand is required, deliver Form 3552 to each taxpayer. If this is not practical, mail the notices as described in 1.2.2.3.

REMINDER:

If the taxpayer has an authorized representative, a copy of correspondence to the taxpayer must also be given to the representative. However, use regular mail for the copy.

5.11.3.6 (01-19-1999)

Appealing the Jeopardy Levy

1. Within thirty days after the Pattern Letter 2439(P) is given, or should have been, the taxpayer can appeal under IRC 7429. The issue is whether collection is truly in jeopardy. If the appeal is rejected, the taxpayer can also file a civil suit in District Court. If any of the liabilities on the jeopardy levy are being considered in Tax Court, the taxpayer can file a civil suit there.
2. In addition, the IRS must notify the taxpayer of appeal

rights under IRC 6330 within a reasonable time after the levy. Thirty days after a jeopardy levy is generally a reasonable time within which to send the notice. However, since Pattern Letter 2439(P) is used to tell the taxpayer about appeal rights under IRC 6330 as well as IRC 7429, it will be delivered within five days. See 3.5:(4). The taxpayer has thirty days from the date of the notice within which to request a Collection Due Process hearing. See Chapter 9 (Taxpayer Rights) of IRM 5.1, General Handbook, and Exhibit 5.11.3-1 for additional information about taxpayers' rights to appeal under IRC 6330.

3. If the taxpayer appeals or says a suit is being filed, contact Special Procedures. Also, get advice from counsel, as needed. The local Appeals Office will handle the administrative appeal. Tell the people who received the levies to delay paying over the funds while the appeal is considered.

Exhibit 5.11.3-1 (01-19-1999)
 Pattern Letter 2439(P) (Rev.1-99)

Letter Number: 2439(P)
 Letter Date:

(Type on Appropriate Letterhead. Should contain IRS Address)
 NOTICE OF JEOPARDY LEVY AND RIGHT OF APPEAL
 Dear (taxpayer name):

As required by Section 6331 of the Internal Revenue Code (IRC), I am notifying you that I have found that you are (insert reason for the jeopardy levy) thereby putting our collection of the (insert type of tax) you owe for the tax period(s)._____ --7in jeopardy. Therefore, based on the information available to me at this time, I have approved the issuance of a levy to collect the amount you owe, although (choose insert {a} we have not provided you a notice of intent to levy and/or notice of your right to a hearing, generally required by Sections 6330 and 6331 of the IRC or {b} the 30 days we told you in our previous notice of intent to levy and/or notice of your right to a hearing that you had before we would issue a levy has not run out).

Your now owe:

Tax Period(s)	Tax	Penalty	Interest	Total
---------------	-----	---------	----------	-------

Under IRC Section 7429, you are entitled to request an administrative review of this action. For this review, you must file a written protest with the District Director at the above address within 30 days from the date of this letter, requesting a redetermination of whether the levy is reasonable under the circumstances.

Also, under IRC Section 6330, you are entitled to request a Collection Due Process (CDP) hearing with the IRS Office of Appeals at which you may bring up issues in addition to whether our decision that collection is in jeopardy is reasonable. For this hearing, you must submit a request in writing to the District Director within 30 days from the date of this letter. See the enclosed Publication 594, Understanding the Collection Process; Publication 1660, Collection Appeal Rights; and Form 12153, Request for A

Collection Due Process Hearing. The references to notice of intent to levy in these Publications and this Form do not apply, because such notice is not required when collection is in jeopardy. If you request a hearing under both provisions, we may handle both at one hearing.

We may proceed with enforced collection action during any administrative review or appeal process, unless you make arrangements regarding collection of the amount you owe. To make such arrangements, or if you have other questions about this letter, please contact (name of appropriate district office official) at (appropriate telephone number) .

Under IRC Section 7429, you may request a judicial review of whether the determination that collection is in jeopardy is reasonable, by bringing a civil suit against the United States in the U.S. District Court in the judicial district in which you live, or in which your principal office is located. However, if you filed a timely petition with the Tax Court for a redetermination of a deficiency under IRC Section 6213(a) before we served the levy, and at least one of the taxes for one period included on the levy is also included in that petition, the Tax Court (in addition to the U.S. District Court) also has jurisdiction for a judicial review of the levy for all tax periods on the levy. You may also request a judicial review under IRC Section 6330 after the CDP hearing as explained in the enclosed Publication 1660.

In order to receive a judicial review of the levy under IRC Section 7429, you must first request an administrative review under that provision within 30 days from the date of this letter. You must file your suit within 90 days after the earlier of (1) the day the Service notifies you of its decision on your protest, or (2) the 16th day after you make the protest. The court will make an early determination of the same points raised in your protest to decide whether the determination that collection was in jeopardy was reasonable under the circumstances. The court's determination is final and not reviewable by any other court.

In order to receive a judicial review under IRC Section 6330, you must first request a CDP hearing under that provision within 30 days from the date of this letter. You must request the judicial review within 30 days from the date of the Notice of the Determination issued by the IRS Office of Appeals at the conclusion of the hearing, as explained in Publication 1660.

Sincerely,

Chief Collection Function
Enclosures
Publication 594
Publication 1660
Form 12153

Section 4 -- Bank Levies

5.11.4.1 (05-05-1998)
Holding Period

1. When a bank levy is issued, the bank must wait 21 calendar days before sending payment. Then, on the next business day, it must turn over the taxpayer's money. "Bank" includes credit unions, savings and loan associations, trust companies, and others described in IRC 408(n).
2. During the holding period, a levy might be released, or the amount owed could change.
NOTE:
If the bank receives no release, it must send the payment after the holding period. No additional notice is required.
3. Consider the holding period before deciding how long to project the accruals on a bank levy.

5.11.4.2 (05-05-1998)

Bank Liaison in the District Office

1. The holding period was created to settle disputes about ownership of bank accounts before money is sent.
2. Assign a bank liaison in each district to settle these issues quickly.
NOTE:
Coordinate with the Region before deciding how to tell the banks who this person is. This can be especially important when ACS call sites cover several districts.
3. Sometimes, ownership is not settled before the holding period ends. If this happens, call the bank to ask for more time.

5.11.4.3 (05-05-1998)

Amount that Must be Surrendered

1. The bank must send the amount in the taxpayer's accounts. However, it must send no more than the amount shown on the notice of levy.
2. The notice of levy only reaches the amount on deposit when the levy is received. Money deposited later is not surrendered, including deposits during the holding period. Another levy must be served to reach this money. Also, the levy only reaches deposits that have cleared and are available for the taxpayer to withdraw.

5.11.4.3.1 (05-05-1998)

Interest on Levy Proceeds

1. The bank must turn over the interest earned on the account(s) during the holding period. It uses the same method for figuring interest it normally would. Even so, the amount paid is no more than the amount shown on the levy.

If And Then

A bank levy for The taxpayer has The bank sends \$5,000
 \$10,000 is \$5,000 in the plus interest earned
 served. bank. during the holding
 period.

A bank levy for The taxpayer has The bank sends \$10,000.
 \$10,000 is \$25,000 in the No interest is sent. Only
 served. bank. \$10,000 is frozen during
 the holding period.
 The bank sends \$10,000 if

A bank levy for The taxpayer has at least \$1 interest is
 \$10,000 is \$9,999 in the earned on the account
 served. bank. during the holding
 period.

* The date the bank normally credits interest to accounts does not matter. If interest is earned, it must be paid over as shown in (3).

* To compute the interest, the bank treats the Service as though:

- * The Service is the depositor.
- * The money is left on deposit during the holding period.
- * On the day the money is being sent, the depositor closes the account.

5.11.4.4 (05-05-1998)

Crediting Levy Payments

1. Credit the levy payment on the date it is received.
2. Credit the money in the most advantageous way to the government. Generally, apply the money to the oldest assessment, first. The taxpayer can not designate how the money is applied.
3. Use designated payment code (DPC) 05 for levy payments. Use DPC 15 for other payments caused by a levy, if they are not levy proceeds.

EXAMPLE:

A bank levy is served. When the taxpayer receives a copy, she pays the amount owed. Code this with DPC 15.

5.11.4.5 (05-05-1998)

Income Deposited in a Bank Account

1. Part of taxpayer's income is exempt from levy. See 5.4. Once income is deposited in a bank, there is no exempt amount. On the other hand, unlike a levy on wages and salary, a bank levy does not continue to reach the taxpayer's money.
2. When an entire paycheck is deposited, however, a hardship may exist because all of the money is levied. If this happens, release enough of the levy to avoid creating hardship.

5.11.4.8 (05-05-1998)

Reimbursing Bank Charges Because of Erroneous Levies

1. Policy Statement P-5-39 says taxpayers will be reimbursed for bank charges caused by erroneous levies.
 - o The Service must have caused the error.
 - o Taxpayers must not have contributed to continuing or compounding the error.
 - o Before the levy, taxpayers must have responded timely to contacts and given information requested to establish their position.

EXAMPLE:

The taxpayer paid the amount owed, but the payment was not posted timely.

EXAMPLE:

An installment agreement was made, but it was not loaded on IDRS timely.

2. Reimburse the taxpayer for fees the bank charged for
 - o processing the levy and
 - o bad check charges directly caused by the levy.

REMINDER:

See IRM 5.1 General for Reimbursement of Bank Charges Due to Service Loss or Misplacement of Taxpayer Checks.

5.11.4.8.1 (05-05-1998)

Filing the Claim

1. The claim must be filed within one year after the fees are charged.
2. The claim is filed on Form 8546.

5.11.4.8.2 (05-05-1998)

Processing the Claim

1. Approving officials are in the Handbook of Delegation Orders.
2. The approving official may ask for a memo to explain what happened. This may not be needed, though.
 - o The case file may be readily available.
 - o An employee familiar with the case can orally brief the approving official.
 - o The claim may be too small to warrant a memo.
3. A claim may be missing some of the required information. Rather than just rejecting it, try to get the missing information from the taxpayer.

EXAMPLE:

Proof of the bank charges must be included with the claim.

4. Regional Counsel (General Legal Services) must review all claims and recommend:
 - o approval
 - o rejection
 - o compromise.

5.11.4.8.3 (05-05-1998)

After the Claim is Approved

1. Prepare Form SF1145 and three copies of Form SF 1145a.
 - A. Cross out the word, "TORT," at the top of the form and the block where the approving official signs.
 - B. Insert the word, "SMALL," so it reads, "Small Claims Act."
 - C. Cross out, "28 U.S.C. 2672," where the approving official signs.
 - D. Insert, "31 U.S.C. 3723."
2. Send Form SF 1145 to the taxpayer with Pattern Letter 2179(P). See Exhibit 5.11.4-2.
3. When the taxpayer returns the signed form, have the approving official sign:
 - o Form SF 1145
 - o Form SF 1145a (three copies)
 - o Pattern Letter 2180(P), See Exhibit 5.11.4-3.

Section 5 -- Levy on Wages, Salary, and Other Income

5.11.5.1 (05-05-1998) Introduction

1. An individual's wages, salary, and other income can be levied. Wages and salary include payment for personal services in a work relationship.

5.11.5.2 (05-05-1998) Employer Threatens to Fire Taxpayer Because of a Levy

1. Sometimes an employer threatens to fire an employee to avoid handling a levy. This might be a violation of 15 USC 1674.
2. If the employer fires the taxpayer because of this, the employer might be fined \$1000. There may also be a one year prison term.
3. Refer the taxpayer to the Wage and Hour Division of the Department of Labor (DOL). DOL, not IRS, must decide if the employer violated the law.

5.11.5.3 (09-04-1998) Continuous Effect of Levy

1. Unlike other levies, a levy on wages and salary has a continuous effect. It attaches future paychecks, until the levy is released. Wages and salary include fees, bonuses, and commissions. All other levies only attach property and rights to property that exist when the levy is served.
EXAMPLE:
If a bank account is levied, it only reaches money in the account when the levy is served. It does not affect money deposited later.
2. When other income is levied, the levy only reaches money the taxpayer has a fixed and determinable right to. Also see 6.1, about retirement and benefit income.

EXAMPLE:

A levy is served to take an author's royalties. The author has a fixed and determinable right to royalties for books that have already been published. The levy reaches royalties for sales of those books in the future. The levy does not reach royalties for books that are written and published later. A new levy must be served to take those royalties.

- 3. Also, see 6.11.1 when a levy is served on a non-liable spouse in a community property state.

5.11.5.4 (05-05-1998)

Exempt Amount

- 1. Part of the taxpayer's wages, salary, and other income is exempt from levy.
2. The weekly exempt amount is:
A. The total of the taxpayer's standard deduction and the amount deductible for exemptions on an income tax return for the year the levy is served.
B. Then, this total is divided by 52.
3. Income that is not paid weekly is prorated, so the same amount is exempt.
4. In addition, the amount the taxpayer needs to pay court ordered child support is exempt. However, the order must be before the date of the levy.

NOTE:

The support order can be from a court or administrative process under the laws and procedures of a state, territory or possession.

REMINDER:

If support is allowed, the same child can not be claimed as an exemption for figuring the exempt amount. See (2)a.

If Then

The taxpayer has already shown Write, "Under section proof of the required child 6334(a)(8) of the Internal support payment. Revenue Code, \$ __ is exempt from this levy."

The taxpayer shows proof of the child support after the Release enough of the levy, so levy is served. the support can be paid.

* The taxpayer is not entitled to the support exemption, unless the support is being paid.

* Consider getting the taxpayer to have the payment withheld and sent directly to the person with custody.

* Instead, the taxpayer may make the payment through the Service, which will forward the payment. When there is no open assignment, have the payments sent through Special Procedures. This may happen if the payments are being monitored in the service center.

5.11.5.4.1 (05-05-1998)

Claiming the Exempt Amount

1. The Notice of Levy on Wages, Salary, and Other Income includes a Statement of Exemptions and Filing Status. The employer gives this to the taxpayer to complete and return within three days. If it is not received by then, the amount is figured as if the person is married filing separate with one exemption. The taxpayer can give the statement to the employer later to change the exempt amount.

NOTE:

The employer needs to use this Statement rather than the employee's W-4. Taxpayers may claim different exemptions for withholding from those claimed on their return.

2. Publication 1494 is sent with the levy to help figure the exempt amount.
3. The taxpayer can give a new statement to the employer later to have the exempt amount computed again.

EXAMPLE:

The taxpayer's filing status or personal exemptions may change.

EXAMPLE:

There may be a change in exempt rates in a new year.

4. The statement is completed under penalty of perjury. Generally, accept the information on the statement, unless there is reason to question it. If it is disallowed, notify the employer and the taxpayer in writing. The taxpayer can show evidence that the statement is right and ask for a manager's review.

5.11.5.4.2 (05-05-1998)

Employers with Centralized Payrolls

1. Some employers have a centralized payroll, so the payroll is not handled where most employees work.
2. Consider mailing the statement of exemptions and filing status directly to the taxpayer. This avoids the delay of the employer remailing it.
 - A. Send Part 1 of the levy and Notice 484 to the employer.
 - B. Send the other parts of the levy and Notice 483 to the taxpayer.

5.11.5.4.3 (05-05-1998)

Joint Liabilities

1. For joint liabilities, generally, levy the income of the spouse with the larger income.
2. Levy both incomes only in flagrant cases of neglect or refusal to pay. Get manager's approval to do this. If taxpayers are separated, consider collecting from the second spouse before allowing the entire amount to be paid by levy on one person's income.

If And Then

The taxpayers are Both taxpayers' Only one of them can filing as married incomes are claim the standard filing jointly. levied. deduction for figuring the exempt amount.

The taxpayers are Both taxpayers' Both can claim the filing with any incomes are standard deductions other filing status. levied. for their filing status.

The taxpayers are remarried and filing Both taxpayers' Both can claim the as married filing incomes are standard deductions jointly with the new levied. for their filing spouses. status.

* When both spouses' incomes are levied, neither spouse can claim the other one as a personal exemption.

5.11.5.4.4 (05-05-1998)

Taxpayers with More Than One Source of Income

1. Consider income from all sources when a taxpayer has more than one source.

If And Then

The taxpayer is getting the exempt amount from one source of income that is levied. Include Letter Another source of 1697(P) with the income is levied, second levy to tell too. the employer not to allow any exempt amount.

If the taxpayer has a source of income that is not levied. Letter 1697(P) can be That source of income is at least on another source of income as much as the income to tell the exempt amount. employer not to allow the exempt amount.

* See Exhibit 5.11.5-1, for a copy of Letter 1697(P).

5.11.5.4.5 (05-05-1998)

Taxpayer's Payroll Deductions

1. A levy legally attaches the taxpayer's gross income minus the exempt amount. However, see Policy P-5-29. By policy, a levy only attaches the taxpayer's usual take home pay.
EXCEPTION:

Voluntary deductions can be disallowed, if they are so large they defeat the levy.

2. Generally, allow the taxpayer to maintain deductions they already have when the levy is served. Notify the employer and the taxpayer of deductions that must stop while the levy is in effect. The taxpayer can ask for a manager's review of this.

EXAMPLE:

The taxpayer has a deduction used to buy shares in a

mutual fund.

3. Generally, employer's should not allow new voluntary deductions after receiving the levy. Exceptions can be allowed on a case by case basis, with the Service's approval.

EXAMPLE:

The taxpayer can not join the company insurance plan, until he is on the job six months. The levy is served before then. The amount of the premium is not unreasonable.

4. The method that the taxpayer is paid is not relevant to take home pay. Direct deposit is not a payroll deduction.

5.11.5.4.6 (05-05-1998)

Severance Pay

1. The taxpayer may leave a job and get severance pay.

If	Then
Severance pay is attributable to pay for a period of time.	The exempt amount is based on that time period.
Severance pay is not attributable to pay for a period of time.	The amount exempt for one pay period is used.

EXAMPLE:

Severance pay is one week's pay for each year on the job. A taxpayer on the job for ten years gets ten weeks' severance pay. The taxpayer gets a paycheck every two weeks for ten weeks. Two weeks' exempt amount is subtracted from each check, just like the person was still working for ten weeks.

EXAMPLE:

The same facts as above, but the taxpayer gets the amount in one payment. The payment is attributable to ten weeks' pay. The employer is just making an "advance" payment, instead of writing a series of checks. The taxpayer gets ten weeks' exempt amount.

EXAMPLE:

A taxpayer gets a lump sum that is not attributable to a period of time. This could be, for example, an incentive payment to retire early. The exempt amount is based on the taxpayer's regular pay period. If there is no regular pay period, use one week's exempt amount. Similarly, if the taxpayer gets \$1000 for each year on the job, this is not attributable to pay periods. A person getting \$10,000 for being on the job ten years does NOT get ten years' exempt amount.

* This assumes the person is not already getting the exempt amount for a pay period at the same time. If both are being received, the taxpayer does not get the exempt amount twice.

EXAMPLE:

The taxpayer is paid for both the last pay period worked and severance on the last pay day. The taxpayer only gets

the exempt amount once.

5.11.5.5 (05-05-1998)

Levy Payments

1. Credit levy payments on the date they are received. Apply the money in the most advantageous way to the government. Generally, apply it to the oldest assessment, first. The taxpayer can not designate how to apply the money.
2. Use designated payment code (DPC) 05 for levy payments. Use DPC 15 for other payments caused by a levy, if they are not levy proceeds.

EXAMPLE:

A wage levy prompts the taxpayer to pay the amount owed, to get the levy released. Code this payment with DPC 15.

3. Payments for these levies may be small. Decide if the amount owed should be paid from the levy proceeds. When the payments are small compared to the amount owed, though, consider other enforced collection.

If	And	Then
Payments are in Cff.	One more payment is expected to pay off the amount owed.	Use Form 668-D to give the employer a payoff figure and release the levy after that is paid. Consider transferring the case to the service center for monitoring. Get management approval, first. See 2.4.9 and 4.3.3.5 of IRM 105.1 Collecting Contact Handbook.
At least two payments are received.	No additional collection is warranted.	

Section 6 -- Notice of Levy in Special Cases

5.11.6.1 (11-05-1999)

Retirement Income

1. A notice of levy is continuous for wages and salary. Other levies only reach property a third party is holding when the levy is received.
REMINDER:
References to property include rights to property.
2. As long as the taxpayer has a fixed and determinable right to property, a levy attaches that right. Therefore, a levy on retirement income can reach payments in the future when the taxpayer would have received them, although the taxpayer has not begun receiving payments yet when the levy is served. This often means that a levy on retirement income reaches future payments.
3. If the taxpayer has the right to receive future payment

- but has not opted to do so, the levy attaches that right.
- 4. Use discretion before levying retirement income.
- 5. A levy served while the taxpayer is receiving periodic payments reaches payments due then, as well as payments as they become due later, as long as there is already a fixed and determinable right to the future payments.

5.11.6.1.1 (05-05-1998)
Social Security

1. The Social Security Administration (SSA) makes payments for:
 - o Retirement, Survivors, and Disability Insurance (RSDI) and
 - o Supplemental Security Income (SSI).
2. RSDI is based on social security taxes during a person's working years. RSDI payments are not based on need, and they can be levied. SSI payments are for needy people who are elderly, blind, or disabled. These payments are exempt from levy.
3. Send Part 1 of Form 668-W to the SSA office that issued the taxpayer's social security number. Include Notice 484. See Document 6408, Notice of Levy Address Directory. Send the other parts of the levy to the taxpayer with Notice 483. Make appropriate changes to Notice 483 and 484.
4. Once a levy is served, SSA will continue honoring it, until the levy is released. However, the taxpayer's eligibility for benefits could change. This might stop the levy proceeds. If this happens, SSA will notify the office that issued the levy not to expect more payments. However, SSA is not allowed to explain why. This would violate the privacy laws that restrict who SSA can disclose benefit information to.
EXAMPLE:
The taxpayer may get full benefits when the levy is served. Later, the person starts working. This may reduce the benefits to less than the exempt amount, so there will be no levy proceeds. If the person stops working and gets full benefits again, SSA will not automatically start sending levy payments. A new levy must be served.
5. There is limited space on the check for information to identify the payment. Each line is limited to 22 characters. The check is sent in a window envelope with information in Exhibit 5.11.6-2 showing through the window. There is no need to send a supply of reply envelopes with the levy.

5.11.6.1.2 (11-05-1999)
Military Retirement

1. See Document 6408 for addresses for mailing levies on military retirement.
2. Expect the first payment two to three months after the notice of levy is sent.

If	Then
The levy is received by the 15th of the month.	The first payment is sent on the first business day of the second month after that.

The levy is received after the 15th of the month.	The first payment is sent on the first business day of the third month after that.
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EXAMPLE:

A levy is received on September 12. The first payment is sent on the first business day of November.

EXAMPLE:

A levy is received on September 19. The first payment is sent on the first business day of December.

5.11.6.1.3 (11-05-1999)

Civil Service Retirement

1. See Document 6408 for the address for these levies.
2. If the civil service account number is known, include it on the levy.
3. Expect the first payment in two to three months. See 6.1.2:(2).

5.11.6.2 (03-13-2000)

Funds in Pension or Retirement Plans

1. These instructions cover money accumulated in a pension or retirement plan, as well as Individual Retirement Arrangements (IRAs). They do not deal with levying retirement income. See section 6.1 of IRM 5.11.
2. There are many employer and self-sponsored retirement vehicles that are not exempt from levy. However, because these provide for the taxpayer's future welfare, levy on the body of funds in a retirement account (as contrasted with income from the account), only in flagrant cases. These plans include, for example:
 - o Qualified Pension, Profit Sharing, and Stock Bonus Plans
 - o IRAs
 - o Retirement Plans for the Self-Employed (such as SEP-IRAs and Keough Plans)
3. The taxpayer may be able to withdraw money in a lump sum from a plan. If the taxpayer has the right to do so, a levy can reach that right. However, remember that a levy only reaches the taxpayer's present rights.

EXAMPLE:

The taxpayer has \$10,000 in a plan but can only withdraw it later. The taxpayer may have a present right to the money, although it can not be withdrawn immediately. A levy may reach that right, but the money can be not paid over until the taxpayer can withdraw it. At that time, there may be \$30,000 in

the plan. Without a new levy, though, only \$10,000 could be paid over.

EXAMPLE:

The taxpayer has money in a plan. The terms of the plan do not allow for any lump sum withdrawal. The plan provides a right in the future to receive monthly payments, but the taxpayer has not paid into it long enough yet to qualify for any future payments. A notice of levy attaches nothing, because the taxpayer has no present property rights.

4. The notice of levy form says it does not attach money in pension or retirement plans. However, in an exception, these funds can be levied. To do this, sign the Notice of Levy in the block to the left of, "Total Amount Due."

NOTE:

If the Form 668-A revision date is before July 1992, there is no signature block for this. Instead, cross out the word "not" in the sentence to the left of, "Total Amount Due." Then, initial above this change.

5. See Exhibit 5.11.1-1, for approval level and section 1.2.4.
6. Discuss the case with the Employee Plans Group before issuing the levy. Special Procedures and Counsel advice may be needed to determine the present right to property. Often, a levy is served before the taxpayer's precise rights are determined. Try to get a copy of the plan instruments as soon as possible to determine the taxpayer's interests in the plan.
7. When money is withdrawn from a retirement account, the taxpayer may be liable for income tax on the withdrawal. If the taxpayer is less than 59½ years old, there may also be 10 percent additional tax on early distributions. However, there are several exceptions that can relieve the taxpayer from the 10 percent additional tax on early distributions.
 - A. On January 1, 2000, a new exception was added to the Internal Revenue Code. If the money was withdrawn, because a notice of levy was served on the retirement account, the taxpayer does not owe the 10 percent additional tax on early distributions. There may still be income tax owed for the amount withdrawn, however.
 - B. Send Letter 3257 (DO) with the notice of levy and Letter 3258 (DO) with the taxpayer's copy of the notice of levy. These letters say that the withdrawal is not subject to the tax on early distributions, even if the taxpayer is under 59½ years old. These letters are available as macros on the Integrated Collection System.

5.11.6.4 (05-05-1998)

Government Employees

1. The income of federal, state and local government officers and employees can be levied. This includes:
 - o Civilian Employees
 - o Military Personnel

- o Elected Officials
 - o Appointed Officials
2. If the taxpayer increases voluntary deductions after a levy is served, tell the employer that this is not allowed.

NOTE:

Comptroller General's Decision B-45105 explains this to federal payroll offices. This decision is dated January 21, 1955, and amended April 18, 1955.

5.11.6.4.1 (11-05-1999)

Military Personnel on Active Duty

1. A levy on the income of active military personnel does not attach just wages and salary. It also attaches:
- o Payments for Quarters
 - o Subsistence
 - o Travel
 - o Clothing and uniform Allowances
 - o Personal Money and Overseas Allowances
 - o Reimbursement for Shipment of Household Goods
 - o Lump Sum Leave Payments
 - o Retirement Income (Including Disability Payments)
 - o Re-enlistment Bonuses
 - o Severance Pay
 - o Mustering Out Pay
 - o Savings Deposits

EXCEPTION:

See 1.3.1:(3) of this handbook.

2. See Document 6408 for addresses to mail these notices of levy.

If	And	Then
The taxpayer is in the Air Force or Marines.	The taxpayer is on active duty or is in the reserves.	Include the taxpayer's address on the levy, if it is known, e.g. Andrews Air Force Base.

* Use Letter 1096(DO) to follow up on military levies.

If	Then
The taxpayer is overseas.	Follow up 10 weeks after the levy is acknowledged.
The taxpayer is in the United States, except for Air Force.	Follow up four weeks after the levy is acknowledged.
The taxpayer is in the United States and is in the Air Force.	Follow up eight weeks after the levy is acknowledged.

* A response should be received to Letter 1096(DO) within 30 days. If not, call the finance center or send a new notice of levy.

* The taxpayer may pay the amount owed before the levy proceeds are received. If the release does not stop the proceeds in time, a payment for the levy will be received. Do not return the check to the finance center. Credit the money, so the

overpayment will generate a refund. If a hardship exists, request a manual refund. See IRM 5.1 General.

5.11.6.11 (09-08-1998)

Levy on Non-Liable Spouse in a Community Property State

1. In some states, community property laws may mean that people who are liable for delinquent tax have a community property interest in their spouse's property and rights to property. In this case, the delinquent taxpayers' property rights in their spouses' property and rights to property might be subject to levy.

EXAMPLE:

Taxpayers who are liable for delinquent tax may have a community property interest in their spouses' wages, so the wages of the spouse who is not liable for the tax might be subject to levy to pay it.

2. Community property laws vary from state to state. This may affect how much of a non-liable spouse's property can be attached by a levy. State law may have other effects, too. Contact Special Procedures for advice on any special language or inserts/cover letters needed with the levy, unless local instructions have already been issued for how to handle these levies. Special Procedures will consult with District Counsel, as needed. In multi-district states, the same procedures need to be used in all districts, so Regional Counsel may need to give advice on standard instructions for this type of levy.

5.11.6.11.1 (09-08-1998)

Wages & Salary

1. Although a non-liable spouse's wages or salary might be subject to levy, the levy does not have a continuous effect. This is because the Internal Revenue Code says that a levy on a taxpayer's wages and salary is continuous. However, if the non-liable spouse's wages or salary are levied, the levy is not actually on the taxpayer's wages or salary.
2. Although a levy on a non-liable spouse's wages or salary is not continuous, the exempt amount can still be claimed.
 - A. However, because the levy might attach only part of the non-liable spouse's income, the portion that is not attached can be treated like an income source that is not being levied when the exempt amount is figured. See 5.4.4.

EXAMPLE:

A non-liable spouse's weekly take home pay is \$500. Assume this person is in a state where a levy attaches half of a non-liable spouse's wages, and this is the only source of income that is levied. This means \$250 is not attached by the levy. If this levy is served in 1998, and the person is filing jointly with two exemptions, \$240.48 is exempt from levy. Since the exempt amount is less than the amount that

is not levied, no exempt amount is subtracted from the \$250 that the levy attaches. The employer should send a weekly check of \$250. The \$240.48 exempt amount has been accounted for by the other \$250 that is not attached.

EXAMPLE:

Take the same facts as the prior example, but the person claims four exemptions, so the weekly exempt amount is \$344.23. Because this is more than the \$250 that is not attached, the person needs to be allowed an additional exempt amount from the \$250 that is attached. This is figured.

\$344.23 Exempt from Levy
 -\$250.00 Not Attached by the Levy
 \$ 94.23 Additional Exempt Amount to be Allowed

The employer, then, figures:

\$250.00 Attached by the Levy
 -\$ 94.23 Additional Exempt Amount
 \$155.77 Weekly Levy Proceeds

B. As a practical matter, in this example, a simpler explanation may be to tell the employer to send half of the person's take home pay if the exempt amount is less than half of that, but follow the instructions on the levy form if the exempt amount is more than half of the take home pay. This will lead to the same amount of levy proceeds:

\$500.00 Take Home Pay
 -\$344.23 Exempt Amount
 \$155.77 Weekly Levy Proceeds

5.11.6.11.2 (11-05-1999)

Notice to the Non-Liable Spouse

1. When a taxpayer's community property interest in a non-liable spouse's property or right to property is levied, the notices in Section 1.2.1 must have been sent to the taxpayer. However, do not send these notices to the non-liable spouse.
2. After serving the notice of levy, the non-liable spouse is notified of the levy same way the taxpayer is notified of a levy. See section 2.1.7.
 - A. If a Notice of Levy is served, e.g. on a bank account, a copy of the levy is sent to the taxpayer. Part 4 of Form 668A(c)(DO) is generally used for this. In this case, though, also send a photocopy of the taxpayer's copy of the levy to the non-liable spouse.
 - B. If a levy is served on wages, salary, or other income, the statement of exemptions and filing status notifies the taxpayer of the levy. Similarly, the non-liable spouse will get these copies of the levy to claim the exempt amount, and this is the notification that a levy has been served.

Section 7 -- Automated Levy Programs

5.11.7.1 (07-21-2000)

State Income Tax Levy Program

5.11.7.1.1 (07-21-2000)

Background Legal Authority

1. The State Income Tax Levy Program (SITLP) matches a database of delinquent taxpayers against a database of participating states' tax refunds. The program is administered pursuant to Section 6331 of the Internal Revenue Code (IRC). This is not an offset program.
2. As a result of the implementation of The IRS Restructuring and Reform Act of 1998 (RRA 98), the SITLP program was completely revised. The SITLP program has been divided into two major program areas:
 - A. State Income Tax Levy Program (SITLP) -- an automated levy against state tax refunds, prior to issuance of a Collection Due Process (CDP) notice, if applicable. The taxpayer has a right to a hearing after levy action has taken place, IRC 6330(f)(2).
 - B. Automated Levy Program (ALP) -- an automated levy against property other than state tax refunds. Types of property include, but are not limited to, Alaska Permanent Fund Dividends, unclaimed property, lottery payments and vendor payments. The taxpayer has a right to a CDP hearing, if applicable, prior to any levy action.
 - C. With the exception of the Alaska Permanent Fund Dividend Levy Program, which may operate during 2000, implementation of the Automated Levy Program is scheduled for January 1, 2001. Procedures for the Automated Levy Program will be contained in IRM 5.11.7.3.

5.11.7.1.2 (07-21-2000)

How the Program Works

1. The participating states are provided with a Notice of Levy (Form 668-A) or a memorandum citing the authority to levy under IRC 6331, along with magnetic tape files to be matched against state files of taxpayers due a refund. New tapes are sent by Martinsburg Computing Center to the state agencies on a biweekly basis.
2. Due to the numerous tax law changes resulting from the implementation of RRA 98, various safeguards have been built into the new SITLP program. These consist of transaction codes, action codes and status codes that eliminate certain taxpayers from the SITLP levy. Refer to Exhibit 1-1 for a list of the exclusion criteria.
3. Each biweekly tape sent to the state agency eliminates taxpayers by entity, or for specific tax period(s), depending on the exclusion criteria present. (For example: A TC 480, offer in compromise pending, would exclude the

entire entity from the SITLP levy. A TC 470, taxpayer claim pending, would only exclude the specific tax periods affected by the TC 470).

4. When matches occur, the state agency forwards the levy proceeds and a corresponding data cartridge to the Service for processing. At that time, the proceeds are applied to delinquent modules. A second review is conducted at the service center to determine whether exclusion criteria are now present on the modules. If so, Service Center Collection Branch (SCCB) determines the proper case resolution.
5. Participating states are required to mail the taxpayer a letter indicating that the refund has been levied by the Service and applied to a Federal tax liability. The letter explains the amount of the refund levied, and advises the taxpayer to contact the IRS at 1-800-829-7650 for information regarding the SITLP levy.

5.11.7.1.3 (07-21-2000)

Master File and IDRS Indicators

1. When it is determined that a taxpayer is not excluded from the SITLP levy, a TC 971 AC 600 is generated onto every tax period affected by the levy. The taxpayer is then included on the biweekly tape sent to the state agency.
2. When a match occurs and levy proceeds are received from the state, a TC 670 Designated Payment Code (DPC) 20 will post to any tax period(s) where the SITLP payment was systemically applied. If the payment is applied manually by deposit operation, a TC 670 DPC 21 will post to the tax period(s).

5.11.7.1.4 (07-21-2000)

SITLP Correspondence Letters

1. As a result of the implementation of RRA 98, two new post levy notices were developed. The notices are CP 92, "Notice of Levy on Your State Tax Refund Notice of Your Right to a Hearing," for IMF accounts, and CP 242, "Notice of Levy on Your State Tax Refund Notice of Your Right to a Hearing," for BMF accounts.
2. The notices advise the taxpayer of the amount levied from his/her state tax refund. In addition, the notices explain the procedure for requesting a Collection Due Process (CDP) hearing or equivalent hearing, if applicable. The notices also advise the taxpayer of any remaining balance due, procedures to follow if a balance due remains, and the amount of any potential refund, if no other balance due exists.
3. The enclosed Publications 1660, Collection Appeal Rights and 594, IRS Collection Process, explain other avenues of appeal such as the Collection Appeals Program (CAP).
4. The toll free number 1-800-829-7650, is shown on the notices to provide assistance to the taxpayer.
5. A separate CP 92/CP 242 is mailed certified mail, for each tax period affected by the SITLP levy. The notice is

mailed to the last known address. A notice is sent to each spouse individually, when the known address is different for each spouse. On BMF accounts, the notice is mailed certified mail to the last known office of record.

6. A separate notice is also mailed by regular mail to a valid Power of Attorney listed on the taxpayer entity.

5.11.7.1.5 (07-21-2000)

Appeal Procedures

1. The notice will include Form 12153, Request for Collection Due Process Hearing , Publication 1660, Collection Appeal Rights , and Publication 594, IRS Collection Process . This information will provide guidance on the appeal process and how to request a hearing. If a taxpayer wants to request a hearing he/she will send the request to the service center address shown on the notice.
2. The taxpayer must request the CDP hearing in writing. Form 12153 may be used for this purpose. The Service representative handling the inquiry will attempt to resolve the issues with the taxpayer. This process may result in the taxpayer not wanting to pursue the CDP hearing. If the issue is resolved, the taxpayer has the option to withdraw the CDP hearing request. The withdrawal must be in writing, Form 12256, Withdrawal of Request for Collection Due Process Hearing , can be used for this purpose.
3. If the representative is unable to resolve the issues, a CDP hearing request file will be initiated, and forwarded to the District Appeals office that services the taxpayer.
4. If the taxpayer has previously received his/her CDP rights for any tax period, as evidenced by a TC 971 AC 69 on the module, he/she will be prohibited from requesting another CDP hearing for that tax period, unless an additional tax assessment is present after the TC 971 AC 69. The taxpayer may still be entitled to appeal under the Collection Appeals Program (CAP).

5.11.7.1.6 (07-21-2000)

Handling Inquiries

1. If a taxpayer inquires about a SITLP levy:
 - o Determine whether the taxpayer received notification from the state, date of the notice, and amount of the state tax refund levied.
 - o Review IDRS for a TC 971 AC 600 and a TC 670 DPC 20 or 21 on any module(s).
 - o If TC 971 AC 600 is present on the module(s) without a corresponding TC 670 DPC 20/21, either the levy proceeds may not have posted to Master File, but is forthcoming, or there were no proceeds or insufficient proceeds to satisfy all open modules.
 - o If both TC 971 AC 600 and TC 670 DPC 20/21 are present, then SITLP proceeds were applied to the tax module(s).
 - o If the taxpayer did not receive the CP 92 and/or the

- CP 242, have him/her send you a copy of any notification received from the state.
- o Determine whether the refund is sufficient to satisfy the total balance due on all open tax periods. If not, discuss payment of the balance due, and attempt to resolve the account.
- 2. Refer to Exhibit 1-1 for a list of exclusion criteria. If the criteria are present on any module(s) affected by SITLP, procedures for initiating a refund may be necessary. Refer to the Customer Service IRM 21.4.4 for procedures on Manual Refunds.

5.11.7.1.7 (07-21-2000)

State Agreement

- 1. Beginning 04/01/2000, one master SITLP agreement will be utilized by the IRS and all participating states. The agreement was finalized after soliciting input from any states interested in participating in the SITLP program.
- 2. The agreement addresses the following:
 - o Purpose
 - o Authority
 - o Overview of the SITLP program
 - o Rights and responsibilities
 - o Coordination
 - o Concurrence
- 3. A copy of the signed agreement will be kept by a representative from the state agency and by the SITLP program analyst at: Internal Revenue Service
Office of Field Programs
Attn: National SITLP Coordinator OP:CO:C:FP
1111 Constitution Ave, NW
Washington, DC 20224

5.11.7.1.8 (07-21-2000)

Program Coordination

- 1. To ensure that communication is maintained and the provisions of the SITLP program are adhered to, coordination between the National Office, service centers, Martinsburg Computing Center, various Fed/State representatives, district coordinators and state representatives is essential to the success of this program. The focal point for coordination will be the National Office Collection/Compliance SITLP coordinator.

5.11.7.1.9 (07-21-2000)

Exclusion Criteria

- 1. Due to the implementation of RRA 98, it is imperative that every precaution is taken to avoid erroneous or wrongful levies. The SITLP program has incorporated exclusion criteria into the two most sensitive parts of the program.
 - o Prior to sending data tapes to the states
 - o Upon receipt of data cartridges from the states

2. It is essential to review the exclusion criteria in Exhibit 1-1 whenever handling a SITLP inquiry. If any transaction code, TC 971 with a corresponding action code or status code listed in the exclusion criteria is present on any module(s), ensure that the proper action is taken to avoid a wrongful or erroneous levy.
3. Procedures for Customer Service employees are located in IRM 21.9.9, Automated Levy Programs.

5.11.7.2 (10-27-2000)

Federal Payment Levy Program

1. The Federal Payment Levy Program (FPLP) is an automated levy program the IRS has implemented with the Department of Treasury, Financial Management Service (FMS).
2. The FPLP is a means by which the IRS will systemically levy federal disbursements using a paperless process.

5.11.7.2.1 (10-27-2000)

Background and Authority

1. Internal Revenue Code (IRC) Section 6331(h) as prescribed by the Taxpayer Relief Act of 1997 (Public Law 105-34) Section 1024, authorizes the Internal Revenue Service to issue continuous levies on certain federal payments.
2. The law allows up to fifteen percent of specified payments to be levied. Specified payments include any federal payment other than a payment for which eligibility is based on the income and/or assets of a payee.
3. FMS disburses some of the federal payments that are available for levy under this new law.
4. Although the law also allows levy on some payments that are exempt pursuant to IRC Section 6334(a), the Service will not pursue those payment sources at this time.
5. The FPLP will be phased in over a two to three year timeframe.

5.11.7.2.1.1 (10-27-2000)

Interagency Agreement

1. The interagency agreement between the IRS and FMS provides for the following payments to be systemically levied during the first phase of the FPLP:
 - o Office of Personnel Management (OPM) Retirement Income
 - o Federal contract/Vendor payments
2. The interagency agreement will be appended to include federal employee salaries and Social Security Administration benefit income as these payment types are included in the FMS payment stream.

5.11.7.2.1.2 (10-27-2000)

Delegation Authority

1. Delegation authority to issue an IRC 6331(h) levy and levy release through the FPLP remains the same as outlined in IRM 5.11.1.2.3, Notice of Levy, Background, Pre-Levy Actions & Restrictions on Levy, Delegation Orders.

5.11.7.2.1.3 (10-27-2000)

Third Party Notification

1. Third Party notification provisions under IRC 7602 (c) do not apply to this levy process as contact is made between electronic database(s).

5.11.7.2.2 (10-27-2000)

Criteria

1. The following modules can be selected for levy through the FPLP:

Master File Tax Code (MFT) 01-06, 09-13, 15, 16, 30, 31, 33, 34, 36, 37, 44, 50, 51, 52, 55, 60, 63, 64, 67, 77, 78

[bullet image] Master File status 23, 24, 22, 26

Status of Case [bullet image] IDRS Transaction Code 530, with closing codes 03, 06, 09, 10, 12, 13, 39

5.11.7.2.2.1 (10-27-2000)

Exclusions

1. Entities and tax modules with certain condition codes will be excluded from selection.
2. Those include pending and approved installment agreements; pending Offers in Compromise; Taxpayer Assistance Orders; open bankruptcies and litigation; pending claims; and imminent CSEDs.
3. See Exhibit 5.11.7-3 for the Criteria of Entities or Modules Not Selected for FPLP.

5.11.7.2.3 (10-27-2000)

FPLP Process

1. All delinquent cases that meet selection criteria will be transmitted to FMS to be matched with federal disbursements.
2. If FMS identifies a match, and the taxpayer has not previously received a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing, then IRS will systemically generate one. (See Exhibit 5.11.7-4 for CP 90-IMF/CP 297-BMF). If the taxpayer does not appeal or resolve their case, IRS will notify FMS to start a continuous levy of fifteen percent of the disbursements due to the taxpayer.

3. If FMS identifies a match, and the taxpayer has previously received a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing, then FMS will immediately begin to levy fifteen percent of the disbursements due to the taxpayer.
4. FMS will transmit the proceeds to IRS and send the remaining disbursement to the taxpayer with a notice indicating the amount levied.

5.11.7.2.4 (10-27-2000)

Notice and Appeal

1. Prior to electronically levying a federal disbursement, IRS will systemically issue a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing (CP 90 or CP 297) with collection due process appeal rights, if one has not already been sent.
2. The notice will have the ACS contact phone number (1-800-829-7650) for taxpayers to resolve the case or exercise their appeal rights.
3. The taxpayer may exercise appeal rights through:
 - o Collection Appeals Program (CAP)
 - o Collection Due Process (CDP)
 - o Equivalent Hearing (Appeals request made after the 30 day CDP period)
4. Service personnel are to process and resolve such contact in accordance with appeals procedures in IRM 5.1, General Handbook, Chapter 9, Taxpayer Rights.
5. It may be necessary to block or release the case from the FPLP, using the procedures in IRM 5.11.7.2.6, if resolution is pending and no other exclusionary criteria exist.

REMINDER:

If a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing was issued prior to the last 180 days, a new warning of enforcement action does not have to be issued since this is a computer matching levy program. See IRM 5.11.1.2.2.4.

5.11.7.2.5 (10-27-2000)

How to Recognize and Handle A FPLP Case

1. Revenue officers must recognize modules that have been selected for the FPLP and determine if this process will be part of their strategy to resolve the case.
2. If revenue officers decide that modules should not be part of FPLP, then they will need to place a block on the modules using procedures in IRM 5.11.7.2.6.

5.11.7.2.5.1 (10-27-2000)

FPLP Indicators

1. Modules selected for the FPLP will remain in their original Master File status codes.
2. Master File (I/BMFOL) will display the indicator FMS

LEVY>1 or FMS-CD>1, if the module has been selected in the FPLP.

3. IDRS (cc ENMOD) will display the indicator FMS>1 on the entity screens, if at least one module has been selected in the FPLP.
4. Each tax module (cc TXMOD, I/BMFOLT) will also display the following:

Currently not included in FPLP;

FMS LEVY/CD > 1 however, at one time the module was included in FPLP.

FMS LEVY/CD > 3 Currently included in the FPLP.

FMS LEVY/CD > other Current or pending block from numeric or alpha code FPLP.

* Integrated Collection System (ICS) will display "FPLP" in red on the case summary and module summary screens.

5.11.7.2.5.2 (10-27-2000)

TC 97X Action Codes

1. The following TC 97X action codes are associated with the FPLP:

TC 971 AC

060 Module selected for FPLP.

TC 972 AC Reversal of module selected for FPLP (computer generated only).

TC 971 AC

061 Block/release of module from FPLP.

TC 972 AC

061 Reversal of block on module.

TC 971 AC Module matched or levied under FPLP with identifying DLN.

Final Notice (Notice of Intent to Levy & Notice

TC 971 AC of Your Right to a Hearing) issued.

069 -CP 90/297 FPLP issued

-LT 11 : ACS issued

-L1058(c): District Office issued

* If a module is selected for the FPLP, then a TC 971 AC 060 will be posted.

* Once a federal disbursement is matched or levied, a TC 971 AC 062 will post.

* Master File will systemically verify if a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing, has been indicated (TC 971 AC 069).

5.11.7.2.5.3 (10-27-2000)

Document Locator Number (DLN)

(TC 971 AC 062)

1. The DLN associated with TC 971 AC 062 will include information about:
 - o Federal payment agency source
 - o Type of federal payment matched for levy
 - o If the module was matched or levied

See Exhibits 5.11.7-5 and 5.11.7-6 to identify the DLN format for federal payment agencies and federal payment type codes.

5.11.7.2.5.4 (10-27-2000)

FPLP or Form 668

1. Whenever the FPLP indicator is present on a module, revenue officers may decide to levy the federal payment source through the FPLP -- attaching up to 15% of the disbursement; or issue Form 668A or Form 668W, levying the federal payment source directly and attaching the maximum amount allowed.
2. Revenue officers cannot close a case as a continuous FPLP levy. This is because continuous levies are placed in Status 60 and FPLP will systemically exclude Status 60 cases. Continuous levies may still be issued on Form 668W, and placed in Status 60. IN order to close a case as a continuous levy on a federal payment source for wages, salary or other income, revenue officers must issue a paper levy directly to the federal payment source.
3. If a federal payment source is levied with Form 668A or Form 668W, the revenue officer must input the TC 971 AC 061 to block the module from the FPLP.

CAUTION:

Electronic levies through the FPLP and paper levies cannot be issued or in effect simultaneously on the same federal payment source.

5.11.7.2.6 (10-27-2000)

Blocking and Releasing FPLP Levy (TC 971 AC 061)

1. The criteria and delegation authority for release of levy will not change for the FPLP levy. See IRM 5.11.2.2.
2. When the revenue officer determines that a module should be excluded from FPLP, input TC 971 AC 061 to block or release a tax module from the FPLP. TC 971 AC 061 must be input for each module that will be blocked.
3. If cases should not be selected for the FPLP or if the levy needs to be released, revenue officers will immediately request input of TC 971 AC 061 on each tax module using Form 4844. Form 4844 will indicate
 - o Taxpayer's name
 - o TIN
 - o Address
 - o MFT and tax period(s)
4. Do not send Form 668D, Release of Levy/Release of Property from Levy, to FMS or the federal payment source. The FPLP levy can only be released electronically.

REMINDER:

TC 971 AC 061 must be input on all modules in order to avoid levy action. Once the TC 971 AC 061 is input to IDRS, it may take up to 3 cycles before a levy is released. In certain situations it may be necessary to work with the FPLP coordinator to immediately

release the levy.

5.11.7.2.6.1 (10-27-2000)

Emergency Release of FPLP Levy

1. Situations will arise when a FPLP levy must be released immediately (e.g. bankruptcy, Taxpayer Assistance Orders, extreme economic hardship). The FPLP levy will need to be released directly from the FMS system.
2. Prepare and sign Form 4844 and fax it to the FPLP coordinator. The FPLP coordinator will have on-line computer access to the FMS system in order to expedite release of a FPLP levy.
3. Indicate on Form 4844
 - o "FPLP Levy Release"
 - o Taxpayer's name and address
4. Call the FPLP coordinator to ensure receipt.
5. Keep a copy of the Form 4844 with the file.
6. A copy of the Form 4844 used to input the TC 971 AC 061 to block the modules may be sent/faxed to the FPLP coordinator. Indicate "FPLP Levy Release" on the form.

CAUTION:

Do not send Form 668D, Release of Levy/Release of Property from Levy to FMS or the federal payment source.

REMINDER:

If the FPLP levy is released through the FMS system, a TC 971 AC 061 using Form 4844 must also be input to block the modules. See IRM 5.11.7.2.6.

5.11.7.2.6.2 (10-27-2000)

FPLP Coordinator Duties

1. The FPLP coordinator will have on-line computer access to the FMS system to release a case from the FPLP.
2. Revenue officers, SPf, and FPLP liaisons from other functions will prepare and send Form 4844 to their FPLP coordinator to input the release of a FPLP levy. Form 4844 may be faxed, if necessary.
3. Form 4844 will serve as the input document for the FPLP coordinator. The coordinator will sign onto the FMS system and release all the modules from levy.
4. Requests for release of FPLP levies must be input within 24 hours of receipt.
5. The FPLP coordinator will not be responsible for authorizing the release. Only delegated officials authorized to release levies will release FPLP levies.
6. Coordinators will provide support for all functions in the district and Customer Service call sites.

5.11.7.2.6.3 (10-27-2000)

Bankruptcy

1. If a taxpayer files bankruptcy and modules have been included in the FPLP, SPf will input the TC 520 and

contact the FPLP coordinator to release the FPLP levy through the FMS system.

5.11.7.2.6.4 (10-27-2000)

Other Cases to be Released Through the FPLP Coordinator

1. There may be other situations where it has been determined release of the FPLP levy through the FPLP coordinator is appropriate.
2. Those cases include, but are not limited to:
 - o Appeals Determinations
 - o Wrongful levies
 - o Erroneous levies on the taxpayer's property
3. The revenue officer will
 - o Prepare, sign and send/fax Form 4844 to the FPLP coordinator for release of levy using the FMS system. See IRM 5.11.7.2.6.1.
 - o Prepare and sign Form 4844 to request input of TC 971 AC 061 to block the modules from the FPLP.

REMINDER:

Upon closure of a case, the revenue officer should reverse the block with TC 972 AC 061 on Form 4844.

5.11.7.2.6.5 (10-27-2000)

Reversing the FPLP Block (TC 972 AC 061)

1. Most tax modules that come from ACS will be systemically blocked from the FPLP.
2. If a tax module is blocked from the FPLP process with TC 971 AC 061, and a decision is made to include the module in the FPLP, then revenue officers should request input of TC 972 AC 061, using Form 4844 to reverse the block on each module.
3. Upon closing a case, revenue officers must reverse the block, allowing those cases that meet the criteria in the FPLP in the future.

5.11.7.2.7 (10-27-2000)

Manual Refunds

1. FPLP levy payments are identified with a TC 670 DPC 18.
2. In situations where the levied proceeds have been transmitted by FMS, and it is determined that the levy should be released, then a manual refund may be issued to the taxpayer in accordance with IRM 5.11.2.3, Returning Levied Property to the Taxpayer, and IRM 5.1 Chapter 15, General Handbook.

Exhibit 5.11.7-1 (07-21-2000)
Exclusion Criteria

-

TC 470 -- Claim Pending
TC 480 -- Offer in Compromise pending
TC 488 -- Installment and/or Manual Billing

TC 500 -- Military Deferment
TC 520 -- IRS Litigation Instituted
TC 524 -- Collateral Agreement pending
TC 530 -- Closing Codes 04, 05, 07, 08
TC 534 -- Expired Balance Write-Off Accrued or Assessed
TC 540 -- Deceased Taxpayer
TC 570 -- Additional Liability Pending and/or Credit Hold

TC 608 -- Statute Expiration Clearance to Zero Balance and
Remove
TC 780 -- Master File Account Compromised
TC 788 -- All Collateral Conditions of the Offer Completed
TC 910 -- Intelligence Hold
TC 914 -- Active Criminal Investigation
TC 916 -- Active Criminal Investigation Refund Schemes Freeze
TC 918 -- Criminal Investigation Refund Schemes 918

Exhibit 5.11.7-1 (07-21-2000)
Exclusion Criteria

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TC 971 with the following Action Codes:

TC 971 AC 18 -- Congressional/ PRP Indicator
TC 971 AC 31 -- Full Bankruptcy Discharge
TC 971 AC 32 -- Fully Accepted OIC
TC 971 AC 35 -- A Manual Trigger to start FTP at 1% (less
than 7 cycles)
TC 971 AC 043 -- Pending Installment Agreement
TC 971 AC 063 -- Installment Agreement in Effect
TC 971 AC 65 -- Form 8857 filed
TC 971 AC 69 -- (less than 7 cycles)
TC 971 AC 71 -- Injured Spouse Claim
TC 971 AC 86 -- Disaster Processing
TC 971 AC 87 -- Additional Disaster Processing
TC 971 AC 99 -- Taxpayer Assistance Order

Installment Agreement Status Codes -- Status 60, 61, 63 and
64

NOTE:

The majority of these transaction codes will be present
on all taxpayer modules, meaning the entire entity will
be excluded from SITLP levy.

If the exclusion criteria are only present on certain
modules, then it is possible that the SITLP levy may be valid
for the other open modules. (

EXAMPLE:

TC 470 only present on 1 of 3 modules. The SITLP levy
may apply to the other two modules).

It will be necessary to determine the exact status of the
case, and make the determination necessary to resolve the
account.

Exhibit 5.11.7-3 (10-27-2000)

Criteria of Entities or Modules Not Selected For FPLP

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TRANSACTION OR FREEZE CODE REMARKS

- A Unreversed TC 500 or --C Military deferment Freeze
 - B Unreversed TC 910, 914, 916, CID hold 918 or --T or Z Freeze
 - C Unreversed TC 480 or TC 780 OIC pending or --Y Freeze
 - D Unreversed TC 976 or 977 or Duplicate return freeze --A Freeze
 - E Unreversed TC 530 CC 24-32 CNC hardship
 - F Unreversed TC 530 CC 08 CNC Deceased
 - G Unreversed TC 540 Deceased taxpayer
 - H Unreversed TC 971 AC 043 Pending IA
 - I Unreversed TC 971 AC 063 Current IA
 - J Unreversed TC 971 AC 099 Taxpayer Assistance Order (TAO)
 - K Unreversed TC 524 Collateral Agreement pending
 - L Unreversed TC 971 AC 086 OR Open Disaster Case 087
 - M Unreversed TC 520 all CCs Bankruptcy, Litigation, Collection Due Process Appeals
 - N Unreversed TC 470 Taxpayer claim pending
- Any module in an entity that has one of the following, will not be selected for FPLP:

Exhibit 5.11.7-3 (10-27-2000)

Criteria of Entities or Modules Not Selected For FPLP

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TRANSACTION OR FREEZE CODE REMARKS

- A If the earliest CSED is within 3 months of expiration
- B Unreversed TC 971 AC 061 Block from FPLP
- C Unreversed TC 971 AC 065 Innocent Spouse module
- D Unreversed TC 971 AC 071 Injured Spouse module

Exhibit 5.11.7-4 (10-27-2000)

CP 90 / 297 (Final Notice, Notice of Intent to Levy and Notice of Your Right To A Hearing)

Exhibit 5.11.7-4 (Cont.) (10-27-2000)

CP 90 / 297 (Final Notice, Notice of Intent to Levy and Notice of Your Right To A Hearing)

Exhibit 5.11.7-4 (Cont. 3) (10-27-2000)
CP 90 / 297 (Final Notice, Notice of Intent to Levy and Notice
of Your Right To A Hearing)

Exhibit 5.11.7-4 (Cont. 4) (10-27-2000)
CP 90 / 297 (Final Notice, Notice of Intent to Levy and Notice
of Your Right To A Hearing)
Exhibit 5.11.7-5 (10-27-2000)
Document Locator Number (DLN) Format of Federal Payment Type

FPLP Document Locator Number Positions

Exhibit 5.11.7-5 (10-27-2000)
Document Locator Number (DLN) Format
of Federal Payment Type