

within the one-year period commencing the day after the date of the CDP Notice issued under section 6330. This period is slightly different from the period for submitting a written request for an equivalent hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.

Q-18. How will the timeliness of a taxpayer's written request for an equivalent hearing be determined?

A-18. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for an equivalent hearing, if properly transmitted and addressed as provided in A-110 of this paragraph (i)(2).

Q-19. Is the one-year period within which a taxpayer must make a request for an equivalent hearing extended because the taxpayer resides outside the United States?

A-19. No. All taxpayers who want an equivalent hearing must request the hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330.

Q-110. Where must the written request for an equivalent hearing be sent?

A-110. The written request for an equivalent hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of the issuing office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN).

Q-111. What will happen if the taxpayer does not request an equivalent hearing in writing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330?

A-111. If the taxpayer does not request an equivalent hearing with Ap-

peals within the one-year period commencing the day after the date of the CDP Notice issued under section 6330, the taxpayer foregoes the right to an equivalent hearing with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the one-year period that does not satisfy the requirements set forth in A-11(ii) of this paragraph (i)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A-11(iii) of this paragraph (i)(2). If a request for equivalent hearing is untimely, either because the request was not submitted within the one-year period or not perfected within the reasonable period provided, the equivalent hearing request will be denied. The taxpayer, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program or any successor program.

(j) *Effective date.* This section is applicable on or after November 16, 2006 with respect to requests made for CDP hearings or equivalent hearings on or after November 16, 2006.

[T.D. 8980, 67 FR 2551, Jan. 18, 2002 as amended by T.D. 9291, 71 FR 60831, Oct. 17, 2006]

§ 301.6331-1 Levy and distraint.

(a) *Authority to levy—(1) In general.* If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the district director to whom the assessment is charged (or, upon his request, any other district director) may proceed to collect the tax by levy. The district director may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer. The district director may also levy upon property with respect to which there is a lien provided by section 6321 or 6324 for the payment of the tax. For exemption of certain property from levy, see section 6334 and the regulations thereunder. As used in section 6331 and this section, the term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with costs and expenses. Property subject to a Federal tax lien which has been sold or

otherwise transferred by the taxpayer may be seized while in the hands of the transferee or any subsequent transferee. However, see provisions under sections 6323 and 6324 (a)(2) and (b) for protection of certain transferees against a Federal tax lien. Levy may be made by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidences of debt, securities, and salaries, wages, commissions, or other compensation. A levy on a bank reaches any interest that accrues on the taxpayer's balance under the terms of the bank's agreement with the depositor during the 21-day holding period provided for in section 6332(c). Except as provided in § 301.6331-1(b)(1) with regard to a levy on salary or wages, a levy extends only to property possessed and obligations which exist at the time of the levy. Obligations exist when the liability of the obligor is fixed and determinable although the right to receive payment thereof may be deferred until a later date. For example, if on the first day of the month a delinquent taxpayer sold personal property subject to an agreement that the buyer remit the purchase price on the last day of the month, a levy made on the buyer on the 10th day of the month would reach the amount due on the sale, although the buyer need not satisfy the levy by paying over the amount to the district director until the last day of the month. Similarly, a levy only reaches property in the possession of the person levied upon at the time the levy is made together with interest that accrues during the 21-day holding period provided for in section 6332(c). For example, a levy made on a bank with respect to the account of a delinquent taxpayer is satisfied if the bank surrenders the amount of the taxpayer's balance at the time the levy is made. The levy has no effect upon any subsequent deposit made in the bank by the taxpayer. Subsequent deposits may be reached only by a subsequent levy on the bank.

(2) *Jeopardy cases.* If the district director finds that the collection of any tax is in jeopardy, he or she may make notice and demand for immediate pay-

ment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331(a), the 30-day period provided in section 6331(d), or the limitation on levy provided in section 6331(g)(1).

(3) *Bankruptcy or receivership cases.* During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending. Taxes cannot be collected by levy upon assets in the custody of a court, whether or not such custody is incident to a bankruptcy or receivership proceeding, except where the proceeding has progressed to such a point that the levy would not interfere with the work of the court or where the court grants permission to levy. Any assets which under applicable provisions of law are not under the control of the court may be levied upon, for example, property exempt from court custody under State law or the bankrupt's earnings and property acquired after the date of bankruptcy. However, levy upon such property is not mandatory and the Government may rely upon payment of taxes in the proceeding.

(4) *Certain types of compensation—(i) Federal employees.* Levy may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this subdivision, the term "employer" means (a) the officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or (b) any other officer or employee designated by the head of the branch, department, agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made. If the head of such branch, department, agency or instrumentality designates

an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Commissioner of the name and address of each officer or employee so designated and the scope or extent of his authority as such designee.

(ii) *State and municipal employees.* Salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) *Seamen.* Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy. See section 6334(c).

(5) *Noncompetent Indians.* Solely for purposes of sections 6321 and 6331, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

(b) *Continuing levies and successive seizures—(1) Continuing effect of levy on salary and wages.* A levy on salary or wages has continuous effect from the time the levy originally is made until the levy is released pursuant to section 6343. For this purpose, the term *salary or wages* includes compensation for services paid in the form of fees, commissions, bonuses, and similar items. The levy attaches to both salary or wages earned but not yet paid at the time of the levy, advances on salary or wages made subsequent to the date of the levy, and salary or wages earned and becoming payable subsequent to the date of the levy, until the levy is released pursuant to section 6343. In general, salaries or wages that are the subject of a continuing levy and are not exempt from levy under section 6334(a)(8) or (9), are to be paid to the district director, the service center director, or the compliance center director (director) on the same date the payor would otherwise pay over the money to the taxpayer. For example, if an individual normally is paid on the

Wednesday following the close of each work week, a levy made upon his or her employer on any Monday would apply to both wages due for the prior work week and wages for succeeding work weeks as such wages become payable. In such a case, the levy would be satisfied if, on the first Wednesday after the levy and on each Wednesday thereafter until the employer receives a notice of release from levy described in section 6343, the employer pays over to the director wages that would otherwise be paid to the employee on such Wednesday (less any exempt amount pursuant to section 6334).

(2) *Successive seizures.* Whenever any property or rights to property upon which a levy has been made are not sufficient to satisfy the claim of the United States for which the levy is made, the district director may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom such claim exists or on which there is a lien imposed by section 6321 or 6324 (or the corresponding provision of prior law) for the payment of such claim until the amount due from such person, together with all costs and expenses, is fully paid.

(c) *Service of notice of levy by mail.* A notice of levy may be served by mailing the notice to the person upon whom the service of a notice of levy is authorized under paragraph (a)(1) of this section. In such a case the date and time the notice is delivered to the person to be served is the date and time the levy is made. If the notice is sent by certificated mail, return receipt requested, the date of delivery on the receipt is treated as the date the levy is made. If, after receipt of a notice of levy, an officer or other person authorized to act on behalf of the person served signs and notes the date and time of receipt on the notice of levy, the date and time so the contrary, the date and time of delivery.

Any person may, upon written notice to the district director having audit jurisdiction over such person, have all notices of levy by mail sent to one designated office. After such a notice is received by the district director, notices

of levy by mail will be sent to the designated office until a written notice withdrawing the request or a written notice designating a different office is received by the district director.

(d) *Effective date.* These regulations are effective December 10, 1992.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7139, 36 FR 15041, Aug. 12, 1971; T.D. 7620, 44 FR 27987, May 14, 1979; T.D. 7874, 48 FR 10061, Mar. 10, 1983; T.D. 8558, 59 FR 38903, Aug. 1, 1994]

§ 301.6331-2 Procedures and restrictions on levies.

(a) *Notice of intent to levy—(1) In general.* Levy may be made upon the salary, wages, or other property of a taxpayer for any unpaid tax no less than 30 days after the district director, the service center director, or the compliance center director (director) has notified the taxpayer in writing of the intent to levy. The notice must be given in person, be left at the dwelling or usual place of business of the taxpayer, or be sent by registered or certified mail to the taxpayer's last known address. For further guidance regarding the definition of last known address, see § 301.6212-2. The notice of intent to levy is separate from, but may be given at the same time as, the notice and demand described in § 301.6331-1.

(2) *Content of Notice.* The notice of intent to levy is to contain a brief statement in nontechnical terms including the following information—

(i) The Internal Revenue Code provisions and the procedures relating to levy and sale of property;

(ii) The administrative appeals available with respect to the levy and sale of property and the procedures relating to such appeals;

(iii) The alternatives available that could prevent levy on the property (including the use of an installment agreement under section 6159); and

(iv) The Internal Revenue Code provisions and the procedures relating to redemption of property and release of liens on property.

(b) *Uneconomical levy—(1) In general.* No levy may be made on property if the director estimates that the anticipated expenses with respect to the levy and sale will exceed the fair market value of the property. The estimate is to be

made on an aggregate basis for all of the items that are anticipated to be seized pursuant to the levy. Generally, no levy should be made on individual items of insignificant monetary value. For the definition of fair market value, see § 301.6325-1(b)(1)(i). See § 301.6341-1 concerning the expenses of levy and sale.

(2) *Time of estimate.* The estimate, which may be formal or informal, is to be made at the time of the seizure or within a reasonable period of time prior to a seizure. The estimate may be based on earlier estimates of fair market value and anticipated expenses of the same or similar property.

(3) *Examples.* The following examples illustrate the application of this paragraph (b):

Example 1. A director anticipates that the taxpayer has only one item of property that can be seized and sold. This item is estimated to have a fair market value of \$250.00. The director also estimates that the costs of seizure and sale will total \$300.00 if this item is seized. The director is prohibited from levying on this one item of the taxpayer's property because the costs of seizure and sale are estimated to exceed the property's fair market value.

Example 2. The facts are the same as in *Example 1* except that the director anticipates that the taxpayer has 10 items of property that can be seized and sold. Each of those items is estimated to have a fair market value of \$250.00. The director also estimates that the costs of seizure and sale will total \$300.00 regardless of how many of those items are seized. The director is prohibited from levying on only one item of the taxpayer's property because the costs of seizure and sale are estimated to exceed the fair market value of the single item of property. The director, however, would not be prohibited from levying on two or more items of the taxpayer's property because the aggregate fair market value of the seized property would exceed the estimated costs of seizure and sale.

Example 3. The taxpayer has three items of property, A, B, and C. The director anticipates that the value of items A, B, and C depends on their being sold as a unit. The director estimates that due to high anticipated costs of storing or maintaining item B prior to the sale, the aggregate fair market value of items A, B, and C will not exceed the anticipated expenses of seizure and sale if all three items are seized. Accordingly, the director is prohibited from levying on items A, B, and C.