

the surrender or payment. Also, it is discharged from any obligation or liability to the insured or other owner. Any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy is not relieved from liability to a third party who owns the property. The owners of mistakenly surrendered property may, however, secure from the United States the administrative relief provided for in 26 U.S.C. 6343(b) or may bring suit to recover the property under 26 U.S.C. 7426.

(d) *Person defined.* In addition to the definition given in §70.11 of this part, the term “person,” as used in 26 U.S.C.A 6332(a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who is under a duty to surrender the property or rights to property or to discharge the obligation. In the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official of the United States, the District of Columbia, or any agency or instrumentality of either, the term “person” includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality who is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see §70.161(a)(4)(i) of this part.

(26 U.S.C. 6332)

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-450, 66 FR 29026, May 29, 2001]

**§70.164 Surrender of property subject to levy in the case of life insurance and endowment contracts.**

(a) *In general.* This section provides special rules relating to the surrender of property subject to levy in the case of life insurance and endowment contracts. The provisions of §70.163 of this part which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy in the case of life insurance and endowment contracts.

(b) *Effect of service of notice of levy—*  
(1) *In general.* A notice of levy served by an appropriate TTB officer on an insuring organization with respect to a

life insurance or endowment contract issued by the organization shall constitute:

(i) A demand by the officer who made the levy for the payment of the cash loan value of the contract adjusted in accordance with paragraph (c) of this section, and

(ii) The exercise of the right of the person against whom the tax is assessed to the advance of such cash loan value.

It is unnecessary for the official who made the levy to surrender the contract document to the insuring organization upon which the levy is made. However, the notice of levy will include a certification by the official who made the levy that a copy of the notice of levy has been mailed to the person against whom the tax is assessed at that person's last known address. At the time of service of the notice of levy, the levy is effective with respect to the cash loan value of the insurance contract, subject to the condition that if the levy is not satisfied or released before the 90th day after the date of service, the levy can be satisfied only by payment of the amount described in paragraph (c) of this section. Other than satisfaction or release of the levy, no event during the 90-day period subsequent to the date of service of the notice of levy shall release the cash loan value from the effect of the levy. For example, the termination of the policy by the taxpayer or by the death of the insured during such 90-day period shall not release the levy. For the rules relating to the time when the insuring organization is to pay over the required amount, see paragraph (c) of this section.

(2) *Notification of amount subject to levy—*(i) *Full payment before the 90th day.* In the event that the unpaid liability to which the levy relates is satisfied at any time during the 90-day period subsequent to the date of service of the notice of levy, the officer who filed the notice of levy will promptly give the insuring organization written notification that the levy is released.

(ii) *Notification after the 90th day.* In the event that notification is not given under paragraph (b)(2)(i) of this section, the officer who filed the notice of levy will, promptly following the 90th

day after service of the notice of levy, give the insuring organization written notification of the current status of all accounts listed on the notice of levy, and of the total payments received since service of the notice of levy. This notification will be given to the insuring organization whether or not there has been any change in the status of the accounts.

(c) *Satisfaction of levy.* The levy described in paragraph (b) of this section with respect to a life insurance or endowment contract shall be deemed to be satisfied if the insuring organization pays over to the officer who made the levy the amount which the person against whom the tax is assessed could have had advanced by the organization on the 90th day after service of the notice of levy on the organization. However, this amount is increased by the amount of any advance (including contractual interest thereon), generally called a policy loan, made to the person on or after the date the organization has actual notice or knowledge, within the meaning of 26 U.S.C. 6323(i)(1), of the existence of the tax lien with respect to which the levy is made. The insuring organization may, nevertheless, make an advance (including contractual interest thereon), generally called an automatic premium loan, made automatically to maintain the contract in force under an agreement entered into before the organization has such actual notice or knowledge. In any event, the amount paid to the appropriate TTB officer by the insuring organization is not to exceed the amount of the unpaid liability shown on the notification described in paragraph (b)(2) of this section. The amount determined in accordance with the provisions of this section, subject to the levy, shall be paid to the appropriate TTB officer by the insuring organization promptly after receipt of the notification described in paragraph (b)(2) of this section. The satisfaction of a levy with respect to a life insurance or endowment contract will not discharge the contract from the tax lien. However, see 26 U.S.C. 6323(b)(9)(C) and § 70.231(i) of this part concerning the liability of an insurance company after satisfaction of a levy with respect to a life insurance or endowment contract.

If the person against whom the tax is assessed so directs, the insuring organization, on a date before the 90th day after service of the notice of levy, may satisfy the levy by paying over an amount computed in accordance with the provisions of this subparagraph substituting such date for the 90th day. In the event of termination of the policy by the taxpayer or by the death of the insured on a date before the 90th day after service of the notice of levy, the amount to be paid over to the appropriate TTB officer by the insuring organization in satisfaction of the levy shall be an amount computed in accordance with the provisions of this subparagraph substituting the date of termination of the policy or the date of death for the 90th day.

(d) *Other enforcement proceedings.* The satisfaction of the levy described in paragraph (b) of this section by an insuring organization shall be without prejudice to any civil action for the enforcement of any Federal tax lien with respect to a life insurance or endowment contract. Thus, this levy procedure is not the exclusive means of subjecting the life insurance and endowment contracts of the person against whom a tax is assessed to the collection of the person's unpaid assessment. The United States may choose to foreclose the tax lien in any case where it is appropriate, as, for example, to reach the cash surrender value (as distinguished from cash loan value) of a life insurance or endowment contract.

(e) *Cross references.* (1) For provisions relating to priority of certain advances with respect to a life insurance or endowment contract after satisfaction of a levy pursuant to 26 U.S.C. 6332(b), see 26 U.S.C. 6323(b)(9) and § 70.231(i) of this part.

(2) For provisions relating to the issuance of a certificate of discharge of a life insurance or endowment contract subject to a tax lien, see 26 U.S.C. 6325(b) and § 70.150(b) of this part.

(26 U.S.C. 6332)

#### § 70.165 Production of books.

If a levy has been made or is about to be made on any property or rights to property, any person, having custody