

§ 70.242

(i) 38 U.S.C. chapter 11, subchapter II, III, IV, V, or VI, or

(ii) 38 U.S.C. chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 shall be exempt from levy.

(11) *Certain public assistance payments.* Any amount payable to an individual as a recipient of public assistance under:

(i) Title 42 U.S.C. subchapter IV (relating to aid to families with dependent children) or 42 U.S.C. subchapter XVI (relating to supplemental security income for the aged, blind, and disabled), or

(ii) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test shall be exempt from levy.

(12) *Assistance under job training partnership act.* Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*) from funds appropriated pursuant to such Act shall be exempt from levy.

(13) *Principal residence exempt in absence of certain approval or jeopardy.* Except to the extent provided in § 70.166 of this part, the principal residence of the taxpayer (within the meaning of 26 U.S.C. 1034) is exempt from levy.

(b) *Appraisal.* The TTB officer seizing property of the type described in 26 U.S.C. 6334(a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, such officer shall summon three disinterested individuals who shall make the valuation.

(c) *Other property.* No other property or rights to property are exempt from levy except the property specifically exempted by 26 U.S.C. 6334(a). No provisions of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

(26 U.S.C. 6334)

27 CFR Ch. I (4–1–10 Edition)

§ 70.242 Wages, salary and other income.

(a) *In general.* Under 26 U.S.C. 6334(a)(9) and (d) certain amounts payable to or received by a taxpayer as wages, salary or other income are exempt from levy. This section described the income of a taxpayer that is eligible for the exemption from levy (paragraph (b) of this section) and how exempt amounts are to be paid to the taxpayer (paragraph (c) of this section). Section 70.243 of this part describes the sum which will be exempt from levy for each of the taxpayer's payroll periods. Payroll periods are described in § 70.244 of this part. Amounts exempt from levy are determined in part by the number of persons claimed by the taxpayer as dependents. Section 70.245 of this part describes the manner in which the taxpayer is to claim any dependent exemptions and the manner in which the employer is to compute the exempt amount and pay the balance to the appropriate TTB officer.

(b) *Eligible taxpayer income.* Only wages, salary or other income payable to the taxpayer after the levy is made on the payor may be exempt from levy under 26 U.S.C. 6334 (a)(9). No amount of wages, salary or other income which is paid to the taxpayer before levy is made on the payor will be so exempt from levy.

(c) *Payment of exempt amounts to taxpayer—(1) From wages, salary or other income not subject to levy.* In the case of a taxpayer who has more than one source of wages, salary or other income, the appropriate TTB officer may elect to levy on only one or more such source while leaving other sources of salary or other income free from levy. If those wages, salary or other income which the appropriate TTB officer leaves free from levy equal or exceed the amount to which the taxpayer is entitled as an exemption from levy under 26 U.S.C. 6334(a)(9) and (d) and § 70.243 of this part (and are not otherwise exempt), then no amount of the taxpayer's wages, salary or other income on which the appropriate TTB officer elects to levy is exempt from levy. The appropriate TTB officer shall notify the employer or other person subject to levy that no amount of the taxpayer's wages, salary or other income is exempt from levy.

(2) *From wages, salary or other income subject to levy.* If the taxpayer's income upon which the appropriate TTB officer does not levy is less than that amount to which the taxpayer is entitled as an exemption, then an amount determined pursuant to § 70.243 of this part is to be paid to the taxpayer from those wages, salary or other income which are subject to levy. The appropriate TTB officer will designate those wages, salary or other income subject to levy from which such amount will be paid to the taxpayer. The appropriate TTB officer will generally make this designation by delivering to the employer, or other person levied upon, the form upon which the taxpayer is to claim any dependent exemption. The form will accompany the notice of levy. The person receiving the form from the appropriate TTB officer must promptly deliver it to the taxpayer. In the case of some employers having a large number of employees, however, the appropriate TTB officer will send the form upon which an employee is to claim any dependent exemption directly to the employee. In such a case, the notice of levy will indicate that the form for claiming dependent exemptions has been sent to the taxpayer. If a notice of levy is not accompanied by the form for claiming dependent exemptions and does not indicate that the form was sent directly to the taxpayer, then the person levied upon must make payment to the appropriate TTB officer without regard to amounts prescribed by § 70.243 of this part as exempt from levy. If a notice of levy is accompanied by the form for claiming dependent exemptions or indicates that the form was sent directly to the taxpayer, then the person levied upon is to pay over to the taxpayer, amounts determined to be exempt from levy pursuant to § 70.243 and § 70.245 (b) and (c) of this part (relating to the requirement that the taxpayer submit a claim for any dependent exemption). Amounts not exempt from levy are to be paid to the appropriate TTB officer in accordance with the terms of the levy.

(26 U.S.C. 6334)

§ 70.243 Exempt amount.

Amount payable to the taxpayer as wages, salary, or other income for each

payroll period described in § 70.244 of this part are exempt from levy as follows:

(a) If the payroll period is weekly, an amount equal to:

(1) The sum of:

(i) The standard deduction, and

(ii) The aggregate amount of the deductions for personal exemption allowed the taxpayer under 26 U.S.C. 151 in the taxable year in which such levy occurs, divided by

(2) 52.

(b) If the payroll period is not weekly, the amount exempt from levy shall be an amount which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as such individual would have under paragraph (a) of this section if (during such period of time) the individual were paid or received such wages, salary or other income on a regular weekly basis.

(26 U.S.C. 6334)

§ 70.244 Payroll period.

For purpose of determining the amount of wages, salary or other income exempt from levy under 26 U.S.C. 6334(a)(9):

(a) *Regularly used calendar periods.* In the case of wages, salary or other income paid to the taxpayer on the basis of an established calendar period regularly used by the employer or other person levied upon for payroll or payment purpose (e.g., daily, weekly, bi-weekly, semimonthly, or monthly), that period is the taxpayer's payroll period.

(b) *Amounts paid on recurrent but irregular basis.* In the case of wages, salary, or other income paid to the taxpayer on a recurrent but irregular basis, the first day of the taxpayer's payroll period is that day following the day upon which the wages, salary, or other income were last paid to the taxpayer. The last day of the payroll period is that day upon which the current payment becomes payable to him or her. However, in any case in which:

(1) Amounts are paid to the taxpayer on a recurrent but irregular basis, and

(2) the last payment was paid to the taxpayer more than 60 days before the current payment becomes payable, the current payment will be deemed a one-