

Internal Revenue Service, Treasury

§ 301.6331-2

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.

Example 4. The facts are the same as in *Example 3* except that the director does not anticipate that the value of items A, B, and C depends on those items being sold as a unit. If the director estimates that the aggregate fair market value of items A and C exceeds the aggregate anticipated costs of the seizure and sale of those two items, items A and C can be seized and sold. The director is prohibited from levying on item B because the high cost of storing or maintaining item B is estimated to exceed the fair market value of item B.

(c) *Restriction on levy on date of appearance.* Except for continuing levies on salaries or wages described in § 301.6331-1(b)(1), no levy may be made on any property of a person on the day that person, or an officer or employee of that person, is required to appear in response to a summons served for the purpose of collecting any underpayment of tax from that person. For purposes of this paragraph (c), the date on which an appearance is required is the date fixed by an officer or employee of the Internal Revenue Service pursuant to section 7605 or the date (if any) fixed as the result of a judicial proceeding instituted under sections 7604 and 7402(b) seeking the enforcement of the summons.

(d) *Jeopardy.* Paragraphs (a) and (c) of this section do not apply to a levy if the director finds, for purposes of

Internal Revenue Service, Treasury

§ 301.6331-4

§ 301.6331-1(a)(2), that the collection of tax is in jeopardy.

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

[T.D. 8558, 59 FR 38903, Aug. 1, 1994, as amended by T.D. 8939, 66 FR 2821, Jan. 12, 2001]

§ 301.6331-3 Restrictions on levy while offers to compromise are pending.

Cross-reference. For provisions relating to the making of levies while an offer to compromise is pending, see § 301.7122-1.

[T.D. 9027, 67 FR 77417, Dec. 18, 2002]

§ 301.6331-4 Restrictions on levy while installment agreements are pending or in effect.

(a) *Prohibition on levy*—(1) *In general.* No levy may be made to collect a tax liability that is the subject of an installment agreement during the period that a proposed installment agreement is pending with the Internal Revenue Service (IRS), for 30 days immediately following the rejection of a proposed installment agreement, during the period that an installment agreement is in effect, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, no levy may be made while the rejection or termination is being considered by Appeals. This section will not prohibit levy to collect the liability of any person other than the person or persons named in the installment agreement.

(2) *When a proposed installment agreement becomes pending.* A proposed installment agreement becomes pending when it is accepted for processing. The IRS may not accept a proposed installment agreement for processing following reference of a case involving the liability that is the subject of the proposed installment agreement to the Department of Justice for prosecution or defense. The proposed installment agreement remains pending until the IRS accepts the proposal, the IRS notifies the taxpayer that the proposal has been rejected, or the proposal is withdrawn by the taxpayer. If a proposed installment agreement that has been accepted for processing does not con-

tain sufficient information to permit the IRS to evaluate whether the proposal should be accepted, the IRS will request the taxpayer to provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may reject the proposed installment agreement.

(3) *Revised proposals of installment agreements submitted following rejection.* If, following the rejection of a proposed installment agreement, the taxpayer makes a good faith revision of the proposal and submits the revision within 30 days of the date of rejection, the provisions of this section shall apply to that revised proposal.

(4) *Exceptions.* Paragraph (a)(1) of this section shall not prohibit levy if the taxpayer files a written notice with the IRS that waives the restriction on levy imposed by this section, the IRS determines that the proposed installment agreement was submitted solely to delay collection, or the IRS determines that collection of the tax to which the installment agreement or proposed installment agreement relates is in jeopardy.

(b) *Other actions by the IRS while levy is prohibited*—(1) *In general.* The IRS may take actions other than levy to protect the interests of the Government with regard to the liability identified in an installment agreement or proposed installment agreement. Those actions include, for example—

(i) Crediting an overpayment against the liability pursuant to section 6402;

(ii) Filing or refiling notices of Federal tax lien; and

(iii) Taking action to collect from any person who is not named in the installment agreement or proposed installment agreement but who is liable for the tax to which the installment agreement relates.

(2) *Proceedings in court.* Except as otherwise provided in this paragraph (b)(2), the IRS will not refer a case to the Department of Justice for the commencement of a proceeding in court, against a person named in an installment agreement or proposed installment agreement, if levy to collect the liability is prohibited by paragraph