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person to be served is the date and time the levy is made. If the notice is sent by certified or registered 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 noted will be presumed to be, in the absence of proof to the contrary, the date and time of delivery. Any person may upon written notice to the appropriate TTB officer, have all notices of levy by mail sent to one designated ofice. After such a notice is received by the appropriate TTB officer, notices of levy by mail will sent to the designated office until a written notice withdrawing the request or a written notice designating a difference office is received by the appropriate TTB officer.

(26 U.S.C. 6331 and 6332)

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

§ 70.162 Levy and distraint on salary and wages.

(a) *Notice of intent to levy*. Levy may be made for any unpaid tax only after the appropriate TTB officer has notified the taxpayer in writing of the intent to levy. The notice must be given in person, left at the dwelling or usual place of business of the taxpayer, or be sent by certified or registered mail to the taxpayer's last known address, no less than 30 days before the day of levy. The notice of intent to levy is in addition to, and may be given at the same time as, the notice and demand described in § 70.161 of this part.

(b) *Jeopardy*. Paragraph (a) of this section does not apply to a levy if the appropriate TTB officer has made a finding under § 70.161(a)(2) of this part that the collection of tax is in jeopardy.

(c) *Continuing effect of levy on salary or wages*. A levy on salary or wages is continuous from the time of the levy until the liability out of which the levy arose is released under 26 U.S.C. 6343 and § 70.167 of this part. 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, and salary or wages earned and becoming payable (or paid in the form of an advance) subsequent to the date of the levy, until the levy is released pursuant to paragraph (d) of this section. In general, salaries or wages that are the subject of a continuing levy, if not exempt from levy under 26 U.S.C. 6334(a) (8) or (9), become payable to the officer who made the levy as the payor would otherwise be obligated to pay over the money to the taxpayer. For example, if the wage earner is paid on the Wednesday following the close of each workweek, a levy made upon the taxpayer's employer on any Monday would reach both the wages due for the prior workweek and the wages for succeeding workweeks as such wages become payable. In such a case the levy would be satisfied if the employer, on the first Wednesday after the levy and on each Wednesday thereafter, pays over to the officer who made the levy wages which would otherwise be paid to the employee on such Wednesday, until the employer receives a notice of release from levy described in paragraph (d) of this section. See, however, § 70.245(d) of this part for rules which permit a delayed payment to the officer who made the levy in certain cases where amounts payable to the taxpayer are exempt from levy under 26 U.S.C. 6334 (a)(9) and (d).

(d) *Release and notice of release from levy*. The officer who made the levy will promptly release a continuing levy on salary or wages when the conditions of 26 U.S.C. 6343 are met. The officer who made the levy will also promptly notify the person upon whom the levy was made that it has been released.

(26 U.S.C. 6331)

§ 70.163 Surrender of property subject to levy.

(a) *Requirement*—(1) *In general*. Except as otherwise provided in 26 U.S.C. 6332, relating to levy in the case of banks or life insurance and endowment contracts, any person in possession of (or obligated with respect to) property or rights to property subject to levy and upon which a levy has been made shall,

upon demand of the officer who made the levy, surrender the property or rights (or discharge the obligation) to the officer who made the levy, except that part of the property or rights (or obligation) which, at the time of the demand, is actually or constructively under the jurisdiction of a court because of an attachment or execution under any judicial process.

(2) *Property held by banks.* (i) Any bank shall surrender any deposits (including interest thereon) in such bank only after 21 days after service of levy.

(ii) Notwithstanding paragraph (a)(1) of this section, if a levy has been made upon property or rights to property subject to levy which a bank engaged in the banking business in the United States or a possession of the United States is in possession of (or obligated with respect to), an appropriate TTB officer shall not enforce the levy with respect to any deposits held in an office of the bank outside the United States or a possession of the United States, unless the notice of levy specifies that such officer intends to reach such deposits. The notice of levy must not specify that such officer intends to reach such deposits unless that officer making such levy believes:

(A) That the taxpayer is within the jurisdiction of a U.S. court at the time the levy is made and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(B) That the taxpayer is not within the jurisdiction of a U.S. court a the time the levy is made, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau.

(b) *Enforcement of levy*—(1) *Extent of personal liability.* Any person who, upon demand of the appropriate TTB officer, fails or refuses to surrender any property or right to property subject to levy is liable in his/her own person and estate in a sum equal to the value of the property or rights not so surrendered, together with costs and interests. The liability, however, may not exceed the amount of the taxes for the collection of which the levy was made. Interest is to be computed at the annual rate referred to in regulations under 26 U.S.C. 6221 from the date of the levy, or, in the case of a continuing levy on salary or wages (see 26 U.S.C. 6331(e)), from the date the person would otherwise have been obligated to pay over the wages or salary to the taxpayer. Any amount recovered, other than cost, will be credited against the tax liability for the collection of which the levy was made.

(2) *Penalty for violation.* In addition to the personal liability described in paragraph (b)(1) of this section, any person who is required to surrender property or rights to property and who fails or refuses to surrender them without reasonable cause is liable for a penalty equal to 50 percent of the amount recoverable under 26 U.S.C. 6332(d)(2). No part of the penalty described in this subparagraph shall be credited against the tax liability for the collection of which the levy was made. The penalty described in this subparagraph is not applicable in cases where a bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy. However, if a court in a later enforcement suit sustains the levy, then reasonable cause would usually not exist to refuse to honor a later levy made under similar circumstances.

(c) *Effect of honoring levy.* Any person in possession of, or obligated with respect to, property or rights to property subject to levy and upon which a levy has been made who, upon demand by the appropriate TTB officer, surrenders the property or rights to property, or discharges the obligation, to that officer, or who pays a liability described in

paragraph (b)(1) of this section, is discharged from any obligation or liability to the delinquent taxpayer with respect to the property or rights to property arising from the surrender or payment. If an insuring organization satisfies a levy with respect to a life insurance or endowment contract in accordance with § 70.164 of this part, the insuring organization is discharged from any obligation or liability to any beneficiaries of the contract arising from 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*