

Defending Taxpayers with Economic Hardship

Handouts

December 2023

## **Reg § 301.6343-1. Requirement to release levy and notice of release.**

**Caution:** The Treasury has not yet amended **Reg § 301.6343-1** to reflect changes made by P.L. 105-206

**Effective:** December 30, 1994.

**(a) In general.** A district director, service center director, or compliance center director (director) must promptly release a levy upon all, or part of, property or rights to property levied upon and must promptly notify the person upon whom the levy was made of such a release, if the director determines that any of the conditions in paragraph (b) of this section (conditions requiring release) exist. The director must make a determination whether any of the conditions requiring release exist if a taxpayer submits a request for release of levy in accordance with paragraph (c) or (d) of this section; however, the director may make this determination based upon information received from a source other than the taxpayer. The director may require any supporting documentation as is reasonably necessary to determine whether a condition requiring release exists.

**(b) Conditions requiring release.** The director must release the levy upon all or a part of the property or rights to property levied upon if he or she determines that one of the following conditions exists—

*(1) Liability satisfied or unenforceable.*

(i) General rule. The liability for which the levy was made is satisfied or the period of limitations provided in section 6502 (and any period during which the period of limitations is suspended as provided by law) has lapsed. A levy is considered made on the date on which the notice of seizure provided in section 6335(a) is given. A levy that is made within the period of limitations provided in section 6502 does not become unenforceable simply because the person who receives the levy does not surrender the subject property within the period of limitations. In this case, the liability remains enforceable to the extent of the value of the levied upon property. However, a levy made outside the period of limitations (normally ten years without suspensions) must be released unless—

(A) The taxpayer agreed in writing to extend the period of limitations as provided in section 6502(a)(2) and §301.6502-1; or

(B) A proceeding in court to collect the liability has begun within the period of limitations.

(ii) Special situations. A continuing levy on salary or wages made under section 6331(e) must be released at the end of the period of limitations in section 6502. However, a levy on a fixed and determinable right to payment which right includes payments to be made after the period of limitations expires does not become unenforceable upon the expiration of the period of limitations and will not be released under this condition unless the liability is satisfied.

*(2) Release will facilitate collection.* The release of the levy will facilitate collection of the liability. A director has the discretion to release the levy in all situations, including those where the proceeds from the sale will not fully satisfy the tax liabilities of the taxpayer, under terms and conditions as he or she determines are warranted.

(i) Example. The following example illustrates the provisions of this paragraph (b)(2):

*Example.* A and B each own machines which, when used together, produce widgets. A owes delinquent federal taxes. A notice of federal tax lien is properly filed against all property or rights to property belonging to A. A's machine is seized to satisfy A's delinquent tax liability. The fair market value of A's property is greater than the expenses of seizure and sale, but less than the amount of A's tax liability. A and B find a buyer who wants to buy both machines together. The buyer will only buy the machines together. A's property has a greater value as part of the package than it does by itself. The larger value, as shown in the sale contract, is enough to pay A's tax liability in full. In this situation a release of the levy will facilitate collection because the sale of both machines can be completed and A's liability will be paid in full at the settlement.

(ii) Compliance with other conditions. The director may find that collection will be facilitated by the taxpayer's compliance with conditions other than immediate payment, such as:

(A) The delinquent taxpayer delivers a satisfactory arrangement, which is accepted by the director, for placing property in escrow to secure the payment of the liability (including the expenses of the levy) which is the basis of the levy.

(B) The delinquent taxpayer delivers an acceptable bond to the director conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. This bond shall be in the form provided in section 7101 and §301.7101-1.

(C) There is paid to the director an amount determined by the director to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(D) The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with section 6502(a)(2) and §301.6502-1.

(iii) Expenses of sale exceed the government's interest. If the director determines that the value of the United States' interest in the seized property does not exceed the expenses of sale of the property, a release of the levy will be deemed to facilitate collection of the liability even though the fair market value of property which has been seized exceeds the expenses of seizure and sale.

(3) *Installment agreement.* The taxpayer has entered into an agreement under section 6159 to satisfy the liability by means of installment payments, unless the agreement provides otherwise. However, the director is not required to release the levy under this condition if a release of the levy will jeopardize the secured creditor status of the United States, e.g., where there is an intervening judgment lien creditor and a notice of tax lien has not been filed.

(4) *Economic hardship.*

(i) General rule. The levy is creating an economic hardship due to the financial condition of an individual taxpayer. This condition applies if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses. The determination of a reasonable amount for basic living expenses will be made by the director and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.

(ii) Information from taxpayer. In determining a reasonable amount for basic living expenses the director will consider any information provided by the taxpayer including —

(A) The taxpayer's age, employment status and history, ability to earn, number of dependents, and status as a dependent of someone else;

(B) The amount reasonably necessary for food, clothing, housing (including utilities, home-owner insurance, home-owner dues, and the like), medical expenses (including health insurance), transportation, current tax payments (including federal, state, and local), alimony, child support, or other court-ordered payments, and expenses necessary to the taxpayer's production of income (such as dues for a trade union or professional organization, or child care payments which allow the taxpayer to be gainfully employed);

(C) The cost of living in the geographic area in which the taxpayer resides;

(D) The amount of property exempt from levy which is available to pay the taxpayer's expenses;

(E) Any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster; and

(F) Any other factor that the taxpayer claims bears on economic hardship and brings to the attention of the director.

(iii) Good faith requirement. In addition, in order to obtain a release of a levy under this subparagraph, the taxpayer must act in good faith. Examples of failure to act in good faith include, but are not limited to, falsifying financial information, inflating actual expenses or costs, or failing to make full disclosure of assets.

*(5) Fair market value exceeds liability.* The fair market value of the property exceeds the liability for which the levy was made and release of the levy on a part of the property can be made without hindering the collection of the liability. The following example illustrates the provisions of this paragraph (b)(5):

*Example.* The Internal Revenue Service levies upon ten widgets which belong to the taxpayer to satisfy the taxpayer's outstanding tax liabilities. Subsequent to the levy, the taxpayer establishes that market conditions have increased the aggregate fair market value of widgets so that the value of seven widgets equals the aggregate anticipated expenses of sale and seizure and the tax liabilities for which the levy was made. The director must release three widgets from the levy and return them to the taxpayer.

### **(c) Request for release of levy.**

*(1) Information to be submitted by taxpayer.* A taxpayer who wishes to obtain a release of a levy must submit a request for release in writing or by telephone

to the district director for the Internal Revenue district in which the levy was made. The taxpayer making the request must provide the following information —

- (i) The name, address, and taxpayer identification number of the taxpayer;
- (ii) A description of the property levied upon;
- (iii) The type of tax and the period for which the tax is due;
- (iv) The date of the levy and the originating Internal Revenue district, if known; and
- (v) A statement of the grounds upon which the request for release of the levy is based.

*(2) Time for submission.* Except in extraordinary circumstances, a request for release of a levy must be made more than five days prior to a scheduled sale of the property to which the levy relates.

*(3) Determination by director.*

(i) When required. The director must promptly make a determination concerning release prior to sale in all cases where a request for release of a levy is made except those where the request for release is made five or fewer days prior to a scheduled sale of the property to which the levy relates.

(ii) Time for making required determination. The determination will be made, generally, within 30 days of a request for release made 30 or more days prior to a scheduled sale of the property to which the levy relates. If a request for release is made less than 30 days prior to the scheduled sale but more than 5 days before the scheduled sale, a determination must be made prior to the scheduled sale. If necessary the director may postpone the scheduled sale in order to make this determination.

(iii) Discretionary determination. The director has the discretion, but is not required, to make a determination concerning release prior to sale in cases where a request for release of a levy is made five or fewer days prior to a scheduled sale of the property to which the levy relates.

*(4) Notification to taxpayer of determination.* The director must promptly notify the taxpayer if the levy is released. If the director determines that none of the conditions requiring release of the levy exist, the director must promptly

notify the taxpayer of the decision not to release the levy and the reason why the levy is not being released.

**(d) Expedited determination with respect to certain business property.**

*(1) General procedure.*

(i) Submission by taxpayer. If a levy is made on essential business property as is described in paragraph (d)(2) of this section, the taxpayer may obtain an expedited determination of whether any of the conditions requiring release of the levy exist. In order to obtain an expedited determination, the taxpayer must submit, within the time frame specified in paragraph (c)(2) of this section, the information required in paragraph (c)(1) of this section and include with the information an explanation of why the property levied upon qualifies for an expedited determination of whether a condition requiring release of the levy exists.

(ii) Time for making required determination. The director must make such a determination by the later of 10 business days from the time the director receives the request for release, or 10 business days from the time the director receives any necessary supporting documentation, if 10 or more business days remain before a scheduled sale of the property to which the levy relates. An expedited determination concerning release must be made prior to sale in all cases where a request for release of a levy is made within the time frame specified in paragraph (c)(2) of this section. If necessary the director may postpone the scheduled sale in order to make this determination.

(iii) Discretionary determination. The director has the discretion, but is not required, to make an expedited determination concerning release in cases where the taxpayer does not submit, within the time frame specified in paragraph (c)(2) of this section, the information required in paragraph (c)(1) of this section and include with the information an explanation of why the property levied upon qualifies for an expedited determination of whether a condition requiring release of the levy exists.

*(2) Essential business property defined.* For purposes of this section, essential business property means tangible personal property used in carrying on the trade or business of the taxpayer which when levied upon prevents the taxpayer from continuing to carry on the trade or business.

*(3) Seizure of perishable goods.* The provisions of this paragraph do not apply in the case of a seizure of perishable goods. Those seizures are governed by the provisions of section 6336 and §301.6336-1.

**(e) Effect of a release of levy.** If property has not yet been surrendered to the director in response to a levy, a release of the levy under section 6343(a) will relieve the possessor of any obligation to surrender the property. Otherwise, a release of a levy under section 6343(a) will cause the property to be returned to the custody of the person or persons legally entitled thereto. The release of a levy on any property under this section does not prevent any subsequent levy on the property. Section 301.6343-2, dealing with return of wrongfully levied upon property, is subject to section 6402 which prohibits the Internal Revenue Service from refunding a payment of money that has been deposited in the Treasury and credited to the taxpayer's liability unless there is an overpayment.

**(f) Effective date.** This section is effective as of December 30, 1994.

T.D. 6119, 12/31/54 , amend T.D. 6425, 11/10/59 , T.D. 6498, 10/24/60 , [T.D. 7180, 4/12/72](#) , [T.D. 8587, 12/30/94](#) .

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Document Title:Reg §301.6343-1 Requirement to release levy and notice of release.

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## Administrative Release of Levy

**1109.5** [IRC Sec. 6343\(a\)](#) provides for the administrative release of levies. The IRS is required to promptly release a levy in the following circumstances [[Reg. 301.6343-1\(b\)](#)]:

- a. The liability for which the levy was made is satisfied or has become unenforceable because the 10-year statute of limitations for collection has expired.
- b. Release of the levy will facilitate collection. If the levy is released, the taxpayer must comply with each of the following conditions that the IRS chooses to impose:
  - (1) Agree to place property in escrow to secure payment of the tax liability (including the expenses of levy) that is the basis of the levy.

- (2) Deliver an acceptable bond conditioned upon the payment of the tax liability (including the expenses of levy) that is the basis of the levy.
  - (3) Pay to the IRS an amount determined to be equal to the interest of the government in the seized property or the part of the seized property to be released.
- c. The taxpayer has entered into an installment agreement, unless the installment agreement provides that the levy will remain in place.
- d. The levy creates an economic hardship because satisfying the levy would prevent the taxpayer from paying basic living expenses such as food, clothing, shelter, and medical expenses. A taxpayer does not have to be in compliance on filing and paying current taxes before the levy is released nor should the levy in this circumstance be used to secure compliance. ([IRM 5.11.1.3.1](#)).
- e. The fair market value of the property exceeds the liability for which the levy was made, and the release of the levy will not hinder collection of the liability.

**1109.6** A release of the levy under one of the preceding circumstances does not prevent a later levy on the same property [[IRC Sec. 6343\(a\)\(3\)](#)].

**1109.7 Observation:** The IRS uses Form 668-D (Release of Levy/Release of Property from Levy) to release property subject to a levy. As a practical matter, most levies are released through negotiation, or in extreme cases by filing Form 911 (Application for Taxpayer Assistance Order). (See section [104](#).) In most cases levies are served to get the taxpayer's attention. When this happens, the taxpayer by definition is placed in a hardship, since the levy prevents the taxpayer from using the assets levied upon.

**1109.8** The regulations state that “economic hardship” would apply if partial or complete satisfaction of the levy would prevent the taxpayer from being able to pay “reasonable basic living expenses” [[Reg. 301.6343-1\(b\)\(4\)](#)]. In determining the reasonable amount of basic living expenses, the IRS considers the following:

- a. The taxpayer's age, employment history, ability to earn, number of dependents, and status as a dependent of someone else.
- b. The amount reasonably necessary for food; clothing; housing (including utilities, insurance, homeowner dues, etc.); medical expenses (including health insurance); transportation; federal, state, and local taxes; alimony, child support, or other court-ordered

payments; and expenses necessary to the taxpayer's production of income (such as union dues or child care payments).

- c. The cost of living in the geographic area in which the taxpayer resides.
- d. The amount of property exempt from levy that is available to pay the taxpayer's expenses.
- e. Any extraordinary circumstances, such as special education or medical expenses.

**1109.9 Practice Tip:** The taxpayer must *act in good faith* to obtain a release of levy based on economic hardship. Examples of failing to act in good faith include falsifying financial information, inflating expenses, or omitting assets [[Reg. 301.6343-1\(b\)\(4\)](#)].

**1109.10** To obtain a release of levy based on a circumstance previously listed, the taxpayer must submit a request in writing or by telephone to the Area Director where the levy was made. The request must include the information listed in [Reg. 301.6343-1\(c\)\(1\)](#).

**1109.11** Except in *extraordinary circumstances*, a request for release must be made more than five days before the scheduled date of sale of the property [[Reg. 301.6343-1\(c\)\(2\)](#)]. The IRS generally makes its determination within 30 days, and is required to promptly notify the taxpayer if the levy is released, and if not released, the reasons why [[Reg. 301.6343-1\(c\)\(3\)](#) and (4)]. However, for levies on tangible trade or business personal property, the IRS must make an expedited determination of whether the levy prevents the taxpayer from carrying on the trade or business [[IRC Sec. 6343\(a\)\(2\)](#) and [Reg. 301.6343-1\(d\)](#)].

**1109.12 Observation:** In one case, the taxpayer's Collection Information Statement showed monthly income of \$800, monthly expenses of \$800, \$14 cash, and a 1996 Toyota Corolla worth \$300. While "verification received by the settlement officer was consistent with the information [taxpayer] provided in the Form 433-A," the IRS refused to release the levy until taxpayer filed her 2005 and 2007 tax returns. The Tax Court responded that [IRC Sec. 6343\(a\)\(1\)\(D\)](#) requires the release of a levy that creates an economic hardship regardless of the taxpayer's past return filing compliance ([Vinatieri](#)). In response, Chief Counsel stated that if the taxpayer establishes that a levy will create an economic hardship, it is not appropriate to proceed with the levy, even if the taxpayer has unfiled tax returns (CC-2011-005).

Document Title:1109 Relief from a Federal Tax Levy

Checkpoint Source:IRS Tax Resolution and Representation (TPA Guide)

## 1109 Relief from a Federal Tax Levy

**1109.1** Once the prerequisites described in paragraph [1106.2](#) have been met, the IRS can levy upon and seize any property or rights to property owned by the delinquent taxpayer. However, the IRS must issue a notice of intent to levy before serving a levy. For this reason, the practitioner should ask the taxpayer if this notice has been received. If the taxpayer says “no” or does not know, the practitioner should insist the Revenue Officer do so unless the officer can prove the notice has been issued.

**1109.2** During the Coronavirus pandemic, IRS has published instructions on getting a levy released due to a coronavirus hardship. Although levies in place between April 1 and July 15, 2020 will not automatically be released, request can be made through the revenue officer assigned the case or if the case is not assigned to one or if unable to get through to the RO, the request can be faxed to 855-796-4524. That fax number is only for coronavirus hardship cases.

## Statute of Limitations

**1109.3** The IRS is permitted to collect tax by levy or pursuant to a court proceeding only if the levy is made or the court proceeding is begun within the 10-year period following the date the IRS validly assesses the underlying tax ([IRC Sec. 6502](#)). The statute of limitations for collection can be extended by written agreement in limited circumstances, and is extended during the time a court proceeding for the collection of tax is pending [[IRC Sec. 6502\(a\)](#)]. (See section [309](#) for analysis of the collection statute of limitations.)

**1109.4** A suit to reduce a tax claim to judgment can be used to extend the collection limitations period when no current source of collections is available [[IRC Sec. 6502\(a\)](#)]. If a proceeding in court for the collection of a tax is begun within the generally applicable 10-year limitations period after assessment, the period for collecting the tax by levy is extended until the liability for the tax or a judgment against the taxpayer arising from the liability is satisfied or becomes unenforceable.

## Administrative Relief in Case of a Wrongful Levy

**1109.13** An Area Director who determines the property was wrongfully levied upon has the authority to take one of the following actions [[IRC Sec. 6343\(b\)](#) and [Reg. 301.6343-2\(a\)](#)]:

- a. Return the specific property levied upon, if the IRS still has the property.
- b. Pay an amount of money equal to the amount levied upon.
- c. Pay an amount of money equal to the amount received from the sale of the property.

**1109.14** Regulations authorize the IRS to return property in certain cases and, to the extent possible, return the taxpayer to the same position as before the levy was made. The regulations apply to the return of (a) levied-upon money applied toward the taxpayer's liability, (b) money received from the sale of levied-upon property, and (c) levied-upon property if the levy was not in accordance with established procedures or if the taxpayer has entered into an installment agreement to satisfy the unpaid liability ( [Reg. 301.6343-3](#)).

**1109.15 Observation:** The Section 6343(b) procedures described here apply where a levy is wrongful and the IRS agrees it is wrongful (i.e., should never have been served). On the other hand, the Section 6343(a) procedures described in paragraph [1109.5](#) require a release of levy if certain circumstances have occurred after the date the levy was served.

**1109.16** Property can be returned at any time [[Reg. 301.6343-2\(a\)\(2\)](#)]. Conversely, to receive money or the value of proceeds from a tax sale, the person whose property was wrongfully levied upon must submit a written request within nine months of the date of the levy. Effective December 22, 2017, the Tax Cuts and Jobs Act extended the nine months to two years. This also applies to levies made on or before December 22, 2017, if the previous nine month period has not expired.

**1109.17** A written request for administrative return of property wrongfully levied upon must be addressed to the IRS office specified in [IRS Publication 4528](#), "Making an Administrative Wrongful Levy Claim Under [Internal Revenue Code \(IRC\) Section 6343\(b\)](#)," or successor publication, and must provide (a) the name and address of the person making the claim, (b) a detailed description of the levied or seized property, (c) a detailed description of the basis for claiming an interest in the property, (d) the taxpayer's name and address, (e) the IRS office that issued the levy or made the seizure, (f) the date of the levy, (g) a statement explaining why any of the above information

is not available, and (h) any documents that support the claim [[Reg. 301.6343-2\(b\)](#)].

**1109.18** With a Federal Payment Levy Program levy, it is difficult to determine the “date of the levy.” IRS memo SBSE-05-1215-0084 dated December 22, 2015, clarified that Counsel has determine that FLPL payments may be returned that were received within nine months preceding the request.

**1109.19** In addition, the 2017 Tax Cuts and Jobs Act (TCJA) extended the time for contesting a levy and filing a claim from nine months to two years. IRS memo SBSE-05-0218-0349 dated February 27, 2018, notes that the period for filing a claim for refund for FPLP levies has been extended from nine months to two years if the date of the levy was on or after March 23, 2017. Any claim on a levy served prior to that date must be made within nine months of the date of the levy. Examples of when an FPLP levy may be returned include (a) a levy that was released but the levy payment was received anyway and (b) a paper levy and an FPLP electronic payment were both attached to the same federal payment simultaneously and both levies were from the same pay date. In that case, the paper levy proceeds must be returned ([IRM 5.17.5.17.9](#)).

**1109.20** The TCJA also extended the time for filing a claim for refund on the State Income Tax Levy Program (SITLP) levies to two years.

## Returning Levied Property

**1109.21** The IRS has the authority to return property that has been levied upon [[IRC Sec. 6343\(d\)](#)] if—

- a. the levy was premature or not in accordance with administrative procedures;
- b. the taxpayer has entered into an installment agreement to satisfy the tax liability, unless the agreement provides otherwise;
- c. the return of the property will facilitate collection of the tax liability; or
- d. the Taxpayer Advocate consents to the return and the return would be in the best interest of the taxpayer (as determined by the Taxpayer Advocate) and the government.

**1109.22** Although the property is returned in the same manner as if it had been the subject of a wrongful levy, the taxpayer is not entitled to interest as in a wrongful levy.

**1109.23** In addition, effective December 31, 2017, IRS Memo SBSE-05-0718-1059 dated July 16, 2018, states that the Bipartisan Budget Act of 2018 allows amounts, including interest, to be returned to an individual from an IRS wrongful levy or erroneous levy on an IRS or employer-sponsored plan. This relief allows an individual to redeposit funds wrongfully levied, including any interest paid by the IRS, and treats the distribution for the levy and the redeposit as a rollover. The deadline for contributing the property or money is the due date (not including extensions) for filing the income tax return for the tax year in which such property or money was returned to the taxpayer [[IRC Sec. 6343\(f\)](#)].

## Taxpayer Advocate

**1109.24** An appeal to the Taxpayer Advocate (see section [104](#)) for release of the levy should be considered in appropriate situations [e.g., where the IRS refuses to release a levy in hardship situations because the taxpayer has not filed all prior year returns ([Vinatieri](#))].

## Judicial Actions Filed by Taxpayer

**1109.25** A taxpayer can file suit for damages against the U.S. in District Court if an IRS officer or employee recklessly, intentionally, or negligently disregards a provision of the Code or the regulations thereunder in connection with the collection of any federal tax [[IRC Sec. 7433\(a\)](#)]. This civil action is the only way to recover damages resulting from such actions, other than the remedy provided by [IRC Sec. 7432](#) (which imposes civil damages for the IRS's failure to release a lien). However, no civil action can be maintained prior to the taxpayer filing an administrative claim that meets the requirements of [Reg. 301.7433-1\(e\)](#), which in part includes (a) the grounds, in reasonable detail, for the claim; (b) a description of the injuries incurred; and (c) the dollar amount of the claim.

**1109.26** [IRC Sec. 7433\(d\)](#) imposes several limitations on a taxpayer's recovery: (a) damages can be reduced if the taxpayer does not exhaust available IRS administrative remedies; (b) actual, direct economic damages are reduced to the extent they could have been mitigated by the taxpayer; and (c) there is a two-year limitations period for filing suit. Furthermore, recovery is limited to damages resulting from IRS collection actions. Therefore, failing to mail a Notice of Deficiency in a timely manner would be excluded because that action relates to the assessment and not the collection of tax. Similarly,

claims that the IRS wrongly failed to abate an assessment, or made misrepresentations that caused the taxpayer to sign an assessment agreement, would not be allowable under this provision.

## Judicial Actions Filed by Third Party

**1109.27** [IRC Sec. 7426](#) authorizes persons other than the taxpayer to pursue a civil action in U.S. District Court for money or return of the property in the following situations:

- a. *Wrongful Levy*. A third party can bring an action for wrongful levy if such person claims an interest in the property subject to the levy, or claims a lien on such property that is senior to the federal tax lien [[Reg. 301.7426-1\(a\)\(1\)](#)]. If the court determines that the property was wrongfully levied upon, it can [[Reg. 301.7426-1\(b\)\(1\)](#)]
  - (1) issue an injunction to prohibit the enforcement of the levy if a tax sale of the property would irreparably injure the rights of a senior lien holder;
  - (2) order the IRS to return the specified property levied upon if it has not been sold;
  - (3) grant a judgment for an amount equal to the amount of money levied upon; or
  - (4) grant a judgment up to the amount received by the IRS from the tax sale of the property.

**Practice Tip:** A levy is considered wrongful if the IRS levied on property exempt under [IRC Sec. 6334](#), or not owned by the taxpayer at the time the levy arose, or sold by the taxpayer to a valid purchaser against whom the levy is invalid, or if it would destroy or injure the rights of a person holding an interest in the property that is senior to the federal tax lien [[Reg. 301.7426-1\(b\)](#)].

- b. *Surplus Proceeds*. A third party who claims an interest junior to the federal tax lien in property sold pursuant to a levy can bring an action for surplus proceeds, which are proceeds from the tax sale in excess of the amount to which the IRS is entitled [[Reg. 301.7426-1\(a\)\(2\)](#)]. Surplus proceeds equal proceeds from the sale of the property, less expenses of the sale, any taxes specific to the property sold, and the tax liability of the delinquent taxpayer [[Reg. 301.7426-1\(b\)\(3\)](#)].

- *c. Substituted Sales Proceeds.* A third party who claims to be legally entitled to all or a portion of a fund established under [IRC Sec. 6325\(b\)\(3\)](#) (see section [1105](#)) with the proceeds of a tax sale of property can bring an action for substituted sales proceeds [[Reg. 301.7426-1\(a\)\(3\)](#)]. This action applies where property (that may depreciate in value) is sold subject to an agreement between the IRS and other lienholders stating that the proceeds be held in a fund subject to the parties' claims in the same manner and priority as the discharged property.

**1109.28** The TCJA extended the period for filing a suit from nine months to two years. Generally, the suit must be filed within two years from the date of the original levy [[IRC Sec. 6532\(c\)\(1\)](#), as amended by the TCJA]. But when the third party makes a timely written request for return of the property under the authority of [IRC Sec. 6343\(b\)](#) (see paragraph [1109.13](#)), this period is extended for a period of 12 months from the date the request is filed or six months from the date the IRS rejects the request, whichever comes first [[IRC Sec. 6532\(c\)\(2\)](#)].

## Wrongful Levy Actions under 28 U.S.C. 1346(a)(1)

**1109.29** In the [Williams](#), case, the Supreme Court held that a person who is compelled to pay the tax liability of another may claim a refund under 28 U.S.C. Sec. 1346(a)(1) (which is not part of the Internal Revenue Code), and that a wrongful lien compelling payment of the tax does not require a lawsuit under [IRC Sec. 7426](#) as the exclusive remedy. (See section [202](#) for additional discussion of the [Williams](#), case.) However, in [EC Term of Years Trust](#), the Supreme Court held that [IRC Sec. 7426\(a\)\(1\)](#) provides the exclusive remedy for third-party wrongful levy claims. [Williams](#), which was decided 12 years earlier, involved a lien and was based on the understanding that no other remedy was open to the plaintiff. In [EC Term of Years Trust](#), the trust challenged the IRS levy and could have made a timely claim under [IRC Sec. 7426\(a\)\(1\)](#).

## Suspension of Collection by Levy

**1109.30** The IRS cannot collect a tax liability by levy (a) while a taxpayer's offer in compromise (OIC) or installment agreement for that liability is being processed, (b) during the 30 days following rejection of an OIC or installment

agreement plus any appeal of the rejection if timely filed, (c) while an installment agreement is in effect, and (d) during the 30 days following the termination of an installment agreement plus any appeal of the termination if timely filed [[IRC Sec. 6331\(k\)](#) ].

**1109.31 Practice Tip:** Once an OIC is sent to the proper Campus (Service Center), the IRS is not allowed to levy. However, there is a significant time lag between the time that the OIC is received at the Campus and when the hold is actually placed on the account. From that point, the hold must be communicated to different collection systems. The representative should call the unit assigned the account to let them know that an OIC has been submitted and ask for a 45-day hold on the account. In addition, the Automated Collection System (ACS) takes five to seven business days to generate a levy; therefore, the practitioner should also ask whether any levies are pending within the system.

**1109.32** Taxpayers whose offers or installment agreements are rejected and who make good faith revisions of their offers and resubmit them within 30 days of the rejection or return will be eligible for a continuous period of relief from collection by levy. This prohibition on collection by levy will not apply if the IRS determines that collection of the tax is in jeopardy or the offer was submitted to delay collection.

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Document Title:1109 Relief from a Federal Tax Levy  
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## Accounts Currently Not Collectible

**1001.17** Either a Revenue Officer, ACS assistors, Appeal and Settlement Officers, and in certain cases, tax examiners in Field Collection and Centralized Case Processing can determine the taxpayer's account is currently not collectible. In very specific situations, bankruptcy specialists and advisory employees may also report an account as uncollectible ([IRM 5.16.1.1.3](#)). Doing so does not wipe out the assessment, it only stops current efforts to collect. Collection can start again at any time before the expiration of the 10-year limitations period. (See section [309](#).) Furthermore, interest and penalties continue to accrue and the collection limitations period continues to run.

**1001.18 Note:** The IRS often contacts the taxpayer for updated financial information prior to the collection statute of limitations.

**1001.19** Examples of situations where the account can be reported as currently not collectible include (a) inability to locate the taxpayer or assets; (b) partial or complete expiration of the statutory period for collection; (c) death of an individual with no collection potential from the estate; (d) business entity that is inactive and defunct with no assets, or liquidated in bankruptcy; (e) collection of the liability would create a hardship by leaving the taxpayer unable to meet necessary living expenses; or (f) if a shared responsibility payment (SRP) from the Affordable Care Act is all that is owed, the IRS will report the account as uncollectible-recess. Generally, hardship cases involve no income or assets, no equity in assets, or insufficient income to make any payment without causing hardship. Hardship can only be used for individual or joint assessments, sole proprietorships, general partnerships, and LLCs where an individual owner is the liable taxpayer.

**1001.20** If the account is reported as currently not collectible, the last entry in the case file will be a summarizing statement supporting the decision. The Revenue Officer will document the decision on Form 53 (Report of Currently Not Collectible Taxes). For this reason, reporting an account as currently not collectible is often referred to as “53ing an account.”

**1001.21 Practice Tip:** The Revenue Officer will enter a code in the Integrated Collection System that determines when the account should be reviewed again for possible collection. See [IRM 5.16.1](#), Exhibit 5.16.1–2 for a list of the codes. The process for reactivating hardship cases relies on an increase in Total Positive Income (TPI) above a predetermined amount based on the hardship closing code when the case was closed. The TPI is reviewed annually when the taxpayer files an income tax return. Unfortunately, experience has shown that regardless of what code is used, if the taxpayer receives a refund, the refund will be applied to the year already classified as currently not collectible. In addition to reactivating when a return is filed with a TPI above the encoded amount, IRS often reactivates an account reported as currently uncollectible shortly before the collection statute expires, trying to take one last bite of the apple.

**1001.22** A lien will be filed before an account is reported as currently not collectible if the IRS believes collection efforts may be successful in the future, or if the aggregate assessed liability, including accounts previously reported as currently not collectible, is \$10,000 or more ([IRM 5.16.1.2](#)). Generally, a lien

will not be filed for a small dollar amount, and need not be filed if (a) the taxpayer is deceased; (b) a corporate taxpayer has gone through a liquidating bankruptcy or receivership, or is defunct; or (c) the taxpayer resides abroad and there are no known assets in the U.S.

**1001.23 Practice Tip:** Some taxpayers have contended that the IRS does not release a wage levy immediately upon receipt of proof that the tax is not collectible. Instead, the IRS leaves the levy in place on one period's wages before releasing the levy. [IRC Sec. 6343\(e\)](#) requires the IRS to immediately release a wage levy upon agreement that the tax is currently not collectible due to hardship.

**1001.24** The IRS is no longer allowed to deny a hardship determination when a taxpayer has failed to file all required tax returns ([IRM 5.16.1.2.9](#)). In [Vinatieri](#), the Tax Court determined that there was no authority requiring that a taxpayer must be current with filing requirements before the IRS may report an account as a currently uncollectible due to hardship. Thereafter, IRS Chief Counsel provided instructions for handling cases where the taxpayer alleges that a levy should not proceed because it would cause an economic hardship (Chief Counsel Notice 2011-005).

**1001.25** Unfortunately, a recent change to [IRM 5.16.1.2.9](#) allows the collection employee to hold an account open even if a hardship exists until the taxpayer has filed any return needed to verify income or expenses rather than reporting the account as currently uncollectible while using other tools to secure returns. This change seems to defy [Vinatieri](#).

## Streamlined Determination

**1204.8** If a requesting spouse satisfies the following threshold conditions, [Rev. Proc. 2013-34](#) authorizes the IRS to consider whether the requesting spouse is entitled to a so-called "streamlined determination" of equitable relief under [IRC Secs. 66\(c\)](#) and [6015\(f\)](#):

- a. The requesting spouse is no longer married to, is legally separated from, or has lived apart for more than 12 months from the nonrequesting spouse.
- b. The requesting spouse would suffer economic hardship if relief were not granted.
- c. The requesting spouse did not know or have reason to know that there was an understatement or underpayment of tax on the joint

tax return. However, if the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information and the requesting spouse was not able to challenge the treatment of any item or question the payment of taxes for fear of retaliation, the abuse or financial control will result in this factor being satisfied, even if the requesting spouse had knowledge or reason to know of the items giving rise to the understatement or deficiency or that the nonrequesting spouse would not pay the tax liability.

**1204.9 Observation:** In [\*Contreras\*](#), the tax court held that the taxpayer/homemaker (requesting spouse) was entitled to Section 6015(f) relief from underpayments for years for which she late-filed joint returns with her ex-husband who owned and operated a construction company as a sole proprietorship that was the only source of income during the marriage. The evidence showed that the taxpayer met both the threshold requirements and “streamlined elements” for equitable relief. The IRS argued that the taxpayer failed the threshold requirement that there be no fraudulent transfers because her ex-husband had transferred certain properties to her. This argument failed in that while the ex-husband did transfer certain properties to the taxpayer, the transfer was incident to divorce and publicly recorded/not concealed. The IRS also argued that taxpayer did not meet streamlined elements test for economic hardship. This argument failed because the taxpayer relied on child support and government assistance to meet basic living expenses, was behind on property taxes and other liabilities, had expenses exceeding income, and her income was below 250% of federal poverty level. The court noted that even considering the potential for selling her properties at appraised value, she did not have sufficient assets to pay stated liabilities while still meeting reasonable living expenses. As a result, the court determined that the taxpayer would be homeless and without sufficient income to provide for basic living needs if denied relief. Finally, the taxpayer met the knowledge test for streamlined relief even though she knew at time she signed the returns that her ex-husband had not made various payments and that he was being sued by government. The facts showed that the ex-husband controlled the family finances and records when they were married and that he abused the taxpayer for years, as witnessed by police reports and the taxpayer and their daughter's credible testimonies.

# Determination If Streamlined Approach Not Available

**1204.10** Following is a nonexclusive list of factors that may be relevant for determining whether to grant equitable relief under [IRC Secs. 66\(c\)](#) and [6015\(f\)](#) if the requesting spouse does not qualify for a streamlined determination under [Rev. Proc. 2013-34](#). No single factor will be determinative. Rather, the IRS will consider and weigh all relevant factors, regardless of whether the factor is listed. (See Practice Aid [PA-108](#) for a quick reference summary of these factors in table format.)

- a. *Marital Status*. Whether the requesting spouse is no longer married to the nonrequesting spouse on the date the IRS makes its determination. If the requesting spouse is still married to the nonrequesting spouse, this factor is neutral. If the requesting spouse is no longer married, this factor will weigh in favor of relief. For these purposes, a requesting spouse will be treated as no longer married to the nonrequesting spouse in any of the following situations:
  - (1) The requesting spouse is divorced or legally separated from the nonrequesting spouse.
  - (2) The requesting spouse is a widow or widower and is not an heir to the nonrequesting spouse's estate, which would have sufficient assets to pay the tax liability.
  - (3) The requesting spouse has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date relief was requested. For this purpose, a temporary absence due to incarceration, illness, business, military service, or college is not considered to be a separation if the absent spouse is expected to return.
- b. *Economic Hardship*. Whether the requesting spouse will suffer economic hardship if relief is not granted, which occurs if payment of part or all of the tax liability will cause the requesting spouse to be unable to pay basic living expenses. If denying relief will cause the requesting spouse to suffer economic hardship, this factor weighs in favor of relief. If denying relief will not cause the requesting spouse to suffer economic hardship, this factor will be neutral. In determining whether the requesting spouse would suffer economic hardship if relief is not granted, the IRS will compare the requesting

spouse's income to the federal poverty guidelines (as periodically updated by the U.S. Department of Health and Human Services) for the requesting spouse's family size and will determine by how much, if at all, the requesting spouse's monthly income exceeds the spouse's reasonable basic monthly living expenses.

- (1) This factor will weigh in favor of relief if the requesting spouse's income is below 250% of the federal poverty guidelines unless the requesting spouse has assets out of which payments toward the tax liability can be made and still adequately meet his or her reasonable basic living expenses.
- (2) If the requesting spouse's income exceeds 250% of the federal poverty guidelines, this factor will still weigh in favor of relief if the requesting spouse's monthly income exceeds his or her reasonable basic monthly living expenses by \$300 or less, unless the requesting spouse has assets that could be applied to the tax liability and still adequately meet his or her reasonable basic living expenses.
- (3) If the requesting spouse's income exceeds 250% of the federal poverty guidelines and monthly income exceeds monthly expenses by more than \$300, or if the requesting spouse qualifies under either standard but has sufficient assets to make payments towards the tax liability and still adequately meet his or her reasonable basic living expenses, the IRS will consider all facts and circumstances (including household size) in determining whether the requesting spouse would suffer economic hardship if relief is not granted.

Document Title:1204 Equitable Relief—IRC Sec. 6015(f)

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## Grounds for Acceptance or Rejection

**1301.13** According to [Rev. Proc. 2003-71](#), the IRS will consider an OIC on the following grounds:

- • *Doubt as to Liability.* For this ground to apply, there must be a genuine doubt to the validity of the liability. Since an OIC is a “compromise,” a client making an OIC on doubt as to liability is

required to offer some payment, even if he or she believes that no tax liability exists. In deciding what amount to accept, the IRS will weigh the hazards of litigation. The greater the hazard, the greater likelihood that the IRS will accept a smaller payment. See Practice Aid [PA-113](#) for excerpts from a filled-in Form 656-L based on doubt as to liability.

- • *Doubt as to Collectibility.* An OIC filed on this ground must demonstrate that (a) it is unlikely that the tax can be collected in full within the collection statute of limitations and (b) the OIC reasonably reflects the amount the IRS could collect through other means, including administrative collection remedies. This determination requires a detailed analysis of the taxpayer's net worth and future income potential. See a sample completed Form 656 at Practice Aid [PA-185](#).

**Practice Tip:** When there are special circumstances, the taxpayer may submit an offer based on doubt as to collectibility for an amount less than the reasonable collection potential. The special circumstances must be described and substantiated.

- • *Promotion of Effective Tax Administration.* This option is the most subjective ground for filing an OIC. The IRS may compromise a tax liability on this ground if (a) full collection is possible but would cause the client an economic hardship; or (b) there are no other grounds of compromise, but public policy or equity considerations provide a sufficient basis for compromising the liability.

**1301.14** In [Mitchell Skrizowski](#), the Tax Court held it was an abuse of discretion for the IRS to reject a taxpayer's OIC without a full investigation of the taxpayer's ability to pay. To the same extent, courts have held the IRS did not abuse its discretion in rejecting an offer ([Johnson Home Care Services, Inc.](#); [Fargo](#), ). However, in [Jerry Joe Kerr](#), the Tax Court held that the IRS could reject an OIC if the taxpayer failed to provide sufficient information so that the OIC could be evaluated.

**1301.15** In another case, the taxpayer claimed that the settlement officer during a CDP hearing abused their discretion when they only considered the taxpayer's assets. The taxpayer claimed that there was doubt as to collectability because he would be unable to repay the taxes out of his income even though his assets were valued at more than four times the tax debt. The Tax Court held that when a taxpayer submits a doubt as to collectability OIC,

IRS may look at the value of his assets and was not required to consider his income. ([Banks](#) ( 2019))

**1301.16** In another case, the taxpayer attempted to submit an OIC via a Collection Due Process (CDP) proceeding without submitting the necessary supporting documentation. The Tax Court held that the IRS did not abuse its discretion in denying the OIC because it was determined from what was submitted that he was able to fully pay the tax ([Ramdas](#)).

## Effective Tax Administration

**1301.17** The IRS can enter into an OIC to promote effective tax administration if collection of the full liability would cause the taxpayer economic hardship, or if the OIC is based on compelling public policy or equity considerations identified by the taxpayer. [IRM 5.8.11.3.1](#) defines an *economic hardship* as an inability to meet reasonable basic living expenses. The IRM goes on to indicate that certain circumstances, such as a long-term illness or disability, that cause a client to be incapable of earning a living constitute an economic hardship. In practice, however, the IRS has been extremely reluctant to use this basis as grounds for approving an OIC. Regarding public policy or equity considerations, [Rev. Proc. 2003-71](#) states that: “Compromise will be justified only where, due to exceptional circumstances, collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner.”

Document Title:1301 Offers in Compromise—The Basics

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### 1302.7 Step 4—Developing the Basis of the Offer.

To submit a doubt-as-to-collectibility OIC that the IRS will process, the taxpayer must offer an amount that is equal to or exceeds the sum calculated on Form 433-A (OIC) or 433-B (OIC). (See Step 6, Calculating the Amount to Offer.) An OIC based on doubt as to liability simply presents a legal analysis of why the taxpayer does not owe all or a part of the tax liability assessed by the IRS. OICs based on effective tax administration (i.e., economic hardship) will be considered first under the traditional criteria (i.e., doubt as to liability or collectibility). If the taxpayer is ineligible for an OIC under these criteria, the IRS will consider the application under the economic hardship guidelines.

## 1302.8 Step 5—Preparing Forms 433-A (OIC) and 433-B (OIC).

For OICs based on doubt as to collectibility, preparation of Forms 433-A (OIC) and/or 433-B (OIC) is the starting point in determining whether an OIC should be made. One or both forms must also be completed for OICs based on effective administration (e.g., economic hardship). Many OICs are returned as incomplete or denied because the taxpayer has failed to fully complete Form 433-A (OIC) or Form 433-B (OIC), and include all required or necessary attachments. A written statement should be included explaining how the taxpayer got to this point.

**1302.9 Observation:** The filing of Forms 433-A (OIC) and/or 433-B (OIC) gives the IRS a roadmap to the taxpayer's financial affairs. While unavoidable when considering an OIC, practitioners and clients should be aware that the IRS will use the information from these forms for collection purposes if the OIC negotiations fail. This should not be a problem since the taxpayer will have to submit this information at some time in any event. The important point is to make sure that these forms are true, accurate, and complete.

Document Title:1302 Systematic Approach for Preparing and Submitting an OIC

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## OICs Based on Other Factors—Effective Tax Administration

**1303.33** RRA '98 authorized the Secretary of the Treasury to prescribe alternative guidelines for the IRS to determine whether an OIC is adequate and should be accepted to resolve a dispute [[IRC Sec. 7122\(d\)\(1\)](#)].

**1303.34** A compromise may be entered into to promote effective tax administration when [[Reg. 301.7122-1\(b\)\(3\)](#)]—

- a. collection of the full liability could be achieved but would cause the taxpayer economic hardship within the meaning of [Reg. 301.6343-1](#) relating to release of levy due to economic hardship (i.e., the inability to pay reasonable basic living expenses); or
- b. there are no other grounds for compromise (i.e., no doubt as to liability, collectibility, or economic hardship as described above), but compelling public policy or equitable considerations identified by the taxpayer provide a sufficient basis for compromising the

liability (the “nonhardship effective tax administration standard”); and

- c. compromise of the liability will not undermine compliance by taxpayers with the tax laws.

**1303.35** When evaluating offers to promote effective tax administration, note the following [\[Reg. 301.7122-1\(c\)\(3\)\]](#):

- a. The determination to accept or reject an OIC made on the grounds that acceptance would promote effective tax administration will be based upon consideration of all the facts and circumstances, including the taxpayer’s record of overall compliance with the tax laws.
- b. Factors supporting (but not conclusive of) a determination of economic hardship include—
  - (1) the taxpayer is incapable of earning a living because of a long-term illness, medical condition, or disability, and it is reasonably foreseeable that the taxpayer’s financial resources will be exhausted providing for care and support during the course of the condition;
  - (2) although the taxpayer has assets, liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses; and
  - (3) although the taxpayer has assets, the taxpayer is unable to borrow against the equity in those assets, and disposition by seizure or sale of the assets would have sufficient adverse consequences such that enforced collection is unlikely.

Document Title:1303 Computing the Offer Amount and Completing the Required Forms

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**1303.36** In the following cases, collection of the tax will create an economic hardship ([IRM 5.8.11.3.1](#)):

- a. The taxpayer is disabled and lives on a fixed income that will not, after allowance of adequate basic living expenses, permit full payment of his or her tax liability under an installment agreement. The taxpayer also owns a modest house that has been especially equipped to accommodate his or her disability. The taxpayer’s equity in the house is sufficient to permit payment of the liability he or she owes. However, because of his disability and limited earning

potential, the taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayer's home has been specially equipped to accommodate his or her disability, forced sale of the taxpayer's residence would create severe adverse consequences for the taxpayer, making such a sale unlikely. The taxpayer's overall compliance history does not weigh against compromise.

- b. The taxpayer has assets sufficient to satisfy the tax liability. The taxpayer provides full-time care and assistance to a dependent child, who has a serious long-term illness. The taxpayer will need to use the equity in assets to provide for adequate basic living expenses and medical care for the child. The taxpayer's overall compliance history does not weigh against compromise.
- c. The taxpayer is retired and has only pension income. The taxpayer's only asset is a retirement account, and the funds in the account are sufficient to satisfy the tax liability. Liquidation of the retirement account would leave the taxpayer without an adequate means to pay living expenses. The taxpayer's overall compliance history does not weigh against compromise.

**1303.37** The existence of economic hardship does not require that the amount of a requested OIC must be accepted. An acceptable offer amount is based on a full financial analysis and negotiation with the taxpayer. For example, assume that the taxpayer has an illness that eventually will hinder his ability to work. Although currently employed, the taxpayer will soon be forced to quit his job and use personal funds for basic living expenses. The taxpayer owes \$100,000 and has a reasonable collection potential of \$150,000. An offer was submitted for \$35,000. Through the offer investigation, it is determined that collecting more than \$50,000 would cause an economic hardship for the taxpayer. The minimum offer amount is \$50,000, since it is the amount the IRS can collect without creating an economic hardship.

**1303.38** According to [IRM 5.8.11.3.2.1](#), compromise based on public policy or equitable considerations may be appropriate when (a) the taxpayer's liability was caused by an IRS processing error that cannot be fully corrected through an abatement, reversal of credits, etc.; (b) the taxpayer incurred the liability because of erroneous IRS advice or instructions; (c) action or inaction by the IRS unreasonably delayed resolution of the taxpayer's case and interest or penalty abatement is not available; (d) criminal or fraudulent acts of a third party are directly responsible for the tax liability, assuming that the taxpayer

has made every effort to comply and took reasonable precautions to prevent the criminal or fraudulent acts at issue; (e) rejecting the OIC would negatively impact the community where the taxpayer lives or does business, such as if the taxpayer provides essential services to the community; or (f) the taxpayer was incapacitated and thus unable to comply with the tax laws.

**1303.39** The preamble to the Section 7122 regulations notes that compromise under the nonhardship effective tax administration standard is appropriate “only in those rare cases where collection would adversely affect the overall tax system.” In applying this standard, the IRS will “presume that the correct application of the tax laws produces a fair and equitable result, absent exceptional circumstances.” With this in mind, the Tax Court upheld the IRS’s rejection of an OIC submitted by a couple who reported an AMT liability of \$206,191 from their exercise of incentive stock options. Thereafter, the value of the stock “dropped precipitously,” causing them to owe tax on value they no longer owned. The Tax Court found no intent by Congress, in enacting **IRC Sec. 7122**, to “override application of specific provisions of the tax laws in every instance in which the liability is perceived to be unfair or inequitable” (**Speltz**, , affirming **124 TC 165 (2005)**).

**1303.40** In a more recent Tax Court case, the taxpayers’ bookkeeper embezzled more than \$115,000 from their construction business. The amount, which was not reported on the taxpayers’ income tax returns, was discovered during an IRS examination. Although the bookkeeper was ordered to pay restitution, taxpayers received no payments. The IRS rejected taxpayers’ proposed \$10,000 OIC because it could find no economic hardship; therefore, an effective tax administration OIC was not warranted. The Tax Court held that the IRS had not adequately considered whether taxpayers were entitled to relief on public policy and equity grounds, since the administrative record indicated that the Appeals/Settlement Officer focused solely on economic hardship and failed to consider whether the embezzlement was an exceptional circumstance under public policy or equity grounds. The court also rejected the IRS’s argument that the taxpayers’ situation was not addressed in the examples of non-economic-hardship OICs in **Reg. 301.7122-1(c)(3)(iv)** since other situations could warrant acceptance of an effective tax administration OIC (**Bogart**).

**1303.41** The IRS has added another situation where a special circumstance may exist. The IRS will give special consideration to an OIC from a taxpayer who has been the victim of fraud by a third-party payroll tax preparer (**IRM**

**5.8.11.3.2.1).** The taxpayer must provide (a) documentation that the act occurred and that a “prudent, responsible business owner would have been misled to believe that tax obligations were properly addressed” and (b) proof that funds required to pay the taxes were segregated or otherwise identified and were available to pay the taxes on time.

**1303.42** The IRS is to consider whether payment of the reasonable collection potential (RCP) would affect the business’s ability to pay current and future expenses, result in employees being laid off, result in reduced goods and services to the community; hinder the business’s ability to stay in business, or negatively impact the local economy. It also must consider whether payment of less than the RCP provides a financial gain to the taxpayer and if it would be considered as fair and equitable tax treatment by the rest of the community.

Document Title:1303 Computing the Offer Amount and Completing the Required Forms

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## **Agreements Providing for Partial Payment**

**1006.19** The IRS has the authority to enter into installment agreements that do not provide for full payment of the taxpayer’s liability [[IRC Sec. 6159\(a\)](#)]. [IRC Sec. 6159\(c\)](#), which requires the IRS to enter into an installment agreement when the total tax liability does not exceed \$10,000 and can be fully paid within three years, only applies if the agreement provides for full payment of the tax liability.

**1006.20** A partial payment installment agreement (PPIA) is available to taxpayers who cannot fully pay the liability prior to the expiration of the collection limitations period but have some ability to pay. As a condition to the PPIA, taxpayers are expected to fully pay their tax liabilities immediately when funds are available, equity in assets must be addressed and used to fully pay or reduce the amount of the liability, allowable expense guidelines will be applied immediately (no transition period, no conditional expenses will be allowed) as in some installment agreements, and the taxpayer must have the ability to make monthly payments.

**1006.21** There are two types of partial payment installment agreements:

- a. *No Asset/No Equity*—Under this PPIA the taxpayer has no assets and/or no equity in assets, or the taxpayer has liquidated available assets to make a partial payment.
- b. *Asset/Equity*—Under this PPIA the taxpayer has minimal equity, is unable to utilize equity, or is unable to sell the asset because it is unmarketable despite a high book value, or the asset is necessary to generate income for the PPIA and the government will receive more from the future income generated by the asset than from the sale of the asset or if selling the property or borrowing against it would cause an economic hardship or a loan payment would exceed the taxpayer's disposable income and he or she would not qualify for a loan.

**1006.22** A full Collection Information Statement is required to verify the taxpayer's ability to pay. When the IRS performs the financial analysis, only necessary expenses (those that provide for the health and welfare of the taxpayer and family and/or relate to the production of income) are permitted. Conditional expenses (see section [1005](#)) are not permitted. Furthermore, equity in assets must be addressed and, if appropriate, used to make payment. However, a PPIA can be granted if a taxpayer does not sell or cannot borrow against assets with equity because (a) the assets have minimal equity or the equity is insufficient to allow a creditor to loan funds (e.g., some lenders require equity of greater than 20% of property value to make a loan); (b) the taxpayer cannot access the equity (e.g., the nonliable spouse refuses to go along with the attempt to borrow); (c) the assets are currently unmarketable; or (d) seizing or forcing the taxpayer to sell or borrow against the assets would impose an economic hardship ([IRM 5.14.2.2.2](#)). For example, seizing the taxpayer's residence would cause an economic hardship if the taxpayer could not find suitable replacement housing and meet necessary living expenses if the property was seized.

Document Title: 1006 Installment Payment Agreements

Checkpoint Source: IRS Tax Resolution and Representation (TPA Guide)

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## Post-Appeals Mediation

**1304.22** The IRS released guidance on the nationwide rollout of post-Appeals mediation for OIC and trust fund recovery penalty (TFRP) cases ([Rev. Proc. 2014-63](#)). [Rev. Proc. 2014-63](#), released December 12, 2014, includes eligibility criteria and procedures for initiating mediation requests for examination and collection issues, the IRS said in a news release (IR-2014-

115). The IRS Office of Appeals originally launched post-Appeals mediation for OIC and TFRP cases in 2008 as a pilot program available in certain cities. Post-Appeals mediation is available to help resolve disputes after unsuccessful negotiations with the IRS Office of Appeals and is available for both factual and legal issues. The mediator's role is to assist the parties in reaching their own agreement, the IRS said, but the mediator does not have settlement authority over any issue. See [IRM 8.26.9](#) for Appeals procedures.

## **Non-Filers and the Delinquent Return Refund Hold Program**

**1602.3** The Delinquent Return Refund Hold Program was developed to identify and withhold nonfilers' refunds until delinquent tax returns are filed. Under this program, the IRS holds individual income tax refunds and credit elects when a current year tax return is filed resulting in a refund and the taxpayer has at least one unfiled tax return within the prior five-year period. However, refunds are not held if they are barred by statute ([IRM 25.12.1.1](#)). The intent is to get the nonfiler to file the delinquent tax return(s) and offset any tax owed on the delinquent tax return(s).

**1602.4** When a refund meets the hold criteria, the nonfiler is notified and instructed to file the delinquent tax return or contact the IRS to explain why a return need not be filed. Otherwise, a return will be filed for the taxpayer ([IRM 25.12.1.6](#)). The refund will be released if (a) the delinquent return(s) being filed reflects a refund or no balance due and results in all delinquencies being resolved, (b) there is no filing requirement for the delinquent year(s), (c) the taxpayer is in a declared disaster/emergency area, or (d) the taxpayer establishes that an economic hardship exists ([IRM 25.12.1.1](#)).

**1602.5** [IRM 25.12.1.9](#) provides that economic hardship is established when an individual taxpayer is unable to pay his/her reasonable basic living expenses. Examples of economic hardship include but are not limited to (a) foreclosure or eviction notice or (b) a statement from a health care provider stating that services are necessary and will not be provided without prepayment. In certain circumstances (due to the urgency or the nature of the hardship), oral or written testimony explaining the hardship may be accepted. For example, the economic hardship can be validated by contacting a landlord or utility company, or by contacting a homeless shelter to verify the taxpayer does not have housing.

**1602.6** From the practitioner’s perspective, withholding a current-year refund will result in a significant hardship because the refund would help the nonfiler meet current living expenses. When faced with such a case, the practitioner should ask that the refund be released. If the IRS refuses to release the refund, the practitioner can file Form 911 (Request for a Taxpayer Assistance Order) according to the procedures described in section [104](#). However, the practitioner may have to settle for less than the entire refund amount.

**Example 1602-1: When significant hardship exists but the refund is withheld.**

Noel Nonfiler’s refund has been withheld, and Noel states that he is delinquent in rent payments and has received an eviction notice. Although the refund is for \$3,000, only \$1,200 is needed to avoid eviction. The IRS employee should recommend a manual refund of \$1,200.

Document Title:1602 IRS Nonfiler Procedures

Checkpoint Source:IRS Tax Resolution and Representation (TPA Guide)

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## **Taxpayer Advocate and EH**

### **¶T-10205.1. “Significant hardship”— Taxpayer Assistance Orders.**

The National Taxpayer Advocate (NTA) is an advocate for the taxpayer within IRS, see. [¶T-10200](#) et seq. Among the NTA's powers is the power to issue Taxpayer Assistance Orders (TAOs) in cases involving “significant hardship” (defined below) to a taxpayer, see [¶T-10205](#).

For TAO purposes, a significant hardship includes,[39](#) but isn't limited to:[40](#)

- (1) an immediate threat of adverse action;[41](#)
- (2) a delay of more than 30 days in resolving taxpayer account problems,[42](#) which exists when a taxpayer doesn't receive a response by the date promised by IRS, or IRS has established a normal processing time for taking an action and the taxpayer experiences a delay of more than 30 days beyond that normal processing time;[43](#)

- (3) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief isn't granted; or<sup>44</sup>
- (4) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief isn't granted.<sup>45</sup>

The above factors aren't intended to be an exclusive list of what's a significant hardship. A TAO also can be issued in other circumstances in which it's determined that the taxpayer is suffering or will suffer a significant hardship. The NTA also is authorized to issue a TAO in any other case in which the taxpayer meets requirements spelled out in regs, which are to be based on considerations of equity.<sup>46</sup>

Significant hardship is a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which IRS is administering the internal revenue laws.<sup>47</sup> Significant hardship also includes situations in which a system or procedure fails to operate as intended or fails to resolve the taxpayer's problem or dispute with IRS.<sup>48</sup>

IRS regards the following as examples of significant hardship:

- Taxpayer lacks funds for housing and utilities, food, transportation to and from work, or medical treatment, due to imposition of levy or lack of receipt of refund.
- Taxpayer can become unemployed or lose a source of income due to IRS's action.
- Taxpayer will lose an opportunity to acquire real property.
- Taxpayer's rights have been abridged.
- IRS handled taxpayer's case differently from cases of other taxpayers in similar situations, and IRS's handling will cause serious damage to taxpayer's ability to earn future income.
- IRS didn't respond to taxpayer in a timely manner.
- Taxpayer's credit wasn't applied in the correct manner or to the correct account.
- Taxpayer didn't receive a statutory final notice before enforcement action was taken.<sup>49</sup>

**Illustration 1:** IRS serves a levy on A's bank account. A needs the bank funds to pay for a medically necessary surgical procedure that's scheduled to take place in one week. If the levy isn't released, A won't have the funds to have the procedure. Here, A is experiencing an immediate threat of adverse action.<sup>50</sup>

**Illustration 2:** B files a Form 4506, request for a copy of a tax return. B doesn't receive the photocopy of the tax return after waiting more than 30 days beyond the normal time for processing. Here, B is experiencing a delay of more than 30 days.<sup>1</sup>

**Illustration 3:** IRS sends XYZ, Inc. a notice requesting payment of the outstanding employment taxes and penalties owed by XYZ. The notice says that XYZ has small employment tax balances with respect to 12 employment tax quarters, totaling \$10X. XYZ provides documentation to IRS, which it claims shows that if all payments were applied to each quarter correctly, there would be no balance due. IRS requests additional records and documentation. Because there are 12 quarters involved, to comply with this request XYZ asserts that it will need to hire an accountant, who estimates he will charge at least \$5X to organize all the records and provide a detailed analysis of how to apply the deposits and payments. XYZ is facing significant costs.<sup>2</sup>

**Illustration 4:** D has arranged with a bank to refinance his mortgage to lower his monthly payment. D cannot make the current monthly payment. Unless the monthly payment amount is lowered, D will lose his residence to foreclosure. IRS refuses to subordinate the federal tax lien, as permitted by [Code Sec. 6325\(d\)](#), or discharge the property subject to the lien, as permitted by [Code Sec. 6325\(b\)](#). As a result, the bank won't allow D to refinance. In this case, D is facing an irreparable injury if relief isn't granted.<sup>3</sup>

<sup>39</sup>[Code Sec. 7811\(a\)\(2\)](#); [Reg § 301.7811-1\(a\)\(4\)\(ii\)](#).

<sup>40</sup>[Reg § 301.7811-1\(a\)\(4\)\(ii\)](#).

<sup>41</sup>[Code Sec. 7811\(a\)\(2\)\(A\)](#); [Reg § 301.7811-1\(a\)\(4\)\(ii\)\(A\)](#).

<sup>42</sup>[Code Sec. 7811\(a\)\(2\)\(B\)](#); [Reg § 301.7811-1\(a\)\(4\)\(ii\)\(B\)](#).

<sup>43</sup>[Reg § 301.7811-1\(a\)\(4\)\(iii\)](#).

<sup>44</sup>[Code Sec. 7811\(a\)\(2\)\(C\)](#); [Reg § 301.7811-1\(a\)\(4\)\(ii\)\(C\)](#).

<sup>45</sup>[Code Sec. 7811\(a\)\(2\)\(D\)](#); [Reg § 301.7811-1\(a\)\(4\)\(ii\)\(D\)](#).

<sup>46</sup>Conf Rept No. 105-599 (PL 105-206) p. 216.

<sup>47</sup>[Reg § 301.7811-1\(a\)\(4\)\(ii\)](#).

<sup>48</sup>[Reg § 301.7811-1\(a\)\(4\)\(ii\)](#).

<sup>49</sup>[Internal Revenue Manual 13.1.18.7](#)

<sup>50</sup>[Reg § 301.7811-1\(a\)\(4\)\(iv\)](#), [Ex 2](#).

**<sup>1</sup>Reg § 301.7811-1(a)(4)(iv), Ex 1.**

**<sup>2</sup>Reg § 301.7811-1(a)(4)(iv), Ex 3.**

**<sup>3</sup>Reg § 301.7811-1(a)(4)(iv), Ex 4.**

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