

IRS Levy Issues Authority & Resolution

2023 Training Event 4 | LG Brooks, EA, CTRS

2pm Eastern | 1pm Central | 12pm Mountain | 11am Pacific

ASTPS is coming to Los Angeles!

For the first time since 2019 ASTPS is returning to the West Coast!

The Los Angeles Accelerator Course is a unique opportunity for business owners looking to expand their firms by adding tax resolution services, as well as individuals seeking to enhance their marketability in the ever-evolving tax industry. As a participant, you'll not only acquire valuable skills but also form lasting connections with fellow professionals in the field.

With limited spots available for this in-demand course, interested professionals are encouraged to register as soon as possible to secure their place in the upcoming Los Angeles ASTPS Accelerator Program!

Don't miss this unparalleled opportunity to elevate your practice and empower yourself with the tools and knowledge necessary to excel in IRS representation. Mark your calendar for June 6th, and join the ASTPS for an unforgettable learning experience at Long Beach!

Register now and learn more at

ASTPS.org/Accelerator



IRS LEVY ISSUES: "Authority & Resolution"

LG Brooks
Enrolled Agent
Certified Tax Resolution Specialist
ASTPS Education Director

American Society of Tax Problem Solvers©

1



LG BROOKS, EA, CTRS, NTPI FELLOW

Senior Tax Resolution Consultant
Lawler & Witkowski CPAs

Education Director
American Society of Tax Problem Solvers

LG Brooks is the Education Director of the American Society of Tax Problem Solvers (ASTPS) and the Senior Tax Resolution Consultant at Lawler & Witkowski CPAs. He is a nationally recognized tax resolution expert and speaker. He brings over 25 years of experience to his presentations and has worked and consulted on thousands of IRS tax resolution cases. LG received a Bachelor of Arts degree from Bishop College at Dallas, Texas in 1977. He is a Certified Tax Resolution Specialist and a Fellow of the National Tax Practice Institute (NTPI)

2

2

IRS LEVY TERMS

❑ LEVY:

“Levy” is generally defined as a legal seizure of a taxpayer’s property to satisfy a tax debt and is typically associated with bank & financial account enforced collection actions.

❑ SEIZURE:

The word “seizure” is another definition pertaining to a levy; however, it is usually associated with enforced collection actions related to real or personal property, as well as the “tagging” of assets.

IRS LEVY TERMS

❑ GARNISHMENT:

This term is generally associated with the levy of a taxpayer’s salary, wages, income and other type earnings. Nonetheless, as referenced above, the taxpayer’s wages or income is actually being “levied/seized”.

❑ TAGGING:

When property or assets are not susceptible to “physical seizure”, the asset or property is “tagged” by allowing the asset to remain in place & prevented from use by locking, chaining or placing an official government notification indicating use is prohibited.

“ASSESSMENT” REQUIRED PRIOR TO LEVY

Internal Revenue Codes

☐ Assessment Authority:

☐ IRC §6201 – “Assessment Authority”

☐ IRC §6203 – “Method of Assessment”

☐ Some practitioners have “misinterpreted” Revenue Ruling 2007-21, which simply states that the IRS is allowed to proceed with collection actions without providing the taxpayer with a copy of the “Record of Assessment”. (Article dated September 28, 2021)

☐ Notice & Demand Procedures:

☐ IRC §6303 – “Notice & Demand for Tax”

☐ IRC §6501 – “Limitations on Assessment & Collection

“LEVY & DISTRAINT”

IRC § 6331

➤ Authority of Secretary

➤ Seizure & Sale of Property

➤ Successive Seizures - **

➤ Requirement of Notice Before Levy

➤ Continuing Levy on Salary & Wages - **

➤ Uneconomical Levy

➤ Levy on Appearance Date of Summons

** - IRC to IRM Comparison to Follow

“LEVY & DISTRAINT-CONTINUED”

IRC § 6331

- Pending proceedings for refund of divisible tax
- During the period an Offer-in-Compromise (OIC) is considered pending or;
- During the period an Installment Agreement request is considered pending, or an actual Installment Agreement (IA) is in place

SUCCESSIVE LEVIES & THE CODE

IRC §6331(c):

❑ SUCCESSIVE SEIZURES:

- ✓ Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, **the Secretary may, thereafter, and as often as may be necessary,** proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SUCCESSIVE LEVIES & THE IRM

IRM 1.2.1.6.5 (Policy Statement 5-28):

❑ SUCCESSIVE SEIZURES-"Timing to Avoid Undue Hardship":

The Code authorizes the service of as many successive levies on the same or other income, property, or rights to property, as may be necessary to fully satisfy the tax liability. **However**, sound judgment should be exercised and the service of successive levies on the same source of income, or type of property, **should be so timed as to avoid undue hardship to the taxpayer and/or family.**

SUCCESSIVE LEVIES & THE IRM

IRM 5.11.4.6.:

❑ REPEATED LEVIES ON THE SAME SOURCE:

1. **Exercise caution** when levying repeatedly on the same source
2. Per Policy Statement P-5-28, at IRM 1.2.1.6.5, while the Code allows for the service of as many successive levies on the same source as necessary to satisfy the tax liability, **judgment should be exercised to avoid undue hardship** on the taxpayer and/or the taxpayer's family.

“LEVY & DISTRAINT”

IRC § 6331

Common Levy Notices & Contact Letters:

- Letter 1058: “**Final Notice of Intent** to Levy & Notice of Right to Hearing”
- Letter 1058-F: “**Post Levy Federal Contractor Collection Due Process**”
- Letter 1058-D: “**Post Levy Collection Due Process Notice**”
- Letter 1058e: “**Notice of Levy** & Notice of Right to Hearing”
- CP-90: “**Final Notice of Intent** to Levy & Notice of Right to Hearing”
- CP-91: “**Final Notice of Intent** to Levy SSA Benefits/Notice of Right to Hearing”
- CP-297: “**Final Notice of Intent** to Levy & Notice of Right to Hearing”

“LEVY & DISTRAINT”

IRC § 6331

Common Levy Notices & Contact Letters:

- LT-11: “**Final Notice of Intent** to Levy & Notice of Right to Hearing”
- LT-73: “**Notice of Disqualified Employment Tax Levy**” (DETL)
- Form 668-A: “**Notice of Levy**”
- Form 668-W: “**Notice of Levy on Wages, Salary & Other Income**”
- Form 668-D: “**Release of Levy**”
- Form 8519: “**Taxpayer’s Copy of Notice of Levy**”

“TAXPAYER RIGHTS”

IRC § 6330

Collection Due Process (CDP) Procedures:

- Levy is “**statutorily prohibited**” prior to issuance of this notice & subsequent to a timely CDP request
- Taxpayer has a “**legal right**” to notice & opportunity to a hearing prior to the occurrence of a “levy, garnishment and/or seizure”
- **Timely** hearing must be requested *within 30 days* of issuance of CDP notice to protect additional judicial rights

“CDP HEARING CONSIDERATIONS”

IRC § 6330

Notice & Opportunity for Hearing Before Levy (Discussion Issues):

- Tax Liability was paid prior to the actual CDPH
- CDP Notice was received while taxpayer was in bankruptcy
- The IRS made a procedural error during assessment of the tax
- The CSED had expired prior to issuance of the CDP Notice
- Taxpayer had no prior opportunity to dispute tax assessment
- Taxpayer desires to discuss “alternative collection resolution”
- An “Innocent Spouse” issue develops
- Other issues may exist & should be presented during conduct of the CDPH

“LEVY-EQUIVALENT HEARING MATTERS”

Treasury Regulation (Treas. Reg) §301.6330(i):

☐ EQUIVALENT HEARING:

- IRM 5.19.8.4.6-7:

“Levy action during an Equivalent Hearing is **not required to be suspended**. However, as a general rule, even though not required by statute, **levy action is generally suspended** pending Appeals determination.

NOTE:

EHs are defined via the IRS Treas. Reg. noted above & are not defined or identified via the Code (IRC).

1. .

“POST LEVY NOTIFICATION LEVIES”

IRC §6330(h)(1):

☐ Disqualified Employment Tax Levy (DETL):

- IRM 5.1.9.3.14:

- IRC 6330(f) was amended by the Small Business & Work Opportunity Tax Act of 2007 to permit a levy to collect employment taxes **without providing the taxpayer a pre-levy CDP notice.**

- Generally notified via “**Letter 1058-D**” or if notified by ACS via “**Letter 1058e**” or “**LT-73**”

1. .

“POST LEVY NOTIFICATION LEVIES”

IRC §6330(h)(2):

☐ Federal Contractor Levy aka the “Federal Payment Levy Program” (FPLP):

• IRM 5.7.9.3.2:

• IRC 6330(f) was also amended to permit a levy to collect “*federal contractor tax liabilities*” **without providing the taxpayer a pre-levy CDP notice.**

• Generally notified via the issuance of an “**LT-75**”

1. .

“AUTHORITY TO RELEASE LEVY & RETURN PROPERTY”

IRC §6343:

☐ Release of Levy & Notice of Release

☐ Expedited Determination on Certain Business Property

☐ Return of Property

☐ Return of “Certain Property”

“PROPERTY EXEMPT FROM LEVY”

IRC §6343:

- ☐ Wearing apparel & school books
- ☐ Furniture & personal effects
- ☐ Tools of trade for business
- ☐ Unemployment Benefits
- ☐ Undelivered Mail
- ☐ Certain Annuity & Pension Payments
- ☐ Workmen’s Compensation Payments
- ☐ Judgements for support of minor children

“COLLECTION APPEAL PROGRAM (CAP)”

IRM §5.1.9:

☐ CAP Appeal Rights:

- Invoked or requested via “**Form 9423**”
- Allowed to be requested *either before or after levy*
- **NOTE- §5.1.9.4.4-4 :**
 - **Levy action is generally suspended** upon the formal request for a CAP Appeal (*even prior to the actual filing of the Form 9423*), however levy action may occur if:
 - Collection is at risk
 - Taxpayer raises frivolous arguments, or
 - The taxpayer is seeking solely to delay the collection process

1. .

“LEVY ACTION DURING THE FILING OF A LIEN”

IRM 5.11.1.4.10:

- ☐ If the notice requirements noted via “IRM 5.11.1.3.2” have been satisfied, “Letter 3172 (DO)” does not create a new waiting period *before the notice of levy can be issued*. **However**, once the taxpayer **appeals the lien filing**, generally as a matter of policy, **no notices of levy will be issued during the administrative or judicial appeal**.

1. .

“OTHER LEVY RELATED CONSIDERATIONS”

Additional Levy Related Issues:

- ☐ IRS request to “Waive” the CSED via **Form 900**
- ☐ Taxpayers have a “right” to refuse to waive the CSED
- ☐ Form 900 must be executed in conjunction with a valid “Installment Agreement” (IA) to be considered valid
- ☐ The CSED may be “waived” up to **5 years**, plus **one additional year** under certain conditions
- ☐ Any Installment Agreement that extends beyond the original CSED **requires Managerial Approval**

1. .

“OTHER LEVY RELATED CONSIDERATIONS”

Additional Levy Related Issues:

❑ Letter 3174, “New Warning of Enforcement”

❑ IRS Letter Ruling 199932047 – Where the IRS addresses the formality or effect of the issuance of “Letter 3174” (Levy action limited)

❑ IRS “Last Known Address” (LKA) mailing errors invalidate the issuance of a calid CDP Notice

❑ See IRM 5.19.8.4.2-18 & IRM 5.19.8.4.4(2)(A)

1. .

**THANKS FOR YOUR
TIME AND
INTEREST!
HOPE YOU
LEARNED
SOMETHING YOU
CAN USE TODAY.**





Next Free Class: Tuesday, May 9th

2pm Eastern | 1pm Central
12pm Mountain | 11am Pacific

Can't make it live? Become a member and get access to the recordings of all of our live monthly trainings!

ASTPS.org/Membership