



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

January 13, 2017

SBSE Control Number: SBSE-05-0117-0004
Expiration Date: January 13, 2018
Impacted: IRM 5.15.1

MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS

FROM: Kristen E. Bailey */s/ Kristen E. Bailey*
Director, Collection Policy

SUBJECT: Interim Guidance for Revenue Officers regarding Levies on Retirement Plans

The purpose of this interim memorandum is to provide new guidance to revenue officers regarding levies on retirement plans.

Effective on the date of this memorandum, revenue officers may be required to attempt to advise taxpayers that contributions to voluntary retirement plans are not a necessary expense, and that retirement plans may be subject to levy, as shown in IRM 5.15.1.27 below.

IRM 5.15.1.27
Retirement or Profit Sharing Plans

(1) Funds held in a retirement plan, including a profit-sharing plan, are considered an asset and may be reachable by levy. Revenue officers should follow the guidance in IRM 5.11.6.2, Funds in Pension or Retirement Plans, when determining whether to levy. In sum:

- consider other assets available to collect from,
- determine whether the taxpayer's conduct has been flagrant, and
- determine whether the taxpayer depends on the money in the retirement account (or will in the near future) for necessary living expenses.

Prior to levy, attempt to advise the taxpayer that retirement plans may be subject to levy. If a discussion is not held with the taxpayer, this does not prohibit a levy on the retirement plan from being issued.

Consider consulting TE/GE for any questions concerning the validity or qualifications of a plan, the availability of assets for collection, and withholding for current year federal income tax liabilities of the taxpayer.

(2) Prior to levy, attempt to advise taxpayers that contributions to voluntary retirement plans are not a necessary expense. In accordance with IRM 5.15.1.1(11), emphasize to taxpayers how much the Service expects from them rather than how the Service expects them to spend their money. If taxpayers wish to continue making contributions, they must divert the money from allowed expenses, or use the amount allowed for miscellaneous expenses under national standards, but they must be able to make the payments required on an installment agreement. Advise taxpayers that continuing to make voluntary contributions to retirement accounts, while asserting an inability to pay an amount that is owed, may be considered flagrant conduct, and could result in a levy on retirement accounts. However, if a discussion is not held with the taxpayer after attempts to advise the taxpayer that retirement plans may be subject to levy, it does not prohibit a levy on the retirement plan from being issued.

Review of the retirement plan document is generally necessary to determine the taxpayer's benefits and options under the plan.

This guidance will be incorporated in IRM 5.15.1.27, *Retirement or Profit Sharing Plans*, in the *Financial Analysis Handbook*, within one year of the date of this memorandum.

If you have questions, please contact me, or a member of your staff may contact Senior Program Analysts, Cynthia Cooper or Lynn Greer. Field personnel should direct any questions, through their management staff to the appropriate Area contact.

cc: National Taxpayer Advocate
Director, Field Collection
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