



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

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MEMORANDUM FOR ASSISTANT DISTRICT COUNSEL, KANSAS-MISSOURI
ATTN: DALE P. KENSINGER

FROM: Alan C. Levine
Chief, Branch1 (General Litigation) CC:EL:GL

SUBJECT: Warning of Enforcement Actions Against Corporations

This is in response to your memorandum dated December 3, 1998. You requested our advice under the significant advice procedures with respect to whether the Internal Revenue Service (Service) should issue a notice of intent to levy upon a corporate officer, rather than a person holding a power of attorney for the corporation. In your memorandum, you concluded that section 6331(d) of the Internal Revenue Code (Code) requires the Service to give the notice of intent to levy to a corporate officer rather than the power of attorney; and further, that section 6304(a) does not require the Service to give the notice to the power of attorney. Our views are provided below with respect to the positions stated in your memorandum.

ISSUE:

Whether the notice of intent to levy required by section 6331(d) should be issued to a corporate officer rather than a person holding a power of attorney when the corporation has authorized a person to represent the corporation.

CONCLUSION:

The notice of intent to levy required by section 6331(d) should be issued to a corporate officer and a person holding a power of attorney when the corporation has authorized a person to represent the corporation.

FACTS:

The corporation has authorized a person holding a power of attorney to represent the corporation. In accordance with section 6331(d), a notice of intent to levy is to be issued to the corporation for an unpaid tax liability.

DISCUSSION:

A. A notice of intent to levy must be sent to a corporate officer

The Treasury Regulations (Regulations) and case law support the conclusion that a notice of intent to levy must be issued to a corporate officer. Section 6331(d)(1) of the Code provides that the Service may levy upon property of any person “only after the Secretary has notified such person in writing of his intention to make such levy.” 1/ Section 6331(d)(2) states the following:

The notice required under paragraph (1) *shall be-*

- (A) given in person,
- (B) left at the dwelling or usual place of business of such person, or
- (C) sent by certified or registered mail to such person’s last know address, no less than 30 days before the day of the levy. (emphasis added)

The Regulations unambiguously state that the notice of intent to levy must be sent to the taxpayer. 2/ Section 301.6331-2(a) of the Regulations provides that the Service may levy on the property of a taxpayer after the director “has notified the *taxpayer* in writing of the intent to levy. The notice must be given in person, be left at the dwelling or usual place of business of the *taxpayer*, or be sent by registered or certified mail to the *taxpayer’s* last know address.” (emphasis added) Thus, the Commissioner has by regulation construed section 6331(d) of the Code to require that a notice of intent to levy be issued to the taxpayer. 3/

Furthermore, case law strongly supports that the notice of intent to levy must be served upon the taxpayer. The Fourth Circuit noted the following:

1/ The term “person” shall be construed to mean and include an individual, ... company or corporation. I.R.C. § 7701(a)(1).

2/ The term “taxpayer” means any person subject to any internal revenue tax. I.R.C. § 7701(a)(14).

3/ Since Congress has delegated to the Commissioner the power to promulgate “all needful rules and regulations for the enforcement of [the Internal Revenue Code],” I.R.C. § 7805(a), the courts will defer to the regulatory interpretations of the Code so long as they are reasonable. Cottage Sav. Ass’n v. C.I.R., 111 S.Ct. 1503, 1508 (1991). See also, National Muffler Dealers Assn., Inc. v. United States, 99 S.Ct. 1304, 1306-1307 (1979).

... § 6331(d) provides that the government can make a levy upon a person's property subject to a tax lien "only after the Secretary has notified such person in writing of his intention to make such a levy," *see* 26 U.S.C. § 6331(d)(1), and such *notice must be served on the person upon whose property levy is intended*, "no less than [30] days before the day of the levy." *See* 26 U.S.C. § 6331(d)(2). (emphasis added).

See United States v. Potemken, 841 F.2d 97, 101 (4th Cir. 1988). See, e.g., James v. United States, 970 F.2d 750, 755-56 (10th Cir. 1992); Haggert v. Philips Medical Systems, Inc., 39 F.3d 1166 (1st Cir. 1994). Moreover, courts have held that "strict compliance with this procedure is 'necessary to effect a valid levy and seizure.'" Potemken, 841 F.2d at 101 (quoting Matter of Computer Management Inc., 40 B.R. 201, 203 (N.D.Ga.1984)). See also, James, 970 F.2d at 756.

B. A copy of the notice of intent to levy must be sent to the power of attorney

The Regulations require that a copy of the notice of intent to levy be sent to a person holding a power of attorney for the corporation. ^{4/} Section 601.502 et seq., provides the rules for powers of attorney. Section 601.501(a) states that "[t]hese rules [as to the power of attorney] apply to all offices of the Internal Revenue Service in all matters...." Therefore, the power of attorney rules must apply to the Service's notice of intent to levy. Section 601.506(a) provides that "[a]ny notice or other written communication (or copy thereof) required or permitted to be given to a taxpayer in any matter ... must be given to the taxpayer and ... to the representative" However, "failure to give notice or other written communication to the recognized representative of a taxpayer will not affect the validity of any notice" Treas. Reg. § 601.506(a)(3). Thus, a person holding a power of attorney for a taxpayer must receive a copy of the notice of intent to levy.

C. Section 6304(a) does not require that a notice of intent to levy be sent to the power of attorney

Section 6304(a) does not require that the Service send a notice of intent to levy to the power of attorney. Section 6304(a) of the Code provides that the Service may not communicate with the taxpayer in connection with the collection of any unpaid tax if the Service "knows the taxpayer is represented by any person authorized to practice before the Internal Revenue Service with respect to such unpaid tax...." Section 6304 is not limited in application to individual taxpayers, but applies to all taxpayers with respect to any unpaid tax, including corporate tax. The congressional intent of section 6304 was to address the concerns regarding

^{4/} A person holding a power of attorney for a taxpayer must be a recognized representative of the taxpayer in accordance with Treas. Reg. § 601.502 et seq.

abusive or harassing contact with taxpayers. See S. Rep. No. 105-174, at 93 (1998).

We believe that a notice of intent to levy does not have the potential to harass a taxpayer; to the contrary, "strict compliance with this procedure is necessary to effect a valid levy and seizure, in order 'to give the taxpayer a last chance to avoid the drastic consequences of seizure by payment of the tax liability.'" Simpson v. U.S., 815 F.Supp 1444, 1446 (N.D.Fla. 1992) (quoting Potemken, 841 F.2d at 102). Moreover, section 6304 is currently substantially codified in off-Code provisions and is in the Internal Revenue Manual, see IRM § 5184.2; therefore, we believe it does not significantly impact current business practices with regard to notices of intent to levy. See Internal Revenue Service, U.S. Dep't of the Treasury, Pub. No. 10848 (9-1998), IRS Restructuring and Reform Act of 1998 Conduct Provisions (1998). Accordingly, we agree with your position that statutorily required notices, such as the notice of intent to levy, do not come within the purview of section 6304(a).

In sum, we conclude that a notice of intent to levy must be issued to a corporate officer and a person holding a power of attorney when the corporation has authorized a person to represent the corporation.

If you have any further questions, please call 202-622-3610.