

Warrantless IRS Seizures Unlawful

by Virginia L. Cropsey, J.D.

According to Fox News and the Associated Press, on December 26, 2000, Michael McDermott went to work as usual, chatting with co-workers about the holidays. But shortly after 11 a.m., the Massachusetts software tester embarked on a deadly rampage that killed seven people.

McDermott allegedly shot one woman in the back as she sat at her desk, crippled another woman with two shots to the leg before finishing her off with a shot to the head and shot another man as he tried to crawl away. When McDermott discovered that employees in the accounting office had barricaded themselves behind a locked door, he “blew the door off with a shotgun.”

McDermott seemed to focus his rage on the accounting department, which had recently been ordered by the IRS to garnish McDermott’s wages.

The Edgewater Technology company (McDermott’s employer) released a statement to absolve itself of responsibility in the shootings, saying there was no way to have predicted actions that “apparently stem from occurrences in [McDermott’s] personal life” or “any apparent reasons to restrict his access to the building.”

Nothing quite so compassionate as a corporation, hmm?

Too bad about the seven victims, but for damn sure there’s no way this corporation is responsible.

However, as you’ll see in the following analysis by attorney Virginia Cropsey, it’s arguable that the IRS precipitated this tragedy by attempting to seize part of Mr. McDermott’s wages without lawful authority. If attorney Cropsey’s analysis is correct, the victims, their heirs or perhaps even Mr. McDermott might have a basis for a civil action against the IRS.

Of course, suing the IRS is something of a fool’s errand. Even if attorney Cropsey is correct, it’s always tough to sue a government agency.

But Ms. Cropsey implies that her arguments might also be used

against the victims' employer—which acted on behalf of the IRS. Perhaps—despite its initial disclaimer of responsibility—if the Edgewater Technology corporation knew or should've known that it was illegal to seize money from Mr. McDermott's wages without a lawful warrant, that corporation might be held partially liable for the seven deaths.

The implications are large.

Reports indicate an employee of a Boston Internet consulting firm shot and killed seven co-workers who apparently participated in plans to honor warrant-less government searches for and seizures of the employee's earnings, accrued and future.

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The law, constitutional and statutory, requires a 4th Amendment warrant, judicial or *executive*, for tax searches and seizures. The warrant is critical to show all the necessary procedures and laws have been complied with to allow the government to seize the property. Without a valid warrant, there is no legally valid proof that a tax debt exists.

Nevertheless, the IRS routinely operates without warrants and thus provokes an outcry, producing litigation, and fomenting office stress that has now resulted in violence.

Apparently, the IRS can't get a warrant for tax seizures because no competent authority can *swear* the tax debt is due and owing. Without a warrant, government seizure of a person's property appears to be a *direct* tax. But the Constitution prohibits direct taxes without apportionment.

The 4th Amendment was inspired by the 1761 speech against the writs of assistance by James Otis, an attorney engaged by the merchants of Boston.

British writs of assistance, which are similar to the current IRS “process” led to the Revolutionary War.

A young John Adams, later second President of the United States, heard the [Otis speech](#) and was inspired to draft Article XIV for the 1780 Massachusetts Declaration of Rights, which later became the basic language for the 4th Amendment.

At the time of the construction of the Bill of Rights, Richard Henry Lee, Senator from Virginia, and ancestor of Robert E. Lee, saw to it the word “effects” rather than “possessions” was used in the 4th Amendment, so that accounts receivable (which include earnings due

employees), have 4th Amendment protection. As shown by 4th and 5th Amendment pre-judgment seizure case law, this means that a warrant is required.

Additionally, under the Supreme Court decision in *Sniadach v. Family Finance Corp*, wages are special property for purposes of pre-judgment seizure. You can't seize property for taxes pre-judgment without a *sworn* statement. Instead, the government should have to swear the debt is owed and demonstrate probable cause for these searches and seizures. The IRS has no business writing your employer about you and interfering with your employment relations without proper authorization.

Recently I showed that the 4th Amendment's "no warrants" clause was intended by the Framers to require at minimum, an *executive branch* warrant for tax seizures. I call it "all about adjectives." I carefully read the Supreme Court's 1977 opinion in *GM Leasing* and found that a *judicial* warrant was necessary for entry into *private* premises for tax seizures.

I knew from the plain language of the 4th Amendment, and from research I did (including the 1762 British sedition case of *Entick v. Carrington & Three Other King's Messengers*) that at least an *executive branch warrant* was necessary for other tax seizures. I'm a bit like the kid in "6th Sense" movie - I don't see dead people, but I do see something the others don't due to my careful reading of the 4th Amendment's 'no warrants' clause - I see *executive branch* warrants.

Executive branch warrants are not figments of my imagination but have been held by the courts to be required for federal tax seizures. In a 1998 opinion in [*Williams v. Boulder Dam Credit Union*](#), a Clark County, Nevada Magistrate exposed pre-1954 case law which held the executive branch warrant is required. I've spent over 1,000 hours researching the issue and filed a 60-page brief on the subject in the Michigan Court of Appeals.

The pre-1954 case law was continued in effect by Congress under the 1954 IRS Code. Since then, a consumer snatch-back line of cases in the Supreme Court makes clear that the Due Process clause of the 5th Amendment requires sworn statements for pre-judgment seizure. These standards also apply to federal tax seizures according to the Supreme Court.

I've also researched the question of whether private sector employers are required to withhold wages without a signed wage withholding order in effect. My re-

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search also shows *future* earnings aren't property under state law and therefore, under 26 U.S.C. Sec. 6331 (the federal tax levy statute), the IRS cannot lawfully reach future earnings with current levy process as they currently do

Cases concerning the issue of warrant requirements are just beginning to make their way through the courts. In order to avoid a 4th Amendment test, the government does not cross the line and technically seize the property. Government has not used the language obfuscated case law says is required for seizure – “is seized and levied upon.” They used quite a few standard legal tricks. It was a textbook case of stealthy encroachment.

But as a result, the levy situation leaves banks and employers subject to suit on contracts, and without a defense that they honored a levy under 26 U.S.C. 6331 & 6332 *since no levy has actually occurred.*

The government avoids a constitutional test of the income tax by not technically seizing the property. It's a double-end run of the Constitution, one 4th Amendment's language was written

to prevent, and one which must end immediately. The IRS has engaged in a calculated campaign to intimidate attorneys, legislators and others who should have reported this situation into silence – the situation is grim and despicable. Every member of Congress, every President in modern times, bears responsibility for allowing these warrant-less seizures to occur. I encourage citizens to write Congress and the President and demand the IRS obtain the warrants the Constitution requires for tax searches and seizures.

Let's assume attorney Cropsey is correct: The IRS must have a warrant to lawfully seize money from an employee's wages or bank account.

If so, what do you suppose would happen if an employer which seized (or was about to seize) your wages on behalf of the IRS were put on proper administrative notice of the law requiring a warrant before lawful seizure could commence? With proper notice, the corporation might be forced to demand the IRS to show proof of a lawful warrant (not just a Notice of Levy), or decline to assist in the seizure less it become *personally liable* to the employee whose wages were unlawfully seized.

What do you suppose would happen if you knew the IRS wanted to seize savings in your bank account, and you put your bank on

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proper notice that the seizure could not take place without a proper warrant? Would your bank risk being sued just to help the IRS?

Of course, the IRS might be able to get a lawful warrant. But the legal process of getting an individual warrant for *every* IRS seizure and levy would be so expensive, time-consuming and prone to endless litigation, that the actual number of seizures and levies would probably decline precipitously.

But is Ms. Cropsey's analysis of warrants valid, flawed, or completely mistaken? I don't know. But judging from her research, I don't think anyone else knows either. In other words, until the Supreme Court absolutely settles the issue, perhaps *nobody knows*.

That suggests that 1) you could legally raise this question in your confrontations with the IRS, your employer or bank; and 2) it might take at least two or three years for your lawsuit based on attorney Cropsey's theory (and variations thereon) to be decided by the Supreme Court.

If so, there may be a two or three year "window" wherein every employer and bank who tried to enforce the IRS liens and levies without proper warrant might expect to be sued by their own employees or depositors. And since the persons suing the employers and banks are targets of the IRS, it's fairly certain that they'll be broke by the time the issue is resolved. If so, the employers and banks would have little hope of recovering their legal fees in court. And each of those lawsuits would probably cost the corporation or bank *at least* \$5,000 or \$10,000 in legal fees for their defense attorneys, plus no end of bad publicity—and that's assuming they ultimately win. (Can you say "Pyrrhic Victory," boys and girls?)

I don't know if the idea that employers or banks who help the IRS might face untenable legal fees makes you smile, but it makes me giggle like a little kid.

Today, some of us know enough law to be a real pain the buns. For example, even if you're some crazy pro se litigant who's not good enough to win a seatbelt case in traffic court, you're probably good enough to file enough motions and counter-suits (all of which require a response) to cause your adversary to spend big bucks on his lawyers. Does the system want to spend \$5,000 in lawyer fees to prosecute a \$75 seatbelt ticket all the way to the state Supreme Court?

Prob'ly not.

Similarly, are corporations and banks willing to expose themselves to \$10,000 in legal fees to seize \$2,000 from your wages or bank account and give it to the IRS?

I don't think so.

And don't imagine that the corporations and banks are on the IRS's side. They generally

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