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Sec. 6331. - Levy and distraint

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property

The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(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

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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.

(d) Requirement of notice before levy

(1) In general

Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) 30-day requirement

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 persons's last known address,

no less than 30 days before the day of the levy.

(3) Jeopardy

Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

(4) Information included with notice

The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms -

(A)

the provisions of this title relating to levy and sale of property,

(B)

the procedures applicable to the levy and sale of property under this title,

(C)

the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

(D)

the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

(E)

the provisions of this title relating to redemption of property and release of liens on property, and

(F)

the procedures applicable to the redemption of property and the release of a lien on property under this title.

(e) Continuing levy on salary and wages

The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343.

(f) Uneconomical levy

No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

(g) Levy on appearance date of summons

(1) In general

No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

(2) No application in case of jeopardy

This subsection shall not apply if the Secretary finds

that the collection of tax is in jeopardy.

(h) Continuing levy on certain payments

(1) In general

If the Secretary approves a levy under this subsection, the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer.

(2) Specified payment

For the purposes of paragraph (1), the term "specified payment" means -

(A)

any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,

(B)

any payment described in paragraph (4), (7), (9), or (11) of section 6334(a), and

(C)

any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act.

(i) No levy during pendency of proceedings for refund of divisible tax

(1) In general

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid divisible tax during the pendency of any proceeding brought by such person in a proper Federal trial court for the recovery of any portion of such divisible tax which was paid by such person if -

(A)

the decision in such proceeding would be res judicata with respect to such unpaid tax; or

(B)

such person would be collaterally estopped from contesting such unpaid tax by reason of such proceeding.

(2) Divisible tax

For purposes of paragraph (1), the term "divisible tax" means -

(A)

any tax imposed by subtitle C; and

(B)

the penalty imposed by section 6672 with respect to any such tax.

(3) Exceptions

(A) Certain unpaid taxes

This subsection shall not apply with respect to any unpaid tax if -

(i)

the taxpayer files a written notice with the Secretary which waives the restriction imposed by this subsection on levy with respect to such tax; or

(ii)

the Secretary finds that the collection of such tax is in jeopardy.

(B) Certain levies

This subsection shall not apply to -

(i)

any levy to carry out an offset under section 6402; and

(ii)

any levy which was first made before the date that the applicable proceeding under this subsection commenced.

(4) Limitation on collection activity; authority to enjoin collection

(A) Limitation on collection

No proceeding in court for the collection of any unpaid tax to which paragraph (1) applies shall be begun by the Secretary during the pendency of a proceeding under such paragraph. This subparagraph shall not apply to -

(i)

any counterclaim in a proceeding under such paragraph; or

(ii)

any proceeding relating to a proceeding under such paragraph.

(B) Authority to enjoin

Notwithstanding section 7421(a), a levy or collection proceeding prohibited by this subsection may be enjoined (during the period such prohibition is in force) by the court in which the proceeding under paragraph (1) is brought.

(5) Suspension of statute of limitations on collection

The period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy.

(6) Pendency of proceeding

For purposes of this subsection, a proceeding is pending beginning on the date such proceeding commences and ending on the date that a final order or judgment from which an appeal may be taken is entered in such proceeding.

(J) No levy before investigation of status of property**(1) In general**

For purposes of applying the provisions of this subchapter, no levy may be made on any property or right to property which is to be sold under section 6335 until a thorough investigation of the status of such property has been completed.

(2) Elements in investigation

For purposes of paragraph (1), an investigation of the status of any property shall include -

(A)

a verification of the taxpayer's liability;

(B)

the completion of an analysis under subsection (f);

(C)

the determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to such liability; and

(D)

a thorough consideration of alternative collection methods.

(k) No levy while certain offers pending or installment agreement pending or in effect

(1) Offer-in-compromise pending

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax -

(A)

during the period that an offer-in-compromise by such person under section 7122 of such unpaid tax is pending with the Secretary; and

(B)

if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending).

For purposes of subparagraph (A), an offer is pending beginning on the date the Secretary accepts such offer for processing.

(2) Installment agreements

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax -

(A)

during the period that an offer by such person for an installment agreement under section 6159 for

payment of such unpaid tax is pending with the Secretary;

(B)

if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending);

(C)

during the period that such an installment agreement for payment of such unpaid tax is in effect; and

(D)

if such agreement is terminated by the Secretary, during the 30 days thereafter (and, if an appeal of such termination is filed within such 30 days, during the period that such appeal is pending).

(3) Certain rules to apply

Rules similar to the rules of paragraphs (3) and (4) of subsection (i) shall apply for purposes of this subsection.

(I)

Cross references

(1)

For provisions relating to jeopardy, see subchapter A of chapter 70.

(2)

For proceedings applicable to sale of seized property see section 6335.

(3)

For release and notice of release of levy, see section 6343

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