



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR Midwest District Counsel
Attn: Michael Calabrese

FROM: Alan C. Levine
Chief, Branch 1 (General Litigation)

SUBJECT: Levy on Right to Social Security Payments

This advice is in response to your electronic mail dated August 5, 1999, concerning the above subject. This document is advisory only and is not to be relied upon or otherwise cited as precedent.

LEGEND:

City: N/A
Taxpayer: N/A
SSN: N/A
Years: N/A
Assessment Amount: N/A

ISSUE:

Whether levies upon taxpayers' Social Security benefits using Form 668-W are proper.

CONCLUSION:

Levies upon taxpayers' Social Security benefits using Form 668-W are proper.

FACTS:

In some cases the only distrainable asset is the taxpayer's right to receive Social Security benefit payments. Subsection 5(11)61.1 of the Internal Revenue Manual ("IRM") provides that Form 668-W is to be issued to the Social Security Administration ("SSA") when levying upon a taxpayer's Social Security benefit

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payments. ^{1/} A question has arisen as to whether IRM 5(11)61.1 is correct on this point and if Form 668-A, Notice of Levy, should be used instead of Form 668-W, Notice of Levy on Wages, Salary, and Other Income.

LAW AND ANALYSIS:

This is in response to your electronic mail ("e-mail") dated August 5, 1999, regarding levies on Social Security benefit payments. In your e-mail you referred to and attached a memorandum that you intend to send to the Chief of the Collection Division, Midwest District, concerning the continuous effect of these levies. In the memorandum you make the following three conclusions: (1) a single levy on Social Security benefits attaches to the fixed right to receive future benefits; (2) the Secretary has not yet delegated to anyone in the field the authority to issue continuous levies pursuant to I.R.C. § 6331(h); and (3) levies upon taxpayers' Social Security benefit payments using Form 668-W are not proper in that they are not in accordance with administrative procedures. We agree with your first two conclusions but disagree with the third, accordingly we will address only your third conclusion.

As your memorandum correctly concludes, a single levy attaches to future Social Security benefit payments if the taxpayer has a current fixed and determinable right to those payments. Subsection 5(11)61.1 of the IRM provides that Form 668-W is to be sent to SSA when levying upon benefit payments due to the taxpayer. Form 668-W is used to levy on wages, salary, and other income. Continuous levies on salary and wages constitute the legislatively enacted exception to the rule that a levy does not operate to seize property acquired after the date of the levy. I.R.C. § 6331(e). On the other hand, a single levy attaches to the future right to receive Social Security benefit payments because they are "other income" that constitute a fixed right to property acquired prior to the date of the levy, and not because they are "salary" or "wages" subject to a continuous levy pursuant to the code.

Form 668-W clearly delineates between the effect of the levy on salary and wages, and the effect on other income. The front side of the form provides, in part, as follows:

This levy requires you to turn over to us: (1) this taxpayer's wages and salary that have been earned but not paid yet, as well as wages and salary earned in the future until this levy is released, and (2) this

^{1/} SSA makes payments for Retirement, Survivors, and Disability Insurance ("RSDI") and Supplemental Security Income (SSI). RSDI payments are not based on need and can be levied, however, SSI payments are for needy people who are aged, blind, or disabled and are exempt from levy pursuant to I.R.C. § 6334(a)(11).

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taxpayer's other income that you have now or for which you are obligated.

Furthermore, Form 668-W explains to the recipient the types of other income that the levy reaches. The back side of the form reads, in part, as follows:

This levy remains in effect for benefit and retirement income if the taxpayer has a current fixed right to future payments, until we send you a release of levy.

Social Security payments are other income that SSA is obligated to pay the taxpayer once he qualifies, and because the taxpayer then has a current fixed and determinable right to future payments, a single levy using Form 668-W reaches that right. The purpose of using Form 668-W instead of Form 668-A is to give the taxpayer an opportunity to claim exemptions pursuant to I.R.C. § 6334(a). Use of Form 668-W does not make the levy on the payments a continuous levy under the code, rather it is a single levy with a continuous effect.

For the reasons stated above, IRM 5(11)61.1 correctly directs that Form 668-W is to be issued to SSA when levying upon a taxpayer's Social Security benefit payments. To the extent that this advice is contrary to any previous advice your office may have received from this office, this advisory represents our current position.

If you have any further questions, please contact General Litigation, Branch 1 at (202) 622-3610.

cc: Assistant Regional Counsel (GL), Midstates Region