Publication 594

Understanding The Collection Process

Mission

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Existe una versión de esta publicación en español, la Publicación 594S, que puede obtener en la oficina local del Servicio de Impuestos Internos

KEEP THIS PUBLICATION FOR A REFERENCE

Department of the Treasury
Internal Revenue Service
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Introduction

This publication explains your rights and responsibilities regarding payment of Federal tax. This information applies to all taxpayers, including individuals who owe income tax and taxpayers who owe employment tax. Special rules that apply only to employers are covered in separate sections of this publication.

Although this publication discusses the legal authority that allows the Internal Revenue Service (IRS) to collect taxes, it is not intended as a precise and technical analysis of the law.

Do not ignore your tax bill. **If you owe the tax shown on a bill, you should make arrangements to pay it.** If you believe it is incorrect, contact the IRS immediately to suspend action until the mistake is corrected. See the following discussion titled "If you believe your bill is wrong," on page 3.

Important reminder about child support. By law, the IRS can collect certified child support obligations. The collection and payment of these debts, with certain exceptions, follow the same process as the collection of unpaid taxes.

Highlights

The answers to the following questions are found in this publication. After each question, you will find the appropriate heading where the topic is explained. These commonly-asked questions relate to the bill you received for your unpaid taxes.

- What if I disagree with the amount of tax that IRS says I owe?

  See "If you believe your bill is wrong," on page 3.

- What is the best way to contact the IRS and explain my situation (why I haven't paid)?

  See "Numbers to Call for Assistance," on this page.

- What do I do if I disagree with the IRS employee and want to appeal?

  See "When you do not agree with decisions of IRS employees," on page 2.

- What are my rights to appeal if I disagree with an IRS decision?

  See "When you do not agree with decisions of IRS employees," "Administrative review," and "Your Appeal Rights," on pages 2, 7, and 8.

- I have tried to get the IRS to resolve my tax problems but can't.

  See "Problem Resolution Program," on page 2.

- Can I make monthly payments on my account?

  See "Making installment payments for individuals or businesses," and "Simplified installment agreements" on page 3.

- Can I settle my tax account for less than what I owe?

  See "Offer in Compromise," on page 4.

- What if; I can't pay any amount? Will you take money out of my wages?

  See "What Happens When You Take No Action to Pay," and "Levy on wages," on pages 5 and 6.

- Can I postpone paying my taxes until my financial condition improves?

  See "Delaying collection if you cannot pay," on page 3.

- I'm an employer. What happens if I cannot pay my employment taxes?

  See "What Happens When You Take No Action to Pay," and "Trust Fund Recovery Penalty Assessments for Employers," on pages 5 and 8.

- How do I make a tax deposit if I do not have tax deposit coupons for employment taxes?

  See "Paying employment taxes," on page 4.

- What happens to my tax refund if I owe taxes for prior years?

  See "If your current Federal and State tax return shows a tax refund and you owe back taxes," on page 4.

- Does owing taxes have an effect on my credit?

  See "Lien," on page 5.

Numbers to Call

Tax Information & Assistance
Call Specific number if listed, otherwise call toll free
1-800-829-1040
(1-800-829-4059 for TDD users)

Tax Forms and Publications
1-800-829-3676
(1-800-829-4059 for TDD users)

FAX: 703-368-9694

Internet: World Wide Web-
http://www.irs.ustreas.gov
FTP-ftp.irs.ustreas.gov
Telnet-iris.irs.ustreas.gov

1 *What do I do if I disagree with an IRS employee's decision and want to appeal?*

See "When you do not agree with decisions of IRS employees."

2 *How can I have my case transferred to another IRS office?*

See "Transferring the location of your tax case."

3 *How can I get help on unresolved tax problems?*

See "Problem Resolution Program."

Your Rights

When dealing with the IRS, you have the right to be treated fairly, professionally, promptly, and courteously by IRS employees.

Publication 1, Your Rights As A Taxpayer. This publication explains some of your most important rights as a taxpayer. It also explains the Examination, Appeal, Collection and Refund processes.

You received a copy of Publication 1 with your initial bill, which is also called a *"Notice of Tax Due and Demand for Payment."* You may also request a copy of Publication 1 from an IRS employee at or before your first in-person interview with an IRS employee.

1 ***When you do not agree with decisions of IRS employees.*** If at any step of the Collection process you do not agree with the decision of an IRS employee, you have the right to an administrative review with the employee's manager. You also have a right to appeal many collection actions including Liens, Levies and Seizures to the Appeals Office and effective January 1997 the termination of installment agreements. At your request, the employee will either arrange for you to meet with the manager or tell you the manager's name and where to contact him or her. Publication 1660, Collection Appeal Rights for Liens, Levies, Seizures, and Installment Agreements), explains how to request an appeal and your rights to appeal liens, levies, seizures, and termination of installment agreements.

Innocent Spouse Provision. Under certain circumstances, you may not be liable for the tax, interest, and penalties on a joint income tax return. Through facts and circumstances, you must be able to establish that you did not know, and had no reason to know, that your spouse substantially understated the amount of tax due. There are certain dollar limitations and other ciriteria which must be met. For Additional information, see Publication 17, *Your Federal Income Tax*, Publication 501, *Exemptions, Standard Deduction, and Filing Information.*, Publication 504, *Divorced or Separted Individuals,* and Publication 556, *Examination of Returns, Appeal Rights and Claims for Refund.*

Who can represent you in IRS matters. You may represent yourself or you may have an attorney, certified public accountant, enrolled agent or any person enrolled to practice before the Internal Revenue Service represent you. For example you may want your tax preparer to respond to a tax bill that you believe is not correct.

To authorize another person to have access to your Federal tax information, you can use Form 2848, *Power of Attorney and Declaration of Representative,* or Form 8821, *Tax Information Authorization,* or any other properly written power of attorney or authorization. You can get copies of these forms from your local IRS office or by calling the toll-free number shown on page 1.

Sharing your tax information. Under the law, we can share your tax information with city and state tax agencies, and in some cases, the Department of Justice, other federal agencies, and persons you authorize. We can also share it with certain foreign governments under tax treaty provisions.

2 ***Transferring the location of your tax case.*** You have the right to request that we transfer your tax case to another IRS office. Generally, we will transfer your case if you have a valid reason for making the request, such as a change of address.

If you move, send Form 8822, *Change of Address,* to any IRS office, so you will receive any notices sent to you.

Receiving receipts for payments you made to IRS. IRS must provide you with a receipt (Form 809) when you pay in cash. You have the right to ask for and receive a receipt for all payments you make. You should ask for a receipt at the time you make a payment. You also have the right to receive copies or confirmation of all contractual arrangements (such as an installment agreement) that you make with us.

3 Problem Resolution Program (PRP)

PRP is a program designed to help taxpayers who have been unable to resolve their tax problems after repeated attempts to do so with another IRS department.

Before contacting PRP, you should first request assistance from an employee or manager in an IRS Collection office. If the problem is still not resolved, you should contact your local IRS district office and ask for PRP.

PRP provides an avenue to help resolve your problem when you believe that: 1) your account information is incorrect, 2) a significant matter or event is not being considered in your case, or 3) your rights as a taxpayer have been violated.

If you suffer a significant hardship. If you have or are about to have a significant hardship because of the collection of your tax debt, additional assistance is available. A significant hardship may occur if you cannot maintain necessities such as food, clothing, shelter, transportation, and medical treatment.

To apply for relief, you can submit Form 911, *Application For Taxpayer Assistance Order (ATAO) to Relieve Hardship,* or contact the district Taxpayer Advocate's office if the employee assigned to your case cannot or will not take action to relieve your hardship. Any IRS employee can help you apply for ATAO handling. We can help you obtain and complete the form, take the information by telephone, or you can contact the district Taxpayer Advocate's office in order to obtain and complete the form and submit it to PRP.

The Taxpayer Advocate or a District Taxpayer Advocate will review your application and if appropriate, take steps to relieve your hardship.

When You Have Not Paid Enough Tax

If you do not pay the full amount of tax you owe, you will receive a tax bill. This bill begins the collection process. The length of the process depends on how soon you respond and pay the bill. We encourage you to pay your bill by check or money order.

Understanding your tax bill. When you file your tax return with the IRS, we check it to make sure the math is accurate and to see if you have paid the correct amount of tax. If you owe tax and have not paid all of it, we will send you a bill which is called a *Notice of Tax Due and Demand for Payment.* The bill will include the tax due, plus penalties and interest that we have charged on the unpaid balance of your account from the date you should have paid your taxes.

What you can do to avoid having overdue taxes. If you owe taxes because not enough tax was withheld from your wages, you should file a new Form W-4, *Employee's Withholding Allowance Certificate,* with your employer(s) to claim a lower number of withholding allowances. If you need help computing the correct number of withholding allowances, see Publication 919, *Is My Withholding Correct?*

If you are self-employed and owe tax, you should increase your estimated tax payments. These payments are explained in Publication 505, *Tax Withholding and Estimated Tax,* and are reported on Form 1040ES, *Estimated Tax for Individuals.*

If you are an employer, see “Paying employment taxes,” discussed on page 4 of this publication. For other types of taxes, see the tax instruction booklet that was mailed with your tax forms.

4 ***If you believe your bill is wrong.*** If you believe your bill is wrong, please let us know, as soon as possible, by calling the telephone number identified on the bill or by writing to the IRS office that sent you this bill. You may also call the IRS or visit the IRS office nearest you.

To help us correct the problem, please include in your correspondence explaining the problem: 1) a copy of the bill, and 2) copies of any records, canceled checks, etc., that will help us understand what you believe is wrong.

Here is a sample format you can use for a letter:

Date

Internal Revenue Service
Address

- Your name, address, and daytime telephone number.
- Taxpayer identification number (social security number or employer identification number) as stated on bill.
- Tax form number as stated on bill.
- Tax period as stated on bill.

State your reason(s) why you believe your bill is wrong. Enclose copies of any information supporting your statement, such as copies of canceled checks or a copy of your tax return and a copy of the tax bill.

Your signature

If we find that you are correct, we will adjust your account, and if necessary, we will send you a corrected bill.

Making Arrangements to Pay Your Bill

This section explains what happens if you are unable to pay your bill in full. All taxpayers are expected to pay their taxes in full; however, if you cannot pay your tax bill in full, we will analyze your ability to pay and then try to find the best way for you to pay the bill.

We will consider different methods of payment, such as paying in installments.

Note: The first part of this section applies primarily to individuals. However, many of the procedures also apply to employers. The last part of this section explains the rules that apply only to employers and payment of employment taxes.

When you pay your tax bill or send us correspondence, please do the following:

1) Include a copy of the most recent tax bill,
2) Identify the tax form number, the tax year or period, and your taxpayer identification number, as shown on your bill, in all your correspondence with us.
3) Also, write your taxpayer identification number (social security number or employer identification number, as appropriate) on your check, and
4) Enclose your payment if you owe tax.

If you can pay only part of your bill. If you cannot pay your bill in full, you should pay as much as you can and immediately call us, write us, or visit your nearest IRS office to explain your circumstances. Whenever you write, be sure to enclose a copy of your tax bill and on your letter, print your name, taxpayer identification number, and the tax form and period shown on your bill.

After we receive your explanation, we will try to find the best way for you to pay your tax bill.

1) We may ask you to complete a Collection Information Statement. We use this form to review your financial condition to determine how you can pay the amount due.
2) We can ask you to sell or mortgage any assets to secure funds to pay the taxes.
3) We will ask you to secure a commercial loan if we determine that you are able to do so. A benefit of obtaining a loan is that you will avoid penalties and interest that we will continue to charge on your unpaid balance until all tax, penalties, and interest are paid.
4) We may take enforced collection action, such as issue a levy on your bank account, levy your wages, or take your other income or assets if you neglect or refuse to pay or make other arrangements to satisfy your bill in full.

5 ***Making installment payments for individuals or businesses.*** We will help you complete a *Collection Information Statement,* Form 433A or 433F for individuals, or Form 433B, for businesses. We use these forms to help us compare your monthly income with your expenses, determine if you qualify for an installment agreement, and the amount you can pay.

You can use these methods to make installment payments:

1) Personal checks, business checks, money orders, or certified funds,
2) Payroll deductions that your employer agrees to take from your salary and send to the IRS in regular payments, or
3) Electronic transfers from your bank account or other similar means.

If you have an installment agreement, you must make each payment on time. If you cannot pay on time, let us know why immediately.

Caution: You will be charged a fee if your installment agreement is approved or needs to be reinstated. Also, while you are making installment payments, we will continue to charge your account with interest and penalties on the unpaid balance of taxes you owe plus interest on the unpaid balance of penalties and interest you owe.

Other actions that we may take include:

- Filing a Notice of Federal Tax Lien to secure the Government’s interest until you make the final payment (See the section on “Liens” on pages 5-6),
- Requiring you to provide current information on your financial condition to determine any change in your ability to pay, and
- Ending the installment agreement if you do not provide financial information when requested or if you do not meet the terms of the agreement, such as paying late, missing a payment, or not filing or paying all required tax returns. If this happens, we may take enforced collection action. See “What Happens When You Take No Action To Pay,” on page 5.

Note: Because your agreement is based on your financial circumstances, it could change. However, you will receive a letter 30 days in advance of any change we would make to your plan.

Simplified installment agreements. A simplified process enables many taxpayers to qualify for a streamlined installment agreement. In most cases, applying requires little paperwork and a Federal tax lien may not be required. To apply, call or visit your local IRS office for details about completing Form 9465, *Installment Agreement Request.*

4 *What if I disagree with the amount of tax that IRS says I owe?*

See “If you believe your bill is wrong.”

5 *Can I make monthly payments on my account?*

See “Making installment payments for individuals or businesses,” and “Simplified installment agreements.”

Can I postpone paying my taxes until my financial condition improves?

See "Delaying collection if you cannot pay."

Can I settle my tax account for less than what I owe?

See "Offer in Compromise."

How do I make a tax deposit if I do not have tax deposit coupons for employment taxes?

See "Paying employment taxes."

Delaying collection if you cannot pay. If we determine that you cannot pay any amount of your tax debt, we may temporarily delay collection until your financial condition improves. If we delay collection, the amount of your debt will increase because we will continue to charge a penalty for late payment and interest on your debt. During a delay, we will review your ability to pay. We may also file a Notice of Federal Tax Lien (explained on page 5) to protect the Government's interest in your assets and send you a reminder to pay.

If your current Federal and State tax return shows a tax refund and you owe back taxes. If you are entitled to receive a tax refund while you still owe unpaid taxes, we will automatically apply the refund to pay the unpaid tax debt and refund the remaining balance to you.

If you are bankrupt. If you are involved in an ongoing bankruptcy proceeding, contact your local IRS office. While the bankruptcy proceeding may not eliminate your tax debt, it will temporarily stop IRS enforcement action to collect a debt related to the bankruptcy.

Offer in Compromise. The Service may accept an offer in compromise to settle unpaid tax accounts for less than the full amount of the balance due when the facts support the liklihood that the Service will be unable to collect the debt in full. This applies to all taxes, including any interest and penalty or additional amount(s), arising under the Internal Revenue laws. The amount you offer must reflect your maximum ability to pay, taking into consideration the total value of your equity in all your assets and future income.

How to file an Offer in Compromise. You can get Form 656, *Offer in Compromise,* and Form 433A, *Collection Information Statement for Individuals,* Publication 1854, How to Prepare a Collection Information statement (Form 433A), or Form 433B, *Collection Information Statement for Business,* plus additional information regarding the filing procedure, at any IRS office. You may also call the toll-free numbers listed on page 1 for assistance or to receive tax forms or publications.

Additional Payment Procedures for Employers

Throughout this publication, we will refer to Employer's Quarterly Federal Taxes as employment taxes. This tax is reported on Form 941, *Employer's Quarterly Tax Return. Form 940, Employer's Annual Federal Unemployment Tax Return,* is used by employers to report Federal unemployment tax.

Note: If your business receives funds from the Small Business Administration or a Small Business Investment Company, you should notify that organization about your unpaid taxes.

General information. Employment taxes are:

- The amounts you withhold from your employees for income tax and social security tax, plus
- The amount of social security tax you pay as an employer on behalf of each employee.

Although your bill includes all of the amounts above, the amounts that you have withheld from your employee's earnings are referred to as "trust fund taxes." They are called "trust fund taxes" because they are actually the employee's money which you hold in trust until you make a Federal tax deposit in that amount.

Degree of taxpayer cooperation. When we collect these unpaid taxes, we distinguish between those taxpayers who show a sincere effort to meet their tax obligations and those taxpayers who show little or no evidence of cooperation. We make this distinction because we believe that taxpayers who are making an effort to comply should be given an opportunity to resolve their bill, over a short period of time.

On the other hand, we believe that "repeater" or "chronic delinquent" trust fund cases require a swift and decisive IRS response for the following reasons:

1) The taxpayer (employer) is using "trust fund" monies as operating capital and thereby gains an unfair competitive advantage over other businesses who are complying, and
2) The taxpayer has been warned and yet continues to divert the "trust fund" monies.

Caution: The amount owed can increase dramatically if the taxpayer ignores the federal tax deposit and/or filing requirements, thus making it increasingly difficult to recover from the tax debt.

Paying employment taxes. In general, you must deposit your taxes directly to the Federal Reserve Bank in your area or to an authorized financial institution.

Electronic Funds Transfer. Some taxpayers are required to deposit by electronic funds transfer. If you are subject to this requirement, you must make electronic deposits for all depository tax liabilities that occur after December 31, 1997 or be subject to a penalty. If you were required to make deposits by electronic funds transfer in prior years, continue to do so.

To make electronic deposits, you need to use the Electronic Federal Tax Payment System (EFTPS). With EFTPS, deposits can be made by ACH debit using a telephone or personal computer or by initiating an ACH credit payment through your financial institution. Instructions for making payments are in the Payment Instruction Booklet that you receive when you enroll in EFTPS. EFTPS changes the method of paying taxes—not the date payments are due or the amounts owed.

If you are not required to make electronic deposits, you can voluntarily participate in EFTPS. For information on EFTPS, call 1-800-945-8400 or 1-800-555-4477. (These numbers are for EFTPS information only.)

Federal Tax Deposit (FTD) Coupon. If you do not make deposits by electronic funds transfer, use Form 8109, FTD Coupon. If any of the preprinted information on your Form 8109 is incorrect, follow the instructions in the coupon book for correcting it. Make your deposits directly to the Federal Reserve Bank in your area or to any financial institution authorized to accept Federal tax deposits.

Reordering forms. The IRS will keep track of the number of FTD coupons you use and will automatically send you addition coupons when you need them. If you do not receive your resupply of FTD coupons, call 1-800-829-1040, or visit the IRS and request Form 8109-B, Federal Tax Deposit Coupon.

Caution: Penalties may apply if you make deposits at an unauthorized financial institution or pay directly to the IRS. Penalties may also apply if you are required to deposit by electronic funds trans and you do not use EFTPS.

More information on Depositing Taxes. For more information about making federal tax deposits, obtain a copy of Circular E, Employer's Tax Guide, from any IRS office.

More information on Form 8109. For more information about making federal tax deposits, you can obtain a copy of Circular E, *Employer's Tax Guide,* or Notice 109, *Information About Depositing Employment and Excise Taxes,* from any IRS office.

If you do not deposit taxes on time. If you do not timely pre-pay your tax using deposit coupons or if you were not required to make any deposit and/or did not include your payment when you filed your return, we will charge you interest and penalties on any unpaid balance.

We may charge you penalties for not depositing employment taxes timely up to 15% of the amount not deposited, depending upon how many days late you make the deposit.

If you do not pay withheld trust fund taxes, we may take additional collection action.

- We can require you to file and pay your taxes on a monthly rather than quarterly basis.
- We can also require you to open a special bank account and deposit the amounts required to be withheld within two banking days after you pay wages to your employees. If, after you are required to do so, you do not open a special account and make timely deposits, you may be found guilty of a misdemeanor.

9 What Happens When You Take No Action to Pay

You will not need to read this section if you have already paid your tax. Please note that before we take any of the actions explained in this section, we try to contact you and give you the opportunity to pay voluntarily.

If you do not take some action to pay your tax bill, we may take any of the following actions:

- File a Notice of Federal Tax Lien,
- Serve a Notice of Levy,
- Seize and sell your property (personal, real estate, and business property),
- Notify payers of your interest and dividend income to begin backup withholding, or
- Assess a trust fund recovery penalty, if you owe employment taxes. (See "Trust Fund Recovery Penalty Assessments for Employers," discussed on page 8).

Some of these actions are referred to as "enforced collection actions" because they are the means by which the IRS can enforce the notice and demand for tax.

10 Lien

This section gives information to help you understand what a lien is, how it affects your credit rating, and how it is released.

Before the IRS files a Notice of Federal Tax Lien, three requirements must be met:

1) The IRS must assess the liability,
2) The IRS must send you a notice and demand for payment, and
3) You must neglect or refuse to fully pay the liability within 10 days of notice and demand. Entering into an installment agreement does not preclude the filing of a notice of lien.

Once these requirements are met, a lien is created for the amount of your tax debt. This lien attaches to all your property (such as your house or car) and to all your rights to property (such as your accounts receivable).

A lien is not valid against the claims of other creditors until the IRS files a Notice of Federal Tax Lien with an appropriate official to establish priority status among these creditors. An example of this is filing a lien in the county where you own property or in the state where you conduct business. By filing a Notice of Federal Tax Lien, the Government is providing a public notice to your creditors that the Government has a claim against all your property, including property that you acquire after the lien was filed.

Caution: Once filed, a lien may harm your credit rating.

Releasing a Lien

The IRS will issue a Release of the Notice of Federal Tax Lien:

1) Within 30 days after you satisfy the tax due (including interest and other additions to the tax) by payment or adjustment, or
2) Within 30 days after we accept a bond that you submit guaranteeing payment of the debt.

In addition, you must pay all fees charged by a state or other jurisdiction for both filing and releasing the lien. These fees will be added to the balance you owe.

Publication 1450, *Request for Release of Federal Tax Lien,* describes how to request a release of a Federal tax lien.

Automatic release of a Federal Tax Lien. A lien will release automatically if we have not refiled it before the time expires to legally collect the tax. This is usually a period of 10 years.

What you can do if IRS does not release a lien. If the IRS knowingly or negligently does not release a Notice of Federal Tax Lien when it should be released, you may sue the Federal government, but not IRS employees, for damages.

Before you file a lawsuit, you must first exhaust all administrative appeals. Also, you must file the suit within 2 years from the date when the IRS should have released the lien.

If you win a civil lawsuit, you may be awarded payment for any losses that you had because the IRS did not release the lien. You may also be paid for your share of the costs of the lawsuit. However, any costs that you could have reasonably reduced will be subtracted from that payment.

Special Release of Tax Lien — Application for a Discharge of a Federal Tax Lien against Property

Each application for a discharge of a tax lien releases the effects of the lien against one specific piece of property. If you are giving up ownership of property, such as when you sell your home, you may apply for a Certificate of Discharge.

You may receive a Certificate of Discharge if any of the following circumstances apply:

- You have other property, subject to the lien, that is worth at least two times the total of the tax you owe, plus any additions to the tax you owe and any other debts you owe on the property, such as a mortgage.
- The IRS receives the value of the government's interest in the property and you are giving up ownership.
- The IRS determines that the government's interest in the property has no value at the time you are giving up ownership.
- The property in question is being sold, and there is a dispute as to who is entitled to the sale proceeds, and the proceeds are placed in escrow while the dispute is being resolved.

When applying for a discharge, you must send your written application in duplicate to the IRS district director where your property is located.

For assistance in requesting a discharge of a Federal Tax Lien, see Publication 783, *Instructions on How to Apply for a Certificate of Discharge of Property From the Federal Tax Lien.*

9 *I'm an employer. What happens if I cannot pay my employment taxes?*

See "What Happens When You Take No Action To Pay" (this page) and "Trust Fund Recovery Penalty Assessments for Employers" (page 8).

10 *Does owing taxes have an effect on my credit?*

See "Lien."

11 *What effect can a levy have on my salary and bank accounts?*

See "Levy."

12 *What must happen to release a levy?*

See "Releasing a levy."

When the IRS Lien Is Secondary to Another Lien — Subordination

Subordination is made at the discretion of the IRS. It means that the IRS has allowed its lien to take a lower place than someone else's lien.

The IRS may let its lien take a lower place than a "junior lienor" (someone whose lien originally had a lower place then the IRS lien) if it receives the dollar value of the lien in the property that the junior lienor is acquiring, for example, a second mortgage.

We may also subordinate a lien if we believe that doing so would speed collection of the tax. For example, we may subordinate a lien that would allow a farmer to receive a loan to harvest a crop.

For assistance in requesting subordination of a Federal Tax Lien, see Publication 784, *How to Prepare Application for Certificate of Subordination of Federal Tax Lien.* When making this request, you should submit a written application in duplicate to the District Director in whose district your property is located.

Withdrawal of Liens —Internal Revenue Code 6323(j) and Taxpayers Bill of Rights 2 allows the withdrawal of a filed notice of tax lien if:

- the notice was filed prematurely or not in accordance with IRS procedures,
- the taxpayer has entered into an installment agreement to satisfy the liability on the notice of lien unless the agreement provides otherwise),
- the withdrawal will facilitate collection of the tax, or
- the withdrawal would be in the best interests of both the taxpayer (as determined by the Taxpayer Advocate) and the Government

The IRS must provide a copy of the withdrawal to the taxpayer and, upon written request of the taxpayer, to other specified institutions.

Incorrect Lien — Your Administrative Appeal

You may appeal the filing of a Notice of Federal Tax Lien if you believe we filed the lien in error. A lien is incorrect if:

- You paid the entire amount you owed the IRS before we filed the lien,
- We assessed the tax and filed the lien when you were in bankruptcy and subject to the automatic stay during bankruptcy,
- We made a procedural error in making an assessment, or
- The time to collect the tax (called the statute of limitations) expired before we filed the lien.

Note: You may not appeal this Notice of Federal Tax Lien if you are challenging the underlying debt that generated the filing of the lien.

If we agree with your appeal, we will release the lien within 14 days after we determine that the lien was filed incorrectly. we will issue a certificate of release of an incorrect lien that includes a statement that we filed the Notice of Federal Tax Lien in error.

11 Levy

A levy is one method the IRS uses to collect tax that you have not paid voluntarily. It means we can, by legal authority, take property to satisfy a tax debt. Levies can be made on property that you hold (such as your vehicle, boat, or house) or on property that is yours, but is held by third parties (such as wages or funds on deposit at a bank).

For example, IRS may levy your wages (salary), commissions, the cash value of life insurance, licenses or franchises, securities, contracts, demand notes, accounts receivables, rental income, dividends, retirement accounts, etc.

Also, in most states that have state income taxes, the IRS can levy a state refund check and apply the state refund to a federal tax debt.

A levy is different from a lien. A lien is a claim used as security for the tax debt, while a levy is used to actually take the property to satisfy the tax debt.

Authority to levy. Generally, the IRS does not need court authorization to take levy action. However, we are required to have court authorization to enter private premises, if this is necessary, to seize property.

Generally, before IRS takes levy action, three legal requirements must be met:

1) The IRS must assess the tax and send you a "Notice and Demand" for payment,
2) You must neglect or refuse to pay the tax, and
3) The IRS must send you a Final Notice of Intent to Levy at least 30 days in advance of the levy.

We may give you this notice in person, leave it at your dwelling or usual place of business, or send it by certified or registered mail to your last known address. The bill that usually accompanies this publication is such a notice.

Caution: If we conclude that collection of your tax is threatened, we may take immediate collection action before all three requirements have been met. For example, if a taxpayer is planning to quickly leave the country, we may believe that collection is threatened or in jeopardy.

If we make a decision that collection of your tax is threatened or in jeopardy, you may seek IRS managerial or court review, or both. These procedures are explained in the letter you will receive when the demand for payment is made.

Levy on wages. If the IRS levies your salary or wages, the levy will end when one of the following occurs:

- The levy is released,
- You pay your tax debt, or
- The time expires for legally collecting the tax.

If we levy your salary or wages, contact the person whose telephone number is listed on the Notice of Levy for assistance.

Levy on your bank account. If the IRS levies your bank account, your bank is required to hold funds you have on deposit, up to the amount you owe, for 21 days. This period allows you time to resolve any problems about the levy or make other arrangements to pay. The bank is then required to send the money, plus interest if it applies, to the IRS.

To discuss your account, you should contact the IRS by calling the person whose name is shown on the Notice of Levy.

12 ***Releasing a levy.*** We must release your levy if any of the following occur:

- You pay the tax, penalty, and interest that you owe.
- The time for collection (statute of limitations) expires before the levy is served.
- You provide documentation for the IRS to determine that releasing the levy will help collect the tax.
- You have, or entered into, an approved, current installment agreement for the tax on the levy. (However, If you and the IRS have agreed that a

current levy will continue while installment payments are made, we will not release it.)

- The IRS determines that the levy is creating an economic hardship.
- The fair market value of the property exceeds the levy and releasing part of the seized property would not hinder the collection of tax.

Property that cannot be levied. Certain types of property are exempt from seizure (levy) by Federal law. They include all of the following items:

- Wearing apparel and school books. (However, expensive items of wearing apparel, such as furs, are luxuries and are not exempt from levy).
- Fuel, provisions, furniture, and personal effects for a head of household, that total up to $2,500 (indexed for inflation after 1996).
- Books and tools you use in your trade, business, or profession, that total up to $1,250 (indexed for inflation after 1996).
- Unemployment benefits.
- Undelivered mail.
- Certain annuity and pension benefits.
- Certain service-connected disability payments.
- Workmen's compensation.
- Salary, wages, or other income that have been included in a judgment for court-ordered child support payments.
- Certain public assistance payments.
- Assistance under the Job Training Partnership Act.
- Deposits to the special Treasury fund made by members of the armed forces and Public Health Service employees who are on permanent duty assigned outside the United States or its possessions.
- A minimum weekly exemption for wages, salary, and other income based on the standard deduction plus the number of allowable personal exemptions divided by 52. In the case of no response to the certification of exemptions, the exempt amount will be computed as if you were married filing separately with one exemption.

Publication 1494, *Table of Figuring Amount Exempt from Levy on Wages, Salary and Other Income* (Forms 668-W and 668-W(c)), can be used to determine the amount of earned income exempt from levy.

Returning levied property. We can consider returning property that has been levied if:

- We levy before the two required notices are sent to you or before your time for responding to them has passed (10 days for the Notice and Demand; 30 days for the Notice of Intent to levy).
- We do not follow our procedures.
- We agree to let you pay in installments, but we still levy, and the agreement does not say that we can do this.
- Returning the property will help get the tax paid.
- Returning the property is both in your best interest and the government's.

How to file a claim for reimbursement when IRS made a mistake in levying your account or misplaced your check. You may be entitled to be reimbursed for fees your bank charged you because IRS made a mistake when we levied your account.

To receive this reimbursement, you must file a claim with the IRS within one year after the bank charged you with the fee. To file your claim, use Form 8546, *Claim for Reimbursement of Bank Charges Incurred Due to Erroneous Service Levy or Misplaced Payment Check.*

13 Seizures and Sales

If you do not pay (or make arrangements to resolve) your tax debt, we may seize and sell any type of real or personal property that you own or have an interest in (including residential and business property) to satisfy your tax bill. Seizure of a primary residence requires the approval from an IRS district director or assistant district director except if the collection of the tax is in jeopardy.

If we seize or levy your property, you should contact the IRS employee who made the seizure or levy for assistance.

When property cannot be seized or levied. We may not seize any of your property when the estimated cost to seize and sell the property is more than the fair market value of the property to be seized. In addition, we may not seize or levy your property on the day you attend a collection interview because of a summons.

However, we can seize or levy your property on this date if collection of the tax is in jeopardy. You may contact the IRS employee who made the seizure or levy if you have any questions.

Administrative review. You have the right to an administrative review of our seizure action when we have taken your personal property that you need to maintain your business. See "When you do not agree with decisions of IRS employees," on page 2 for information about how to apply for this review.

Notice of proposed sale. After we seize your property, we must give public notice of a pending sale. Public notice usually appears in a newspaper that is published or circulated in the county where the sale will be held. We will personally deliver the original notice of sale to you or send it to you by certified mail. After we give notice, we must wait at least 10 days before conducting the sale.

However, if the property is perishable and must be sold immediately, we are not required to wait 10 days before holding the sale.

Minimum bid. Before the sale, we will compute a "minimum bid price." This is the lowest amount that we will accept for the sale of the property to protect your interest in that property. We will tell you the minimum bid price we set, which is usually 80% or more of the forced sale value of the property, after any liens are subtracted.

If you disagree with this minimum bid price, you can appeal it by requesting that the price be recomputed by either an IRS valuation engineer or a private appraiser who can assist the IRS engineer. If you still disagree with the revised appraisal, you may obtain a second appraisal.

14 ***Release of property.*** Before the date of sale, we may release the property that we seized from you if you:

1) Pay us the amount of the Government's interest in the property,
2) Enter into an escrow arrangement,
3) Furnish an acceptable bond, or
4) Make an acceptable agreement for payment of the tax.

Your right to "buy back" the property. You have the right to "buy back" your personal property at any time before the sale. To do this, you must pay the tax due, including interest and penalties, and pay the expenses of seizure.

For real estate, you (or anyone with an interest in the property) may redeem it at any time within 180 days after the sale by paying the purchaser the amount paid for the property plus interest at 20% annually.

Sale procedures. You may request that we sell the seized property within 60 days. For information on how to make this request, you should contact the IRS employee who made the seizure. We will grant your request unless it is in the Government's best interest to retain the property. We will inform you in writing of our decision whether or not we are able to grant your request.

13 *What types of property can the IRS seize?*

See "Seizures and Sales."

14 *How can I obtain a release of the seized property?*

See "Release of Property."

My business is closed. Can I be held responsible for unpaid "trust fund" taxes?

See "Who is a responsible person for trust fund tax."

After the sale, we use the proceeds first to pay the expenses of the levy and sale. We then use any remaining amount to pay the tax bill.

If the sale proceeds are less than the total of the tax bill and the expenses of levy and sale, you will still have to pay the remaining unpaid tax.

If the sale proceeds are more than the total of the tax bill and the expenses of the levy and sale, we will notify you about the surplus money and provide you with instructions about how to request a refund. However, if a person, such as a mortgagee or other lienholder, submits a claim superior to yours, we will pay that claim before we refund any remaining funds to you based on your request.

Backup Withholding

You are legally required to report your interest, dividend, or patronage dividend income on your individual income tax return. You must report the correct amounts, and these amounts must match the amounts that the payers report to IRS. You are also required to provide your correct taxpayer identification number to all payers of interest, dividends and miscellaneous income.

Usually, there is no withholding of tax on interest and dividend payments. However, if you do not report this interest and dividend income or provide the correct taxpayer identification number as required, you may be subject to backup withholding. This occurs when we notify all those who pay you interest or dividends to begin withholding income tax on these payments. You may also be subject to backup withholding if you do not provide your correct taxpayer identification number.

How to prevent backup withholding from starting. Before we notify your payers to withhold, we will send you at least four notices over a period of at least 120 days to give you a chance to correct the underreporting and pay any additional tax to avoid backup withholding.

Stopping backup withholding. Once backup withholding begins, we will stop it when:

1) The income is properly reported,
2) The income tax is paid in full,
3) You furnish the correct taxpayer identification number, and
4) The IRS notifies the payer to stop withholding.

Generally, we will notify payers to stop withholding at the end of the year if we receive full payment of the tax by October 15. If we receive full payment after October 15, they will continue withholding through the following year.

While you are subject to backup withholding, you must certify to any new payers that you are subject to backup withholding. If you falsely certify that you are not subject to backup withholding, you will be liable for a penalty of $1,000 or imprisonment for up to one year, or both. For additional information, see Publications 1281 and 1679 which contain information about backup withholding and taxpayer identification numbers.

Trust Fund Recovery Penalty Assessments for Employers

To encourage prompt payment of withheld income and employment taxes, including social security and railroad retirement taxes or collected excise taxes, Congress passed a law that provides for the trust fund recovery penalty. This penalty is used as a tool for collection of unpaid employment taxes. The penalty also applies to those excise taxes which are commonly referred to as "collected" excise taxes.

If you are a "responsible person," we can apply this penalty against you immediately after you do not pay trust fund taxes in response to a notice and demand for payment. Also, we can apply this penalty regardless of whether you are out of business or without assets.

Caution: Once we assert the penalty, we can take collection action against your individual assets, such as filing a Federal tax lien if you are the responsible person(s).

Figuring the penalty amount. The amount of the penalty is equal to the unpaid trust fund tax. The penalty is computed based on two amounts which constitute trust fund tax:

1) The unpaid income taxes withheld, plus
2) The employee's portion of the FICA taxes withheld.

For collected taxes, the penalty is based on the unpaid amount of collected excise taxes.

Who Is Subject to the Penalty

We may impose the penalty against any person who is responsible for collecting or paying withheld income and employment taxes or for paying collected excise taxes AND who willfully fails to collect or pay them. Therefore, the two key elements that support this penalty assessment are **responsibility** and **willfulness**.

Who is a responsible person for trust fund tax. A responsible person is one who has the duty to perform and the power to direct the collecting, accounting, and paying of trust fund taxes. Therefore, responsibility involves status, duty, and authority.

This person may be:

- An officer or an employee of a corporation,
- A member or employee of a partnership,
- A corporate director or shareholder,
- A member of a board of trustees of a nonprofit organization, or
- Another person with sufficient authority and control over funds to direct their disbursement.

In some situations the responsible person may be a person who is not directly affiliated with the delinquent business. For example, the penalty may be assessed against an official or employee of a bank or other financial institution who has the authority to direct the financial affairs of the business and:

- Furnishes funds to a business and directs how the funds are to be distributed, or
- Directs the business not to pay the taxes.

Proof of willfulness. By willful, we mean conduct that is intentional, deliberate, voluntary, and knowing — as opposed to accidental conduct. YOU are considered to have a willful attitude if you have free will or choice and yet either intentionally disregard the law or are plainly indifferent to legal requirements.

For willfulness to exist, the responsible person must:

1) Have known about the unpaid taxes, and
2) Have used the funds to keep the business going or allowed available funds to be paid to other creditors.

Willfulness does not imply that you had acted for personal gain. For example, the courts ruled in one case that the actions of a corporate officer, in permitting withheld taxes to be used for operating expenses of the business (whether at the officer's direction or with his tacit approval) is sufficient evidence of willfulness that the trust fund recovery penalty can be charged to that officer.

In addition, If an employer meets payrolls, we can infer that sufficient funds were available to pay the tax, regardless of whether the funds were actually set aside or otherwise specifically identified for tax purposes.

Your Appeal Rights

The appeal process is outlined clearly in Publication 5, *Appeal Rights and Preparation of Protests for Unagreed Cases.* If we recommend that you pay the trust fund recovery penalty amount, you can attempt to resolve the matter informally through a discussion with the group manager of the IRS employee in your district. If you disagree with the decision of the group manager, you may request a conference before the Regional Director of Appeals.