



*Procedures for Retirement Account and
Thrift Savings Plan Levies Are Not Always
Followed by Revenue Officers*

September 26, 2017

Reference Number: 2017-30-082

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HIGHLIGHTS

PROCEDURES FOR RETIREMENT ACCOUNT AND THRIFT SAVINGS PLAN LEVIES ARE NOT ALWAYS FOLLOWED BY REVENUE OFFICERS

Highlights

Final Report issued on
September 26, 2017

Highlights of Reference Number: 2017-30-082 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

To satisfy tax debts, the IRS may levy funds held in retirement accounts. Special procedures are required before levying retirement accounts because taxpayers may need to rely on those funds, either now or in the near future, to pay living expenses. In addition, withdrawals from retirement accounts may result in taxpayers owing taxes.

WHY TIGTA DID THE AUDIT

Many taxpayers rely on Individual Retirement Accounts, or defined contribution plans, such as 401(k) or 403(b) plans, or Thrift Savings Plans (TSP) to fund living and other expenses after retirement. This audit was initiated to determine whether the IRS has adequate controls and procedures in place to properly issue levies on retirement income, retirement accounts, and TSP accounts.

WHAT TIGTA FOUND

Pre-levy procedures for retirement income require managerial approval for Automated Collection System (ACS) employees and more discretion by revenue officers. TIGTA's review of a random sample of 30 levies of retirement income issued by ACS employees and 28 levies of retirement income issued by revenue officers showed that pre-levy procedures were properly followed in most cases. However, TIGTA's analysis of the financial condition of these taxpayers showed that 11 taxpayers were potentially in economic hardship at the time of the levies.

Revenue officers must follow special procedures prior to levying assets in retirement and TSP accounts, including determining if the taxpayer has other property or non-retirement assets that could be used to collect the liability or if a payment agreement can be reached; has exhibited flagrant behavior; or needs the money in the retirement account (or will in the near future) to pay necessary living expenses. In addition, revenue officers must obtain Collection function Area Director approval for such levies.

TIGTA's review of a judgmental sample identified 11 of 27 retirement account levies for which some or all of the required special procedures were not followed. The IRS levied \$140,615 from four retirement accounts. Taxpayers were burdened because their retirement accounts were improperly levied. The average age for all 27 sampled taxpayers with retirement accounts was 61 years, so the taxpayers may have relied on these funds in the near future. These taxpayers would have experienced other resulting tax consequences from the improper levy as well.

TIGTA's review of a judgmental sample also identified 20 of 31 TSP account levies for which some or all of the required special procedures were not followed.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS revise procedures to clarify that retirement income levy actions should not be taken if it will likely cause economic hardship based on facts and circumstances of the case; consider revising Form 668-A, *Notice of Levy*, to more clearly indicate whether the levy is on a retirement account; ensure that the planned ICS enhancement to remind revenue officers to determine if Area Director approval is needed is implemented and tested; and provide revenue officers with periodic clarification and reinforcement of the retirement account and TSP levy procedures.

In their response, IRS management agreed with TIGTA's recommendations and plans to take corrective actions.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 26, 2017

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Procedures for Retirement Account and Thrift Savings Plan Levies Are Not Always Followed by Revenue Officers (Audit # 201630015)

This report presents the results of our review to determine whether the Internal Revenue Service has adequate controls and procedures in place to properly issue levies on retirement income, retirement accounts, and Thrift Savings Plan¹ accounts. This audit is included in our Fiscal Year 2017 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

Management's complete response to the draft report is included as Appendix VIII. Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations.

If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

¹ See Appendix VII for a glossary of terms.



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Abbreviations

ACS	Automated Collection System
CFR	Code of Federal Regulations
ICS	Integrated Collection System
IRA	Individual Retirement Account
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRP	Information Returns Processing
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration
TSP	Thrift Savings Plan



Procedures for Retirement Account and Thrift Savings Plan Levies Are Not Always Followed by Revenue Officers

Background

Many taxpayers rely on Individual Retirement Accounts (IRA)¹ or defined contribution plans, such as 401(k) or 403(b) plans, to fund living and other expenses after retirement. Similar to a 401(k) plan, Federal employees' retirement plan is referred to as the Thrift Savings Plan (TSP). Congress has given the Internal Revenue Service (IRS) broad powers to collect taxes, including the authority to levy on a taxpayer's property and rights to property.² This power to levy extends to income from retirement accounts and assets held in retirement accounts, including the TSP. Though the IRS's levy power is broad, it is subject to certain legal limitations, including that if the levy is causing an economic hardship it must be immediately be released.³ In a prior audit, the Treasury Inspector General for Tax Administration (TIGTA) observed problems with IRS levies of Social Security income, including levies of Social Security benefits that likely caused or exacerbated economic hardships.⁴ As a result of that audit, the IRS agreed to revise its Internal Revenue Manual (IRM) to clarify that levy actions should not be taken if they will likely cause or exacerbate an existing economic hardship based on facts and circumstances of the case.

The IRS has the authority to levy income paid from retirement accounts as well as the assets held in retirement accounts, including the TSP.

Retirement Income Levies⁵

If a taxpayer is receiving income (disbursements) from a retirement account, the IRS may levy that income.⁶ Taxpayers typically begin to receive regular distributions from a 401(k), IRA, or pension plan once they reach retirement age, as defined by their plan, and the IRS can issue a continuous levy on that income.⁷ A levy on retirement income can also reach payments the taxpayer has a right to receive in the future. In other words, a levy made today will attach to future payments, even if the taxpayer is not currently eligible to receive those payments. Also, a

¹ See Appendix VII for a glossary of terms.

² Internal Revenue Code § 6331.

³ Internal Revenue Code § 6343(a)(1) requires that the levy be promptly released if: A) the liability is satisfied or is no longer enforceable due to the lapse of time; B) release of the levy will facilitate collection action; C) the taxpayer has entered into an installment agreement; D) the IRS determines that the levy is creating an economic hardship; and E) the fair market value of the property exceeds the liability and release of the levy can be made without hindering collection.

⁴ TIGTA, Ref. No. 2016-30-043, *Revenue Officer Levies of Social Security Benefits Indicate That Further Modification to Procedures Is Warranted* (June 2016).

⁵ Retirement income in this review does not include Social Security payments.

⁶ IRM 5.11.6.1, *Retirement Income* (Jan. 17, 2017).

⁷ 5 Code of Federal Regulations (CFR) § 1653.36(c) requires levies on TSP accounts to be disbursed at one time; therefore, the IRS may not issue a continuous levy on a series of TSP payments.



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levy that is made within the Collection Statute Expiration Date remains enforceable on the value of the property at the time the levy was issued, even if the taxpayer does not begin to receive the retirement income before the Collection Statute Expiration Date.

Levies on retirement income may be issued by both revenue officers and Automated Collection System (ACS) employees. For revenue officers, IRM procedures require discretion when determining if retirement income should be levied, and the employee should use the same pre-levy considerations that are used for most other levies.⁸ For ACS employees, the IRM procedures for retirement income levies are the same as for most other levies, except that managerial approval is required.⁹

Retirement Account Levies

The IRS also has the authority to levy on the assets in retirement accounts, such as a 401(k), 403(b), or an IRA. However, a levy only reaches the taxpayer's vested present rights under the plan.¹⁰ Additionally, if the taxpayer is not currently eligible to withdraw a lump sum from the retirement account, the levy will not attach until the taxpayer becomes eligible. The terms of the plan may need to be reviewed to determine a taxpayer's present rights.¹¹

Retirement account levies are only issued by revenue officers (ACS employees may not issue them). Given the long-term importance of retirement assets to individuals' future welfare, the IRS regards retirement account levies as "special cases" that require additional scrutiny and managerial approval. As a result, the IRS has established additional procedures for revenue officers to follow when considering whether to levy a taxpayer's retirement account.¹² The additional procedures include:

- 1) Determining if the taxpayer has other property or non-retirement assets that could be used to collect the liability, or if a payment agreement can be reached.
- 2) Determining if the taxpayer's conduct has been flagrant.¹³

⁸ IRM 5.11.6.1, *Retirement Income* (Jan. 17, 2017).

⁹ IRM 5.19.4.3.12, *Issuing Levies* (Jan. 1, 2015).

¹⁰ "Vesting" in a retirement plan means ownership. An employee's own contributions to the plan are always 100 percent vested, or owned, by the employee. However, different vesting rules apply to employer contributions, depending on the type of plan. An employee who is 100 percent vested owns 100 percent of his or her account and the employer cannot forfeit, or take it back, for any reason.

¹¹ Reviewing the plan is important because the taxpayer may not be eligible to take a lump sum withdrawal from the retirement account until he or she retires, depending on the terms of the plan.

¹² IRM 5.11.6.2, *Funds in Pensions or Retirement Plans* (June 14, 2016).

¹³ Examples of flagrant conduct include: 1) reliance on frivolous arguments, 2) voluntary contributions to retirement accounts during the time period taxpayers knew taxes were accruing, 3) conviction for tax evasion for the liability, 4) assessment of a fraud penalty with respect to the liability, and 5) a demonstrated pattern of uncooperative or unresponsive behavior. IRM 5.11.6.2(6) (June 14, 2016).



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- 3) Determining whether the taxpayer depends on the money in the retirement account, or will in the near future, for necessary living expenses.
- 4) Preparing a memorandum summarizing the taxpayer's compliance history and reason for the levy, including the results from the first three requirements, and obtaining approval of the Area Director, Collection, Small Business/Self-Employed Division.

Taxpayers may elect to have their retirement accounts levied by the IRS because they can avoid the early withdrawal penalty if the IRS levies the account directly instead of the taxpayer making the withdrawal. In June 2016, the IRS revised its policy to allow taxpayers with retirement accounts to submit a written request asking the revenue officer to levy the account.¹⁴ Revenue officers must still follow IRM procedures to determine and document whether there are other assets that can be levied and whether the taxpayer depends on the funds now or in the near future; however, they do not need to prove or document flagrant behavior if the taxpayer is making the request that the assets be levied.

TSP Levies

Revenue officers can also issue levies against TSP accounts. Although the IRS has had the authority to levy retirement accounts since 1986 under Internal Revenue Code (I.R.C.) Section (§) 6331, the TSP contended the governing statute included a provision that protected TSP funds from levy, garnishment, or other legal process, except for certain circumstances that did not include Federal tax levies. However, in January 2013, legislation was enacted which clarified that tax levies can be enforced against accounts in the TSP.¹⁵ This legislation brought the TSP in line with other retirement accounts (sector 401(k) savings plans and IRAs) which were already subject to levy.

In December 2011, IRM procedures for levies on TSP accounts were updated to instruct revenue officers to use the same procedures that are required for retirement account levies. Prior to that time, the only instruction for TSP levies was to consult with IRS Associate Area Counsel.

There are some differences in how TSP accounts can be levied compared to other retirement accounts. For levies on other retirement accounts, the taxpayer must be eligible to withdraw money in a lump sum amount from the plan; if they cannot, then a levy will not reach those funds until the taxpayer becomes eligible to receive them. However, for levies on TSP accounts, taxpayers are generally not eligible to withdraw money in a lump sum, except in certain circumstances; therefore, the taxpayer must only be vested (or become vested within 30 calendar days of the date the TSP receives the levy) in the account for a levy to reach the funds.¹⁶

¹⁴ IRM 5.11.6.2(3), *Funds in Pensions or Retirement Plans* (June 14, 2016).

¹⁵ Public Law No. 112-267, 126 Stat. 2440 (January 14, 2013).

¹⁶ The TSP only permits two types of withdrawals while the taxpayer is in Federal service: financial hardship and age-based withdrawals. Taxpayers no longer in Federal service do not have these restrictions. However, when any withdrawal is made, it cannot be returned to the TSP account.



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Additionally, when taxpayers begin to receive regular disbursements from their retirement account, the IRS can issue a continuous levy on those payments. However, when taxpayers begin to receive regular disbursements from their TSP accounts, the IRS cannot issue a continuous levy on those payments.¹⁷ Furthermore, while taxpayers may now request the IRS to levy their retirement account to avoid the early withdrawal penalty, revenue officers are directed not to levy TSP accounts at the request of the taxpayer.¹⁸

The National Taxpayer Advocate has raised various concerns about whether taxpayers will be treated fairly and consistently when retirement and TSP levies are considered.¹⁹ For example, some of the concerns expressed in recent reports to Congress include: a lack of standardized procedures on how to document the required memorandum to the Area Director, Collection, Small Business/Self-Employed Division; the lack of a definition for flagrant behavior; the lack of tracking indicators needed to identify these levies and review them; and the IRS's inability to return retirement funds levied in error from a taxpayer's retirement account (for tax purposes).

This review was performed at the Small Business/Self-Employed Division, Field Collection offices in Denver, Colorado; Plantation, Florida; Memphis, Tennessee; Nashville, Tennessee; and Houston, Texas, and the ACS office in Jacksonville, Florida, during the period June 2016 through June 2017. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹⁷ 5 CFR § 1653.32(c).

¹⁸ IRM 5.11.6.2.1, *Thrift Savings Plan* (July 17, 2015).

¹⁹ National Taxpayer Advocate *2015 Annual Report to Congress*; National Taxpayer Advocate *Objectives Report to Congress Fiscal Year 2016*; National Taxpayer Advocate *Objectives Report to Congress Fiscal Year 2017*.



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Results of Review

Levies of Retirement Income Were Issued on Taxpayers With Potential Economic Hardship Situations

Levies on retirement income are similar to other levies on taxpayer income, such as levying a taxpayer's wages. However, because retirement income may be the only source of income a taxpayer has for living expenses, the IRS requires revenue officers to use more discretion when considering a levy on retirement income. In addition, the IRS requires ACS employees to get managerial approval before levying retirement income.

Prior to any levies, including those on retirement income, the IRS sends a series of notices for each tax period owed by the taxpayer. In some cases, the IRS also attempts to make contact via telephone before the case is assigned to enforcement inventory. If the taxpayer fails to respond or voluntarily resolve the account, the case will be assigned to the ACS or the field, where employees will make a determination on how to proceed with the case, which may include a levy.

ACS employees followed IRM procedures prior to levy, but some taxpayers in economic hardship situations were potentially burdened

Pre-levy considerations that ACS employees must follow before issuing a levy are not as extensive as those for revenue officers. IRM procedures require ACS employees to determine if the required Notice of Levy has been sent to the taxpayer at least 30 calendar days prior to the levy, and to scan the ACS and Accounts Management System history comments, account alerts, and history codes for anything that may affect the levy decision.²⁰ This research includes determining if the taxpayer has other modules in economic hardship status, or has a pending installment agreement or offer in compromise, in which case, the taxpayer cannot be levied. While the IRM governing revenue officer levies cautions not to levy if the levy will cause an economic hardship, the ACS IRM does not require employees to attempt contact with the taxpayer and does not advise employees to consider the taxpayer's financial condition prior to levy.²¹ ACS employees must obtain managerial approval to levy a taxpayer's retirement income;

²⁰ IRM 5.19.4.3.4, *Levy Determination* (Jan. 1, 2015).

²¹ The IRS made changes to the IRM governing revenue officers' levies following TIGTA's audit of revenue officer levies of Social Security benefits. See TIGTA, Ref. No. 2016-30-043, *Revenue Officer Levies of Social Security Benefits Indicate That Further Modification to Procedures Is Warranted* (June 2016). As subsequently described, we believe additional changes to the revenue officer IRM are warranted.



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however, managers signing off on those levies do not have the benefit of analysis of the taxpayer's financial situation.

Our review of a random sample of 30 levies issued on retirement income by ACS employees showed that IRM procedures were properly followed.²² In all 30 cases, pre-levy considerations were followed and managerial approval was obtained. However, our analysis of the financial condition of the taxpayers for these cases showed that in seven of 30 cases, taxpayers did not have sufficient income to pay their balances due at the time of the levies.²³ Specifically, our analysis showed that after deducting the standard allowable expenses from income, these taxpayers would not have any remaining income to meet their tax obligations.²⁴

The IRS did not receive proceeds from the retirement income levy in four of the seven cases.²⁵ However, for the remaining three cases, the IRS received levy proceeds and applied them to the taxpayer's balance due. As such, ACS employees levied taxpayers' retirement income that likely caused or exacerbated an existing economic hardship.

IRS management disagreed and informed us that there is no legal requirement that the IRS complete an economic hardship determination prior to issuing a levy and that taxpayer Information Returns Processing (IRP) documents are not sufficient to establish economic hardship. When taxpayers do not attempt to resolve their account balance, ACS employees may exercise their judgement and determine whether enforcement action is appropriate.

IRM procedures do not require ACS employees to consider the financial situation of the taxpayer. However, I.R.C. § 6343(a)(1)(D) requires the IRS to promptly release a levy if it determines the levy is causing an economic hardship to the taxpayer. Although employees followed IRM procedures, those procedures did not take into account the law's requirement to release levies when they cause economic hardship or case law that requires the IRS to release a levy when it determines that the taxpayer is experiencing an economic hardship.²⁶ As a result, employees could levy taxpayers even when ACS has information showing that the taxpayers are

²² We identified a population of 496 ACS cases with a manual Form 668-W, *Notice of Levy on Wages, Salary, and Other Income*, levy issued on the taxpayer's retirement levy source between July 1, 2015, and June 30, 2016. See Appendix I for additional information on the sample methodology.

²³ Our analysis was based on the taxpayer's adjusted gross income from the 2015 tax return, if available, otherwise Form W-2, *Wage and Tax Statement*, and Form 1099 income documents showing on the Information Returns Processing system at the time of the levy. See Appendix I for more information about how we performed our financial analysis.

²⁴ Standard allowable expenses are determined based on the taxpayers' age, location, and number of dependents, and are adjusted annually. Standard allowable expenses also depend on whether the taxpayers own or lease a car, or take public transportation.

²⁵ The IRS did not receive proceeds from these levies because either the levy was canceled when the taxpayer requested an installment agreement or the financial institution did not respond to the levy.

²⁶ I.R.C. § 6343(a)(1)(D) and Treas. Reg. § 301.6343-1(b)(4). The Tax Court has also held that it was an abuse of discretion for the IRS to levy on a taxpayer who was clearly experiencing economic hardship within the meaning of I.R.C. § 6343(a)(1)(D). *Vinatieri v. Commissioner*, 133 T.C. 392 (2009).



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either already unable to meet basic living expenses or that the levy would cause them to be unable to meet basic living expenses.

Additionally, retirement income may be the only income a taxpayer can rely upon for living expenses; therefore, we believe more direction should be provided to ACS employees before levying retirement income. Specifically, ACS IRM procedures should be revised to include a requirement to consider the taxpayer's financial condition based on available information before levying retirement income. After we brought this to IRS management's attention, they agreed to clarify the IRM for ACS managers to consider what is known about the taxpayer's financial condition including economic hardship when approving a retirement income levy.

Revenue officers did not always follow required procedures for retirement income levies, and some taxpayers in economic hardship situations were potentially burdened

Revenue officers meet face to face with individual and business taxpayers to help them resolve their tax issues and must work cases strategically by taking simultaneous case actions when possible to maximize collections while protecting taxpayer rights. For revenue officers, levies on retirement income have the same procedural requirements as most other levies. For example, revenue officers are required to perform a pre-contact analysis of the taxpayer's situation; ensure that the proper notices have been issued to the taxpayer, such as the required Notice of Intent to Levy;²⁷ and make initial contact with the taxpayer.

The procedural difference for retirement income levies is that revenue officers should "use discretion" when determining if retirement income should be levied.²⁸ When making any decision to levy, revenue officers are supposed to handle each case independently and use good judgment. Prior to issuing any levy, in addition to the general pre-levy procedures, revenue officers are also advised to consider the taxpayer's:

- Responsiveness to attempts at contact and collection.
- Filing and paying compliance history.
- Effort to pay the tax.
- Whether current taxes are being paid.
- Financial condition, including information related to economic hardship determinations.

²⁷ The right to a Collection Due Process hearing on the first Notice of Intent to Levy issued on a delinquent account is required by I.R.C. § 6330. The notice must include the amount of unpaid tax, the right to request a Collection Due Process hearing, and the proposed action the IRS intends to take, along with other important information on topics such as collection alternatives.

²⁸ IRM 5.11.6.1(1), *Retirement Income* (Jan. 17, 2017).



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Our review of 28 retirement income levies issued by revenue officers showed pre-levy procedures were properly followed in most cases.²⁹ For all 28 cases, revenue officers ensured that the required Notice of Intent to Levy was sent at least 30 calendar days prior to issuing the levy, performed a pre-contact analysis, and made initial contact with the taxpayer.

However, our analysis of the 28 taxpayers' financial condition showed the four taxpayers did not have sufficient income to pay their balances due at the time of the levies. Our analysis showed that after deducting the standard allowable expenses from their income, these four taxpayers would not have any remaining income to meet their tax obligations. Although revenue officers can use their judgment to determine if additional financial information from the taxpayer is required, we observed revenue officer comments indicating that taxpayers may have been struggling financially or experiencing economic hardship. Economic hardship is defined as a levy that will cause the individual to be unable to pay their reasonable necessary living expenses. Examples of taxpayer situations that may be economic hardship include cases in which taxpayers had no steady income, worked odd jobs, did not believe that they made enough money to file a tax return, and had no means of transit to gain employment.

Despite observations of fact patterns similar to these, the revenue officers issued levies when the taxpayers missed deadlines in all four cases. While the IRS did not receive any proceeds from these levies, the revenue officers levied on the taxpayers' retirement income despite a potential economic hardship situation.³⁰

IRS management disagreed and stated that when taxpayers do not respond or miss deadlines, the revenue officer may take enforcement action. Revenue officers have the discretion to issue levies when they cannot secure or verify taxpayers' financial information. Revenue officers are allowed to use their judgement to determine if additional financial information from the taxpayer is required in order to determine the appropriate treatment to resolve the case.

The IRS's position on retirement income levies is inconsistent with recent changes made to its IRM. In Fiscal Year 2016, TIGTA conducted an audit of revenue officer levies of Social Security benefits and observed cases in which the taxpayer's situation suggested the existence of an economic hardship. The law requires the IRS to immediately release a levy that is causing an economic hardship; therefore, levying retirement income from taxpayers who are potentially experiencing economic hardship not only burdens taxpayers but also burdens the IRS which

²⁹ There is no way to determine the population of retirement income levies as they are not uniquely identified or tracked. From a population of 6,328 cases with potential retirement income levies we reviewed a random sample of 250 Field Collection cases and identified 28 cases in which retirement income levies were issued in our scope. See Appendix I for additional details on the sample methodology.

³⁰ The IRS did not receive proceeds from these levies for various reasons (*e.g.*, the levy was issued for funds above a certain amount and the taxpayer's payment was below that amount, or the financial institution did not respond to the levy).



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must then work to reverse the levy after the hardship is determined. TIGTA recommended changes to IRM 5.11.1.3.1, and the IRS agreed.³¹

On January 12, 2017, the IRS published an updated IRM regarding pre-levy considerations for revenue officers.³² The updated IRM directs revenue officers to note anything that is known about the taxpayer's financial condition, including economic hardship. It states that third-party information may be sufficient to determine economic hardship, but in some cases, the revenue officer may need to contact the taxpayer to provide additional information in order to make that determination. It provides in the Note, "do not issue the levy as a means to secure other compliance, e.g., missing tax returns." Figure 1 is an excerpt from the applicable IRM containing the new policy.

Figure 1: Excerpt From IRM 5.11.1.3.1

5.11.1.3.1 Pre-Levy Considerations

(08/01/2014)
(01/12/2017)

1. Taxpayers have the right to a fair and just tax system. That is, taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. See Pub 1, Taxpayer Bill of Rights #10.
2. Levy determinations are made on a case-by-case basis and Revenue Officers must exercise good judgment in making the determination to levy. Consider the following when determining if a levy is appropriate:
 - o The taxpayer's responsiveness to attempts at contact and collection

NOTE: Anything that is known about the taxpayer's financial condition including economic hardship. If the revenue officer has obtained sufficient information and verified that the levy would cause an economic hardship, the levy should not be issued. While third-party information may be sufficient to determine economic hardship, in some cases the revenue officer may need to contact the taxpayer to provide additional information in order to make that determination.

- o The taxpayer's compliance history
- o The taxpayer's effort to pay the tax
- o Whether current taxes are being paid

NOTE: When the Service determines that the levy will create an economic hardship, do not issue the levy as a means to secure other compliance, e.g., missing tax returns.

Source: IRM 5.11.1.3.1, January 12, 2017

³¹ Appendix V shows an excerpt from IRM 5.11.1.3.1 prior to the changes made in response to TIGTA's audit of revenue officer levies of Social Security benefits.

³² IRM 5.11.1.3.1 (Jan. 12, 2017). This IRM contains pre-levy considerations for all levies issued by revenue officers, not just retirement income levies.



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However, the first bullet point contradicts the second Note suggesting that a taxpayer's responsiveness is still a consideration which could outweigh whether the taxpayer would experience an economic hardship. In fact, in response to this audit, IRS management asserted that a taxpayer's nonresponsive behavior is sufficient basis to levy retirement benefits even if the revenue officer is aware that the levy may cause hardship. The revised IRM now only lists the taxpayer's financial condition as a Note, and the other considerations provided (which are not derived from the law, such as the taxpayer's responsiveness to the revenue officer) appear to be given at least equal weight to a taxpayer's economic hardship (which is derived from I.R.C. § 6343). Economic hardship should take precedence over nonlegal considerations.

Recommendations

The Director, Collection, Small Business/Self-Employed Division, should:

Recommendation 1: Revise the IRM for ACS employees to clarify that retirement income levy actions should not be taken if they will likely cause or exacerbate an existing economic hardship based on the facts and circumstances of the case.

Management's Response: The IRS agreed with this recommendation. IRS management will clarify the IRM for ACS managers to consider what is known about the taxpayer's financial condition, including economic hardship, when approving a retirement income levy.

Recommendation 2: Revise the IRM for revenue officers to clarify that economic hardship considerations should take precedence over other nonlegal considerations.

Management's Response: The IRS agreed with this recommendation. IRS management will revise IRM 5.11.1.3.1 on pre-levy considerations to make the taxpayer's financial condition, including economic hardship, a primary consideration.

Levy Procedures for Retirement Account and Thrift Savings Plan Levies Were Not Always Followed, and Levy Funds Were Improperly Received

The IRS considers retirement account and TSP levies to be "special cases" that require additional scrutiny and managerial approval due to the long-term importance of retirement assets to taxpayers' future welfare.³³ Unlike retirement income levies which may be issued by both revenue officers and ACS employees, only revenue officers issue retirement account levies. As a result, the IRS has established procedures for revenue officers to follow when they are

³³ IRM 5.11.6.2, *Funds in Pensions or Retirement Plans* (June 14, 2016).



Procedures for Retirement Account and Thrift Savings Plan Levies Are Not Always Followed by Revenue Officers

considering levying a taxpayer's retirement account or TSP. Specifically, before issuing a retirement account or TSP levy, revenue officers must first:

1. Determine if the taxpayer has other property or non-retirement assets that could be used to collect the liability, or if a payment agreement can be reached. The IRM instructs revenue officers to consider all alternatives before issuing a levy on a retirement or IRA account.
2. Determine if the taxpayer's conduct has been flagrant.³⁴ The IRM does not define the term flagrant, but it does provide a number of examples, such as:
 - Taxpayers who make voluntary contributions to retirement accounts while asserting an inability to pay an amount that is owed.
 - Taxpayers who have demonstrated a pattern of uncooperative or unresponsive behavior, *e.g.*, failing to meet established deadlines, failing to attend scheduled appointments, failing to respond to revenue officer attempts to contact.
 - Taxpayers convicted of tax evasion.
 - Taxpayers assessed with a fraud penalty.
 - Taxpayers assisting others in evading tax.
 - Taxpayers with liabilities based on illegal income.
3. Determine whether the taxpayer depends on the money in the retirement account, or will in the near future, for necessary living expenses. The IRM instructs revenue officers to complete a financial analysis to establish necessary living expenses and to use life expectancy tables from IRS Publication 590-B, *Distributions From Individual Retirement Arrangements (IRAs)*, to estimate withdrawals.³⁵
4. Prepare a memorandum summarizing the taxpayer's compliance history and reason for the levy, including the results from the first three requirements, and obtain approval from the Area Director, Collection, Small Business/Self-Employed Division.

All four criteria must be met before revenue officers can obtain approval from the Area Director, Collection, Small Business/Self-Employed Division, and issue the retirement account or TSP levy. TSP levy procedures also have instructions on how to address the levy to the Federal Retirement Thrift Investment Board and when the levy will attach to TSP funds. The IRM advises revenue officers to discuss the retirement account levy cases with Associate Area Counsel, if needed, to determine if the taxpayer has a present right to the property, based on the taxpayer's interests in the specific retirement plan.

³⁴ See Appendix VI for a full list of IRM examples of flagrant taxpayer behavior for retirement account levies.

³⁵ IRM 5.11.6.2, *Funds in Pensions or Retirement Plans* (June 14, 2016).



*Procedures for Retirement Account and Thrift Savings Plan
Levies Are Not Always Followed by Revenue Officers*

Revenue officers did not always follow required procedures for retirement account levies and, therefore, funds were improperly received

Our review of a judgmental sample of 27 cases, in which the Integrated Collection System (ICS) case history indicates that revenue officers issued a levy on the taxpayer's retirement account, identified 11 cases for which some or all of the required procedures were not followed.³⁶ For example, revenue officers did not always:³⁷

- Identify or consider the taxpayer's other non-retirement assets, such as wages (eight cases).
- Determine if the taxpayer depended on the money in the account or would in the near future (eight cases).
- Prepare the required memorandum or obtain the Area Director's approval (10 cases).

Identifying a taxpayer's other assets and determining whether a taxpayer depends on the money in the account are vital to conducting an economic analysis of a taxpayer's situation. IRS management disagreed in most cases and advised us that there was no indication in the ICS history that the revenue officers *intended* to levy these taxpayers' retirement accounts. Because revenue officers are not required to review IRP documents prior to issuing levies, it is possible that some revenue officers might not know that they are levying retirement accounts. However, procedures should be in place to require them to know whether they are levying a retirement account. Our review of ICS histories showed that revenue officers in all of these cases were aware the taxpayers had a retirement account. In addition, the lack of intent does not change the fact that revenue officers issued Form 668-A, *Notice of Levy*, levies (the form used for one-time levies) on taxpayers' retirement account sources and received levy funds from those retirement accounts.

The IRS received total proceeds of \$140,615 from retirement accounts in four of these cases and applied the funds to the taxpayers' balances due.³⁸ Taxpayers were burdened because the IRS improperly levied the funds from their retirement accounts. These taxpayers would have experienced other consequences from the improper levy as well, including any pretax investment funds withdrawn would have been subject to income tax in the following year. In addition, the taxpayers lost any investment gains they would have made on this money if it had not been

³⁶ There is no way to determine the population of retirement account levies because they are not uniquely identified or tracked. See Appendix I for additional details on our sample methodology.

³⁷ The numbers do not add up to 11 because some cases had multiple violations.

³⁸ No retirement account proceeds were received on the other seven cases because either the account had no funds, the financial institution responded that it could not send proceeds from a retirement account without the required signature on the levy, or the revenue officer also issued a retirement income levy and received retirement income levy proceeds.



Procedures for Retirement Account and Thrift Savings Plan Levies Are Not Always Followed by Revenue Officers

withdrawn. The average age of the 27 taxpayers in our sample was 61 years, so many of these taxpayers could be dependent on their retirement accounts in the near future.

It is important for the IRS to properly work cases involving retirement accounts to ensure that both taxpayers' rights and the Government's interest are protected. The U.S. Census Bureau estimations of the 2016 population show that 24 percent of adults³⁹ in the United State are over age 62, and another 12 percent of adults are between the ages of 55 and 61.⁴⁰ The U.S. Census Bureau also states that between the years 2012 and 2050, the population aged 65 and over is projected to almost double.⁴¹ As the overall population ages, more taxpayers will become dependent on their retirement accounts. Although retirement account levies are not commonly used, the number of retirement levies is likely to increase based on the increasing population of older taxpayers.

Revenue officers did not always follow procedures for TSP levies

Our review of a judgmental sample showed that some or all of the required procedures were not followed, or there was no documentation that procedures were followed, in 20 of 31 TSP levies issued by revenue officers.⁴² Specifically, revenue officers did not always:

- Determine if the taxpayer had other assets available for levy (12 cases).
- Determine if the taxpayer's behavior was flagrant (eight cases).
- Determine whether the taxpayer depends on the money in the retirement account or will in the near future (15 cases).
- Prepare the required memorandum or obtain the Area Director's approval (20 cases).⁴³

IRS management stated that for most of the 20 cases, the revenue officers did not intend to levy a lump sum from the taxpayer's TSP account. However, the circumstances of the cases do not support the claim that revenue officers did not intend a lump sum levy from the TSP.

Specifically, a TSP account can only be a retirement account; there are no non-retirement accounts administered by the Federal Retirement Thrift Investment Board. In most cases, revenue officers levied these retirement accounts using a Form 668-A, which is the form used for

³⁹ Adults are age 18 years or older.

⁴⁰ *National, State, and Puerto Rico Commonwealth Characteristics Datasets: Population estimates by age (18+): July 1, 2016*. The U.S. Census Bureau created population estimates by age based on the 2010 Census.

⁴¹ Jennifer Ortman, Victoria Velkoff, and Howard Hogan "An Aging Nation: The Older Population in the United States." U.S. Census Bureau (May 2014).

⁴² There is no way to determine the population of retirement account levies because they are not uniquely identified or tracked. We requested a list of all TSP levies from the IRS and it provided 11 cases. We also reviewed a population of 112 potential TSP levy cases and identified 20 additional cases. See Appendix I for details on our population methodology and sampling plan.

⁴³ The numbers do not add up to 20 because some cases had multiple violations.



Procedures for Retirement Account and Thrift Savings Plan Levies Are Not Always Followed by Revenue Officers

a one-time (lump sum) levy. Additionally, Federal law prohibits continuous levies on TSP accounts, so the only type of levy that can be issued on a TSP account is a lump sum levy.⁴⁴

The IRS did not receive proceeds from 19 of these 20 cases in which levies were attempted. * 1 *
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Taxpayers are burdened when their TSP accounts are improperly levied. They also experience other consequences in addition to the loss of use of the TSP funds. For example, funds that are removed from the TSP account cannot be returned, even when they were mistakenly taken by a third party.⁴⁵ Additionally, any pretax investment funds withdrawn would have been subject to income tax that must be paid the following year.⁴⁶ In addition, taxpayers would lose any investment gains they would have made on this money if it had not been withdrawn. Furthermore, the withdrawn money would not be available for TSP investment funds in the future and would not be included in the TSP when the taxpayer retires and potentially converts the funds to an annuity or lump sum payout.

The IRS depends on financial institutions to determine whether to honor retirement account levies

To identify retirement accounts from levy sources, revenue officers can review taxpayers' IRP documents for Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*,⁴⁷ and Form 5498, *IRA Contribution Information*.⁴⁸ If taxpayers have one of these forms present on their accounts, revenue officers would know that a specific levy source (financial institution) holds the retirement account. However, IRM procedures do not require revenue officers to verify the types of accounts a taxpayer has prior to issuing a levy. Failing to check IRP documents undermines the IRM procedural prerequisites for levying retirement accounts, *e.g.*, determining flagrancy and whether the taxpayer depends on the funds in the account because if revenue officers do not know the account is a retirement account, then they would not know to test whether the IRM procedural prerequisites to levy a retirement account have been satisfied.

⁴⁴ 5 CFR § 1653.36(c).
⁴⁵ 5 CFR § 1653.36(g).
⁴⁶ However, taxpayers are able to roll over these funds into another retirement plan or IRA and could request a tax waiver.
⁴⁷ Form 1099-R is filed by the financial institution when taxpayers receive distributions from pensions, annuities, retirement or profit-sharing plans, IRAs, insurance contracts, *etc.*, of \$10 or more.
⁴⁸ Form 5498 is filed by the financial institution when taxpayers contribute to an IRA.



Procedures for Retirement Account and Thrift Savings Plan Levies Are Not Always Followed by Revenue Officers

We interviewed 24 revenue officers and their managers to determine their understanding of, and experience with, retirement account and TSP levies.⁴⁹ We asked the revenue officers how they review levy sources and identify retirement accounts, and observed that:

- Some revenue officers do not use IRP documents to attempt to identify retirement account levy sources before issuing levies.
- Some revenue officers use IRP documents to identify the type of account for a levy source and knew all of the required pre-levy procedures for issuing a levy on a retirement account levy source.
- Some revenue officers have not had training on TSP or retirement account levies since their new hire training with the IRS or stated that they did not have any training on TSP or retirement account levies.

Some financial institutions that are providers of checking or savings accounts also provide retirement accounts, such as IRAs. IRS management informed us that many times revenue officers will inadvertently attempt to levy a taxpayer's retirement account when trying to obtain any funds the taxpayer may have in one of these financial institutions. Management advised us that in such instances, the revenue officer relies on financial institutions to know that a retirement account levy must have an additional signature on the Form 668-A and will not honor the levy if the signature is missing. In fact, the Form 668-A has a statement which states, "this levy won't attach to funds in IRAs, Self-Employed Individuals' Retirement Plans, or any other Retirement Plans in your possession or control, unless it is signed in the block to the right."

Our review showed this control does not always work. Specifically, we identified three of 27 retirement account levy cases in which there was no evidence of the required signature on the forms, but the levies were honored and funds were sent to the IRS from the taxpayers' retirement accounts. IRS management informed us that the revenue officers did not always intend to levy a lump sum. However, the lack of intent does not change the fact that financial institutions sent proceeds to the IRS from taxpayers' retirement accounts without the required signature present on the Form 668-A levy. To provide more clarity for financial institutions, the IRS should revise the Form 668-A levy to more clearly indicate whether the levy is intended for a lump sum levy on retirement account funds.

IRS management informed us that they have developed a way to alert revenue officers about TSP and retirement account levy sources prior to issuing a levy, and it is scheduled to be implemented in January 2018. Specifically, the ICS will display a pop-up message with the wording "Caution: Determine if Area Director approval is required for this potential TSP, IRA/retirement levy source" when a levy is going to be issued on an IRA, pension, or TSP levy source. This change should help to reduce the cases in which the IRS is reliant on financial institutions to protect taxpayers' retirement funds and alert the revenue officer to follow all the

⁴⁹ Revenue officers we interviewed had three or more years of work experience.



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required pre-levy procedures before levying retirement accounts. However, revenue officers will still be allowed to continue with the levy action after clicking “OK,” even if the procedures have not been followed. Therefore, it is important the IRS test the ICS enhancement after implementation to ensure that revenue officers are following the proper procedures.

Our discussions with revenue officers showed there are inconsistent approaches to issuing retirement account levies, especially given that there have been many recent IRM updates. These recent changes may contribute to why revenue officers do not always follow required procedures for TSP and retirement account levies. IRS management informed us that TSP and retirement account levies will be covered in a mandatory continuing professional education course in Fiscal Year 2017.

Recommendations

The Director, Collection, Small Business/Self-Employed Division, should:

Recommendation 3: Consider revising the Form 668-A to more clearly indicate whether the levy is intended for a lump sum levy on a retirement account.

Management’s Response: The IRS agreed with this recommendation. IRS management will secure input from several financial institutions as to how to clarify when a levy is intended to attach to retirement account funds, and will request appropriate changes based on that research.

Recommendation 4: Ensure that the enhancement to the ICS to address the need for Area Director approval when a revenue officer intends to issue a levy on a retirement account is implemented and tested for proper use after implementation.

Management’s Response: The IRS agreed with this recommendation. IRS management expects this enhancement to be implemented in October 2018 and will be monitoring and testing it to ensure that it is operating as intended.

Recommendation 5: Provide revenue officers with clarification and reinforcement of the retirement account and TSP levy procedures in new hire training and periodic continuing professional education training.

Management’s Response: The IRS agreed with this recommendation. IRS management will ensure that new hire training includes levies on retirement accounts and the TSP. Field Collection will have a course for revenue officers in FY 2017, and IRS management will schedule an annual message reminding revenue officers of these procedures.

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Levies Are Not Always Followed by Revenue Officers*

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⁵⁰ See page 13, 2nd paragraph, of this report for information on these error cases and also see Appendix IV for the outcome measure information.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS had adequate controls and procedures in place to properly issue levies on retirement income, retirement accounts, and TSP¹ accounts. To accomplish our objective, we:

- I. Identified the laws, policies, procedures, and guidelines for levying retirement income, retirement accounts, and TSP accounts to gain an understanding of the processes.
 - A. Reviewed the laws for levying retirement income, retirement accounts, and TSP accounts.
 - B. Reviewed the IRM policies, procedures, training, and guidelines used for revenue officers to levy retirement income, retirement accounts, and TSP accounts.
 - C. Reviewed the IRM policies, procedures, training, and guidelines used for the ACS to levy retirement income.
 - D. Interviewed and discussed retirement income, retirement account, and TSP account levy policies, procedures, and guidelines with Field Collection management and with Territory managers, group managers, and revenue officers during site visits. We selected a judgmental sample² of four sites to visit which included interviews of five territory managers, 12 group managers, and 24 revenue officers (representative of a reasonable cross-section of Collection function employees) to discuss their procedures and handling of cases in which taxpayers with retirement income, retirement accounts, and TSP accounts were levied by revenue officers.
 - E. Reviewed Taxpayer Advocate Service reports and recommendations and discussed findings with National Taxpayer Advocate and Taxpayer Advocate Service staff and IRS management.
 - F. Interviewed IRS management and determined why there is a difference between when TSP account funds and retirement account funds are eligible to be levied.
 - G. Obtained a written explanation from the IRS about the rationale for the different standards for levying funds in a retirement account versus retirement income.
- II. Determined whether the IRS followed proper procedures when levying retirement income.

¹ See Appendix VII for a glossary of terms.

² A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



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- A. Identified a population of 496 ACS taxpayers with retirement income levies by using the ACS open and closed levy files to identify taxpayers with a manual Form 668-W, *Notice of Levy on Wages, Salary, and Other Income*, levy issued on a retirement levy source between July 1, 2015, and June 30, 2016.
 1. Validated a random sample of 25 cases by verifying selected data in the Integrated Data Retrieval System. We determined the data are reasonable, complete, and accurate, and therefore sufficiently reliable for the audit purpose.
 2. Selected a random sample of 30 cases to review.
 3. Reviewed the 30 cases to determine if ACS employees followed the proper procedures to levy retirement income.
 - B. Identified a population of 6,328 ICS taxpayers with a retirement levy source and a Form 668-W levy issued between July 1 2015, and June 30, 2016, by using the ICS levy source file and the ICS levy file in the Data Center Warehouse (Document Code 04 with Payment Indicator 88 – Form 5498, *IRA Contribution Information*, and Document Code 01 with Payment Indicator 128 or 130 – Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*).
 1. Validated a random sample of 25 cases by verifying selected data in the Integrated Data Retrieval System. We determined the data are reasonable, complete, and accurate, and therefore sufficiently reliable for the audit purpose.
 2. Selected a random sample of 250 cases to review. We used a random sample to ensure that every case in the population had an equal chance of being selected. We reviewed ICS histories to determine if the Form 668-W levy was issued on the retirement levy source. We identified 28 cases in which the taxpayer had a Form 668-W levy issued on a retirement levy source between July 1, 2015, and June 30, 2016.
 3. Reviewed the 28 cases to determine if field revenue officers followed the proper procedures to levy retirement income.
- III. Determined whether revenue officers followed proper procedures when levying retirement accounts and TSP accounts.
- A. Identified a population of 9,477 taxpayers with a retirement levy source and a Form 668-A, *Notice of Levy*, levy issued between July 1, 2015, and June 30, 2016, by using the ICS levy source file and the ICS levy file in the Data Center Warehouse (Document Code 04 with Payment Indicator 88 – Form 5498, and Document Code 01 with Payment Indicator 128 or 130 – Form 1099-R).
 1. Validated a random sample of 25 cases by verifying selected data in the



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- Integrated Data Retrieval System. We determined the data are reasonable, complete, and accurate, and therefore sufficiently reliable for the audit purpose.
2. Selected a random sample of 675 cases to review. We used a random sample to ensure that every case in the population had an equal chance of being selected. We reviewed ICS histories to determine if a Form 668-A levy was issued on a retirement levy source. We identified 18 cases in which the taxpayer had a Form 668-A levy issued during the period July 1, 2015, through June 30, 2016, on their retirement levy source, and in which there is evidence in the history that the source was a retirement account prior to when the revenue officer issued the levy.
 3. Identified 367 cases in which the “levy comment text” field from the ICS levy table was not blank. We reviewed the field for retirement-related comments, then reviewed the ICS history to determine if a Form 668-A levy was issued on the retirement levy source, and in which there is evidence in the history that the source was a retirement account prior to when the revenue officer issued the levy. We identified a population of nine cases.
 4. Combined the 18 cases from III.A.2 and the nine cases from III.A.3 for a total judgmental sample of 27 cases. We reviewed all 27 cases to determine if revenue officers followed the proper procedures to levy retirement accounts.
- B. Requested the population of TSP levies from the IRS. The IRS provided 11 TSP levy cases.
- C. Identified a population of 112 taxpayers with TSP accounts and a Form 668-A levy issued from July 1, 2015, through June 30, 2016, by using the TSP Employer Identification Number in the ICS levy source file and the ICS levy file in the Data Center Warehouse.
1. Validated a random sample of 25 cases by verifying selected data in the Integrated Data Retrieval System. We determined the data are reasonable, complete, and accurate, and therefore sufficiently reliable for the audit purpose.
 2. Reviewed all 112 ICS histories to determine if a Form 668-A levy was issued on the TSP account. We identified 20 cases in which the taxpayer had a Form 668-A levy issued during July 1, 2015, through June 30, 2016, on their TSP account.
- D. Combined the 11 TSP levy cases from III.B and 20 cases from III.C.2 for a total judgmental sample of 31 cases. We reviewed all 31 TSP levy cases identified and determined if revenue officers followed the proper procedures to levy TSP accounts.

Internal controls methodology

Internal controls relate to management’s plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for



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planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: Small Business/Self-Employed Division Collection function policies, procedures, and practices for taking levy action; specifically, those involving levy determinations and forms used to levy retirement income, retirement accounts, and TSP accounts. We evaluated these controls by reviewing a judgmental sample of ACS (for retirement income) and revenue officer (for retirement income, retirement account, and TSP account) cases in which retirement benefits were levied, and interviewing Collection function management and personnel.



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Appendix II

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Marcus Sloan, Auditor



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Appendix III

Report Distribution List

Commissioner
Office of the Commissioner – Attn: Chief of Staff
Deputy Commissioner for Services and Enforcement
Deputy Commissioner, Small Business/Self-Employed Division
Director, Campus Collection, Small Business/Self-Employed Division
Director, Collection, Small Business/Self-Employed Division
Director, Collection Policy, Small Business/Self-Employed Division
Director, Field Collection, Small Business/Self-Employed Division
Director, Headquarters Collection, Small Business/Self-Employed Division
Director, Office of Audit Coordination



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Appendix IV

Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; four taxpayers whose retirement accounts were improperly levied \$140,615 (see page 11).

Methodology Used to Measure the Reported Benefit:

We identified a population of 9,477 taxpayers with a retirement levy source and a Form 668-A, *Notice of Levy*,¹ levy issued by Field Collection between July 1, 2015, and June 30, 2016. We selected a random sample of 675 cases and reviewed their ICS history to determine if that Form 668-A levy was issued on a retirement levy source and if there was evidence in the history prior to the levy that the source was a retirement account. We used a random sample to ensure that every case in the population had an equal chance of being selected. We identified 18 cases that met these criteria.

We also identified 367 cases from the population of 9,477 taxpayers to identify any with retirement-related terms in the “levy comment text” field of the ICS levy data.² We reviewed all 367 cases and identified nine cases with a Form 668-A levy issued by Field Collection between July 1, 2015, and June 30, 2016, on a retirement levy source for which there was evidence in the ICS history prior to the levy that the source was a retirement account.

We combined these samples for a total judgmental sample³ of 27 retirement account cases and reviewed the history to determine if the cases were worked properly by revenue officers. We identified 11 exception cases for which the revenue officers did not obtain Area Director approval, consider the taxpayer’s other property or assets available for levy, and/or check if the taxpayer depends on the retirement funds or would in the near future.

In four of the 11 exception cases, the IRS received \$140,615 that was applied to the taxpayers’ balances due as a result of the retirement account levy.

¹ See Appendix VII for a glossary of terms.

² We searched for the following terms: retire, IRA, 401k and 401(k), and pension.

³ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



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Appendix V

Excerpt From Internal Revenue Manual 5.11.1.3.1

<p>5.11.1.3.1 (08-01-2014) Pre-Levy Considerations</p>	<p>(1) Taxpayers have the right to a fair and just tax system. That is, taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. See Pub 1, Taxpayer Bill of Rights #10.</p> <p>(2) Accordingly, levy determinations are made on a case-by-case basis and Revenue Officers must exercise good judgment in making the determination to levy. When determining if a levy is appropriate consider the following:</p> <ul style="list-style-type: none">• The taxpayer's financial condition, including information discussed in IRM 5.1.12.20.1.1 related to economic hardship determinations <p>Note: When determining whether the financial information available is sufficient to establish an economic hardship each levy should be considered independently. In general, it will be necessary for the taxpayer to provide information for this determination to be made. However, if the Revenue Officer can verify from the information available that the levy will cause an economic hardship, the levy will not be issued, because if there is economic hardship, the levy must be released under IRC 6343(a)(1)(D).</p> <ul style="list-style-type: none">• The taxpayer's responsiveness to attempts at contact and collection• The taxpayer's filing and paying compliance history• The taxpayer's effort to pay the tax• Whether current taxes are being paid <p>Note: There is no requirement that taxpayers experiencing economic hardship be in filing or payment compliance before a levy is released. See <i>Vinatieri v. Commissioner</i>, 133 T.C. 392 (2009). Thus, when the Service determines that the levy will create an economic hardship, do not issue the levy as a means to secure other compliance, e.g., missing tax returns.</p>
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Source: IRM 5.11.1.3.1, August 1, 2014.



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Appendix VI

Internal Revenue Service Examples of Flagrant Behavior by Taxpayers

This appendix presents the following examples of flagrant taxpayer conduct for revenue officers¹ issuing a levy on a taxpayer's retirement account as listed in IRM 5.11.6.2(6).²

- Taxpayers whose failure to pay is based on frivolous arguments which are listed in Notice 2010–33, IRB 2010–1 C.B. 609, or subsequent updates.
- Taxpayers who voluntarily contributed to retirement accounts during the time period the taxpayer knew unpaid taxes were accruing.
 - Caution: When the taxpayer verifies they have been automatically enrolled to have a limited percentage of their basic pay deducted and deposited into a retirement account do not consider this flagrant conduct.
- Taxpayers who continue to make voluntary contributions to retirement accounts while asserting an inability to pay an amount that is owed while the IRS determined voluntary contributions not necessary living expenses and disallowed them for the purpose of determining taxpayers' ability to pay.
 - Caution: Where a tax liability has been discharged in bankruptcy, the IRS may continue to have a valid tax lien on certain retirement assets that existed prior to the bankruptcy.
 - Caution: When the taxpayer verifies they have been automatically enrolled to have a limited percentage of their basic pay deducted and deposited into a retirement account do not consider this flagrant conduct.
- Taxpayers convicted of tax evasion for the tax debt.
- Taxpayers assessed with a fraud penalty for the tax debt.
- Taxpayers assisting others in evading tax.
- Taxpayers with liabilities based on illegal income.

¹ See Appendix VI for a glossary of terms.

² June 14, 2016.



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- Taxpayers who are in business, pyramiding unpaid trust fund taxes, and fail to provide a complete Collection Information Statement, and do not comply with the results of the IRS's financial analysis or fail to timely make Federal Tax Deposits.
- Individual taxpayers who are accumulating unpaid income taxes over multiple tax periods and will not adjust their withholding or make timely and adequate estimated tax payments to prevent future delinquencies.
- Trust Fund Recovery Penalty modules have been assessed at different times or against more than one business entity.
- Taxpayers who have demonstrated a pattern of uncooperative or unresponsive behavior that delays the collection of the tax due, *e.g.*, failing to meet established deadlines, failing to attend scheduled appointments, documented broken promises to pay, failing to respond to IRS employee's attempts to contact. In such cases, determining alternatives and the taxpayer's dependence on the money in the retirement accounts (final step) may not be possible, so a levy may need to be served without making those determinations.
- Taxpayers who have placed other assets beyond the reach of the Government, *e.g.*, sending them outside the country, concealing them, dissipating them, or transferring them to other people.
- Taxpayers with jeopardy or termination assessments subject to collection.

The IRM also directs revenue officers to keep in mind extenuating circumstances that may mitigate the taxpayer's flagrant conduct, such as illness, loss of employment, a personal loss (family or loved one), identity theft/return preparer misconduct/embezzlement, or natural acts of nature.



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Appendix VII

Glossary of Terms

Term	Definition
401(k)	<p>A defined contribution plan in which an employee can make contributions from his or her paycheck either before or after tax, depending on the options offered in the plan.</p> <p>In some plans, the employer also makes contributions such as matching the employee's contributions up to a certain percentage.</p>
Accounts Management System	<p>A system that provides employees access to multiple IRS systems through their computers and allows for inventory management, case delivery, history narratives, print-to-fax capabilities for sending information to taxpayers, and electronic referral generation.</p>
Automated Collection System	<p>A telephone contact system through which telephone assistants collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.</p>
Collection Statute Expiration Date	<p>Each tax assessment has a Collection Statute Expiration Date. I.R.C. Section 6502 provides that the length of the period for collection after assessment of a tax liability is 10 years. The collection statute expiration ends the Government's right to pursue collection of a liability.</p>
Continuous Levy	<p>The I.R.C. allows for continuous levies with respect to wages, salaries, and certain other types of property. This means that a levy on wages and salaries continuously attaches until it is released.</p>
Data Center Warehouse	<p>An online database maintained by TIGTA. The Data Center Warehouse pulls data from IRS system resources, such as IRS collection files and IRS examination files, for TIGTA access.</p>



*Procedures for Retirement Account and Thrift Savings Plan
Levies Are Not Always Followed by Revenue Officers*

Term	Definition
Early Withdrawal Penalty	Most retirement plan distributions are subject to income tax and may be subject to an additional 10 percent tax. Generally, the amounts an individual withdraws from an IRA or retirement plan before reaching age 59½ are called “early” or “premature” distributions. Individuals must pay an additional 10 percent early withdrawal tax unless an exception applies.
Federal Retirement Thrift Investment Board	The Federal Retirement Thrift Investment Board administers the TSP, a tax-deferred defined contribution plan similar to private sector 401(k) plans, which provides Federal employees the opportunity to save for additional retirement security.
Field Collection	The unit in the Area Offices consisting of revenue officers who handle face-to-face contacts with taxpayers to collect delinquent accounts or secure unfiled returns.
Form 1099-R	Financial institutions are required to file Form 1099-R, <i>Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.</i> , for each person to whom they have made a designated distribution or are treated as having made a distribution of \$10 or more from profit-sharing or retirement plans, any IRAs, annuities, pensions, insurance contracts, survivor income benefit plans, permanent and total disability payments under life insurance contracts, charitable gift annuities, <i>etc.</i>
Form 5498	Financial institutions must file Form 5498, <i>IRA Contribution Information</i> , with the IRS for each person for whom they maintained any IRA.
Form 668-A, Notice of Levy	Form 668-A(c)(DO) is used to levy other property that a third party is holding. For example, this form is used to levy bank accounts and business receivables.
Form 668-W, Notice of Levy on Wages, Salary, and Other Income	Form 668-W(ICS) or 668-W(c)(DO) is used to levy an individual’s wages, salary (including fees, bonuses, commissions), or other income. It also provides notice of levy on a taxpayer’s benefit or retirement income.



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Term	Definition
Hardship	An economic hardship occurs when the IRS has determined the levy prevents the taxpayer from meeting basic, reasonable living expenses. In order for the IRS to determine if a levy is causing hardship, the IRS may need the taxpayer to provide financial information.
Individual Retirement Account	An individual account or annuity set up with a financial institution, such as a bank or a mutual fund company. Under Federal law, individuals may set aside personal savings up to a certain amount, and the investments grow, tax deferred.
Information Returns Processing	The IRP identifies taxpayers who have underreported their income by matching information documents received by third parties to the income reported on the individual's tax return.
Installment Agreement	An agreement by which the IRS allows taxpayers to pay the tax they owe in monthly installments instead of immediately paying the full amount.
Integrated Collection System	A system used by Collection function employees to report taxpayer case time and activity. The system has applications designed around each of the main collection tasks such as opening a case, assigning a case, building a case, performing collection activity, and closing a case. The ICS is designed to provide management information, create and maintain case histories, generate documents, and allow online approval of case actions.
Integrated Data Retrieval System	The IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records. This system shows historical information (original account balances, adjustments, payments, abatements) and current account status (fully paid, collections, suspended, <i>etc.</i>). It allows employees to post transaction updates to the IRS Master Files.
Internal Revenue Code	Title 26 of the U.S. Code enacted by Congress containing all relevant rules pertaining to estate, excise, gift, income, payroll, and sales taxes.



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Term	Definition
Internal Revenue Manual	The primary, official source of instructions to staff related to the organization, administration, and operation of the IRS. It contains the policies, procedures, instructions, guidelines, and delegations of authority which direct the operation for all divisions and functions of the IRS.
Levy	A method used by the IRS to collect outstanding taxes from sources such as bank accounts and wages.
National Taxpayer Advocate	An independent organization within the IRS to help taxpayers resolve problems with the IRS and recommend changes that will prevent the problems.
Notice	Computer-generated messages resulting from an analysis of the taxpayer's account on the Master File. These include notices of assessments of tax, adjustments, balances due, or overpayments that are refunded to taxpayers.
Notice of Intent to Levy	A letter to notify taxpayers of their unpaid taxes and that the IRS intends to levy to collect the amount owed. The letter and referenced publications explain how to request an appeal if the taxpayer does not agree.
Offer in Compromise	An agreement between a taxpayer and the Government that settles a tax liability for payment of less than the full amount owed.
Revenue Officer	An employee in the Field who attempts to contact taxpayers and resolve collection matters that have not been resolved through notices sent by the IRS campuses (formerly known as service centers) or the ACS.
Small Business/ Self-Employed Division	The IRS organization that services self-employed taxpayers and small businesses by educating and informing them of their tax obligations, developing educational products and services, and helping them understand and comply with applicable tax laws.



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Term	Definition
Standard Allowable Expenses	Standard allowable expenses are determined based on the taxpayer's age, location (zip code), and number of dependents, and are adjusted annually. They also depend on whether the taxpayers owns or leases a car, or takes public transportation.
Thrift Savings Plan	A retirement savings and investment plan for Federal employees and members of the uniformed services. It was established by Congress in the Federal Employees Retirement System Act of 1986 ¹ and offers the same types of savings and tax benefits that many private corporations offer their employees under 401(k) plans.
U.S. Census Bureau	The Census Bureau's mission is to serve as the leading source of quality data about the Nation's people and economy.

¹ Public Law 99-335 *Federal Employees' Retirement System Act of 1986* (June 6, 1986).



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Levies Are Not Always Followed by Revenue Officers*

Appendix VIII

Management's Response to the Draft Report

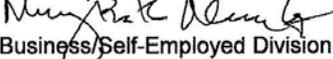


COMMISSIONER
SMALL BUSINESS/Self-EMPLOYED DIVISION

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

SEP 05 2017

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Mary Beth Murphy 
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Procedures for Retirement Account and
Thrift Savings Plan Levies Are Not Always Followed by Revenue
Officers (Audit # 201630015)

Thank you for the opportunity to review the subject draft report. Taxpayers rely on retirement accounts to fund living and other expenses after retirement. We recognize the importance of balancing the taxpayer's future welfare and the need for effective enforcement action. Your review was initiated to determine whether the IRS has adequate controls and procedures in place to properly issue levies on retirement income, retirement accounts, and TSP accounts. We appreciate your recognition that adequate controls were, indeed, in place and that pre-levy procedures for retirement income levies were properly followed in most of the cases you reviewed.

The decision to issue a levy to attach the income or corpus of a retirement account is a sensitive one. The Internal Revenue Manual (IRM) directs Field Collection (FC) revenue officers to use discretion when determining whether retirement income should be levied, and Automated Collection System (ACS) employees must secure managerial approval to do so. Levies on funds in a retirement account require Field Collection Area Director (AD) approval, and we are working to create a template for revenue officers to use in these situations that will standardize the information presented to the approving official.

IRS Collection employees are responsible for collecting delinquent taxes and, in doing so, they protect and promote the public confidence in our tax system and ensure fairness to the millions of taxpayers who do pay their taxes. In working to gain a full understanding of a taxpayer's financial situation, we research IRS databases. However, that information is not complete by itself because the databases may not include all sources of income and may not provide information on taxpayer assets.

In most cases, we need financial information from the taxpayer in order to determine the appropriate treatment to resolve the case. When taxpayers do not provide required information in order to resolve their tax debts, enforcement action may be initiated to collect the liabilities. Levies on retirement account income are only issued after we have made an attempt to contact the taxpayer to resolve the delinquent accounts. If the taxpayer does not cooperate and is not responsive, the IRS must take action to protect



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the revenue and promote compliance. If a taxpayer later provides the IRS with the required information, levies can often be released and payment arrangements, or a determination of economic hardship, may be made.

In recent years, in coordination with the National Taxpayer Advocate, we provided guidance in the Field Collection section of the IRM to clarify that levy actions should not be taken if they will cause an economic hardship based on facts and circumstances of the case. We agree with TIGTA's recommendation to clarify that guidance, making the taxpayer's financial condition including economic hardship a primary consideration, and we agree with TIGTA's other recommendations in this audit.

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We appreciate your continued support and insight as we strive to further strengthen our processes. Attached is a detailed response outlining our corrective actions to address your recommendations.

If you have any questions, please contact me, or a member of your staff may contact Scott Prentky, Director Collection at (954) 991-4326.

Attachment



*Procedures for Retirement Account and Thrift Savings Plan
Levies Are Not Always Followed by Revenue Officers*

Attachment

RECOMMENDATION 1:

The Director, Collection, Small Business/Self-Employed Division, should revise the IRM for ACS employees to clarify that retirement income levy actions should not be taken if they will likely cause or exacerbate an existing economic hardship based on the facts and circumstances of the case.

CORRECTIVE ACTION:

We will clarify the IRM for ACS managers to consider what is known about the taxpayer's financial condition, including economic hardship, when approving a retirement income levy.

IMPLEMENTATION DATE:

April 15, 2018

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 2:

The Director, Collection, Small Business/Self-Employed Division, should revise the IRM for revenue officers to clarify that economic hardship considerations should take precedence over other nonlegal considerations.

CORRECTIVE ACTION:

We will revise IRM 5.11.1.3.1 on Pre-Levy Considerations to make the taxpayer's financial condition including economic hardship a primary consideration.

IMPLEMENTATION DATE:

December 15, 2017

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.



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RECOMMENDATION 3:

The Director, Collection, Small Business/Self-Employed Division, should consider revising the Form 668-A to more clearly indicate whether the levy is intended for a lump sum levy on a retirement account.

CORRECTIVE ACTION:

We will secure input from several financial institutions as to how to clarify when a levy is intended to attach retirement account funds, and will request appropriate changes based on that research.

IMPLEMENTATION DATE:

October 15, 2018

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 4:

The Director, Collection, Small Business/Self-Employed Division, should ensure the enhancement to the ICS system to address the need for Area Director approval when a revenue officer intends to issue a levy on a retirement account is implemented and tested for proper use after implementation.

CORRECTIVE ACTION:

We have previously requested programming to enhance the Integrated Collection System (ICS) to provide a reminder to revenue officers to address the need for Area Director approval if they intend to issue a levy to attach retirement account levy sources. We expect this enhancement to be implemented in January, and will be monitoring it and will test it to ensure that it is operating as intended.

IMPLEMENTATION DATE:

October 15, 2018

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.



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RECOMMENDATION 5:

The Director, Collection, Small Business/Self-Employed Division, should provide revenue officers with clarification and reinforcement of the retirement account and TSP levy procedures in new hire training and periodic continuing professional education training.

CORRECTIVE ACTION:

We will insure new hire training includes levies on retirement accounts and Thrift Savings Plans (TSP). Field Collection will deliver a course for FY 2017, Continual Professional Education (CPE) for Revenue Officers, which will cover retirement account and TSP levy procedures. We will schedule an annual message reminding revenue officers of these procedures.

IMPLEMENTATION DATE:

Field Collection CPE Course –January 1, 2018
Annual Reminder Message and New Hire Training - October 15, 2018

RESPONSIBLE OFFICIALS:

Director, Collection Policy, Small Business/Self-Employed Division
Director, Field Collection, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.