



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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CC:EBO:7: [REDACTED]

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Chief, Branch 7
Office of Associate Chief Counsel (EBO) (CC:EBO:7)

SUBJECT:

This Field Service Advice responds to your request for assistance regarding certain issues arising on an examination of the above-referenced taxpayer. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

TP1 =
Plan A =
Employer X =
Entity Z =
a =
b =
c =
Year 1 =
Year 2 =
Year 3 =

ISSUE

Whether Plan A is required to honor a levy by the Internal Revenue Service with respect to funds held on behalf of TP1 under Plan A if TP1 is not entitled to an immediate distribution from Plan A at the time the levy is received.

FACTS

TP1 is currently a civilian employee with Employer X, and he participates in Plan A. He has been employed by Employer X for approximately years. TP1 is c years of age. TP1 is not disabled.

TP1 owes taxes (excluding interest) in the amount of \$a for Year 1 and Year 2 through Year 3. These taxes originated from a jeopardy assessment. TP1 requested that the Service levy benefits held on his behalf under Plan A. The Service subsequently levied such benefits under Plan A. Entity Z refused to honor the tax levy, stating that benefits under Plan A are not subject to federal tax levy.

TP1 is not entitled to an immediate distribution of benefits under the terms of Plan A, b, because he is still employed and he is not disabled. However, we understand that a pending offer-in-compromise, under consideration by the revenue officer assigned to this case, takes into account the value of TP1's benefits under Plan A.

DISCUSSION

Based on the facts specifically set forth above, we have determined that Plan A is not required to honor the levy at this time because, under the terms of Plan A, TP1 is not eligible to receive an immediate distribution of his Plan A benefits. Accordingly, until such time as TP1 is otherwise eligible to receive benefits under the terms of Plan A, Entity Z is not required, pursuant to the levy, to distribute any portion of Plan A held on his behalf to the Service. Therefore, if TP1's offer-in-compromise provides for payment pursuant to the levy, we recommend that that offer be rejected. If TP1 wants to use benefits under Plan A to satisfy his tax obligations, he may want to consider making a request for a loan from Plan A.¹

However, it is well established that if TP1 has a present vested right to future benefits under the terms of Plan A, the current levy reaches that present right and may be enforceable against such future benefits when TP1 becomes eligible to receive them. See United States v. National Bank of Commerce, 472 U.S. 713

¹ Because §3436 of the Restructuring and Reform Act amended IRC §72(t) to provide an exception for federal tax levies from the additional tax for early distributions from certain retirement plans, we understand that it may be more advantageous for TP1 to satisfy its tax obligations pursuant to levy. However, based on our understanding of the facts, there is no way that a levy can presently reach benefits under Plan A.

(1985); Rev. Rul. 55-210, 1955-1 C.B. 544.² Accordingly, the levy should not be released regardless of TP1's current inability to receive an immediate distribution from Plan A. We recommend that Plan A be informed in writing that we are not releasing our levy and that any funds that become distributable to TP1 are subject to the levy and Plan A may be required to turn over such funds to the Service.

We have coordinated this response with the Office of Assistant Chief Counsel (General Litigation). If you have any questions, please call the branch telephone number.

MICHAEL J. ROACH

CC: Chief, Branch 1 (General Litigation)

² The Service has taken the position that a participant's right to borrow from an employer's plan does not constitute a vested right that is subject to immediate levy.