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Methods the Internal Revenue Service ("IRS") Uses to Collect Delinquent Taxes

April 15th has come and gone, and you have either filed your returns or extended them until later this year. Either way, hopefully you made sure you paid Uncle Sam all your tax liability by April 15th. But what if you miscalculated or can't pay your total tax liability on time? You are not alone. Per the Report to the Committee on Finance, U.S. Senate GAO-18-39, only a little over 80% of the total tax assessment is voluntarily and timely paid by taxpayers. The rest of the uncollected taxes requires the efforts of one or several varieties of IRS enforcement actions.

IRS NOTICES AND PRECOLLECTION ACTIVITY

If you are one of the taxpayers who failed to pay your taxes in full, never fear, the IRS will not forget you. Their first course of action is to mail a notice informing you, the taxpayer, that there is unpaid tax remaining. The balance due will also be increased by penalty and interest charges. If you are unable to resolve the outstanding balance due, there are several options you can explore by contacting the IRS to work out a mutually agreeable solution. After a certain amount of time has passed and the taxpayer hasn't responded to the IRS's efforts or is unable to reach an agreement with the IRS, more drastic actions may be taken to secure payment.

Levies and Liens

Levies

The Internal Revenue Code (Sec 6331) authorizes the IRS to collect unpaid tax by placing a levy on all property and rights to property with very few exceptions. The levy typically attaches to assets such as bank accounts, social security benefits, self-employment income, and wages until the entire balance due, along with penalties and interest, is paid in full. Also, the IRS may seize your personal and real properties, with certain limitations, which could have a devastating effect on your lifestyle. The IRS will deliver a Final Notice of Intent to Levy 30 days before the actual collection action begins. This notice also gives the taxpayer time to either contact the IRS for collection alternatives or to file a request for Collection Due Process hearing with the Office of Appeals, before the levy is enforced.

There are circumstances where some taxpayers may be protected under certain conditions that would require the IRS to release the levy. Here are a few examples where the IRS may release a levy:

- The levy creates an economic hardship to the taxpayer -

An economic hardship is considered to occur when the taxpayer is unable to meet basic, reasonable living expenses, as determined by Bureau of Labor Statistics and Consumer Expenditures under the Department of Labor (Treasury Reg 301.6343-1(b)(4). If the IRS agrees that an economic hardship will be created by the levy, it may fully or partially release the levy, whether or not the taxpayer is in compliance with their filing requirements (IRC Section 6343, Vinatieri v. Commissioner, 133 T.C. 392).

- The taxpayer has an Installment Agreement (Payment Plan) in place-

Unless agreed otherwise, the levy may be released in full upon the approval of an Installment Agreement (IRC Section 6331). However, unlike the hardship situation above, the taxpayer must be in full compliance with the current IRS filings to qualify for an Installment Agreement.

- The levy notice was issued prematurely-

If the IRS has not complied with the requirements of all applicable laws and administrative procedures before initiating a collection enforcement, the levy must be released (IRC Section 6330).

- The levy attaches to certain property specifically exempted from levy-

These assets include, but are not limited to unemployment benefits, workmen's compensation, and certain service-connected disability payments (IRC Section 6334).

- The tax is no longer legally enforceable-

The Internal Revenue Code limits the length of the time to collect unpaid tax liabilities. Generally, the government's right to pursue collection ends 10 years after the assessment (IRC Section 6502). However, this 10-year Collection Statutory Expiration Date ("CSED") can be extended or suspended by various tolling events, such as a bankruptcy, an Offer-in-Compromise, a timely filed Collection Due Processing hearing, an innocent spouse relief request, certain military deferments, etc. Although the Taxpayer Bill of Rights <IRS Pub 1> stipulates the taxpayer's right to know its CSED, the IRS often mis-calculates the date, therefore providing you an incorrect CSED. In this case, your tax advisor should contact the IRS to correct the calculation.

LIENS

While the levy is an actual collection effort to remove a property from the taxpayer, the tax lien is a form of passive collection action to protect the government's interest in a taxpayer's property. The Notice of Federal Tax Lien is recorded to a county office and becomes a legal claim against the property in the taxpayer's possession. Once the tax lien is filed, the taxpayer is not allowed to sell, transfer, or re-finance the property without the government's approval first. Another downside is the tax lien filing will affect your credit score since it's a public record. However, the lien does not create the economic hardship that a levy does because it does not actually take possession of the taxpayer's assets. For this reason, the lien is not always released even if the taxpayer and the IRS reach a collection alternative agreement such as an Installment Agreement. (IRM 5.12.2)

In its efforts to collect delinquent taxes, the IRS has two very powerful and effective tools at its disposal with the use of levies and liens. In the last few years another restriction has been implemented to influence and help with their collection processes.

The Fixing America's Surface Transportation Act (FAST Act) requires the Department of State to deny the issuance or renewal of passports to taxpayers with severely delinquent tax debts. Since the act was signed into law in 2015, the IRS has actively utilized this new tool on those taxpayers who have an unpaid tax liability exceeding a predetermined limit ($52,000 in 2019).

Keeping current with your tax payments is important and it is best to be able to avoid all these consequences from the beginning. However, unforeseen circumstances may happen, and you may fall behind. If you receive a notice from the IRS for taxes due, please act at once. The IRS will not forget you. If you need guidance and advice, we will be happy to help you determine the best option to resolve your collection issue.

Please call or email us if you have any questions regarding delinquent taxes.

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