

would exceed the estimated costs of seizure and sale.

Example 3. The taxpayer has three items of property, A, B, and C. The director anticipates that the value of items A, B, and C depends on their being sold as a unit. The director estimates that due to high anticipated costs of storing or maintaining item B prior to the sale, the aggregate fair market value of items A, B, and C will not exceed the anticipated expenses of seizure and sale if all three items are seized. Accordingly, the director is prohibited from levying on items A, B, and C.

Example 4. The facts are the same as in *Example 3* except that the director does not anticipate that the value of items A, B, and C depends on those items being sold as a unit. If the director estimates that the aggregate fair market value of items A and C exceeds the aggregate anticipated costs of the seizure and sale of those two items, items A and C can be seized and sold. The director is prohibited from levying on item B because the high cost of storing or maintaining item B is estimated to exceed the fair market value of item B.

(c) *Restriction on levy on date of appearance.* Except for continuing levies on salaries or wages described in § 301.6331-1(b)(1), no levy may be made on any property of a person on the day that person, or an officer or employee of that person, is required to appear in response to a summons served for the purpose of collecting any underpayment of tax from that person. For purposes of this paragraph (c), the date on which an appearance is required is the date fixed by an officer or employee of the Internal Revenue Service pursuant to section 7605 or the date (if any) fixed as the result of a judicial proceeding instituted under sections 7604 and 7402(b) seeking the enforcement of the summons.

(d) *Jeopardy.* Paragraphs (a) and (c) of this section do not apply to a levy if the director finds, for purposes of § 301.6331-1(a)(2), that the collection of tax is in jeopardy.

(e) *Effective date.* These regulations are effective December 10, 1992.

[T.D. 8558, 59 FR 38903, Aug. 1, 1994, as amended by T.D. 8939, 66 FR 2821, Jan. 12, 2001]

§ 301.6332-1 Surrender of property subject to levy.

(a) *Requirement—(1) In general.* Except as otherwise provided in § 301.6332-2, relating to levy in the case of life insur-

ance and endowment contracts, and in § 301.6332-3, relating to property held by banks, any person in possession of (or obligated with respect to) property or rights to property subject to levy and upon which a levy has been made shall, upon demand of the district director, surrender the property or rights (or discharge the obligation) to the district director, except that part of the property or rights (or obligation) which, at the time of the demand, is actually or constructively under the jurisdiction of a court because of an attachment or execution under any judicial process.

(2) *Levy on bank deposits held in offices outside the United States.* Notwithstanding subparagraph (1) of this paragraph (a), if a levy has been made upon property or rights to property subject to levy which a bank engaged in the banking business in the United States or a possession of the United States is in possession of (or obligated with respect to), the Commissioner shall not enforce the levy with respect to any deposits held in an office of the bank outside the United States or a possession of the United States, unless the notice of levy specifies that the district director intends to reach such deposits. The notice of levy shall not specify that the district director intends to reach such deposits unless the district director believes—

(i) That the taxpayer is within the jurisdiction of a U.S. court at the time the levy is made and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(ii) That the taxpayer is not within the jurisdiction of a U.S. court at the time the levy is made, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the Code. For purposes of this subparagraph, the term “possession of the United States” includes Guam, the

Midway Islands, the Panama Canal Zone, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Wake Island.

(b) *Enforcement of levy*—(1) *Extent of personal liability.* Any person who, upon demand of the district director, fails or refuses to surrender any property or right to property subject to levy is liable in his own person and estate in a sum equal to the value of the property or rights not so surrendered, together with costs and interest. The liability, however, may not exceed the amount of the taxes for the collection of which the levy was made. Interest is to be computed at the annual rate referred to in regulations under section 6621 from the date of the levy, or, in the case of a continuing levy on salary or wages (see section 6331(d)(3)), from the date the person would otherwise have been obligated to pay over the wages or salary to the taxpayer. Any amount recovered, other than cost, will be credited against the tax liability for the collection of which the levy was made.

(2) *Penalty for violation.* In addition to the personal liability described in subparagraph (1) of this paragraph (b), any person who is required to surrender property or rights to property and who fails or refuses to surrender them without reasonable cause is liable for a penalty equal to 50 percent of the amount recoverable under section 6332(d)(1). No part of the penalty described in this subparagraph shall be credited against the tax liability for the collection of which the levy was made. The penalty described in this subparagraph is not applicable in cases where bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy. However, if a court in a later enforcement suit sustains the levy, then reasonable cause would usually not exist to refuse to honor a later levy made under similar circumstances.

(c) *Effect of honoring levy*—(1) *In general.* Any person in possession of, or obligated with respect to, property or rights to property subject to levy and upon which a levy has been made who, upon demand by the district director, surrenders the property or rights to property, or discharges the obligation,

to the district director, or who pays a liability described in paragraph (b)(1) of this section, is discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to the property or rights to property arising from the surrender or payment.

(2) *Exception for certain incorrectly surrendered property.* Any person who surrenders to the Internal Revenue Service property or rights to property not properly subject to levy in which the delinquent taxpayer has no apparent interest is not relieved of liability to a third party who has an interest in the property. However, if the delinquent taxpayer has an apparent interest in property or rights to property, a person who makes a good faith determination that such property or rights to property in his or her possession has been levied upon by the Internal Revenue Service and who surrenders the property to the United States in response to the levy is relieved of liability to a third party who has an interest in the property or rights to property, even if it is subsequently determined that the property was not properly subject to levy.

(3) *Remedy.* In situations described in paragraphs (c)(1) and (c)(2) of this section, taxpayers and third parties who have an interest in property surrendered in response to a levy may secure from the Internal Revenue Service the administrative relief provided for in section 6343(b) or may bring suit to recover the property under section 7426.

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. M Bank is served with a notice of levy for an unpaid tax liability due from A in the amount of \$2,000. M Bank holds \$2,000 in a checking account in the names of A or B or C. Although all of the deposits into the account were made by B and C, A has an unrestricted right to withdraw the funds from the account. M Bank surrenders the entire account to the district director at the end of the holding period provided in section 6332(c). Under paragraph (c)(1) of this section, M Bank is not liable to B or C for any amount, even if B or C prove that the funds in the account did not belong to A, because A's unrestricted right to withdraw the funds is an interest which is subject to levy. B or C may, however, seek the return of the funds

from the United States as provided in sections 6343(b) and 7426 of the Internal Revenue Code.

Example 2. A is indebted to B for \$400. Unbeknownst to A, B has assigned his right to receive payment to C. A is served with a notice of levy for an unpaid tax liability due from B for \$400. A, acting with no knowledge of the assignment to C, surrenders \$400 to the district director. A is discharged from his obligation to pay B, the taxpayer. Under paragraph (c)(2) of this section, because B had an apparent interest in the funds that A owed to B, and because A determined in good faith that those funds had been levied upon, A is also discharged from any liability to C, even though the money is not properly subject to levy. C may, however, seek return of the payment from the United States as provided in sections 6343(b) and 7426 of the Internal Revenue Code.

Example 3. M Bank is served with a notice of levy for an unpaid tax liability due from "John H. Smith, Sr." in the amount of \$5,000. M Bank fails to read the notice of levy carefully. When searching its records, M Bank finds the name of "John H. Smith, Jr." and looks no further. M Bank surrenders \$5,000 from John H. Smith, Jr.'s checking account to the district director. M Bank is not discharged from liability under section 6332(e) of the Internal Revenue Code because the delinquent taxpayer (John H. Smith, Sr.) had no apparent interest in the account of John H. Smith, Jr. (Generally, John H. Smith Jr. may seek return of the payment from the United States as provided in sections 6343 and 7426 of the Internal Revenue Code.)

Example 4. M Bank is served with a notice of levy for an unpaid tax liability due from "Robert A. Jones" in the amount of \$5,000. M Bank searches its records and identifies four separate accounts of \$1,000 each in the name of "Robert A. Jones." All four accounts list different addresses and social security identification numbers. M Bank surrenders all four accounts totalling \$4,000 in response to the levy. M Bank could not in good faith have determined that all four accounts were levied upon. Therefore, M Bank is not discharged from liability to any person other than the taxpayer whose account was levied upon.

(5) *Effective date.* Paragraph (c) of this section is effective January 11, 1993. However, persons surrendering property to the Internal Revenue Service may rely on the regulations with respect to levies issued after November 10, 1988.

(d) *Person defined.* The term "person," as used in section 6332(a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who is under a

duty to surrender the property or rights to property or to discharge the obligation. In the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official of the United States, the District of Columbia, or any agency or instrumentality of either, the term "person" includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality who is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see paragraph (a)(4)(i) of § 301.6331-1.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7180, 37 FR 7317, Apr. 13, 1972; T.D. 7620, 44 FR 27988, May 14, 1979; T. D. 8466, 58 FR 17, Jan. 4, 1993; T. D. 8467, 58 FR 3829, Jan. 12, 1993]

§ 301.6332-2 Surrender of property subject to levy in the case of life insurance and endowment contracts.

(a) *In general.* This section provides special rules relating to the surrender of property subject to levy in the case of life insurance and endowment contracts. The provisions of § 301.6332-1 which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy in the case of life insurance and endowment contracts.

(b) *Effect of service of notice of levy—*
(1) *In general.—*(i) A notice of levy served by a district director on an insuring organization with respect to a life insurance or endowment contract issued by the organization shall constitute—

(A) A demand by the district director for the payment of the cash loan value of the contract adjusted in accordance with paragraph (c) of this section, and

(B) The exercise of the right of the person against whom the tax is assessed to the advance of such cash loan value.

(ii) It is unnecessary for the district director to surrender the contract document to the insuring organization upon which the levy is made. However, the notice of levy will include a certification by the district director that a copy of the notice of levy has been mailed to the person against whom the tax is assessed at his last known address. For further guidance regarding