

(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 certifi-

cation 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 the definition of last known address, see § 301.6212-2. At the time of service of the notice of levy, the levy is effective with respect to the cash loan value of the insurance contract, subject to the condition that if the levy is not satisfied or released before the 90th day after the date of service, the levy can be satisfied only by payment of the amount described in paragraph (c) of this section. Other than satisfaction or release of the levy, no event during the 90-day period subsequent to the date of service of the notice of levy shall release the cash loan value from the effect of the levy. For example, the termination of the policy by the taxpayer or by the death of the insured during such 90-day period shall not release the levy. For the rules relating to the time when the insuring organization is to pay over the required amount, see paragraph (c) of this section.

(2) *Notification of amount subject to levy—*(i) *Full payment before the 90th day.* In the event that the unpaid liability to which the levy relates is satisfied at any time during the 90-day period subsequent to the date of service of the notice of levy, the district director will promptly give the insuring organization written notification that the levy is released.

(ii) *Notification after the 90th day.* In the event that notification is not given under subdivision (i) of this subparagraph, the district director will, promptly following the 90th day after service of the notice of levy, give the insuring organization written notification of the current status of all accounts listed on the notice of levy, and of the total payments received since service of the notice of levy. This notification will be given to the insuring organization whether or not there has been any change in the status of the accounts.

(c) *Satisfaction of levy—*(1) *In general.* The levy described in paragraph (b) of this section with respect to a life insurance or endowment contract shall be deemed to be satisfied if the insuring organization pays over to the district

director the amount which the person against whom the tax is assessed could have had advanced to him by the organization on the 90th day after service of the notice of levy on the organization. However, this amount is increased by the amount of any advance (including contractual interest thereon), generally called a policy loan, made to the person on or after the date the organization has actual notice or knowledge, within the meaning of section 6323(i)(1), of the existence of the tax lien with respect to which the levy is made. The insuring organization may, nevertheless, make an advance (including contractual interest thereon), generally called an automatic premium loan, made automatically to maintain the contract in force under an agreement entered into before the organization has such actual notice or knowledge. In any event, the amount paid to the district director by the insuring organization is not to exceed the amount of the unpaid liability shown on the notification described in paragraph (b)(2) of this section. The amount, determined in accordance with the provisions of this section, subject to the levy shall be paid to the district director by the insuring organization promptly after receipt of the notification described in paragraph (b)(2) of this section. The satisfaction of a levy with respect to a life insurance or endowment contract will not discharge the contract from the tax lien. However, see section 6323(b)(9)(C) and the regulations thereunder concerning the liability of an insurance company after satisfaction of a levy with respect to a life insurance or endowment contract. If the person against whom the tax is assessed so directs, the insuring organization, on a date before the 90th day after service of the notice of levy, may satisfy the levy by paying over an amount computed in accordance with the provisions of this subparagraph substituting such date for the 90th day. In the event of termination of the policy by the taxpayer or by the death of the insured on a date before the 90th day after service of the notice of levy, the amount to be paid over to the district director by the insuring organization in satisfaction of the levy shall be an amount computed in accordance

with the provisions of this subparagraph substituting the date of termination of the policy or the date of death for the 90th day.

(2) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. On March 5, 1968, a notice of levy for an unpaid income tax assessment due from A in the amount of \$3,000 is served on the X Insurance Company with respect to A's life insurance policy. On March 5, 1968, the cash loan value of the policy is \$1,500. On April 9, 1968, A does not pay a premium due on the policy in the amount of \$200. Under an automatic premium advance provision contained in the policy originally issued in 1960, X advances the premium out of the cash value of the policy. As of June 3, 1968 (the 90th day after service of the notice of levy), pursuant to the provisions of the policy, the amount of accrued charges upon the automatic premium advance in the amount of \$200 for the period April 9, 1968, through June 3, 1968, is \$2. On June 5, 1968, the district director gives written notification to X indicating that A's unpaid tax assessment is \$2,500. Under this section, X is required to pay to the district director, promptly after receipt of the June 5, 1968, notification, the sum of \$1,298 (\$1,500 less \$200 less \$2), which is the amount A could have had advanced to him by X on June 3, 1968.

Example 2. Assume the same facts as in example 1 except that on May 10, 1968, A requests and X grants an advance in the amount of \$1,000. X has actual notice of the existence of the lien by reason of the service of the notice of levy on March 5, 1968. This advance is not required to be made automatically under the policy and reduces the amount of the cash value of the policy. For the use of the \$1,000 advance during the period May 10, 1968, through June 3, 1968, X charges A the sum of \$3. Under this section, X is required to pay to the district director, promptly after receipt of the June 5, 1968, notification, the sum of \$1,298. This \$1,298 amount is composed of the \$295 amount (\$1,500 less \$200 less \$2 less \$1,000 less \$3) A could have had advanced to him by X on June 3, 1968, plus the \$1,000 advance plus the charges in the amount of \$3 with respect thereto.

Example 3. Assume the same facts as in example 1 except that the insurance contract does not contain an automatic premium advance provision. The contract does provide that, upon default in the payment of premiums, the policy shall automatically be converted to paid-up term insurance with no cash or loan value. A fails to make the premium payment of \$200 due on April 9, 1968. After expiration of a grace period to make

the premium payment, the X Insurance Company applies the cash loan value of \$1,500 to effect the conversion. Since the service of the notice of levy constitutes the exercise of A's right to receive the cash loan value and the amount applied to effect the conversion is not an automatic advance to A to maintain the policy in force, the conversion of the policy is not an event which will release the cash loan value from the effect of the levy. Therefore, X Insurance Company is required to pay to the district director, promptly after receipt of the June 5, 1968 notification, the sum of \$1,500.

(d) *Other enforcement proceedings.* The satisfaction of the levy described in paragraph (b) of this section by an insuring organization shall be without prejudice to any civil action for the enforcement of any Federal tax lien with respect to a life insurance or endowment contract. Thus, this levy procedure is not the exclusive means of subjecting the life insurance and endowment contracts of the person against whom a tax is assessed to the collection of his unpaid assessment. The United States may choose to foreclose the tax lien in any case where it is appropriate, as, for example, to reach the cash surrender value (as distinguished from cash loan value) of a life insurance or endowment contract.

(e) *Cross references.* (1) For provisions relating to priority of certain advances with respect to a life insurance or endowment contract after satisfaction of a levy pursuant to section 6332(b), see section 6323(b)(9) and the regulations thereunder.

(2) For provisions relating to the issuance of a certificate of discharge of a life insurance or endowment contract subject to a tax lien, see section 6325(b) and the regulations thereunder.

[T.D. 7180, 37 FR 7317, Apr. 13, 1972, as amended by T.D. 8939, 66 FR 2821, Jan. 12, 2001]

§ 301.6332-3 The 21-day holding period applicable to property held by banks.

(a) *In general.* This section provides special rules relating to the surrender, after 21 days, of deposits subject to levy which are held by banks. 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 on property held by banks.

(b) *Definition of bank.* For purposes of this section, the term "bank" means—

(1) A bank or trust company or domestic building and loan association incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions;

(2) Any credit union the member accounts of which are insured in accordance with the provisions of title II of the Federal Credit Union Act, 12 U.S.C. 1781 *et seq.*; and

(3) A corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(c) *21-day holding period*—(1) *In general.* When a levy is made on deposits held by a bank, the bank shall surrender such deposits (not otherwise subject to an attachment or execution under judicial process) only after 21 calendar days after the date the levy is made. The district director may request an extension of the 21-day holding period pursuant to paragraph (d)(2) of this section. During the prescribed holding period, or any extension thereof, the levy shall be released only upon notification to the bank by the district director of a decision by the Internal Revenue Service to release the levy. If the bank does not receive such notification from the district director within the prescribed holding period, or any extension thereof, the bank must surrender the deposits, including any interest thereon as determined in accordance with paragraph (c)(2) of this section (up to the amount of the levy), on the first business day after the holding