

# IRS Abuse of Discretion

## Unlawful IRS Garnishment of Income and Assets

The IRS has the legislative authority to “levy” a taxpayer’s income and assets when there is a demand for payment and there has been a refusal or an inability to pay by the taxpayer subject to the levy<sup>1</sup>. There are statutory limitations on the legislative authority delegated to the IRS by Congress in circumstance where an IRS levy of income and assets creates an *economic hardship* on individuals and businesses.

Congress has passed law clearly indicating that it does not want the IRS to levy a taxpayer in any circumstance which results in an *economic hardship*<sup>2</sup> to the taxpayer. Tax regulations have defined *economic hardship* as money needed for *reasonable basic living expenses*<sup>3</sup>. In general, the IRS is prohibited by law from levying income or assets that will deprive a taxpayer of food, housing, transportation, medication and other reasonable and basic necessities.

We are witness to thousands of wage garnishments that cause economic hardship to taxpayers, thereby exceeding the authority to levy delegated to the IRS by the Congress. Taxpayers throughout the U.S. have experienced this IRS abuse of power and discretion of its power to levy. The IRS routinely levies the assets and income of taxpayers that render families unable to pay expense necessary for basic survival.

Notwithstanding the clear intent of the law precluding a levy that creates an *economic hardship*, taxpayers throughout the U.S. will testify to their Congressional

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<sup>1</sup> The authority of the IRS to levy is found in section 6331 of the Internal Revenue Code.

<sup>2</sup> Congress enacted §6343(a)(1)(D) of the Internal Revenue Code which states that the IRS must release a levy in situations where the IRS has determined that the levy *is creating an economic hardship*.

<sup>3</sup> The term *economic hardship* is defined in §301.6343-1(b)(4). These regulations indicate that the levy must be removed if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her *reasonable basic living expenses*. The determination of a reasonable amount for basic living expenses is made by the IRS and will vary according to the *unique circumstances* of the individual taxpayer. In determining a reasonable amount for basic living expenses, the IRS will consider a taxpayer’s age, employment status and history, ability to earn, and number of dependents. The IRS will consider as *reasonable basic living expenses* as amounts reasonably necessary for food, clothing, housing (including utilities, home-owner insurance, home-owner dues, and insurance), transportation, current tax payments (including federal, state, and local), alimony, and expenses necessary to the taxpayer’s production of income (such as dues for a trade union or professional organization, or child care payments which all the taxpayer to be gainfully employed).

The IRS Forum will accomplish four objectives from a data base of unlimited duration based upon actual case histories of IRS levy abuse case histories:

1. It facilitates the accumulation of actual case histories of levy abuse cases. One taxpayer complaint to a Congressman or Senator gets little or no attention because Congress cannot interfere with the administration of the tax laws by the IRS. However, when large scale abuses are documented and collected within the IRS Forum, this data will be available to Congress to evaluate in considering any tax legislation to correct the documented abuse cases.
2. It empowers taxpayers to unite with other taxpayers for the enhanced ability to communicate their problems to the public and to the Congress more effectively and with greater impact. It also gives taxpayers the opportunity to communicate with one another through a message board, to share problems and consider group actions in the IRS levy abuse cases.
3. It is a vehicle to educate the Congress, the media, and the public about documented IRS levy abuse case histories.
4. It creates “talking points” for those individuals and groups looking facilitate IRS reform and or basic tax reform with documented cases of IRS levy abuses contrary to the law.

Given the large amount of unreasonable levies against taxpayers, Congress added a new statute in 1998<sup>4</sup> requiring the IRS to provide a Notice of Levy to taxpayers. The statute also gave taxpayers the “Due Process” right to appeal a Notice of Levy within 30 days of the Notice date for the Appeal. During that procedure, the taxpayer can offer collection alternatives like an Offer in Compromise or an Installment Agreement.

There is a systemic problem with the “Due Process” Appeal. If a paycheck or a bank account is levied (for example, containing the money for food or with the payroll for a small business), the bank must release that money to the IRS in 21 days. Therefore, collection is completed before the case is received by an IRS Appeals Office.

The situation is worse for salary garnishments which are continuous. There is a large body of taxpayers living from paycheck to paycheck who suffer when ongoing paychecks are levied. Many taxpayers have little choice but to leave their place of employment and look for another job. The “Due Process” hearing is ineffective for salary garnishments because most families cannot do without even one week’s paycheck.

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<sup>4</sup> Section 6330 of the Internal Revenue Code as added in the IRS Restructuring and Reform Act of 1998.

The most onerous of levies is the levy of a bank account of a business which contains money for payroll and other business expenses. The IRS takes the position that levy relief for “economic hardship” only applies to individuals and not to businesses.<sup>5</sup>

**The IRS continues to levy families even if that levy violates the law that restricts the IRS power to levy in “hardship” cases.** Although Congress made it more difficult for the IRS to be abusive and excessive in hardship cases with Due Process appeal rights, those garnishments proliferate. **More assistance is needed from the Congress to remedy the IRS abuses of existing law.**

As a non-profit tax exempt organization, the IRS Forum cannot lobby the Congress. Members of the IRS Forum can join together to document the IRS abuse case histories. That group will be in a position to unite as an independent organization, elect leadership and lobby the Congress (if it chooses) on the levy abuse problem. It should be sufficient to have taxpayers archive their abuse case history into the data base of the IRS Forum. Ultimately, when the number of abuse cases hits critical mass, the media, the public, and the Congress will get the message by reason of the large size of the documented levy abuse cases.

Members of the House and Senate get constituent complaints on a daily basis related to over zealous levies and the hardship created when the IRS levies reasonable and necessary living expenses. It is hoped that those who contact their Congressional representative will join and unite with similarly situated taxpayers in the IRS Forum. Taxpayers are empowered by uniting as members of a larger group which has the potential to grow large enough to get the attention of the Congress for assistance.

This document was prepared by **irstaxattorney**<sup>6</sup> and is intended as a public educational service.

Please address any questions or comment to [taxattorney@IRSforum.org](mailto:taxattorney@IRSforum.org).

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<sup>5</sup> The IRS argues that section 6343 of the Code, preventing a levy for “economic hardship,” only applies to individuals. That is an interpretative opinion that has not been litigated. It is more probably that Congress did not want to give the IRS authority to levy a business bank account, inventory, or accounts receivable if the levy will close down the business. **It is counter productive for the IRS to levy assets that will force a business into bankruptcy in circumstances where the ongoing business can afford to pay its tax liability in an Installment Agreement.**

<sup>6</sup> IRStaxattorney is a tax attorney who specializes in IRS controversies, issues and problems. For that reason we see IRS abuses of their power to levy on a daily basis. It is hoped that others who practice before the IRS will also have their abuse cases posted to the IRS Forum. The IRS Forum does not accept advertising and there are no membership fees. The IRS Forum depends on voluntary donations (tax deductible under section 501(c)(3)) for its support for editors and other basic staffing.