

Paypal

DATE: 6-20-14

NOTICE OF FRAUDULENT NOTICE OF LEVY
Notice to the Principal is Notice to the Agent
Notice to the Agent is notice to the Principal

To Whom it May Concern;

I am writing in response to the Notice of Levy you received from the IRS and wish to NOTICE PayPal that the "Notice of Levy" is NOT a valid or legal Levy and is actually a fraudulent attempt to coerce your institution into illegally turning funds over to the IRS. The following is considered "Legal and Constructive NOTICE" of the laws involved, and the lack of standing the IRS has in this issue.

Your institution has not met, personally, any alleged agent of the IRS, or have ANY proof of said authority from alleged IRS agent, including a signed, in blue ink, document purporting to be from a judge through a due process court of law that is proof of due process of law on this alleged tax debt issue. Due diligence on your part is required prior to releasing any assets belonging to me personally, or liability exists for all released funds, per the below evidence;

1. Authority for levy;

C.F.R. 26 (Code of Federal Regulations) 301.6332-1(c) which states in part:

"... Any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy is not relieved from liability to a third party who owns the property..." (Emphasis added).

The "Court Order" (Warrant of Distrainment-see below) also protects the third party from a liability which may arise under C.F.R. 26, 301.6332-1(c)

In United States v. O'Dell, 160 F.2d 304 (1947), the court stated;

'Nothing alleged to have been done amounts to a levy, which requires that the property be brought into legal custody through seizure, actual or constructive, levy being 'an absolute appropriation in law of the property levied upon.' Levy is not effected by mere notice. No warrants of distrainment were issued here.'
O'Dell, supra, at 307. (Emphasis added)

In the O'Dell court's decision, it was stated that "levy is not effected by mere notice" where no warrants of distrainment are issued. Thus, Plaintiff's property had not

been lawfully levied. Levy is only threatened with a "Notice." Defendant (bank in O'Dell) was under no legal obligation to turn over Plaintiff's property, and had no legal right to do so, the O'Dell court determined. Defendant (Bank) was indebted to Plaintiff for all amounts wrongfully withheld.

The O'Dell Court specifically stated that:

"The method of accomplishing a levy ... is the issuing of warrants of distraint ..." and that the Internal Revenue Service must also serve "... with the notice of levy, [a] copy of the warrants of distraint and [the] notice of lien." The court emphasized that the "... Levy is not effected by mere notice."

No such Warrant of Distraint (Court order) has been furnished.

[3] Internal Revenue 220 4855

220 Internal Revenue

220XXV Collection

220XXV(B) Levy or Distraint

220k4855 k. In General. Most Cited Cases

"The method for accomplishing a levy on a bank account is the issuing of warrants of distraint, the making of the bank a party, and the serving with notice of levy, copy of the warrants of distraint, and notice of lien."

"The distress authorized by § 3690 is different from anything known to the common law, both because it authorizes a sale of the property seized, and because it extends to other personalty than chattels. By its very nature it requires that the demands of procedural due process of law be rigorously honored. In the case at bar there was no lawful acquisition of possession of the property representing the surplus funds held by defendant, whether those funds were derived from the corporeal or intangible resources of Brokol. The surplus should be returned to the Trustee to be administered under the Bankruptcy Act. The foregoing opinion shall constitute findings of fact and conclusions of law as required by Rule 52, Fed. Rules Civ. Proc. 28 U.S.C.A." FREEMAN v. MAYER, 152 F. Supp. 383, 387 (D.N.J. 1957).

(Emphasis added)

In *Linwood Blackstone et.al., v. United States of America*, (778 F.Supp 244 [D. Md. 1991]), the Court held that: "The general rule is that no tax lien arises until the IRS makes a demand for payment."

"Without a valid "Notice and Demand", there can be no tax lien; without a tax lien, the IRS cannot levy against the taxpayer's property ... this Court concludes, consistent with the views expressed in *Berman, Marvel, and Chila* that the appropriate "sanction" against the IRS for its failure to comply with the 6303(a) notice and demand requirement is to take away its awesome non-judicial collection powers." *Myrick v. United States*, [62-1 USTC 9112], 296 F 2d 312 (5th Cir. 1961).

Because you are in control of my property, it is your responsibility to know the law and act in accordance with the law, or, if unfamiliar with the law, to seek competent legal advice (assuming any can be found). If you have received no signed court judgment, and no copy of a lawful "Notice and Demand" which should have been filed prior to any "Notice of Levy" being provided to you, or any Warrants of Distrainment, then the IRS is outside its authority.

2. You may have received a copy of the IR Code quotes used to substantiate its position. On the 668 levy form, the authority listed includes 6331(b) through 6331(e) but omits 6331(a) which is the actual authority for a levy and the Section upon which the others rely and refer to. (See attached exhibit A). Why is section (a) not cited on the form?

The authority to levy is restricted to and contained within Section 6331(a) of the Internal Revenue Code.
IRC 6331 - Levy and distraint.

(a) Authority of Secretary. If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official). If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section. [Emphasis Added].

Section 6331 is the only authority in the entire IR Code that provides for the Levy of wages and salaries, etc., and the "limitation" of that authority should be rather obvious since it pertains ONLY to certain officers, employees, and elected officials of the government, and, of course, their employer, the government. Your establishment is NOT my employer, nor is the Federal government or IRS, and I am NOT such "officer, employee, or elected official", nor have I ever been since my Service in the Navy.

You are under NO legal compulsion to act on behalf of the IRS on a simple "Notice of Levy", nor are you held responsible for defending your customer's property and rights against illegal encroachment. You have the fiduciary duty to prove the IRS' standing to be doing what they are against my property prior to releasing such

property.

4. The courts have correctly ruled that the provisions of the "Internal Revenue Code" are only "directory in nature" and NOT mandatory. [See *Lurhing v. Glotzbach*, 304 F.2d 360 (4th Cir. 1962); *Einhorn v. DeWitt*, 618 F.2d 347 (5th Cir. 1980); and *United States v. Goldstein*, 342 F. Supp. 661 (E.D.N.Y. 1972)]. Courts have also held that the provisions of the "Internal Revenue Manual" are not mandatory and lack the force of law. [See *Boulez v. C.I.R.*, 810 F.2d 209 (D.C. Cir. 1987); *United States v. Will*, 671 F.2d 963, 967, (6th Cir. 1982)].

These cases have never been overturned. There is no legal compulsion for your establishment to comply with "directory" notices, and certainly no authority for you to have to comply with an administrative letter that has no legal basis to it.

5. In the IR Manual, section 6110, it states...

IR Manual 3(17)(63)(14).1:

6110 Tax Assessments

"(2) All tax assessments must be recorded on Form 23C Assessment Certificate. The Assessment Certificate must be signed by the Assessment Officer and dated. The Assessment Certificate is the legal document that permits collection activity."

In the IR Manual, it also states...

IR Manual 3(17)(46)2.3

"Certification

"(1) All assessments must be certified by signature of an authorized official on Form 23C, Assessment Certificate. A signed Form 23C authorizes issuance of notices and other collection action . . .

"(2) Some assessments are prescribed for expeditious action as and be certified on a daily basis. These assessments will require immediate preparation of Form 23C from RACS . . . Form 23C is described in Document 7130, IRS Printed Product Catalog as: "23C—Assessment Certificate-Summary Record of Assessments."

No such documentation exists, and no court order exists, nor was a copy supplied to your establishment. As far as the "Notice of Levy" is concerned, you may presume that the responsibility for these determinations rests with the IRS. It naturally follows, in accepting that presumption, that the IRS is then legally responsible for that "determination." What you would be failing to consider is that, since you are in possession of the property being sought, it is PayPal who is ultimately responsible for any determination having to do with its disposition, not the IRS, especially since the IRS is acting outside its own laws and authority as provided herein. This means it is YOU who must assure that the IRS is NOT coercing or intimidating you into acting for them illegally, through doing your proper due diligence into these facts of law.

The individual who actually receives the "Notice of Levy" rarely, if ever, realize the responsibility for correctly determining that the validity of the levy is theirs. Nor do they fully realize the importance of making a correct legal determination, since an incorrect determination can lead to a personal liability. Even worse, it could lead to criminal charges called "conversion of property", "tortuous interference", and provide prima facie evidence of "criminal collusion", and other felony charges.

6. IRC 6303 - Notice and demand for tax.

"(a) General Rule ... the Secretary shall ... give notice to each person liable for unpaid tax, stating the amount and demanding payment thereof."

As evident from the Court case just mentioned, it would be, and is, impossible for the IRS, and you personally, to move forward at all if the IRS has not issued a "Notice and Demand," especially to a proper party.

The IR Manual shows that the IRS even agrees with those established principles and encourages their agents to abide by those principles by citing the authority of United States v. O' Dell which says that a proper levy against anyone must issue from a warrant of distraint (Court Order) and not by mere "notice". The O'Dell Court specifically stated that:

"The method of accomplishing a levy ... is the issuing of warrants of distraint ..." and that the Internal Revenue Service must also serve "... with the notice of levy, [a] copy of the warrants of distraint and [the] notice of lien."

No such warrants of distraint documents have ever been received by me. The court emphasized that the "... Levy is not effected by mere notice."

Attorney's who bother to read the IR Code manual know that the "warrant of distraint" mentioned above is the Court Order which is required pursuant to IRC 7403.20. This means any actions the IRS demands of ANY third party agency is void on its face, and is a harm to me personally, damaging my credit rating and threatening my property rights.

IRC 7403 - Action to enforce lien or to subject property to payment of tax.

(c) Adjudication and decree: The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property.

No such actions have taken place in this case, nor was provided to you, to validate a lawful "Notice of Tax Lien".

In a more recent decision involving tax indebtedness, that of Stephens Equipment Co., Inc., debtor," (54 BR, 626 [D.C. 1985]), the court said:

"The role of the district court in issuing an order for the seizure of property in satisfaction of tax indebtedness is substantially similar to the court's role in issuing a criminal search warrant. In either case, there must be a sufficient showing of probable cause." (Emphasis added).

More importantly, the court held that in order to substantiate such an Order, the IRS must present the court with certain validation. The court stated that "... to effect a levy on the taxpayer's property [an Order] must contain specific facts providing the following information:

An assessment of tax has been made against the taxpayer, including the date on which the assessment was made, the amount of the assessment, and the taxable period for which the assessment was made;

Notice and demand have been properly made, including the date of such notice and demand and the manner in which notice was given and demand made;

The taxpayer has neglected or refused to pay said assessment within ten days after notice and demand; ...

Property, subject to seizure and particularly described presently exists at the premises sought to be searched and that said property either belongs to the taxpayer or is property upon which a lien exists for the payment of the taxes; and

Facts establishing that probable cause exists to believe that the taxpayer is liable for the tax assessed."

Most of these elements are missing from this file, not to mention a host of other illegal errors involved.

The "Court Order" also protects the third party from a liability which may arise under C.F.R. 26 (Code of Federal Regulations) 301.6332-1(c) repeated here:

"... Any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy [i.e., the bank, County and Recorder, or other corporate manager] is not relieved from liability to a third party who owns the property ..." (Emphasis added).

I would highly suggest PayPal immediately contact the sending IRS agent and request that they explain the "Notice of Levy", and provide validation to you in writing of the required documentation, so your liability is covered... which they will NOT provide for you, proving this Notice to you. I have included a letter you can use as a template to send a request for validation of the IRS Levy to show your good

faith in complying with the law, but also to obtain the evidence for a valid Levy. It is most likely that the IRS will not respond with any information, or if they do respond, it will not provide the requested documentation or wet ink signature of anyone who will take personal responsibility for absolving you of any liability should you choose to comply with their illegal request.

If my funds are released by PayPal to the IRS without proper and lawful documentation proving your liability to the IRS, and that the IRS is fully within the law to be acting in coercing your establishment to release funds within the 21 days allotted, then not only will suit be brought against PayPal but compensatory and punitive damages as well.

Please comply with the law and prove your responsibility to the IRS... and keep in mind the IRS has been complicit in multiple scandals in recent years, and just recently for lying and destruction of evidence. Be the first company to legally and rightfully challenge this corrupt agency and prove you have zero legal responsibility to respond to this frivolous "Notice of Levy."

If you wish to discuss this in greater detail, please contact me.

Sincerely,

Jeffrey T. Maehr
924 E. Stollsteimer Rd
Pagosa Springs, Colorado 81147