

Office of Chief Counsel  
Internal Revenue Service  
**Memorandum**

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date: May 11, 2005

to: Associate Area Counsel (Seattle/Anchorage)  
(Small Business/Self-Employed)

from: Mitchel S. Hyman, Senior Technician Reviewer, Branch 1 (Collection, Bankruptcy and  
Summonses)

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subject: Updating Levy Amounts for Additional Accruals of Interest and Penalties

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. Whether the Internal Revenue Service may update a levy for post-levy accruals of interest and penalties by altering language on the Form 668-C, Final Demand, rather than issuance of a new Form 668-A, Notice of Levy, when the person or levy source who is in possession of the taxpayer's property or rights to property has failed to surrender it timely.
2. Whether the Service must provide the information required by IRC §§ 6631 and 6751(a) in an updated final demand.

CONCLUSION

1. The Service may issue an altered final demand indicating additional accruals of interest and penalty, in lieu of issuing a new notice of levy.
2. The Service is not required to provide any penalty or interest information under sections 6631 and 6751(a) in an updated final demand.

## FACTS

The Service issues a Form 668-C, Final Demand, when a levy source in possession of the taxpayer's property or rights to property has received the Service's Form 668-A, Notice of Levy, and has failed to respond timely. The Form 668-C advises that if the levy source does not surrender the taxpayer's property or rights to property within five days, enforcement action will be taken against the levy source under IRC § 6332. In cases where the levy source has not surrendered the taxpayer's property or rights to property timely, you propose that the Service modify the final demand to include a statement of accruals of interest and penalty since service of the original levy and a demand for the updated payoff amount. You suggest that modifying the final demand will save time and resources because the Service will not have to issue a second notice of levy. In responding to your proposal, we have consulted with the Administrative Provisions and Judicial Practice Division of the Associate Chief Counsel (Procedure and Administration), Division Counsel (Small Business/Self-employed) and the Office of Collection, Collection Policy, General Payment Process & Analysis (Small Business/Self-Employed).

## LAW AND ANALYSIS

1. Ten days after notice and demand and a taxpayer's neglect or refusal to pay the Service is entitled to collect a tax by levy upon all property and rights to property belonging to the taxpayer under IRC § 6331(a). As used in section 6331, the term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with costs and expenses. Treas. Reg. § 301.6331-1(a)(1). The Service may accordingly levy to collect payment of any accrual of interest or penalty. Updating the levy by including new accruals on the Form 668-C rather than a new notice of levy is consistent with section 6331(a).

We note that except for continuous levies under sections 6331(e) and 6331(h), the levy attaches only to property possessed or existing obligations owed to the taxpayer at the time the levy is served. Treas. Reg. § 301.6331-1(a)(1). For example, a notice of levy on a bank would not attach deposits made after the notice of levy is served. The Service would have to serve a new notice of levy to reach those deposits. Therefore, while the Service may serve final demand on a levy source that includes interest and penalty accruals since the date the original notice of levy was served, the levy is limited to the taxpayer's property or rights to property held by the levy source on that date. As a consequence, such a procedure is primarily useful where the funds held by the levy source exceed the tax due on the date of the levy.

2. The Service is also required to give a taxpayer notice of its intention to levy and appeal rights under sections 6330 and 6331(d), but the notice of levy and the final demand are generally not served on the taxpayer.<sup>1/</sup> The notice of levy and final demand

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<sup>1/</sup> Pursuant to IRM subsection 5.11.2.1.7, the Service provides a copy of the notice of levy to the taxpayer.

are sent to a levy source after the taxpayer has been informed of the interest, penalty, and tax due.

Section 6631 of the Code provides that the Secretary shall include the Code section imposing interest and a computation of the interest on each notice requiring a taxpayer to pay interest under this title. Because the notice of levy and final demand are not issued directly to the taxpayer, the Service is not required to include any interest information under section 6631 in the notice of levy or final demand.

Section 6751(a) similarly provides that the Secretary shall include the name of the penalty, the Code section imposing the penalty, and a computation of the penalty with each notice of penalty under this title. While section 6751 does not expressly limit its application to notices provided to taxpayers as section 6631 does, we believe that the term "notice of penalty" refers only to notices provided to taxpayers. The notice of levy or final demand also is not a notice of penalty because it is issued to recover property from the person in possession of property subject to levy, who is not the taxpayer. Thus, the Service is not required to include any penalty information under section 6751(a) in the notice of levy or the final demand.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-3610 if you have any further questions.