

J. Collection: The IRS Does Not Adequately Protect Low Income Taxpayers from the Harmful Effects of Levies

The National Taxpayer Advocate believes personal contacts are necessary to ensure IRS levy actions are not creating hardships for low income taxpayers.

The law requires the IRS to release a levy it knows is causing an economic hardship due to the financial condition of the taxpayer.¹ In the *Vinatieri* case, the U.S. Tax Court held that when the IRS sustains even a proposed levy on a taxpayer it knows is in economic hardship, it abuses its discretion because the IRS would have to release such a levy immediately.² Despite urging by the National Taxpayer Advocate to reevaluate and adjust its practices in this area, the IRS continues to resist changes to ensure levies do not create or exacerbate economic hardships.³

This problem is particularly evident in the Federal Payment Levy Program (FPLP), under which 15 percent of a taxpayer's monthly Social Security benefit is automatically levied and applied against an outstanding tax liability.⁴ While the IRS has modified the FPLP to screen out low income taxpayers who rely on Social Security payments to meet basic living expenses, it has chosen to *not* screen out taxpayers if IRS data indicate they *may* have unfiled tax returns, even if those records also indicate the taxpayer's income would otherwise meet the screening criteria.

In her 2013 Annual Report to Congress, the National Taxpayer Advocate raised a number of concerns regarding the use of IRS levies in cases where the taxpayers appeared to be suffering economic hardship.⁵ In its response to this report, the IRS continues to insist that taxpayers must provide additional information before it can verify an economic hardship. The IRS even goes so far as to assert that the FPLP low income filter (LIF) is “not determinative of economic hardship or inability to pay.”⁶ This statement is inaccurate, as the LIF *is* determinative of economic hardship. As described in the 2013 report, the LIF was established based on a TAS research study that applied the IRS's formula for economic hardship to a

1 IRC § 6343(a)(1)(D); Under the regulations, “economic hardship” is established “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.” Treas. Reg. § 301.6343-1(b)(4).

2 *Vinatieri v. Comm’r*, 133 T.C. 392 (2009).

3 For a complete discussion of the Federal Payment Levy Program (FPLP) and the IRS's implementation of the FPLP filter, see National Taxpayer Advocate 2011 Annual Report to Congress 350-365 (Most Serious Problem: *The New Income Filter for the Federal Payment Levy Program Does Not Fully Protect Low Income Taxpayers from Levies on Social Security Benefits*). See also National Taxpayer Advocate 2013 Annual Report to Congress 84-93 (Most Serious Problem: *Hardship Levies: Four Years After the Tax Court's Holding in Vinatieri V. Commissioner, the IRS Continues to Levy on Taxpayers It Acknowledges Are in Economic Hardship and Then Fails to Release the Levies*).

4 The Federal Payment Levy Program is an automated program used by the IRS to collect delinquent tax debts. The FPLP is used by the IRS to issue continuous levies on funds received by delinquent taxpayers from the federal government. Retirement and disability payments issued by the Social Security Administration (SSA) are included in the program.

5 National Taxpayer Advocate 2013 Annual Report to Congress 84-93 (Most Serious Problem: *Hardship Levies: Four Years After the Tax Court's Holding in Vinatieri v. Commissioner, the IRS Continues to Levy on Taxpayers it Acknowledges Are in Economic Hardship and Then Fails to Release the Levies*).

6 IRS response to recommendation 7-4, National Taxpayer Advocate 2013 Annual Report to Congress Most Serious Problem: *Hardship Levies: Four Years After the Tax Court's Holding in Vinatieri v. Commissioner, the IRS Continues to Levy on Taxpayers it Acknowledges Are in Economic Hardship and Then Fails to Release the Levies* (May 23, 2014), available at <http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf>.

based on a TAS research study that applied the IRS's formula for economic hardship to a representative sample of taxpayers in the Social Security FPLP population. The LIF is the result of that study and was implemented because the Deputy Commissioner for Services and Enforcement at the time accepted the LIF as the proxy for economic hardship.

The National Taxpayer Advocate believes the IRS can and should do more in this area. In cases where data (*e.g.*, information on tax returns and information provided by third parties) indicate the taxpayer is low income and likely to experience hardship, the IRS should not issue levies without trying to personally contact the taxpayer to determine his or her actual financial condition. While the IRS contends that information provided by the taxpayer is needed to verify economic hardship, the National Taxpayer Advocate believes personal contacts are necessary to ensure IRS levy actions are not creating hardships for low income taxpayers. These contacts can also confirm the taxpayers are legally required to file any returns the IRS believes may be delinquent. Further, the IRS must be more flexible in returning levy proceeds that have caused an economic hardship or made it worse.

This fiscal year, the National Taxpayer Advocate has received commitments from the Commissioner to exclude more taxpayer cases from the FPLP process. Specifically, taxpayers over 65 years of age will be filtered out if they have filed at least one return within the last three tax years and the IRS has not identified a potential delinquent return after the last filed return. Although the IRS response to the recommendations in the 2013 Annual Report to Congress refers to plans to include in the FPLP LIF taxpayers who receive supplemental security income (SSI), we note that these cases are already excluded from the FPLP program. Alternatively, we believe the IRS has conceptually agreed to exclude from the FPLP process taxpayers who are receiving any disability payments from the Social Security Administration (SSA).

In FY 2015, the National Taxpayer Advocate will continue to advocate for proper safeguards in systems and procedures driving the use of FPLP levies. TAS will work with IRS and SSA to explore systemically identifying taxpayers who are recipients of SSA disability payments and excluding them from the FPLP process.

TAS will also continue researching the impact of FPLP levies on low income taxpayers, the benefits the IRS has obtained through the FPLP low income filter, and opportunities to expand the LIF criteria to include more taxpayers who the current process may be harming. TAS will work with the IRS to clarify procedural guidance governing pre-levy considerations, and the return of levy proceeds in appropriate situations.