

Third Party Checklist for Determining Validity of Department of the Treasury – Internal Revenue Service Notice of Levy

To Whom It May Concern:

Be in compliance with the law, do not proceed to the next step (questions below) unless the answer to each and every question below is **YES**. If the answer to **ANY** question is **NO**, the levy is **invalid** and is **LEGALLY UNENFORCEABLE**.

YOU MAY BE HELD PERSONALLY LIABLE FOR HONORING SUCH A “NOTICE” WITHOUT AN ATTACHING COURT ORDER.

Inform the IRS that you are **unable** to honor the “levy” until **ALL** of the **legal requirements** (as found in Title 26 USC and elsewhere) for such have been met.

- 1.) Is there a copy of the **court ordered Warrant of Distraint and Notice of Lien** included with the **Notice of Levy**? (F.R.C.P., 69. EXECUTION)
- 2.) Does the tax that the IRS claims is owed arise from taxable activities subject to miscellaneous excise taxes under **Title 26 USC, subtitle E**, or those that would pertain to the enabling regulations of **Title 27 CFR Part 70** (*alcohol, tobacco, and firearms*), **or** are you a Federal employer as defined in **Title 26, section 3401(d)** (in one of the U.S. territories **and** responsible for administering provisions under **26 USC subtitle C**)?
- 3.) Was a **valid Notice and Demand** for unpaid tax sent to the individual whose property is the target of the levy?
- 4.) Has a **valid** Notice of Lien been filed with the appropriate court **at least** 10 days **after** the **Notice and Demand** was received, and has the court issued a WARRANT OF DISTRAINT pursuant to **IRS section 7403**?
- 5.) Has the IRS sent **at least** three notices to the individual asking for payment and has the individual refused to pay?
- 6.) Has the IRS sent a **Notice of Intent to Levy** to the individual **at least** 30 days prior to the date on the **Notice of Levy** you received?
- 7.) Is the **Notice of Levy** duly signed, in ink, by an IRS agent (Criminal Investigator of either the Intelligence Division or the Internal Security Division) and is there a proper delegation order in existence giving that particular agent the authority to issue a **Notice of Levy**?

If **ALL** of the above conditions have been satisfied, the levy **could** be valid. However, if you turn over property in response to an improper levy, the individual who owns the property can sue you personally for punitive as well as actual damages (see, **26 CFR 301.6332-1c**). (See, **Title 26 USC § 6331(a)** – may be on reverse side.)

U.S. Constitution, Amendment V, states in pertinent part: “No person shall be deprived of life, liberty or property without due process of law.”

26 CFR 301.6632-1(c) states in pertinent 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.”

**IT IS YOUR RESPONSIBILITY AS THE FIDUCIARY TO INSURE
THAT ALL OF THE LEGAL REQUIREMENTS ARE MET!!!
TO BE LAWFUL YOU MUST KNOW & COMPLY WITH THE LAW.**

USC > TITLE 26 > Subtitle F > CHAPTER 64 > Subchapter D > PART II > § 6331

(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.) [The above is generally missing on the reverse side of Department of the Treasury - Internal Revenue Service Notice of Levy forms. Be aware also that there is no OMB number showing on the forms.]

Suggestion: Just write the IRS agent and ask a few questions, such as

Agent Smith:

Regarding your "Notice of Levy" as received, copy attached, my/our customer/employee has raised a couple of legal points that need some clarification. Could you please respond to these so I/we can be guaranteed that I/we am/are not acting improperly in turning over this property to you, otherwise I/we face legal liability which will result in my/our being sued. Please answer the questions in the accompanying checklist, and provide documentation supporting your positions, and when I/we see that all legal requirements have been met and due process is being followed, I/we will be happy to honor your Notice of Levy.

Thank you for your cooperation.

[The silence from the agent will be deafening.]

FOR MORE INFORMATION:

To see a relating opinion letter please visit

<http://www.tax-freedom.com/opinion2.txt>

AND

Sovereignty Education and Defense Ministry (**SEDM**)

<http://www.sedm.org/>