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From:

Sent: Wednesday, September 19, 2012 12:13:09 PM

To:

Cc:

Subject: RE: Question re Levy on Pension Benefits

As you know, a levy attaches to all of the taxpayer's property and rights to property (except exempt property) pursuant to section 6331(a). With respect to pension plans, the Federal Tax Lien (FTL) attaches to a participant's interest in a plan if the participant has a vested benefit, which would be when the participant has acquired a nonforfeitable right to part or all of the accrued benefits. The FTL attaches to all present rights the taxpayer has under the plan, including the participant's present right to payment, the present right to payment in the future, and the present right to elect a form of distribution even if presently unexercised.

In your case, because the taxpayer has the right to receive monthly annuity payments from the plan, the government's levy reaches such distributions and neither the taxpayer nor the plan administrator may thwart collection by alleging a lack of authorization. The RO need not wait for an election by the taxpayer to receive payments. The only two defenses to levy are (1) that the person is not in possession of the taxpayer's property or rights to property or (2) the property or rights to property are subject to prior judicial attachment. See *U.S. v. Nat'l Bank of Commerce*, 472 U.S. 713, 721-22 (1985). Neither defense seems applicable here. [REDACTED] The plan administrator faces personal liability for failing to honor a levy pursuant to section 6332(d), possibly including the 50% penalty under section 6332(d)(2). See *U.S. v. Donahue Industries*, 905 F.2d 1325 (9th Cir. 1990).

Feel free to call me directly if you have any questions or further want to discuss.

Regards,