

Certified U.S. Mail c/o [address]  
#P-xxx-xxx-xxx [City] zip code exempt  
Return Receipt Requested [State] REPUBLIC  
Restricted Delivery Requested  
[Date of Notice]

[Name of Bank]  
Attention: Legal Department  
[Street Address]  
[City] zip code exempt  
[State] REPUBLIC

NOTICE AND DEMAND  
FOR RESTORATION OF ACCOUNT

Re: IRS "Notice of Levy" dated [mm/dd/yy]  
against [Victim(s)]  
[Account Number]

Dear Sir/Ms:

Notice and demand are hereby served upon you to restore  
all  
funds which have been paid by [Name of Bank] from account  
number  
[Account Number] to the Internal Revenue Service, under  
color of  
IRS Form 668-A "Notice of Levy" dated [mm/dd/yy] (see  
attached).

FORMAL NOTICE

Formal Notice is hereby given to you concerning law(s)  
applicable to IRS levies, and your liabilities for  
violating  
those laws. IRS Forms 668-A, 668-A(c) and 668-W are the  
"Notices  
of Levy" that are sent to third parties such as banks,  
employers,  
and other financial institutions to confiscate property  
for the  
purpose of collecting taxes allegedly owed. This NOTICE

AND

DEMAND to you covers the relevant factors in the correct lien/levy procedure, and demonstrates how the IRS has misused and abused their extremely limited authority in this area, particularly in the case of funds which were unlawfully confiscated from [Name of Bank] account #xxxx-xxxxxx (hereinafter "Victim's Account") by alleged agent(s) of the "Internal Revenue Service" [sic] (hereinafter "IRS").

In what follows, we explain first what a "levy" is, and we examine how it is commonly mis-perceived by both the third parties who receive it (e.g. banks) and by the IRS agents who issue it. Then we cover the legal requirements that must be met before a Notice of Levy can be valid. We also discuss how, in many cases, IRS agents use the Internal Revenue Manual (hereinafter "IRM") as their legal "authority" in the levy process, even though the courts have ruled that the IRM conveys no such legal authority. We then relate the specific effect this has on IRS employees who fail to recognize the limited nature of their authority. We review the responsibilities and liabilities of third parties (like [Name of Bank]) who may receive an IRS Notice of Levy. Finally, attached is a checklist for determining whether or not an IRS Notice of Levy is valid.

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## THE LEVY

To understand the limited nature of a levy, we begin by defining the term. A "levy" is a confiscation of property

in  
accordance with a legal judgment. From the definition  
itself, we  
see that there are two elements to a levy: the first  
element is  
that a levy is a confiscation of property; but, the  
definition  
is limited by the second element which is that, before  
property  
can be confiscated, it must be in accordance with a legal  
judgment.

In civil law, the specific process is carried out by a  
Writ  
of Execution, or Warrant of Distrainment, which is a "formal  
process  
issued by court[s] generally evidencing the debt of the  
defendant  
to the plaintiff and commanding the officer to take the  
property  
of the defendant in satisfaction of the debt." (Federal  
Rules of  
Civil Procedure, Rule 69) The plaintiff in the instant  
case is  
the IRS; the defendant is a [Status of Victim(s)]. The  
Warrant  
of Distrainment, or its equivalent, results in a lien filed  
against  
the property by the court. A lien, by definition, is a  
claim on  
property for payment of debt.

The following are important points to understand regarding  
the nature of a levy:

(a) levy can only come after seizure;

(b) seizure only applies to property subject to  
forfeiture;

(c) the only property subject to forfeiture is that which  
comes  
under the provisions of IRC Subtitle E -- Alcohol,  
Tobacco,

and Certain Other Excise Taxes; and

(d) all the enabling regulations pertaining to levies are found in Title 27 CFR, which pertains only to those activities described in (c) above.

The individual who actually receives the Notice of Levy is a third party, but rarely, if ever, do third parties realize that the responsibility for determining the validity of a levy is theirs (i.e. the bank employee's, or officer's, responsibility). Nor does such a third party ever fully realize the importance of making a correct legal determination, since an incorrect determination can lead to a personal liability and possibly also a criminal charge for "conversion of property."

From Black's Law Dictionary, Fifth Edition, we find that conversion is an unauthorized and wrongful exercise of dominion and control over another's personal property, to the exclusion of or inconsistent with the rights of the owner. Anyone still doing business with banks or other financial institutions must take the time to notify the appropriate bank officials of the Notice of Levy's limited application. These officials will benefit from the knowledge necessary to protect them from perfectly justified damage suits brought against them by damaged customers. Information available to us indicates that a rapidly growing number of People are becoming aware of the applicable law and are not bowing down to IRS threats and bullying tactics.

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Most People have little or no understanding of the applicable law, and thus are unaware of the statutory requirements that must be met before a Notice of Levy can be valid. We have found that most People assume the IRS has already made that determination; otherwise, why would the IRS be sending the Notice of Levy in the first place? In their minds, it naturally follows that the IRS is then legally responsible for any errors. What those who receive the Notice of Levy fail to consider is that, since they are the fiduciary in possession of the property, it is they who are ultimately responsible for determining its disposition -- not the IRS. The trust we place in those who maintain our property is much like the trust we place in our doctor; it should be maintained at the highest possible level of honesty and integrity.

The IRS agent who sends a Notice of Levy is usually acting on the presumption that he has the requisite authority. Unfortunately, most IRS agents have no idea what the law requires. Surprisingly, the agent has no legal obligation to tell the third party whether the levy is valid and, more than likely, the agent doesn't know himself. Rather, because the third party has possession of the property, it is his/her responsibility to know the law and to act accordingly, or to seek competent legal advice (assuming any can be found). The bottom line is this: were it not for the many parties involved

and the various legal aspects that seem to confuse the average attorney, it would be impossible for the IRS to seize property under the guise of collecting income taxes.

#### AUTHORITY FOR THE LEVY

The authority to levy is restricted to and contained within Section 6331(a) of the Internal Revenue Code ("IRC"). The annotated version of the United States Codes provides more insight into the purpose of Section 6331. Title 26 USCA 6331, under Note 5, describes the purpose of this section as follows:

Purpose. This section was enacted to subject salaries of federal employees to the same collection procedures as are available against all other taxpayers, including employees of a state.

You will not see either of these paragraphs printed on the back of any Notice of Levy form. For some reason, the IRS begins quoting their levy authority with the ominous sounding words of subsection (b): "Seizure and sale of property." However, that subsection is only an explanation of the term "levy" as that term is used in the previous subsection, IRC 6331(a), that limits the authority for that levy.

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Section 6331(a) contains the following key sentence:

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.  
[emphasis added]

This sentence would seem to imply that only government employees are subject to levy. This would be correct if it specifically referred to the "employment tax" on income under Subtitle C, but it is important to emphasize that this section is implemented by regulations pertaining to, and making enforceable, levies on the manufacture of alcohol, tobacco, and firearms under 27 CFR Part 70, and certain other excise taxes under Subtitle E of the IRC.

The USC/CFR Parallel Table of Authorities reveals quite clearly the limited application of this IRC Section by identifying these excise taxes. The enabling regulations that it specifies pertain ONLY to 27 CFR Part 70 (alcohol, tobacco, and firearms) and those other miscellaneous excise taxes found in Subtitle E of the IRC. There is simply no connection whatsoever with income tax in Subtitle A. Therefore, assuming that all other legal requirements are met (e.g., notice and demand, court order, lien, etc.), a levy may be made only on property of those persons who are described in IRC Subtitle E, and on the property of the government employees described in 6331(a). No similar provisions exist for anyone or anything else!

One of the more troubling statements which the IRS makes appears in IRS Publication 1 (Rev. 10-90) entitled Your Rights as a Taxpayer. On the last page under the subheading, "Access to your private premises," it states:

A court order is not generally needed for a collection officer to seize your property. However, you don't have to allow the employee access to your private premises, such as your home or the non-public areas of your business, if the employee does not have court authorization.

We will show that the statement "A court order is not generally needed for a collection officer to seize your property" is an incredible distortion of the truth. Keep in mind that the IRS admits that its interpretation of the law may directly conflict with court decisions. This is often the case, unfortunately, because its interpretations seem to be designed more to intimidate than to represent the intent of the law.

Section 6331 is the only authority in the entire IRC that provides for the levy of property such as wages, salaries, etc. The limitation for that authority should be rather obvious since it pertains ONLY to those persons who are subject to the provisions of IRC Subtitle E, and certain officers, employees, and elected government officials and, of course, their "employer" -- the government. But, there are further limitations! We say "certain" officers, employees, and elected officials because, in

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this particular section, the applicable definition of "United States" restricts the list of government agencies to those operating within the geographical confines of U.S. government possessions and territories such as Guam, American Samoa, etc. There are at least three (3) definitions of the term "United States" in the IRC, and it is important to know which definition is in operation with respect to any given section.

In this case, the ONLY government "employer" under such an obligation and legally bound to honor the levy would be a federal agency outside the 50 Union states. We make the distinction because there are many federal officers, employees, and elected officials working for government agencies within the 50 Union states who might otherwise think that the law provides for a levy from their own agency. They are concerned because they are employed within the 50 Union states, but no other third party is identified by this section, and thus, no other third party may be served with such a notice.

The technical aficionado who might question this should note that this section identifies the subject of a levy by specifying the employer as defined in section 3401. IRC 3401 is in Subtitle C (Social Security) and the employer referred to is, of course, an entity that is defined for the purpose of administering Subtitle C provisions.

An employer is NOT the taxpayer under Subtitle A. Rather, he, she, or it is an entity that is defined for the purpose of administering the provisions of Subtitle C only, and who, by the definition contained within Section 3401, employs other participants (defined as "employees") within the geographic confines of the insular island possessions and territories of the United States. Thus, the "employer," for purposes of this section, is a territorial government agency.

Since this geographic area is outside the borders of the 50 Union states, the lawmakers were not under any constitutional prohibition regarding direct or indirect taxation, or any restriction pertaining to the rules of apportionment and uniformity. The Constitution for the United States, as such, does not extend beyond the limits of the States which are united by and under it. (See *Downes v. Bidwell*, 182 U.S. 244 (1901).)

As far as the average person is concerned, it is completely inapplicable to those who have not voluntarily applied to obtain a benefit in federal entitlement programs or who have revoked their application to participate, based on the fact that their signatures were obtained via a constructively fraudulent process (if they were led to believe that participation was required).

#### DELEGATION OF AUTHORITY

Despite the apparent loopholes which seem to exonerate and provide an escape for an IRS agent's errantly exercising a presumed authority, there are other provisions that do

hold him  
responsible for its administration. Specifically, these  
provisions deal with what are called "delegation orders."  
No  
agent may administer a provision of law without a proper  
order  
delegating authority to do so.

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The authority to administer the provisions of Section  
6331,  
regardless of its applicability, is further restricted by  
national and local delegation orders designed to ensure  
agency  
compliance within the limits of the law.

As with all authority under the IRC, it is the Secretary  
of  
the Treasury who must administer the provisions for levy,  
or  
delegate the authority to do so, if and when appropriate.  
The  
delegation orders that do exist for liens and levies are  
remarkably limited. For example, the Delegation Order for  
authority to execute lien and levy actions in the Newark  
District  
Office of the IRS lists the "Internal Revenue Manual,  
Sections  
5312, 5314, 5326, 5343.2, 5421, 5541, and 5450." Notice  
that the  
citations pertaining to liens and levies within these  
orders do  
not actually contain the statutory authority to levy that  
we have  
examined thus far (i.e., IRC Section 6331).

Interestingly, the back side of the Notice of Levy form  
itself also shows a similar peculiarity. On Form 668-W,  
the  
authorities listed include 6331(b) thru 6331(e), but they  
omit

the elusive 6331(a), which is the actual authority for a levy and the statute upon which the others rely and to which they refer.

Why is Section 6331(a) not cited on the form?

In the Delegation Order, the remainder of the cite refers to the IRM which is, of course, only "directive" in nature. Since it is not the law, it cannot possibly convey actual legal authority. It can only clarify what that authority is for the benefit of agents seeking to understand how to administer the law. A nationwide search of all delegation orders has revealed that section 6331(a) has indeed been omitted from each and every one; but then again, if the authority for the levy pertains only to those previously mentioned, then it should certainly come as no surprise that delegation orders pertaining to service centers and district offices within the 50 Union states of the Union (including [State] REPUBLIC, of course) cannot authorize such a levy.

If agents are puzzled by this, their only other source for clarification is the Internal Revenue Manual ("IRM").

#### THE INTERNAL REVENUE MANUAL

The IRC is the body of law that contains the legal authority for the Secretary (and his delegates) to administer provisions pertaining to the collection of income taxes. It is, however, not unusual for the IRS to cite the IRM as their legal authority

for various aspects of a collection procedure.

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As long as there is some illusion of authority, it is easy for IRS agents to justify (in their own minds) that certain actions are within the scope of their authority and, as mentioned previously, the delegation orders do list another "authority," specifically the IRM. But, research has revealed that at least six courts have ruled that the IRM does not have the force of law. The courts have ruled that the provisions of the IRM 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); *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).

The simple fact is that the IRM may not be relied upon as the legal authority for any part of a collection action, which leaves Section 6331(a) as the sole authority for a levy. As we have just seen, this Section is severely limited. So, it would seem that the non-judicial collection powers of the IRS (without a court order) are not as awesome as some IRS officials would have the public believe. Or, is it just another case of the naked emperor deluding himself? Either way, it doesn't end there. The Notice and Demand is another nail in the

coffin.

#### THE IRS NOTICE AND DEMAND

The non-judicial collection authority is wholly dependent upon a statute (Section 6321, also enabled by 27 CFR Part 70), which provides for a lien to arise automatically when a taxpayer fails to pay a tax that is demanded via a "Notice and Demand" under Section 6303. If such "demand" is not or cannot be made, then a lien cannot automatically arise, and subsequent collection activity cannot occur. All of the available case law confirms this. In *Linwood Blackston 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. *Myrick v. United States* [62-1 USTC 9112], 296 F.2d 312 (5th Cir. 1961). 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 I.R.S. for its failure to comply with the [Sec.] 6303(a) notice and demand requirement is to take away its awesome non judicial collection powers.

[emphasis added]

IRC Section 6303 is the law that requires a "Notice and Demand" to be issued; however, the IRS does not issue such notices for reasons which are beyond the scope of our discussion here. As is evident from the court case just mentioned, it is

impossible for the IRS to move forward with the legal action that is required by Section 7403 (entitled Action to enforce lien or to subject property to payment of tax) if they have not issued a Notice and Demand. In most cases, the Notice of Levy given to a third party falsely states that a Notice and Demand has been issued; but if the IRS fails to issue the required Notice and

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Demand pursuant to section 6303, then they cannot possibly obtain the necessary legal sanction through a court of law to enforce the levy. Why? Because, in order to obtain the sanction of a court, they would need to produce a copy of the Notice and Demand that was referenced on the Notice of Levy form, and they can't do that if it does not exist. If the IRS is unable to send the Notice and Demand, then it follows that it would be impossible to obtain the necessary court order.

Throughout this explanation, it is important to keep in mind that no single IRS official is necessarily guilty of fraud. It is more accurate to say that the process itself is constructively fraudulent. In other words, it is not necessarily intentional. It is sufficient to explain that there are many IRS employees involved, and that the employee responsible for any given

part of  
the "presumed correctness" of any given action rarely, if  
ever,  
has any communication with any of the other employees, who  
then  
act on those presumptions.

Those who have worked in a typical busy office environment  
know that the responsibility for getting things done often  
falls  
on a low-level employee who is trying to do the work of 10  
People. The short-cuts they teach their fellow workers are  
not  
necessarily in the best interest of their employer, but  
since  
they are unfamiliar with the details of their company's  
inner  
workings, the reason that it is a detriment is beyond  
their  
understanding. Of course, if there is no penalty for their  
actions, the likelihood that their invented procedure will  
be  
corrected by a superior is slim. When new employees are  
hired,  
they learn the same defective way of doing things.

The government is more prone to this situation than any  
privately owned business because its employees are  
generally less  
productive and have less incentive to change anything. In  
the  
situation we are examining, the law is written to protect  
People  
from these inadvertent short-cuts made by lower level  
employees.  
That is why a court order is necessary to effect a levy.

## THE COURT ORDER

Page 57(16) of the IRM entitled Legal Reference Guide for  
Revenue Officers confirms (on the upper right-hand corner  
of the  
page) that a court order (i.e., Warrant of Dstraint) is  
necessary. We say "confirms" because the IRM is merely



referring  
to established principles of law, since it does not itself  
constitute the law that requires the Warrant of Distrainment.  
Moreover, the IRM shows that the IRS even agrees with  
those  
established principles and encourages their agents to  
abide by  
them. The IRM, for example, cites the authority of United  
States  
v. O'Dell, 160 F.2d 304 (6th Cir. 1947), to confirm that a  
proper  
levy against amounts held as due and owing by employers,  
banks,  
stockbrokers, etc., must issue from a Warrant of Distrainment  
(i.e.,  
a court order) and not by mere notice. The O'Dell court  
specifically states that:

The method of accomplishing a levy on a bank account is  
the  
issuing of warrants of distrainment, the making of the bank a  
party, and the serving with notice of levy, [a] copy of  
the  
warrants of distrainment, and [the] notice of lien.

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The court emphasized that:

Levy is not effected by mere notice.  
[emphasis added]

Agents who bother to read the IRM know that the "Warrant  
of  
Distrainment" mentioned above is the court order which is  
required  
pursuant to IRC Section 7403.

In the case of Freeman v. Mayer, 152 F.Supp. 383 (1957), a  
U.S. District Court ruled, "A levy for delinquent taxes,  
pursuant

to statute, requires execution of warrant for distraint  
...." In  
the case of *In re Holdsworth*, 113 F.Supp. \_\_\_\_\_, No. 279-50  
(1953), a U.S. District Court ruled that "... a mere  
notice of  
levy is not tantamount to an effective levy upon and  
distraint of  
all sums of money due from debtors of bankrupts, in  
absence of  
warrant of distraint." In a recent Memorandum of Points  
and  
Authorities in Support of an Application to Enter the  
Premises of  
a safe deposit box at Wells Fargo Bank in California, an  
Assistant U.S. Attorney admitted on record that the IRS is  
required to obtain a court order to do so:

The Supreme Court recognizes the broad power of seizure  
and  
distraint authorized by 26 U.S.C. 6331, but has held that  
the government must seek a warrant before entering private  
premises to search for distrainable assets to satisfy tax  
assessments. *G.M. Leasing Corporation v. United States*,  
429  
U.S. 338 (1977). See also, *United States v. Condo*, 782  
F.2d  
1502 (9th Cir. 1986).  
[emphasis added]

Thus, the relevant authorities, including the U.S. Supreme  
Court, make it abundantly clear that a court ordered  
Warrant of  
Distraint is required before property can be confiscated  
by the  
IRS for payment of delinquent taxes.

In a decision involving the tax indebtedness of *Stephens  
Equipment Company, 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.

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:

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... 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.

[emphasis added]

In their Memorandum of Points and Authorities supporting

entry into a safe deposit box at Wells Fargo Bank, the government reiterated the standard of probable cause necessary for an entry order:

In the Ninth Circuit, the standard of probable cause necessary for an entry order is similar to the standard used for criminal search warrants. ... In particular, the government must establish the following elements to be entitled to an ex parte order:

- (1) The Internal Revenue Service has made an assessment of tax and notice and demand for payment;
- (2) the taxpayer has neglected or refused to pay the tax;
- (3) notice of intent to levy has been given; and
- (4) there presently exists, at the premises to be searched, some property subject to seizure which belongs to the taxpayer or is otherwise encumbered by a federal tax lien. citing In re Gerwig, 461 F.Supp. 449 at 452 (C.D. Cal. 1978)

Is it any wonder that, in most cases, the IRS cannot seek a court order? Nevertheless, the court order is a statutory requirement for the levy procedure because it establishes the validity of the IRS's claim to the third party to whom the levy is presented. These procedures assure the third party that the lien and subsequent levy have been executed in a lawful manner. The court order also protects the third party from a liability which may arise under 26 CFR Part [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]

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Again, one of the purposes of the court order is to prevent overzealous IRS agents from taking a short-cut as previously discussed.

Please be advised that there is on record no court order or declaratory judgment holding that the "[Name of Trust or Other Entity]" is a Nominee, Transferee, or Alter Ego of "[Victim(s)]" as is alleged on IRS Form 668-A dated [mm/dd/yy].

It is amazing what happens when People insist that the IRS obey the law. What is even more encouraging is that more People are doing this each and every day, and the political pressure is now becoming impossible for the IRS to ignore. According to IRS Commissioner Margaret Milnor Richardson in a speech before the National Association of Enrolled Agents in Nevada on August 26, 1993, (as of that year) 1 in 5 People had stopped (voluntarily) complying, and the situation was out of control. We would say just the opposite: the situation is finally becoming controllable because the public seems to have developed the will

to study and know the law, and to confine the IRS within the law.

#### SUMMARY

We have reviewed the nature of, confusion surrounding, and authority for the levy. We have examined it in light of its application, the enabling regulations, the pertinent delegation orders, the missing notice and demand that is the cornerstone of the process leading up to the lien/levy procedure, and we have shown why the IRS may not obtain the necessary court order without it. A levy cannot be made against a bank account without a court order, which cannot be obtained without the due process requirements of proper notice and hearing on the matter. The U.S. Constitution has never been repealed, and the Due Process guarantees of the Fourth and Fifth Amendments are still in full force and effect, because they have not been waived.

#### DEMAND FOR RESTORATION

Wherefore, demand is hereby made upon you to restore all funds which were paid by [Name of Bank] from the [Victim(s)] to the IRS under color of IRS "Notice of Levy" Form 668-A dated [mm/dd/yy]. Our records indicate that the amount in question was at least [Dollar Amount].

#### RESERVATION OF RIGHTS AND NOTICE OF LIABILITY FOR DAMAGES

[Victim(s)] explicitly reserves all their Rights to hold

[Name of Bank], and all employees who were involved in the transaction in question, jointly and severally liable for actual, consequential, and exemplary damages incurred by [Victim(s)] as a consequence of this transaction.

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#### NOTICE OF DEADLINE

If the [Victim(s)] account is not restored to its full value prior to unlawful confiscation by the IRS, and if formal written notice of same is not received by us, within thirty (30) calendar days of the date of this NOTICE AND DEMAND, then [Victim(s)] will have no alternative but to hold [Name of Bank] and the individual employees involved jointly and severally liable for all actual, consequential, and exemplary damages, which have arisen under 26 CFR Part [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]

We have provided you with a readable summary of the law relevant to levies performed under authority of the Internal Revenue Code. A much more detailed exposition of this law can be provided to you, upon request. In addition to an irrefutable

reason for restoring the [Victim(s)]'s account to its original status, it is our sincere hope that this letter will also give you and other bank officials sufficient legal justification to handle IRS Notices of Levy quite differently in the future. May we recommend that you consider adopting the attached checklist as your standard operating procedure for handling all IRS Notices of Levy from now on?

Thank you in advance for your immediate cooperation in this matter.

Sincerely yours,

[Name(s) of Victim(s)]

copies: litigation files

attachments

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Third Party Checklist for Determining Validity  
of Internal Revenue Service Notices of Levy

(Do not proceed beyond each step unless the answer to each question is YES. If the answer to any question is NO, the levy is invalid. Inform the IRS that you are unable to honor the levy until all legal requirements are met.)



☐ Is there a copy of the court ordered Warrant of  
Distrain  
and Notice of Lien included with the Notice of Levy?

☐ Does the tax that the IRS claims is owed arise from  
taxable  
activities subject to miscellaneous excise taxes under IRC  
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 IRC  
Section 3401(d) (in one of the U.S. territories and  
responsible for administering provisions under IRC  
Subtitle  
C)?

☐ Was a valid Notice and Demand for unpaid tax sent to  
the  
individual (or entity) whose property is the target of the  
levy?

☐ Has a valid Notice of Lien been filed with the  
appropriate  
court at least ten (10) days after the Notice and Demand  
was  
received and has the court issued a Warrant of Distrain  
pursuant to IRC Section 7403?

☐ Has the IRS sent at least three notices to the  
individual  
(or entity) asking for payment and has the individual (or  
entity) refused to pay?

☐ Has the IRS sent a Notice of Intent to Levy to the  
individual (or entity) at least 30 days prior to the date  
on  
the Notice of Levy you received?

☐ Is the Notice of Levy signed by an IRS agent and is  
there a  
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 a valid one. However, if you turn over property in response to an improper levy, the individual (or entity) who owns the property can sue you personally for actual as well as exemplary and consequential damages (see 26 CFR [301.6332-1\(c\)](#)).

It is your responsibility as a fiduciary to insure that all legal requirements are met.

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Roscoe Pound Warned Us

Mr. Roscoe Pound was Dean of the Law School of Harvard University from 1916 to 1936. He was awarded the American Bar Association medal of "conspicuous service to the cause of American jurisprudence" in 1940. He was the author of many works in various fields of law. He deserves our ear when he speaks.

Back in 1946, Mr. Pound wrote a paper entitled "Administrative Agencies and the Law." A few succinct comments from that paper follow:

"To them, administrative officials, law is whatever is done officially. And so administrative law is whatever is done by administrative agencies ....

"There was a steady growth of administrative agencies in

the  
states in the last decade of the nineteenth century and  
the  
first decade of the present century, as part of the rise  
of  
social legislation. At first, this produced a certain  
friction with the courts .... This led some advocates of  
administrative development to denounce the separation of  
powers which is fundamental in American constitutional law  
....

"Today, exemption from judicial scrutiny of its actions  
seems to be the ambition of every federal administrative  
agency ... but in the hands of agencies and subordinates  
of  
agencies not disposed to be scrupulously fair, these  
simple,  
nontechnical methods may easily serve as traps for the  
citizen who is seeking to obey the law ....

"But, it is a characteristic tendency of present-day  
administrative agencies to use as a ground of decision  
some  
idea of policy not to be found in the statute or general  
law  
nor even in any formulated rule of the agency ....

"Many of these agencies entertain complaints; institute  
investigations upon them; begin what are in effect  
prosecu-  
tions before themselves; allow their own subordinates to  
act as advocates for the prosecution; and often make the  
adjudications in conference with those same subordinates.  
All this runs counter to the most elementary and  
universally  
recognized principles of justice."

[emphasis added]

He goes on to say that excessive zeal, absence of a fair  
hearing, disregard of evidence, prejudgment by  
administrative  
agencies, improper delegation of authority and obstruction  
of

judicial relief, are the characteristics which require checks.

Does this sound as if he is speaking of the Internal Revenue Service?

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