

# PUBLICATION

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## IRS Seizing Retirement Benefits!

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IRS seizure of retirement benefits *can* occur under certain circumstances. The IRS has the authority, generally under Section 6331 of the Internal Revenue Code (Code), to do so in order to satisfy a federal tax lien for taxes due. There is a very limited group of retirement benefits which are exempt from these tax levies, such as for special retirement benefits provided to recipients of military Medals of Honor. See generally Code Section 6334(a)(6). Most retirement plan administrators are accustomed to the idea that pre-distribution retirement plan benefits are generally not subject to the claims of creditors of the plan participants, except in the case of a qualified domestic relations order or perhaps in cases of a participant's theft from plan assets. Although not specifically addressed by many plan documents, there is a further exception allowing the federal government to levy on retirement benefits to satisfy a federal tax lien.

Creditors can generally reach assets after they are distributed from a qualified retirement plan, but waiting for the distribution to be made may be problematic for the creditors. The Service is not so limited, but nevertheless has been somewhat selective in deciding to seize pre-distribution vested assets from retirement plans. However, where it chooses to do so, the IRS has a process for levies on retirement plan assets. In general, when a distribution becomes available to the participant the IRS will send either Form 668-W or Form 668-A, Notice of Levy, to the plan administrator to seize assets as they become payable. Plan assets taken by the IRS to satisfy a tax levy are not subject to the 10% early withdrawal tax penalty. The early withdrawal penalty was eliminated after the IRS tried to seize the assets of a Florida resident and then impose both the income taxes due plus an early withdrawal penalty.

Importantly, the current provisions of federal law which protect most qualified retirement assets from the claims of creditors (ERISA) do not generally apply to assets held under an IRA, simplified employee pension or Keogh plans, government plans, or most church plans. In limited situations, other protections from the claims of creditors may be available for such arrangements, either as a matter of state law or through a claim of sovereign immunity by a governmental unit. However, while these other protections may provide a certain degree of protection against claims by most creditors, they may not prevent a levy by the Service.

Should you have any questions or wish to discuss any aspects of the Service's lien rights with respect to retirement plan benefits, please contact any of the attorneys in the Firm's Tax Department.