



IRS and State Levies on Bank Accounts for Tax Collection

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Both the Internal Revenue Service (“IRS”), for delinquent federal tax obligations, and the Illinois Department of Revenue (“IDOR”), for delinquent State income tax obligations, have the authority to levy against a taxpayer’s bank account(s) as a means of collecting unpaid taxes. Although IRS regulations on levies against bank accounts are far more thorough than those of IDOR, a comparison reveals two distinctions addressed below.

Holding periods

For an IRS levy, the bank must freeze the funds in a bank account (up to the amount of the levy) for 21 days and if by Day 21 the bank has not been notified of release of the levy, the bank pays the levy amount, **plus any interest earned during the holding period**, to the IRS on Day 22.

For IDOR levies, the holding/freeze period before paying the levied amount to IDOR is 20 days. Like an IRS levy, the money in the levied account that would be turned over to the State includes any interest earned during the holding period.

Amount subject to levy

The more significant distinction between IRS and IDOR levies on bank accounts is the fact that an IRS levy locks on to deposits in the account only as of the day upon which levy was served on the bank; any incoming deposits after the date of the levy would require the IRS to pursue one or more additional levies until the delinquent tax obligation is fully paid. By contrast, an IDOR levy applies to all funds in the levied account(s) during the 20 day holding period (i.e., funds in the account on the date of the IDOR levy **and** subsequent deposits during the holding period).

More on IRS levies

As I mentioned at the beginning, IRS regulations on tax levies against bank accounts are far more thorough and informative than those of the State, and so I will continue with topics covered by the IRS that are not specifically addressed in an Illinois statute or regulation. I am not suggesting definitively that IDOR would take a different position on these topics, only that the IRS provides more clarity and leaves less to the imagination or to assumptions.

Taxpayer's petition to subordinate tax lien to a mortgage interest

Maybe it's just cynical of me to doubt that the IRS would generously and frequently subordinate its lien position, but at least on paper there is a process whereby the delinquent taxpayer can petition the IRS to subordinate its tax lien to another creditor if the taxpayer is having difficulty procuring credit because of a tax lien. The example given by the IRS is a mortgage refinancing for which the prospective creditor is balking due to the IRS lien on assets that might otherwise determine loan approval; in such cases, the taxpayer is directed to an application process whereby (s)he can request that the IRS execute a subordination of its lien in favor of the mortgage under consideration.

Levy service charges assessed by bank

The IRS has no objection to a bank charging an administrative fee for complying with the levy process, **provided** that the fee does not come out of the levied funds in the account. For example: Taxpayer owes IRS \$1,500 and has a balance of \$2,500 in her/his levied account; any service charge must come from the \$1,000 that is not subject to remittance to the IRS.

Account funds exceeding the levied amount

While I **assume** that this right would be the same under an IDOR levy against a bank account, the IRS regs make it clear that funds in the account above the levied amount are not frozen and are available for withdrawal during the holding period.

Joint accounts

The IRS regulations clearly state that any account for which the taxpayer has legal capability to withdraw funds is subject to levy, even if the account is a joint account into which most, or even all, of the deposits have been made by a joint co-owner.

Calculation of interest as part of levy

The IRS specifies that the bank's normal date for calculation/accrual of interest on the deposit account does not apply when adding interest that would be earned on the levied amount during the 21 day holding period. Two pertinent examples provided by the IRS are: EXAMPLE A..... IRS levy for \$10,000 is served on the bank; on the day of service Taxpayer has \$5,000 in the account. After 21 days, Bank would pay to IRS \$5,000 plus any interest that would have accrued during the 21 day holding period. EXAMPLE B.....Bank is served with an IRS levy of \$10,000 and balance in Taxpayer's account(s) is \$9,999. After 21 days, Bank would pay \$10,000 to IRS if as much as \$1.00 of interest would have been earned on the \$9,999 balance(s).

Mortgage escrow accounts

Generally, the IRS treats funds in a mortgage escrow account as being exempt from levy; however, that exemption does not apply to any escrowed amount that represents an overpayment or a refundable amount that can be accessed by the Taxpayer.

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