volving funds totaling $7.5 million.

Further, according to the Lawyers' Fund, some 38 other states have some form of overdraft notification requirements. Based on these concerns, the Lawyers' Fund initiated recommendations to the Courts to expand the then existing rules to address the use of overdraft protection in connection with attorney escrow accounts, culminating in the amendments that became effective April 1, 2021[v].

As a result of the recent amendments, Disciplinary Rule 1.15(b)(1) now provides that, under the penalty of discipline, no attorney escrow account may have overdraft protection. In addition, the Bounced Check Rule has been expanded to require banks to include instances of overdrafts within the mandated reporting obligations they must make to the Lawyers' Fund, irrespective of whether the overdrawn check is actually honored and paid[vi].

The process for making what is now called a "dishonored check and overdraft report" otherwise remains unchanged, including the 10-day waiting period before which the Lawyers' Fund is required to forward that report to the appropriate Attorney Grievance Committee.

Lawyers who receive notification from their bank of a dishonored check or overdraft issue that may lead to a report to the Lawyers' Fund, should give immediate attention to such notification. Should the lawyer form a reasonable conclusion that such notification resulted from a mistake by the bank, timely action must be taken within the 10-day window if the lawyer seeks to have the bank withhold or withdraw its report to the Lawyers Fund, and thereby avoid a referral to the grievance committee. In that regard, it is critical to bear in mind that the curing of any account insufficiency by the deposit of additional funds does not constitute a proper basis for withholding or withdrawing such report[vii].

By instilling greater lawyer compliance with their fiduciary responsibilities, and enhancing public protection, these rules as now amended should continue to serve the judicial system well.

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Lien vs. Levy. What Hits First and What Rights Do You Have to Contest the IRS?

By Stelios Karatzias, Esq.; and Karen Tenenbaum, Esq.; LL.M. (Tax), CPA of Tenenbaum Law

A taxpayer who owes the Internal Revenue Service an outstanding tax debt can face further repercussions for failing to pay in a timely manner. The IRS undertakes a Collection Process when tax debts have not been satisfied. Typically, this process results in the taxpayer receiving either a Federal Tax Lien or Levy. Understanding how Liens and Levies work is the key to contesting them and avoiding loss of the taxpayer's assets to the IRS.

What Is a Lien? What Is a Levy?

A lien is a legal claim against all the taxpayer's current and future property to secure the payment of a tax liability. A levy is a legal seizure of a taxpayer's property or rights to property to satisfy a tax debt. A taxpayer's assets come in many forms, such as real estate, bank accounts, wages, and vehicles.

Who Knows About a Lien?

The IRS files a Notice of Federal Tax Lien, similar to how creditors file liens for an unpaid obligation. The purpose is to give public notice to creditors that the IRS has a legal claim against the taxpayer's assets. The IRS files the notice with the local or state authorities.

When Does Collection Go from a Lien to a Levy?

If the taxpayer fails to respond to IRS notices and resolve their tax liability, they will receive a Final Notice of Intent to Levy. The Final Notice is issued 30 days before a potential seizure of the taxpayer's assets. The IRS can seize most types of property with a few exceptions.

What Methods Can a Taxpayer Use to Stop the IRS?

A Taxpayer can challenge a Federal Tax Lien and Levy by use of:

- Form 9423, Collection Appeals Request
- Form 12153, Request for Collections Due Process or Equivalent Hearing ("CDP")

A Collection Appeals Request enables taxpayers to challenge the IRS' collection action and resolve their tax liability using a faster process than a CDP.

However, they cannot contest the underlying penalties and they lose their ability to pursue a CDP Hearing on the same issue at a later point.

In contrast to the Collection Appeals Program, taxpayers who pursue a CDP Hearing can argue they have reasonable cause to dispute the collection action and may challenge the penalties imposed by the IRS. However, a CDP Hearing may not occur for several months and a taxpayer may not want to leave their tax liability unresolved for such a long period.

The IRS will provide the taxpayer with a Notice of Determination. The taxpayer may appeal this Notice by filing a petition and may also have tax court rights.

Conclusion

Determining the best process for challenging a Lien or Levy is dependent on the taxpayer's goal, the circumstances of their tax controversy and at what point in the collection process the taxpayer is in.

Taxpayers should consult experienced tax attorneys such as Tenenbaum Law, P.C. (www.litaxattorney.com), for guidance.

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Founder and Managing Partner, Tenenbaum, P.C.

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