

## Selected Subjects

Guru Chatter\*

on Garnishments and Levies



### **Garnishment of Direct Deposit of Benefits**

Question: I am looking for any information available regarding the garnishment of social security direct deposits.

Answer by Andy Zavoina:

There is information in [Court Watch](#) and in the [threads](#).

A recent case is *Miller v. Bank of America*, Cal. Super. Ct., No 301917 which is a San Francisco Superior Court decision and at this time won't reach further than that.

Bank of America is going to appeal this case and like *Lopez v. Washington Mutual Bank* this may well be reversed. *Lopez* was a similar circumstance. It was in the 9th Circuit which includes CA, OR, WA, AZ, MT, ID, NV, AK and HI. The 9th reversed itself in *Lopez*. We have no way of knowing what could happen in other states or what the final disposition will be here. But even the Social Security Administration is trying to promote direct deposit and this would have a chilling effect on that and on the relationship these customers have with their banks. No one wants to see some of the changes that would result from this ruling on *Miller*.

### **Do We Levy the Business Account even if the Levy is on an Individual?**

Question: When we receive a levy on an individual and they only have a checking account with a business name and their name, do we levy the funds in that account?

Answer by John Burnett:

Assuming that your use of the word "levy" refers to tax levies by the IRS or the state revenue department, what must occur before the levy attaches is a match between the party whose property is being levied and ownership of an account.

If the levy is on property owned by Jack Smith, it reaches only accounts owned by Jack Smith. That would include an individual or joint personal account on which Jack is an owner. It would also include a business account in the name of Jack Smith as a sole proprietor. It would not include a business account for Jack Smith, Inc., or Jack Smith, LLC, or a partnership owned by Jack Smith and Sam

Jones.

Be sure to distinguish between accounts on which Jack is an account owner (not an authorized signer) and those owned by businesses of which Jack is an owner. Jack must own the account for the levy to reach it.

Answer by Ken Gollhofer:

I agree with John's analysis, but want to add that this is an area where the IRS is apparently finding reason to criticize banks' handling of their claims.

Here is a recent addition to the IRS web site which purports to provide some guidance in this area. In my opinion, the clearest *guidance* it offers is to call the contact number listed on the levy if you have questions. Personally, I would suggest reasoned analysis such as John's over calling the IRS for advice.

One of my client banks called them explaining that they did not have an account in the name of "XYZ," the name on the levy they received, for this client. However, they did have one in the name of "ABC." The IRS representative agreed the levy did not attach, but a few days later the bank received a levy in the name of "ABC."

The potential for an "overshare" of information when discussing customer accounts exists whenever you talk to IRS representatives on the phone. If my own analysis did not allow me to feel comfortable in my decision, I would talk to the bank's attorney, not the IRS.

Banks should find some comfort in the fact that the customer has 21 days to dispute account ownership with the IRS before the customer delivers the funds. However, my experience is that if the customer disputes the issue immediately, the IRS employs no philosophy that would be described as "prompt corrective action;" they are likely to leave the levy in place for the entire period of time and the customer may be significantly impacted.

### **IRS Levies Exempt from the RTFPA?**

Question: Are IRS levies covered under the Right to Financial Privacy Act and if covered would we need the government's "certification of compliance with the Right to Financial Privacy Act"? It's not clear whether IRS levies are covered since under the exceptions section it states that "(c) nothing in this title prohibits the disclosure of the financial records in accordance with procedures authorized the Internal Revenue Code." That makes it sound like it is exempt from the RTFPA. What do you think?

Answer by Ken Gollhofer:

The RFPA specifically excludes "disclosure pursuant to title 26 (the Internal Revenue Code)" from coverage; the RFPA does not apply to IRS summons, levies, etc. The IRS will not provide you with a certification of RFPA compliance before turning over the funds or the information.

The exception is based on the fact that the Internal Revenue Code contains consumer protections similar, but not identical, to those found in the RFPA.

### **Levying Deposits Made During the Hold Period**

Question: When a levy is received against a customer's account and I put a hold on the amount of funds that the customer has at that time for 21 days, if they receive a deposit during the 21 days am I allowed to take those funds also?

Answer by Randy Carey:

If you are talking about an IRS levy - no. From the IRS:

5.11.4.3 (05-05-1998)

Amount that Must be Surrendered

1. The bank must send the amount in the taxpayer's accounts. However, it must send no more than the amount shown on the notice of levy.
2. The notice of levy only reaches the amount on deposit when the levy is received. Money deposited later is not surrendered, including deposits during the holding period. Another levy must be served to reach this money. Also, the levy only reaches deposits that have cleared and are available for the taxpayer to withdraw.

### **Levy the Child's and Corporate Accounts, Too?**

Question: I received an IRS Levy on a customer under their individual tax ID. The customer also has two other accounts tied to their name. On one, the customer's is the second name with the first name being that of a corporation and the account is under the corporation's EIN. On the second account the customer's is the second name, with a child listed as the primary owner and the SSN used is the child's. Do I put levies on the corporation's and the child's accounts?

Answer by John Burnett:

The target of the levy must have both ownership in the account and the right to access the account.

The corporate account is owned by the corporation, not by the individual; it cannot, therefore, be reached by a levy in the name of the individual even if the individual signs on the account.

The second account sounds like it might be a joint account. If that is the case, the individual targeted by the levy has both ownership and access; therefore, the account can be reached.

But be careful. Make certain the account isn't an UTMA account. If it is, the custodian has access but not ownership, so the account would not be reached by the levy. Check the account documentation for this status.

### **Subsequent Deposits Subject to Garnishment or Levy?**

Question: When a garnishment or levy is received and the amount due exceeds the account balance, is the hold placed for the amount due or for the collected balance in the account on the date the notice is received? In other words, are subsequent deposits subject to the garnishment or levy?

Answer by Ken Gollhofer:

"Garnishment" and "attachment" are generally terms used in state law to describe remedies ordered by state courts that involve the taking of a judgment debtor's property. "Levy" is a term used in both state and federal law to describe a claim made by state or federal taxing authorities.

Any state actions described as garnishments, attachments or levies would be governed entirely by state law. They may or may not constitute a continuing lien against future deposits. You might want to post your question in your state's forum and make it clear that you are asking about state law.

IRS levies are a "snapshot," not a continuing lien. They attach to the money that is in the account the day the levy was received; they do not constitute a lien against future deposits. Given that the funds will be held for 21 days, there is no rationale for the bank to use any balance (collected, available, etc.) other than the one the customer would see on his or her statement as of that date.