

## IRS ENFORCEMENT ACTIVITY IS ON THE RISE

Cincinnati Bar Report

Published February, 2006

By Howard S. Levy

Despite laws enacted during the Clinton administration that many feared would hinder IRS collections, enforcement activity has steadily been on the rise.

The number of garnishments issued by the IRS between 2001 and 2004 has more than tripled, from 674,080 to 2,029,613. IRS tax lien filings have also been on the rise, increasing 20% from 2001 to 2004.

<u>Collection Action</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Garnishment	674,080	1,283,742	1,680,844	2,029,613
Tax Liens	426,166	482,509	544,316	534,392

But when is an IRS collection target at risk for a property seizure? How quickly can it happen? What protections does the target have against it?

### Collection Risk Scores

In most cases, the IRS will send four computer generated notices to a target before it commences enforcement. These notices are, in order, (1) the initial Notice and Demand for Payment, (2) the Reminder – Balance Due notice, (3) the Urgent – Balance Due notice and, finally, (4) the Final Notice of Intent to Levy. These notices are usually issued five to six weeks apart. It can take six months to complete the notice and demand cycle.

While the notices are being sent, the IRS Inventory Delivery System is ranking each delinquent account for further handling. This is internally referred to as Risk Based Collection criteria. The IRS risk scores take into consideration the amount of tax owed, the age of the account and the type of tax involved. Some types of tax delinquencies, such as trust fund employment taxes, are assigned a high risk score. Newer accounts are often assigned a higher risk factor than older accounts.

Based on the risk scores, cases are placed in a holding queue and are either sent to the Automated Collection System or to a Revenue Officer.

### Automated Collection System

Automated Collection System (ACS) is a series of 15 centralized telephone call centers. ACS collection representatives spend the majority of their time responding to inbound calls from taxpayers, many of which are in response to the previously issued

collection notices. In 2002, 66% of ACS resources were spent on inbound calls, with 30% working inventory and 4% on outbound calls. It has been reported that medium risk ACS cases are deemed to be currently uncollectible if not resolved within 52 weeks, while low risk cases are temporarily written off after 65 weeks in ACS.

If a collection target is in ACS, it is unlikely that a call will be received from the IRS. The “hit” will likely be from a computer generated wage or bank garnishment. Based on its impersonal and remote nature, ACS representatives do not engage in more complex seizures, such as those involving retirement plans, personal residences, transferee liability and business seizures.

### Revenue Officers

The Revenue Officer function is localized, with the Revenue Officers located in the city in which the taxpayer resides. Revenue Officers visit the taxpayer’s place of business or residence and often require face to face meetings and negotiations. Revenue Officers are the most experienced and sophisticated collection employees within the IRS. They work high dollar cases deemed to be of significance. Revenue Officers have the ability to closely watch and monitor a target’s activities and can act swiftly, if necessary. There are approximately twenty Revenue Officers in the Cincinnati area working out of the downtown and West Chester IRS field offices.

ACS collection representatives and Revenue Officers do have an restrictions on their ability to take action against a collection target. Absent jeopardy, the IRS must adhere to formal procedures under the Internal Revenue Code designed to ensure that collection targets have due process before the IRS can implement a seizure.

### Final Notice of Intent to Levy and Due Process Rights

Before any garnishment or seizure takes place, the IRS must issue a final notice informing the target of its rights to due process. This notice is referred to as a Final Notice of Intent to Levy and Rights to a Due Process Hearing. It is the fourth and final notice that the IRS issues in the “notice stream”. This final notice informs the target of the IRS decision to commence enforced collection activity. It also provides the target with rights to dispute and appeal the proposed seizure before it occurs.

The IRS cannot commence its seizure until 30 have passed since the final notice was issued. Within this 30 day period, the target has the right to file an administrative appeal with the IRS.

### Appeals and the Stay on Collection

The appeal of the Notice of Intent to Levy is known as a Collection Due Process Appeal. A collection appeal generally disputes the IRS decision to seize assets and offers alternatives to the proposed enforcement.

If the appeal is timely filed, the IRS cannot take enforced collection action while the appeal is pending. The IRS often uses discretion and administratively ceases collection action on untimely appeals, but it is only mandatory when the appeal is timely.

The administrative appeal portion of a collection due process appeal generally can take anywhere from six to twelve months. The average collection appeal took 241 days in 2004, down from 274 days in 2002 and 253 days in 2003. This is valuable time to the collection target; it is time ticking to the IRS (although only 1% of all final notices are appealed).

The majority of the time is not spent in active negotiations, but rather having the case transferred from collection to appeals and assigned to an Appeals Officer. The case slowly moves through “the system”. Once the Appeals Officer has the case file and is ready to work the case from inventory, a notice will be sent out to the target setting a hearing date and time. The hearing is often conducted by phone, but usually will require substantiating financial documentation be sent to the Appeals Officer in advance.

<u>Source of Collection</u>	<u>Notices Issued</u>	<u>Appeals Filed</u>	<u>Percent</u>
Automated Collection Service	1,628,467	13,951	.86%
Revenue Officers	<u>110,394</u>	<u>4,645</u>	<u>4.21%</u>
Total	1,738,861	18,596	1.07%

As reflected in the Table, in fiscal year 2004, the IRS issued 2,276,684 final notices to targets that enforced collection action was being contemplated. Automated Collection Service issues 16 times more final notices than Revenue Officers. However, final notices issued by Revenue Officers were more than 4 times as likely to be appealed. ACS targets might just feel as if they are a lower priority without the added attention bestowed by Revenue Officers. Clearly, notices issued by Revenue Officers have a more defined impact on collection targets.

### Judicial Review of the Enforcement Action

After the Appeals hearing is concluded, the target will receive a notice describing the findings of the appeals officer. This document is called a Notice of Determination. If the collection target disagrees with the findings in the Notice of Determination, and the appeal was timely filed, a petition can be filed to the U.S. Tax Court or to U.S. District Court.

The purpose of instituting Tax Court or District Court tax collection litigation is to have an impartial third-party review the proposed IRS enforcement action. Up to that point, the target has had the IRS reviewing the collection decisions of the IRS.

The IRS remains prohibited from proceeding against the target while the case is in court. Collection litigation involving income taxes is heard by the Tax Court, while disputes involving employment taxes have jurisdiction in District Court. The litigation portion of a collection appeal generally lasts one year.

A collection target should not place much hope on having the Tax Court or District Court overturn the IRS's administrative collection decision. There is a high standard for overturning the decision of the IRS Appeals Officer. The target must show that the proposed IRS collection action is not an efficient collection of taxes and that it is more intrusive than necessary. The standard of review is an abuse of discretion by the IRS in their collection enforcement decision.

For practical purposes, it is difficult to prove that the IRS is abusing its discretion in seeking enforcement against a target that has not worked out a plan to repay a tax liability. The following reflects how the IRS has fared in Tax Court on collection cases:

<u>Court Decisions</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Decided for IRS	54%	73%	81%
Taxpayer's Case Dismissed	36%	23%	14%
Decided for Taxpayer	3%	1%	1%
Split Decision	3%	3%	1%
Remanded to Appeals	4%	0%	3%

Dismissals against taxpayer are for failure to state a claim, late filing of the petition or lack of jurisdiction.

Many of these cases were filed on a pro se basis, but the point remains that 97%-99% of collection cases that make it to Tax Court are lost by the target. When the litigation ends, the case goes back into the field, and either to ACS, the Revenue Officer or the holding queue.

At the end of the day, the IRS is a debt collector that continues to extend credit to bad accounts.

---

### Biography

CBA member Howard Levy represents individuals and businesses in IRS controversies. Howard is a former trial attorney for the IRS and has an LL.M. in Taxation. His tax practice includes offers in compromises, tax litigation, trust fund recovery assessments, IRS collection activities and the use of bankruptcy to resolve tax controversies. Howard is a member of Voorhees & Levy LLC in Blue Ash.