

Ignoring an IRS Notice of Levy May be a Costly Mistake

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On December 17, 2013, the United States District Court for the Northern District of Georgia issued its decision in **United States v. Morris Legal Group, LLC**, 113 AFTR 2d, 2014-XXXX (D.C. Georgia). Gilbert Greenburg, a disbarred attorney, was employed as the office manager of Morris Legal Group, LLC, a law firm in Atlanta, Georgia. He helped set up and manage the law firm's personal injury practice. Interestingly, Mr. Greenburg had no written agreement with the law firm relative to the amount of compensation he was entitled to receive. Rather, he wrote himself payroll checks from time to time based upon the level of the firm's profits. His compensation generally ranged from \$4,000 to \$8,000 per month.

Mr. Greenburg owed the IRS over \$100,000 in unpaid income taxes, interest and penalties. On May 26, 2011, the IRS sent the law firm a Notice of Levy and formally requested it surrender Mr. Greenburg's wages until the levy was released. Morris Legal Group, LLC appears to have ignored the levy and continued paying Mr. Greenburg compensation.

The law in this area is fairly straightforward. IRC §§ 6331 and 6332 generally allow the government to collect delinquent taxes from a person by levy upon any property or property rights of that person, including salary and wages. The Eleventh Circuit in **United States v. Ruff**, 78 AFTR 2d, 96-7274 (11th Cir. 1996) clearly articulated a party's obligations upon receipt of a Notice of Levy as follows:

"Upon receipt of a notice of levy, such third parties are required to surrender that property to the IRS. The notice of levy 'gives the IRS the right to all property levied upon...and creates a custodial relationship between the person holding the property and the IRS so that the property comes into constructive possession of the government.' Those individuals who fail to honor the levy incur liability to the government equal to the full value of the property not surrendered." [Citations omitted].

There are generally two defenses that excuse a party's failure to comply with a Notice of Levy. The first defense is where it can be shown the party was not in possession of any of the delinquent taxpayer's property or rights to property at the time it received the Notice of Levy. The second defense is where the party can show, when it received the Notice of Levy, the property or property rights in question were already subject to attachment or execution under judicial process.

In this case, the law firm, Morris Legal Group, LLC, failed to honor the Service's levy. It had no defenses. Consequently, the Eleventh Circuit held it was liable for amounts it continued to pay Mr. Greenburg following receipt of the Notice of Levy (up to the amount owing by Mr. Greenburg to the IRS), plus interest on these unpaid amounts. In addition, under IRC § 6332(d)(2), it was subject to a 50% penalty (i.e., 50% of the amount owing by the person failing to honor the levy). The law firm ended up being liable to the IRS for its failure to comply with the levy for more than \$200,000. **Ouch!**

The moral to the story is simple: You cannot ignore a Notice of Levy. Unless one of the two defenses discussed above are clearly applicable, ignoring the Notice of Levy may be costly. If one of these defenses could apply, before asserting the defense, have a qualified tax practitioner review the matter. As Morris Legal Group, LLC learned, a mistake in this area of tax law can be costly.

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