Internal Revenue Manual Section 5.11.6.2(5)

Funds in Pension or Retirement Plans (03-15-2005)

(1) These instructions cover money accumulated in a pension or retirement plan, as well as Individual Retirement Arrangements (IRAs). They do not deal with levying retirement income. See section IRM 5.11.6.1 above.

(2) There are many employer and self-sponsored retirement vehicles that are not exempt from levy. These plans include, for example:

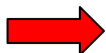
- Qualified Pension, Profit Sharing, and Stock Bonus Plans under ERISA
- IRAs
- Retirement Plans for the Self-Employed (such as SEP-IRAs and Keogh Plans)

(3) Because these retirement vehicles provide for the taxpayer's future welfare, levy on the assets in a retirement account (as contrasted with income from the account) after following the procedures set forth below.

Note: On January 1, 2000, a new exception to the 10 percent additional tax on early distributions from retirement plans was added to the Internal Revenue Code. If an account is levied upon, the taxpayer does not owe the 10 percent additional tax. Because of the levy exception to the 10 percent additional tax, occasionally taxpayers may ask the Service to levy the funds in the retirement accounts. Even though the taxpayer may be able to voluntarily withdraw money in a lump sum from a retirement account and apply it to the outstanding tax liability, do not levy on retirement assets at the request of the taxpayer. Instead, follow the procedures set forth below.

Note: An imminent CSED, alone, does not justify levying on retirement assets. Levying on assets in retirement accounts requires application of the procedures set forth below.

(4) The first step in deciding whether to levy on a retirement account is to determine what property, retirement assets and non-retirement assets, is available to collect the liability. If there is property other than retirement assets that can be used to collect the liability, or if a payment agreement can be reached, consider these alternatives before issuing a levy on retirement accounts. Also consider the expense of pursuing other assets as well as the amount to be collected.



(5) The second step in deciding whether to levy on a retirement account is to determine whether the taxpayer's conduct has been flagrant. If the taxpayer has not engaged in flagrant conduct, do not levy on retirement accounts. Deciding whether the taxpayer has

engaged in flagrant conduct must be done on a case-by-case basis. Keep in mind extenuating circumstances may exist that mitigate the taxpayer's flagrant conduct. The following are some examples of flagrant conduct.

Example: Taxpayers whose failure to pay is based on frivolous arguments such as taxes are illegal, unconstitutional, only apply to a narrow range of people, and similar arguments that have been consistently rejected by the courts.

Example: Taxpayers who continue to make voluntary contributions to retirement accounts while asserting an inability to pay an amount that is owed.

Example: Taxpayers who contributed to retirement accounts during the time period the taxpayer knew unpaid taxes were accruing.

Example: Taxpayers convicted of tax evasion for the tax debt.

Example: Taxpayers assessed with a fraud penalty for the tax debt.

Example: Taxpayers assisting others in evading tax.

Example: Taxpayers with liabilities based on illegal income.

Example: Taxpayers who are in business and pyramiding unpaid trust fund taxes, or individual taxpayers who are pyramiding unpaid income taxes.

Example: Taxpayers against whom the Trust Fund Recovery Penalty has been asserted on more than one occasion.

Example: Taxpayers who have demonstrated a pattern of uncooperative or unresponsive behavior, e.g., failing to meet established deadlines, failing to attend scheduled appointments, failing to respond to revenue officer attempts to contact. In such cases, determining alternatives and the taxpayer's dependence on the money in the retirement accounts (final step) may not be possible, so a levy may need to be served without making those determinations.

Example: Taxpayers who have placed other assets beyond the reach of the government, e.g., sending them outside the country, concealing them, dissipating them, or transferring them to other people.

Example: Taxpayers with jeopardy or termination assessments.