



JOINT COMMITTEE ON TAXATION

March 23, 2010

JCX-21-10

**A DESCRIPTION OF THE REVENUE PROVISIONS ADDED OR MODIFIED
BY THE MANAGER'S AMENDMENT TO H.R. 4849**

The manager's amendment modifies section 306 of H.R. 4849, relating to the availability of collection due process rights with respect to levies for tax liabilities of Federal contractors, adds a provision to disqualify crude tall oil from the cellulosic biofuel producer credit, and increases the corporate estimated tax payments otherwise due for certain periods.

A. Modification to H.R. 4849

1. Application of continuous levy to tax liabilities of certain Federal contractors (sec. 306 of the amendment and sec. 6330 of the Code)

Present Law

In general

Levy is the IRS's administrative authority to seize a taxpayer's property or rights to property to pay the taxpayer's tax liability.¹ Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,² and the IRS has provided both notice of intention to levy³ and notice of the right to an administrative hearing (referred to as a collections due process notice or "CDP" notice)⁴ at least thirty days before the levy is made. A Federal tax lien arises automatically when: (1) a tax assessment has been made, (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment,

¹ Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

² Sec. 6331(a).

³ Sec. 6331(d).

⁴ Sec. 6330. The administrative hearing is referred to as the CDP hearing.

and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.⁵

The 30-day pre-levy notice requirements, the taxpayer's rights before, during, and following the CDP hearing, and the Federal payment levy program are discussed below.

Pre-levy notice requirements

The notice of intent to levy and the CDP notice must include a brief statement describing the following: (1) the statutory provisions and procedures for levy, (2) the administrative appeals available to the taxpayer, (3) the alternatives available to avoid levy, and (4) the provisions and procedures regarding redemption of levied property.⁶ In addition, the CDP notice must include the following: (1) the amount of the unpaid tax, and (2) the right to request a hearing during the 30-day period before the IRS serves the levy.

Upon receipt of this information, the taxpayer may stay the levy action by requesting in writing a hearing before the IRS Appeals Office.⁷ Otherwise, the IRS will levy after expiration of 30 days from the notice.

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable in permitting assessment of tax without following the normal deficiency procedures.⁸

The CDP notice (and pre-levy CDP hearing) is not required if the Secretary finds that collection would be jeopardized by delay or the Secretary has served a levy on a State to collect a Federal tax liability from a state tax refund. In addition, a levy issued to collect Federal employment taxes is excepted from the CDP notice and the pre-levy CDP hearing requirement if the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the 2-year period before the beginning of the taxable period with respect to which the employment tax levy is served. The taxpayer, however, in each of these three cases, is provided an opportunity for a hearing within a reasonable period of time after the levy.⁹

⁵ Sec. 6321.

⁶ Sec. 6330(a)(3), 6331(d)(4). In practice, the notice of intent to levy and the collections due process notice is provided together in one document, Letter 1058, *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing*. Chief Counsel Advice Memorandum 2009-041 (November 28, 2008)

⁷ Sec. 6330(b).

⁸ Secs. 6331(d)(3) and 6861.

⁹ Sec. 6330(f).

CDP hearing

At the CDP hearing, the taxpayer may present defenses to collection as well as arguments disputing the merits of the underlying tax debt if the taxpayer had no prior opportunity to present such arguments.¹⁰ In addition, CDP includes the right to negotiate an alternative form of payment, such as an offer-in-compromise, under which the IRS would accept less than the full amount, or an installment agreement under which payments in satisfaction of the debt may be made over time rather than in one lump sum, or some combination of such measures.¹¹ If a taxpayer exercises any of these rights in response to the notice of intent to levy, the IRS may not proceed with its levy.

After the CDP hearing, a taxpayer also has a right to seek, within 30 days, judicial review in the U.S. Tax Court of the determination of the CDP hearing to ascertain whether the IRS abused its discretion in reaching its determination.¹² During this time period, the IRS may not proceed with its levy.

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997¹³ authorized the establishment of the Federal Payment Levy Program (“FPLP”), which allows the IRS to continuously levy up to 15 percent of certain “specified payments,” such as government payments to Federal contractors that are delinquent on their tax obligations. The levy generally continues in effect until the liability is paid or the IRS releases the levy.¹⁴

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury’s Financial Management Service (“FMS”), such as certain Social Security benefit and Federal wage records. When the records match, the delinquent taxpayer is provided both notice of intention to levy and notice of the right to the CDP hearing 30 days before the levy is made. If the taxpayer does not respond after 30 days, the IRS can instruct FMS to levy its Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or IRS releases the levy.

On the other hand, upon receipt of this notice information, the taxpayer may stay the levy action by requesting in writing a hearing before the IRS Appeals Office. Also, after the CDP hearing, a taxpayer has a right to seek, within 30 days, judicial review in the U.S. Tax Court of the determination of the CDP hearing to ascertain whether the IRS abused its discretion in reaching its determination. During this time period, the IRS may not proceed with its levy.

¹⁰ Sec. 6330(c).

¹¹ Sec. 6330(c)(2).

¹² Sec. 6330(d).

¹³ Pub. L. No. 105-34.

¹⁴ Sec. 6331(h). With respect to Federal payments to vendors of goods or services (not defined), the continuous levy may be up to 100 percent of each payment. Sec. 6331(h)(3).

Explanation of Provision

The manager's amendment strikes section 306 of the bill and provides that, a Federal contractor levy, defined as any levy issued to collect Federal taxes owed by a Federal contractor, is excepted from the CDP notice and pre-levy CDP hearing requirements. As with current law exceptions to the CDP procedures, Federal contractors are provided an opportunity for a hearing within a reasonable period of time after the levy.

Effective Date

The provision applies to levies issued after December 31, 2010.

B. Additional Revenue Provisions

1. Crude tall oil ineligible for cellulosic biofuel producer credit (sec. 309 of the amendment and sec. 40 of the Code)

Present Law

The "cellulosic biofuel producer credit" is a nonrefundable income tax credit for each gallon of qualified cellulosic fuel production of the producer for the taxable year. The amount of the credit is generally \$1.01 per gallon.¹⁵

"Qualified cellulosic biofuel production" is any cellulosic biofuel which is produced by the taxpayer and which is: (1) sold by the taxpayer to another person (a) for use by such other person in the production of a qualified cellulosic biofuel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or (c) who sells such cellulosic biofuel at retail to another person and places such cellulosic biofuel in the fuel tank of such other person; or (2) used by the producer for any purpose described in (1)(a), (b), or (c).

"Cellulosic biofuel" means any liquid fuel that (1) is produced in the United States and used as fuel in the United States, (2) is derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and (3) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency ("EPA") under section 211 of the Clean Air Act. The cellulosic biofuel producer credit cannot be claimed unless the taxpayer is registered with the IRS as a producer of cellulosic biofuel.

Cellulosic biofuel eligible for the section 40 credit is precluded from qualifying as biodiesel, renewable diesel, or alternative fuel for purposes of the applicable income tax credit, excise tax credit, or payment provisions relating to those fuels.¹⁶

¹⁵ In the case of cellulosic biofuel that is alcohol, the \$1.01 credit amount is reduced by the credit amount of the alcohol mixture credit, and for ethanol, the credit amount for small ethanol producers, as in effect at the time the cellulosic biofuel fuel is produced.

¹⁶ See secs. 40A(d)(1), 40A(f)(3), and 6426(h).

Because it is a credit under section 40(a), the cellulosic biofuel producer credit is part of the general business credits under section 38. However, the credit can only be carried forward three taxable years after the termination of the credit. The credit is also allowable against the alternative minimum tax. Under section 87, the credit is included in gross income. The cellulosic biofuel producer credit terminates on December 31, 2012.

The kraft process for making paper produces a byproduct called black liquor, which has been used for decades by paper manufacturers as a fuel in the papermaking process. Black liquor is composed of water, lignin and the spent chemicals used to break down the wood. The amount of the biomass in black liquor varies. The portion of the black liquor that is not consumed as a fuel source for the paper mills is recycled back into the papermaking process. Black liquor has ash content (mineral and other inorganic matter) significantly above that of other fuels.

Crude tall oil is generated by reacting acid with “black liquor soap.” Crude tall oil is used in various applications, such as adhesives, paints, and coatings. It also can be burned and used as a fuel.

Explanation of Provision

The provision modifies the cellulosic biofuel producer credit to exclude from the definition of cellulosic biofuel certain processed fuels with an acid number of greater than 25. The acid number is the amount of base required to neutralize the acid in the sample. The acid number is reported as weight of the base (typically potassium hydroxide) per weight of sample, or milligram (“mg”) potassium hydroxide per gram. The normal acid number for crude tall oil is between 100 and 175. As a comparison, ASTM D6751 for biodiesel specifies that the acid number be less than 0.5 mg potassium hydroxide. ASTM D4806 for ethanol does not have acid value but instead limits “acidity” to 0.007 mg of acetic acid per liter, which is significantly below an acid number of 25. Since the acid number for crude tall oil exceeds 25, crude tall oil would no longer qualify for the credit under the provision.

Processed fuels are fuels other than those which (1) are more than four percent (determined by weight) water and sediment in any combination, or (2) have an ash content of more than one percent (determined by weight).¹⁷ Water content (including both free water and water in solution with dissolved solids) is determined by distillation, using for example ASTM D95 or a similar method suitable to the specific fuel being tested. Sediment consists of solid particles that are dispersed in the liquid fuel and is determined by centrifuge or extraction using, for example, ASTM D1796 or D473 or similar method that reports sediment content in weight percent. Ash is the residue remaining after combustion of the sample using a specified method, such as ASTM D3174 or a similar method suitable for the fuel being tested.

¹⁷ Black liquor has a water, sediment and ash content that exceeds these thresholds. The provision does not address the eligibility of black liquor for the cellulosic biofuel producer credit. A provision disqualifying black liquor from the cellulosic biofuel credit is found at section 1408 of H.R. 4872, Health Care and Education Reconciliation Act of 2010, as passed by the House of Representatives on March 21, 2010.

Effective Date

The provision is effective for fuels sold or used on or after January 1, 2010.

2. Time for payment of corporate estimated taxes (sec. 310 of the amendment and sec. 6655 of the Code)

Present Law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability.¹⁸ For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15. In the case of a corporation with assets of at least \$1 billion (determined as of the end of the preceding taxable year):

(i) payments due in July, August, or September, 2014, are increased to 157.75 percent of the payment otherwise due;¹⁹

(ii) payments due in July, August or September, 2015, are increased to 121.5 percent of the payment otherwise due;²⁰ and

(iii) payments due in July, August or September, 2019, are increased to 106.5 percent of the payment otherwise due.²¹

For each of the periods impacted, the next required payment is reduced accordingly.

Explanation of Provision

The provision increases the required payment of estimated tax otherwise due in (1) July, August, or September, 2014, by 4.5 percentage points, (2) July, August, or September, 2015, by 3.5 percentage points, and (3) July, August, or September, 2019, by 1.25 percentage points.

Effective Date

The provision is effective on the date of enactment of the bill.

¹⁸ Sec. 6655.

¹⁹ Pub. L. No. 111-147, Sec. 561, par. (1); Pub. L. No. 111-124, Sec. 4; Pub. L. No. 111-92, Sec. 18; Pub. L. No. 111-42, Sec. 202(b)(1). Payments due in July, August, or September, 2014, would be increased by an additional 15.75 percent to 173.5 percent as a result of section 1410 of H.R. 4872, Health Care and Education Reconciliation Act of 2010.

²⁰ Pub. L. No. 111-147, Sec. 561, par. (2).

²¹ Pub. L. No. 111-147, Sec. 561, par. (3).