

Dear COMPANY NAME:

I understand you are in receipt of an IRS Form 668-W regarding me, Xxxx Y. Zzzzzz. COMPANY NAME should be committed, as a matter of policy, and civic duty, to upholding the law, and to complying with all lawful obligations to which you are subject. The IRS asserts such an obligation in their form, but you should be aware of several areas in which the assertion, the statutory authority under which it is made, and the facts regarding me are in conflict, and may lead to your direct liability for damages to me, personally, if I am forced to seek legal redress.

I have read the entire statute under the authority of which you and the IRS claim to be acting, including the portions which they have omitted from the back of their own form. The statute specifically and exclusively identifies **federal workers** (meaning those working directly for the federal government and those working for federally-connected entities) as entities whose unpaid compensation can be attached under the levy authority (when liability has been established): "**Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia...**" In light of the basic legal principle of "*Inclusio unius est exclusio alterius*" ("***The inclusion of one is the exclusion of another.***" i.e., ***the certain designation of one person is an absolute exclusion of all others. ... This principle requires that where law expressly describes [a] particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded.*** **SEE: Black's Law Dictionary, 6th edition**), and the fact that I am not a federal worker (relevant to any payments owed me by you, at least), I am unequivocally convinced that the demands for levy under this statute do not apply in this case. This understanding is reinforced by the (exclusive) specification in 26 CFR 301.6331-1 (the regulatory structure by which Section 6331 regarding levy of wages is implemented) of three separate categories of workers, which include those identified in the statute as noted above, as well as:

(ii) State and municipal employees: Salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) Seamen: Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy.

I presume that the terms "State and municipal employees" and "Seamen" refer to those of the federal States, municipalities and Territories (as defined in the relevant revenue statutes), and federally commissioned mariners, respectively; however, such details are moot in this specific case. The inclusion of these specifications unambiguously contradicts any suggestion that the authority of the levy power in regard to compensation can or should be presumed as extending beyond those entities specified,

for were that actually the case, subparagraphs (ii) and (iii) cited above would be superfluous and redundant. If the compensation of "any person" actually can be, or lawfully is, reached by levy, then no further specification is needed.

If you are inclined to entertain uncertainty in this regard, please be mindful of the United States Supreme Court's instructions in *American Banana Co. v. United Fruit Co.*, 213 U.S. 347 (1909) that, "Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch." , and in *Gould v. Gould*, 245 U.S. 151 (1917) that, "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen." For further official confirmation of my position, see also the copy of a letter (next page) from a sitting member of congress to his constituent on the subject of private citizen levies.

Your obligation to me, as your associate, is entirely unambiguous and, thus, I hereby formally demand that you seek further clarification from the IRS before continuing to honor their directive. In order to ensure that no one is the victim of a misunderstanding, and to protect COMPANY NAME from the possibility of legal action for any of several possible criminal and civil offenses which would be attendant upon your continued diversion of money which is legally my property, unless done as strictly and unambiguously required by law, I respectfully, and in good faith, demand that you require the following statement (see pages 3 and 4, attached) be executed, under penalty of perjury, by someone of sufficient authority with the IRS and returned to COMPANY NAME in order to verify your necessary obligation to comply with their directive before any further monies are withheld without due process.

I thank you for your courteous and expeditious attention to this matter, and look forward to the results of you inquiry.

Sincerely,

Xxxx Y. Zzzzzz

COMMITTEES:
ARMED SERVICES
MERCHANT MARINE AND
FISHERIES
SELECT COMMITTEE ON
AGING



Congress of the United States
House of Representatives
Washington, D.C. 20515

DENNIS M. HERTEL
14TH DISTRICT, MICHIGAN
DISTRICT OFFICE:
28221 MOUND ROAD
WARREN, MICHIGAN 48091
(313) 574-9420
DISTRICT OFFICE:
18927 KELLY ROAD
DETROIT, MICHIGAN 48221
(313) 528-5900
218 CANNON OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-6276

December 30, 1985

Regarding your recent contact with my office on the difficulties you are experiencing with the Internal Revenue Service, it is the policy of our office not to give legal advice and suggest that you seek out counsel with tax expertise.

We can address your specific question relative to IRS Form 668-W, Notice of Levy on Wages... Section 6331 IRC entitled "Levy and Distraint" and Section 6331(a) IRC entitled "Authority of Secretary". "...Levy may be made upon the accrued salary or wages of any officer, employee or elected official of the United States, District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer of such officer, employee or elected official..." does not provide authority to levy wages of private citizens in the private sector.

The omission of this section from IRS Form 668-W may be misleading to some employers, as you have suggested.

I hope that you will find this information useful and regret that I am unable to provide you with more assistance.

Please feel free to contact me again if you have any questions or comments regarding your federal government.

Sincerely,

Dennis M. Hertel
DENNIS M. HERTEL
Member of Congress

D:21/h:jf

IRS
(ADDRESS OF LEVYING OFFICE)
(CITY), (STATE) (ZIP)

Sirs:

We are in receipt of your Form 668-W regarding one Xxxx Y. Zzzzz. COMPANY NAME is committed, as a matter of policy and civic duty, to upholding the law, and it is our sincere desire to comply with all lawful obligations to which we are subject. You assert such an obligation in your form, but we are troubled by what appear to us to be several areas in which your assertion, the statutory authority under which it is made, and the facts regarding Xxxx Y. Zzzzz do not seem to mesh well.

We have read the statute under the authority of which you claim to be acting, including the portions which you have omitted from the back of your form. The statute specifically and exclusively identifies **federal workers** (meaning those working directly for the federal government and those working for federally-connected entities) as entities whose unpaid compensation can be attached under the levy authority (when liability has been established): "**Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia...**" In light of the basic legal principle of "Inclusio unius est exclusio alterius" (*Which means "The inclusion of one is the exclusion of another," i.e., the certain designation of one person is an absolute exclusion of all others. This principle requires that where law expressly describes [a] particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded, Black's Law Dictionary, 6th edition*), and the fact that Xxxx Y. Zzzzz is not a federal worker (relevant to any payments owed by this company, at least) we are uncertain as to how the statute applies in this case. This concern is reinforced by the (exclusive) specification in 26 CFR 301.6331-1 (the regulatory structure by which 6331 is implemented) of three separate categories of workers, which include those identified in the statute as noted above, as well as:

(ii) State and municipal employees. Salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) Seamen. Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy.

We presume that the terms "State and municipal employees" and "Seamen" refer to those of the federal States, municipalities and Territories (as defined in the relevant revenue statutes), and federally commissioned mariners, respectively; however, such

details are moot. The inclusion of these specifications unambiguously contradicts any suggestion that the authority of the levy power in regard to compensation can or should be presumed as extending beyond those entities specified, for were that actually the case, subparagraphs (ii) and (iii) cited above would be superfluous and redundant. If the compensation of "any person" actually can be, or lawfully is, reached by levy, then no further specification is needed.

Furthermore, even if we were inclined to entertain uncertainty in that regard, we are also mindful of the United States Supreme Court's instructions in *American Banana Co. v. United Fruit Co.*, 213 U.S. 347 (1909) that, "Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch." , and in *Gould v. Gould*, 245 U.S. 151 (1917) that, "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen." As our obligation to Xxxx Y. Zzzzz is entirely unambiguous, we find it impossible to honor your directive without clarification.

Therefore, in order to ensure that no one is the victim of a misunderstanding, and to protect COMPANY NAME from the possibility of legal action against us for any of several possible criminal and civil offenses which would be attendant upon our diversion of money which is legally the property of another if done other than as strictly and unambiguously required by law, we respectfully and in good faith ask that the following statement (see next page, attached) be executed by someone of sufficient authority in your agency and returned to us, whereupon we will promptly comply with your directive.

Thank you for your expeditious attention to this matter. We look forward to your response.

Sincerely,

(signature)

FOR COMPANY NAME

AFFIDAVIT OF OBLIGATION AND INDEMNIFICATION FROM LIABILITY

This statement is to affirm that COMPANY NAME, a private-sector, non-federally-connected (union-state of origin) enterprise, is required by law to pay over to the Internal Revenue Service -- upon its demand and in the absence of any court order supporting that demand -- a portion of the money COMPANY NAME owes to Xxxx Y. Zzzzzz for work performed by Xxxx Y. Zzzzzz on COMPANY NAME's behalf and under its direction, per the terms of the agreement that exists between these two parties. This is true even though the work for which this money is owed in no way involves any activities by, or any status of, Xxxx Y. Zzzzzz as an officer, employee, or elected official, of the United States, the District of Columbia, a State, Territory, or Possession, or any agency or instrumentality of one or more of the foregoing, or as an officer of a corporation [a majority of the stock of which is owned by or on behalf of the United States, or the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States]. Furthermore, COMPANY NAME is fully indemnified against any and all possible civil or criminal liability to any party and under any jurisdiction for doing so.

I declare under penalty of perjury that all of the foregoing is true and correct to the best of my knowledge and belief.

(Signature of testifying officer)

____/____/____

(Date executed)

(printed name and title of testifying officer)