

Sir/Madam:

You are put on legal notice by means of this document and the accompanying affidavit that I, _____, am not lawfully subject to levy under the authority reflected at 26 USC 6331 et seq.. Any action taken which purports to apply that authority to me, or which is in cooperation with an action purporting to apply that authority to me which has been initiated by another, is unlawful, and will be construed as having been undertaken deliberately and in a personal capacity. You are advised to seek competent legal counsel.

1. Although the rendering of the power codified at 26 USC 6331(a) deploys expansive-- indeed, seemingly all-encompassing-- language:

26 USC 6331

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. 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, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section,

the actual statutory authority reflected therein is neither all-encompassing, or even particularly expansive, but is, rather, narrowly confined to a limited class of persons.

2. The actual statutory language upon which 26 USC 6331 relies for its authority confines its application to a class of "taxpayer"-persons distinguished by monthly (and other special return) filing requirements-- such as federal "employers", of course, as well as distillers, per section 3307 of the Revised Statutes (R. S.); brewers, per R. S. 3337 and 3338; and tobacco producers, per R. S. 3358 and 3390. Others, such as annual filers, are not encompassed by this authority. That statutory language reads as follows:

R. S. Sec. 3185. All returns required to be made monthly by any person liable to tax shall be made on or before the tenth day of each month, and the tax assessed or due thereon shall be returned by the Commissioner of Internal Revenue to the collector on or before the last day of each month. All returns for which no provision is otherwise made shall be made on or before the tenth day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made. When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: Provided, that notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner of Internal Revenue. It shall then be the

duty of the collector, in case of the non-payment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with five per centum added thereto, and interest at the rate of one per centum per month, as aforesaid, in the manner prescribed by law; and if said tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law. (The interest rate established in this statute was changed to 6% per annum by section 404 of the Revenue Act of 1935.)

This language is helpfully reformatted in the original codification of the statute in 1939 (of which the current section 6331 of 26 USC is merely a convenient, consolidated rendering, with no change in meaning):

Part II—Assessment, Collection, and Refund

SEC. 3310. RETURNS AND PAYMENT OF TAX.

(a) MONTHLY RETURNS.—All returns required to be made monthly by any person liable to tax shall be made on or before the 10th day of each month, and the tax assessed or due thereon shall be returned by the Commissioner to the collector on or before the last day of each month.

(b) OTHER RETURNS.—All returns for which no provision is otherwise made shall be made on or before the 10th day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made.

(c) ADDITION TO TAX IN CASE OF NONPAYMENT.—When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of 5 per centum, together with interest at the rate of 6 per centum per annum, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: Provided, That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner.

(d) DEMAND FOR TAX, PENALTY, AND INTEREST.—It shall then be the duty of the collector, in case of the nonpayment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with 5 per centum added thereto, and interest at the rate of 6 per centum per annum, as aforesaid, in the manner prescribed by law; and

(e) DISTRAINT.—If said tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law.

(Although the derivation tables for section 6331(a) of the current code indicate that, in addition to section 3310 of the 1939 IRC, elements of sections 3660, 3690, 3692 and 3700 of that earlier code are also reflected in 6331(a)'s construction, it is only in 3310 that the 10-day notice and demand requirement, around which all the other sections revolve, is presented. This accurately reflects the statutes underlying all the relevant derivative 1939 and current IRC sections-- which include R. S. 3187, 3188 and 3196, as well as sections 1016 of the Revenue Act of 1924, 1105 of the Revenue Act of 1932, 510 of the Revenue Act of 1934 and 404 of the Revenue Act of 1935. Only R. S. 3185 imposes the 10-day notice and demand protocol, and thus establishes the class to which the related provisions apply.)

3. As is evidenced by the accompanying affidavit, I, _____, am not among the classes of persons subject to the levy authority reflected at 26 USC 6331 et seq.

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