

22-6631
No.

ORIGINAL

Supreme Court, U.S.
FILED

JAN 05 2023

OFFICE OF THE CLERK

**IN THE
SUPREME COURT OF THE UNITED STATES**

LARRY WELENC
Petitioner

v

COMMISSIONER OF THE
INTERNAL REVENUE SERVICE
Respondent

**ON PETITION FOR WRIT OF CERTIORARI
BEFORE JUDGMENT**

PETITION FOR WRIT OF CERTIORARI

**LARRY WELENC
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QUESTIONS PRESENTED FOR REVIEW

Petitioner Larry Welenc respectfully prays that a Certification of the following Questions
f Law

- 1,) Can the Commissioner of the Internal Revenue Service issue a NON Final Intent of Notice for immediate payment of Amount Due, to be paid within a deadline which amounts to 10 days from the Notice of Levy, or the taxpayer nay subject to Seizure of Property, Appendix B (attached)?
- 2,) Is a Notice of Levy containing a 10-day deadline and Intent to Seize property a de facto a Final Notice of Levy?
- 3) Doe the Taxpayer should the Notice in no. 2 constitute a de facto Final Levy still obtain his right to a collection hearing under 26 CFR § 301.6330-1 - Notice and opportunity for hearing prior to levy, 26 USC §6330. Notice and opportunity for hearing before a levy is attempted and is any attempt to collect unlawful without that Hearing.
4. Does the \$190 which the IRS is attempting to Levy fall under 26 U.S. Code § 6331 - Levy and Distraint (f)Uneconomical levy

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

Larry Welenc,	Appellant and Petitioner
Commissioner of the Internal Revenue,	Appellee and Respondent

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TABLE OF AUTHORITIES

CASES

Herycyk v. U.S., No. 4:01CV00058 (N.D. Ohio Dec. 11, 2001)

STATUTES

26 CFR § 301.6330-1 - Notice and opportunity for hearing prior to levy

26 USC §6330. Notice and opportunity for hearing before levy

26 U.S. Code § 6331 - Levy and Distraint (f) Uneconomical levy

26 USC 6331 (d)(3) Jeopardy

5 U.S.C. §§ 551–559

INDEX TO APPENDICES

Motion of Petitioners to certify question of law

Corrected Motion of Petitioner stay proceeding

Response of Commissioner of the IRS in Opposition
to Motion to Certify Question of Law

Response of Commissioner of the IRS in Opposition to Motion to Stay

REPLY filed by Mr. Larry Welenc to response to of the Commissioner
of the IRS in opposition to Motion to Stay Response in
Opposition to Certification of Question of law

Readable copy of Appendix B of Appeal

dated November 18, 2016 informing Appellant that this was an error dated informing Appellant that the case was closed and the money considered uncollectable. The IRS tried to collect again without a Final Notice of Levy. When Appellant brought this to the IRS attention Sharon Worthy sent Appellant another letter dated March 17, 2017 the letter which you read today apologizing stating that the issue had already been resolved and no further action was necessary and that if Appellant had any questions to call them. The IRS apparently wanted Appellant to think that the case was closed to allow the Interest to accumulate.”

The IRS did not respond to Appellant’s appeal of the denial of Appellant’s Appeal within the time frame allowed under IRS rules and regulations. As stated in Appellant’s Petition with the US Tax Court, “ IRS did not Act within 6 months as calculated from the [last] date of their receiving the appeal July 30, 2019, the date of the letter of the Taxpayer Advocate” As per the letter of the Tax Payer Advocate of July 30 2019 the appeal was forwarded by the Tax Payer Advocate on or around July 30 2019 he with instructions for the Appellant to contact them again if Appellant did not hear from the IRS in 120 days. Appellant did not hear from the IRS in 120 and was instructed to wait until 6 months after receipt of the Appeal by the IRS before filing in US Tax Court. Appellant filed after nine months of lack response by the IRS

REASONS FOR GRANTING CERTIFICATION

The IRS notifications from 2015 to 2019 were both deceptive and/or based on false information with the intent to allow Interest to accumulate to give an impression that the case was closed. i.e 1.) case closed currently not collectable (notice October 6, 2016 (Appellant was in the higher tax bracket that year) 2) “we have already resolved the issue Notice Nov 8, 2016 , Case Closed, Notice Nov. 18 2016 3.) Your account is uncollectible, Notice June 20, 2017. 4) We have already resolved your issue.. we did not need ot take any further actions , Notice March 9, 2017 . 5.) Credit on Account \$599 without mentioning that the credit was the result of the IRS “losing” Appellant’s 2018 taxes and crediting the payment for 2018 back to Appellant and was not the result of Appellant’s appeal of the denial of Abatement of Interest and Penalty.

The Commissioner of the Internal Revenue Service state in his Reponses to the Appeal that IRS not meeting the 6 month deadline to make a final Decision only gives the Petitioner the right to take that matter to court and have the matter in question heard. This would be true if No Notice of Levy be it Final or Non Final. By threading seizure of property with a 10 day deadline to pay the amount due , the case moves to another level that of an attempt to collect and **this is one of the questions that Petitioner is seeking clarification on as a matter of law, can the IRS forgo making a Final Decision on an appeal and simply attempt to collect.**

The IRS seems to have abandoned issuing Final Notices of Levy which require a Collections hearing and in its place are now issuing Notices of Levy with a 10 day Notice

to pay the amount due or be subject to Seizure of Property seemingly in an attempt to avoid the required collections hearing and are ignoring t26 U.S. Code § 6331 - Levy and Distraint (f) Uneconomical levy substituting intimidation through Non final Notices of Levy in the guise of Final Notices of Levy. The IRS seems to have eliminated the Verbiage "Final Notice of Levy" from their on-line publishing of their Rules and Regulations at <https://www.irs.gov/irm> as indicated by the Commissioner of the Internal Revenue Service in his Opposition to Petitioner's Motion to Produce at least use of the key words "Final" or "Final Notice of Levy" do not bring up any documents containing the word Levy . Further the IRS attempts to collect in case which fall under Levy and Distraint (f) Uneconomical levy as this one does in the hopes that and unlawful Non Final Levy with a 10 day deadline to pay the requested amount or be subject to seizure of property will intimidate the tax payer into paying the amount due.

Respectfully submitted,

Larry M Welenc , Petitioner

Dated: July 20, 2014