U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
FEB 16 1979
JOSEPH McELROY, JR., CLERK
BY Liggy Millet
Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

AMENDED
MISC. ORDER NO. 1

ORDER ESTABLISHING THE PROCEDURE
FOR ISSUANCE OF ORDERS FOR ENTRY ON PREMISES
TO EFFECT LEVY BY INTERNAL REVENUE SERVICE

It appearing to the Court that the Supreme Court of the United States has construed Section 6331 of the Internal Revenue Code of 1954 to mean that the Internal Revenue Service has the right to distrain and seize property of a taxpayer who neglects or refuses to pay his tax, but does not mean that the Internal Revenue Service may violate the Fourth Amendment by entering private premises for the purpose of distraint and seizure without a valid search warrant. And it further appearing to the Court that the Internal Revenue Service in this district will, in all likelihood, seek a large number of such warrants, it is therefore the opinion of this Court that the following procedure be established for the processing of such requests.

All requests by the Internal Revenue Service for the issuance of a warrant to allow entry on premises to effect a levy for the collection of taxes shall be titled "APPLICATION OF THE UNITED STATES TO ENTER PREMISES TO EFFECT LEVY" and shall be in the form attached hereto as Exhibit A, along with an affidavit of the appropriate official of the Internal Revenue Service, which shall be in the form attached hereto as Exhibit B, and the order issued by this Court shall be titled "ORDER FOR ENTRY ON PREMISES TO EFFECT LEVY," and shall be in the form attached hereto as Exhibit C.

Approval for filing of the foregoing instruments must be first secured from either the United States Attorney, any Assistant

United States Attorney, the District Counsel for Internal Revenue Service, or any duly designated Assistant District Counsel, and such approval will be evidenced by the signing of the "APPLICATION OF THE UNITED STATES TO ENTER PREMISES TO EFFECT LEVY" (Exhibit A).

These instruments shall be filed with the United States Magistrate, who shall have full authority to issue the appropriate order after finding that probable cause exists to believe that property or rights to property which is subject to levy by the United States pursuant to Section 6331 of the Internal Revenue Code of 1954 is located on, or within, the premises described in the aforesaid APPLICATION AND AFFIDAVIT. The instruments shall be filed by the appropriate official of the Internal Revenue Service who will appear before the United States Magistrate, and give sworn testimony in support of his application. The appearance of an attorney representing the Internal Revenue Service will not be required.

These instruments will be received by the United States Magistrate and filed under an appropriate numbering system and will be kept by the Magistrate and not delivered to the United States District Clerk.

Upon execution of the Order issued pursuant to these rules, the appropriate representative of the Internal Revenue Service will not be required to make a return of execution to the Court.

The foregoing procedures are effective immediately.

SIGNED this 16 day of February, 1979.

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

_____ DIVISION

| | | |
|---|---|---|
| IN THE MATTER OF THE TAX INDEBTEDNESS OF | ) | DOCKET NO. _____ |
| _____ | ) | |
| _____ | ) | |

APPLICATION OF THE UNITED STATES
TO ENTER PREMISES TO EFFECT LEVY

The United States of America, on the basis of the attached affidavit, respectfully requests this Court to enter an order authorizing the revenue officer to enter the premises located at _____, _____, Texas, for the purpose of seizing the property of _____ as may be found therein which is subject to levy by the United States in satisfaction of the outstanding federal taxes now due and owing by said taxpayer, together with interest and costs as allowed by law.

KENNETH J. MIGHELL
UNITED STATES ATTORNEY

By: _____
ASSISTANT U. S. ATTORNEY

OR

DAVID E. GASTON, DISTRICT COUNSEL
INTERNAL REVENUE SERVICE

By: _____
ASSISTANT DISTRICT COUNSEL

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

_____ DIVISION

| | | |
|---|---|---|
| IN THE MATTER OF THE TAX INDEBTEDNESS OF _____ _____ | * * * * * | DOCKET NO._____ |

AFFIDAVIT OF REVENUE OFFICER

_____

City of _____ *
State of Texas *

Revenue Officer _____, having been first duly sworn, states as follows:

1. I am a revenue officer employed in the Collection Division of the Office of the District Director, Internal Revenue Service, at _____. As a revenue officer, I have the duty and authority to collect federal taxes by seizure and sale under the provisions of Section 6331 of the Internal Revenue Code of 1954.

2. An assessment of tax, penalty and interest to the extent applicable, for the periods ending: _____ _____, has been made against _____ _____, in the total amount of $_____ for which notice and demand was made on _____, pursuant to Sections 6201, 6203, and 6303 of the Internal Revenue Code.

3. The said taxpayer has neglected or refused to pay the full amount of the tax assessed within 10 days after such notice and demand and this neglect or refusal continues.

4. There is now due, owing and unpaid with respect to such tax, penalty and interest a total amount of $_____ plus statutory additions.

5. By reason of the assessment, a lien has arisen on all property and rights to property of said taxpayer as prescribed by Sections 6321 and 6322 of the Internal Revenue Code of 1954 (26 U.S.C.).

6. By reason of the taxpayer's neglect and failure to pay such tax within 10 days after notice and demand, a levy may be made on all property and rights to property belonging to the taxpayer or to which the federal tax lien attaches.

7. [Narrative statement describing article (or articles) to be seized and ownership interest of taxpayer. Statement should reflect that the affiant knows or has reasonable cause to believe that there is personal property on the premises belonging to the taxpayer. Statement should also include description of attempts to secure permission from the taxpayer for levy.]

_____
Revenue Officer
_____, Texas

Subscribed and sworn to before me this _____ day of _____, 19___.

_____
UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

_____ DIVISION

| | | |
|---|---|---|
| IN THE MATTER OF THE TAX INDEBTEDNESS OF<br>_____<br>_____ | )<br>)<br>)<br>)<br>) | DOCKET NO. _____ |

ORDER FOR ENTRY ON PREMISES
TO EFFECT LEVY

The United States, having filed an application requesting authorization for _____, a revenue officer of the Internal Revenue Service, to enter the premises located at _____, _____, Texas, in order to seize property in satisfaction of unpaid federal taxes, together with his affidavit in support of that application, and the Court finding, on the basis of the affidavit, that there is probable cause to believe that property or rights to property which is subject to levy by the United States pursuant to Section 6331 of the Internal Revenue Code is located on or within the premises described, it is

ORDERED that the revenue officer is authorized to enter the premises described and to make such search as is necessary in order to levy and seize, pursuant to Section 6331 of the Internal Revenue Code of 1954. In making this search and seizure, however, the revenue officer is directed to enter the premises during business hours or the day time and within 10 days of this order.

Dated: _____

_____
UNITED STATES MAGISTRATE

EXHIBIT C