

Win the Case but Lose the Fee: a Levy Deprives Lawyers of a Contingent Fee.

The Internal Revenue Code provides the IRS with potent administrative collection powers that are not well known to the legal profession as a whole. As a consequence, capable lawyers can make mistakes because they are unfamiliar with some of the collection tools employed by the IRS. A Middle District of Florida case illustrates this point, showing how a successful group of lawyers lost a contingent fee because they did not know how to respond to an IRS levy.

In *Austin and Laurato, P.C. v. United States*, 2012 U.S. Dist. LEXIS 167517 (M.D. Fl. Nov. 26, 2012), the plaintiffs were a group of lawyers who had been retained on a contingent fee basis to challenge the seizure of funds by the City of Tampa on behalf of three clients. While they were successful in obtaining a court order in September 2010, directing that the funds be released, the IRS issued a levy to the City of Tampa a few days before the order was entered, asserting that the forfeited cash was subject to a tax lien. After the order directing the City to release the funds was affirmed on appeal, the funds were transferred to the IRS in July 2011. The plaintiffs' lawyers attempted to have the state court direct that the funds be returned so that they could be awarded fees, but the state court indicated that either a federal claim or an administrative claim before the IRS was required.

After the funds were transferred to the IRS, the plaintiffs' lawyers wrote to the U.S. Attorney and to the IRS without success. At this point, the lawyers decided to challenge the levy as wrongful, filing suit in 2012. The district court dismissed the case, ruling first that the lawyers did not have a legally protected interest in the fund, because the state court had ordered that it be returned to their *clients*. 2012 U.S. Dist. LEXIS 167517 at *7-*12. As a consequence, the court held that the lawyers lacked standing to assert a wrongful levy claim. In addition, the Court also ruled that the claim was not asserted in a timely fashion, as the claim had been brought well beyond the nine month statute of limitations that applies to wrongful levy claims.

The result is unfortunate, as apparently only one of the three clients was the subject of a federal tax lien, and the levy may well have been improper. The Supreme Court has ruled, however, that a wrongful levy claim under Section 7426 of the Code is the sole remedy available to a third party who wishes to challenge a levy, and the Code is quite clear that such a claim must be brought within nine months.

What the lawyers should have done is file either an administrative challenge to the levy or a complaint on behalf of their clients shortly after the levy was made. If that challenge was successful, they could then collect their fee from the fund recovered.

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