

MAR 26 1991

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

MURRAY L. HARRIS, CLERK

DEPUTY *Rita Robbins*

GENERAL ORDER NO. 91-1

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

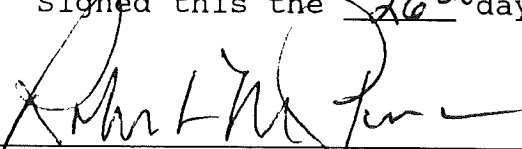
These instruments shall be filed with the United States District Clerk who shall assign it to a United States Magistrate Judge, who shall have full authority to issue the appropriate order after finding that probable cause exists to believe that property or rights to property which is subject to levy 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 SWORN AFFIDAVIT. The appearance of an attorney representing the Internal Revenue Service will not be required.

Upon the execution of the Order issued pursuant to these

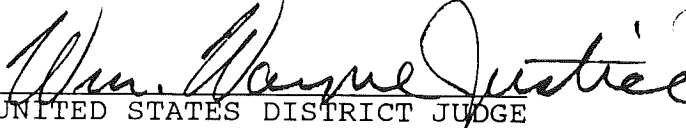
rules, the appropriate representative of the Internal Revenue Service will not be required to make a return of execution to the Court.

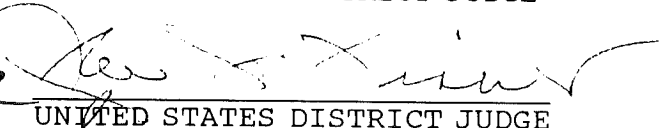
The foregoing procedures are effective immediately.

Signed this the 26<sup>th</sup> day of March, 1991.

  
CHIEF UNITED STATES DISTRICT JUDGE


  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

  
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UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

\_\_\_\_\_ DIVISION

IN THE MATTER OF THE TAX )  
INDEBTEDNESS OF )

MISC. 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, or duly authorized Service representative, to enter the premises located at \_\_\_\_\_, \_\_\_\_\_, Texas, in order to seize property in satisfaction of unpaid federal taxes, together with the 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, or authorized representative, is authorized to enter the premises described and to make such search as is necessary in order to levy and seize property on the premises described and to make such search as is

EXHIBIT C

necessary in order to levy and seize, pursuant to 26 U.S.C. Section 6331. In making this search and seizure, however, the revenue officer, or authorized representative, is directed to enter the premises during regular business hours, or the daytime, and within 10 days of this order and to make reasonable entries thereafter to effectuate any disposition of seized property.

Done at \_\_\_\_\_, Texas, on this \_\_\_\_ day of \_\_\_\_\_,  
19\_\_.

\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION

IN THE MATTER OF THE TAX  
INDEBTEDNESS OF

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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)

Misc. 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 Department 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.

EXHIBIT B

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.)

A consent to enter has not been requested because the taxpayer has refused to cooperate or comply with previous requests (or in the alternative, that consent to enter was requested but the taxpayer declined).

\_\_\_\_\_  
\_\_\_\_\_, Revenue Officer  
\_\_\_\_\_, Texas



THE STATE OF TEXAS \*  
COUNTY OF \_\_\_\_\_ \*

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the above and foregoing Affidavit, and acknowledged to me that said affidavit is true and correct.

SWORN TO AND SUBSCRIBED before me on this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires \_\_\_\_\_