

UNITED STATES TAX COURT

NAME [REDACTED],	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. [REDACTED]
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

OBJECTION TO MOTION TO RESTRAIN ASSESSMENT OR COLLECTION

RESPONDENT OBJECTS to petitioner's Motion to Restrain Assessment or Collection (the "Motion") on grounds that it is moot, as the subject levies have been returned by the recipient with no funds or respondent has released the levy.

IN SUPPORT THEREOF, respondent respectfully states:

1. In the Motion, petitioner seeks to restrain the respondent from taking any collection action on his income tax liability for taxable year 2002. Petitioner also seeks the release of seven Notices of Levy (Forms 668-A), which were attached to the Motion as Exhibit A. If respondent collected any money as a result of the Notices of Levy, petitioner seeks a refund of that money.

2. On [REDACTED] 2007, the Court filed a document submitted by petitioner as the petition. The petition indicates that petitioner seeks a redetermination of a lien or levy action for the taxable year 2002.

3. On [REDACTED], 2007, the Court ordered petitioner to pay

the \$60 filing fee and file an amended petition by [REDACTED] 2007. The Court subsequently extended the time for petitioner to file an amended petition to [REDACTED] 2008. Petitioner failed to comply with this order, and the Court dismissed this case (Docket No. [REDACTED]) for lack of jurisdiction on [REDACTED] 2008.

4. After the Court's dismissal of this case on [REDACTED], 2008, respondent closed its legal file and informed Revenue Officer [REDACTED], who was assigned to collect the subject tax, that she could proceed with collection action.

5. On [REDACTED] 2008, petitioner lodged a motion to vacate the Court's order of dismissal. Petitioner did not serve the motion to vacate on respondent, nor did the Court provide respondent with an opportunity to object to the motion to vacate. On [REDACTED], 2008, the Court entered an Order in which it granted petitioner's motion to vacate and reinstated this case. Respondent received this Order on [REDACTED] 2008. Also on [REDACTED], 2008, Revenue Officer [REDACTED], issued the seven Notices of Levy (Form 668-A) at issue.

6. Respondent agrees with petitioner that I.R.C. § 6330(e)(1) prevents respondent from issuance of a Notice of Levy while the Tax Court case is pending. In the present case, respondent's Revenue Officer issued the Notices of Levy the same day respondent's counsel received the Court's Order reinstating this case. Respondent submits that the Revenue Officer did not intentionally violate I.R.C. § 6330(e)(1), as respondent lacked

knowledge of the case's reinstatement until the same day that the subject Notices of Levy were issued.

7. The following chart summarizes the current status of each of the seven Notices of Levy attached to the Motion.

<u>Issued To</u>	<u>Status</u>
[REDACTED]	Closed [REDACTED] 08. No funds.
[REDACTED]	Closed [REDACTED]/08. No funds.
[REDACTED]	Closed [REDACTED]/08. No funds.
[REDACTED]	Closed [REDACTED]/08. No funds.
[REDACTED]	Closed [REDACTED]/08. No funds.
[REDACTED]	Closed [REDACTED]/08. No funds.
[REDACTED]	Levy Released [REDACTED]/08. No funds received.

8. A copy of the Release of Levy (Form 668-D) issued on [REDACTED], 2008 to Fortune and Sons, Inc. is attached hereto as Exhibit A.

9. Although petitioner did not attach to the Motion a Notice of Levy issued to [REDACTED], respondent issued a Release of Levy (Form 668-D) to this recipient on [REDACTED], 2008. A copy of this Release is attached hereto as Exhibit B.

10. Although petitioner did not attach to the Motion a Notice of Levy issued to the Social Security Administration, respondent issued a Release of Levy (Form 668-D) to this recipient on [REDACTED], 2008. A copy of this Release is attached hereto as Exhibit C.

11. Based upon the foregoing, the Notices of Levy that petitioner requests be released have been returned to respondent by the recipient with no funds or have been released by respondent. Also, respondent has released additional Notices of

Levy that that petitioner did challenge in the Motion.

Wherefore, respondent prays that the Court overrule the Motion on grounds that it is moot and the relief sought therein is unnecessary.

[REDACTED]  
[REDACTED]  
Internal Revenue Service

Date: [REDACTED] 2008

By [REDACTED]

Attorney  
Tax Court Bar

OF COUNSEL:

[REDACTED]  
Division Counsel  
(Small Business/Self-Employed)

[REDACTED]  
Area Counsel  
(Small Business/Self-Employed: [REDACTED])

[REDACTED]  
Associate Area Counsel  
(Small Business/Self-Employed)

# Release of Levy/Release of Property from Levy

To  [REDACTED]	Taxpayer(s) [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
	Identifying Number(s) [REDACTED]

- A notice of levy was served on you and demand was made for the surrender of:
- all property, rights to property, money, credits and bank deposits of the taxpayer(s) named above, except as provided in 6332(c) of the Internal Revenue Code—"Special Rule For Banks." See Page 2 regarding this exception.
  - wages, salary and other income, now owed to or becoming payable to the taxpayer(s) named above.

The box checked below applies to the levy we served on you.

## Release of Levy

Under the provisions of Internal Revenue Code section 6343, all property, rights to property, money, credits, and bank deposits of the taxpayer(s) named above are released from the levy.

- Under the provisions of Internal Revenue Code section 6343, all wages, salary and other income now owed to or becoming payable to the taxpayer(s) named above are released from the levy.

## Release of Property from Levy

- Under the provisions of Internal Revenue Code section 6343, all property, rights to property, money, credits, and bank deposits  greater than  less than are released from the levy. The levy now attaches only to this amount.
- The last payment we received from you was dated \_\_\_\_\_. The amount the taxpayer still owes is \_\_\_\_\_. When this amount is paid to the Internal Revenue Service, the levy is released. If you sent us a payment after the last payment date shown, subtract that from the amount you send now.
- Under the provisions of Internal Revenue Code section 6343, all wages, salary and other income  greater than  less than each now owed to or becoming payable to the taxpayer(s) named above are released from the levy.

Dated at \_\_\_\_\_ (Place) \_\_\_\_\_, 2008 (Date)

Signature [REDACTED]	Telephone Number [REDACTED]	Title [REDACTED] REVENUE OFFICER
-------------------------	--------------------------------	--

# Release of Levy/Release of Property from Levy

To  [REDACTED]	Taxpayer(s) ME [REDACTED] BER [REDACTED]
	Identifying Number(s) [REDACTED]

A notice of levy was served on you and demand was made for the surrender of:

- all property, rights to property, money, credits and bank deposits of the taxpayer(s) named above, except as provided in 6332(c) of the Internal Revenue Code—"Special Rule For Banks." See Page 2 regarding this exception.
- wages, salary and other income, now owed to or becoming payable to the taxpayer(s) named above.

The box checked below applies to the levy we served on you.

## Release of Levy

- Under the provisions of Internal Revenue Code section 6343, all property, rights to property, money, credits, and bank deposits of the taxpayer(s) named above are released from the levy.
- Under the provisions of Internal Revenue Code section 6343, all wages, salary and other income now owed to or becoming payable to the taxpayer(s) named above are released from the levy.

## Release of Property from Levy

- Under the provisions of Internal Revenue Code section 6343, all property, rights to property, money, credits, and bank deposits  greater than  less than are released from the levy. The levy now attaches only to this amount.
- The last payment we received from you was dated \_\_\_\_\_. The amount the taxpayer still owes is \_\_\_\_\_. When this amount is paid to the Internal Revenue Service, the levy is released. If you sent us a payment after the last payment date shown, subtract that from the amount you send now.
- Under the provisions of Internal Revenue Code section 6343, all wages, salary and other income  greater than  less than each now owed to or becoming payable to the taxpayer(s) named above are released from the levy.

Dated at [REDACTED] (Place) [REDACTED] 2008 (Date)

Signature [REDACTED]	Telephone Number [REDACTED]	Title [REDACTED] REVENUE OFFICER
-------------------------	--------------------------------	--

# Release of Levy/Release of Property from Levy

To  
SOCIAL SECURITY ADMINISTRATION  
6401 SECURITY BLVD  
BALTIMORE, MD 21235-0000

Taxpayer(s)  
ME [REDACTED] BEF [REDACTED]  
[REDACTED]

Identifying Number(s)  
[REDACTED]

A notice of levy was served on you and demand was made for the surrender of:

- all property, rights to property, money, credits and bank deposits of the taxpayer(s) named above, except as provided in 6332(c) of the Internal Revenue Code—"Special Rule For Banks." See Page 2 regarding this exception.
- wages, salary and other income, now owed to or becoming payable to the taxpayer(s) named above.

The box checked below applies to the levy we served on you.

## Release of Levy

- Under the provisions of Internal Revenue Code section 6343, all property, rights to property, money, credits, and bank deposits of the taxpayer(s) named above are released from the levy.
- Under the provisions of Internal Revenue Code section 6343, all wages, salary and other income now owed to or becoming payable to the taxpayer(s) named above are released from the levy.

## Release of Property from Levy

- Under the provisions of Internal Revenue Code section 6343, all property, rights to property, money, credits, and bank deposits  greater than  less than are released from the levy. The levy now attaches only to this amount.
- The last payment we received from you was dated \_\_\_\_\_. The amount the taxpayer still owes is \_\_\_\_\_. When this amount is paid to the Internal Revenue Service, the levy is released. If you sent us a payment after the last payment date shown, subtract that from the amount you send now.
- Under the provisions of Internal Revenue Code section 6343, all wages, salary and other income  greater than  less than each now owed to or becoming payable to the taxpayer(s) named above are released from the levy.

Dated at \_\_\_\_\_ (Place) \_\_\_\_\_ (Date) 2008

Signature [REDACTED]	Telephone Number [REDACTED]	Title REVENUE OFFICER
-------------------------	--------------------------------	--------------------------

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing paper was today served by mailing the same in a postage-paid wrapper addressed to:

me ber  
[REDACTED]

Dated: [REDACTED] 2008

By: [REDACTED]

Attorney (SBSE)  
Tax Court Bar [REDACTED]

[REDACTED]  
[REDACTED] CA 51 [REDACTED]

RECEIVED