

Action This Day: Delay in Freezing a Taxpayer's Account Results in Liability.

When Winston Churchill wanted something done right away, he sent out memos headed "action this day." Churchill's tag line is also good advice for someone who receives an IRS levy, a point illustrated by a recent California case.

In *United States v. JP Morgan Chase Bank N.A.*, 2014 U.S. Dist. LEXIS 113896 (C.D. Cal. Aug. 15, 2014), the taxpayer had received a \$75,000 tax refund despite income of under \$22,000. In an effort to recover the money, the IRS served a jeopardy levy on JP Morgan Chase Bank. *Id.*, slip op. at *2. Two hours after the levy was served on the bank, the taxpayer withdrew \$40,000. *Id.*, slip op. at *3. Inexplicably, the bank didn't freeze the account for two days.

To a degree, the IRS was at fault. When the revenue officer appeared at the taxpayer's door to demand payment (as required before making the levy), he also alerted the taxpayer that his bank account would be seized. *Id.*, slip op. at *8. While somewhat sympathetic to the bank's situation, the district court nonetheless concluded that it was on the hook, rejecting a variety of equitable defenses that it had previously persuaded it to deny summary judgment to the government.

The court's reasoning was fairly straight-forward. First, while it was unfortunate that the IRS agent alerted the taxpayer of the planned levy, the IRS was required to demand payment before serving the levy, and that demand would certainly alert the taxpayer that a property seizure might be coming. *Id.*, slip op. at *10. And in terms of the law, the court concluded that there was no "reasonableness" defense under Section 6332 of the Internal Revenue Code. In the court's view, if a bank fails to preserve property that is subject to levy, it is liable under Section 6332(d)(1). *Id.*, slip op. at *11. As the court noted, this conclusion is reinforced by the existence of a penalty provision: if someone holding a taxpayer's property receives a levy and fails to comply without good cause, they are subject to a fifty percent penalty. *Id.* (citing I.R.C. § 6332(d)(2)).

Jim Malone is a tax attorney in Philadelphia; he focuses his practice on federal, state and local tax controversies. © 2014, MALONE LLC.