

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAR 26 1991

MURRAY L. HARRIS, CLERK

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

BY 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).

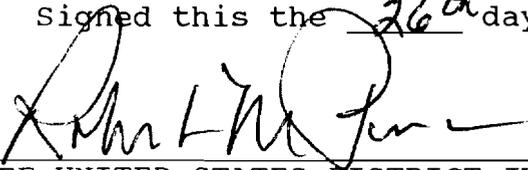
These instruments shall be filed with the United States District Clerk who shall assign it to a United States Magistrate Judge, who shall have full authority to issue the appropriate order after finding that probable cause exists to believe that property or rights to property which is subject to levy 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.

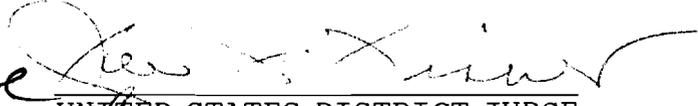
The foregoing procedures are effective immediately.

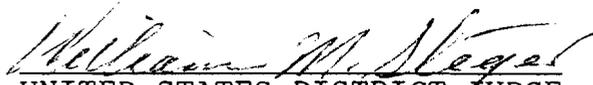
Signed this the 26th day of March, 1991.

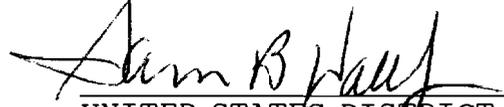

CHIEF UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE


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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
_____, DIVISION

IN THE MATTER OF THE TAX)
INDEBTEDNESS OF)

_____)
_____)
_____)
_____)

Misc. 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 taxpayers, together with interest and costs as allowed by law.

BOB WORTHAM
UNITED STATES ATTORNEY

By: _____
ASSISTANT U.S. ATTORNEY

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

IN THE MATTER OF THE TAX
INDEBTEDNESS OF

)
)
)
)
)
)

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.

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 _____