

WORKMEN'S COMPENSATION: RE: Notice of levy for income taxes under
workmen's compensation.

TAXATION:

Opinion No. 11 (64)
Answered by letter.

February 28, 1964



Mr. Spencer H. Givens
Director
Division of Workmen's Compensation
Jefferson City, Missouri

Dear Mr. Givens:

This letter is in response to your request of August 20, 1963, for an official opinion of this office. You inquire:

"Is compensation due from an employer to an employee under the Workmen's Compensation Law (Chapter 287, RSMo 1959) subject to levy by the United States for income taxes claimed by the Internal Revenue Service, United States Treasury Department, to be due from the injured employee, who would otherwise be entitled to receive such compensation payments? In that connection attention is invited to the provisions of Section 287.260, RSMo 1959.

"Is the Notice of Levy, a photostatic copy of which is enclosed, legal and binding on the employer named therein?"

Section 287.260, RSMo 1959, to which you refer provides:

"The compensation payable under this chapter, whether or not it has been awarded or is due, shall not be assignable, shall be exempt from attachment, garnishment, and execution, shall not be subject to setoff or counterclaim, or be in any way

liable for any debt and in case of the insolvency of an employer or his insurer, or the levy of an attachment or an execution against an employer or insurer shall be entitled to the same preference and priority as claims for wages, without limit as to time or amount, * * *"

The Notice of Levy of the Federal Internal Revenue Service enclosed with your request was made under authority of Section 6321 of the Internal Revenue Code of 1954, 26 U.S.C. §6321, which creates a lien in favor of the United States upon the taxpayer's property or right to property.

It is well established that the federal power to tax and to collect the tax is supreme and prevails over the state's power to exempt property from claims of creditors. State law cannot create an exemption from the collection of federal taxes. *Kieferdorf v. Commission of Internal Revenue*, 142 F2d 723, 725; *U.S. v. Heffron*, 158 F2d 657, 658; *Leuschner v. First Western Bank*, 261 F2d 705, 707.

Thus, the exemption provided by Section 287.260, RSMo 1959, does not prevent the federal tax authorities from levying on workmen compensation benefits. We do not, however, rule that workmen's compensation benefits are or are not subject to federal tax levy.

Although federal power to collect taxes prevails over state exemption laws, there are exemptions provided under the federal laws. For example, Section 6334 of the Internal Revenue Code, 26 U.S.C. §6334, provides such exemptions. It is our opinion that whether or not workmen compensation benefits come within any federal exemption is a question to be determined by the courts through an adversary proceeding involving proper parties-in-interest.

Your request in effect asks us to rule how the federal tax levy affects the rights and liabilities of the employer and the employee and also the federal government. This we cannot and should not attempt. First, as explained supra, the scope of federal tax exemptions should be determined by court action. Second, the validity of any levy and its effect on the parties can only be determined upon a case by case basis. The employee may have defenses to the collection of the tax. The employer may have obligations to give notice and raise defenses which the employee may have. The relative rights of the parties can only be determined upon the operative facts. Such facts vary in each case.

Mr. Spencer H. Givens

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Furthermore, the relative rights and duties affected by the tax levy are between the employer, employee and the federal tax authorities. We have attempted, but fail to see how the Workmen's Compensation Commission is legally affected by the federal levy. Thus, it is not a party-in-interest to the issues. It is our opinion that the Commission is not a proper party to either litigate or determine these issues but that the legal consequences of a notice to levy is a matter to be resolved between the employer, the employee and the federal tax authorities.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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