

**MEMO# 11418**

November 22, 1999

## **GUIDANCE ON IRS LEVIES ON QUALIFIED RETIREMENT ACCOUNTS**

[11418] November 22, 1999 TO: PENSION COMMITTEE No. 65-99 RE: GUIDANCE ON IRS LEVIES ON QUALIFIED RETIREMENT ACCOUNTS

Recently, both an Internal Revenue Service Field Service Advice Memorandum and an Eastern District of New York court case have analyzed the issue of the implications of an IRS levy for taxes on qualified retirement accounts. In Field Service Advice Memorandum 199930039 (the "FSA"), the IRS advised that a retirement plan does not have to honor an IRS levy for taxes on behalf of a taxpayer who is not entitled to an immediate distribution of benefits under the terms of the plan. Because the taxpayer was still employed and not disabled, he or she was not eligible to receive an immediate distribution of plan benefits under the terms of the plan. Therefore, the plan was not required to distribute any portion of plan assets to the Service pursuant to the levy. In *Kopec v. Kopec*, an Eastern District of New York case, the court held that a spouse who had a right to a survivor annuity under her husband's pension plan and did not waive that right when the pension funds were rolled over into her husband's IRA, does not have a claim to the IRA monies that would invalidate an IRS levy on the funds. The facts of the case are as follows: in 1996 and 1997, the Service made assessments against Donald Kopec for tax deficiencies in excess of \$1million. The IRS levied on Mr. Kopec's assets, including an IRA he had opened in his own name, which consisted of assets that were directly rolled over from his pension plan. Plaintiff Helen Kopec, wife of Donald Kopec, filed an action under ERISA claiming that she failed to sign the spousal waiver provided for in ERISA section 205(d), which negated the rollover to Donald's IRA, entitling her to 50% of the proceeds included in the IRA. Helen Kopec challenged the IRS levy against her husband's IRA as wrongful because it failed to recognize her spousal right to 50% of the IRA account. The IRS argued that Helen had no rights to the IRA account because she had no vested right in the pension distribution. Because Helen's rights to her husband's pension benefits resulted from a survivor annuity and because Donald was still alive, Helen's interest in the pension monies would be merely contingent. In addition, the IRS argued that any ERISA rights Helen had in the pension monies were extinguished upon distribution of the pension funds. The court held that payment of funds to Donald did not create an ownership interest for Helen for the value of her survivorship interest. Helen's right to a survivor annuity continues as an obligation of Donald's pension fund, because the pension fund failed to require a proper spousal waiver under ERISA section 205 when distributing Donald's entire accrued benefits. Helen's right against the fund is in no way extinguished by the IRS's levy on the full amount of Donald's IRA. Wrongful payment to one beneficiary does not create an ownership right to those funds in the proper recipient, according to the court. If a wife could automatically claim an ownership right to half the monies that were distributed to her husband, she would receive a double recovery if

permitted to also obtain a declaration that the pension plan must honor her survivor benefit rights. Copies of FSA 199930039 and Kopec v. Kopec, E.D.N.Y., No. 97-CV-3800 (ADS) (Oct. 18, 1999) are attached. Kathryn A. Ricard Associate Counsel Attachments

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