

VOLUME 7B, CHAPTER 28: “COLLECTION OF NON-DEPARTMENT OF DEFENSE (DoD) DEBT AND DELINQUENT FEDERAL TAXES BY TAX LEVY”

SUMMARY OF MAJOR CHANGES

All changes are denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by [***bold, italic, blue, and underlined font***](#).

The previous version dated [September 2018](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
280102	Updated “Authoritative Guidance” paragraph to comply with administrative instructions.	Revision

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CHAPTER 28

COLLECTION OF NON-DEPARTMENT OF DEFENSE (DoD) DEBT AND
DELINQUENT FEDERAL TAXES BY TAX LEVY

2801 GENERAL

280101. Purpose

The purpose of this chapter is to provide guidance on the collection of non-DoD debt from the retired pay of members. Non-DoD debt discussed in this chapter include debts owed to other non-DoD federal creditor agencies and debt owed to the United States as a result of a civil judgment against a member. This chapter also provides guidance on tax levies issued by the Internal Revenue Service (IRS) in order to collect delinquent income tax debt from members. See Volume 16 for the collection of DoD debts from members.

*280102. Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 5, 26, 31, and 37. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2802 INVOLUNTARY COLLECTION

280201. Recovery of Debt

Current pay is available for repayment of indebtedness without the member's consent only if such recovery is expressly authorized by statute.

280202. Offsetting Retired Pay to Collect Debts Owed to Non-DoD Federal Creditor Agencies

Title 5, U.S.C., [section 5514](#) provides authority to offset retired pay in order to collect debts owed to non-DoD federal creditor agencies.

A. Non-DoD Federal Creditor Agencies. A non-DoD federal creditor agency is a non-DoD federal agency to which an employee owes a debt. Examples of non-DoD federal creditor agency debts include debts owed by members for overpayments of civilian pay the member earned as an employee of a non-DoD federal agency or federal loan debts from non-DoD agencies. See section 2803 for collection of delinquent federal tax by levy. See paragraph 280204 for court judgments.

B. Offset Authority. Non-DoD federal creditor agency debts may be collected by offset of retired pay under 5 U.S.C. 5514. When non-DoD federal creditor agencies identify members as having outstanding debts, those agencies must address their salary offset requests to

the Secretary of Defense designee for such collection, which is the Defense Finance and Accounting Service (DFAS). The following designated agent is responsible for receiving these collection requests:

Defense Finance and Accounting Service (DFAS)-AHADC
1240 E. 9th Street
Cleveland, OH 44199-8002

C. Due Process. A request for offset must include certification that due process rights have been afforded to an indebted employee by the non-DoD creditor agency. A federal tax levy takes precedence over other pay or salary offset deductions, pursuant to 5 U.S.C. § 5514. See also Volume 16, Chapter 3, paragraph 030404.

D. Deduction Limitation. Collection may be made in monthly installments or at established pay intervals not to exceed 15 percent of disposable pay for any pay period, unless a greater percentage is authorized by written consent of the member. Unsatisfied debts at retirement must be deducted from subsequent payments of any nature due the member. See Volume 16, Chapter 3, paragraph 030304.

280203. Administrative Offset of Debts Owed to Non-DoD Federal Creditor Agencies

Debts owed to non-DoD federal creditor agencies may be collected by administrative offset under [31 U.S.C. § 3716](#). See also Volume 16, Chapter 3, paragraph 030404.

280204. Collection of Other Debts

A member's retired pay may be subject to garnishment, tax levy, or a court judgment.

A. Garnishment or Levy

A retired member may not be deprived of pay by the civil process of garnishment or tax levy except as set out in Chapter 27 (garnishment of child support and alimony) or section 2803 (levy of delinquent federal taxes).

B. Judgments in Favor of the United States

Court judgments against a member, or retired member, in favor of the United States may not be collected under Public Law (P.L.) 97-276, section 124. However, such judgments in favor of the United States may be collected under 5 U.S.C. § 5514.

C. Judgments in Favor of Private Individuals

Court judgments ordered to be collected to pay private individuals are not debts owed to the United States government and cannot be collected by offset under 5 U.S.C. § 5514 or 31 U.S.C. § 3716.

2803 COLLECTION OF DELINQUENT FEDERAL TAXES BY LEVY

280301. General

When a member does not pay any federal income taxes due within 30 days after the IRS has issued a notice and demand for payment to the member, the IRS may collect the tax by levy on the member's salary or other income, including retired or retainer pay. IRS tax levies are requests on IRS Form 668-W, Notice of Levy on Wages, Salary, and Other Income, for a continuous levy from a member's retired pay to collect taxes owed. The effect of a levy on wages, salary, or other income payable to or received by the member will be continuous from the date such levy is first made until such levy is released by the IRS on Form 668-D, Release of Levy. Medal of Honor recipients are exempt from tax levy.

280302. IRS Form 668-W

The IRS will transmit IRS Form 668-W or [668-W\(c\)](#), in five parts (the letter "c" designates a computer-generated form which is the same as the version of the form without the "c"). The IRS Form 668-W will identify the member, specify the amount of the tax liability, give instructions for providing due process, show how to compute the levy based on input from the taxpayer, and give the payment address. The DFAS Retired and Annuitant Pay Office (hereinafter "Office") must follow the instructions on the IRS Form 668-W. In general, the Office must notify the taxpayer (see Figure 28-1 for an example of a sample letter), compute the amounts available for payment to the IRS, and make the payment. Currently, the IRS Form 668-W requires the employer to send to the IRS all of the taxpayer's net pay less what is exempt from levy. Net pay is gross retired pay less all deductions and allotments in effect as of the date of receipt of IRS Form 668-W. The Office must follow the instructions on IRS Form 668-W when computing exemptions.

280303. Problem Cases

When the IRS has determined the taxpayer's case is a problem case, the taxpayer will be furnished with the IRS Form 668-W, a statement of the amount of delinquent taxes and a statement that "net pay" is not enough to pay the levy and that all available accrued pay should be sent to the IRS. Available accrued pay is gross retired pay less:

- A. Withholding for current [Federal](#) taxes (statutory amounts only);
- B. Amounts required to satisfy prior overpayments of pay;
- C. Amounts waived in favor of compensation from the [Department of Veterans Affairs](#);
- D. United States Government Life Insurance/National Service Life Insurance premiums;
- E. Deductions for Retired Serviceman's Family Protection Plan and/or Survivor Benefit Plan costs;

- F. Voluntary child-support allotments to satisfy court orders, provided the court order is dated prior to the date of the levy from the IRS;
- G. Pay attached or garnished for child support or alimony; and
- H. The levy exemptions calculated under normal levy procedures.

NOTE: The main difference between a regular levy and a problem case levy is that, under the latter, the Office must stop the member's voluntary allotments of retired pay to satisfy the levy. If it is not necessary to stop all allotments, the Office should request the member elect which allotments to stop. If the member does not respond to the request, the Office must stop such allotments as are necessary, stopping any commercial insurance allotments last. See Chapter 19, Figure 19-1 for the order of precedence.

Figure 28-1. Example of Notification Letter for IRS Notice of Levy

<p style="text-align: center;">Defense Finance and Accounting Service Retired and Annuitant Pay</p> <p style="text-align: right;">December 1, 20XX</p> <p>CMSGT John Doe, U.S. Air Force (Retired) 1240 East 97th Street Cleveland, OH 44199-2055</p> <p>Dear CMSGT Doe,</p> <p>The IRS has sent us the attached IRS Form 668-W, (Notice of Levy on Wages, Salary, and Other Income). Please read the IRS Form 668-W carefully, as it may be advisable to discuss it with your attorney or other tax adviser.</p> <p>Complete the attached form and return it to us within 3 working days to claim your partial exemption. If we do not receive the completed form, we will compute your exemption for you, using the exemption for a married person filing separately with one personal exemption. Please note that the exemptions you claimed for tax withholding purposes are NOT the same and we will not use them to compute your exemption from levy.</p> <p>This is a continuous levy against your retired pay to collect delinquent federal taxes. We will deduct the levy from your (month/year) retired pay. We will make a specified collection from your retired pay and continue the collection until the levy has been satisfied. This levy remains in force and effect until the IRS serves our office with IRS Form 668-D, (Release of Levy).</p> <p>If you have been awarded the Medal of Honor, you are exempt from levy. Send us a copy of the citation awarding you the Medal of Honor to prevent the levy of your retired pay.</p> <p>Please contact the IRS office that issued the levy for questions that you may have concerning the levy.</p> <p style="text-align: right;">Sincerely,</p> <p style="text-align: right;">Military Pay Technician Retired and Annuitant Pay</p> <p>Attachment: As stated</p>
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REFERENCES

**CHAPTER 28 – COLLECTION OF NON-DEPARTMENT OF DEFENSE (DoD) DEBT
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2802 –INVOLUNTARY COLLECTION

280201	37 U.S.C. § 1007(c) 5 U.S.C. § 5514 31 U.S.C. § 3716
280202	37 U.S.C. § 1007(c) 5 U.S.C. § 5514
280203	31 U.S.C. § 3716
280204	5 U.S.C. § 5514 31 U.S.C. § 3716 P.L. 97-276, section 124, October 2, 1982 Comptroller General, B-230865 (1990), United States v. Tafoya , 803 F.2d 140 (5 th . Cir 1986)

2803 – COLLECTION OF DELINQUENT FEDERAL TAXES BY LEVY

26 U.S.C. § 6321(a)
26 U.S.C. §§ 6331 and 6334