



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. 91-013

REVENUE:

Authority of Investigators of  
Department of Revenue to Levy Upon,  
Seize and Sell Property of  
Delinquent Taxpayers

Douglas L. Whitley, Director  
Illinois Department of Revenue  
101 West Jefferson Street  
Springfield, Illinois 62708

Dear Director Whitley:

I have your predecessor's letter wherein he inquired whether, under the provisions of the Illinois Income Tax Act (Ill. Rev. Stat. 1989, ch. 120, par. 1-101 et seq.) and the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1989, ch. 120, par. 440 et seq.), investigators of the Illinois Department of Revenue are generally empowered to levy upon, seize and sell property of delinquent taxpayers. For the reasons hereinafter stated, it is my opinion that the Department's investigators

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may levy upon a taxpayer's property only to the extent that the Director is expressly authorized by statute to designate Department employees to levy upon such property.

Section 1109 of the Illinois Income Tax Act (Ill. Rev. Stat. 1989, ch. 120, par. 11-1109), which provides for the collection of delinquent income taxes by a summary process, provides, in pertinent part:

"Demand and Seizure. In addition to any other remedy provided for by the laws of this State, if the tax imposed by this Act is not paid within the time required by this Act, the Department, or some person designated by it, may cause a demand to be made on the taxpayer for the payment thereof. If such tax remains unpaid for 10 days after such demand has been made and no proceedings have been taken to review the same, the Department may issue a warrant directed to any sheriff or other person authorized to serve process, commanding the sheriff or other person to levy upon the property and rights to property (whether real or personal, tangible or intangible) of the taxpayer, without exemption, found within his jurisdiction, for the payment of the amount thereof with the added penalties, interest and the cost of executing the warrant. The term 'levy' includes the power of distraint and seizure by any means. In any case in which the warrant to levy has been issued, the sheriff or other person to whom the warrant was directed may seize and sell such property or rights to property. \* \* \*

Any officer or employee of the Department designated in writing by the Director is authorized to serve process under this Section to levy upon accounts or other intangible assets of a taxpayer held by a financial organization, as defined in Section 1501 of this Act. In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director may levy upon the following property and rights to property

belonging to a taxpayer: contractual payments, accounts and notes receivable and other evidences of debt, and interest on bonds, by serving a notice of levy on the person making such payment. Levy shall not be made until the Department has caused a demand to be made on the taxpayer in the manner provided above. In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director, may levy upon the salary, wages, commissions and bonuses of any employee, but not upon the salary or wages of officers, employees or elected officials of the United States or any state other than this State, by serving a notice of levy on the employer, as defined in Section 701(d). Levy shall not be made until the Department has caused a demand to be made on the employee in the manner provided above. \* \* \*

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(Emphasis added.)

Section 5f of the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1989, ch. 120, par. 444f) similarly authorizes the collection of delinquent retailers' occupation tax by a summary process. Section 5f provides, in pertinent part:

"In addition to any other remedy provided for by the laws of this State, if the tax imposed by this Act is not paid within the time required by this Act, the Department, or some person designated by it, may cause a demand to be made on the taxpayer for the payment of the tax. If the tax remains unpaid for 10 days after demand has been made and no proceedings have been taken for review, the Department may issue a warrant directed to the sheriff of any county of the State or to any State officer authorized to serve process, commanding the sheriff or other officer to levy upon property and rights to property (whether real or personal, tangible or intangible) of the taxpayer, without exemption, found within his or her jurisdiction, for the payment of the amount of unpaid tax with the added penalties, interest and the cost of executing the

warrant. The term 'levy' includes the power of distraint and seizure by any means. In any case in which the warrant to levy has been issued, the sheriff or other person to whom the warrant was directed may seize and sell such property or rights to property. \* \* \* The sheriff or other officer to whom such warrant is directed shall proceed in the same manner as is prescribed by law for proceeding against property to enforce judgments which are entered by a circuit court of this State \* \* \*.

\* \* \*

Any officer or employee of the Department designated in writing by the Director is authorized to serve process under this Section to levy upon accounts or other intangible assets of a taxpayer held by a financial organization, as defined by Section 1501 of the Illinois Income Tax Act. In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director may levy upon the following property and rights to property belonging to a taxpayer: contractual payments, accounts and notes receivable and other evidences of debt, and interest on bonds, by serving a notice of levy on the person making such payment. Levy shall not be made until the Department has caused a demand to be made on the taxpayer in the manner provided above. In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director, may levy upon the salary, wages, commissions and bonuses of any employee, but not upon the salary or wages of officers, employees or elected officials of the United States or any state other than this State, by serving a notice of levy on the employer. Levy shall not be made until the Department has caused a demand to be made on the employee in the manner provided above. \* \* \*

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(Emphasis added.)

Both section 1109 of the Illinois Income Tax Act and section 5f of the Retailers' Occupation Tax Act allow the

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Department of Revenue, after making a demand upon the delinquent taxpayer for payment, to issue a warrant directed to a sheriff, or a State officer or other person authorized to serve process, commanding the sheriff or other person or officer to levy upon the taxpayer's property, which may be seized and sold. Investigators for the Department of Revenue, unlike sheriffs, have not been given the general power to serve process. (Cf., Ill. Rev. Stat. 1989, ch. 127, par. 39b15.1.)

Both statutory provisions also permit the Director of the Department of Revenue to designate in writing officers or employees of the Department who are authorized to serve process and levy upon certain types of financial assets of taxpayers. The power to designate officers or employees to levy upon such assets, however, is limited and, under the terms of the statutes cited above, does not extend to serving process for seizure of other kinds of assets. Had it been the intention of the General Assembly to authorize the Director of the Department of Revenue to designate officers or employees of the Department to serve process to levy upon all types of assets of a taxpayer, those portions of the statutes expressly relating to the powers of the Director's designees would be rendered superfluous.

It is my opinion, therefore, that investigators employed by the Department of Revenue may not ordinarily serve process, levy, seize, and sell delinquent taxpayer's property pursuant to section 1109 of the Illinois Income Tax Act or

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section 5f of the Retailers' Occupation Tax Act. The Director of the Department of Revenue may, however, designate his investigators to serve process and levy upon certain types of financial assets which are expressly described therein, such as salaries, wages, commissions and bonuses, contractual payments, accounts and notes receivable, and other intangible assets, pursuant to the express statutory authority which has been granted to the Director.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL