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THE ACCOUNT SECTION OF THE BUREAU OF WORKMEN'S COMPENSATION AND/OR THE INDUSTRIAL COMMISSION MUST HONOR LEVIES FROM THE U. S. TREASURY DEPT. ON ALL TYPES OF AWARDS OF COMPENSATION MADE TO INJURED WORKMEN. §4123.67, R.C., OPINION NO. 923, OAG, 1959.

**SYLLABUS:**

Despite the provisions of Section 4123.67, Revised Code, under Section 6332, Internal Revenue Code, the accounts section of the Bureau of Workmen's Compensation and/or the Industrial Commission must honor levies from the United States Treasury Department on all types of awards of compensation made to injured workmen under Chapter 4123., Revised Code, and not yet paid.

Columbus, Ohio, March 21, 1962

Hon. J. Maynard Dickerson, Chairman Industrial Commission of Ohio  
Ohio Departments Building, Columbus 15, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"The writer has been directed by the administrator of the Bureau of Workmen's Compensation to request your opinion on the following matter:

"The Workmen's Compensation Law of Ohio, Section 4123.67 provides, in part as follows:

"'Compensation before payment shall be exempt from all claims or creditors and from any attachment or execution, and shall be paid only to the employees or their dependents.'

"Section 6321 Internal Revenue Code of 1954 would appear to make compensation under an award, and before payment, subject to a levy to satisfy income tax indebtedness.

"Section 6332 Internal Revenue Code provides for surrender of property subject to levy and a penalty for failure or refusal to surrender.

"Our Accounts Section and the Chief thereof have been served with such levy (form 668-A) and in a few cases with a final demand (form 668-C).

"Your opinion is respectfully requested on these points:

"(1) Is the Accounts Section of the Bureau of Workmen's Compensation and/or the Industrial Commission obligated to surrender such award of compensation which have been made to the injured workmen and not yet paid or transmitted?

"(2) If your answer to the foregoing is 'Yes' does it make any difference whether the award of compensation is for total disability, temporary or permanent, or such award is for partial disability?

"(3) If your answer to the first inquiry is 'Yes' and your answer to the second inquiry is that 'it makes no difference as to the type of disability' then if the compensation is surrendered under such a levy, demand and lien would the Commission and/or the Bureau have a complete valid defense in any type of action brought by the claimant in a State Court to require the Bureau or Commission to pay claimant's

compensation direct to him if such payment have already been made to the Internal Revenue?"

Section 4123.67, Revised Code, provides in pertinent part as follows:

"Compensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to the employees or their dependents.  
\* \* \*

When it adopted said section, the Legislature clearly intended to preserve and protect payments of compensation to injured workmen and their dependents under the Workmen's Compensation statutes from any and all seizure for debts of any kind and character. But whether the provisions of the section can prevail against the fastening of a lien by the federal government for unpaid income taxes on such compensation requires a consideration of the powers of the federal government in this regard.

The Sixteenth Amendment to the Constitution gives to the federal government the power to lay and collect income taxes and Title 26 of the United States Code, more familiarly known as the Internal Revenue Act, was enacted in conformity with the grant of power of the Amendment. The legislative power of the states is subject to the paramount authority of the United States, and only the Congress can provide exemptions from execution and attachment for unpaid income taxes.

Section 6321, Internal Revenue Code, provides for a lien in favor of the United States upon all real and personal property and upon rights of persons who have neglected or refused after demand to pay any federal tax. Section 6331, Internal Revenue Code, provides for the collection of delinquent taxes by levy upon all property belonging to delinquent taxpayers. Subsection (a) of Section 6321, Internal Revenue Code, provides exemptions from property subject to levy and subsection (c) makes it clear that: "Notwithstanding any other law of the United States no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a)."

I find that payments of workmen's compensation benefits are not included in the specific exemptions of subsection (a) and that there is no provision in the Internal Revenue Code for such exemption.

As a matter of fact, it now seems well settled that the provisions of state workmen's compensation acts cannot avail against the establishment and enforcement of a lien of the federal government.

In the case of *U. S. v. Ocean Accident & Guarantee Corporation, Ltd.*, 76 F. Supp. 277 (1948), the Court had before it a provision of the New York compensation law which is similar to Section 4123.67, Revised Code, about which you are concerned. The New York law read as follows:

“Sec. 33 Assignments: exemptions

“Compensation or benefits due under this chapter shall not be assigned, released or commuted, except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees or their dependents, \* \* \*.”

The Court held that the above statute was ineffective against a federal tax lien.

I cite this case because it is so clearly on all fours with the first question you pose. There are numerous cases which establish the principle that a state cannot by legislation create exemptions from execution or attachment for the collection of federal income tax.

Not only does it appear that Section 4123.67, Revised Code, cannot prevail against the fastening of a lien by the federal government for unpaid federal income tax, but it seems clear that employees of the Bureau of Workmen's Compensation and the members of the Industrial Commission must honor the levy of the federal government or be personally liable for the amounts involved. Reference is made to my Opinion No. 923, Opinions of the Attorney General for 1959, page 623. The second paragraph of the syllabus reads as follows:

“Where the Auditor of State is in possession of (or obligated with respect to) property or rights to property subject to levy by the United States Treasury Department, upon which a levy has been made, Section 6332, Internal Revenue Code, requires that the Auditor shall, upon demand of the Secretary of the Treasury or his delegate, surrender such property or rights to the Secretary or his delegate, except such part of the property or right as is, at the time of such demand, subject to an attachment or execution under any judicial process.”

Also, see *Sims v. United States*, 3 L. ed. 2d, 667, 292 F. (2d) 434, Aff'd. 359, U.S. 108, in which the state auditor of West Virginia was held personally liable for surrendering funds to taxpayers when the federal government had a lien on such funds.

In view of the foregoing, I answer your first question in the affirmative.

Your second question suggests a possible differentiation between awards of compensation which I believe cannot be maintained with regard to the purview of the Internal Revenue Code. All forms of compensation payable under the Ohio Workmen's Compensation Act whether for temporary total disability, temporary partial disability, permanent partial disability or permanent total disability of necessity fall within the meaning of the language: "property or right to property" as it is used in the Internal Revenue Code. It seems clear that an award of compensation, whatever its purpose, is property or a right to property and I thus answer your second question in the negative.

As to your third question, in view of the definite mandate of the federal law, I am of the opinion that the Commission and/or the Bureau would have a valid defense against an action brought by a claimant for funds which were released to the federal government under Section 6332, Internal Revenue Code.

In summary, it is my opinion and you are advised that despite the provisions of Section 4123.67, Revised Code, under Section 6332, Internal Revenue Code, the accounts section of the Bureau of Workmen's Compensation and/or the Industrial Commission must honor levies from the United States Treasury Department on all types of awards of compensation made to injured workmen under Chapter 4123., Revised Code, and not yet paid.

Respectfully,  
MARK McELROY  
Attorney General