



OFFICE OF THE GENERAL COUNSEL

DEC 14 1994

Arnold E. Kaufman
Assistant Chief Counsel
Department of the Treasury
Internal Revenue Service
Washington, D.C. 20224

Dear Mr. Kaufman:

This is in response to your letter of June 9, 1994 concerning a number of cases in the Buffalo district in which the Rental Assistance Corporation (RAC), a public housing authority (PHA), refuses to honor an Internal Revenue Service (IRS) levy. You state that the RAC contends that it is prohibited from honoring the levy because of language contained in the Section 8 Housing Assistance Payments (HAP) contract. Please excuse the delay in our response.

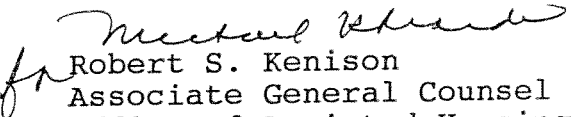
Historically, the Department's position in such cases as they relate to state law is, that Federal law under the Section 8 statutes only authorizes "payments to the owner." (42 U.S.C. 1437f(b)) Thus, the PHA is prohibited from making payments to a garnishing creditor instead of an owner who has entered into a Section 8 assistance contract with a PHA. Federal Law would pre-empt a State law which would otherwise require a PHA to make assistance payments to an entity other than the Section 8 owner.

The present issue involves construction of the relationship between Federal statutes (a) authorizing IRS levy on a Section 8 owner's property to satisfy tax obligation and (b) authorizing PHA payments to a Section 8 owner. In your letter you state that the IRS takes the position that under § 6332 of the Internal Revenue Code (I.R.C.), any person surrendering property subject to levy under I.R.C. § 6321 shall be discharged from any obligation or liability to the delinquent taxpayer. Section 6321 treats the party surrendering the property as if they had surrendered the property to the delinquent taxpayer. Thus, a PHA that surrenders Section 8 assistance payments pursuant to a levy under § 6321, is considered under the law to have surrendered such property to the taxpayer/Section 8 owner. In light of the Federal statutory protection afforded PHAs under § 6332(e), discharging a PHA's liability to the section 8 owner if the levy

is honored, it is our position that the RAC is not prohibited under the Section 8 HAP contract from honoring an IRS levy under I.R.C. § 6321. We will so inform our Field staff.

For further assistance on this matter please contact Althea Forrester at (202) 708-8974.

Sincerely,


for Robert S. Kenison
Associate General Counsel
Office of Assisted Housing
and Community Development