



## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 1. Lien Program Overview

##### 5.12.1 Lien Program Overview

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##### Manual Transmittal

October 14, 2013

##### Purpose

- (1) This transmits the revised IRM 5.12.1, Federal Tax Liens, Lien Program Overview

##### Background

A revision of the IRM 5.12 chapter has been done in order to consolidate and coordinate like topics, reduce duplication of content, and provide an overview, cross-references, and contacts.

##### Material Changes

- (1) Move IRM 5.12.2.1 and .2 to IRM 5.12.1.3 and .4
- (2) 5.12.1.4(2)(b) (formerly known as IRM 5.12.2.1(1)) changed word "protect" to "establish" at the behest of the TAS
- (3) The following table provides a cross walk of sections MOVING TO IRM 5.12.1 FROM other 5.12 location(s)

##### Moving from \_\_\_\_\_ to IRM 5.12.1

5.12.2.1  
5.12.2.2  
5.12.2.16  
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5.12.2.18  
5.12.2.22  
5.12.3.11  
5.12.6.1  
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5.12.6.6  
5.12.6.11  
5.12.6.12  
5.12.6.13  
Exhibit 5.12.6-1

(4) Former IRM 5.12.2.18, *Priority of Certain Other Interests - Advances, Interest and Expenses* from the table above was moved to this IRM but then deleted because the material is more fully and accurately addressed in IRM 5.17.2, *Federal Tax Liens* which is the legal reference guide for liens.

(5) Former IRM 5.12.2.22, *Cost of Living Adjustment* from table above was moved to this IRM but then deleted.

(6) The following table provides sections OF IRM 5.12.1 STAYING IN IRM 5.12.1.

##### Staying in IRM 5.12.1

5.12.1.4

(7) The following table provides a cross walk for sections MOVED FROM IRM 5.12.1 TO their new 5.12 location(s)

**Prior IRM content from: Moving to new location in IRM:**

5.12.1.1  
5.12.1.2                      5.12.6  
5.12.1.3

- (8) IRM 5.12.1.2 added section on Introduction to Liens.
- (9) IRM 5.12.1.3 moved to this section *Creation and Duration*.
- (10) IRM 5.12.1.4 moved to this section *Purpose and Effect of Filing a Notice of Federal Tax Lien (NFTL)*. Included in this section are *Lien and NFTL Priorities*, moved to IRM 5.12.1.4.1 and *NFTL Effect on Home, Business, and Credit* added as IRM 5.12.1.4.2..
- (11) IRM 5.12.1.5 added section on IRS Organizations Working Lien Issues, IRM 5.12.1.5.2 added section on Appeals, and IRM 5.12.1.5.3 moved to Taxpayer Advocate Service section.
- (12) IRM 5.12.1.6 added section on *Lien Content Locations* in the IRM 5.12 series.
- (13) IRM 5.12.1.7 added section on *Lien Content or References in Other IRMs*.
- (14) IRM 5.12.1.8 added section on *Educational Videos and Web Sites Associated with the Lien Program*.
- (15) IRM 5.12.1.9 moved to this section *Authority to Sign Lien Notices, Certificates, and other Lien Documents*.
- (16) IRM 5.12.1.10 moved to this section *Requests for Disclosure of Outstanding Lien Amount*.
- (17) IRM 5.12.1.11 added section on *Lien Notices and Certificates*.
- (18) IRM 5.12.1.12 added section on *Report, Instruction, and Application Products Associated with the Lien Program*.
- (19) IRM 5.12.1.13 added section on *Letters associated with the Lien Program*.
- (20) IRM 5.12.1.14 moved to this section *Management and Responsibility for the Lien Program*.
- (21) IRM 5.12.1.15 moved to this section *Communicating With Centralized Lien Processing*.
- (22) IRM 5.12.1.16 moved to this section *Field Office Resource Team (FORT)*.
- (23) IRM 5.12.1.17 moved to this section *Functional Coordinator Responsibilities*.
- (24) IRM 5.12.1.18 moved to this section *Automated Lien System (ALS) Permissions* and Exhibit 5.12.1-1 *ALS Permissions Chart*.
- (25) IRM 5.12.1.19 moved to this section *Contacting Recording Officials*.
- (26) IRM 5.12.1-1 moved to this section *ALS Permissions Chart*.
- (27) IRM 5.12.1-2 added to this section *Glossary of Common Acronyms in IRM 5.12*.

**Effect on Other Documents**

This material supersedes IRM 5.12.1, dated January 9, 2009, IRM 5.12.2 dated March 8, 2012, IRM 5.12.3 dated June 1, 2010, and IRM 5.12.6 dated July 16, 2010.

**Audience**

SBSE and W&I Collection, Centralized Lien Operation, and Appeals

**Effective Date**

(10-14-2013)

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**5.12.1.1 (10-14-2013)**

**Purpose of this IRM**

- 1. The purpose of this IRM is to provide an introduction to the lien program, cross-references, and contacts.

**5.12.1.2 (10-14-2013)**

**Introduction to Liens**

- 1. Congress, through the Internal Revenue Code (IRC), has provided the IRS a powerful tool allowing the Government to protect the American taxpaying public's interest in collecting the proper amount of tax revenues. This tool is the Federal tax lien (FTL) which is sometimes called the "statutory lien" or "assessment lien". At times the lien has been referred to as the "silent" lien because, while the Service makes the taxpayer aware of the existence of the lien, it does not make the lien's existence public unless a notice of the lien has been filed. Because the lien arises by operation of law, it is referred to throughout this IRM Chapter as the statutory lien or simply "lien".
- 2. A federal tax lien is a claim against property including current and future rights to property. It represents the tax or tax related debt of an individual or business.
- 3. This IRM Section provides a broad outline or road map introducing liens, indicating where lien information can be found in the IRM 5.12 chapter, where lien information can be found in other IRM chapters, and providing contact points.
- 4. The law sections in the United States Code most frequently associated with liens are:
  - 1. 26 USC § 6321: Lien for taxes
  - 2. 26 USC § 6322: Period of lien
  - 3. 26 USC § 6323: Validity and priority against certain persons
  - 4. 26 USC § 6320: Notice and opportunity for hearing upon filing of notice of lien
  - 5. 26 USC § 6324: Special liens for estate and gift taxes
  - 6. 26 USC § 6324A: Special lien for estate tax deferred under section 6166

7. 26 USC § 6324B: Special lien for additional estate tax attributable to farm, etc., valuation
  8. 26 USC § 6325: Release of lien or discharge of property
  9. 26 USC § 6326: Administrative appeal of liens
  10. 26 USC § 6327: Cross References
  11. 26 USC § 7425: Discharge of Liens
  12. 26 USC § 7426: Civil actions by persons other than taxpayers
  13. 26 USC § 7432: Civil damages for failure to release lien
  14. 28 USC § 2410: Actions affecting property on which United States has lien
5. Title 26 of the United States Code is called the Internal Revenue Code (IRC). The legal cite might be seen referenced in a variety of ways including: 26 USC § 6321, IRC § 6321, IRC 6321, section 6321, and I.R.C. 6321 with or without the section symbol. The associated Treasury Regulation are found in the Code of Federal Regulations (CFR) and would be cited as Treas. Reg. § 301.6321-1 or as 26 CFR § 301.6321-1.
6. Both the Code and the Regulations have on-line research availability. Use the web page [United States Code](#) on the US House of Representatives site or the web page [Electronic Code of Federal Regulations](#) on the National Archives and Records Administration site.
7. Though it may seem obvious, it is important to understand that a lien is not a levy. Information about levies can be found in IRM 5.11 and IRM 5.10.

### 5.12.1.3 (10-14-2013) Creation and Duration

1. A Federal Tax Lien is created by the statute IRC § 6321 which is why it is said to be created by operation of law. It attaches to a taxpayer's current and future property and rights to property for the amount of the liability. This is the "statutory" lien. The following must occur for the statutory lien to arise by operation of law:
  - A. An assessment must have been made.
  - B. Notice and demand for payment must have been made.
  - C. The taxpayer must have neglected or refused to pay.
2. Once the lien exists it is controlled by IRC § 6322:
  - A. Its date of origin becomes the assessment date.
  - B. It continues to exist until the liability is satisfied or becomes unenforceable by lapse of time.

### 5.12.1.4 (10-14-2013) Purpose and Effect of Filing a Notice of Federal Tax Lien (NFTL).

1. The Notice of Federal Tax Lien is a public notification filed with designated state and local jurisdictions.
2. The purpose of filing the NFTL publicly is to both
  - A. inform certain third parties, typically a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor of the existence of the statutory lien securing the tax debt, and
  - B. establish the Government's right of priority against these same creditors.

(For additional information see IRM 5.17.2, *Federal Tax Liens*).

#### Reminder:

Estate and Gift Tax Liens are discussed in IRM 5.5.8, *Decedent Estates and Estate Taxes - Estate Tax Liens*

3. The NFTL is not a negotiating tool and is to be used only in accordance with IRM 5.12 and IRM 5.17.2.

### 5.12.1.4.1 (10-14-2013) Lien and NFTL Priorities

1. Lien priorities are determined generally by "the first in time, first in right" rule. Under that rule, the Service relies on the date of assessment, which is the date the lien arises. However, the Code provides statutory deviations from the general rule. For some classes of creditors, the federal tax lien will not have priority until the notice of federal tax lien is filed (See IRC § 6323(a)). For other classes of creditors, the federal tax lien does not have priority even if notice of the federal tax lien has been filed. These are called the superpriorities. (See IRC § 6323(b).) Lien priorities are fully explained in IRM 5.17.2, *Federal Tax Liens*.

#### Note:

The priority provided with respect to casual sales and small repairs or improvements of residential real property is subject to cost of living adjustments.

See IRM 5.17.2.6.5.4 and IRM 5.17.2.6.5.7, in the Superpriorities section.

### 5.12.1.4.2 (10-14-2013) NFTL Effect on Home, Business, and Credit

1. Because other creditors become aware of the statutory lien and tax liability through the NFTL filing and then must compete with the lien based on the category of creditor they are, the party named in the NFTL may find their creditworthiness impacted. It may also impact the ability to get a loan or the financing charges paid to buy a house or a car, get a new credit card, or sign a lease. That is why it is so important that taxpayers resolve liabilities as quickly as possible, before an NFTL filing becomes necessary.

### 5.12.1.5 (10-14-2013) IRS Organizations Working Lien Issues

1. The IRS business units and organizations working lien issues are:

Enterprise Collection Strategy	Campus	Field Collection	Appeals	Chief Counsel	Taxpayer Advocate Service
Collection Policy Analysts	Centralized Lien Operation (CLO)	Revenue Officers	Settlement Officers	Area Counsel	Case Advocates

Automated Lien System (ALS) Analysts and Developers	Campus Automated Collection (ACS) in SBSE and W&I	Advisory	Appeals Analysts	SBSE Counsel	TAS analysts
Automated Collection System (ACS) Analysts	CIO Centralized Insolvency	Insolvency		Procedures and Administration	
Integrated Collection System (ICS) Analysts	COIC Centralized Offer In Compromise MOIC Monitoring Offers in Compromise W&I Accounts Management Contact Representatives				

### 5.12.1.5.1 (10-14-2013) IRS Business Units

1. The majority of Notice of Federal Tax Lien filing and maintenance work is performed by Field Collection, ACS, and Centralized Lien Processing. Some lien notice filing is also performed by W&I Accounts Management Contact Representatives working collection issues. These units rely on Counsel as needed to fulfill their responsibilities.

**Note:**

Also see *IRM 5.12.1.8, Educational Videos and Web Sites Associated with the Lien Program* for videos and web sites that may be of assistance with lien work.

2. Additionally, there are two other organizations (Appeals and the Taxpayer Advocate Service) listed in the chart above who can assist taxpayers with lien issues.

### 5.12.1.5.2 (10-14-2013) Appeals

1. The IRS Office of Appeals handles formal appeals through either Collection Due Process (CDP) or the Collection Appeals Program (CAP). See IRM 5.12.6 for specific lien program appeal instructions or see IRM 5.1.9 *Collection Appeal Rights* for general Collection appeal instructions.
2. The Appeals' organization manuals related to their work with liens can be found in IRM 8.22 and IRM 8.24 describe Appeals CDP and CAP procedures relating to notices of Federal tax lien filings.
3. Web sites containing educational assistance for the Appeals' organization include:
  - Appeals' external web site [Appealing a Collection Decision](#)
  - Appeals' external web page [Collection Appeals Program \(CAP\)](#)
  - Appeals' external web page [Collection Due Process \(CDP\)](#)
  - Appeals' internal web site Appeals
  - Appeals' Collection program instructions are found in Publication 1660, Collection Appeal Rights

### 5.12.1.5.3 (10-14-2013) Taxpayer Advocate Service

1. Taxpayers often contact the Taxpayer Advocate Service (TAS) when they are attempting to resolve collection issues.
2. If the taxpayers asks to be referred to the Taxpayer Advocate Service (TAS), or the taxpayer meets TAS criteria and the taxpayer's issue cannot be resolved the "same day (within 24 hours)", complete Form 911 or e-Form 911, *Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance order)* and refer the taxpayer to TAS. See IRM 13.1.7 for more information.
3. If you are able to resolve and close the TAS issue on the same day as the TAS contact, do not refer the inquiry to TAS.
4. There will be times that although you cannot completely resolve the issue within 24 hours, if you have taken steps within 24 hours to resolve the taxpayer's issue, these cases also meet the definition of "same day." Do not refer these cases to TAS unless the taxpayer asks to be transferred to TAS.

**Note:**

Refer to IRM 13.1.7.4, *Same Day Resolution by Operations*.

5. The TAS web sites are:
  - The Taxpayer Advocate Service's external web site [Taxpayer Advocate Service](#)
  - The Taxpayer Advocate Service's internal web site TAS News Center.
  - Service Level Agreements Between Taxpayer Advocate Service and the Operating Divisions/Functions can be found at: <http://tas.web.irs.gov/policy/sla/default.aspx>

### 5.12.1.6 (10-14-2013) IRM 5.12 Lien Content Locations

1. The location of lien content within the IRM 5.12 sections is in the table below.

Topic	Location
Lien Program Overview	IRM 5.12.1
Notice of Lien Determinations	IRM 5.12.2
Notice of Lien Preparation and Filing	IRM 5.12.7
Notice of Lien Refiling	IRM 5.12.8
Notice of Lien Withdrawal	IRM 5.12.9
Lien Release, Revocation, IRC § 6326 and IRC § 7432	IRM 5.12.3
Appeals Processes Involving Liens	IRM 5.12.6
Judicial and Non-Judicial Foreclosure	IRM 5.12.4
Redemption	IRM 5.12.5
Discharge, Subordination, Subrogation, and Nonattachment	IRM 5.12.10
Special Topics including identity theft and disaster situations	IRM 5.12.11

### 5.12.1.7 (10-14-2013) Lien Content or References in Other IRMs

1. Other IRM sections that provide guidance for Collection employees on lien related issues are shown in the following table. You can find specific guidance in these sections by querying "lien".

Topic	Location
Legal Reference Guide for Revenue Officers - "Federal Tax Liens"	IRM 5.17.2
Local Law Supplements	State Law Guides
Centralized Case Processing - Liens	IRM 5.19.12
ACS - Enforcement Action IRM	IRM 5.19.4
ACS Support Lien Perfection	IRM 5.19.6.6
ACS Support undelivered lien mail	IRM 5.19.6.17.5
Estate and Gift Tax Liens	IRM 5.5.8
Currently Not Collectible	IRM 5.16.1
Innocent Spouse - Notice of Federal Tax Lien	IRM 25.15.8.11
Insolvency	IRM 5.9 series
Installment Agreements	IRM 5.14.1.4.2
Suits and liens	IRM 25.3
Offers in Compromise "Overview" and the IRM covering lien notice filing responsibilities regarding offers	IRM 5.8.1IRM 5.8.4.13
"Community Property"	IRM 25.18
"Taxpayer Advocate Case Procedures"	IRM 13.1
	IRM 5.1.9
Appeals Processes Involving Liens	IRM 8.22
	IRM 8.24

#### 5.12.1.8 (10-14-2013)

##### Educational Videos and Web Sites Associated with the Lien Program

- The following lists various educational information related to liens.

Title	Number
Automated Lien System web site	ALS web landing page
Understanding a Federal Tax Lien	IRS.gov web page
Selling or Refinancing When There is an IRS Lien	Video
Lien Notice Withdrawal	Lien Notice Withdrawal
Federal Tax Liens	MySBSE web page
ELMS Course titled: SB-CO-Discharge, Subrogation, and Subordination	Course Number 30441
ELMS Course titled: SB-CO-RO Changes to Federal Tax Lien Priority	Course Number 23232

#### 5.12.1.9 (10-14-2013)

##### Authority to Sign Lien Notices, Certificates, and other Lien Documents

- Delegation Order 5-4 found in IRM 1.2.44.5 identifies all parties authorized to approve or sign specified lien documents and take other lien related actions.
- Centralized Lien Operation (CLO) which was formerly known as the Centralized Lien Processing (CLP) operation has authority related to ALS generated documents as follows:
  - CLO team managers are responsible for generating and printing through ALS the documents and certificates created by employees authorized under Delegation Order 5-4 found in IRM 1.2.44.5.
  - CLO team managers or lead tax examiners are authorized to make lien release determinations and to issue certificates of release resulting from lien payoffs initiated by their employees.

#### 5.12.1.10 (10-14-2013)

##### Requests for Disclosure of Outstanding Lien Amount

- See Delegation Order 11-2 found in IRM 1.2.49.3, *Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, and IRM Exhibit 1.2.49-2 for a list of employees authorized to disclose information concerning the amount of the outstanding obligation secured by the NFTL. Disclosure may be made to any person who demonstrates that he/she possesses a right or intends to obtain right in the property. See also IRM 11.3.11.10, *Disclosure of Amount of Outstanding Lien*.
- Employees listed in Delegation Order 11-2 have the authority to determine whether or not to disclose the requested information under the authority of IRC 6103(k)(2).
- Any person, other than the taxpayer or their designee, desiring information as to the amount of the outstanding obligation in order to decide whether to acquire the property covered by the NFTL (when a NFTL has been filed) must submit a written request stating the reasons the information is desired and properly identifying the NFTL in question. A prospective purchaser should attach a copy of the sales contract or a lender loan application.
- The requested information will be furnished using Letter 1038 (DO), *Response to Inquiries About Release of Federal Tax Lien*.

#### 5.12.1.10.1 (10-14-2013)

##### Disclosure to Escrow and Title Companies

- When a completed Form 8821, *Tax Information Authorization*, is provided, employees designated the authority to execute Forms 668(Y)(c), may disclose the amount of the outstanding obligation secured by the NFTL to any individual or entity listed as an appointee on the completed Form 8821. For example, an escrow agent, title company, lending institution, etc. may be listed as an appointee on a completed Form 8821. See IRC § 6103(c). Authorities for lien related activities are found in IRM 1.2.44.5, *Delegation Order 5-4, Federal Tax Lien Certificates*.
- The Form 8821 must be completed prior to the taxpayer signing it and should authorize disclosure of lien information on the specific piece of property for sale.
- The following information should be provided:
  - The taxpayer's name, address, taxpayer identification number, or any combination of these three.
  - The information to be disclosed, for example, the amount shown on the NFTL, including the address of the real property subject to the filed NFTL.
  - The identity of the company or escrow agent authorized to receive the information. It is not necessary to name an individual.
  - The taxpayer's signature and date.
  - It is not necessary to specify tax type or tax year.
- Taxpayers may also authorize disclosure telephonically. Verify the taxpayer's identity using approved functional procedures and document the information in writing.

- A. The information to be disclosed; for example, the amount shown on the NFTL, including the address of the property subject to the NFTL.
  - B. The identity of the escrow agent or title company authorized to receive the information.
  - C. The date of the consent. For example, "John Doe on 06/05/2012 consents to disclose the payoff amount of all filed NFTLs on 134 Maple Boulevard to XYZ Title."
5. Disclosure of lien information not subject to a filed NFTL should not occur without obtaining the taxpayer's authorization either orally or in writing. Obtain and document the information referred to (4) above.
6. In situations where the taxpayer's authorization cannot be obtained, seek advice from Area Counsel; for example, taxpayer is medically incapacitated, is on vacation outside the U.S. and cannot be reached, etc.

**5.12.1.11 (10-14-2013)**

**Lien Notices and Certificates**

1. This section identifies the various lien notices and certificates associated with the creation of Notices of Federal Tax Lien and their maintenance. The documents are grouped by topic.

**5.12.1.11.1 (10-14-2013)**

**Notice of Federal Tax Lien Types**

1. The following table contains the documents used to create Federal Tax Lien Notices associated with IRC § 6323 and IRC § 6324:

Title	Number	IRM Location	Generated & Maintained by ALS	Requested through
Notice of Federal Tax Lien	668Y	IRM 5.12.7	yes	ICS ACS Form 12636
Notice of Federal Tax Lien (Nominee)	668Y(Annotated)	IRM 5.12.7	SLID only	Advisory and Area Counsel manually
Notice of Federal Tax Lien (Alter Ego Lien)	668Y(Annotated)	IRM 5.12.7	yes	Advisory and Area Counsel
Amended Notice of Federal Tax Lien	Amended 668Y	IRM 5.12.7	yes	Form 13809
Notice of Federal Tax Lien Under Internal Revenue Laws (Refile)	668F	RM 5.12.8	yes	ICS Form 12636
Notice of Federal Estate Tax Lien	668H 668J	IRM 5.5.8	no	manual process

2. The following table contains the documents used to withdraw Federal Tax Lien Notices associated with IRC § 6323.

Title	Number	IRM Location	Generated & Maintained by ALS	Requested through
Withdrawal of Filed Notice of Federal Tax Lien	10916	IRM 5.12.9	yes	Form 13794-W
Partial Withdrawal of Filed Notice of Federal Tax Lien	Partial 10916	IRM 5.12.9	yes	Form 13794-W
Withdrawal of Notice of Federal Tax Lien After Release	10916-A	IRM 5.12.9	yes	Form 13794-W

3. The following table contains the document used to notate a duplication of a Federal Tax Lien Notice associated with IRC § 6323.

Title	Number	IRM Location	Generated & Maintained by ALS	Requested through
Certificate of Duplication of Federal Tax Lien Letter	2440	IRM 5.12.7	no	manual process

**5.12.1.11.2 (10-14-2013)**

**Lien Release Certificates**

1. Whenever a Notice of Federal Tax Lien has been filed and the liability has been satisfied or become unenforceable, a release document is required to notify creditors of the lien's change in status.
2. The following table contains release certificates associated with Code sections IRC § 6325 and IRC § 6326

Certificate Title	Form Number	IRM Location	Generated & Maintained by ALS	Requested Through
Self-Release statement on Notice of Federal Tax Lien	668Y	IRM 5.12.7.2	triggered by column "e"	systemic
Certificate of Release of Federal Tax Lien	668Z	IRM 5.12.3	yes	Form 13794
Certificate of Release of Federal Tax Lien (Erroneous Lien)	668Z (with special wording)	IRM 5.12.3	yes	manual process
Partial Release of Federal Tax Lien	Partial 668Z	IRM 5.12.3	yes	Form 13794
Certificate of Release of Federal Estate Tax Lien	668H 668J	IRM 5.5.8	no	Advisory Estate and Gift Tax Group

**5.12.1.11.3 (10-14-2013)**

**Certificates that Reestablish a Statutory Lien**

1. The following table lists certificates used to reestablish the statutory lien if the statutory lien has been erroneously or inadvertently released but the collection statute remains open.

Certificate Title	Form Number	IRM Location	Generated & Maintained by ALS	Requested Through
Revocation of Release of Federal Tax Lien	12474 12474-A	IRM 5.12.3	yes ALS	
Partial Revocation of Release of Federal Tax Lien	Partial 12474 12474-A	IRM 5.12.3	yes ALS	

**5.12.1.11.4 (10-14-2013)**

**Other Certificates Relating to Liens**

1. The following table shows certificates used to adjust attachment of liens to identified property.

- A. Discharge - removes the statutory tax lien from specific property.
- B. Subordination - elevates another creditor's lien to the Service's priority position making the Service's statutory lien junior to that creditor's lien.
- C. Nonattachment - denotes that a person of like or similar name is not, in fact, the person identified in the NFTL.
- D. Release of Right of Redemption - waives the opportunity to redeem real property from a foreclosure sale purchaser.

Certificate Title	Form Number	IRM Location	Generated & Maintained by ALS	Requested Through
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Certificate of Discharge of Property from Federal Tax Lien (various code sections)	669A 669B 669C 669G 669H	IRM 5.12.10	no	Advisory Form 14135
Certificate of Subordination of Federal Tax Lien (various code sections)	669D	IRM 5.12.10	no	Advisory Form 14134
Certificate of Discharge of Property from Federal Estate Tax Lien	792	IRM 5.5.8	no	Advisory Estate and Gift Tax Group
Certificate of Subordination of Federal Estate Tax Lien	669F	IRM 5.5.8	no	Advisory Estate and Gift Tax Group
Certificate of Nonattachment of Federal Tax Lien	Letter 1628	IRM 5.12.10	no	Advisory
Certificate of Release of Right of Redemption (Value)	ICS Template	IRM 5.12.5	no	Advisory
Certificate of Release of Right of Redemption (Valueless)	ICS Template	IRM 5.12.5	no	Advisory

#### 5.12.1.12 (10-14-2013)

#### Report, Instruction, and Application Products Associated with the Lien Program

1. This section contains a listing of the various forms issued, publications, instructions, and applications associated with the lien program. The tables are grouped by topic.

#### 5.12.1.12.1 (10-14-2013)

#### Forms for Reporting Investigation Results

1. The list below contains various forms associated with the lien program where the results of an investigation need to be reported.

Title	Number
Investigation of Request for Certificate of Discharge or Subordination Form	3033
Report of Investigation (26 USC § 7425 or 28 USC §2410)	Form 4376

#### 5.12.1.12.2 (10-14-2013)

#### Discharge, Subordination, and Election Products Containing Instruction and Applications

1. The list below contains various forms and publications associated with applying for and processing Discharges and Subordinations of Federal Tax Lien.

Title	Number
Instructions on how to apply for a Certificate of Discharge of Property From Federal Tax Lien	<a href="#">Publication 783</a>
Application for Certificate of Subordination of Federal Tax Lien	<a href="#">Form 14135</a>
Request for Relocation Expenses Allowance	<a href="#">Form 12451</a>
How to Prepare an Application for a Certificate of Subordination of Federal Tax Lien	<a href="#">Publication 784</a>
Application for Certificate of Subordination of Federal Tax Lien	<a href="#">Form 14134</a>
Purchase Money Mortgages and Subordination of the Federal Tax Lien	<a href="#">Publication 785</a>
Application for Certificate Discharging Property Subject to Estate Tax Lien	<a href="#">Form 4422</a>
How to Apply for Certificate of Subordination of Estate Tax Lien Under IRC 6325(d)(3)	<a href="#">Publication 1153</a>
IRC Section 6324A Lien Agreement Form	Form 13925

#### 5.12.1.12.3 (10-14-2013)

#### Lien Release, Notice Withdrawal, and Nonattachment Products Containing Instruction and Applications

1. The list below contains various forms and publications associated with processing lien releases, Notice of Federal Tax Lien Withdrawals, and Nonattachments.

Title	Number
Instructions on How to Request a Certificate of Release of Federal Tax Lien	<a href="#">Publication 1450</a>
Application for Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien (as based on Internal Revenue Code Section 6323(j))	<a href="#">Form 12277</a>
How to Prepare an Application for a Certificate of Nonattachment of Federal Tax Lien	<a href="#">Publication 1024</a>

#### 5.12.1.12.4 (10-14-2013)

#### Foreclosure and Redemption Products Containing Instruction and Applications

1. The list below contains various instructions related to the Foreclosure and Redemption programs.

Title	Number
Instructions for Preparing Notice of Non-Judicial Sale of Property & Application for Consent to Sale	<a href="#">Publication 786</a>
Requesting the United States to Release Its Right to Redeem Property Secured by a Federal Tax Lien	<a href="#">Publication 487</a>

#### 5.12.1.12.5 (10-14-2013)

#### Miscellaneous Products Associated with the Lien Program

1. The following list contains some miscellaneous documents associated with the lien program.

Title	Number
Collection Advisory Group Addresses	<a href="#">Publication 4235</a>
Notice of Federal Taxes Due	Form 10492
Billing Support for Lien and Certificate Fees Form	3982

#### 5.12.1.13 (10-14-2013)

#### Letters associated with the Lien Program

1. The following tables provide letters associated with the lien program

#### 5.12.1.13.1 (10-14-2013)

#### Letters Associated with Notices of Federal Tax Lien Preparation and Filing

1. The letters associated with IRM 5.12.7, Notice of Lien Preparation and Filing are listed below.



Title	Number
Notice of Federal Tax Lien Filing	Letter 3171
Power of Attorney (POA) Notification of Additional Lien Filing	Letter 3271
Notice to Taxpayer of Nominee/Alter ego of Federal Tax Lien Filing	Letter 3886

#### 5.12.1.13.2 (10-14-2013)

##### Letters Associated with Appealing Notices of Federal Tax Lien

- The letters and notices associated with IRM 5.12.6, Appeals Processes Involving Liens are listed below.

Title	Number
Notice of Federal Tax Lien Filing and your Rights to a Hearing Under IRC 6320	Letter 3172
Letter Notifying of Federal Tax Lien Filing-Nominee or Alter-Ego	Letter 3177
Notice of Federal Tax Lien Filing - Child Support Obligation	Letter 3527
POA Lien Notification	Letter 3262

#### 5.12.1.13.3 (10-14-2013)

##### Letters Associated with Notice of Federal Tax Lien Withdrawal

- The letters associated with IRM 5.12.9, Notice of Lien Withdrawal are listed below.

Title	Number
Withdrawal Cover Letter	Letter 3044
Lien Withdrawal Cover Letter	Letter 4026

#### 5.12.1.13.4 (10-14-2013)

##### Letters associated with Lien Releases and Certain Claims

- The letters and notices associated with IRM 5.12.3 Lien Release, IRC § 6326 and IRC § 7432 are listed in the table below.

Title	Number
Response to Inquiries About Release of Federal Tax Lien	Letter 1038
Commitment to Release Notice of Federal Tax Lien	Letter 4117
Release of Federal Tax Lien	Notice 48
Letter of Apology - Erroneous Filing of Notice of Federal Tax Lien	Letter 544
Letter of Apology - Inadvertent Filing of Notice of Federal Tax Lien	Letter 544-I
Acknowledgement of Administrative Appeal Request	Letter 2421
Acknowledgement and Partial Denial of Administrative Appeals Request	Letter 2423
Non-processable Claim for Damages Letter	Letter 2730
Transfer of Claim for Damages	Letter 2731
Notification of full or partial Denial of claim for civil Damages	Letter 2732
Notification of Full or Partial Allowance of Claim for Civil Damages	Letter 2733
Processing Letter for Financial Management Services Claim Group	Letter 2734

#### 5.12.1.13.5 (10-14-2013)

##### Letters Associated with Foreclosures and Redemptions

- The letter used with IRM 5.12.4 and Non-Judicial Foreclosures is listed below.

Title	Number
Notification of Inadequacy of Nonjudicial Sale Notice	Letter 1840

- The letter associated with IRM 5.12.5 and Redemptions is listed below.

Title	Number
Notification of IRS Right of Redemption	Letter 5597

#### 5.12.1.13.6 (10-14-2013)

##### Letters Associated with Discharge, Subordination, and Subrogation

- The letters associated with IRM 5.12.10, Discharge, Subordination, Subrogation, and Nonattachment are listed below.

Title	Number
Conditional Commitment to Discharge Certain Property from Federal Tax Lien	Letter 402
Conditional Commitment to Discharge Certain Property from Federal Tax Lien (Value)	Letter 403
Taxpayer Lien Payoff Letter	Letter 3640 Letter 3640-A
Third Party Lien Payoff Letter (Escrow or Financial Institution)	Letter 3641
Letter Advising of Action on Application for Discharge of Property From Federal Tax Lien	Letter 4025
Letter Advising of Action on Application for Subordination of Federal Tax Lien	Letter 4027
Conditional Commitment to Subordinate Federal Tax Lien	Letter 4053

#### 5.12.1.13.7 (10-14-2013)

##### Letters Associated with Estate and Gift Tax Liens

- The letters associated with IRM 5.5.8 Estate and Gift Tax Liens.

Title	Number
Installment or Interest Due - Current Status Requested or Explained: Form 706	Letter 249
Follow-up Letter for Installment Billing & Section 6161 Balance Due Billing: Form 706	Letter 2568

#### 5.12.1.14 (10-14-2013)

##### Management and Responsibility for the Lien Program

- Enterprise Collection Strategy's Collection Policy organization has overall responsibility for the lien program and the Automated Lien System (ALS).



2. Each individual who prepares or approves lien notices and certificates accepts the responsibility that the review process encompasses many duties including reviewing the request or manual document for completeness such as ensuring there is name, address, balance due, and tax period information on each NFTL. The requestor is ultimately responsible to see that the lien notice or certificate is processed and filed timely, where required.

#### **5.12.1.14.1 (10-14-2013)**

##### **Centralized Lien Operation Responsibilities**

1. Working with Collection Policy, Centralized Lien Processing is responsible for:
  - A. Processing requests for and maintaining Notices of Federal Tax Lien generated by ALS.
  - B. Processing requests submitted by Insolvency and Advisory, Manually Monitored Offer-in-Compromise, and Innocent Spouse functions for partial withdrawals, partial releases, nominee lien notices and estate tax liens (See IRM 5.5.8 for estate tax lien processing procedures).
  - C. Issuing lien certificates related to NFTLs, such as releases and withdrawals, generated by ALS.
  - D. Facilitating payment of recording fees to the appropriate recording official.
  - E. Administration of the ALS database, including but not limited to, adding and removing users, resolving exception reports, providing assistance to other functional users.
  - F. Responding to written and telephone requests for lien payoffs and releases.
  - G. Mailing all documents timely.
  - H. Liaison with internal and external stakeholders.
2. For more information about CLO processing, communication, and quality control responsibilities see IRM 5.19.12.

#### **5.12.1.14.2 (10-14-2013)**

##### **Managing Work Processed During Dead Cycles**

1. Master file updates its systems during the middle of December through the first week of January, each year. This period is known as the "dead cycles" . During this time, master file does not provide Status 12 extracts or DIAL downloads to ALS.
2. Lien releases can be manually input to ALS during this time.
3. Document processing will continue in accordance with established time frames.
4. Certificates of release must be processed within the established 30 day time frame. Therefore, when master file is back on line, immediate processing must occur, including printing and mailing of certificates of release.
5. Transaction codes 582 and 360 for work processed during this time period will be posted when master file resumes processing.

#### **5.12.1.15 (10-14-2013)**

##### **Communicating With Centralized Lien Operation**

1. Field employees may contact the CLO team for their Area for problems with a specific lien notice or certificate. If the problem is not resolved or if it is a general problem impacting many lien notice or certificate documents, the employee may contact the Field Office Resource Team (FORT).
2. Contact with CLO or the FORT may be by phone, fax, or secure e-mail.
3. CLO will identify concerns and take any necessary corrective actions. The Lien Organization can resolve issues regarding Notice of Federal Tax Lien filings including:
  - A. missing TIN,
  - B. incorrect name control,
  - C. incorrect tax period,
  - D. incorrect type of tax, etc.
4. CLO will notify the field employee of the resolution.
5. Occasionally, the Lien Organization employee will need to refer an issue to the FORT.
6. The FORT will determine if other functions are involved and, if so, initiate contact.
7. For assistance with the ALS database on changes such as POD addresses, group numbers, and county/zip code matches, the field employee should contact the local ICS IQ Analyst who will coordinate the changes with the Lien Policy Analysts or ALS Functional Coordinator.
8. When contacting CLO to request assistance with creating and or filing a document, use the charts in *IRM 5.12.1.11* above to identify which form to use.

#### **5.12.1.16 (10-14-2013)**

##### **Field Office Resource Team (FORT)**

1. The FORT acts as a technical resource and liaison for the Lien Processing Units. A staff revenue officer/advisor responds to employee requests or determines if assistance from some other function is required.
2. Generally the FORT:
  - A. Obtains information on lien issues from field employees, as necessary
  - B. Communicates with Headquarters Analysts
  - C. Resolves issues with recording offices, if possible
  - D. Initiates Contact with area counsel and governmental liaison offices as well as maintaining associated nationwide contact lists
  - E. Responds to questions regarding new procedures
  - F. Assists in implementing new or revised procedures
  - G. Explains and interprets IRM procedures, when necessary
  - H. Provides technical guidance to internal and external customers

- I. Responds to questions from field employees related to centralized lien processing
- J. Encourages Lien Processing employees to contact field employees to resolve non-technical issues

#### 5.12.1.17 (10-14-2013)

##### Functional Coordinator Responsibilities

1. The ALS Functional Coordinator is located in the FORT at the Cincinnati Campus. The responsibilities of the ALS Functional Coordinator include, but are not limited to:
  - A. Establishing permissions and menu groups for users.
  - B. Generating and providing reports to the appropriate management official.
  - C. Updating local files and/or permissions.
  - D. Serving as a resource person for users experiencing problems, responding to questions, etc.
  - E. Periodically reviewing all ALS permissions to ensure menu accuracy.
2. Contact the coordinator when you require assistance with the ALS.

##### Note:

The ALS Coordinator resets the ALS secondary password only. UNIX login passwords are reset through the MITS Help Desk.

3. For assistance with POD addresses, group numbers, or county/zip code matches, contact the IQA, ICS/Entity Quality Analyst who will coordinate the changes with the Collection Policy Analyst or ALS Functional Coordinator.

#### 5.12.1.18 (10-14-2013)

##### ALS Permissions

1. While Collection Policy governs most aspects of the ALS system, the ALS Functional Coordinator ensures permissions are accurate and current using information provided by functional managers. If there are any questions about access, contact the ALS Functional Coordinator. Information about ALS permissions can also be found on the following web sites:
  - Automated Lien System
  - Automated Lien System Web Site
  - ALS User Guides
2. An On-line (OL) 5081 must be approved by the appropriate manager. This is used to request user additions, name changes, or deletions.
3. The OL5081 for new users should indicate the types of permissions or capabilities the employee requires; i.e., research, create, approval, temporary access vs. permanent. Subsequent changes affecting the user's account, with the exception of a name change or deletion, may be accomplished via e-mail, memorandum, or OL5081 forwarded by the manager or his designee to the functional coordinator. Functional coordinators names and phone numbers are located on SERP/Automated Lien System, Who/Where.

##### Note:

Deleting employees from ALS should not occur without the functional managers approval, including those received from systems administrators.

4. **Requests to have a UNIX login reset will be made through the MITS Help Desk. For those users with increased permissions on ALS, ask that your secondary password reset be sent to the functional coordinator by secure e-mail and that the secure email include the user's name and ALS login.**
5. Changes affecting the user's account, such as requests for additional permissions or removal of permissions, will be submitted via OL5081 after approval by the manager or his designee.

##### Note:

Deleting employees from ALS, require the functional manager's approval including those requests received from systems administrators.

6. CLO is responsible for updates to user profiles. Passwords are generally responded to within three (3) days of request receipt.
7. The functional coordinator works with the employee's manager and/or the Policy Lien Program Analyst, when necessary, to ensure proper permissions are given. See IRM Exhibit 5.12.1-1, ALS Permissions Chart
8. Functional managers will create and provide an IDRS TSIGN number for all employees added to ALS. (See ADP Handbook, Section 11, Collection, for guidance.) Employees cannot be added to ALS without a TSIGN. ALS uses the TSIGN number to associate lien requestor (and approver) information with lien documents. Therefore, ensure employee Integrated Data Retrieval System (IDRS) TSIGN numbers are included on ALS access requests. ALS access requests cannot be processed unless employee TSIGNs are provided.

##### Note:

ALS programmers and Compliance Policy staff do not provide TSIGNs for ALS use. Occasionally, the ALS Functional Coordinator will assist functional managers.

9. When removing or requesting employee permissions, provide the following employee information:
  - A. function, i.e., MOIC, COIC, CIO, etc.,
  - B. mailing address,
  - C. job title,
  - D. telephone number, and
  - E. employee identification number.
10. Use the OL5081 process to remove retired or resigned employees from the database immediately upon notification.

#### 5.12.1.19 (10-14-2013)

##### Contacting Recording Officials

1. CLO is the contact point with recording officials and they have been instructed to contact CLO if they have a complaint with the Service.

2. CLO may take any or all the following actions:

- A. Explain the Service's position and attempt to resolve the issue.
- B. Document any conversations and also retain any correspondence received from the official.
- C. Decide on a list of actions to be taken to resolve the issue.
- D. Initiate corrective actions if you determine that established policies or procedures have not been followed.
- E. Contact the employee who originated or requested a lien document filing.
- F. Contact area counsel and/or the local governmental liaison staff to determine if policies or practices have been established.
- G. Contact the recording official and outline our procedures and any code or regulation requirements.
- H. If Collection Policy lien analysts are contacted, they along with SBSE Counsel, will determine further appropriate corrective actions.
- I. If it is determined that procedural changes are required, initiate a systems change request and submit to Headquarters for approval.
- J. Request interim guidance, if necessary.

3. If a recorder contacts a revenue officer, the revenue officer should answer the question if they are able to but also the revenue officer should direct the recorder to CLO and inform CLO of the conversation and the recorder's concern so that it may be addressed. CLO is in the best position to recognize if the concern is a one-time situation or if there are multiple recorders with concerns on the same topic.

**Exhibit 5.12.1-1  
ALS Permissions Chart**

ALS access options have been established for the following employees, including affiliated tax examiners, clerks and group secretaries. Permissions must be approved by managers and may be altered to meet specific employee needs.

Permission	RO	TAS and Appeals	MOIC (Monitoring Offers in Compromise)	COIC (Centralized Offer in Compromise)	Collection Advisory and Field Insolvency	CIO (Centralized Insolvency Office)
Create a Lien				x	x	x
Research Lien Information	x	x	x	x	x	x
Request Lien Release			x	x	x	x
Withdrawal					x	x
Revocations					x	x
Partial Release					x	x
Refile a Lien					x	x
Input Court Data					x	
Update a Lien (History)				x	x	x
Input POA Information (NOTADD)	x			x	x	x
Print Facsimiles	x	x	x	x	x	x
Amend					x	
Approve			x	x managers only	x	x
Edit a Lien				x		
Bypass					*x managers approval required	*x managers only

**Exhibit 5.12.1-2  
Glossary of Common Acronyms in IRM 5.12**

ACS	Automated Collection Service
AI	Advisory & Insolvency
AIS	Automated Insolvency System
ALS	Automated Lien System
BMF	Business Master File
BSV	Billing Support Voucher
CAF	Centralized Authorization File
CAP	Collection Appeal Program
CCP	Centralized Case Processing
CDP	Collection Due Process
CIO	Centralized Insolvency Operation
CLO	Centralized Lien Operation
COIC	Centralized Offer in Compromise
CPS	Correspondence Production Services
CSED	Collection Statute Expiration Date
DDIA	Direct Debit Installment Agreement
DPC	Designated Payment Code
EFT	Electronic Fund Transfer
EIN	Employer Identification Number
FTL	Statutory Federal Tax Lien
FORT	Field Office Resource Team
GM	Group Manager
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
LFI	Lien Filed Indicator
LLC	Limited Liability Company
MCAR	Mutual Collection Assistance Request

MF	Master File
MFT	Master File Transaction
MOIC	Monitoring Offer in Compromise
NAOC	NFTL After Original CSED (fka Portland Lien)
NFOI	Non-Field Other Investigation
NFTL	Notice of Federal Tax Lien
NMF	Non-Master File
NTBFL	Not To Be Filed Lien (NFTL)
OIC	Offer in Compromise
PDF	Portable Data Format
POA	Power of Attorney
RO	Revenue Officer
SFR	Substitute for Return
SLID	Serial Lien Identification number
SSN	Social Security Number
TAS	Taxpayer Advocate Service
TC	Transaction Code
TFRP	Trust Fund Recovery Penalty
TIN	Taxpayer Identification Number
TM	Territory Manager
Treas Reg	Treasury Regulations
USDC	United States District Court
USPS	United States Postal Service

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 2. Notice of Lien Determinations

##### 5.12.2 Notice of Lien Determinations

- 5.12.2.1 [Purpose](#)
- 5.12.2.2 [Taxpayer Contact](#)
- 5.12.2.3 [Notice of Federal Tax Lien Filing Determination \(Pre-filing Considerations\)](#)
- 5.12.2.4 [Determination Criteria for "Do-Not-File" or Deferring the NFTL Filing](#)
- 5.12.2.5 [Approvals Relating to Determinations](#)
- 5.12.2.6 [NFTL Filing Criteria](#)
- 5.12.2.7 [Approval of Lien Notice Filing](#)

##### Manual Transmittal

November 10, 2014

##### Purpose

(1) This transmits a topic based revision to IRM 5.12.2, Federal Tax Liens, Notice of Lien Determinations, to incorporate procedural changes based on the Affordable Care Act.

##### Background

A revision of IRM 5.12.2 has been done in order to incorporate changes associated with the Affordable Care Act. Content unrelated to the ACA provisions was not reviewed for currency or accuracy.

##### Material Changes

(1) The IRM contains the following substantial changes:

Item	IRM Subsection	Change
1	IRM 5.12.2.3.1.1	Titled, <i>Affordable Care Act's (ACA) Shared Responsibility Payment (SRP) Exception</i> , has only been updated for the Affordable Care Act (ACA) Internal Revenue Code (IRC) [§ 5000A].
2	IRM 5.12.2.4(5)(f)	This IRM has only been updated for the Affordable Care Act (ACA) Internal Revenue Code (IRC) [§ 5000A].
3	IRM 5.12.2.6.1	Titled, <i>ACA Shared Responsibility Considerations When filing NFTL</i> , has only been updated for the Affordable Care Act (ACA) Internal Revenue Code (IRC) [§ 5000A and § 4980H].

(2) Correct: IRM cross-reference typos in IRM 5.12.2.5.3(3)

##### Effect on Other Documents

This material supersedes IRM 5.12.2 dated October 14, 2013.

##### Audience

SBSE Collection, Centralized Lien Operation, and Appeals

##### Effective Date

(01-01-2015)

Rocco A. Stecco  
Acting Director, Collection Policy  
Small Business/Self Employed Division

##### 5.12.2.1 (10-14-2013)

###### Purpose

1. The purpose of this IRM is to provide instructions for making the determination of whether to file a Notice of Federal Tax Lien (NFTL) and the NFTL filing criteria.
2. A Notice of Federal Tax Lien filing determination is the decision whether to file an NFTL; defer the filing of an NFTL, or not to file an NFTL. Determination criteria is found in *IRM 5.12.2.3*. If the determination decision is to file a lien notice, filing thresholds and criteria are found in *IRM 5.12.2.6*. If the determination decision is to defer or not file, that criteria is found in *IRM 5.12.2.4*.

##### 5.12.2.2 (10-14-2013)

###### Taxpayer Contact

1. The Service is required to make reasonable efforts to contact the taxpayer before filing an NFTL. The efforts to contact the taxpayer are to advise that an NFTL may be filed if full payment is not made when requested. Issuance of the statutory assessment notice and the balance due notices sent during the collection process will constitute reasonable efforts. Publication 594 (IRS Collection Process), CP 501 (Balance Due - Reminder), CP 504 (Balance Due - Urgent Notice), and Letter 1058 (Final Notice - Intent to Levy), advises the taxpayer that an NFTL may be filed. Also the ACS letters LT-39 (Reminder Notice) and LT-11 (Final Notice of Intent to Levy and Your Notice of Your Right to Hearing) warns taxpayers of possible NFTL filing. The CP 523 (Installment Agreement Default Notice) also contains a warning that a lien notice may be filed.

2. While the notices sent in the notice stream are sufficient for filing an NFTL, *generally* when an NFTL has not been previously filed the revenue officer's determination with respect to the filing of the NFTL will be done in conjunction with the initial actual contact or initial attempted contact. Contact (request for full payment) may be made by:

- A. field contact (preferably).
- B. telephone.
- C. mailing a notice or letter to the last known address (when appropriate). See IRM 5.11.1.2.1.1 for "last known address" description.

3. If full payment is not received during initial contact, explain to the taxpayer that a notice of the lien may be filed. See *IRM 5.12.2.6* for notice filing criteria. Explain the possible effects of the NFTL filing on normal business operations and their credit rating.

**Reminder:**

When giving a deadline for a taxpayer response, take into consideration providing adequate time for that response. See also IRM 5.1.10.3 (5)

4. If the taxpayer disagrees with the proposed notice filing, advise the taxpayer of their right to appeal under the Collection Appeals Program (CAP). Also explain to the taxpayer their right to request a Collection Due Process (CDP) hearing under Internal Revenue Code (IRC) §6320 **once the notice has been filed**. See IRM 5.12.6.

**5.12.2.3 (10-14-2013)**

**Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations)**

1. The Notice of Federal Tax Lien (NFTL) filing determination is a process of deciding whether to file, defer, or not file an NFTL. If the decision is to file, then follow the filing criteria and thresholds found in *IRM 5.12.2.6*. If the filing thresholds are not met, then the decision may need to be revisited once the thresholds are met.
2. IRC § 6320 requires the IRS to insure collection actions, including the decision to file an NFTL, balance the need for efficient collection of the tax with legitimate concerns of the taxpayer that actions be no more intrusive than necessary. To that end, review the factors contained in this IRM section and related subsections to reach the appropriate decision.
3. Filing determination considerations are listed below. It is not an all-inclusive list but it, as well as this IRM as a whole, provides guidance for the varying circumstances experienced when working with taxpayers.
  - A. Taxpayer compliance history: See IRM 5.1.30, *Field Collecting Procedures - Resolution-directed Approach to Casework*.
  - B. Taxpayer qualification for a determination exception: See *IRM 5.12.2.3.1, Determination Requirement Exceptions*.
  - C. Protection of the government's interest, including exigent circumstances; where the filing of an NFTL is necessary to protect the those interests: See IRM 5.12.1.2, *Introduction to Liens*, and IRM 5.17.2.3.1, *Purpose and Effect of Filing Notice*.
  - D. Taxpayer qualification for a determination that an NFTL filing will hamper collection: See *IRM 5.12.2.4(6), Determination Criteria for "Do-Not-File" or Deferring the NFTL Filing*.

**5.12.2.3.1 (10-14-2013)**

**Determination Requirement Exceptions**

1. **An NFTL filing determination is not required** on Guaranteed/Streamlined Installment Agreements or In-Business Trust Fund Express Agreements.
2. If a revenue officer finds that an NFTL determination is needed for a Guaranteed/Streamlined Installment Agreement to protect the government's interest (such as in the case of an impending bankruptcy, or other exigent circumstances), follow the instructions in *IRM 5.12.2.3.2, Determination Requirements* and *IRM 5.12.2.6, NFTL Filing Criteria*. Also, an NFTL determination decision to file may be made on In-Business Trust Fund Agreements if necessary to protect the government's interest, such as:
  - a BMF entity has defaulted on an installment agreement in the current year or prior calendar years, or
  - a BMF entity meets the definition of a "pyramiding" trust fund taxpayer as described in IRM 5.7.8.3.

**Reminder:**

Where an NFTL filing determination is not required, but a decision to file an NFTL has been made, document the justification in the case history including the manager's concurrence.

**5.12.2.3.1.1 (01-01-2015)**

**Affordable Care Act's (ACA) Shared Responsibility Payment (SRP) Exception**

1. **Do not** make an NFTL filing determination decision on **SRP/MFT 35** modules.

**Note:**

MFT 35, tax class 6 is still used on NFM for partnership returns Forms 1065.

2. While the [IRC § 6321](#) statutory lien arises on SRP/MFT 35 assessments, these assessments are not subject the NFTL filing under [IRC § 6323](#). (See [IRC § 5000A\(g\)\(2\)\(B\)](#))

**5.12.2.3.2 (10-14-2013)**

**Determination Requirements**

1. NFTL filing determinations must be made on all balance due cases including reactivated balance due cases within established time frames.
  - A. The NFTL filing determination is due 10 calendar days from the initial attempted contact or initial actual contact date, whichever date is earlier.
  - B. The request for NFTL filing or the appropriate non-filing documentation must be prepared within 10 calendar days of initial attempted contact or initial actual contact, with the taxpayer or taxpayer representative.
  - C. If the revenue officer fails to make a timely initial or attempted contact, the NFTL determination is due 10 calendar days from the date the initial contact was actually due. The revenue officer will document the ICS history with the reason for making the NFTL filing determination prior to taxpayer contact.

See IRM 5.1.10.3, *Initial Contact*, for established time frames.

2. Additional assessments (usually balance due modules) are often made and then assigned to a case on ICS after the initial contact is made or the initial contact due date. On these additional assessments, the documentation for request of NFTL filing, non-filing, or deferral (as appropriate) must be prepared the sooner of:

- Within 30 days of assignment to the ICS inventory as an IDRS Bal Due, or
- Next calendared touch on the case.

**Note:**

If a pre-assessed module is created on ICS, the NFTL determination is due within thirty days of assessment.

**Note:**

See also *IRM 5.12.2.6(2)*.

3. **An NFTL filing determination will be made**, if the taxpayer has not:

- A. made full payment,
- B. qualified for an exception to the NFTL filing determination requirement (*IRM 5.12.2.3.1* and *IRM 5.14.5*), or
- C. made other security arrangements (such as a bond) to satisfy the liability.

4. When making a determination to file an NFTL, consider whether issuance of the L-1058 is also warranted, if it was not sent previously.

*For Example:* Issuance of the L-1058 is appropriate when a taxpayer has been given a deadline and was advised of levy action for failure to comply. This action should only occur when an L-1058 was not previously issued for the module(s) in question.

**Note:**

By issuing the L-1058 at the same time the NFTL is being filed, the taxpayer will receive CDP hearing rights for the NFTL and levy concurrently. If the taxpayer chooses to exercise their CDP rights, both the NFTL and levy issues can and should be addressed together in Appeals.

5. The taxpayer's filing and payment compliance should always be considered when the non-filing or deferring of a Notice of Federal Tax Lien is being determined.

**5.12.2.3.3 (10-14-2013)**

**Determination Date Extension**

1. The extension of the Determination Date for a lien notice filing is not the same as deferring the filing of the NFTL. The Lien "Notice Filing" Determination Date extension is used only when a determination cannot be made prior to the NFTL filing determination due date. Refer to *IRM 5.1.10.3.1*, Effective Initial Contact, for established time frames and *IRM 5.1.20.2.4.2*, Targeted Inventory Levels, for instances in which timely initial and follow-up contact time frames may be waived. Although not specifically mentioned in *IRM 5.1.10.3.1* or *IRM 5.1.20.2.4.2* other situations may warrant an NFTL filing determination extension. These situations are generally only applicable when the revenue officer has had no contact with the taxpayer.

Potential situations may include:

- A. Inventory is assigned and the revenue officer is placed on a detail assignment.
- B. Inventory is assigned and the revenue officer is attending training.
- C. Inventory is reassigned or transferred to the revenue officer.
- D. The revenue officer is out due to illness or planned leave.

**Example:**

This is an example of when it is appropriate to extend the NFTL filing determination date: A revenue officer receives five new Bal Due cases on Monday 4/11/2011. The NFTL filing determination due date on ICS is 5/22/2011. The revenue officer is assigned a long term detail and is to report on Monday 4/25/2011 and will not return to their POD until Monday 6/13/2011. In this situation the NFTL filing determination date may be extended for a reasonable time frame allowing the RO to make an appropriate determination.

**Reminder:**

Make an appropriate history entry explaining why the initial contact was not timely.

**5.12.2.4 (01-01-2015)**

**Determination Criteria for "Do-Not-File" or Deferring the NFTL Filing**

1. When considering the non-filing or deferring of an NFTL determine if the taxpayer is in filing and payment (Federal Tax Deposits, estimated tax payments, notice accounts, etc.) compliance. You should also consider:

- A. The use of a *collateral agreement* (see *IRM 5.6.1* for additional information).
- B. Whether filing the NFTL then using a *subordination of the NFTL* for loan and financing situations is appropriate in lieu of not filing an NFTL (see *IRM 5.12.10*).
- C. Whether filing the NFTL then using a *discharge of the property* for removing specific property from the Federal Tax Lien is appropriate in lieu of not filing an NFTL (see *IRM 5.12.10*).

2. Use **deferral** when the decision to delay filing will be revisited (e.g., doubt as to liability pending taxpayer documentation or Form 911 submission).

**Example:**

When a taxpayer alleges Return Preparer Fraud, temporarily defer filing any new Notice(s) of Federal Tax Lien for those modules where the assessment may be a result of that fraud. See Interim Guidance SBSE-05-0613-0034, *Return Preparer Fraud or Misconduct*, any successor Interim Guidance, or *IRM* once the guidance has been incorporated. It is important to recognize the potential for adverse impact on a taxpayer who is a victim of Return Preparer Fraud.

**Example:**

Taxpayer Advocate Service (TAS) cases may be initiated because of a potential notice of lien filing. TAS will notify the revenue officer when a [Form 911, Request for Taxpayer Advocate Service Assistance \(and Application for Taxpayer Assistance Order\)](#) has been received and when it has been resolved. The revenue officer may also initiate a request for TAS assistance on behalf of the taxpayer. See *IRM 5.12.1*.

3. Choose **"do not file"** when there is no reason to believe NFTL filing will be required in the future (pending full abatement, decedent with no estate, etc.).

4. In general, NFTLs should not be filed when:

- A. The taxpayer is a defunct corporation or LLC (where the LLC is liable) whose assets have been previously liquidated.

**Note:**

A determination that the assets have been liquidated is not the same as an inability to find assets. The RO must have specific information indicating that a senior creditor has taken possession of all assets or all assets have been liquidated.

- B. The taxpayer is deceased and there are no known assets in an estate.



5. NFTLs should not be filed in the following circumstances:

- A. The taxpayer is a corporate entity or LLC (where the LLC is liable) that has gone through a liquidating bankruptcy or receivership regardless of dollar amount. Document the proceeding number in the case history.
- B. When a non-paying officer has been assessed the Trust Fund Recovery Penalty (TFRP) and an adjustment to the TFRP is pending because the assessment has been paid by another officer.
- C. There is an indication that the liability has been satisfied or that credits are available to satisfy the liability.
- D. The taxpayer is in bankruptcy and the NFTL relates to liabilities incurred before the taxpayer filed for bankruptcy. Section 362(a) of the Bankruptcy Code imposes an automatic stay that prohibits all creditors from taking certain collection actions against debtors in bankruptcy. Consult Insolvency or Counsel to determine if an NFTL may be filed after the automatic stay ends.
- E. There is genuine doubt as to the validity of the liability (for example, assessments made against victims of identity theft; see IRM 5.1.12.2, Identity Theft and IRM 5.12.11.2, Identity Theft related to requested or filed NFTL). (But the revenue officer must document the taxpayer's justification and the method of resolution (payment tracer, amended return, credit transfer etc.).
- F. SRP (MFT 35) assessments. (See [IRC § 5000A\(g\)\(2\)\(B\)](#))

**Reminder:**

MFT 35, tax class 6 is still used on NFM for partnership returns Forms 1065.

6. A decision may be made to defer the filing of an NFTL when the revenue officer can substantiate with *reasonable certainty* and supported with documentation from the taxpayer, that filing the NFTL will hamper collection. The determination to defer filing the NFTL because it will hamper collection must be part of an agreed resolution between the RO and the taxpayer that deferral will both facilitate collection and be in the best interest of the government and the public. In general a hamper collection determination could apply in the following situations:

- A viable business, which factors account receivables, proposes a reasonable resolution with supporting documentation.
- A viable business, which operates on a floor plan, proposes a reasonable resolution with supporting documentation.

**Example:**

Automobile dealerships may use floor-plan financing to acquire their inventory of vehicles.

- A viable business, which would lose its revolving account receivables upon the filing of an NFTL, proposes a reasonable resolution with supporting documentation.
- When a taxpayer is near closing on refinancing a property to secure equity from the home in order to pay his tax liability and the filing of the NFTL will prohibit closing the loan.

**Example:**

Following are examples of when it is **appropriate** to defer the filing of an NFTL:

- A. During a field visit on 5/01/2011 to a "Not for Profit" taxpayer you are asked not to file an NFTL and consider an in-business installment agreement. It is explained that if an NFTL is filed, state funding, which is the principle funding source for the entity, will be eliminated and the taxpayer will not be able to make installment payments. You agree to defer filing the NFTL and request appropriate documentation from the entity be sent to you by 05/12/2011 and you will consider the IA. On 05/09/2011 you receive the documents and are able to document a reasonable certainty that the NFTL would hamper collection of the liability and determine to defer the NFTL and place the taxpayer in a manually monitored IA. You inform the taxpayer of the IA and the condition that an NFTL will be filed if the taxpayer defaults on the installment agreement.
- B. During a field visit to a taxpayer who is in the business of selling vacation time shares, you determine that the tax liability cannot be paid immediately and that in all likelihood an installment agreement may resolve the unpaid balance. However, in order to obtain the funds to make the installment payments and pay other operating expenses, the taxpayer must sell accounts receivable to a factor on a weekly basis. The factor also requires that the taxpayer gives a security interest in all current and future accounts receivable. Filing an NFTL in this case would end the factoring arrangement. You agree to defer the filing of the NFTL provided the taxpayer **provides a copy of the contract, and remains cooperative and compliant**. You inform the taxpayer that not complying with the provisions will result in your immediate filing of the NFTL.

**Example:**

Below are examples of when it is **not appropriate** to defer the filing of an NFTL:

- A. During a field visit, the taxpayer informs you that they are planning to purchase a new car or possibly lease one to replace their current vehicle and the filing of the NFTL will negatively affect their credit. They ask you to not file the NFTL. You ask if the car is essential to generate income to assist in the payment of the liability. The taxpayer informs you that the car is not essential for them to generate income. It would be appropriate to file an NFTL in this case.
- B. During a field visit on 4/1/2011 a taxpayer informs you that he has applied for a loan to pay the liability and other operating expenses of the business and requests that you do not file an NFTL. He explains that the loan agreement has a clause which indicates any additional lien notice filings will cause the proposed agreement to be null and void. You agree to defer filing an NFTL if the taxpayer supplies you with back up documentation for the completed financial statement and loan agreement from his financial institution by 4/15/2011 and become current with all federal tax deposits (FTD). You also inform the taxpayer that if the documents are not received by the 15th, you will file the NFTL. You return to your office on Monday 4/4/2011 and document your case history with the reason why you deferred filing the NFTL and schedule a follow up date of 4/15/2011. On Monday 4/18/2011 you still have not received the documentation from the taxpayer or confirmation of the FTD payments. Since the taxpayer did not meet the specified deadline it is appropriate to file the Notice of Federal Tax Lien at this time without further contact with the taxpayer.
- C. After returning to the office from a field visit the previous day you have determined to file an NFTL because the taxpayer did not make full payment and was not in compliance. The taxpayer calls you and asks that you not file the NFTL because she is selling her home to full pay the liability and avoid enforcement actions. You tell the taxpayer that the NFTL is going to be filed to protect the Government's interest in the home. The taxpayer tells you that the sale will not go through because of the NFTL. You then tell the taxpayer that a Release of NFTL can be issued at the time full payment is made at the sale.
- D. After your initial analysis of a BMF taxpayer you plan to visit in the field tomorrow, you determine that in addition to owing several 941 liabilities exceeding the notice filing threshold, there are several unfiled 941 returns, and FTDs have not been made for the current quarter. During your field visit the taxpayer informs you that they are currently under contract to sell their rights to a patent for a product they developed and the sale will more than pay the liability and the amount they estimate will be owed for the delinquent returns. The taxpayer tells you that part of the agreement for sale is that there can be no liens associated with the patent and asks that you do not file an NFTL prior to the sale in 45 days. You review the contract and confirm the taxpayer's claim that sale of the patent is scheduled in 45 days. You tell the taxpayer that the lien exists because they owe taxes whether a notice of the lien's existence is filed or not but that you will defer the filing of the NFTL if they file all delinquent returns and pay all delinquent FTD within 15 days. This is 30 days prior to the sale. The taxpayer agrees that they can file the returns and make all FTD payments due and owing for the current quarter within the 15 days. On the 18th day you receive all delinquent returns but do not receive any of the promised FTD payments due and owing for the current quarter. A follow-up phone call to the taxpayer finds that they have gone on vacation. You made a timely lien notice filing determination within 10 days of your field call, deferring filing of the NFTL to correspond with the deadline agreed upon by the taxpayer. Since the taxpayer did not fulfill their agreed upon obligation, further deferral of the NFTL filing in this situation would not be appropriate.

- E. During a field visit to the representative's office, she informs you that filing an NFTL will embarrass the taxpayer in their business community. A taxpayer's embarrassment alone is not a reason to defer filing the NFTL. In this case it would be appropriate to file the NFTL, unless the POA can document that the NFTL would hamper the payment of the liability.
  - F. During a field visit to an IMF taxpayer you request full payment of the \$200,000 liability. The taxpayer tells you that he is negotiating a sale of his home (primary residence) but there is only \$100,000 of equity so he can't full pay even with the sale. He asks that you not file the NFTL because it will ruin the sale. You ask the taxpayer to supply you with the appropriate documents (these may vary by location) to confirm his statement. He says he cannot. In this situation it would be appropriate to file the NFTL and inform the taxpayer that he may request a *discharge of the specific property* when he is prepared to close the sale.
7. The filing of an NFTL may affect a taxpayer's credit rating, and this alone is not sufficient reason to withhold filing the NFTL.
  8. When a revenue officer determines to defer the filing of an NFTL, the action must be supported by an Integrated Collection System (ICS) history entry that clearly states why filing an NFTL is not proper at that time. The entry must also include a follow-up date by which the revenue officer will receive the requested information and/or payment or the date the NFTL will be filed.
  9. The revenue officer will withhold filing the NFTL if the taxpayer has entered into a collateral agreement with the Service as provided in IRM 5.6. Revenue officers should document their case files and consult with Advisory to ensure legal sufficiency.
  10. A taxpayer may submit a faxed request for non-filing of the NFTL if the revenue officer has made contact with the taxpayer by phone or in person. The revenue officer should document the case history with the date of contact and the taxpayer's rationale. The revenue officer should also retain the faxed document in the case file.

#### 5.12.2.4.1 (10-14-2013)

#### Integrated Collection System (ICS) Documentation When Deferring the Filing of an NFTL or Choosing "Do Not File"

1. A decision to not file or defer the filing of an NFTL **must** be supported by a history entry that clearly states why filing an NFTL is not appropriate. An exception to this would be where a typically expected action is taken (e.g. the aggregate UBA is less than \$10,000 or the balance to be reflected on the NFTL is less than \$2500). Here the action taken is documented in the case history but the rationale does not need to be documented. In these circumstances the non-typical action's rationale would be explained in the case history.
2. When the decision to not file or defer the filing of an NFTL is made the revenue officer should ensure that the ICS NFTL filing determination field is properly updated on the case summary screen for each module. Update the Notice of Lien filing Determination in ICS by choosing "Lien Not to be Filed" when the decision is to "not file" or "Defer Lien Filing" when the decision is to defer.

#### 5.12.2.5 (10-14-2013)

#### Approvals Relating to Determinations

1. The following sections identify when approvals are needed for determination date extensions, and for filing, non-filing, or filing deferral determinations.

#### 5.12.2.5.1 (10-14-2013)

#### Determination Date Extension Approval

1. Group manager approval is required for all RO decisions to extend the normal time frame for making a determination to file an NFTL on all cases that have employment tax modules (MFT 01, 10, 11, 14) in which the known aggregate assessed or to be assessed balance will be greater than \$10,000. The extension of the NFTL filing determination date is not the same as deferring the filing of the NFTL. See *IRM 5.12.2.3.3*.

#### 5.12.2.5.2 (10-14-2013)

#### NFTL Filing Determination Approvals

1. A determination to file an NFTL by revenue officers below GS-9 must be approved by the manager prior to the NFTL being filed.
2. If authorized by the group manager, GS-9 and above revenue officers may approve the NFTL filing determination for revenue officers below GS-9 and initiate the ICS NFTL request.

#### 5.12.2.5.3 (01-01-2015)

#### NFTL "Do-Not-File" and Filing Deferral Determination Approvals

1. Group manager approval is required for all RO decisions to not file or defer the filing of an NFTL on all cases that have employment tax modules in which the known aggregate assessed or to be assessed balance will be greater than \$10,000.

#### Note:

For purposes of this section employment tax modules consist of Form 941, Form 940, Form 943 and Form 944. (MFT 01, 10, 11, 14)

2. Group manager approval should be noted in the ICS history. All these determinations to defer the filing of an NFTL must have a calendared follow-up to revisit the NFTL determination should the taxpayer fail to properly resolve the delinquency. In most cases the calendared follow-up will correspond with an established deadline.
3. For cases that meet the criteria outlined in IRM 5.12.2.4(4) and IRM 5.14.5.2 approval to not file or defer the filing of an NFTL is not required.

#### Note:

Where an NFTL should not be filed, a "do-not-file" approval is not required. See IRM 5.12.2.4(5).

4. Manager approval is required for the non-filing or deferral of an NFTL filing on additional assessments when the aggregate balance on the case exceeds \$10,000.00.

#### Note:

An exception to this requirement would be if a prior non-filing or deferral approval has previously been granted on the case and the same factors supporting the prior approval apply to the additional assessment.

5. **Group Manager and Territory Manager Approval:** In addition to group manager approval, Territory Manager approval is required for NFTL filing deferral and non-filing in certain instances. These are

- cases with 10 or more employment tax modules (MFT 01, 10, 11, 14)
- any employment tax case in which NFTL filing is deferred or not filed for more than 120 days from initial TP contact

#### Note:

if the NFTL being deferred or not filed would reflect a balance of less than \$2,500, neither GM nor TM approval is required.

#### 5.12.2.6 (10-14-2013)

#### NFTL Filing Criteria

1. In general, an NFTL should be filed in the following situations:

**Note:**

For the purposes of this section, "unpaid balance of assessments" (UBA) means the total balance of all unpaid and assessed tax periods for the taxpayer.

<b>If</b>	<b>Then</b>
	file an NFTL
the aggregate UBA is \$10,000 or more	<b>Note:</b> Determine the need to file an NFTL when there are additional assessments.  file an NFTL. See IRM 5.14.5
an installment agreement (IA) does not meet streamlined, guaranteed, or in-business trust fund express criteria	<b>Reminder:</b> For an IA meeting streamlined, guaranteed, or in-business trust fund express criteria see <i>IRM 5.12.2.3.1</i>
an open account with an aggregate UBA of \$10,000 or more is being reported as currently not collectible	file an NFTL.  the NFTL filing may be delayed to include both period types on the NFTL.
a case involving both assessed and unassessed periods will be reported currently not collectible	<b>Note:</b> You may also choose to file an NFTL on the current assessments and wait for the unassessed periods to be assessed, and then file for those periods as well.
there is property not being administered in a Federal bankruptcy or state insolvency proceeding	file an NFTL to protect the government's interest unless doing so is currently stayed by the proceeding  file an NFTL. Contact requirements are waived.
the taxpayer resides outside the U.S. and has known assets	<b>Note:</b> Prior to requesting that a taxpayer be placed on the Treasury Enforcement Communications System (TECS), file an NFTL even though the taxpayer resides outside the US and has no known assets in the US. Procedures concerning TECS are discussed in IRM 5.1.12.26.

**Note:**

Even though there is no mandatory NFTL filing requirement prior to service of a Notice of Levy, before levying the Service should consider, for purposes of lien priority, filing an NFTL.

**Note:**

Generally NFTLs will not be filed when the UBA is less than \$10,000, but they may be filed if they will protect the government's interest, such as in the case of an impending bankruptcy or other exigent circumstances.

2. Except in rare circumstances, an NFTL should not be filed when the balance to be reflected on the NFTL is less than \$2,500 (remember, an NFTL can accommodate 15 statutory liens). If the case facts indicate that immediate filing of an NFTL will prevent loss to the government (e.g., taxpayer is dissipating assets), the NFTL may be filed. Notate the circumstance in the case history.
3. Accrued interest and penalties added to tax must be collected during the limitation period for collecting the tax. Therefore, an NFTL may be filed on *accruals only* modules where all assessed liabilities have been full paid while keeping in mind that NFTLs should not be filed when the balance to be reflected on the NFTL is less than \$2,500. The tax liability's collection limitation period does not apply to bad checks, fraud penalty or certain other penalties that may carry a separate collection statute expiration date. See IRM 5.12.7.3(14) *Preparing the NFTL General Instructions*.
4. Examples of when it is appropriate to file an NFTL are listed below:
  - A. After your initial analysis of a law firm with three quarters of Form 941 liabilities totaling \$37,000, you determine that all notices requesting payment have been sent. You then make a field visit on Tuesday 10/16/2012 to the taxpayer at the last known address. The office has a sign saying it is closed for that day so you leave a 2246 (Field Contact Card) with Publication 1 and 594 in a sealed envelope under the door. The calling card instructs the taxpayer to contact you by Friday 10/19/2012. By close of business on Wednesday 10/24/2012 you have still not received any communication from the taxpayer. In this situation it is appropriate to file the NFTL.
  - B. During a field visit to a self-employed taxpayer you request full payment of the tax liability of \$31,000. As part of your compliance check you also inform the taxpayer that they are not current with their estimated tax payments, and they must make those payments as well. The taxpayer makes payment for a portion of the tax liability (\$1,000) and tells you they will make their \$6,000 in late estimated tax payments in 30 days. The taxpayer provides a financial statement which shows they have equity in assets that will full pay the liability however the income would not support any short term or streamlined installment agreement. In this situation it would be appropriate to file an NFTL. The RO advises the taxpayer that the NFTL will be filed and provides the taxpayer with information regarding lien subordinations and discharges.

**5.12.2.6.1 (01-01-2015)  
ACA Shared Responsibility Considerations When filing NFTL**

1. Follow the chart below for NFTL filing when the taxpayer's account contains SRP/MFT 35 or MFT 43 assessments.

<b>If the UBA contains ...</b>	<b>And the UBA is ...</b>	<b>Then ...</b>
SRP/MFT 35 assessment(s)	<u>less than \$10,000</u> when not including the MFT 35 assessment(s) in the UBA calculation	(1) An NFTL may still be filed as long as the provisions in IRM 5.12.2.3 are followed. <b>Reminder:</b> SRP/MFT 35 assessment(s) CANNOT BE included on the NFTL
<b>Reminder:</b> MFT 35, tax class 6 is still used on NFM for partnership returns Forms 1065.		(2) Notate in the ICS history any decision to file, on the other assessments, in these circumstances. Include in the history the reason(s) for filing the NFTL.
SRP/MFT 35 assessment(s)		

**Reminder:**

MFT 35, tax class 6 is still used on NFM assessment(s) in the UBA calculation **\$10,000 or more** without including the MFT 35 assessment(s) in the UBA calculation. File an NFTL. \_\_\_\_\_  
for partnership returns Forms 1065. **Reminder:**SRP/MFT 35 assessment(s) CANNOT BE included on an NFTL

MFT 43 assessment(s) \$10,000 or more File an NFTL and include the MFT 43 assessment(s) on the NFTL

**5.12.2.7 (10-14-2013)  
Approval of Lien Notice Filing**

1. Revenue officer group managers will note their review and approval of the lien notice filing in the ICS history for revenue officers below the GS-9 level or they may assign the notice filing responsibility to a revenue officer at the appropriate grade level.
2. When a manual NFTL is prepared (using ICS Templates), managers will ensure that the first five numbers of an SSN have been redacted and sign the NFTL for revenue officers below GS-9. The NFTL may also be signed by a revenue officer at the appropriate grade level.
3. In all cases document the case file.

**5.12.2.7.1 (10-14-2013)  
The Manager's Review Process**

1. Managers of revenue officers below GS-9 are required to:
  - A. review the taxpayer's information,
  - B. verify there are no SSNs included on the name or address lines and that any manually prepared NFTL redacts the first five numbers of the SSN,
  - C. verify the balance due, and
  - D. affirm that the lien notice filing is appropriate given the taxpayer's circumstances, considering the amount due and the value of the property or rights to property.
2. In all cases, revenue officers must document the following information:
  - A. A summary of any information the taxpayer provides that may affect the decision to file a lien notice,
  - B. If the taxpayer provided information, the employee is to explain their review of the information and findings, and
  - C. Verification that the amount is owed, e.g., the balance has been checked on IDRS.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 3. Lien Release and Related Topics

##### 5.12.3 Lien Release and Related Topics

- 5.12.3.1 [Purpose](#)
- 5.12.3.2 [Lien Release \(Overview\)](#)
- 5.12.3.3 [Lien Release Conditions](#)
- 5.12.3.4 [Certificate of Release](#)
- 5.12.3.5 [Processing Requests for Release of Lien](#)
- 5.12.3.6 [Partial Lien Release](#)
- 5.12.3.7 [Disposition of Certificate of Release](#)
- 5.12.3.8 [Problems with Recording Offices](#)
- 5.12.3.9 [Erroneously Filed Notice of Federal Tax Lien](#)
- 5.12.3.10 [Erroneous NFTL in ID Theft Situation](#)
- 5.12.3.11 [Administrative Appeals Not Meeting IRC § 6326](#)
- 5.12.3.12 [Inadvertent NFTL Filing](#)
- 5.12.3.13 [Civil Cause of Action Under IRC § 7432 for Failure to Release Lien](#)
- 5.12.3.14 [Revocation of Certificate of Release](#)
- 5.12.3.15 [Reinstatement of Lien](#)
- 5.12.3.16 [Filing of Revocation Certificates](#)
- 5.12.3.17 [Designated Payment Codes \(DPC\) Related to Liens and Lien Certificates](#)
- 5.12.3.18 [Review of Lien Release Timeliness](#)
- Exhibit 5.12.3-1 [Starting Points for 30-Day Release Time Frame](#)
- Exhibit 5.12.3-2 [Form 668\(Z\) - Partial Release for Bankruptcy](#)
- Exhibit 5.12.3-3 [Form 668\(Z\) - Partial Release for Offer in Compromise](#)
- Exhibit 5.12.3-4 [Form 668\(Z\) Release of Erroneous NFTL](#)
- Exhibit 5.12.3-5 [Form 668\(Z\) Partial Release of Erroneous NFTL](#)

##### Manual Transmittal

October 14, 2013

##### Purpose

(1) This transmits revised IRM 5.12.3, Federal Tax Liens, Lien Release and Related Topics

##### Background

A revision of the IRM 5.12 chapter has been done to consolidate and coordinate like topics, reduce duplication of content, and provide an over view, cross-references, and contacts.

##### Material Changes

(1) As part of reorganization of IRM 5.12, changed title to "Lien Release and Related Topics."

(2) Sections that did not apply to subject matter were moved to other IRM chapters. Sections from other IRM chapters pertaining to the subject were moved to this IRM. The sections remaining in this chapter were renumbered and reorganized.

(3) From the wording of the previous IRM sections, editorial changes made throughout and verbiage updated for form and systemic changes.

(4) The following table provides a cross walk for sections moved **FROM** IRM 5.12.3 to their new 5.12 location(s)

Old IRM number:	Topic:	New IRM chapter:
5.12.3.11 through 5.12.3.23	Discharge of Property and Subordination of Federal Tax Lien	5.12.10
5.12.3.24 through 5.12.3.26	Certificate of Nonattachment	5.12.10
5.12.3.27 through 5.12.3.37	Withdrawal of Notice of Federal Tax Lien	5.12.9
5.12.3.39	Appeal Rights - Lien Certificates	5.12.9; 5.12.10
		5.12.9; 5.12.10
5.12.3.40	Designated Payment Codes	<b>Note:</b>
		Also remained in 5.12.3

(5) The following table provides a cross walk of sections moved **TO**, or incorporated into, IRM 5.12.3 from other IRM 5.12 location(s)

Old IRM number:	Topic:
5.12.6.5.1	Certificate of Release
5.12.6.5.2	Certificate of Revocation

(6) The remaining sections were renumbered and/or consolidated with other sections to remain in 5.12.3. The following table shows the current and the previous IRM numbers and identifies material changes to the text.

New IRM Number	Old IRM Number(s)	Material Change
5.12.3.2	5.12.3.1; 5.12.3.11	Modified to emphasize certificates related to lien releases

5.12.3.3	5.12.3.2	Expanded to be overview of releases
5.12.3.3.1	5.12.3.2.1	Added Exhibit. Split into section on payment and adjustment.
5.12.3.3.1.1	5.12.3.2.1; 5.12.3.3.3	New section to expand on satisfaction by payment
5.12.3.3.1.1.1	5.12.3.3.4; 5.12.6.5.1.2	n/a
5.12.3.3.1.2	5.12.3.2.1	New section to expand on satisfaction by adjustment/abatement
5.12.3.3.2	5.12.3.2.2; 5.12.3.3.2	Better defined self release
5.12.3.3.3	5.12.3.2.3	Cross references added.
5.12.3.4	5.12.3.3; 5.12.6.5.1	Revised to be consistent with CLO procedures
5.12.3.4.1	5.12.3.4; 5.12.6.5	Revised to be consistent with CLO procedures
5.12.3.4.1.1	5.12.3.2.2; 5.12.3.3.2	Elaborated on self release situations
5.12.3.4.2	5.12.6.5.1	n/a
5.12.3.4.3	5.12.3.9	Simplified to reference to delegation orders.
5.12.3.4.3.1	IG SBSE-05-0513-0039	New section on electronic signatures
5.12.3.5	5.12.3.3;	Restructured section to better define release requests.
5.12.3.5.1	5.12.3.3.3	Updated procedures
5.12.3.5.1.1	5.12.3.3.3	New section on requesting releases without a specific taxpayer request.
5.12.3.5.2	5.12.3.3.1	Expanded information regarding release requests
5.12.3.5.2.1	5.12.6.5.1.3	n/a
5.12.3.5.2.2	5.12.6.5.1.1	n/a
5.12.3.5.3	5.12.3.2.4	n/a
5.12.3.5.3.1	5.12.3.2.4.1	Updated to make consistent with other manual release procedures
5.12.3.5.4	5.12.3.3.2	Updated chart
5.12.3.5.5	5.12.3.2.5	n/a
5.12.3.5.6	n/a	New section on abatement of lien fees.
5.12.3.6	5.12.3.8; 5.12.6.5.1.4	Revised to clarify partial release situations.
5.12.3.6.1	5.12.3.2.6	Changed from partial releases in bankruptcy to broader language of partial releases.
5.12.3.6.2	5.12.3.2.7	Added abatement of lien fee statement.
5.12.3.7	5.12.3.7	Updated to be consistent with centralized lien processing.
5.12.3.8	n/a	New section to address common problems
5.12.3.8.1	5.12.6.5.1.8	n/a
5.12.3.8.2	n/a	New section on fraudulent documents
5.12.3.9	5.12.3.5	Revised to clarify process
5.12.3.9.1	5.12.3.38; 5.12.3.38.1	Updated to clarify process as relates to 6326.
5.12.3.9.1.1	5.12.3.38.1	Updated to clarify procedures
5.12.3.9.2	n/a	New section on rescission of appeal rights
5.12.3.10	n/a	New section to address ID theft situations
5.12.3.11	5.12.3.38.1	New section to address appeals not under IRC 6326
5.12.3.12	5.12.3.5.1	Removed "improvident" as unnecessary term. Added reference to withdrawal after release
5.12.3.13	5.12.3.10	Added statement regarding limits to claim
5.12.3.13.1	5.12.3.10.1	n/a
5.12.3.13.2	5.12.3.10.2	Added time frame to open case control
5.12.3.13.3	5.12.3.10.3	Updated forms used for claims
5.12.3.14	5.12.3.23; 5.12.3.24	Expanded definitions
5.12.3.14.1	5.12.3.24.1	Revised to be consistent with current procedures
5.12.3.14.2	n/a	New section on partial revocations
5.12.3.14.3	IG SBSE-05-0512-019	New section on electronic signatures
5.12.3.14.4	n/a	New section on revocations due to programming problem
5.12.3.15	5.12.3.25	Revised to clarify procedures
5.12.3.16	5.12.3.26	Updated to clarify NFTL filing requirements
5.12.3.16.1	n/a	New section on releasing revoked lien
5.12.3.17	5.12.3.40	Clarified use of DPCs.
5.12.3.18	n/a	New section on Collection Policy review of releases
Exhibit 5.12.3-1	n/a	New chart demonstrating 30 day release time frames
Exhibit 5.12.3-2	Exhibit 5.12.3-1	Updated form and verbiage
Exhibit 5.12.3-3	Exhibit 5.12.3-2	Updated form and verbiage
Exhibit 5.12.3-4	Exhibit 5.12.3-3	Updated form and verbiage
Exhibit 5.12.3-5	n/a	New exhibit on partial releases of erroneous NFTL
Exhibit 5.12.3-6	n/a	New format for requesting revocations

## Effect on Other Documents

This material supersedes IRM 5.12.1, dated January 9, 2009; IRM 5.12.2 dated March 8, 2012; IRM 5.12.3 dated June 1, 2010; IRM 5.12.6 dated July 16, 2010; and Interim Guidance Memo SBSE-05-0513-0039, Electronic Signatures on Lien Certificates and Associated Correspondence, dated May 16, 2013.

## Audience

SBSE and W&I Collection, Centralized Lien Operations, Appeals

## Effective Date

(10-14-2013)

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Small Business/Self Employed Division

## 5.12.3.1 (10-14-2013)

### Purpose

1. The purpose of this Internal Revenue Manual (IRM) is to convey instructions related to releasing liens, lien notices, revocations, and civil causes of action under Internal Revenue Code (IRC) §§ 6326 and 7432.

2. See IRM Exhibit 5.12.1-2 for common acronyms used in this section.
3. This IRM is for procedural use and does not provide instruction on the use of any system. Please consult User Guides as necessary.
  - Automated Lien System (ALS) User Guide: <http://mysbse.web.irs.gov/Collection/collsystems/als/userguide/default.aspx>
  - Integrated Collection System (ICS) User Guide: [http://icsweb.web.irs.gov/Docs/HTML/user\\_guide.htm](http://icsweb.web.irs.gov/Docs/HTML/user_guide.htm)

### 5.12.3.2 (10-14-2013) Lien Release (Overview)

1. Internal Revenue Code (IRC) § 6323 provides for the filing of a Notice of Federal Tax Lien (NFTL). The IRC also provides for the issuance of other certificates for the administration of the lien, including:
  - Release of lien (IRC § 6325(a));
  - Discharge of lien (IRC § 6325(b));
  - Subordination of lien (IRC § 6325(d));
  - Nonattachment of lien (IRC § 6325(e)); and
  - Withdrawal of NFTL (IRC § 6323(j)).
2. This IRM is for releases of liens after a NFTL has been filed. Specifically, this IRM provides guidance on the criteria for release, the release process, and issues related to lien releases.

#### Note:

For instructions on other lien certificates as shown above, see their respective sections--IRM 5.12.9 and IRM 5.12.10.

3. Certificates of release are normally generated through ALS, either systemically or by manual input. On occasion, manual preparation of the certificate may also be needed. This IRM primarily focuses on those times when manual intervention is needed.
4. The document used to release a lien is Form 668(Z), *Certificate of Release of Federal Tax Lien*.
5. Servicewide Delegation Order 5-4 lists those employees who have the authority to approve Federal tax lien releases and other lien related certificates. (See IRM 1.2.44.5.)

#### Note:

References in IRM 1.2.44.5 to SB/SE Technical Services (Advisory) should be considered as references to Advisory.

6. Social Security Numbers (SSN) on lien-related certificates must be partially redacted so that only the last four digits of the SSN are shown (e.g. xxx-xx-1234). Redaction is not required for an Employer Identification Numbers (EIN).

### 5.12.3.3 (10-14-2013) Lien Release Conditions

1. IRC § 6325(a) requires the issuance of a release of federal tax lien within 30 calendar days of the date on which:
  - The liability is satisfied;
  - The liability becomes legally unenforceable; or
  - A bond is accepted.
2. Generally, releases are systemically generated through the Automated Lien System (ALS) when all modules on a NFTL are satisfied on Master File (MF). Module satisfaction notices are generated by Master File whenever a module containing a TC 582 has been satisfied. These notices are uploaded weekly to ALS and an analysis of the ALS database is completed systemically to determine if a Certificate of Release of Federal Tax Lien should be issued.
3. Occasionally, manual intervention is needed in the release process. This may occur when:
  - it is determined that the release will not be systemically issued within the required 30 calendar days;
  - thirty days have elapsed since the date of satisfaction and the lien has not been released;
  - the NFTL contains Non-Master File (NMF) modules; or
  - the taxpayer, their representative, or a third party with an interest in property attached by a NFTL requests an immediate release of lien.
4. Manual intervention in the release process can take different forms.
  - A. Manually requesting a release is the act of preparing Form 13794, *Request for Release or Partial Release of Notice of Federal Tax Lien*, and forwarding it for input to ALS.
  - B. Manually preparing a release is the act of physically preparing Form 668(Z), *Certificate of Release of Federal Tax Lien*, and forwarding it to Centralized Lien Processing Operations (CLO) to be mailed to the recording office.
  - C. Manually issuing a release is the act of physically preparing Form 668(Z) and providing it directly to the taxpayer or recording office.
5. Timely release of the lien is essential. IRC § 7432 gives taxpayers the right to sue the federal government if the Service knowingly or negligently fails to release a lien. *IRM 5.12.3.13*.
6. Employees requesting, issuing, or otherwise authorizing a release must be delegated the authority to do so (see IRM 1.2.44.5) and must verify that conditions for release are met.
7. During "dead cycles" when Master File is offline for maintenance and upgrades, a manual NFTL release should be requested whenever the liability(s) on the NFTL is fully satisfied.

#### Note:

Dead cycles are generally the first 2-3 cycles of the calendar year. Payments that are received, or other satisfying transactions that occur, at the end of the calendar year may have their posting to Master File delayed by the dead cycles. Manual NFTL releases should be requested for any satisfying transactions impacted by the dead cycles.

8. Releases are printed and mailed twice weekly by CLO. See IRM 5.19.12 for CLO procedures.



**5.12.3.3.1 (10-14-2013)**

**Liability is Satisfied - IRC § 6325(a)(1)**

1. Under IRC § 6325(a)(1), a certificate of release of lien must be issued within 30 calendar days after determining that the taxpayer's outstanding obligation covered by the NFTL (including any interest, additional amount, addition to the tax, or assessable penalty, together with any additional costs that may have accrued) is fully satisfied.
2. Modules may be satisfied by payment or by adjustment/abatement to the taxpayer's account.
3. =====  
=====
4. The starting time for the 30 day release period is affected by the type of satisfying transaction.
  - A. See Exhibit 5.12.3-1 for a listing of satisfaction types and how the 30 days is generally calculated.
5. A release must be manually requested whenever all the liabilities of a NFTL on NMF periods are fully satisfied.

**5.12.3.3.1.1 (10-14-2013)**

**Liability Satisfied by Payment**

1. A NFTL will be considered satisfied by payment when the full amount owed of all the liabilities on the NFTL, including penalties and interest, is paid. This may be done by means such as a taxpayer remitting a payment; a credit offset being applied to the module(s) on the NFTL from a payment on other module(s); or the taxpayer completing the payment terms on an accepted OIC.
2. At times, the taxpayer, their representative, or a third party with interest in property attached by the lien may request an immediate release of the lien. This may be for the purpose of transferring property, completing some other financial transaction, or just to resolve the lien.
3. A release may be immediately issued when the liability(s) on the NFTL is satisfied by the following forms of payment:
  - cash;
  - postal money order;
  - bank money order;
  - certified check;
  - cashier's check;
  - official bank check;
  - Treasury check; or
  - guaranteed draft drawn on any federally chartered or state licensed financial institution.

**Note:**

If there is reason to doubt the financial stability of an institution, then reject the tender of the institution's guaranteed draft. If a guaranteed draft is not duly paid, then the United States will have a lien on all assets of the drawee institution in the amount of the draft.

4. When payment is made by personal check, the 30 calendar day release period begins after 15 calendar days from receipt. This permits sufficient time for the check to clear. A release may be issued immediately upon presentation of the canceled check.
5. If a credit line check is received, the 30 calendar day release period begins after 15 business days from receipt. However, if the credit line check is certified, an immediate release may be issued.
6. Whether or not it is expressly requested by the taxpayer, an immediate release should be given when a taxpayer full pays their liability to redeem their assets from an IRS seizure.
7. A release must be manually requested whenever the liability(s) on a NFTL is satisfied and the posting of the satisfied transaction will be delayed because of the Master File dead cycles (e.g., a payment received on an Individual Master File (IMF) account in the first two cycles of the calendar year or on a Business Master File (BMF) account in the first three cycles).
8. Employees must use designated payment code (DPC) 07 when posting payments that are the direct result of a NFTL payoff. (See *IRM 5.12.3.17* for other DPCs related to lien certificates.)

**5.12.3.3.1.1.1 (10-14-2013)**

**Electronic and Credit Card Payments**

1. DO NOT issue an immediate release when credit or debit cards are used to full pay the tax liability. Credit and debit cards are barred for immediate release of lien because of the possibility of chargeback of such payments over a period of months. It is unlikely that a release will be requested from a credit or debit card payment because the Service may accept such payments only within three years after assessment. However, if a debit or credit card is accepted to satisfy a tax year and a request for release is received, the lien may not be released until the period for chargeback has run. The maximum period for chargeback is:
  - 120 calendar days for payment by credit card under 15 U.S.C. § 1666, and
  - 100 calendar days for payment by debit card under 15 U.S.C. § 1693f.

**Note:**

For general information regarding payment of tax liabilities with credit and debit cards by individuals, see *IRM 21.2.1.48*.

2. Issue a certificate of release when full payment of the liability is made by electronic funds transfer (EFT). These payments become irrevocable in a short period of time.

**5.12.3.3.1.2 (10-14-2013)**

**Liability Satisfied by Adjustment/Abatement**

1. A NFTL will be considered satisfied when the full balance owed on the liability(s) on the NFTL, including penalties and interest, is resolved through an abatement or adjustment to the module(s) on the NFTL.
2. Liens will be considered satisfied and manual releases should be requested when any of the following conditions exist:
  - **Form 3870, Request for Adjustment, is forwarded for processing** – If the approved adjustment will fully satisfy the period(s) shown on the NFTL and input of transaction code 470, closing code 89 or 90 is requested.

- **Form 4159, Payment Tracer Request, is forwarded for processing** – If transaction code 470, closing code 93 was input at the request of the initiator of the Form 4159, campus personnel will, upon locating the payment and determining that transfer to the proper account will fully satisfy the period(s) shown on the NFTL, request a release of lien.
- **Premature assessments in Tax Court cases** – If Appeals confirms that an assessment is premature, after forwarding approved Form 3870 and requesting input of transaction code 470, closing code 90.
- **Accounts with pending abatements** – Whenever pending abatements that will satisfy the period(s) are present on IDRS.
- **Pending credit transfers** - Whenever credit transfers are pending that will satisfy the lien period(s) are present on IDRS.
- **Corrected unpostables** - Whenever an unpostable condition is identified that will, upon correction, satisfy a period(s).
- **Delayed payment posting** - If, due to oversight or the absence of an employee to whom a payment is submitted, processing of a payment that will satisfy a lien is delayed for more than 15 business days.

**Note:**

See IRM 5.1.15 for procedures on requesting Abatements, Reconsiderations, and Adjustments. See *IRM 5.12.3.5.6* for guidance on abating NFTL filing fees.

3. In certain situations described above where the liability(s) was satisfied prior to the NFTL filing, a full (or partial) erroneous NFTL release may be appropriate. See *IRM 5.12.3.9* for further details. Alternatively, the taxpayer may request a withdrawal of the NFTL. See *IRM 5.12.9* for processing withdrawal requests.
4. If taxpayers request manual releases and payments do not fit the criteria provided above, verify accounts are in status 12 prior to requesting the release.

**5.12.3.3.2 (10-14-2013)**

**Liability is Unenforceable - IRC § 6325(a)(1)**

1. The term "unenforceable" means unenforceable as a matter of law and not merely uncollectible. Most commonly, "unenforceable" pertains to the passing of the Collection Statute Expiration Date (CSED).

**Note:**

See IRM 5.9.17.4.1 regarding the release of lien in bankruptcy cases.

2. NFTLs filed on Form 668(Y)(c), *Notice of Federal Tax Lien*, show a "Last Day for Refiling." Language on the form states that if the NFTL is not refiled by that date, the lien will be considered to have been released. This is known as a self-releasing lien. Generally, the self release feature of the NFTL is utilized when a liability is no longer enforceable. See *IRM 5.12.3.4.1.1*.

**Note:**

The Last Day for Refiling is not the CSED. If a NFTL is filed within the first ten years of assessment, the Last Day for Refiling will run concurrently with the CSED (i.e., CSED plus 30 days). If the CSED is extended beyond the original 10 years from assessment date, there is no direct correlation between the two dates.

**5.12.3.3.3 (10-14-2013)**

**Acceptance of a Bond - IRC § 6325(a)(2)**

1. Issue a release of a lien within 30 calendar days of accepting a bond securing the payment of the amount assessed (including any interest, addition to tax, assessable penalty, together with any accrued costs) within the time agreed to in the bond, but not later than six months before the expiration of the statutory period for collection. See IRC § 6325(a)(2).
2. The bond must be executed by a surety company holding a certificate of authority from the Secretary of the Treasury, or, at the discretion of the area director, collateral may be accepted within established limits (see IRC § 7101 and IRC § 7102).
3. A listing of approved sureties is contained in Department Circular 570, *Treasury's Listing of Approved Sureties*, which is available on the internet at [www.fms.treas.gov/c570](http://www.fms.treas.gov/c570). (See IRM 5.6.1.2.1) The acceptability of a surety, other than a Treasury approved surety, will be determined on a case by case basis.
4. Bonds, letters of credit and other types of securities may be accepted in lieu of filing NFTLs. See IRM 5.6.1.2 and IRM 5.12.10 for additional information regarding collateral agreements

**5.12.3.4 (10-14-2013)**

**Certificate of Release**

1. Issue a certificate of release only after all modules covered by the NFTL meet the criteria for release.
2. For NFTLs with multiple modules, a partial release certificate can be issued after each assessment is satisfied or becomes unenforceable; however, this should only be done if a specific request is received from the taxpayer.

**5.12.3.4.1 (10-14-2013)**

**Requesting a Certificate of Release on ALS**

1. ALS is the system designed to house information relative to NFTLs that have been filed. The CLO has primary responsibility for the maintenance of ALS data.
2. The majority of NFTL releases are systemically generated through ALS, but NFTL releases can also be generated when release data is manually input to ALS. This is done when there is insufficient time to wait for systemic processing or the systemic release will not be accomplished within 30 days of the satisfaction date. Releases manually input will be printed and mailed by CLO in accordance with standard procedures.

**Caution:**

Do not confuse releases manually input to ALS with releases manually prepared in the field. Releases manually input to ALS are generally to speed up the issuance process to 3–7 days. Manually prepared releases are for immediate issuance to the taxpayer.

3. To request a lien release be manually input to ALS, prepare Form 13794, *Request for Release or Partial Release of Notice of Federal Tax Lien*, and forward it via secure email to the CLO team assigned to the state where the NFTL is filed. CLO teams can be found on the Who/Where tab on SERP.
  - A. As an alternative to forwarding Form 13794 to CLO, Advisory and Insolvency employees with appropriate permissions may input the release information directly into the ALS.
4. Certificate issuance should be approved prior to ALS input. Therefore, documents will be generated and mailed without contacting the functional manager.
5. When release information is input to ALS, basic audit trail data is captured as well as how the lien was satisfied, the requesting employee, and the approving official. The NFTL release is assigned to the manager's queue for electronic signature and is produced after it has been approved.
6. Upon approval in the ALS manager's queue, the release is printed and batched for mailing in accordance with CLO printing routines. See IRM 5.19.12.3.

7. In situations where a release is manually issued, a copy of the Form 668(Z) and issuance information must be provided to CLO so that ALS may be updated.

#### 5.12.3.4.1.1 (10-14-2013)

##### Self Releasing Lien

1. NFTLs filed on Form 668(Y)(c), *Notice of Federal Tax Lien*, show a "Last Day for Refiling." Language on the form states that if the NFTL is not refiled by that date, the lien will be considered to have been released. This is known as a self-releasing lien.

##### Note:

The self releasing language was incorporated into Form 668(Y) in December 1982. In very rare situations, you may encounter a NFTL filed prior to that time. Although such a NFTL would not have been self-releasing, it would have to have been refiled timely to maintain its priority. Any such NFTLs that are still identified as active by the local recording office should be researched and addressed accordingly.

2. The primary reason for the self-releasing statement is to provide an efficient means to notify third parties that the lien is no longer enforceable. The self-release feature meets the 30-day requirement to release a lien. When the "Last Day for Refiling" passes and no refile has been done, both the statutory lien and the NFTL are immediately released.
3. A certificate of release is not systemically issued for self-releasing liens.

- A. If the taxpayer requests a certificate of release and the underlying liabilities have been satisfied or are no longer enforceable, then a certificate of release will be issued.
- B. If a NFTL contains multiple liabilities that are satisfied by different means (i.e. payment, statute, etc.), a certificate of release may or may not be issued based on the chart below:

**If the last open liability on the NFTL is... And the Last Day for Refiling for all the other liabilities on the NFTL... Then a Certificate of Release...**

no longer enforceable	has passed	does not need to be issued.
no longer enforceable	has not passed	must be issued
satisfied by payment or adjustment	has or has not passed	must be issued

4. If the "Last Day for Refiling" is not specified on the NFTL, the self-release provision is not in effect and a certificate of release must be issued when the CSED expires.
  - A. NFTLs After the Original CSED (NAOC) fka "Portland liens" may or may not specify a "Last Day for Refiling." This date is based on standard refiling periods and does not necessarily coincide with the CSED for modules on the NAOC. A certificate of release must be issued for a NAOC when the CSED expires.
5. A NFTL refiled on Form 668(F), *Notice of Federal Tax Lien Refile*, is not self-releasing. A certificate of release must be filed when the liability becomes unenforceable.
6. For more information about refiling liens, see IRM 5.12.8.

#### 5.12.3.4.2 (10-14-2013)

##### Manually Preparing a Certificate of Release

1. In situations where a certificate of release needs to be manually prepared in the field, use Form 668(Z) from the ICS templates or the PDF fillable format on the intranet.
2. Prepare the form so that the data matches exactly the information on the NFTL.
3. Depending on the circumstance, the certificate may be forwarded to CLO to be included in the next mailing to the recording office or issued directly to the taxpayer or their representative for filing.

##### Note:

In situations where a release is manually issued, a copy of the Form 668(Z) must be provided to CLO so that the information may be input to ALS.

#### 5.12.3.4.3 (10-14-2013)

##### Authority to Sign/Request Release of Lien

1. Delegation Order 5-4 in IRM 1.2.44.5 contains a complete list of positions authorized to approve releases of lien.

#### 5.12.3.4.3.1 (10-14-2013)

##### Use of Electronic Signatures on Lien Certificates

1. Neither the IRC nor Treasury regulations address the method in which lien certificates are to be signed; however, they both address the Secretary's authority to develop procedures associated with the use and acceptability of electronic signatures on forms and other documents.
2. Approval of documents must always be in accordance with Delegation Order 5-4. See IRM 1.2.44.5.
3. Certificates, letters, and forms related to liens may be signed by the approving official via electronic means or by authorized stamp when a physical signature is not feasible.

##### Note:

Documents generated by ALS are digitally signed in accordance with the delegation order. The electronic signature described in this section is only for situations where manually prepared certificates are needed.

4. To sign a document electronically, the document must be converted to a Portable Data Format (PDF) using Adobe Acrobat and the approving official must create a signature file. The format of the electronic signature should adhere to the following:
  - A. The signature should not contain the email address, logo, location or other unnecessary information.
  - B. The signature should preferably be an actual/graphic signature file of the approving official or at the minimum should show the name of the approving official. It should not be the Standard Employee Identifier (SEID) as that is for internal use only.
  - C. The approving official should validate the signature so that the pdf question mark does not appear.
5. Approval must be granted on a case by case basis. The ICS history must be documented by the approving official to indicate the electronic or facsimile signing of the lien certificate and associated correspondence.
6. A printed copy of the electronically signed certificate must be retained as part of the case file for appropriate record keeping.
7. There may be hesitation from some recording offices to accept electronically signed lien certificates; however, they cannot refuse to record the documents as the Service dictates the form and content of lien certificates. Recording offices may be referred to Publication 1468, *Guidelines for Notices of Federal Tax Lien and Centralized Lien Processing*, for more information.

8. Facsimile signatures must be protected in accordance with established IRS procedures.

- A. Physical signature stamps are designated "High Security." Store signature stamps in accordance with IRM 10.2.15.3(b) with reference to Exhibits 10.2.15-1 and 10.2.15-2. (See also IRM 1.4.6, Managers Security Handbook)
- B. All systems capable of reproducing electronic or PDF generated signatures for lien certificates must be official IRS computer systems and be password protected.
- C. Ensure a record of approval is available for electronically generated, PDF generated, and stamped signatures.

#### 5.12.3.5 (10-14-2013)

##### Processing Requests for Release of Lien

1. During the course of working balance due accounts, situations will be encountered where actions must be taken regarding a lien release. These could include:
  - a request from the taxpayer or another customer requesting release of the lien; or
  - identifying an issue that could potentially delay the systemic release of the lien.
2. Prompt action must be taken in these matters to ensure that the time frame for release is met.

#### 5.12.3.5.1 (10-14-2013)

##### Full Payment in Exchange for Immediate Lien Release

1. When a taxpayer requests an immediate lien release in exchange for a full payment of the liability, ensure that the payment does satisfy the liabilities and that it is made by a method described in *IRM 5.12.3.3.1.1*.
2. Prepare Form 668(Z), *Certificate of Release of Federal Tax Lien*, in accordance with *IRM 5.12.3.4.2*.
3. Provide the original Form 668(Z) to the taxpayer with Notice 48, *Release of Federal Tax Lien*. Advise the taxpayer that he or she must file the certificate and pay a recording fee if the release needs to be recorded immediately.
4. Document the ICS history that the release was given to the taxpayer to record themselves. If the release is given to another person, document the name, phone number and other identifying information in the history.
5. Forward a copy of the Form 668(Z) to CLO so that the ALS database can be updated. Forward the copy via secure email including the date of the release, the reason for the release, the name and badge number of the person initiating the release, and the name of the person given the release, if different from the taxpayer. If unable to send this information via email, phone or fax the information to CLO.

#### 5.12.3.5.1.1 (10-14-2013)

##### Requesting Release without Specific Taxpayer Request

1. Whenever full payment of the liability(s) on a NFTL is received, a manual request for release may be submitted to CLO whether the taxpayer expressly requested it or not. These manual requests are not generally required but may be considered based on case situations.
2. If there is an expectation that systemic processing of the release will be delayed, a manual release should be requested. Examples of when systemic problems may be anticipated include, but are not limited to:
  - full payment received immediately prior to or during MF dead cycles;
  - a freeze condition on the account that restricts normal processing;
  - a payment that will be split over multiple modules and will result in a significant overpayment of one of the modules.
3. To request a manual release, secure email Form 13794 to the appropriate CLO team. Make sure to check the appropriate box regarding how the lien was satisfied.

##### Note:

ALS will systemically hold processing for liabilities satisfied by personal check to allow time for check clearance.

#### 5.12.3.5.2 (10-14-2013)

##### Requests from External Customers

1. Lien release requests may be received verbally, by fax, or in writing. The request must at the minimum provide the following information:
  - The taxpayer's name and address;
  - Information about the NFTL;
  - The reason for the release request; and
  - The requestor's name and contact information, if different from the taxpayer's.

##### Note:

For third party requests, secure appropriate information to ensure the requester has the right to received the information before disclosing any information regarding the NFTL (e.g. the requester's interest in the property attached by the lien).

2. Request additional information as needed, such as a copy of the canceled check or other proof of payment.
3. Incomplete requests should not be summarily rejected because the timely issuance of the release may be affected. Notify the requestor when additional information is needed to identify the NFTL to be released. Provide Publication 1450, *Instructions on How to Request a Certificate of Release of Federal Tax Lien*, as needed to explain the required content of the request.
4. Upon receipt of a properly completed request, determine if the modules subject to the NFTL have been satisfied and whether a release has previously been issued.
5. If the release request is not appropriate, notify the requestor of the reason why a certificate of release will not be issued.

##### Note:

Taxpayers are not entitled to CAP rights when a lien release is not issued; however, taxpayers may pursue administrative appeal under IRC § 6326, if appropriate.

6. If the release is appropriate, manually request a release through ALS or manually issue a certificate of release as the situation warrants.

#### 5.12.3.5.2.1 (10-14-2013)

##### Certificates of Release Requested by the Taxpayer Advocate Service or Appeals Offices

1. Neither the Taxpayer Advocate Service (TAS) nor Appeals have the authority to release federal tax liens.
2. TAS must use an *Operations Assistance Request* (OAR), which is Form 12412, to request the IRS release a lien. Before issuance of an OAR, TAS should establish that IRC lien release statutory requirements have been met.
3. Appeals uses Form 13794, *Request for Release or Partial Release of Notice of Federal Tax Lien*, for their requests. Before requesting a lien release, Appeals should establish that IRC lien release statutory requirements have been met.
4. Generally, the TAS OAR or Appeals request is faxed to the CLO FORT, but occasionally it may be directed to a field employee.

#### 5.12.3.5.2.2 (10-14-2013)

##### Department of Justice or Court Ordered Requests for Issuance of Certificates of Release

1. Occasionally, it is necessary for the IRS to issue certificates of release based on court decisions or at the request of the Department of Justice.
2. These requests will be acknowledged and the releases will be prepared and issued immediately upon receipt.
3. The requesting employee will provide all pertinent information to prepare the release, including the taxpayer's current address.
4. It may be necessary for the employee to hand carry the document to the recording office. The employee should pay the filing fee and be reimbursed through the travel voucher system.
5. When the release is hand carried to the recording official, the requesting employee will forward a copy of the certificate of release with the recording data to the CLO for ALS input.
6. A history will be added to ALS by the CLO that the certificate of release was hand carried, including the date the certificate was provided by the employee, and the requesting employee's name.
7. As an alternative to the IRS employee manually filing the release and as the situation permits, arrangements may be made through Counsel or DOJ for the release to be provided to the taxpayer or their representative for filing. In this event, ensure necessary release information is provided to CLO to update ALS.

#### 5.12.3.5.3 (10-14-2013)

##### Acceptance of an Offer in Compromise

1. When an offer in compromise (OIC), including a collateral agreement, is accepted, the NFTL will be released upon payment of the offered amount.
2. Requests for the issuance of a certificate of release may be made by OIC units with ALS access.
3. OIC managers with access to ALS may approve the issuance of a certificate of release on the ALS system for a joint liability only when the OIC has been accepted from both taxpayers.
4. OIC Units without ALS access will secure email or FAX a Form 13794 to CLO.
5. OIC unit managers may issue a certificate of release when extenuating circumstances exist, e.g., innocent spouse, non-petitioning spouse, co-obligors, etc. See Exhibit 5.12.3-3. Use the procedures in (4) above for requesting the release.

#### 5.12.3.5.3.1 (10-14-2013)

##### OIC Funded by Lending Institutions

1. When the offered amount is to be paid by a lending institution, manually prepare the certificate of release. *Do not sign or date the form.* The designated employee will sign and date the certificate of release upon receipt of payment.
2. Forward the certificate of release to the assigned revenue officer at the time the taxpayer is informed that the offer is accepted.
3. The revenue officer will secure the full offer amount and provide a copy of the release to the lending institution and the taxpayer. Forward the original release to CLO for filing with the recording office.
4. If the taxpayer or lending institution request the original for filing, provide it with Notice 48, *Release of Federal Tax Lien*, which explains the process for having the certificate of release recorded. Forward a copy of the certificate of release to the CLO for update of the ALS database.

#### 5.12.3.5.4 (10-14-2013)

##### Satisfied or Unenforceable Taxpayer Accounts

1. Follow these procedures after verifying the liability has been satisfied:

<b>If...</b>	<b>Then...</b>
a release has not been issued, the liability was satisfied more than 30 calendar days ago, and the last date for refile has not passed	manually prepare a release. Based on the taxpayer request, forward the release to the taxpayer or CLO for filing.
a release has not been issued, the liability was satisfied less than 30 calendar days ago, and the last date for refile has not passed	manually request a release. Advise the taxpayer a copy of the release will be mailed.
the module is unenforceable and the last day for refile has passed,	advise the taxpayer of the self releasing lien situation. At the taxpayer request, manually request a certificate of release to be generated through ALS.
there is no record that the liability(s) on the NFTL has been satisfied on ALS or IDRS	request that the taxpayer submit documentation regarding the proof of payment.

#### 5.12.3.5.5 (10-14-2013)

##### Trust Fund Recovery Penalty Offsets

1. A certificate of release should be requested for the nonpaying officer(s) on a trust fund recovery penalty assessment when one officer has paid the liability in full. This will be done even though the liability has not been abated pending the expiration of the statutory period during which a claim for refund by the paying officer may be made.

#### 5.12.3.5.6 (10-14-2013)

##### NFTL Fee Abatements

1. When an adjustment is made to a module to reduce the tax liability to zero, the taxpayer may still be liable for the fee assessed to the account for the filing of the NFTL (TC 360). The abatement of the NFTL filing fee is dependent on the nature of the underlying assessment and other case facts.
2. The determination to abate the TC 360 NFTL fee should be made on a case by case basis considering the situation surrounding the adjustment and utilizing the best judgment of the employee assigned the account. Generally, the determination should follow the table below. Consult with Advisory if assistance is needed with the determination.

<b>If ...</b>	<b>Then...</b>
any of the liabilities on the NFTL were due to the taxpayer not complying with Internal Revenue laws (e.g., SFR/6020(b) assessment where the required the TC 360 should	

return was not timely filed) not be abated.  
 the liabilities on the NFTL were not the result of the taxpayer's action or inaction with respect to the law (e.g., SFR assessment reversed after determined, the TC 360 should  
 return was filed under spouse's TIN; ID theft; taxpayer had no filing requirement due to insufficient income or payroll) be abated.  
**and the liabilities are abated in full**  
 prior to the filing of the NFTL, credits were available to fully satisfy the liabilities on the NFTL but those credits were not properly applied by the IRS the TC 360 should  
 be abated  
 the liabilities on the NFTL are not fully abated, regardless of whether it was due to the taxpayer's compliance with Internal Revenue laws, the TC 360 should  
 not be abated.  
 any of the liabilities on the NFTL were satisfied by means other than abatement or adjustment the TC 360 should  
 not be abated.

3. See IRM 5.1.15 for abatement procedures.

- A. If the lien fee is abated, a manual release request may be needed (see *IRM 5.12.3.3.1.2*).
- B. If the NFTL filing fee is not abated, proceed with appropriate actions to resolve the remaining balance.

**Reminder:**

If all the liabilities on the NFTL are resolved and the filing fee is the remaining balance, ensure the taxpayer is aware of the balance due needed for a lien release.

**5.12.3.6 (10-14-2013)  
 Partial Lien Release**

1. Although there is no provision in the IRC for the issuance of a partial release, circumstances sometimes dictate that a partial release of the NFTL is necessary.
2. When one person named on a NFTL as a co-obligor for a tax liability is relieved of, or satisfies, their liability, a certificate of release for that taxpayer must be issued. If there remains a balance on the liability for which the other co-obligor is still liable, a partial release must be issued. Most commonly, a partial release is issued when:
  - there is a discharge in bankruptcy and only one person of the joint liability petitioned the court;
  - an offer-in-compromise is requested by one person of the joint liability and the offered amount is accepted; or
  - there is an innocent spouse determination.
3. A partial lien release may also be generated when there are multiple tax liabilities on the NFTL and the taxpayer requests a release for a specific tax liability that has been satisfied. Absent a taxpayer request, standard practice is not to issue a certificate of release until all liabilities on the NFTL are satisfied.
4. Unless the conditions of erroneous NFTL filing are met, partial releases should not be issued when the IRS mistakenly includes the name of a non-liable person on the NFTL. In these situations an amended NFTL should be filed to remove the non-liable person's name. See *IRM 5.12.7.9*.
5. Partial lien releases should be prepared using ALS. The generated release document clearly identifies the name of the non-liable taxpayer and includes wording in the body of the document to identify the partial release situation.
6. To request a partial release, complete Form 13794 and submit to CLO for input to ALS.
7. Infrequently, manual preparation of the Form 668(Z) is needed. If manually prepared, identify the name of the taxpayer that is no longer liable for the tax debt and include language in the body of the release to identify the partial situation.
8. Do not post TC 583, Reverse Lien Indicator, to the still liable taxpayer's master file account.

**5.12.3.6.1 (10-14-2013)  
 Partial Release of a Jointly Filed Lien**

1. When one party on a jointly-filed NFTL files bankruptcy and is discharged or makes an OIC that is accepted, a TC 971 is posted to the jointly-owed module to trigger the splitting of the account (TC 400), e.g., the one MFT 30 module now becomes two MFT 31 modules. Generally, Master File uploads the partial satisfaction code to ALS and a partial release is systemically generated within the required time frame.
2. Employees monitoring the cases must ensure releases are issued timely. Manual release requests should be made when the partial release will not be issued within 30 calendar days of the satisfying event.
3. ALS generates partial releases showing special wording to identify the partial release situation. In the unusual instance where a partial release must be manually prepared, the Form 668(Z) must identify the person being released and the special wording must be included. See Exhibit 5.12.3-2.
  - A. For bankruptcy cases, the name of the party to be released must be clearly identified and the body of the release should read: *With respect to the liabilities of [Taxpayer B] only, the liabilities secured by the subject lien have been effectively discharged through United States Bankruptcy Court proceedings. This justifies the issuance of this certificate which releases the lien only insofar as it relates to [Taxpayer B] in the liability of [Taxpayer A and B]. The lien is not released as it relates to [Taxpayer A].*
  - B. For OIC cases, the name of the party to be released must be clearly identified and the body of the release should read: *With respect to the liabilities of [Taxpayer A] only, the liabilities secured by the subject lien have been satisfied. This justifies the issuance of this certificate which releases the lien only insofar as it relates to [Taxpayer A] in the liability of [Taxpayer A and B]. The lien is not released as it relates to [Taxpayer B].*

**5.12.3.6.2 (10-14-2013)  
 Innocent Spouse Determinations**

1. IRC § 6015 grants relief to a spouse when it is determined that he or she is not liable for all, or part, of a joint liability.
2. When a determination has been made that one spouse is not liable for the joint assessment, a partial release should be issued for the taxpayer who is not responsible for the liability.
3. Partial releases can be generated through ALS. Special wording is affixed to the generated document to clearly identify the innocent spouse.
4. In the rare instance where a partial release must be manually prepared, the person being released must be clearly identified in the name section and the following special wording must be included in the body of the Form 668(Z):

*The conditions for release of the Notice of Federal Tax Lien against [Taxpayer A and B] have been met by [Taxpayer B]. This certificate releases the IRS's claim to property and rights to property as it pertains to the tax years identified above for [Taxpayer B] only.*

5. If the original assessment was completely abated but the NFTL filing fee (TC 360) was not systemically abated, abate the NFTL fee.
6. See *IRM 25.15.8* for further guidance on working Innocent Spouse cases.



#### **5.12.3.7 (10-14-2013)**

##### **Disposition of Certificate of Release**

1. Form 668(Z) must be mailed or presented to the proper recording office to address the public record.
2. CLO has primary responsibility for transmitting lien documents to recording offices. See IRM 5.19.12.3.5 . As much as possible, lien releases should be processed through CLO.
3. In rare situations, a field employee may file a certificate of release. In doing so, the employee is responsible for paying the filing fee and subsequently claiming reimbursement on their travel voucher. The employee must also notify CLO within 4 calendar days of the release filing.
4. The payment of release fees should be handled in the same manner as filing fees.
5. A taxpayer may request to personally file the certificate of release. If a certificate of release is appropriate, prepare the Form 668(Z) and provide it to the taxpayer.
  - A. Include Notice 48 when transmitting the certificate to the taxpayer to file.
  - B. Ensure that the taxpayer is aware that they are responsible for paying the filing fee.
  - C. Advise the taxpayer they may request a refund of the filing fee by returning a copy of the recorded certificate along with a receipt of the filing fee paid. Upon receipt of such documentation, request an abatement of a portion of the TC 360 on the taxpayer's account equal to the amount of the filing fee paid. If no documentation is returned, do not abate any filing fees that were assessed.

##### **Note:**

When a taxpayer requests a copy of the certificate of release where the collection statute expired or there was a bankruptcy discharge, do not abate any filing fees.

- D. Notify CLO whenever a release is issued directly to the taxpayer so that ALS can be updated appropriately.
6. Although not legally required, copies of releases generated on ALS and processed through CLO are routinely issued to the taxpayer through Correspondence Production Services (CPS). If the release is manually prepared in the field, ensure that the taxpayer is provided with a copy of the release document.
  7. Whenever an NFTL is released, TC 583 must be input, with the appropriate definer code, to all the modules on the NFTL. For releases printed from ALS and mailed for filing by CLO, the upload of TC 583 is systemic. For manually prepared and issued releases, manual input is needed.
    - DC 1 - released
    - DC 2 - withdrawal due to administrative error
    - DC 3 - withdrawal due to collection due process appeal rights
    - DC 4 - reversal
    - DC 5 - self-released (statute expiration).

##### **Note:**

Do not input TC 583 for partial releases.

#### **5.12.3.8 (10-14-2013)**

##### **Problems with Recording Offices**

1. The Service takes appropriate measures to ensure that lien releases are timely and properly issued. At times, however, problems will be encountered in the filing process at the local recording office.
2. Generally, situations with recording offices are handled by CLO, but occasionally field assistance may be necessary.

#### **5.12.3.8.1 (10-14-2013)**

##### **Certificates of Release Not Found in Recording Office**

1. Occasionally the certificate of release cannot be located by the recording office even though ALS shows that the release was issued. Requests for copies of releases are routinely received by CLO from taxpayers or their representatives, but sometimes are received by revenue officers.
2. The original copy of the certificate of release can be reprinted through ALS by CLO. Request CLO reissue the release to the recording office.
  - A. If the situation occurs where the original NFTL is no longer on ALS, request the taxpayer provide a copy of the NFTL from the recording office so that a release can be recreated. See CLO procedures in IRM 5.19.12.2.1.3 .
3. Filing fees will not be posted to the taxpayer's account.
4. If a taxpayer is waiting on the certificate, manually prepare the certificate and inform the taxpayer that they can take the copy to the recording office, however, a filing fee must be paid. Provide the taxpayer with a copy of Notice 48.
5. Request an ALS history be input indicating the date and to whom the release was provided.

#### **5.12.3.8.2 (10-14-2013)**

##### **Fraudulent Lien Certificate Recorded**

1. Occasionally the IRS is contacted by a recording office or another third party to verify the validity of a lien certificate that was issued. Although unusual, situations may be found where the certificate was not authorized by the IRS.
2. Secure a copy of the document that was recorded and other relative information about the taxpayer's account.
3. Notify TIGTA of the situation.
4. Unless advised not to do so by TIGTA, contact the recording office to see if they can reverse their records regarding the release. Incorporate the assistance of Area Counsel as needed.
5. Depending on the situation, it may be necessary to file a revocation of the release and a new NFTL. Work with Advisory and Counsel on an appropriate remedy to the situation.

#### **5.12.3.9 (10-14-2013)**

##### **Erroneously Filed Notice of Federal Tax Lien**

1. IRC § 6326 provides the right for a person against whom a NFTL has been filed to appeal for the release of the NFTL if they allege the filing was erroneous.



2. Reg § 301.6326-1 defines an erroneously filed NFTL as one which is filed during the presence of one of the following conditions:

- A. The tax liability was satisfied prior to the NFTL filing.
- B. The tax liability was assessed in violation of deficiency procedures in IRC § 6213.
- C. The tax liability was assessed in violation of a bankruptcy stay.
- D. The statute of limitations for collection expired prior to the filing of the NFTL.

**Note:**

Since Bankruptcy Code § 362(b)(9)(D) permits a governmental unit to assess a tax without a violation of the automatic stay occurring, there should be few, if any, situations when an assessment will violate the automatic stay.

3. The administrative appeals process:

- may not be used to challenge the underlying deficiency leading to the encumbrance of the NFTL.
- allows for appeal within one year after the taxpayer becomes aware of the erroneously filed NFTL

4. Requests must be handled expeditiously. The Service, when practical, must issue a Certificate of Release within 14 calendar days after determining the filing was erroneous.

5. If it is determined that the NFTL was erroneous, the release must include a statement to that effect. This ensures that the public records contain a statement that the filing was not attributable to the taxpayer and will assist in repairing the taxpayer's credit or other financial records. A Certificate of Release must be issued on any erroneously filed NFTL. See *IRM 5.12.3.9.1* for specifics on how to prepare the release in these cases.

6. The issuance of the special-worded release of erroneous NFTL should be sufficient to repair any damage done to the taxpayer's credit. However, consideration will also be given to a request properly submitted by the taxpayer for a withdrawal of the NFTL. (See *IRM 5.12.9.*)

7. All collection actions will be withheld during the administrative appeals process, unless collection is in jeopardy.

**5.12.3.9.1 (10-14-2013)**

**Administrative Appeals Under IRC § 6326**

1. Advisory is responsible for making erroneous NFTL determinations.

**Note:**

Insolvency is responsible for making erroneous NFTL determinations for situations identified during the course of working a bankruptcy case. The procedures in this section detailing Advisory's role will be used interchangeably by Insolvency.

2. When an erroneous NFTL is identified in the field, ACS, or other function, a memorandum outlining the facts and recommending the release should be immediately prepared and forwarded to Advisory. When circumstances dictate immediate action, the facts of the case may be given to Advisory by telephone; however, the memorandum must still be prepared and forwarded to Advisory.

**Note:**

For cases involving bankruptcy, contact the Centralized Insolvency Operation (CIO) to determine the correct Insolvency caseworker assigned the case.

3. Requests for an administrative appeal under IRC § 6326 must:

- be in writing;
- provide the taxpayers name, current address and TIN;
- include a copy of the NFTL, if available;
- state the grounds on which the request is made (notice of deficiency was mailed to the wrong address, etc.);
- provide the canceled check or other evidence of payment, if liability satisfaction is claimed; and
- if applicable, provide information identifying the bankruptcy court, docket number, and petition date if a bankruptcy stay violation is claimed.

4. If the request does not meet the administrative appeal criteria, respond to the appealing party using Letter 2423, *Acknowledgement and Partial Denial of Administrative Appeals Request*.

5. Advisory will review the request memorandum and conduct additional research, as needed, to determine whether the filing of the NFTL was erroneous. Advisory will respond within 30 calendar days to all requests that meet the criteria.

6. Advisory must initiate an interim reply letter when it is not possible to meet the 30 day response date. Additional interim letters will be sent if necessary. An interim letter must:

- identify the reason a final response is delayed;
- provide an approximate time when the final response will be mailed; and
- include the name, telephone number, and organizational code symbols for reference purposes as a contact point.

7. After reviewing the request, Advisory will take action as follows:

**If...**

it is determined that the NFTL was not erroneous  
the taxpayer has provided proof that the liability was satisfied prior to the filing of NFTL  
the liability was assessed in violation of deficiency procedures (as determined by Exam, Appeals, or Counsel)  
the liability was assessed in violation of the automatic stay in bankruptcy (Title 11)

**Then Advisory will...**

inform the requester and the taxpayer (or designated POA) in writing.  
request issuance of a certificate of release.  
request abatement of the assessment through the Exam function and request issuance of a certificate of release.  
process a Form 3870, *Request for Adjustment*, to abate the assessment and  
request issuance of a certificate of release.  
request issuance of a certificate of release.

the statute of limitations expired prior to the filing of the NFTL

8. If the appeal is denied, inform the taxpayer using Letter 2423.

**Note:**

Determinations under IRC § 6326 are not subject to CAP rights.

9. Issue a special-worded Form 668(Z), *Certificate of Release of Federal Tax Lien*, within 14 days, or as expeditiously as possible, after the determination that the filing of the NFTL was erroneous.
10. Releases of erroneous NFTL filings should be prepared through ALS by CLO or Advisory.
  - A. If requesting preparation on ALS by CLO, Advisory will complete Form 13794, *Request for Release or Partial Release of Notice of Federal Tax Lien*, and check "9 Erroneous Lien" in the field "How was the tax liability satisfied." The Form 13794 should be secure emailed to CLO with a request for a scanned copy of the release when printed.
  - B. If Advisory is inputting the release directly to ALS, "Erroneous Lien" must be selected for the reason for release. Failure to select this reason will cause a regular release to be issued without the special wording.
11. In rare circumstances, it may be necessary to manually prepare the release document. If manual preparation is needed, Advisory will:
  - input the NFTL data on the ICS template of Form 668(Z) following standard procedures,
  - line through the certification statement at the top of the form, and
  - insert the following wording in the body of the document:

*"I certify that under the provisions of IRC Section 6326, the filing of the Notice of Federal Tax lien under IRC Section 6323 was erroneous. Therefore, the Notice of Federal Tax Lien for the taxes listed above has been released." (See Exhibit 5.12.3-4.)*

12. In certain situations a partial release of an erroneously filed NFTL may be needed. This would occur when the NFTL was filed showing more than one party but the filing was erroneous under IRC § 6326 with respect to some, but not all, of the parties.

- A. Partial releases can be done through ALS by following the steps in (7) above and identifying the party that should not be included on the NFTL.
- B. If manual preparation is needed, Advisory will input the NFTL data on the Form 668(Z) template following standard procedures, line through the certification statement at the top of the form, identify the party to be released in the name line, and insert the following wording in the body of the document:

*\*\*With respect to the liabilities of Taxpayer B only, I certify that under the provisions of IRC Section 6326, the filing of the Notice of Federal Tax Lien under IRC Section 6323 was erroneous. Therefore, the Notice of Federal tax Lien for the taxes listed above is released only insofar as it relates to Taxpayer B in the liability of Taxpayers A and B. The lien is not released as it relates to Taxpayer A." (See Exhibit 5.12.3-5.)*

- C. In the unusual situation where some, but not all, the assessments listed on the NFTL are erroneous, a partial release will generally not be issued unless specifically requested by the taxpayer.
13. Letter 544, *Letter of Apology - Erroneously Filed Notice of Lien*, is not printed through ALS and must be manually prepared. The letter should be signed by the Advisory group manager and forwarded to the taxpayer (or designated POA) with a copy of the Form 668(Z).
14. At the taxpayer's written request, a copy of the release and letter of apology may be furnished to creditors or credit bureaus. Instruct the taxpayer to provide names, mailing addresses, and permission to disclose the information.
15. Filing and release fees will be abated on erroneously filed NFTLs. Follow standard procedures for requesting an adjustment to the account.
16. Reverse the Lien Filed Indicator by inputting TC 583 dc 04.

**Note:**

Input of TC 583 is only needed for manually prepared and issued releases. For releases generated through ALS and processed by CLO, upload of the TC 583 is systemic.

17. Notify the office assigned the taxpayer's account of the determination and take necessary action to update IDRS, if needed.
  - A. Update the control record to reflect the nature, date of determination, and date of the certificate of release.
  - B. Reverse any CC STAUP on notice status accounts.
18. In the event an Erroneous NFTL Release is needed but a regular Certificate of Release is issued without the special wording for an Erroneous NFTL Release, take one of the following actions:
  - A. Manually prepare and issue an amended certificate of release that shows the proper wording; or
  - B. Request a withdrawal after release.

**Note:**

It is not necessary to secure a specific request for withdrawal from the taxpayer in this situation. The identification of the NFTL as erroneous is sufficient.

**5.12.3.9.1.1 (10-14-2013)  
IRC § 6326 Appeals Referred to Examination**

1. Appeals under IRC § 6326 that meet the appropriate criteria and pertain to the validity of the deficiency assessment, should be forwarded to Examination for evaluation. This includes requests involving Substitute for Return (SFR).
2. The referral should be made to Examination using Form 3449, *Referral Report to Examination*, addressed to "PSP Support".
  - A. Identify on the top of the Form 3449 "Administrative Appeal of Lien".
  - B. Submit related cases, to the extent possible, to Examination together.
  - C. Notate the CSED on the transmittal, Form 3449, for any case in which the period has less than 6 months to run.
  - D. Transmit each case with an imminent statute date under a separate Form 3449.
  - E. Identify the date of the referral to Examination on the control record for future follow-up. Forward Parts 1 and 2 to Examination with the appealing party's request. Retain Part 3 for follow-up action.

3. Issue Letter 2421, *Acknowledgement of Administrative Appeal Request*, advising the appealing party that their request has been received and provide the taxpayer with a contact point for any further inquiries relative to the request.
4. Examination has 30 calendar days from the referral date to return a determination on the validity of the assessment. A monthly review will be performed to identify any Examination referrals that are overage and require follow-up with Examination.

**If Examination determines that the...**

assessment was incorrectly made, assessment is valid

**Then...**

an abatement is necessary. Examination will provide a completed Form 3870, *Request for Adjustment*, requiring IDRS input. The certificate of release may be issued prior to the abatement posting to IDRS. Examination will indicate this determination on Form 3449. Upon receipt of this determination, perform further case action as described in *IRM 5.12.3.9.1*.

5. Update the control record to reflect the nature and date of the determination and the date of the certificate of release if appropriate.

**5.12.3.9.2 (10-14-2013)**

**Rescission of CDP Rights for Erroneous Lien**

1. The Service may rescind a CDP notice properly issued under IRC § 6320(a) when certain conditions apply. See *IRM 5.12.9.6.6* for further details.
2. Rescission of the CDP notice is not necessary if the lien is released under IRC § 6326(b). If the tax has been satisfied, then the Service can no longer pursue collection and no NFTL can be filed in the future. If the underlying assessment is invalid, the taxpayer would be entitled to a new CDP notice when a new assessment is made and a new NFTL filed.

**5.12.3.10 (10-14-2013)**

**Erroneous NFTL in ID Theft Situation**

1. When it has been determined that the liability(s) covered by the NFTL was assessed against the taxpayer due to an identity theft situation, the NFTL may be released as an erroneous NFTL filing.
2. The Advisory office where the taxpayer resides has primary responsibility for processing releases for NFTLs deemed erroneous due to ID theft.
3. Often, the ID theft situation is determined by the Automated Substitute for Return Program (ASFR) and Advisory is notified accordingly.

**Note:**

Procedures for the ASFR Unit to notify Advisory can be found in *IRM 5.18.1.10.2.3.13.5*. ASFR will complete Form 13794 to the best of their ability but they do not have access to ALS so certain data will not be available to them.

4. Upon notification of the abatement determination, Advisory will follow the procedures in *IRM 5.12.3.9* to issue the release of the erroneous NFTL. All NFTLs covering the impacted assessments, regardless of where the NFTLs were filed, should be addressed.
5. A release of erroneous NFTL should only be issued in this situation if all the assessments on the NFTL were impacted by the ID theft situation and the taxpayer does not owe for any of the assessments.

**Note:**

Upon the taxpayer's request, a partial release of erroneous NFTL may be issued if some, but not all, of the assessments on the NFTL are abated due to ID theft.

6. The office approving the release of erroneous NFTL (usually Advisory) is responsible for requesting abatement of the NFTL filing fee (TC 360), when appropriate, and issuance of Letter 544..
7. A withdrawal of the NFTL may be considered in lieu of the release or after the release, if requested by the taxpayer.
8. In the event an erroneous NFTL release is appropriate but a regular Certificate of Release is issued without the special wording for an erroneous NFTL release, take one of the following actions:
  - A. Manually prepare and issue an amended certificate of release that shows the wording for an erroneous NFTL release; or
  - B. Request a withdrawal after release.

**Note:**

It is not necessary to secure a specific request for withdrawal from the taxpayer in this situation. The identification of the NFTL as erroneous is sufficient.

**5.12.3.10.1 (10-14-2013)**

**Return Preparer Misconduct Situation**

1. When it has been determined that the liability(s) covered by the NFTL was assessed against the taxpayer due to return preparer misconduct, the NFTL may be released as an erroneous NFTL filing.
2. The Advisory office where the taxpayer resides has primary responsibility for processing releases for NFTLs deemed erroneous due to return preparer misconduct.
3. Upon notification of the abatement determination, Advisory will follow the procedures in *IRM 5.12.3.9* to issue the release of the erroneous NFTL. All NFTLs covering the impacted assessments, regardless of where the NFTLs were filed, should be addressed.
4. A release of erroneous NFTL should only be issued in this situation if all the assessments on the NFTL were impacted by the misconduct and the taxpayer does not owe for any of the assessments.

**Note:**

Upon the taxpayer's request, a partial release of erroneous NFTL may be issued if some, but not all, of the assessments on the NFTL are abated due to ID theft.

5. The office approving the release of erroneous NFTL (usually Advisory) is responsible for requesting abatement of the NFTL filing fee (TC 360), when appropriate, and issuing Letter 544.
6. A withdrawal of the NFTL may be considered in lieu of the release or after the release, if requested by the taxpayer.
7. In the event an erroneous NFTL release is appropriate but a regular Certificate of Release is issued without the special wording for an erroneous NFTL release, take one of the following actions:
  - A. Manually prepare and issue an amended certificate of release that shows the wording for an erroneous NFTL release; or
  - B. Request a withdrawal after release.

**Note:**

It is not necessary to secure a specific request for withdrawal from the taxpayer in this situation. The identification of the NFTL as erroneous is sufficient.

**5.12.3.11 (10-14-2013)**

**Administrative Appeals Not Meeting IRC § 6326**

1. Taxpayers have the right before and after the filing of the NFTL to exercise CAP rights and have CDP rights that arise with the filing of the NFTL. (See IRM 5.12.6 for details.) The guidance in this section does not circumvent those rights.
2. When a request is received challenging the validity of the NFTL but it does not meet the criteria of IRC § 6326 (e.g., questions the underlying assessment), review the request to see if other issues may be present that should be addressed.
3. Review the request in accordance with the following table:

<b>If...</b>	<b>Then...</b>
a request disputes the tax, penalty or interest due, a problem with the liability is identified and can and should be corrected by adjustment, the taxpayer does not provide adequate substantiation that the assessment is incorrect, the taxpayer identifies another issue (e.g., math error),	attempt to secure the basis for the claim from the taxpayer. make the adjustment. advise the taxpayer to pay the liability and file a claim. research IDRS to determine the status of the liability and refer the request to the appropriate function.

4. Respond to the taxpayer using Letter 2423 to identify the reason the request does not meet the administrative appeal criteria or that the request is being referred to another function for action.
5. Refer the request to the appropriate function to work.

<b>If...</b>	<b>Then...</b>
the liability on the NFTL is in ACS inventory or in the queue	forward the request to the ACS call site.
the liability on the NFTL is in notice status (e.g., reactivated TC 530 case) the liability on the NFTL has been assigned to a revenue officer	input a CC STAUP to IDRS for the appropriate number of cycles and reference the receipt of a request for lien release in the IDRS history section. Advisory should research and resolve the request or refer the request to the appropriate function for resolution. forward the request to the revenue officer assigned the balance due.
the liability on the NFTL is not present on IDRS	it may have aged off IDRS and is in an inactive status present on the master file (e.g., CNC, below tolerance). Use the CFOL commands, IMFOL and BMFOL to view the accounts. Advisory should then resolve the request or refer the request to the appropriate functional area for resolution.
the request cannot be immediately resolved during the resolution period of the request, the deferred tax module becomes active	research IDRS to determine the status of the liability and advise the employee/function assigned to the case of the taxpayers request. notify the appropriate function of the request received.

6. Resolution to the request should follow standard IRM procedures for the nature of the problem.
7. If resolution results in the liability being fully satisfied, release the NFTL following standard procedures. Do NOT issue the specially-worded release for an erroneous NFTL unless the criteria of IRC § 6326 are met.

**5.12.3.12 (10-14-2013)**

**Inadvertent NFTL Filing**

1. When a NFTL is inadvertently filed and then subsequently released, provide the taxpayer with Letter 544-I, *Letter of Apology - Inadvertent Lien Filing*.
2. If the criteria for release of a NFTL that has been inadvertently filed are not present, consider withdrawal of the NFTL.
3. If an inadvertently filed NFTL has been released, consideration may also be given to withdrawing the NFTL, if a withdrawal request is submitted. See IRM 5.12.9 .

**5.12.3.13 (10-14-2013)**

**Civil Cause of Action Under IRC § 7432 for Failure to Release Lien**

1. Under IRC § 7432 taxpayers have the right to sue the federal government for damages in federal district court if any officer or employee of the Internal Revenue Service knowingly or by reason of negligence, fails to release a lien.
2. Recovery is limited to actual, direct, economic damages sustained by the taxpayer which, but for the actions of the IRS, would not have been sustained, plus the costs of the action. Litigation and administrative costs (including costs of making a claim) cannot be recovered under IRC § 7432. (Treas. Regs. § 301.7432-1)
3. IRC § 7432(d)(1) requires that taxpayers must exhaust all administrative remedies available within the IRS prior to initiating a civil action in federal district court.
4. Taxpayers must:
  - submit a written request for a release of the NFTL to the area office where the NFTL was filed or where the taxpayer currently resides; and
  - submit an administrative claim for damages.

**5.12.3.13.1 (09-07-2006)**

**Administrative Claim Procedures**

1. Treasury regulation 301.7432-1 details the administrative claim procedures of IRC § 7432.
2. There is no standard form used for preparing a claim. It must contain the following information:
  - The name, current address, home and work telephone numbers, any convenient times to be contacted, and the taxpayer identification number of the taxpayer making the claim;
  - A copy of the NFTL affecting the taxpayer's property, if available;
  - A copy of the request for the release of lien made in accordance with Treasury regulation 401.6325-1(f);
  - The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service;

- A description of the damages incurred by the taxpayer filing the claim (including copies of any available substantiating documentation or evidence);
  - The dollar amount of the claim, including any damages that have not yet been incurred but that are reasonably foreseeable (including copies of any available substantiating documentation or evidence); and
  - The signature of the taxpayer or the taxpayer's duly authorized representative.
3. Forward the administrative claim to the Advisory Group Manager in the area office where the taxpayer currently resides. Each claim will be reviewed by Advisory to ensure that it contains the required information.
  4. If the claim does not contain the information required in (2) above, notify the taxpayer in writing within 14 calendar days advising of the deficiencies and that the claim is not processable.

**Note:**

This is not considered a rejection of the claim because a claim meeting the requirements of Treasury regulation 301.7432-1 has not been filed.

5. Use Letter 2730, *Non-processable Claim for Damages Letter*, to notify the taxpayer of any claim deficiencies.
6. Administrative review of the claim must be completed within 30 calendar days of receipt of a processable claim. The taxpayer may bring suit either upon:
  - a decision on the claim; or
  - 30 calendar days after the filing of a processable claim.
7. A taxpayer must file an action in federal district court within two years after the cause of action accrues. If the taxpayer files an administrative claim within the last 30 calendar days of the two-year period of limitations, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the period of limitations, without waiting for 30 calendar days to expire or for a decision to be rendered on the claim.
8. Use Letter 2732, *Notification of Full or Partial Denial of Claim for Civil Damages*, or Letter 2733, *Notification of Full or Partial Allowance of Claim for Civil Damages*, to notify the taxpayer of the results of the administrative review of the claim. If only a portion of the claim is approved, both pattern letters will be sent to the taxpayer at the same time. These letters are signed by the Advisory Territory Manager who has the delegated authority to approve or reject the claim. See Delegation Order 5-4.
9. There is no administrative appeal of a rejected claim for damages under IRC § 7432, however, the taxpayer may bring a civil action for damages in a district court of the United States.
10. If the taxpayer files suit under IRC § 7432, see IRM 25.3.3.9 for guidance in responding to the filing.

**5.12.3.13.2 (10-14-2013)**

**Evaluation of Claim for Damages Under IRC § 7432**

1. Date stamp the claim upon receipt. Advisory should complete the review within 30 calendar days of receipt.
2. Open an Non-Field Other Investigation (NFOI) on ICS under 101 (Claim- Other) no longer than 7 calendar days after receipt of the claim in the group. Review ICS closed files for any prior claims.
3. Address the following issues in determining if a claim is administratively allowable:
  - A. Should the IRS have released the NFTL under the provisions of IRC § 6325?
  - B. Did failure to release an outstanding NFTL against the taxpayer cause the taxpayer to sustain direct, economic damages?
  - C. Are any damages reducible by any amount that could have reasonably been avoided or mitigated by the taxpayer?
  - D. Has there been a finding under IRC § 6325(a)(1) that the liability for the amount assessed, together with all interest, has been fully satisfied or has become legally unenforceable? Such a finding is treated as made on the earlier of: the date the appropriate official makes this finding or the date on which the Service receives a request for a certificate of release of lien in accordance with Treasury Regulation § 301.7432-(f)(2)(iii), together with any information that is reasonably necessary to conclude that the lien has been fully satisfied or is legally unenforceable.
4. Evaluate the facts and circumstances of each case.
5. If the claim is made without proof or proper substantiation of damages, the taxpayer should be contacted immediately and told of the requirement to provide verification that these damages have been incurred. The Advisor charged with reviewing and making the initial determination should approach this task with the recognition that it is possible that actual economic damages can accrue as a result of untimely NFTL releases. When faced with issues that do not present a clear-cut solution, consult with Area Counsel.
6. The reviewer must determine if the IRS knowingly or negligently failed to release a lien under IRC § 6325 and whether the failure caused direct economic damages which the taxpayer could not avoid.

**Note:**

Negligence means the appropriate IRS employee failed to use due diligence, or act as a reasonable person would, to release the lien.

7. The reviewer must ascertain the point in time when the taxpayer became, or should have become, aware of the violation for the purpose of determining if the claim should be rejected for untimeliness.
  - A. Claims filed more than two years after the violation must receive special scrutiny. This means that the violation occurred more than two years before the filing date of the claim. The taxpayer has two years in which to file a claim.
  - B. The taxpayer's two-year limitation to bring suit begins at the point when the taxpayer has had a reasonable opportunity to discover all essential elements in a possible cause of action.
  - C. The reviewer must determine when the taxpayer knew or should have known of the IRS's failure to release the NFTL.
  - D. Claims filed outside the two year limitation will be rejected.
8. The amount of an approved administrative claim awarding damages is guided by the following criteria:
  - A. The amount of the award is to be reduced by the amount of those damages which could have reasonably been lessened by the taxpayer.
  - B. Only actual, direct economic damages are recoverable in an administrative claim. No litigation or administrative costs are recoverable in an administrative claim. To the extent that any costs are recoverable under § 7432, such costs are recoverable only in a court proceeding.
9. Area Counsel must review and concur with all claim determinations.
10. Release the NFTL if it is determined the IRS knowingly or negligently failed to release the NFTL under IRC § 6325.

11. The advisor or reviewer will provide written notification to the taxpayer of the determination.
12. Advisory will take the appropriate closing or other follow-up actions no later than (ten) 10 calendar days of completion of the initial review.

#### 5.12.3.13.3 (10-14-2013)

#### Reimbursement of Damages and Costs for Failure to Release Lien Under IRC § 6325.

1. If an administrative claim is submitted to the approving official, Collection personnel involved with the filing or release of the NFTL may be asked to prepare a memo explaining the facts of the case. This should include any documentation which confirms or contradicts the taxpayer's statements.
2. If a claim is approved, prepare the following:
  - FMS Form 194, *Judgment Fund Transmittal*;
  - FMS Form 195, *Judgment Fund Payment Request (Admin. Award)*;
  - FMS Form 196, *Judgment Fund Award Data Sheet*;
  - FMS Form 197, *Voucher for Payment of Judgments, Compromise Settlements and Administrative Awards*; and
  - FMS Form 198, *Judgment Fund Award Data Sheet - Additional Deductions* (complete this form only if appropriate).

#### Note:

Fillable versions of these forms are available at the Electronic Publishing website under product type "other gov." and search word "FMS" or at the FMS website at <http://www.fms.treas.gov/judgefund/forms.html>.

3. Forward the original voucher (FMS Form 197) for signature to the taxpayer under cover Letter 2733, *Notification of Full or Partial Allowance of Claim for Civil Damages*.
4. When the signed form is returned by the taxpayer, the approving official will sign FMS Form 197 and provide the taxpayer with a copy.
5. Use Letter 2734, *Processing Letter for Financial Management Services Claim Group*, to forward the original forms listed in (2) above to the:  
Department of the Treasury, Judgment Fund Branch  
Financial Management Service  
3700 East-West Hwy, Room 6E15  
Hyattsville, MD 20782
6. If the taxpayer requests a check in lieu of electronic deposit, FMS will return the check to the contact person listed on FMS Form 196 who will forward the check to the taxpayer.
7. Mail the check to the taxpayer with a cover letter (locally designed) that specifies the date and the amount of the check.
8. Keep a copy of the forms sent to the Judgment Fund Branch in the file. Record any information received from FMS regarding payment to the taxpayer on ICS.

#### 5.12.3.14 (10-14-2013)

#### Revocation of Certificate of Release

1. IRC § 6325(a) provides that a lien shall be released when the liability has been satisfied or becomes unenforceable or a bond is accepted. (See *IRM 5.12.3.3* for further details.) Occasionally, a lien may be improperly released prior to the liability being resolved.
2. IRC § 6325(f)(2) provides for a revocation of a release of lien, and the reinstatement of the statutory lien, if it is determined that the period of limitation on collection after assessment has not expired and the release was issued:
  - erroneously;
  - improvidently; or
  - in connection with a collateral agreement entered into in connection with a compromise under IRC § 7122) which has been breached.
3. A release of lien can take one of two forms:
  - A. A Form 668(Z), *Certificate of Release of Federal Tax Lien*, is issued; or
  - B. The lien "self-releases," i.e., the "Last Day for Refiling" on the NFTL passes and the NFTL is not refiled. (See *IRM 5.12.8*.)

#### Note:

If a NFTL is refiled but the refiling is not done timely, the lien is considered self-released.

4. Regardless of the form of the release or whether underlying liabilities were satisfied, a lien release extinguishes the statutory lien of the liability(s). Without a statutory lien, IRS can continue to collect the tax liability(s) but administrative enforcement action to collect can be restricted.

#### Note:

Consult with Area Counsel if there are questions regarding litigation or specific collection actions that were in progress at the time of lien release.

5. The release of one NFTL extinguishes the statutory liens for **ALL** the assessments included on the release. The release also extinguishes the statutory liens of those same assessments on all NFTLs on which those assessments are included, regardless of where or when the other NFTLs were filed or whether or not the other NFTLs were refiled timely.

#### Example:

A NFTL was filed on the taxpayer in County A for the 1040 income tax liabilities for 2000 and 2001. A NFTL was also filed for the same liabilities in County B. The CSED was extended on both liabilities. The NFTL was refiled in County A. The NFTL in County B was not refiled by the "Last Day for Refiling" shown on the NFTL, so the lien self-released. The self-release in County B released the statutory liens for the liabilities. Therefore, the NFTL in County A was no longer effective because the underlying statutory liens had been released.

6. There are two forms that can be issued to revoke an erroneous release.
  - A. Use Form 12474, *Revocation of Certificate of Release of Federal Tax Lien*, when a Form 668(Z), *Certificate of Release of Federal Tax Lien*, was issued.
  - B. Use Form 12474-A, *Revocation of Certificate of Release of Federal Tax Lien*, when a lien self-released.
7. There can be instances when a release of lien was appropriate for certain modules on the NFTL but not all. A partial revocation document may be issued in the following situations:



- A. Multiple modules are included on the NFTL and, at the time of release, some, but not all, of the modules had been satisfied. The partial revocation document would list only those modules that still have a balance due.
  - B. Multiple persons were liable for the assessment(s) and included on the NFTL and the statutory period of collection is still open on some, but not all, of the persons. The partial revocation document would list only those persons that are still liable for the balance due.
8. The issuance of a revocation only reinstates the statutory lien of the liabilities. It does not reinstate the NFTL. A new NFTL should be considered to protect the priority of the lien after the Certificate of Revocation is filed. See *IRM 5.12.3.15*.

**Caution:**

A new NFTL in these circumstances is sometimes inaccurately referred to as a "refile." It is not a refiled lien. It is a new NFTL to replace the released NFTL. Do not use Form 668(F), *Notice of Federal Tax Lien Refile*, to reinstate a NFTL after revocation of release.

9. Because of the effect of the release on the statutory lien, revocations should generally be requested unless legally precluded or other business factors, such as time remaining on the statute, amount owed on the liability, etc., would make the revocation inappropriate.

**Note:**

Although priority may be lost to competing liens - both those in existence when the federal tax lien was erroneously released, and those coming into existence between the erroneous release date and the revocation/reinstatement date - it is nevertheless important to use the revocation and reinstatement procedures in order to correct the presumptive conclusive extinction of the lien under IRC § 6325(f)(1)(A), and prevent additional loss of priority when future competing liens arise, especially where significant property interests exist or are reasonably anticipated to come into existence during the life of the extended collection statute.

**5.12.3.14.1 (10-14-2013)**

**Requesting Revocation of Lien Release**

1. Advisory has primary responsibility for approving revocations of erroneous lien releases, except for those pertaining to an on-going insolvency case or those related to a case actively assigned to Field Collection. See Delegation Order 5-4 found in *IRM 1.2.44.5*.
2. Upon identifying an erroneous lien release, research the liabilities secured by the NFTL to determine if a revocation of the release is appropriate. Factors to consider include:
  - The amount of time left before the CSED (i.e., generally should be more than 6 months);
  - The amount owed on the liabilities (i.e., generally should be more than \$2500 for the NFTL); and
  - Whether further collection actions are planned.

**Note:**

For on-going insolvency cases, other factors would need to be considered, including the appropriateness of filing a revocation during an automatic stay. See *IRM 5.9.17* for Insolvency procedures.

3. To request a Revocation document, complete the Form 14466, *Request for Revocation of Erroneous Release of Federal Tax Lien*.

- A. Specify the type of revocation needed—full or partial.
- B. Provide the SLID of the NFTL involved and the recording data for the NFTL, if not already on ALS.

**Note:**

Revocations cannot be processed on ALS if the court recording information for the original NFTL filing has not been input. If ALS does not show court recording data for the NFTL, this information must be secured via internet research or by contacting the recording official and input to ALS before the revocation request is submitted.

- C. Check whether a certificate of release was issued. Enter the date the certificate of release was issued with the applicable recording information, if available, or "Expired" for a self released lien.
  - D. Select the reason for the revocation and provide an additional, brief explanation for the reason.
  - E. Provide the next CSED date for the assessments on the revocation.
  - F. If a partial revocation is needed, complete that section stipulated for which taxpayer the revocation is being issued and/or which assessments are involved.
  - G. Complete the remainder of the form by answering the questions regarding other NFTLs involved and whether a new NFTL will be filed. (See 5.12.3.15 below.)
4. If multiple NFTLs were erroneously released on the same taxpayer, revocations need to be requested for each released lien; however, the modules on those released liens can be combined on one new NFTL.
5. For cases not actively assigned, email revocation requests by secure email to the Advisory Group for your Area for approval. Include the Form 14466; copy of the released NFTL from ALS; and narrative.
6. Advisory will:
- review the request and, if necessary, request additional information from the originator;
  - determine the legality of filing a revocation and new NFTL;
  - approve or disapprove the revocation request; and
  - control the cases on ICS under OI case code 193 (Lien & Levy Activity) and maintain a history of their review and decision on that system.
7. Disapprovals will be returned to the originator with an explanation. No further actions are necessary unless additional information is provided and Advisory's decision is reversed.
8. Advisory will indicate its approval on the Form 14466 and forward the request by secure email to Centralized Lien Processing (CLO) for input to ALS. For any revocation requests not approved by Advisory or Insolvency, CLO will return the request to the originator for proper routing.
9. At their discretion, Advisory or Insolvency employees who have the necessary permissions may process the revocation, including partial revocations, on ALS by direct input.
- A. Input the revocation onto ALS following the instruction in the ALS User Guide.



- B. Add a history item indicating the recording data for the release, if applicable, and the reason for the revocation. For partial revocations, the history entry should list the modules for which the revocation was issued.
- C. Request immediate management approval of the revocation in the ALS Manager's Release Queue.

**Note:**

See *IRM 5.12.3.15* for guidance on new NFTLs.

10. For revocations related to a case actively assigned to a GS-9 revenue officer or above, the RO may sign the Form 14466 as the approving officer, bypass Advisory, and send Form 14466 via secure email directly to the CLO for input to ALS.
11. Generally, the taxpayer's copy of the revocation document will be printed and mailed to the taxpayer by CLO; however, it is the responsibility of the originating employee to ensure this has been done.
12. Taxpayers may appeal revocations of releases under the Collection Appeal Program (CAP). See *IRM 5.12.3.15*.
13. The originator of the revocation request can monitor the status of both the revocation and any new NFTL by checking ALS.
14. If exigent circumstances exist, the revocation and new NFTL may be manually prepared and filed.
  - A. The revocation must still be approved by Advisory.
  - B. *IRM 5.12.7.4* details procedures for manually filed notices of lien.
  - C. The originator is responsible for providing the taxpayer a copy of the revocation document.

#### **5.12.3.14.2 (10-14-2013)**

##### **Partial Revocations**

1. Issue a partial revocation when:
  - a release is issued in error on joint liabilities where one party remains liable for the tax;
  - only some periods listed on the notice of lien are still valid; or
  - a NFTL is not refiled timely on a specific period on a multiple period NFTL.
2. Partial revocations can, and should, be completed on ALS.
3. Partial revocations and the subsequent new NFTL filing will be processed according to standard procedures.
4. The requesting employee prepares and sends the Form 14466 as described in *IRM 5.12.3.14.1*.
5. If it is necessary to manually prepare the partial revocation, the IRS Intranet or ICS template versions of Forms 12474 and 12474-A may be used.
  - A. The form will be annotated "Partial Revocation" in the box titled. "For Optional Use by Recording Office."
  - B. The data on Form 12474 pertaining to the modules/names subject to revocation must match the data on the original NFTL exactly.
6. If manually prepared, Advisory approves the partial revocation, if appropriate, scans and secure emails the completed document to CLO for processing. Revocations created using ALS will go to the manager's queue for approval.
7. In certain circumstances, it may be necessary for the revocation to be manually filed. Follow normal procedures for filing any lien document.
8. The taxpayer's copy of the partial revocation is forwarded (manual processing only) to the taxpayer by Advisory.

#### **5.12.3.14.3 (10-14-2013)**

##### **Use of Electronic Signatures on Revocations**

1. Neither the IRC nor Treasury regulations address the method in which lien certificates are to be signed; however, they both address the Secretary's authority to develop procedures associated with the use and acceptability of electronic signatures on forms and other documents.
2. Approval of documents must always be in accordance with Delegation Order 5-4. See *IRM 1.2.44.5*.
3. Revocation documents may be signed by the approving official via electronic means when a physical signature is not feasible.

**Note:**

Revocations should normally be generated through the Automated Lien System (ALS). The electronic signature described in this section is only for situations where manually prepared certificates are needed.

4. To sign a document electronically, the document must be converted to a Portable Data Format (PDF) using Adobe Acrobat and the approving official must create a signature file. The format of the electronic signature should adhere to certain standards.
  - A. The signature should not contain the email address, logo, location or other unnecessary information.
  - B. The signature should preferably be an actual/graphic signature file of the approving official or at the minimum should show the name of the approving official. It should not be the Standard Employee Identifier (SEID) as that is for internal use only.
  - C. The approving official should validate the signature so that the pdf question mark does not appear.
5. Approval must be granted on a case by case basis. The ICS history must be documented by the approving official to indicate the electronic or facsimile signing of the lien certificate and associated correspondence.
6. A printed copy of the electronically signed certificate must be retained as part of the case file for appropriate record keeping.
7. There may be hesitation from some recording offices to accept electronically signed lien certificates; however, they cannot refuse to record the documents as the IRS dictates the form and content of lien certificates. Recording offices may be referred to Publication 1468, *Guidelines for Notices of Federal Tax Lien and Centralized Lien Processing*, for more information.
8. Facsimile signatures must be protected in accordance with established IRS procedures.
  - A. Physical signature stamps are designated "High Security." Store signature stamps in accordance with *IRM 10.2.15.3(i)* with reference to Exhibits 10.2.15-1 and 10.2.15-2. (See also *IRM 1.4.6 Managers Security Handbook*)

- B. All systems capable of reproducing electronic or PDF generated signatures for lien certificates must be official IRS computer systems and be password protected.
- C. Ensure a record of approval is available for electronically generated, PDF generated, and stamped signatures.

#### 5.12.3.14.4 (10-14-2013)

##### Revocation of Multiple Erroneous Systemic Releases

1. On rare occasions, a systemic problem on ALS or its interface with Master File may possibly result in a batch of erroneous releases. The procedures contained in this section reflect general guidelines that may be used to resolve the situation, but the process may vary based on the number of NFTLs involved.
2. Determinations regarding necessary actions if such an event occurs requires teamwork of many functions, including:
  - Enterprise Collection Strategy, Collection Policy, Technical and Advisory;
  - Collection, Advisory and Insolvency;
  - Enterprise Collection Strategy, Planning & Analysis, Collection Case Delivery, Collection Automation Support (Automated Lien System);
  - Campus Compliance Services, Campus Filing & Payment Compliance, Centralized Case Processing, Liens & Insolvency; and
  - Campus Compliance Services, Service Centers, Cincinnati Compliance Services, Centralized Lien Unit - Operations Manager.
3. When multiple erroneous releases were issued due to a system problem, ALS programming staff must be alerted.
4. ALS programming staff can generate a list of the NFTLs released in error. If the erroneous releases cannot be isolated by ALS, the programming staff can generate a list of all releases issued within the affected time frame.
5. ALS programming staff will send the list of releases via secure email to a team comprised of representatives of various impacted offices, such as those shown in (2) above.
6. The team may review the list to:
  - identify the erroneous releases; and
  - determine the tax modules affected by the erroneous releases.
7. Using research tools at its disposal, the team may ascertain information about the erroneous released NFTLs including, but not limited to:
  - the status of the taxpayer's case (e.g., SC 26, 53, 72, etc.);
  - the closing codes, if any, associated with the modules (e.g., TC 530 cc 08);
  - the CSEDs of the erroneously released modules; and
  - the balances due of the erroneously released modules.

**Note:**

If the affected population of NFTLs cannot be isolated by ALS or the team, the erroneous releases may be worked on a case by case basis following the revocation procedures set forth in 5.12.3.14.1 above.
8. The team may separate the list of erroneous released NFTLs based on their status codes and distribute the lists to the Technical Analysts of the respective functions. For example:
  - A. SC 26 to Collection Field function.
  - B. SC 71 to Offer In Compromise.
  - C. SC 72, 89 to Advisory and Insolvency.
9. The Technical Analysts for each function may further distribute the lists to the employees or offices assigned the cases so that revocation and new NFTL determinations can be made. The revocation process set forth in 5.12.3.14 above will be followed to file the notices of revocation and new NFTLs.
10. The team may review the list of remaining releases to determine if notices of revocation are appropriate.
11. For those cases on which a revocation is appropriate, the team may conduct additional research as necessary to make determinations for new NFTL filings
12. The team will work with CLO to ensure that revocations are processed and, if appropriate, new notices of lien are created using the last known address information of the taxpayers.

#### 5.12.3.15 (10-14-2013)

##### Reinstatement of Lien

1. After a certificate of release has been revoked, the statutory lien may be reinstated by:
  - mailing notice of the revocation to the last known address of the person against whom the tax was assessed, **AND**
  - by filing notice of the revocation in the same office(s) in which any related NFTL was filed.
2. A reinstated FTL will be effective on the date the notice of revocation is mailed to the taxpayer but not before the date the notice is filed.
3. On the effective date of reinstatement, a reinstated FTL has the same force and effect as a general tax lien for a period not longer than the period of limitation on collection after assessment of the tax liability to which it relates.
4. Reinstated FTLs will not be valid against any lien or interest described in IRC § 6323(a) until a new NFTL has been filed subsequent to the time the reinstated FTL became effective. The date of the new NFTL filing is the date from which priorities will be determined as against IRC § 6323(a) interests.
5. The determination to file a new NFTL should be made in accordance with standard procedures found in IRM 5.12.2. Filing of a new NFTL after revocation is not a requirement for the revocation process. Generally a new NFTL should not be filed if:
  - legally precluded (e.g., taxpayer is under protection of bankruptcy court);
  - precluded by policy (e.g., taxpayer is under jurisdiction of Appeals); or,
  - it is determined that it is not in the government's interest.

**Note:**

The new NFTL does not have to contain only the tax periods that were on the released lien. Any tax periods eligible for NFTL filing can be included on the new NFTL.

6. When filing a new NFTL, care must be taken to ensure the Last Day for Refiling in column E is accurate. For example:

<b>If...</b>	<b>And...</b>	<b>Then Column E on the new NFTL should be...</b>
an erroneous release was issued	it is still within the original 10 year statute	the same date that was shown on the original notice of lien.
a refiled NFTL was not timely filed	the original NFTL self-released,	the end date of the second refile period (i.e. the Last Day for Refiling on the original NFTL plus 10 years)
an erroneous release was issued	it is beyond the refiling period for the original 10 year statute (i.e., more than 10 years and 30 days after the assessment)	the end date of the current refile period

**Note:**

Prior to August 2011, new NFTLs filed after the original CSED date showed "N/A" in the Last Day for Refiling column.

7. The amount to be shown on the new NFTL should be the total balance due at the time of filing the new notice.
8. The updated CSED should be specified for each tax module to be included on the new NFTL.
9. The filing of the new NFTL must occur after the filing of the revocation. If the new NFTL is filed before the revocation, the NFTL is not valid. It should be withdrawn as an improper filing and another new NFTL filed.
10. When there has been a revocation of a release of a lien and a new NFTL is filed, taxpayers may be entitled to a collection due process notice if they did not receive a notice when the original NFTL was filed.
  - A. Send a CDP notice if the erroneously released NFTL was filed *before* 01-19-1999, which was the effective date of IRC § 6320.
  - B. Send a CDP notice for tax periods added to the new NFTL that were not included on a previous NFTL.
  - C. If CDP rights were previously provided for all the tax periods, the taxpayer is not entitled to new CDP rights, nor are they entitled to equivalent hearings.
  - D. If a taxpayer's CDP rights are exhausted, CAP procedures may be exercised to appeal the new NFTL filing.
11. After a new NFTL is filed, routine ALS procedures will be followed for monitoring the lien, including the systemic release of the lien when the tax liabilities are satisfied.

**5.12.3.16 (10-14-2013)  
Filing of Revocation Certificates**

1. A certificate of revocation will be filed in all the same offices where the original NFTLs were filed, unless the state has since redesignated its filing office for the specific type of property. The Uniform Federal Lien Act of the state should be checked to confirm where to file the certificate or notice.
2. Expenses related to the recording of the revocation certificate are borne by the government. The cost of recording a new NFTL is assessed to the taxpayer's account.
3. In the unlikely event that these certificates and notices may not be filed in the office designated by State law, they are to be filed in the office of the clerk of the United States district court for the judicial district in the State office where the NFTL is filed.
4. When filing a Certificate of Revocation and a new Notice of Federal Tax Lien, documents must be recorded in the proper order to be valid. The Certificate of Revocation must be recorded prior to the new Notice of Federal Tax Lien.
5. It is not necessary to file the new NFTL in the same recording office where the revocation certificate was filed. The new NFTL should be filed in a place appropriate for the current location of the taxpayer and/or their assets.

**5.12.3.16.1 (10-14-2013)  
Release After Revocation When There Was No New NFTL**

1. When a revocation of release was issued but a new NFTL was not filed, the statutory lien is, nonetheless, reinstated.
2. When the liability is subsequently satisfied, whether by payment, adjustment, statute expiration or other event, a new certificate of release of lien is not required; however, one may be issued if requested by the taxpayer.
3. If it is determined that one will be issued based on a taxpayer's request:
  - A. Manually prepare the certificate of release based on the original NFTL.
  - B. Provide the certificate of release directly to the taxpayer so they may record it as needed.

**5.12.3.17 (10-14-2013)  
Designated Payment Codes (DPC) Related to Liens and Lien Certificates**

1. IRM 5.1.2.8.1 provides detailed instructions on the use of designated payment codes and who may use them.
2. Generally, employees should use one of the following DPCs when posting a payment that is the direct result of a lien-related certificate:
  - 07 - NFTL payoff
  - 53 - discharges
  - 55 - subordinations
  - 56 - NFTL withdrawals
  - 57 - judicial and non-judicial foreclosures
  - 58 - redemptions and releases of right of redemption
  - 59 - estate tax liens and payments as the result of the filing of a proof of claim in a probate proceeding.

**5.12.3.18 (10-14-2013)  
Review of Lien Release Timeliness**

1. On a semi-annual basis, Collection Policy, with the assistance of CLO and other impacted functions, will conduct a program review of lien releases to ensure the Service is in compliance with IRC § 6325(a).

**Exhibit 5.12.3-1  
Starting Points for 30-Day Release Time Frame**

This chart is a general summation from specific program IRMs (e.g. 5.7; 5.8; 5.9; etc.). Consult the specific IRM sections for complete information on each program. Procedures in the specific IRMs supersede the information contained in this chart.

<b>Satisfied by...</b>	<b>Thirty days starts ...*</b>
Payment by certified funds (e.g. cash, cashier check, money order)	The date payment is received
Payment by uncertified funds (e.g. personal check)	Fifteen calendar days after the date payment is received
Payment by levy	The date payment is received
Payment by credit/debit card	The date the chargeback period expires (i.e. 120 days from credit, 100 days from debit).
Payment by electronic funds transfer	The date payment is received
Refund offset from filing return unrelated to tax liability (i.e., not amended or 6020B reconsideration)	The cycle when the assessment of the unrelated return posts, which makes the credit available.
Credit overpayment from another module (same taxpayer)	The cycle when the processing of the related module is complete (i.e. final assessment of interest and penalty), which makes the credit available.
Transfer of credit from another module (same taxpayer)	The cycle when the credit posts to the correct module.
Credit offset from another account (different taxpayer)	The cycle when the credit from the other account posts to the taxpayer's account.
SFR/6020(b) Abatements – original return filed	The cycle when the return is processed and the adjustment of tax and related penalty and interest posts to zero the module.
SFR/6020(b) Abatements – no return filed	The cycle when the adjustment of tax and related penalty and interest is final and posts.
Adjustment to account (e.g., amended return, audit reconsideration, Tax Court)	The cycle when the adjustment of tax and related penalty and interest is final and posts.
Abatement of penalty and interest	The cycle when the adjustment of penalty and interest is final and posts.
Payment through litigation (non-bankruptcy)	The cycle when the payment has been processed through the Lockbox and posts to IDRS.
Litigation settlement (non-bankruptcy)	The cycle when the litigation freeze is reversed and the transaction posts to reduce the module balance to zero. The latest of the dates when: <ul style="list-style-type: none"> <li>• payment terms of the OIC are completed</li> <li>• amount due under terms of a Collateral Agreement, if due when OIC payment terms are complete, is paid</li> <li>• it is verified there is no amount due on the Future Income Collateral (Note: only for cases where final deferral payment on OIC is within three months of the first year of collateral); or</li> <li>• any assets required to be assigned to the Government have been turned over.</li> </ul>
Offer in compromise	
Innocent Spouse	The cycle when the transaction codes to remove the liability from the non-liable taxpayer have posted.
Proceeds from sale of seized property	The date when Advisory has completed the review of the Form 2436 and forwards it to Accounting for processing.
Proceeds from release of seized property	The date when Advisory has completed the review of the Form 2436R and forwards it to Accounting for processing.
Proceeds from redemption of seized property	The date the payment is received. The earlier of when: <ul style="list-style-type: none"> <li>• resolution of the freeze condition posts to IDRS; or</li> <li>• processing time frames to resolve the freeze condition as referenced in IRM have passed.</li> </ul>
Resolution of Freeze Code	
Other	The cycle when the satisfying transaction posts.

\* Pursuant to IRC 6325, the thirty day time frame to release a lien is required in those situations where the liability is fully satisfied or has become legally unenforceable, or a bond is accepted for the collection of the liability. In other situations where these conditions are not met (e.g., bankruptcy discharge), the time frame to release a lien is a matter of policy. For example:

<b>Satisfied by...</b>	<b>Release time frame generally starts ...</b>
	After closing actions for the bankruptcy case are initiated, which normally occurs within 30 days of the latest of the following dates (per AIS history): <ul style="list-style-type: none"> <li>• the IRS has been notified of the discharge;</li> <li>• the determination not to pursue exempt, abandoned, or excluded assets has been made;</li> <li>• the determination is made to pursue exempt, abandoned, or excluded assets and collection actions against the assets are completed; or</li> <li>• no other litigation actions are pending.</li> </ul>
Discharged through bankruptcy – Chapter 7	
	After closing actions for the bankruptcy case are initiated, which normally occurs within 30 days of the latest of the following dates (per AIS history): <ul style="list-style-type: none"> <li>• the IRS has been notified that the plan has been completed and the court has discharged the case;</li> <li>• the IRS has received final payment under the plan; or</li> <li>• no other litigation actions are pending.</li> </ul>
Discharged through bankruptcy – Chapter 11	
	After closing actions for the bankruptcy case are initiated, which normally occurs within 30 days of the latest of the following dates (per AIS history): <ul style="list-style-type: none"> <li>• the IRS has been notified that the plan has been completed and the court has discharged the case;</li> <li>• the IRS has received final payment under the plan; or</li> <li>• no other litigation actions are pending.</li> </ul>
Discharged through bankruptcy – Chapter 13	

**Exhibit 5.12.3-2  
Form 668(Z) - Partial Release for Bankruptcy**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.12.3-3**  
**Form 668(Z) - Partial Release for Offer in Compromise**

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**Exhibit 5.12.3-4**  
**Form 668(Z) Release of Erroneous NFTL**

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**Exhibit 5.12.3-5**  
**Form 668(Z) Partial Release of Erroneous NFTL**

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## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 4. Judicial/Non-judicial Foreclosures

##### 5.12.4 Judicial/Non-judicial Foreclosures

- 5.12.4.1 [Foreclosure Overview](#)
- 5.12.4.2 [Judicial Foreclosures](#)
- 5.12.4.3 [Non-judicial Foreclosures](#)
- 5.12.4.4 [Notice of Non-judicial Sale](#)
- 5.12.4.5 [Non-Judicial Sale of Perishable Goods](#)
- 5.12.4.6 [Consent to Sale of Property Free of Lien](#)
- 5.12.4.7 [Non-judicial Sale Activities and Tasks](#)
- 5.12.4.8 [Redemption](#)
- Exhibit 5.12.4-1 [Letter 1840 \(DO\)](#)

##### 5.12.4.1 (06-11-2010)

###### Foreclosure Overview

1. A foreclosure is the process by which an owner's right to a property is terminated, the foreclosing party's interest is liquidated, and junior creditor interests on the property are extinguished. This IRM contains instructions and information related to third party foreclosures. It does not address the Service's suits to foreclosure lien interests.
2. There are two types of foreclosures discussed in this IRM. Judicial foreclosures as referenced in 28 USC § 2410 and 26 USC § 7425(a) and non-judicial foreclosures as referenced in 26 USC § 7425(b). State law governs whether the foreclosure is judicial or non-judicial. The location of the property being foreclosed will determine which state's laws are followed.
3. Judicial foreclosures are processed either in federal or state courts and are the primary responsibility of the Department of Justice (DOJ). When DOJ requires assistance or information, the request is handled through Advisory. Non-judicial foreclosures are the primary responsibility of Advisory. When Advisory requires assistance they issue an OI to the Field. Field Revenue Officers may also find that property belonging to an assigned taxpayer is in foreclosure.
4. Non-judicial foreclosures are possible when a power of sale clause exists in a mortgage or deed of trust. A "power of sale" clause is where the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event the borrower defaults.
5. There are four classes of participants to keep in mind when working foreclosures. They are:
  - Foreclosing party or the lender
  - Foreclosed party or the borrower
  - Creditors
  - Foreclosure sale purchaser

Each has differing responsibilities or needs during the process. The Service has an education responsibility, when working foreclosures, to ensure the participating parties have knowledge of the applicable Federal statutes pertaining to their part of the foreclosure process.

6. In general:
  - A. The foreclosing party has the responsibility to provide notice of the foreclosure suit commencement or sale, conduct the foreclosure sale, and distribute surplus or excess proceeds resulting from the foreclosure sale.
  - B. The foreclosed party may have tax consequences arising from the process. A portion of their debt may be forgiven which translates to taxable income. See Mortgage Debt Relief Act of 2007 and IRM 5.12.4.1.3(5).
  - C. Creditors such as the IRS need to determine whether they were properly noticed, how the foreclosure impacts their interest in the property, whether there are surplus or excess proceeds they may be entitled to, and whether redemption from the foreclosure sale purchaser is a consideration.
  - D. The foreclosure sale purchaser's acquisition of the property may be temporary if redemption is a consideration.
7. The percentage of real estate foreclosures rise in bad economic times because they are tied to:
  - Real estate values
  - Loan to value rates
  - Borrower's ability to pay the loan

Real estate loans become high risk investments for lenders when the first two items below are compounded by the third item:

- Loan amount encumbers 100% or more of the value of the property
- Loan collateral is only the property encumbered by the loan
- Loan payment more than 40% of borrower's monthly net income

If the value of real estate drops it inhibits the lender from renegotiating these types of loans. Then it takes only a shift in the borrower's income or cost of living to cause a loan to default.

##### 5.12.4.1.1 (06-11-2010)

###### Investigation Guidelines for Judicial/Non-judicial Sales

1. The purpose of a judicial or non-judicial investigation is to determine first whether the foreclosing party holds an encumbrance senior or junior to the IRS position. If the foreclosing encumbrance is junior to the IRS position the IRS lien remains on the property undisturbed by the foreclosure. If the foreclosing encumbrance is senior, the employee investigates how the Service's equity in the property is impacted by the foreclosure and whether any action is warranted to protect that interest.
2. Other Investigations (OI) to investigate foreclosures originate in Advisory. For detailed information, see IRM 5.12.4.7(1).
3. During the course of a judicial or non-judicial investigation, when the applicant, taxpayer, representative, or IRS employee misses a specific deadline, follow-up is based on meeting the Service's requirements to maintain its standing in the proceeding and should be initiated **no later than** 14 calendar days after the missed deadline. This follow-up includes closing the case if this action is appropriate.
4. When circumstances dictate, the employee should use problem solving and negotiation techniques, and in so doing consider the taxpayer's/POA/third party's perspective when working toward case resolution.
5. Any written notification or other communication should address the issue(s) clearly and in a language understandable to someone unfamiliar with Service terms, acronyms, and jargon.

#### **5.12.4.1.2 (06-11-2010)**

##### **Lien Discharge Consideration During Foreclosure Investigation**

1. Foreclosing mortgagees should be encouraged to request discharges under IRC 6325(b)(2) before the sale rather than join the United States in a judicial proceeding. It would be to their advantage to eliminate the Government's right of redemption and to the Government's advantage to eliminate lengthy litigation. However, a Certificate of Discharge will not be issued during the pendency of litigation without the prior approval of Area Counsel.
2. A commitment letter will be furnished to foreclosing parties within thirty calendar days of receipt of a complete application. Certificates will be issued after receipt of proof that the taxpayer has been divested of right, title or interest in the property.
3. A commitment letter should not be issued to parties in the non-judicial foreclosing process when adequate notice of sale has been provided as required by IRC 7425 and outlined in Publication 786. In these circumstances the parties should be advised, if interested, of the procedures for requesting the government release its right of redemption. The instructions for application are in Publication 487.
4. If a Federal agency has foreclosed non-judicially and given adequate notice, they may feel that the lien remains a cloud upon the title. As an accommodation to that agency, a discharge will be issued.

#### **5.12.4.1.3 (06-11-2010)**

##### **Mortgage Forgiveness**

1. The subject of mortgage forgiveness may be encountered when working foreclosure cases. It is provided here as an awareness of a taxpayer's potential tax consequence arising from foreclosure.
2. When lenders foreclose and sell a borrower's property or restructure the borrower's loan, the lender may forgive or cancel portions of the loan. A lender may use this as an alternative to or in conjunction with a deficiency judgment against the borrower for the balance remaining on the loan after the foreclosure sale. The tax code treats the amount forgiven as income to be taxed. The following are typical scenarios where loan forgiveness may be encountered.
  - Lender modifies loan reducing the principal balance of loan and the borrower keeps house
  - Property is sold and deeded back to the lender
  - Lender forecloses and the property sells for less than the amount of the loan
3. Cancellation of debt may impact the Service's decision to discharge or subordinate a lien interest related to a foreclosure investigation. Asking the lender or borrower whether a portion of the debt will be cancelled should be added to the foreclosure investigation questions for those parties.
4. The amount forgiven is all or a portion of the remaining amount on the original loan minus the new loan or minus the sale amount of the property. This forgiven amount becomes cancellation of debt income (COD) to the taxpayer. COD income must be included as ordinary income on the taxpayer's return unless exclusion is allowable.
5. The Mortgage Forgiveness Debt Relief Act of 2007 increases incentives for borrowers and lenders to work together when the foreclosure involves the borrower's principal residence. The objective is to allow families to secure lower mortgage payments without facing higher taxes.

#### **Note:**

Any questions related to these considerations should be referred through appropriate channels, to the Milwaukee Area Counsel Attorneys who are the subject matter experts on this topic.

References on this topic which may be of assistance are:

- IRS FAQs – Mortgage Forgiveness Debt Relief Act found at <http://www.irs.gov/individuals/article/0,,id=179414,00.html>
- Form 982 & Instructions Reduction of Tax Attributes Due to Discharge of Indebtedness (And Section 1082 Basis Adjustment) found at <http://www.irs.gov/pub/irs-pdf/f982.pdf>
- Pub 4681 Canceled Debts, Foreclosures, Repossessions, and Abandonments (for Individuals) found at <http://www.irs.gov/pub/irs-pdf/p4681.pdf>
- Pub 544 Sales and Other Dispositions of Assets found at <http://www.irs.gov/pub/irs-pdf/p544.pdf>

#### **5.12.4.2 (08-11-2006)**

##### **Judicial Foreclosures**

1. Section 2410 of Title 28 of the United States Code is the authority under which the United States consents to be sued in suits to quiet title, to foreclose a mortgage or other lien, to partition, to condemn, or interpleader suits, or suits in the nature of interpleader with respect to property on which the United States has or claims a mortgage or other lien.
2. If the foreclosure action involves an encumbrance which is junior to the NFTL, the sale of the property shall be made without disturbing the NFTL unless the United States agrees that the property be sold free and clear of its liens, in which event the proceeds are distributed according to the priorities of the interests of the various parties involved.
3. When a foreclosure action, to which the United States has been made a party, involves an encumbrance which is prior in right to the NFTL, a judicial sale has the same effect on the Government's lien as it would on any other junior lien under local law in the place where the property is situated, i.e., junior tax liens are extinguished on that particular property.

#### **5.12.4.2.1 (06-11-2010)**

##### **Judicial Foreclosure Case Responsibility**



1. It is the responsibility of the Department of Justice (DOJ) to work 28 USC Section 2410 foreclosures. These are actions initiated by third parties where a NFTL has been recorded against the property and the process takes place in the judicial system. DOJ requests the assistance from Advisory as needed when working these cases but case priority is dependent on DOJ resources.
2. The type of assistance required by DOJ of the Service includes:
  - A. Determination of the IRS lien priority
  - B. Determination whether surplus or excess proceeds need addressing
  - C. Redemption investigation
  - D. Other information as requested

**Note:**

A Certificate of Discharge will not be issued during the pendency of litigation without the prior approval of Area Counsel.

#### **5.12.4.2.2 (06-11-2010)**

##### **Judicial Foreclosure Activities and Tasks**

1. The U.S. Attorney will forward a copy of the summons and complaint, along with a request for the information needed to prepare an answer, to the area director, Attention: Manager, Advisory, when the United States or the area director is joined in a suit to foreclose a mortgage or other lien (Section 2410 (Title 28, USC)).
2. The request will be promptly screened against the Notice of Federal Tax Lien files to determine the balance due on the lien(s) which involved the United States in the proceedings. In cases where records indicate no outstanding liability, the area director will advise the U.S. Attorney, and the U.S. Attorney will file a disclaimer on behalf of the United States.
3. In all other cases, Advisory will:
  - A. open a NF OI - 146 - Judicial Foreclosure on ICS no later than 7 calendar days after receipt,
  - B. document the receipt date of the notice of judicial foreclosure,
  - C. establish a file, and
  - D. furnish any information requested by the U.S. Attorney that may be obtained without a formal investigation

The U.S. Attorney will take the legal action deemed appropriate.

4. Advisory will follow up with the U.S. Attorney or the clerk of the court until a date of sale is established, unless a redemption investigation is not required.
5. In many cases the property will be sold for an amount more than sufficient to satisfy the mortgage or other liens which are prior to those of the United States. In such cases action should be taken to obtain the surplus proceeds for application to the taxpayer's account.
6. Each area is responsible for establishing the time frame and methodology for following up. However, during the course of an investigation, when the applicant, taxpayer, representative, or IRS employee misses a specific deadline, follow-up is based on meeting the Service's requirements to maintain its standing in the proceeding and should be initiated **no later than** 14 calendar days after the missed deadline. This follow-up includes closing the case if this action is appropriate. Established procedures should strive to provide a minimum of 90 days remaining available to conduct a redemption investigation.
7. The revenue officer assigned the investigation will provide to Advisory by the date specified on the Form 2209, Courtesy Investigation:
  - a completed Form 4376, Report of Investigation (IRC 7425 or 2410 USC), or
  - a memorandum in accordance with IRM 5.12.5.6.4; IRM 5.12.5.6.4
  - the original history documentation if not on ICS, and
  - any other information requested by the U.S. Attorney

#### **5.12.4.2.3 (06-11-2010)**

##### **Right to Redeem Property Sold at Judicial Sale**

1. Redemptions and redemption investigations are covered in IRM 5.12.5.
2. 28 USC 2410(c) provides that where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have not less than 120 days from the date of sale within which to redeem. This provision gives the Service time to investigate and determine whether it would be to the advantage of the United States to redeem the property. Redemption allows the Service to resell the property for more than the cost of redemption with the resulting benefit to the Government. A principal consideration in such an investigation entails a determination as to whether the value of the property sold in the foreclosure proceeding is reasonably in excess of the amount required to effect the redemption.
3. Advisory generally will not work or issue a courtesy investigation, for the purpose of determining whether or not to exercise the right of redemption, more than 30 days prior to the scheduled date of sale. An effort should be made to issue the investigation no more than 30 days after the sale is completed, thus allowing the maximum amount of time to complete the redemption process.
4. In cases where it appears that redemption may be feasible, the assigned employee will retain:
  - the Form 2209, and
  - the original Form 4376.
5. The assigned employee will send a copy of the Form 4376, and any other information requested by the U.S. Attorney to the Advisory GM by the due date of the Form 2209. See IRM 5.12.5 for procedures related to redemptions and redemption investigations.

#### **5.12.4.3 (08-11-2006)**

##### **Non-judicial Foreclosures**

1. Non-judicial foreclosures are possible when the borrower has granted the lender, through the loan documents, the ability to foreclose outside of a court's jurisdiction. The process is determined by state statutes. When working non-judicial foreclosures Advisors and Revenue Officers need to be aware of the foreclosure statutes in the state where the property is located.
2. Property is discharged from the tax lien when the holder of a superior lien forecloses by non-judicial sale under IRC 7425(b)(2). Foreclosure by a lienholder junior to the NFTL does not disturb the tax lien (IRC 7425(b)(1)).

#### 5.12.4.3.1 (06-11-2010)

##### Investigation Elements and Responsibilities for Non-Judicial Foreclosures

1. The elements of a non-judicial foreclosure investigation generally the responsibility of Advisory deal with whether the Service was properly notified:
  - A. IRS lien priority determination
  - B. Notice of Non-Judicial Sale adequacy determination (IRC 7425(c)(1))
  - C. Consent to Sale review and determination (IRC 7425(c)(2))
  - D. OI issuances to the Field for assistance
2. The elements of a non-judicial foreclosure investigation which can be the responsibility of either Advisory or the Field deal with foreclosure sale and post foreclosure sale activities:
  - A. Foreclosure sale monitoring
  - B. Surplus or excess foreclosure sale proceed availability determination and pursuit
  - C. State law research relating to claiming surplus or excess foreclosure sale proceeds
  - D. Status of CDP process research related to tax liabilities associated with claims for surplus or excess foreclosure sale proceeds
  - E. Redemption investigation

#### 5.12.4.4 (06-11-2010)

##### Notice of Non-judicial Sale

1. Except for perishable goods, *IRM* 5.12.4.5.a notice of a sale will be given, in writing, by registered or certified mail or by personal service, not less than 25 days prior to the sale, to the Advisory group manager, in the Field Collection Area where the sale is to be held. (See IRC §7425(c)(1)).
2. Persons seeking information on when or how to submit a notice of non-judicial sale should be furnished a copy of Publication 786, Instructions for Preparing Notice of Non-judicial Sale of Property and Application for Consent to Sale and Publication 4235, Advisory Group Addresses.
3. In situations where a notice of Federal tax lien has not been filed or has been filed less than 31 days before the sale, it is not necessary to notify the Advisory group managers office of a sale of the taxpayer's property. In these situations, the sale shall have the same effect with respect to the discharge of the Federal tax lien/NFTL as provided by local law with respect to junior liens.
4. When the sale is postponed, the seller of the property is required to give notice of the postponement to the Advisory group managers office in the same manner required under local law with respect to other secured creditors.
5. Notice of sale is required to be given even though such notice was not originally required because no NFTL was filed less than 31 days before the scheduled date of sale, if the postponed sale date is more than 31 days from the lien filing date.
6. In cases of forfeiture of land sales contracts, Area Counsel should be consulted to determine if the Service has a redemption right.

#### 5.12.4.4.1 (06-11-2010)

##### Determining the Date of Non-judicial Sale

1. The date of the sale shall be determined in accordance with the following rules:
  - A. in the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred,
  - B. in the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date on which title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and
  - C. in the case of divestment of junior liens on property, not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law.

#### 5.12.4.4.2 (06-11-2010)

##### Review of IRC 7425 Notice

1. Review of the IRC 7425 Notice will be completed by the advisor for timeliness and adequacy.
2. If the notice was not submitted timely, the Notice of Tax Lien will not be impacted by the pending sale unless the United States consents to the sale free of the tax lien or title of the United States in the property. Otherwise the foreclosing lienholder will be required to either:
  - pay the amount of the tax lien in full; or
  - prepare a request to discharge the property from the tax lien.
3. No formal investigation will be required when the items to be sold are consumer goods. A copy of the notice of sale should be given to the person charged with the balance due to decide what further action is required, if any.

##### Note:

If the case does not appear on IDRS, has been reported currently not collectible or is assigned to ACS, the advisor will file accordingly.

#### 5.12.4.4.3 (06-11-2010)

##### Adequacy of IRC 7425 Notice

1. Once it has been determined that an investigation will be worked, the employee will:
  - A. open a NF OI -147 - Non-Judicial Foreclosure on ICS no less than 7 calendar days prior to the date of sale,
  - B. include the receipt date of the IRC 7425 notice, and
  - C. review notice for adequacy.
2. The notice will be considered adequate if it contains the following information:
  - A. Name and address of the person submitting the notice of sale

- B. Copy of each Notice of Federal Tax Lien (Form 668(Y)) affecting the property to be sold, or list containing the IRS area office responsible for filing the lien, name and addresses of the taxpayer, date of filing, and place of filing
  - C. Detailed description of the property to be sold including location and any distinctions or particularities as can happen with multiple tracts of land; in the case of real property, inclusion of the street address, city, state, legal description contained in the title or deed to the property, and, if available, a copy of the abstract of title
  - D. Date, time, place, and terms of the proposed sale of the property; and, in the case of a perishable property sale as described in IRM 5.12.4.5.1, a statement of the reasons the property is believed to be perishable.
  - E. Approximate amount of the principal obligation, including interest, due the person selling the property, and
  - F. Description of other expenses (such as legal, selling costs, etc.) which may be charged against sale proceeds.
3. The notice will be considered inadequate if it does not contain the information described in (2) above. In the case of an inadequate notice, the Advisory Advisor will provide written notification via Pattern Letter 1840, Notice of Inadequacy. *Exhibit 5.12.4-1*.
  4. Any written notification or other communication should address the issue(s) clearly and in a language understandable to someone unfamiliar with Service terms, acronyms, and jargon.
  5. In case of an inadequate notice, the Advisory group manager may, at his or her discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is not given 25 days prior to the sale.
  6. In any case where the person who submitted a timely notice does not receive written notification that the notice is inadequate more than five days prior to the date of the sale, the notice will be considered adequate.
  7. In situations where the acknowledgement of the notice or inadequacy of the notice is the only issue such that the case will not be entered onto ICS, the AIQ executive will provide alternative methods for the internal tracking of receipts and dispositions.

#### **5.12.4.4.4 (06-11-2010)**

##### **Acknowledgment of Notice**

1. A written request that the receipt of a notice of sale be acknowledged will be honored. Acknowledgement can be made through the mailing of a duplicate notice, via facsimile as long as the third party is agreeable to receiving same.
2. In accordance with Service wide Delegation Order 5.4, the authority to acknowledge IRC 7425 Notices, and to reject them because of inadequacies, is delegated to the Advisory group manager.

#### **5.12.4.4.5 (06-11-2010)**

##### **Disclosure of Adequacy of Notice**

1. The Advisory group manager is authorized to disclose to any person who has a proper interest, whether an adequate notice of sale was given. Disclosure may be made either before or after the sale.
2. Any person desiring this information should submit to the Advisory group manager a written request which clearly describes the property sold, identifies the applicable NFTL(s), gives the reasons for requesting the information, and states the name and address of the person making the request.

#### **5.12.4.5 (06-11-2010)**

##### **Non-Judicial Sale of Perishable Goods**

1. IRC 7425(c)(3) provides for the sale of perishable good. The Code defines perishable goods, describes noticing requirements, and provides sale proceed distribution requirements.

#### **5.12.4.5.1 (06-11-2010)**

##### **Definition of Perishable Goods**

1. The term "perishable goods" means any tangible personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

#### **5.12.4.5.2 (06-11-2010)**

##### **Notice of Non-judicial Sale of Perishable Goods**

1. If notice of the sale is given, in writing, by registered or certified mail, or by personal service to the Advisory group manager before such sale, the sale will discharge or divest such property of the lien or title of the United States in the property but not the proceeds.
2. The notice of sale of perishable goods shall contain the same information required in IRM 5.12.4.5.
3. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the Advisory group manager of the postponement. For provisions relating to the authority of the Advisory group manager to discharge property subject to a NFTL in the case where the proceeds of the sale are held as a fund subject to the liens and claims of the United States, please refer to IRM 5.12.3.12.

#### **5.12.4.5.3 (06-11-2010)**

##### **Non-Judicial Perishable Sale Proceeds**

1. The proceeds (exclusive of costs) of the sale are held as a fund for not less than 30 days after the date of the sale and remain subject to the liens and claims of the United States. Distribution of the fund is in the same manner and with the same priority as the liens and claims had with respect to the property sold.
2. If the seller fails to hold the proceeds of the sale in a fund in accordance with the provisions of IRC 7425(c)(3), the seller becomes personally liable to the United States for an amount equal to the value of the interest of the United States in the fund.
3. The buyer of the perishable property is afforded certain protection. Even if the proceeds of the sale are not held by the seller, but all the other provisions are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States.

#### **5.12.4.6 (06-11-2010)**

##### **Consent to Sale of Property Free of Lien**

1. A consent to sale IRC 7425(c)(2) shall discharge or divest the foreclosing property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title. The consent may be granted even if the IRC § 7425(b)(2)(c) notice of sale requirements have not been met. The area, in which the sale occurs, is responsible to determine whether consent will be granted.
2. Consent to the sale may be given when adequate protection is afforded the lien or title of the United States. Protection is considered adequate if,
  - A. taxpayer has no equity in the property,
  - B. proceeds of sale are substituted as provided in IRC 6325(b)(3)

- C. taxpayer's interest in the property is assigned to the Director, AIQ,
  - D. assignment of proceeds in excess of prior encumbrances is secured, or
  - E. any other circumstances acceptable to the area.
3. The consent will be effective only if given in writing and shall be subject to such limitations and conditions as may be required by the area and may not be given after the date of the sale.
  4. The right to redeem remains even though a consent to the sale is given.
  5. The consent to a sale under IRC 7425 will be approved by the Advisory group manager.
  6. All payments, directly related to consents to sale, secured by Advisory staff will be applied to the taxpayer's account using Designated Payment Code (DPC) 57. Payments received by a revenue officer should be applied using TC 670 DPC 07.

#### **5.12.4.6.1 (08-11-2006)** **Application for Consent**

1. Any person desiring the Advisory Group Manager's consent to sell property free of a NFTL or a title derived from the enforcement of a NFTL of the United States in the property shall submit an original and two copies of the information required in Publication 786, Notice of Non-judicial Sale of Property and Application for Consent to Sale, as stated in the section titled, Application for Consent.
2. The information required as stated in Publication 786 can be received from an external source, such as a foreclosure attorney electronically, as long as the electronic transmission includes all of the required information and is submitted with a declaration that the information is submitted under the penalties of perjury. An electronic signature is acceptable. Internally, the information can be forwarded electronically from office to office via secured messaging.

#### **5.12.4.6.2 (08-11-2006)** **Processing Applications**

1. As a general rule, consent may be given without a field investigation if the property is of nominal value, is consumer goods or if the property is real property and the Government's interest is less than the criteria established in IRM 5.12.5.1.1 and LEM 5.12.5 for redemption investigations.
2. If the property is real property and the Government's interest is more than the redemption investigation criteria, the application for consent should be investigated to determine the most feasible administrative action to be taken.

#### **5.12.4.6.3 (08-11-2006)** **Form of Consent**

1. When consent to a non-judicial foreclosure sale is given, the consent letter, prepared in triplicate by Advisory, will contain the following:
  - A. name and address of person requesting consent.
  - B. restatement of Internal Revenue Code authority (7425(c)(2)).
  - C. detailed description of property to be divested.
  - D. description of lien(s) to be divested.
  - E. unpaid balance of FTL/NFTL, including interest, lien fees, etc.
  - F. place and date NFTL filed.
  - G. statement that surplus proceeds are subject to the FTL/NFTL of the United States.
  - H. signature of Advisory group manager.
2. Copies of the consent letter will be disposed of as follows:
  - A. original and duplicate to requestor.
  - B. triplicate to be associated with related NFTL.
3. When it is determined that consent to the sale should not be given, the Advisory group manager will prepare in triplicate a letter of non-consent containing the following:
  - A. name and address of person requesting account.
  - B. restatement of IRC 7425(c)(2)
  - C. recommended alternate procedure (discharge of property, substitution of proceeds of sale, etc.)
  - D. signature of the Advisory group manager.

#### **5.12.4.7 (06-11-2010)** **Non-judicial Sale Activities and Tasks**

1. Generally, Other Investigations (OIs) to investigate non-judicial sales originate in Advisory. Certain situations may warrant revenue officer involvement. When this occurs, the Advisory Group Manager will assign the OI to a revenue officer field group. This decision will be contingent upon factors such as geographic feasibility and the need for investigative field work. Due to the need for immediate assignment of these cases, OIs will be routed directly to the field revenue officer group working the zip code. The group manager will be required to treat these OIs as priority work. Non-judicial foreclosure OIs will be assigned to a revenue officer expeditiously, to ensure that the Government's interest is not compromised and that the investigation is completed accurately and timely. Non-judicial foreclosure OIs will be exempt from existing case delivery parameters. Consideration should be given to:
  - the dollar amount of the liability,
  - the type of property involved,
  - the economic condition of the particular locality,
  - the practical impact of local law, or
  - any other significant factor.
2. The only time Advisory needs to review notices of sale is when the notice meets the criteria in (1) above.

3. For notices of sale where investigations will be performed, Advisory should request Area Counsel provide redemption periods applicable under local law, which will be used in determining the time available for a revenue officer to conduct the investigation.
4. A copy of the Notice of Sale will be given to the person charged with the balance due to decide what further action should be taken. If the case does not appear on IDRS, has been reported currently not collectible or is assigned to ACS, the Advisory file will be noted.
5. As mentioned previously, the Advisory group manager will determine whether to issue an OI to the field or to have the investigation worked by the advisor.
6. The advisor assigned the case will issue an outgoing NF OI - 147- Non Judicial Foreclosure via ICS no earlier than 30 days prior to the scheduled date of sale. Advisory will determine if the fair market value of the property in question exceeds the amount required to redeem, prior to the issuance of a Courtesy Investigation. Sources from which this information can be secured varies; but examples include the tax assessor's office and the foreclosing creditor's attorney.
7. The revenue officer need not attend the sale, unless specifically directed by the advisor. Attendance should be requested only in unusual cases. The necessary information may generally be secured from the seller or seller's agent immediately after the sale.
8. Each area is responsible for establishing the time frame and methodology for following up. However, during the course of an investigation, when the applicant, taxpayer, representative, or IRS employee misses a specific deadline, follow-up is based on meeting the Service's requirements to maintain its standing in the proceeding and should be initiated **no later than** 14 calendar days after the missed deadline. This follow-up includes closing the case if this action is appropriate. Established procedures should strive to provide a minimum of 90 days remaining available to conduct a redemption investigation.
9. The Form 4376, Report of Investigation (IRC 7425 and 2410 USC) will be prepared to provide a basis for a recommendation to exercise the right of redemption.

#### **5.12.4.7.1 (06-11-2010)**

##### **Surplus or Excess Proceeds from Non-Judicial Sales**

1. In the event the sale produces an amount in excess of prior encumbrances (surplus proceeds), the employee assigned determines what party at the state level handles these funds. It could either be the party who conducted the sale or another party charged with that responsibility by state law.
2. The purpose of the non-judicial foreclosure sale investigation is to determine whether the proceeds more than fully satisfied the foreclosing party's encumbrance. When this occurs there are two parallel paths to investigate. Either or both may result in action by the Service. One investigation path is whether there are surplus or excess sale proceeds. The other investigation path is whether sufficient equity in the property remains after sale for the Service to consider exercising its redemption rights. Even if there are no surplus or excess proceeds from the sale, sufficient equity in the property may remain to consider redemption.
3. There are two methods the Service has to pursue surplus or excess proceeds.
  - A. Issuance of a *Form 668 A, Notice of Levy* will only be considered when a Letter 1058, Final Notice has been issued for all applicable tax periods and the Service has reason to believe that the "holder" of the excess proceeds is not disbursing the funds in accordance with the legal requirements for disbursement of excess proceeds or if we have knowledge that funds are being disbursed to a creditor junior to the IRS secured position. A levy may only include those modules where all Collection Due Process (CDP) appeal rights are extinguished or resolved. If the CDP process has been completed on some but not all modules issue the levy containing only those modules. If the proceeds available will more than full pay the levy and there are remaining liabilities or the liabilities have not been through the appropriate CDP process, the second method must be used.
  - B. If the Service cannot levy for the excess sale proceeds, the statutory lien remains and the IRS must look to its rights as a creditor under the laws of the state in which the foreclosure and sale took place. Use *Form 10492, Notice of Federal Taxes Due* where levy is not appropriate. This form will serve as written notice to the settlement attorney or other third party that the IRS may be entitled to excess proceeds. State law controls how and to whom claim for the proceeds is submitted. Some but not all states require the party distributing the proceeds to ensure distribution using the priority order the junior liens attached to the property prior to the foreclosure sale. Sometimes an interpleader suit is initiated by the party responsible to distribute the funds to determine who has rights to the funds. Questions should be addressed to Area Counsel.
4. All payments, directly related to non-judicial sales, secured by Advisory staff will be applied to the taxpayer's account using Designated Payment Code (DPC) 57. Payments received by a revenue officer should be applied using TC 670 DPC 07.
5. The employee's investigation should determine if there is a problem with the distribution of the funds and if appropriate recommend action by Area Counsel.

#### **5.12.4.7.2 (06-11-2010)**

##### **Right to Redeem Property Sold at Non-judicial Sale**

1. IRC 7425(d) provides for the redemption by the Government of real property sold in a non-judicial proceeding when such sale is made to satisfy a lien that is prior to the United States. The period for redemption is 120 days, or the period provided by State law, whichever is longer.
2. If the sale is of real property, based on assignment of the investigation, either the advisor or the revenue officer will determine whether to recommend the exercise of the right of redemption. Form 4376, Report of Investigation (IRC 7425 or 2410 USC), will be used for this purpose. This process may also require assistance from a Property Appraisal and Liquidation Specialist (PALS). The final review and processing of Form 4376 is the responsibility of Advisory. When a revenue officer and/or a PALS is involved in the investigation, it is essential that all required documentation be included with Form 4376 when forwarding the results of the investigation to Advisory.

#### **5.12.4.7.2.1 (06-11-2010)**

##### **Redemption Investigations**

1. Redemption investigations are found in IRM 5.12.5. That IRM covers the investigation leading up to the decision to redeem, the redemption itself, and the sale of the redeemed property.

#### **5.12.4.7.2.1.1 (06-11-2010)**

##### **Upset Bidding**

1. Upset bidding after a foreclosure sale is allowed in some states like North Carolina. An upset bid is a recorded bid placed after a foreclosure sale has ended. It is higher than the highest bid received at the actual foreclosure sale. This type of bidding can cause confusion when conducting a redemption investigation because it impacts the person from whom the IRS would redeem the property. An upset bid extends the bidding period but does not change the sale date which IRS uses to start the redemption period. Consult Advisory and Counsel when encountering upset bidding when considering redeeming property.

#### **5.12.4.7.2.1.2 (06-11-2010)**

##### **Upset Price**

1. The upset price, also called the judgment amount or minimum bid, is what the lender is owed on the property. This sum usually includes the outstanding loan and any interest and fees accumulated since the start of the foreclosure process. It is a bid made after a judicial sale but before the successful bid at the sale has been confirmed, larger or better than such successful bid, and made for the purpose of upsetting the sale and securing to the "upset bidder" the privilege of taking the property at this bid or competing at a new sale.

#### **5.12.4.8 (06-11-2010)**

##### **Redemption**

1. Redemptions and redemption investigations are covered in IRM 5.12.5.

2. IRC § 7425(d) provides the Internal Revenue Service the right to redeem real property sold in nonjudicial foreclosure action by a third party which has a priority over the Notice of federal Tax Lien.
3. Title 28 U.S.C. § 2410(c) provides the United States the right to redeem real property sold in a judicial foreclosure to satisfy a lien that is prior to that of the United States.
4. The time period for a redemption after a foreclosure sale with respect to either a nonjudicial or judicial foreclosure is 120 days or the period allowable for redemption under State law, whichever is longer.
5. IRS redemptions can benefit both the government and the taxpayer. The purpose of redemption is to pay off the foreclosing instrument and apply funds to the taxpayer's liability. The key to a successful redemption case is locating a guaranteed purchaser willing to advance a deposit generally in the amount of 20 percent of the amount bid.

**Exhibit 5.12.4-1  
Letter 1840 (DO)**

**Letter 1840 (DO)**

Internal Revenue Service

Department of the Treasury  
Director, Advisory Insolvency and Quality (AIQ)

Date:

In re:

Person to Contact:

Contact Telephone Number:

***Information Copy Only***

We are returning your notice of non-judicial sale because it does not contain adequate information. This letter is a NOTICE OF INADEQUACY, which we are required to send to you. We have indicated either missing and/or incorrect information in the boxes checked below.

- The name and address of the person submitting the notice of sale.
- A copy of each Federal tax lien affecting the property to be sold, or
  - a. The location of the IRS Area office that issued the lien.
  - b. The name and address of the taxpayer, and
  - c. The date and place the lien was filed.
- A detailed description of the property to be sold including the location of the property (if real property), must include the street address, City, State, the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title.
- The date, place, time, and terms of the proposed sale.
- The approximate amount of the principal obligation, including interest due the person selling the property and a description of other expenses that may be charged against the sale proceeds.
- Other: \_

Please resubmit your notice and all required documentation with the copy of this letter attached within sufficient time so that we receive it at least 25 days before the sale.

Please resubmit your notice along with a copy of this letter and the necessary information to consider your notice as being adequate. The 25 day notification period (above) begins upon receipt of an adequate notice of non-judicial sale. For additional information, please refer to Publication 786, Instructions for Preparing a Notice of Non-judicial Sale of Property and Application for Consent to Sale.

Strip in "Director, AIQ, (City) Area" in bottom left corner (face only) aligned with form number  
( 1/2" left, 3/8" bottom margin). (10 pt News Gothic Bold)

(Choice of facsimile, hand or stamped signature to be determined by using office. Area will strip in facsimile signature if one is requested.)

(over)

Letter 1840 (DO) (Rev. MM-YY)

In case we find it necessary to contact you, please include your name and a daytime telephone number and/or email address in your response. If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Advisory Group Manager

Enclosures:

Notice of Non-judicial Sale

Copy of this letter

Letter 1840 (DO) (Rev.MM-YY)

[More Internal Revenue Manual](#)





## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 5. Redemptions

##### 5.12.5 Redemptions

- 5.12.5.1 [Redemption Overview](#)
- 5.12.5.2 [Foreclosure Sale Purchaser Reimbursement Rights](#)
- 5.12.5.3 [Soliciting Agreements to Bid](#)
- 5.12.5.4 [Processing Recommendations to Exercise Redemption Rights](#)
- 5.12.5.5 [Amount to Redeem](#)
- 5.12.5.6 [Redemption Certificate](#)
- 5.12.5.7 [Administration of Redeemed Property](#)
- 5.12.5.8 [Release of Right of Redemption—Judicial Sales](#)
- 5.12.5.9 [Release of Right of Redemption — Nonjudicial Sales](#)
- Exhibit 5.12.5-1 [Pattern Letter P-597](#)
- Exhibit 5.12.5-2 [Letter 1879\(P\)](#)
- Exhibit 5.12.5-3 [Pattern Letter P-338](#)
- Exhibit 5.12.5-4 [Federal Tax Lien Revolving Fund Request](#)
- Exhibit 5.12.5-5 [FTL REVOLVING FUND](#)

##### 5.12.5.1 (07-01-2001)

###### Redemption Overview

1. In accordance with IRC § 7425, the Internal Revenue Service has the right to redeem real property which was sold in nonjudicial foreclosure action by a third party to satisfy an outstanding encumbrance which has a priority over the Notice of federal Tax Lien.
2. In accordance with Title 28 U.S.C. § 2410(c), the Internal Revenue Service has the right to redeem real property which is sold in a judicial sale where the United States position is junior to the foreclosure party.
3. The time period for a redemption after a foreclosure sale with respect to either a nonjudicial or judicial foreclosure is 120 days or the period allowable for redemption under State law, whichever is longer.
4. IRS redemptions can benefit both the government and the taxpayer. In some instances the property is redeemed for an amount substantial enough to pay off the foreclosing instrument and apply funds to the taxpayer's liability and to the taxpayer. The key to a successful redemption case is locating a guaranteed purchaser willing to advance a deposit generally in the amount of 20 percent of the amount bid.
5. IRM 5.12.5 contains procedural information on judicial and nonjudicial redemptions. In addition, many of the procedures outlined in IRM 5.12.5 are intertwined with the procedures mentioned in IRM 5.12.4, Judicial and Nonjudicial Foreclosures. Procedures related to redeeming acquired property from seizure and sale may be found in IRM 5.10.7.
6. The Advisory, Insolvency, and Quality (AIQ) advisor has primary responsibility for conducting redemption investigations. In addition, it is the responsibility of the advisor to coordinate with a revenue officer and/or Property Appraisal and Liquidation Specialist (PALS) when field investigation assistance is necessary.
7. The primary role of the revenue officer and/or PALS is to assist the advisor in determining the government's interest and in recommending the appropriate action to close out the investigation.
8. Each area, with the concurrence of the Advisory, Insolvency, Quality AIQ Territory Manager (Advisory TM), is responsible for establishing criteria for conducting redemption investigations.

##### 5.12.5.1.1 (06-11-2010)

###### Elements of a Redemption

1. The following are the elements of a redemption:
  - foreclosure sale
  - redemption investigation
  - sufficient property value to consider redemption
  - consideration given to releasing the right of redemption
  - foreclosure sale purchaser (or successor in interest) notification
  - guaranteed bidder for an IRS redemption sale
  - revolving fund loan to cover the foreclosure sale amount and allowable expenses
  - purchase the property from the foreclosure sale purchaser
  - record property ownership documents
  - conduct redemption sale of the property
  - transfer property ownership to the successful bidder at the redemption sale
  - complete paperwork

##### 5.12.5.1.2 (06-11-2010)





**Note:**

The overall objective in establishing the criteria is to ensure that a redemption is made whenever appropriate and that resources are used efficiently. Inquiries about possible redemptions frequently lead to lien payoffs and releases of our right of redemption.

8. If the AIQ advisor, or revenue officer tentatively decides to recommend redemption, they will:
  - A. Notify the purchaser of their rights
  - B. Locate parties interested in submitting agreements to bid for the property

**Note:**

PALS may become involved in locating prospective bidders.

9. During the course of a redemption investigation, when the foreclosure sale purchaser, guaranteed bidder, redemption sale purchaser, other participant, taxpayer, representative, or IRS employee misses a specific deadline, including submitting required documentation and/or payment, follow-up is based on meeting the Service's requirements to maintain its standing in the proceeding and should be initiated **no later than 14 calendar days** after the missed deadline. This follow-up includes closing the case if this action is appropriate
10. When circumstances dictate, the employee should use problem solving and negotiation techniques, and in so doing consider the taxpayer's/POA/third party's perspective when working toward case resolution.
11. Any written notification or other communication should address the issue(s) clearly and in a language understandable to someone unfamiliar with Service terms, acronyms and jargon.

**5.12.5.2 (06-11-2010)**

**Foreclosure Sale Purchaser Reimbursement Rights**

1. When redemption is considered and prior to the expiration of the redemption period, the Service must notify the purchaser (or successor in interest) of the property at the foreclosure sale that:
  - A. They have the right to request reimbursement for certain payments made to a senior lienor
  - B. They have the right to be reimbursed for such payments if:
    - 1) the Government redeems the property, and
    - 2) the purchaser (or successor in interest) has submitted a reimbursement request that meets the requirements of the regulations

**5.12.5.2.1 (06-11-2010)**

**Notification to Foreclosure Sale Purchaser**

1. The Service's notice to the purchaser must be hand-delivered or sent by certified or registered mail. Pattern Letter P-597 (Exhibit 5.12.5-1 and also an ICS template) should be used for this purpose.

**Note:**

The regulations governing reimbursement for payments to a senior lienor impose certain special requirements on both the Service and the purchaser and, therefore, must be viewed separately from those that govern other amounts to which the purchaser may be entitled if the property is redeemed.

**5.12.5.2.2 (06-11-2010)**

**Maintenance Expenses for Which Reimbursement May Be Requested**

1. If the Service redeems the property, it will pay an amount equal to the excess of the expenses necessarily incurred to maintain the property over any income realized from the property, plus a reasonable rental value of the property (to the extent the property is used by the foreclosure sale purchaser or with his/her consent is rented at less than its reasonable rental value);
2. The foreclosure sale purchaser has the right to be reimbursed for necessary maintenance expenses/fees incurred during the time he/she is in possession of the property. These expenses/fees are subject to review and approval either in whole or in part by the employee assigned to work the investigation. The Advisory Group Manager has final approval whether the expenses are allowable.
3. Specific maintenance expenses/fees to consider are those utilized to keep the property safe and intact. These expenses and/or fees are categorized within this section of the IRM. Expenses not listed can be considered as long as reasonable business prudence is administered when considering the expense. Examples of expenses to consider are:
  - Recording fees
  - Insurance
  - New locks for security purposes
  - Required repairs needed to fix damage that would directly impact the value of the property during this period of time
4. The Service will not consider expenses to enhance the property. Examples of unallowable expenses are:
  - Cleaning
  - Utilities unless required to keep property from being damaged
  - Property taxes unless foreclosure proceedings are in effect

**5.12.5.2.3 (06-11-2010)**

**Payments to Senior Lienor for Which Reimbursement May Be Requested**

1. A purchaser (or successor in interest) of real property at a foreclosure sale may request reimbursement for:
  - A. Payment to a holder of a lien that was, immediately before the foreclosure sale, senior to the lien foreclosed
  - B. Payment by an escrow agent of a real property tax or special assessment lien which was senior to the lien foreclosed

**5.12.5.2.4 (06-11-2010)**

**Requirements for Consideration of Reimbursement**

1. The foreclosure sale purchaser's (or successor interest) reimbursement request must be:

A. Mailed or delivered no later than 15 calendar days after the Service sends the notice identified in IRM 5.12.5.2.1

B. Mailed or delivered to the IRS office specified in the notice identified in IRM 5.12.5.2.1

2. The request must contain:

A. Written itemized statement

B. Claimant signature

C. Amount paid to the senior lienor for which reimbursement is claimed

D. Supporting evidence

E. Waiver or other document that will be effective, upon redemption, to discharge the property from, or transfer to the United States, any interest in or lien on the property arising under local law with respect to the payment made to the senior lienor.

#### **5.12.5.2.5 (06-11-2010)**

##### **Review of Requests for Reimbursement**

1. The employee assigned to work the investigation will review the request for reimbursement for adequacy and will promptly request the purchaser to correct any obvious defects. The request will then be referred through Advisory to Area Counsel for review.
2. The Service will not reimburse a purchaser for payment to a senior lienor if the request is not timely mailed or delivered. However, if the purchaser shows reasonable cause, and the Advisory Territory Manager consents, the purchaser may request an extension for a reasonable period to submit, amend or supplement a request for reimbursement. Any such extension request must be submitted before expiration of the applicable period for redemption.
3. In the event the Service exercises its right to redeem the property, the amount requested for reimbursement will be approved and paid from the Revolving Fund.
4. If the right to redeem is not exercised or a request for reimbursement is withdrawn, the employee involved in the investigation will promptly return to the purchaser (or successor in interest) the waiver or other document by certified or registered mail or by hand delivery.

#### **5.12.5.2.6 (06-11-2010)**

##### **Denial of Reimbursement**

1. Requests for reimbursement generally will be denied only in cases where:
  - A. Reimbursement request not timely delivered and reasonable cause not shown
  - B. Waiver or other document required to be submitted with the reimbursement request was not submitted or was unsatisfactory
  - C. Evidence of payment to a bona fide senior lienor was not submitted or was unsatisfactory
2. If reimbursement is denied:
  - A. Advisory TM notifies the purchaser that the Service has denied the amount claimed
  - B. States reason for the denial
  - C. Sends denial by certified or registered mail or hand-delivered within 30 calendar days after receipt of the reimbursement request, or 15 calendar days before expiration of the applicable period for redemption, whichever is later

#### **5.12.5.3 (06-11-2010)**

##### **Soliciting Agreements to Bid**

1. Before recommending redemption of real property, the employee assigned to work the investigation must obtain at least one offer to bid on the property. Letter 1879, found on the Publishing web site, can be mailed to each name shown on the public auction bidders list. Any bidders list would be maintained by the PALS. The offer, which must be reduced to a written agreement to bid, should be for an amount that is sufficient to ensure that redemption will be in the Government's interest. The employee working the investigation should give the prospective bidder the opportunity to inspect the property and to inquire about its condition and title, and should ensure that the agreement is consistent with the method by which the Government intends to sell the property.
2. Any commencement of the redemption process without a secured or guaranteed bidder is prohibited without prior approval from the Advisory Area Manager.

#### **5.12.5.3.1 (06-11-2010)**

##### **Commercial Advertising**

1. The judicious use of commercial advertising to solicit bids may broaden the field of potential bidders at the sale of redeemed property. Advertising should be considered **before** the property is redeemed and must be approved in advance by the group manager.
2. The advertisement, regardless of size, should be limited to a statement such as, "Prospective Purchasers of Real Property . . . the Internal Revenue Service is considering the redemption of real property located at (given address) . . ." A statement and number can also be provided for parties not interested in being a guaranteed bidder but who are interested in purchasing the property at our sale after our redemption.
3. The expense of advertising for agreements to bid will be satisfied from the Program Costs Account, Sub-object Class 252D, Expenses of Seizure and Sale (Standard Announcement 200X-01, Financial Management Code Handbook). The voucher should reflect "Direct Charge to PAC 7D."
4. The taxpayer's account will not be debited for these expenses even if the property is not sold.

#### **5.12.5.3.2 (06-11-2010)**

##### **Deposit Submitted With Agreement to Bid**

1. To secure performance under an agreement to bid, a minimum deposit of 20 percent of the agreed bid is required. Pattern Letter P-338, Agreement to Bid, IRM Exhibit 5.12.5-3 should be used for this purpose.
2. A deposit of less than 20 percent may approved by the Advisory group manager with Advisory territory manager concurrence. At a minimum, this will include written verification that this was discussed and agreed upon by both levels of management. In no case should the deposit be less than \$1,000 unless the deposit amount represents 20 percent of the agreed bid. A decision to accept less than the 20 percent must be made based on the facts of the case, with the understanding that there is a greater risk to the government based on the potential for a bidder to default on a small amount.
3. The deposit should be made by a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any state, territory, or possession of the United States, or by a postal, bank, express, or telegraph money order.
4. Certificates of Deposit and irrevocable letters of credit are also acceptable if approved in advance by area counsel. However, care should be exercised in accepting and monitoring such instruments because of the period of time in which they are negotiable is generally limited.

5. Upon receipt of a bid deposit, prepare Form 2276, Collateral Deposit Record, identifying the remittance as an "agreement to bid deposit." The remittance and Form 2276 will be placed in a secured area in accordance with IRM 1.16.15.2 and with Exhibit 1.16.15-1 and 2.
6. Pattern Letter P-338, Agreement to Bid, Exhibit 5.12.5-3 now includes the following statement: "I further understand and agree that if I do not bid at least the amount specified in this agreement, and the property is not sold within the time frame specified above, for at least such an amount, my deposit will be retained pending final determination of damages the government sustained because of default. If damages exceed the amount of the deposit, I will be liable for the excess damages."
7. It is imperative that any potential bidders are fully aware of the provision discussed in (7) above.

#### 5.12.5.4 (06-11-2010)

##### Processing Recommendations to Exercise Redemption Rights

1. Upon receipt of the advisor's, revenue officer's, or PALS report (Form 4376), which generally must indicate that a prospective purchaser(s) has been secured, the respective manager will review the report and if in concurrence forward it to the Advisory Group Manager (Advisory GM) for review. If the Advisory GM concurs he/she will submit the report to the Advisory TM. See Delegation 5-4 found in IRM 1.2.44.4(29 - 31). The Advisory TM will:
  - A. review the report
  - B. sign Form 4376, Report of Investigation
  - C. ensure that a redemption serial number is assigned to the case

**Note:**

If the recommendation is against exercising the right of redemption, only the Advisory GM review and approval is needed.

2. Any redemption recommendation without a secured/guaranteed purchaser must be approved by the Advisory AM. See Delegation Order 5-4 in IRM 1.2.44.4(35-37).
3. The advisor will be responsible for documenting the information in the history section of ICS to include the date of redemption; amount the property was redeemed for; amount of tax liability satisfied; and the date and place the certificate was recorded.
4. When it is determined the redemption will be made, the advisor will:
  - A. Forward an original and one copy (with all necessary enclosures) of the report to the local area counsel for approval of the determination of the amount necessary to redeem and determination of the title the United States will acquire from the purchaser if redemption is made.
  - B. This should occur as soon as possible, but not later than 30 days from the date of the sale. This deadline is to be used as a guideline and can be further discussed with the local area counsel. With area counsel concurrence, deadlines can be determined on a case-by-case basis.
  - C. Upon receipt of area counsel approval, forward a copy of the investigator's report and the area counsel approval determination to the Advisory TM for information purposes as well as keep copies in the redemption file. Forwarding this information to the Advisory TM can be at the discretion of the Advisory TM.
  - D. Prepare a memorandum to be signed by the Advisory GM requesting an advance from the revolving fund (see IRC 7810) and provide the following information extracted from the redemption report:
5. When preparing the memorandum, referenced in IRM 5.12.5.4(4)(d) above, provide the following information extracted from the redemption report.
  - redemption serial number
  - amount requested to redeem property
  - date of sale
  - date the redemption right expires
  - estimated property redemption value
  - date the funds are required
  - amount the prospective/guaranteed purchaser will pay for the property
  - approximate repayment date
  - name and address of the taxpayer
  - person/organization to whom the check is payable, and
  - IRS office and employee to whom the check should be sent
6. The request for funds for the redemption of real property will be faxed to the SB/SE Field Budget Officer at (215) 861-1406 by the advisor. The time period to exercise our right of redemption is generally 120 days from the date of the foreclosure sale. It is therefore necessary to process requests for funds as promptly as possible. The request being forwarded to the SB/SE Field Budget Officer should include the following:
  - A. memorandum (as mentioned above) requesting funds from the revolving fund account;
  - B. area counsel memorandum concurring with the request for funds;
  - C. copy of Form 4376, Report of Investigation
  - D. Advisory GM approval on the memorandum and/or Form 4376; and
  - E. evidence that there is a secured/guaranteed purchaser or if there is no guaranteed purchaser, the approval of the Advisory AM.
7. Allow a minimum of five working days for processing of requests for revolving fund advances. It is important to ensure that there is ample time to process the request and for mailing of the funds from Beckley Financial Center.
8. The SB/SE Field Budget Office will determine availability of funds and the priority for disbursement when available funds may be insufficient to meet two or more requests. This will serve to avoid depletion of the fund.
9. The Field Budget Office employee will forward a memorandum to the Advisory GM and/or advisor to certify that funds are available. The memorandum will serve as documentation of an approved request for funds for the redemption of real property.
10. Based on authorization from the Budget Office, Beckley Finance Center will generally issue a manual check to the field employee making the request. Beckley Finance Center must have a copy of the memorandum referenced in (8) above. This is required for their file documentation.

11. The Advisory GM has follow-up responsibilities to ensure that the revolving fund is repaid. See IRM 5.12.5.7.3(6), Transmittal and Application of Proceeds, as well as IRM 5.10.7.7, Report of Disposition - Sale of Redeemed Property, for additional information.

#### 5.12.5.4.1 (01-01-2006)

##### Redemption Serial Numbers

1. The redemption serial number will be completed following the format outlined below:

<b>Technical Services Advisory Territory and RED to identify Redemption</b>	<b>Technical Services Advisory Group</b>	<b>Four Digit Sequence Number</b>
CWRED	04	0001

2. In the above example, the redemption investigation is being investigated in the South Atlantic Territory (05); advisory group (04); and the redemption represents the first redemption serial number issued.
3. Since the revolving fund is not governed by fiscal year the files are maintained geographically and by territory.
4. The Advisory TM will determine where the serial numbers will be maintained and monitored.

#### 5.12.5.4.2 (01-01-2006)

##### Guaranteed Bid Determination

1. As stated in IRM 5.12.5.2 (1) and (2), redemption recommendations must include a guaranteed purchaser unless the redemption will be approved by the Advisory AM. *IRM 5.12.5.4* In addition, this purchaser is generally required to submit a deposit on an "Agreement to Bid" form, for 20 percent of the bid amount.
2. For purposes of establishing a guaranteed bid amount, the investigating employee will use the following guidelines:

- A. The prospective purchaser must guarantee his/her bid with a non-refundable deposit equal to 20 percent of the promised bid amount.

##### Note:

A deposit of less than 20 percent must be approved by the employee's group manager. This must also be discussed with the advisor and his/her group manager for concurrence. The Advisory TM will be briefed and must concur with the proposed deposit provisions. Any discrepancies will be resolved by the Advisory TM.

- B. In no case should a deposit be for less than \$1,000.00 unless the deposit represents 20 percent of the agreed bid.

- C. The guaranteed bid must be an amount determined to be reasonable in relationship to the cost of redeeming, maintaining, and selling the property. This amount does not need to represent forced sale value.

##### Note:

Please refer to IRM 5.10.4.6 (5), Establishment of Minimum Bid for additional information regarding "forced sale value."

3. The amount arrived at as a guaranteed bid is subject to approval by the employee's manager. Final approval rests with the Advisory GM. If the field manager and the Advisory GM are unable to concur with the guaranteed bid amount, then the final decision will rest with the Advisory TM for the area in which the property is located.
4. Pattern Letter P-338, Agreement to Bid IRM Exhibit 5.12.4-4 and IRM 5.12.4.14.2 provisions have been revised. Pattern Letter P-338 now will include the following phrase: "I further understand and agree that if I do not bid at least the amount specified in this agreement, and the property is not sold within the time specified above, for at least such an amount, my deposit will be retained pending final determination of damages the government sustained because of default. If damages exceed the amount of the deposit, I will be liable for the excess damages" .

#### 5.12.5.4.3 (01-01-2006)

##### Redemption Investigations Requiring \$100,000.00 or More From the Revolving Fund

1. When a recommendation is made to exercise the right of redemption, the investigation is routed to the Advisory GM for initial approval. If an initial determination has been made to redeem the property, and it requires an expenditure of \$100,000.00 or more from the revolving fund, the Advisory GM must consider the benefits of either assigning an Other Investigation to a PALS, and/or enlisting the services of an IRS appraisal engineer, or a professional appraisal firm. This decision must be documented prior to approving and forwarding the recommendation for Advisory TM approval. In addition, when there is a question as to the extent of property boundaries, the Advisory GM is encouraged to consider the use of a professional surveyor to establish the exact nature of the property to be redeemed. The decision not to utilize these services will be documented and attached to the Form 4376, Report of Investigation. Form 4376. Otherwise, the results of the appraisal and/or survey will be included as a part of the investigation.

#### 5.12.5.4.4 (01-01-2006)

##### Outside Contractors

1. Under certain circumstances and as warranted the group manager of the revenue officer or PALS will coordinate with the Advisory GM for the advisor assigned the investigation in order to determine the feasibility of contracting out for a professional survey. This should be considered with redemptions involving acreage, multi-structure parcels, or any other property where a professional survey would prove to be in the Government's best interest. This will prove beneficial when considering the field employee's (revenue officer and/or PALS) determination of exact boundaries, as well as ensuring property is included or excluded in the investigation, as appropriate. Contracting professional property appraisal services should also be considered when the services of a PALS or valuation engineer are not readily available, or if specialized expertise is required to accurately determine the value of a unique property.
2. The initial decision to utilize an outside contractor generally will be made by the revenue officer or PALS and his/her group manager. The feasibility of contracting out should then be discussed with the advisor and his/her group manager. The Advisory GM and the field group manager should be in agreement that circumstances warrant outside contractor consideration, although the final decision rests with Advisory. If the two managers are in disagreement, then the final decision rests with the Advisory TM.
3. When outside services are to be used, expenses must be requested and approved through the Web Request Tracking System (webRTS). Instructions and procedures can be found on the AWSS web site. The URL for this site is: <http://awss.procurement.irs.gov/webrts.htm> . Expenses incurred for this type of procurement will be paid from the "enforcement expense budget." This expense is predicated on an internal decision to utilize an outside contractor and will not be assessed against the taxpayer's account. Specifics regarding the request and approval of funds should be discussed in detail with the SB/SE Field Budget Office.
4. The approval path hierarchy and the request information to be established in the Web Request Tracking System (RTS) for all outside contractor requests will include:
  - A. The approval path initiator  
Advisory GM  
Advisory TM  
SB/SE Field Budget plan manager
  - B. The "item/description"  
Include the statement, "Appraisal/Survey related to possible redemption." in the item/description field.
  - C. The Federal Supply Classification "FSC" Code  
The current FSC Code for Appraisal/Survey services is R411

The requester should not enter any accounting code. The appropriate accounting code will be entered by the plan manager. Access to RTS is at the discretion of the group manager. Any questions pertaining to costs associated with outside contractors should be directed to the plan manager.

#### **5.12.5.4.5 (06-11-2010)**

##### **Revolving Fund for Property Redemption**

1. A revolving fund was created for the redemption of real property by the United States, based on the Government's federal tax lien. (See IRC 7810 and IRC 7425(d)).
2. By exercising its right of redemption, the Government can purchase property sold at distress prices and resell the property at a profit. In some instances this procedure is the only means by which Federal tax liabilities can be collected.
3. When redeemed property is sold, the proceeds of the sale, to the extent of the costs of redemption, are to be redeposited in the revolving fund.
4. See IRM 5.12.5.7.6 for disposition of redemption sale proceeds.

#### **5.12.5.4.6 (06-11-2010)**

##### **Advances from the Revolving Fund**

1. When the revenue officer or PALS secures a prospective/guaranteed purchaser, a report will be forwarded through the employees group manager to the Advisory GM. The following information is required in their report:
  - A. serial number
  - B. amount required to redeem
  - C. estimated redemption value of property
  - D. amount of agreed bid
  - E. date required payment is needed
  - F. date of sale
  - G. date redemption right expires
  - H. approximate repayment date
  - I. person or organization to whom check is payable, and
  - J. IRS office and person to whom check should be sent
2. Please refer to 5.12.5.4 for detailed procedures regarding the approval process between the field, SB/SE Field Budget Office and Beckley Finance Center for requesting and obtaining funds from the revolving fund.
3. When a redemption investigation is subsequently cancelled, advances must be returned immediately to Beckley Finance Center.
4. Forward a copy of the cancellation notice to the SB/SE Field Budget Office and to Beckley Finance Center.
5. Obtain instructions from SB/SE Field Budget Office and/or Beckley Finance Center for the exact procedures for returning funds due to cancellation.
6. If a revolving fund advance has been distributed and cannot be returned to Beckley Finance Center, consult with Area Counsel for avenues to retrieve the advance. The advisor will submit a status report monthly. After 90 days, the Advisory GM will need to secure Advisory TM concurrence of continued delays. Advisory TM concurrence will be required every 30 days thereafter until the fund is reimbursed or Advisory TM determines the funds are irretrievable and a memorandum signed by the Advisory TM reports a loss for the revolving fund to both Beckley Finance Center and the SB/SE Field Budget Office.

#### **5.12.5.5 (07-01-2001)**

##### **Amount to Redeem**

1. There must be an actual payment of money as distinguished from a mere proposal or proposition to pay it.

#### **5.12.5.5.1 (07-01-2001)**

##### **Payment of Money**

1. The employee who has been designated to tender the amount required to redeem must be accompanied by at least one witness, preferably an advisor, area counsel attorney or revenue officer.
2. In the event that the tender to redeem is refused, a joint report of the transaction should be prepared and forwarded through Advisory to area counsel for an advisory opinion and guidance as to the next action to be taken.
3. The report should include a request for instructions as to the immediate disposition of the check that had been tendered. Place the redemption check in an area meeting the Minimum Protection Standards (MPS) as outlined in IRM 1.16.15 and in Exhibit 1.16.15-1. Depending on the type of payment, this is generally an Special Security (SP-2 or SP-3) requirement. Generally, an acceptable location would be a qualified safe used by Advisory or Criminal Investigation. IRM 1.16.15 The payment will remain in a secured place until advice is received from area counsel regarding the next proposed action to be taken. Prepare Form 2276, Collateral Deposit Record for safekeeping of the property.

##### **Note:**

The period to redeem (e.g. 120 days from the date of foreclosing sale or the State allowed period whichever is longer) may expire while the check is being held by the IRS. However, to perfect the redemption of the property, the Certificate of Redemption must be properly recorded prior to the expiration of the redemption period.

4. See IRM 5.12.5.6.2 for preparation and disposition of the certificate.

#### **5.12.5.5.2 (07-01-2001)**

##### **Proper Person**

1. It is essential that a timely tender of the amount required to redeem be made to the proper person. Even if the person who purchased the property at the foreclosure sale conveys it to another, the Service may still redeem the property from the subsequent purchaser. The advice of area counsel should be solicited to ascertain the proper party and amount to be tendered.

#### **5.12.5.5.3 (06-11-2010)**

##### **Reimbursable Expenses**

1. The Service will pay an amount equal to the excess of the expenses incurred to maintain the property over income from the property.



2. See IRM 5.12.5.2 and its subsections for the expenses that may be claimed by the foreclosure sale purchaser, the documentation needed, and the consideration given in determining which, if any, expenses will be reimbursed.
3. Any type of maintenance expense/fee claimed must be verified and justified as necessary under the circumstances. Unusual claims should be discussed and agreed to by the manager. If the legality of the expense is being challenged area counsel concurrence is also needed.

#### **5.12.5.5.4 (06-11-2010)**

##### **Amount To Be Paid**

1. In any case in which the United States redeems real property under 28 USC 2410 or IRC 7425, the amount to be paid for the property will be the sum of:
  - A. the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),
  - B. interest on the amount paid (as determined under (a) above) at 6 percent per annum from the date of such sale,
  - C. the amount (if any) equal to the excess of the expenses necessarily incurred in connection with such property after the sale but before redemption, over the income from such property plus (to the extent such property is used or allowed to be used by the purchaser) a reasonable rental value of such property, and
  - D. the amount, if any, of a payment made by the purchaser (or successor in interest) after the foreclosure sale to a holder of a lien senior to that foreclosed.

#### **5.12.5.6 (07-01-2001)**

##### **Redemption Certificate**

1. Certificates of redemption will be issued when investigations are complete and all statutory requirements are met.

#### **5.12.5.6.1 (01-01-2006)**

##### **Certificate of Redemption**

1. If a Advisory TM exercises the right of redemption, his or her designee will apply to the officer designated by local law for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States.
2. If no such officer has been designated by local law, or if the office so designated fails to issue the necessary documents, the Advisory TM is authorized to issue the certificate of redemption. Preparation and disposition of the certificate of redemption will be accomplished by the advisor assigned to work the investigation.
3. The authority to sign a certificate of redemption has been delegated to the Advisory TM, as stated in Servicewide Delegation Order 5-4. See IRM 1.2.44.4(29-31)
4. In cases where there is no guaranteed purchaser, the certificate of redemption must be signed by the Advisory AM. See Delegation Order 5-4, IRM 1.2.44.4(35-37).

#### **5.12.5.6.2 (07-01-2001)**

##### **Preparation and Disposition of Certificate**

1. Area counsel will provide the Advisory TM or his/her designee instructions as to the form and control of the certificate to be used in each jurisdiction.
2. The certificate of redemption may be prepared either before the check is delivered to the payee or immediately afterwards provided sufficient time exists to permit filing the certificate before the redemption period expires.
3. The certificate will be prepared in duplicate by the advisor and disposed of as follows:
  - A. Original to be filed with recording official.
  - B. Duplicate to be retained by Advisory.
4. Advisory is responsible for periodic follow-up action until the redeemed property is disposed of. The frequency of follow-up activity can be determined by the Advisory TM.

#### **5.12.5.6.3 (07-01-2001)**

##### **Filing Certificate**

1. The Advisory office should promptly cause the certificate to be recorded in the proper recording office. A revenue officer or PALS will ensure that the certificate is personally delivered and verify recordation.
2. If the State in which the real property is redeemed has not designated an office in which the certificate may be recorded, the certificate shall be filed in the office of the clerk of the United States District Court, for the judicial district in which the redeemed property is situated.
3. Area counsel should be requested to indicate the proper place for recording the certificate in each jurisdiction.

#### **5.12.5.7 (06-11-2010)**

##### **Administration of Redeemed Property**

1. The Advisory TM should periodically request status reports from their area advisory office involved in the redemption investigation. If the investigation is assigned to a revenue officer or PALS, the advisor should obtain necessary status updates as required by his/her Advisory TM.
2. The Advisory GM will ensure that redeemed property located within the jurisdiction of the area office is maintained as determined to be appropriate for the type of property involved. Ordinary and necessary expenses may be incurred in the preservation of the property. These expenses may include the cost of minor repairs to the property if deemed necessary for its preservation. The procedures relating to the protection of property the during period of seizure also apply to redeemed property. Refer to IRM 5.10.3.6 for the correct procedures to follow.
3. Maintenance expenses or fees may be incurred while administering redeemed property. Refer to IRM 5.12.5.2 for specific guidance on what are appropriate maintenance expenses.
4. Estimated expenses expected to be incurred in connection with the preservation or sale of the property should be documented and paid in the same manner as is required with seized property. Review the procedures as discussed in IRM 5.10.3.7.

#### **5.12.5.7.1 (07-01-2001)**

##### **Lease of Redeemed Property**

1. Real property may be leased if it is determined that it will be in the possession of the Advisory TM over an extended period of time and that the Government's interest will best be served by such action. The initial determination will be made by the advisor with concurrence from the Advisory GM, and will be based upon the circumstances of the investigation. However, the final decision rests with the Advisory TM and his or her approval must be secured before the property is offered since the Advisory TM must sign the lease.
2. If it is determined that redeemed property will be leased and a prospective lessee has been secured, the advisor and his/her manager, should request that area counsel prepare a lease agreement in duplicate. The terms of the lease should generally not be more than a year and should not contain any provision which would prevent selling the property, subject to the lease, at any time a suitable purchaser is found. The lease agreement should specify that payments be made by certified or cashier's check or



money order and sent directly to the advisor. Area counsel should be furnished the following information:

- A. name and address of the lessee
  - B. area involved
  - C. description and location of property
  - D. how property was acquired by the United States
  - E. period of the lease
  - F. terms of payment (amount, manner, due date and place of payment)
  - G. any special provisions to be contained in the lease, such as property maintenance, authorized alterations, improvements, etc
  - H. any other pertinent information
3. Upon receipt of the proposed lease agreement from area counsel, the Advisory GM will:
- A. review the lease to see that it conforms to the intent of the parties involved
  - B. forward original and duplicate to the Advisory TM for his or her review and subsequent approval
4. After the Advisory TM has signed the lease agreement, both copies will be returned to the Advisory GM, who will assign the advisor responsible for the investigation to:
- A. secure the signature of the lessee on the original lease agreement.
  - B. furnish duplicate lease agreement to the lessee which may be considered authority for the lessee to have possession of the property in accordance with terms of the agreement.
  - C. file original lease agreement in the related Disposition of Redeemed Property case file.
5. Payment received from leased property should be discussed with Area Counsel for a determination as to how these funds should be applied. Most likely any payments will be applied first to the revolving fund balance and then to the taxpayer's liability. Please refer to IRM 5.10.7.2(4) for additional information on preparation of a memorandum for lease payments. IRM 5.10.7.2
6. If a payment is not received within a reasonable time after the due date, the Advisory GM should contact the lessee to secure payment. If payment is not received, area counsel should be consulted as to the legal action required.

**Note:**

Please refer to IRM 5.10.7.2.1, Lease of Real Property for additional information.

**5.12.5.7.2 (06-11-2010)  
Sale of Redeemed Property**

1. Authority to sell redeemed property is contained in IRC 7506 (real property). The administration and disposition of real property is the responsibility of the Advisory TM for the area in which the real property is situated. In the case of real property, the Commissioner may, if deemed advisable, take charge of and assume responsibility for the administration and disposition of the property by giving written notice to the Advisory TM through the Advisory AM or the Director, AIQ.
2. If real property consisting of a single parcel is situated in more than one area/territory, the responsibility for the administration and disposition of the property will be that of the Advisory TM under whose direction the property was redeemed. If there is doubt as to which Advisory TM is to have charge of the property, the pertinent facts should be reported to the Advisory AM so that a designation may be made.

**Note:**

For additional information on the sale of "acquired property" please refer to IRM 5.10.7.3, Preparations for Sale.

**5.12.5.7.3 (07-01-2001)  
Report of Sale**

1. Advisory will receive the original and duplicate, with all attachments, of the report entitled "Report of Sale of Redeemed Property." The report will include:
  - A. name and address of purchaser
  - B. sale price of property
  - C. expenses of sale shown by amount, names and addresses of payees and the services rendered
  - D. date of sale
  - E. place of sale
  - F. places and dates that notices of sale were published and/or posted
  - G. a statement signed by the employee conducting the sale and by the employee who assisted in the sale. The statement will certify the sale was conducted in accordance with IRC 7506 and regulations, and that the information reported is a true and correct record of the sale proceedings
2. Vouchers for sale expenses should be attached to the duplicate report.
3. Attachments to the original of the report will include:
  - A. copy of the notice of sale
  - B. triplicate of the memorandum transmitting the sale proceeds
  - C. Forms 2593-A, Sealed Bid For Purchase of Property Redeemed by the United States, if applicable. Form 2593-A
  - D. tabulation of bids
4. Upon receipt of the reports, Advisory will:
  - A. note the ICS history screen

- B. forward the duplicate report, with any vouchers not previously submitted to both SB/SE Budget Finance office and to Beckley Finance Center. In addition, the area counsel concurrence memorandum will be included as part of the report

**Note:**

Please refer to IRM 5.10.7.7, Report of Disposition - Sale of Redeemed Property for additional information.

**5.12.5.7.4 (07-01-2001)**

**Deed to Real Property**

1. Regulations under IRC 7506 provide that, upon payment in full of the purchase price, the Advisory TM will issue a deed to the purchaser.
2. The deed will be prepared in duplicate by Advisory and forwarded to Area Counsel for approval. When the approved deed is received in the Advisory GMs office, he or she will:
  - A. remove the original report of sale from the suspense file
  - B. secure the signature of the Advisory TM on the original deed
  - C. furnish the original deed to the purchaser
  - D. note on the duplicate deed the date the original deed is executed and the date it is delivered to purchaser
  - E. file duplicate deed and original report of disposition in the redemption case file

**5.12.5.7.5 (06-11-2010)**

**Disposition of Redemption Sale Proceeds**

1. Proceeds from the redemption sale are first used to reimburse the revolving fund. If there are insufficient funds from the sale of the property to fully reimburse the fund, notify Beckley Finance Center by memorandum or by secure E-mail and follow the procedures in IRM 5.12.5.4.(6) and IRM 5.12.5.7.4(4).
2. Surplus proceeds remaining after reimbursing the revolving fund are applied in accordance with IRC 6342(a) and in the same manner as funds realized from levy proceeds. Legitimate property maintenance, preservation, and sale expenses incurred while bringing the redeemed property to sale are deducted first and the net amount is credited to the taxpayer's account by the advisor handling the case.
3. Any remaining surplus after reimbursement of the revolving fund and full payment of the taxpayer's liability is refunded, in accordance with IRC 6342(b), to the person entitled to receive the funds. Interest is paid on surplus proceeds in accordance with IRC 6611. The party generally entitled to these surplus proceeds is the taxpayer. Junior lienholders are not entitled to proceeds from the sale of redeemed property, and they should not be notified. If Advisory cannot determine the party entitled to the surplus proceeds, the case will be referred to area counsel for a legal opinion prior to any disposition of this surplus.

**5.12.5.7.6 (01-01-2006)**

**Transmittal Memorandum for Redemption Sale**

1. A transmittal memorandum entitled "Proceeds from the Sale of Redeemed Property" and any accompanying remittances will be controlled by the advisor. If the memorandum is prepared by a revenue officer or PALS, it will be forwarded to Advisory for review. The memorandum will contain the following information:
  - A. name and address of the taxpayer as shown on the Form 4376, which would have been submitted at the time redemption of the property was recommended
  - B. name and address of the purchaser
  - C. redemption sale price
  - D. amount previously deposited with agreement to bid, if applicable
  - E. identification of remittances accompanying the transmittal, including the amount submitted with the winning bid, if applicable, and the amount remitted to pay the balance of the purchase price
2. The advisor is responsible for transmitting the memorandum, remittances, and the purchaser's deposit (if any) to Beckley Finance Center.
3. The Advisory advisor is also responsible for returning any other deposits submitted with unsuccessful "agreements to bid" unless it was as a result of the depositor defaulting on the agreement.
4. Where payment of the full purchase price is deferred, the purchaser's deposit will be promptly forwarded to Beckley Finance Center for deposit to the revolving fund. This also applies to any deposit the purchaser may have made with an "agreement to bid" prior to the sale. The advisor must ensure that the funds are correctly identified to Beckley Finance Center.
5. The purchaser's payment of the balance must also be clearly identified for Beckley Finance Center. Duplication of memorandums is not required for each of these scenarios, as long as Beckley Finance Center is understanding of what the funds represent. This can be accomplished through an telephone call, memorandum or secured E-mail message. The advisor is responsible for ensuring that communication efforts with Beckley Finance Center are clearly understood and well documented in the ICS history.
6. The Advisory GM will follow-up on the authorization for redemption within 60 days from the initial repayment date or any subsequent repayment date if the funds have not been repaid. If there is a delay in repayment to the revolving fund, the advisor will notify Beckley Finance Center by memorandum or by secure E-mail, giving the redemption serial number, amount to redeem, explanation for the delay, and the new estimated repayment date. The advisor must submit a status report to Beckley Finance Center every 30 days after the initial 60 day time period has expired. If, after 90 days, the amount remains unpaid, Advisory GM concurrence must be obtained for continued delays.
7. See also IRM 5.10.7.7, Report of Disposition - Sale of Redeemed Property for additional information.

**5.12.5.7.7 (06-11-2010)**

**Process, Application, and Recordation of Redemption Sale Proceeds**

1. A record of the distribution of all redemption proceeds will be maintained in the redemption file that is kept by Advisory.
2. The advisor is responsible to:
  - identify the taxpayer's account to which the surplus over the amount advanced from the revolving fund is to be applied in accordance with IRC 6342(a), and
  - request a copy of the transmittal be returned to the Advisory office with the surplus funds so that there will be no difficulty in properly applying the funds
3. Upon receipt of the transmittal and gross proceeds from Advisory, Beckley Finance Center will:
  - deposit the check;
  - credit the appropriation with the amount originally disbursed to the Advisory area office,

- forward the remainder by check to the advisor for crediting to the taxpayer's account.
4. If the revolving fund is not reimbursed by the repayment date because of default, litigation, etc., the advisor will submit a status report monthly, until such time as the fund is reimbursed. After 90 days, the Advisory GM will need to secure Advisory TM concurrence of continued delays. Advisory TM concurrence will be required every 30 days thereafter until the matter is resolved.
  5. In the case of surplus proceeds remaining after reimbursement of the revolving fund and application of proceeds under IRC 6342(a), Advisory will deposit these funds in the 4720 Deposit Fund Account located at the Ogden campus. A memorandum will be completed in duplicate. The memorandum will be titled "Surplus Proceeds—Redemption Sale" and will contain the following:
    - A. taxpayer's name and address;
    - B. the redemption serial number;
    - C. amount of surplus proceeds; and,
    - D. date of the sale.
  6. The original of the memorandum will be used as a posting document to submit the funds to the Ogden Campus for processing. A copy of the memorandum will be placed in the Redemption file and in the "Surplus Proceeds—Redemption Sale" File to be established.
  7. Payment of surplus proceeds will need to be coordinated between the Ogden Campus staff and the advisor assigned to monitor the status of payment. This will likely be in the form of a manual check being issued to the advisor for delivery to the appropriate party in accordance with IRC 6342(b). A record of the surplus proceeds will be referenced in the history section of ICS. Indicate the amount as "Surplus Proceeds—Redemption Sale."
  8. All payments, directly related to Redemption and Release of Right of Redemption, secured by AIQ staff (Advisory/PALS) and applied to the taxpayer's account will use the Designated Payment Code (DPC) 58 for the Transaction Code (TC) 670. Payments received by a revenue officer should be applied using TC 670 DPC 07.

#### **5.12.5.8 (07-01-2001)**

##### **Release of Right of Redemption—Judicial Sales**

1. The U.S. Government may release its right to redemption. This right cannot be sold, but the government can issue a certificate stating that it will not exercise the right to redeem. Generally, this requires payment of the value of the right of redemption as determined by the advisor and approved by the Advisory GM.
2. Authority to release any right of redemption is delegated to the Department of Justice by section 0.70 of Title 28 of the Code of Federal Regulations. In any case involving a private request, a consideration equal to the value of the right of redemption or \$50, whichever is greater, is required by the Department of Justice and must be paid for the release. However, no consideration will be required for releases of right of redemption issued to Federal agencies when it has been determined that the redemption right has no value.

#### **5.12.5.8.1 (06-11-2010)**

##### **Applications for Release of Right of Redemption—Judicial Sale**

1. Any person desiring a release of right of redemption with respect to a Federal tax lien arising from a judicial proceeding shall submit to the United States Attorney for the area in which property subject to the right is located an application in quadruplicate, executed under penalties of perjury, in form and content as set forth in the Department of Justice Form No. OBD-225, requesting that the right be released. Form No. OBD-225 may be secured by applicants from the office of the United States Attorney.

#### **5.12.5.8.2 (06-11-2010)**

##### **Referral of Applications**

1. Applications for release of right of redemption, together with remittance and all necessary evidence, will be sent by applicants directly to the United States Attorney. Any applications received in the area office will be referred to Advisory for immediate transmittal to the United States Attorney.
2. The United States Attorney will forward the original and two copies of the application, together with one set of the appraisals, to Advisory for verification and recommendation. Applications received in the area office from any Federal agency may be processed by Advisory without first being referred to the United States Attorney.
3. If an application is complete and proper, a field investigation will not be required unless Advisory has information warranting an investigation. A field investigation will not be required on any application made by the Veterans Administration or any other Federal Agency regardless of value or use. An exception to the general rule may be determined by the Advisory GM with Advisory TM concurrence. In those rare cases requiring a field investigation, a copy of the application and any attachments should be promptly forwarded with Form 2209, Courtesy Investigation, to the Area office having jurisdiction in the area where the property is located. The original and one copy of the application and attachments should be retained for reference and follow-up purposes.
4. Advisory will complete Part B of any application that does not require a field investigation. Before a recommendation is made, Advisory must be satisfied that the appraisals were made by disinterested persons and that they were qualified to make appraisals. A memorandum report specifically stating that the appraisers involved are disinterested and qualified will be prepared and accompany the application. In those cases in which the applicant is a Federal agency, the appraised value furnished in the application will be accepted as correct and no statement will be necessary.

#### **5.12.5.8.3 (07-01-2001)**

##### **Investigation of Applications**

1. Applications in which field work is required shall be investigated promptly by a revenue officer or a PALS in order that final disposition may be made by Advisory within 30 days. The employee assigned to investigate the application shall verify each item contained in the application or which, in accordance with the requirements prescribed, should have been contained in the application.
2. The investigating employee shall gather sufficient facts in order that a determination may be made as to whether the United States should release its right of redemption.
3. In accordance with Servicewide Delegation Order 5-4, the release of the right of redemption is currently delegated to the Advisory GM.

#### **5.12.5.8.4 (07-01-2001)**

##### **Report of Investigation**

1. The investigating employees report of investigation will be prepared when the investigation is completed. The report will then be submitted to Advisory. The Advisory GM is responsible for determining whether the final report will be on Form 4376, Report of Investigation Form 4376 or in memorandum form. The report will specifically state whether the appraisers involved are disinterested and qualified.

#### **5.12.5.8.5 (07-01-2001)**

##### **Disposition of Application**

1. Upon receipt of the investigator's report, the advisor will review it to ensure that there is sufficient information to determine whether the right of redemption should be released. The advisor will complete the application by indicating the Service's recommendation and forward the report to his/her manager for approval.
2. Upon completion of the recommendation, the original and one copy of the application, with copies of the investigator's report attached, will be forwarded to area counsel for submission to the Department of Justice. A copy of the application, the set of appraisals and a copy of the report will be maintained by Advisory.

3. Upon verification (usually by a copy of a letter sent to the applicant, and receipt of the payment of the amount required for the release of the right of redemption), such payment shall be applied to the taxpayer's outstanding liability.

#### **5.12.5.9 (07-01-2001)**

##### **Release of Right of Redemption — Nonjudicial Sales**

1. IRC 7425(d) provides for redemption, by the Government, of real property sold in a nonjudicial proceeding when the sale is made to satisfy a lien that is prior to that of the United States. The 120-day (or longer, if State law so provides) period for redemption is applicable.
2. In nonjudicial proceedings, if it is determined that the right of redemption is valueless, no consideration shall be required to waive the Government's redemption right from either a private individual or Federal agency.
3. Any questions arising as to the value of the right of redemption shall be referred to area counsel for an advisory opinion.

#### **5.12.5.9.1 (06-11-2010)**

##### **Application Investigations - General**

1. Applications for release of right of redemption, and all necessary evidence, will be sent by applicants to the attention of the Advisory GM, for the area in which property subject to the right is located. Applicants should be furnished a copy of Publication 487, How to Prepare Application Requesting the United States to Release Its Right to Redeem Property Secured by a Federal Tax Lien. In addition, Publication 4235, AIQ Advisory Group Addresses should also be referenced for the correct Advisory group address. Publication 487Publication 4235 Right of Redemption investigations originate in Advisory.
2. Applications arising out of nonjudicial proceedings will be processed promptly. It is important to utilize the services of area counsel whenever the need arises. This decision must be made promptly by the advisor or the employee assigned to handle the investigation.
3. The investigating employee shall gather sufficient facts to determine whether the United States should release its right of redemption. The investigation may be terminated when it is found that there is an encumbrance(s) prior to the foreclosing lien holder in excess of the value of the property.

#### **5.12.5.9.1.1 (06-11-2010)**

##### **Applications Investigated by Advisory**

1. If an application is complete and proper, a field investigation will not be required unless there is information in Advisory that indicates such investigation is warranted. A field investigation will not be required on any application made by the Veterans Administration or any other Federal Agency regardless of value or use. Any exceptions to this would be determined by the Advisory GM.

#### **5.12.5.9.1.2 (06-11-2010)**

##### **Applications Referred to the Field for Investigation**

1. Certain situations may warrant field involvement. When this occurs, the advisor will assign the redemption OI to either a revenue officer or a PALS to investigate. This decision will be contingent upon factors such as geographic feasibility and the need for investigative field work.
2. Due to the need for immediate assignment of these cases, OIs will be routed directly to the field revenue officer group working the zip code. The group manager will be required to treat these OIs as priority work. Redemption OIs will be assigned to a revenue officer or PALS expeditiously, to ensure that the Government's interest is not compromised and that the investigation is completed accurately and timely. Redemption OIs will be exempt from existing case delivery parameters.

#### **5.12.5.9.1.3 (06-11-2010)**

##### **Applications Investigated by the Field**

1. Applications in which field work is required will be investigated promptly by a revenue officer or PALS, in order that final disposition may be made by Advisory within 30 days of receipt. The investigating employee will verify every item contained in the application and identify any item which should have been included in the application.
2. Except in unusual cases, it will not be necessary for the revenue officer or PALS to secure outside appraisals to establish the value of the property prior to making a recommendation. If the situation arises to consider the services of an outside contractor, please refer to the procedures outlined in 5.12.5.4.4

#### **5.12.5.9.2 (07-01-2001)**

##### **Report of Investigation**

1. The investigating employee's redemption report shall be prepared upon completion of the investigation. The report will be completed using Form 4376, Report of Investigation, and may include a memorandum containing additional information, if necessary. The report will be forwarded with the copy of the application and all exhibits to the group manager. He or she will review the report and, upon approval, return the file to the employee for forwarding to Advisory.

#### **5.12.5.9.3 (06-11-2010)**

##### **Release of Right of Redemption Issued**

1. When a Release of the Right of Redemption is warranted, the advisor will prepare the appropriate document for signature approval.
2. Use the ICS Templates created for this purpose. If the Release of Right of Redemption is for value use the template "certRightValue ". If the investigation has determined there is no value in the property to redeem, use the template "certRightValueless" .
3. The release shall be prepared in duplicate, the original will be given to the applicant, upon receipt of the amount determined to be the Government's interest. The duplicate information will be retained by Advisory.
4. In accordance with Servicewide Delegation Order 5-4 found in IRM 1.2.44.4(32-34), the release of the right of redemption is currently delegated to the Advisory GM.
5. Any payment secured for the release of the right of redemption shall be applied to the taxpayer's outstanding liability.
6. Payments received by AIQ employees (Advisor/PALS) will be applied using Transaction Code (TC) 670 with the Designated Payment Code (DPC) 58. The DPC 58 is not for Field employee use.
7. Payments received by revenue officers should be applied using TC 670 DPC 07.

#### **Exhibit 5.12.5-1 Pattern Letter P-597**

This Pattern Letter can be found with other ICS template letters.

#### **P-597**

Internal Revenue Service      Department of the Treasury  
Washington, D.C. 20224

Date:

Property Location:

Date of Sale:

Contact Telephone Number:

[Salutation]

We understand that you purchased property identified above at a foreclosure sale. This property was subject to a Federal tax lien junior to the foreclosing lien. Under 2410 of Title 28 or Section 7425(d) of the Internal Revenue Code, the Internal Revenue Service has the right to redeem the property from you by paying you the amount specified in the regulations issued under that section.

We are considering this action and can take it within the period that begins with the date of the sale and ends on ( **Enter date, and number of days after**) after the date of the sale. We may release our right to redemption before the redemption period expires if you pay an amount determined to be equal to our redemption right. Publication 487 is enclosed. It describes how to apply for a release. If the right of redemption is determined to be without value, you will not be required to pay to obtain a release.

If we redeem the property, we will pay you the sum of the following amounts:

1. The actual amount you paid for the property at the foreclosure sale, including the amount of the obligation secured by the foreclosing lien to the extent satisfied by the sale if you were the holder of that lien;
2. Interest on the amount paid at the rate of six percent a year for the period from the date of the sale to the date of redemption;
3. An amount equal to the excess of (A) the expenses you incurred to maintain the property over (B) any income you realized from the property, plus a reasonable rental value of the property (to the extent the property is used by you or with your consent, or is rented at less than its reasonable rental value); and,
4. The amount you paid after the foreclosure sale to a holder of a senior lien, if you properly request reimbursement for such payment and your request is approved.

P-597 (Rev. MM-YY)

(Reference: IRM 5.12.4.13)

- 2 -

If you plan to request reimbursement for payments made to a senior lienor (see paragraph 4, above), you have 15 days from the date this letter was sent to do so. Your request must contain an itemized statement, signed by you, of the amount claimed, together with supporting evidence. The request must also include a waiver or other document that will be effective, on redemption by the United States, to discharge the property from, or transfer to the United States, any interest in or lien on the property that may have arisen under local law from payment made to a senior lienor.

No amount may be reimbursed to you for payments made to a senior lienor unless we redeem the property and you file a timely request for reimbursement. If you need more time to prepare your request, we may be able to give you an extension.

If your request for reimbursement for payments to a senior lienor is denied, you will receive a notice of denial within 30 days of receipt of your request, or 15 days before expiration of the period for redemption, whichever is later.

If we redeem the property, we must issue our check to the proper person before the redemption period expires. Please help us by answering the questions in the attachment to this letter. Then return the attachment to us within 15 days from the date it was sent. An addressed envelope is enclosed for your convenience. The copy of this letter is for your records.

If you have any questions, please contact me at the telephone number or address shown in the heading of this letter.

Sincerely yours,

[Space for signature]

Title

Enclosures:  
Publication 487  
Attachment  
Copy of this letter

Form P-597 (Rev. MM-YY)

- 3 -

Attachment

IDENTITY OF PERSON TO WHOM PAYMENT SHOULD BE MADE FOR REDEMPTION OF PROPERTY UNDER SECTION 7425 OF THE INTERNAL REVENUE CODE OR SECTION 2410 OF TITLE 28 OF THE UNITED STATES CODE

1. Name and address of person to whom payment should be made (if person is your agent, please indicate):
2. Area code and telephone number:
3. Dates when person will be available to accept payment:

Between     (date)     and     (date)     ( Note: Second date should not be less than 20 days before the redemption period expires.)

Give days of week and hours when person will be available during the above period:

SIGNATURE: \_\_\_\_\_ Date: \_\_\_\_\_

Form P-597 (Rev. MM-YY)

**Exhibit 5.12.5-2  
Letter 1879(P)**

This letter can now be found on the Publishing web site.

Person to Contact:

Badge Number:  
Telephone/Fax Number:  
Refer Reply To:  
Date:

**Information for Prospective Purchasers of Real Property**

The Internal Revenue Service is seeking to redeem and sell the real property located at *(Street address)*.

**Guaranteed Minimum Bid Amount: \$**

**To Redeem Real Property:**

In order to redeem the property under *(Section 7425(d) of the Internal Revenue Code or Section 2410 of title 28 of the United States Code)*, the IRS must obtain a written agreement to bid. If you are interested in bidding, I can send you an "Agreement to Bid" letter. The IRS generally requests a minimum deposit of 20% of the amount bid on the property.

**Deposits for Real Property**

Deposits generally are made in the following forms:

- Cashier's or certified check
- Bank or postal money order
- Certificate of Deposit
- Irrevocable line of credit

**Redeemed Real Property**

If redeemed the property will be sold pursuant to Section 7506 of the Internal Revenue Code. Property is sold subject to any prior outstanding mortgages, encumbrances, or other liens having priority over the foreclosing instrument.

If you have any questions, or require additional information, please contact me at the telephone number above.

Sincerely,

Title

**Exhibit 5.12.5-3  
Pattern Letter P-338**

**AGREEMENT TO BID**

**(Because of limited use, the Headquarters Office will not provide a form for this purpose.)**

I, the undersigned, in consideration of the United States Government offering for public sale the property described below, agree to bid at least the amount of \$ \_\_\_\_ for the property if offered for sale within \_\_\_\_ days from the date of this agreement.

(Description of Property)

\*I authorize the enclosed deposit of \$ \_\_\_\_ to be applied against the sale price if I am the successful bidder.

\*I further understand and agree that if I default in payment of the bid price, and the property is not sold for at least that amount, my deposit will be retained pending final determination of the damages the government sustained because of default. If damages exceed the amount of the deposit, I will be liable for the excess damages.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name:  
Street Address:  
City/State/Zip Code:  
Telephone/E-mail:

\*These paragraphs should be omitted if a deposit is not required.

**Exhibit 5.12.5-4  
Federal Tax Lien Revolving Fund Request**

- DATE:
- REQUESTOR/BADGE NUMBER:
- REQUESTOR'S TELEPHONE NUMBER:
- REQUESTOR'S FAX NUMBER:
- TERRITORY:
- AREA OFFICE:
  - 1. REDEMPTION SERIAL NUMBER:
  - 2. AMOUNT REQUIRED TO REDEEM:
  - 3. ESTIMATED REDEMPTION PROPERTY VALUE:
  - 4. AMOUNT OF AGREED BID:
  - 5. DATE CHECK REQUIRED:
  - 6. DATE OF SALE:
  - 7. DATE REDEMPTION RIGHT EXPIRES:
  - 8. APPROXIMATE REPAYMENT DATE:
  - 9. PERSON/ORGANIZATION RECEIVING THE CHECK:
  - 10. SEND CHECK TO: IRS OFFICE ADDRESS, ATTN: ADVISOR/REVENUE OFFICER'S NAME

**Exhibit 5.12.5-5  
FTL REVOLVING FUND**

FUNDS FROM SALE OF REDEEMED PROPERTY  
DATE:

TECHNICAL SERVICES ADVISOR:

TERRITORY:

AREA OFFICE:

1. REDEMPTION SERIAL NUMBER:
2. TOTAL OF ADVANCE FROM THE FUND:
3. AMOUNT REALIZED FROM THE SALE:
4. AMOUNT OF ANY PARTIAL PROCEEDS:
5. AMOUNT BEING SUBMITTED:
6. AMOUNT TO BE RECORDED AS A REPLENISHMENT:
7. AMOUNT OF LOSS TO THE FT LRF ESTIMATED:
8. AMOUNT OF ADMINISTRATIVE COSTS:
9. AMOUNT OF TAX LIABILITY SATISFIED:
10. AMOUNT OF ANY SURPLUS:

[More Internal Revenue Manual](#)





## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 6. Appeals Processes Involving Liens

##### 5.12.6 Appeals Processes Involving Liens

- 5.12.6.1 [Purpose](#)
- 5.12.6.2 [Appealing the Notice of Federal Tax Lien \(NFTL\)](#)
- 5.12.6.3 [Collection Due Process \(CDP\) and Collection Due Process \(CDP\) Notices](#)
- 5.12.6.4 [Collection Appeals Program](#)

##### Manual Transmittal

October 14, 2013

##### Purpose

(1) This transmits the revised IRM 5.12.6, Federal Tax Liens, Appeals Processes Involving Liens.

##### Background

A revision of the IRM 5.12 chapter has been done to consolidate and coordinate like topics, reduce duplication of content, and provide an overview, cross-references, and contacts.

##### Material Changes

(1) As part of the reorganization of IRM 5.12, this section is now titled "Appeals Processes Involving Liens."

(2) The contents of this IRM section were taken from IRM 5.12.1 and 5.12.6 and Interim Guidance memorandums that were issued. Some former sections were deleted, merged or incorporated to remove duplicative information.

(3) The following table provides a cross walk of sections moving to IRM 5.12.6 and the nature of the changes involved.

New IRM Number	Old IRM Number(s)	Material Change
5.12.6.1	n/a	New section citing IRM purpose
5.12.6.2	5.12.1.1	No material changes
5.12.6.3	5.12.1.2	Revised to clarify terminology, updated IRM reference and incorporated IRM 5.12.6.4
5.12.6.3.1	5.12.1.2.1	No material changes
5.12.6.3.2	5.12.1.2.2	Updated to elaborate on allowable communications with Appeals
5.12.6.3.3	5.12.1.2.3	Clarified retained jurisdiction
5.12.6.3.4	5.12.1.2.4	Restructured for clarity
5.12.6.3.5	5.12.1.2.5	Added section on Consolidated Groups
5.12.6.3.6	5.12.1.2.6	Revised to clarify CDP issuance process
5.12.6.3.6.1	5.12.1.2.6.1	Restructured for definition of subsequent assessment and terminology change
5.12.6.3.7	5.12.1.2.7	Changed terminology and refined procedure.
5.12.6.3.7.1	5.12.1.2.7.1	Clarified when CDP rights are applicable
5.12.6.3.8	5.12.1.2.8	Incorporated IRM 5.12.6.8.1
5.12.6.3.9	5.12.1.2.9	Added note to define terminology and clarify CDP rights
5.12.6.3.10	5.12.1.2.10	Merged prior IRM 5.12.6.4.5, Creating Notices for the Power of Attorney (POA)/Taxpayer Representative and Co-obligors
5.12.6.3.10.1	5.12.1.2.10.1	No material change
5.12.6.3.10.2	5.12.1.2.10.2	No material change
5.12.6.3.11	5.12.1.2.11	Updated to clarify that only Collection Appeal Program (CAP) rights are available to the nominee or alter-ego.
5.12.6.3.12	5.12.1.2.12	No material change
5.12.6.3.13	5.12.1.2.13	No material change
5.12.6.3.14	5.12.1.2.14	Revised to require contact with Appeals when a withdrawal of the CDP hearing request is secured after the case was sent to Appeals. It also addresses required contact with Appeals when the NFTL is being withdrawn on an ongoing Appeals case
5.12.6.3.15	5.12.1.2.15	No material change
5.12.6.3.16	5.12.1.2.16	Revised to show that an invalid CDP notice can be rescinded and a correct substitute CDP notice issued. Valid CDP notices can only be rescinded during the time period for filing a hearing request and only if there was no CDP hearing request
5.12.6.3.17	5.12.1.2.17	Incorporated the instructions contained in Interim Guidance Memorandum SBSE-05-0213-017 and merged prior IRM 5.12.6.4.3, Returned CDP Notices.
5.12.6.3.18	5.12.1.2.18	Changed the transaction code input time frame to fourteen (14) days of receipt of returned lien CDP notices and merged prior IRM 5.12.6.4.3.1, Transaction Code 971 Posting for Receipt and Delivery of CDP Notices
5.12.6.3.19	5.12.1.2.19	Revised to clarify information regarding filing a NFTL during the appeal.
5.12.6.4	5.12.1.3	Clarified when Collection Appeals Process (CAP) may be used.
5.12.6.4.1		New section which lists exclusions to CAP for NFTL issues.
5.12.6.4.2		New section that elaborates on CAP procedures.
5.12.6.4.3		New section which outlines procedures for disagreeing with the CAP decision.
5.12.6.4.4		New section on the CAP process

(4) The following table provides sections OF IRM 5.12.6 where the content is being deleted.

**Content being deleted as not applicable, outdated, or duplicative for the IRM's audience**

5.12.6.4  
5.12.6.4.1  
5.12.6.4.1.1  
5.12.6.4.1.2  
5.12.6.4.1.3  
5.12.6.4.4  
5.12.6.4.6  
5.12.6.4.7  
5.12.6.9  
5.12.6.9.2  
5.12.6.9.3  
Exhibit 5.12.6-2  
Exhibit 5.12.6-3

(5) Editorial changes were made throughout the IRM sections, terminology was updated for form and systemic changes.

**Effect on Other Documents**

This material supersedes IRM 5.12.1 dated January 9, 2009; IRM 5.12.2 dated March 8, 2012; IRM 5.12.3 dated June 1, 2010; IRM 5.12.6 dated July 16, 2010; and Interim Guidance Memorandum SBSE 05-0213-017, Returned Lien Collection Due Process Notices, dated February 28, 2013.

**Audience**

SBSE and W&I Collection, Centralized Lien Operation, and Appeals

**Effective Date**

(10-14-2013)

Michelle C. Alvarado  
Acting Director, Collection Policy  
Small Business/Self Employed Division

**5.12.6.1 (10-14-2013)**

**Purpose**

1. The purpose of this IRM is to convey instructions for identifying, preparing, and issuing lien notices being appealed.

**5.12.6.2 (10-14-2013)**

**Appealing the Notice of Federal Tax Lien (NFTL)**

1. Taxpayers may have two ways to appeal certain collection actions to the IRS Office of Appeals:
  - Collection Due Process or Equivalent Hearing; and
  - Collection Appeals Program (CAP).
2. Revenue officers and customer service employees should discuss the Collection Appeals Program (CAP) and Collection Due Process (CDP) appeal rights with taxpayers.
3. Taxpayers may also contact the Taxpayer Advocate Service (TAS) for assistance. See IRM 5.12.1 and IRM 13.1.7.2.

**5.12.6.3 (10-14-2013)**

**Collection Due Process (CDP) and Collection Due Process (CDP) Notices**

1. Under IRC § 6320, the Internal Revenue Service must notify taxpayers in writing of their right to a CDP hearing with the Office of Appeals the first time a tax period is included on a NFTL. The written notification must be given within five (5) business days of the filing of a Notice of Federal Tax Lien. When a taxpayer timely requests a CDP hearing the taxpayer has a right to judicial review of the Appeals determination.

**Note:**

For purposes of IRC § 6320 and this IRM, a "tax period" is the statutory assessment lien on a tax module. If a tax module contains multiple statutory assessment liens (e.g. TC 290, 300, 240, etc.), a CDP notice must be provided the first time any of them are shown on the NFTL.

2. Taxpayers may be entitled to a collection due process hearing if a timely request for a hearing is received. Otherwise, an equivalent hearing may be available. See IRM 5.1.9.3.2.2, Equivalent Hearing and Timeliness of Equivalent Hearing Request.
3. The taxpayer cannot obtain judicial review of a decision from an equivalent hearing (EH) unless the issue raised in the hearing provides for judicial review, i.e., taxpayer raises spousal defense issues under IRC § 6015 or interest abatement issues under IRC § 6404.
4. The CDP notice (Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320*) must be sent to the taxpayer *within five (5) business days* after the NFTL is filed with the local recording office. The notice must be:
  - given in person;
  - left at the taxpayer's residence or usual place of business; or
  - sent by certified or registered mail to the taxpayer's last known address.
5. The notice will include:
  - the amount of unpaid tax;
  - the right to request a hearing during a 30 day period (beginning after the five day period described in (4) above);
  - administrative appeals available to the taxpayer with respect to the NFTL and procedures relating to such appeals (e.g., meet with the employee's supervisor, Collection Appeals Program, etc.); and
  - the provisions of IRC § 6320 that relate to a CDP hearing and the provisions of the Internal Revenue Code relating to release of liens. (These provisions are explained in Publication 1660).

#### 5.12.6.3.1 (10-14-2013)

##### Hearing Issues

1. Certain issues and considerations must be undertaken during the hearing process. The taxpayer may raise any non-frivolous issue relating to the unpaid tax.
2. See IRM 5.1.9.3.9, Appeal Process, for additional information on this issue.

#### 5.12.6.3.2 (10-14-2013)

##### Requirement of Investigation

1. If the taxpayer requests a CDP hearing, Appeals must verify that procedures with respect to the filing of the NFTL and providing the CDP notice have been met. See IRM 5.1.9.3.9, Appeal Process, for additional information.
2. You may be asked to clarify certain issues. Appeals or the originating function may ask questions or provide information that involve ministerial, administrative, or procedural matters.
3. Care must be taken to refrain from prohibited ex parte communications. Ex parte is a term used in legal proceedings to describe a one-sided point of view received on behalf of or from one side or party only. In this context ex parte communications are communications which take place between appeals employees and other Internal Revenue Service employees, including revenue officers (ROs), without giving the taxpayers/representatives an opportunity to participate in the communications. See IRM 5.1.9.5, Communications with Appeals, and Rev. Proc. 2012-18 for additional information.

#### 5.12.6.3.3 (10-14-2013)

##### Judicial Review of Determination

1. The taxpayer has 30 days under IRC § 6320 from the date of the notice of determination by the Appeals Officer to file a petition appealing the determination with the U. S. Tax Court.
2. The Office of Appeals retains jurisdiction with respect to any Notice of determination issued under IRC § 6320, including subsequent hearings requested by the person who requested the original CDP hearing on issues regarding:
  - collection actions taken or proposed with respect to the Appeal determination; and
  - changes in circumstances of the taxpayer that affect the Appeal determination after the person has exhausted all administrative remedies, i.e., CAP.
3. See IRM 5.1.9.3.13, Jurisdiction Retained by Appeals, for additional information.

#### 5.12.6.3.4 (10-14-2013)

##### Suspension of Collection Period of Limitations

1. If a hearing is timely requested, the running of the period of limitation is suspended starting on the date the hearing request is received. The suspension will end:
  - when the decision of the Appeals office becomes final, i.e., 30 days after issuance of the determination if it is not appealed to the Tax Court; or
  - if appealed to the Tax Court, when the decision of the Tax Court case becomes final.
2. Notwithstanding the above, the period of limitation for collection will not expire before 90 days after a determination becomes final.
3. For more information see IRM 5.1.9.3.6 and Treasury Reg. §301.6320-1(g).

#### 5.12.6.3.5 (10-14-2013)

##### When is the CDP Notice (L3172) Issued

1. The CDP notice, L3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC § 6320*, is issued when the original NFTL is filed and when an additional NFTL is filed after a subsequent assessment is made, including assessments of additional penalties but not on accruals of penalties. See *IRM 5.12.6.3.6.1, Issuing L3172 on Additional Assessment*. Do not issue a CDP notice when an NFTL is filed in an additional jurisdiction if the taxpayer has already been issued a CDP notice for the tax and tax periods listed in the NFTL.
2. CDP notices are issued for the different entity types.

##### A. Individual taxpayers

###### Reminder:

When there is a joint liability each spouse will be sent the same notice in a separate envelope addressed respectively to each spouse at their last known address.

##### B. Co-obligors, which include:

- Ex-spouses
- Spouses living at the same address
- Spouses living at different addresses

##### C. Partnerships (See *IRM 5.12.6.3.7* for procedures to create CDP notices for general partners.)

##### D. Limited liability companies (LLC)

###### Note:

For assessments of employment taxes in the name and Employer Identification Number (EIN) of a single member LLC, you must determine whether the LLC or the owner of the LLC is the liable taxpayer prior to requesting the NFTL. To ensure the CDP notice is sent to the correct taxpayer, select the name and last known address of the liable taxpayer when requesting the NFTL. Refer to guidance on determining the liable taxpayer for an LLC in IRM 5.1.21, Collecting from Limited Liability Companies. If you have difficulty determining who should be identified on the NFTL, contact Collection Advisory or Area Counsel.

##### E. Corporations

##### F. Consolidated groups.

###### Note:

A consolidated group is an affiliated group of corporations connected through stock ownership in a parent-subsidary relationship as defined in IRC § 1504. The affiliated group may elect to file a consolidated income tax return. In such situations the common parent and all the subsidiaries must be listed on the NFTL. The name of the common parent & all the subsidiaries must also be listed on the CDP notice. The notice should not be mailed to the subsidiaries, as the common parent is the only entity with the right to participate in a CDP hearing on behalf of subsidiary members of the consolidated group. If you have difficulty determining who should be listed on the NFTL, contact Advisory or Area Counsel for assistance.

3. CDP notices list the same tax period, type of tax, and unpaid balance of assessment listed on the NFTL. If a subsequent NFTL is requested for the same tax periods **and** includes additional assessments, the Automated Lien System (ALS) will generate a L3172. The taxpayer is only entitled to a hearing for the assessments for which a notice was not previously issued. If a hearing is requested, include copies of previously issued tax liens and CDP notices in the Appeals case file.

**Example:**

A NFTL was issued for John and Nancy Smith for tax periods 30-200612, 30-200712, and 30-200812 on July 15, 2010 in Washington County, IA. A CDP notice listing all periods was mailed to both taxpayers. A second NFTL is filed on May 20, 2012 in Marshall County, IA, for tax periods 30-200612, 30-200712, 30-200812, 30-200912, and 30-201012. A CDP notice listing all periods, including those where a CDP notice was previously issued, is mailed to both taxpayers. If a hearing is requested based on the second CDP notice, the taxpayers are only entitled to a hearing for 30-200912 and 30-201012, because the other periods were covered in the first notice.

**Note:**

The CDP notice generated through ALS does not exclude any tax period listed on the NFTL even though a CDP notice was previously issued.

4. The notice of a right to a hearing will not be generated for refiled or estate tax liens.
5. TC 582 indicates that a NFTL was requested. When the NFTL is requested through ALS, it is also an indication that the L3172 generated. Check on ALS to determine when the notice was mailed.
6. Facsimile copies may be generated by revenue officers and other employees with access to ALS, as necessary.

**5.12.6.3.6 (10-14-2013)  
Issuing the CDP Notice**

1. The Service is required to notify taxpayers after a NFTL has been filed. The L3172 must be mailed within five business days after the NFTL is filed.
  - A. The taxpayer must request a IRC § 6320 CDP hearing no later than 30 days after the expiration of the five (5) business days after the date the NFTL is filed. For purposes of this calculation, the NFTL is considered filed on the date it should be received by the recording office.
  - B. The Service uses an estimated filing date on the L3172 to provide the taxpayer with the date by which the IRC § 6320 hearing request must be submitted. The estimated filing date is calculated by adding three (3) business days to the NFTL mailing date.
  - C. The taxpayer's response due date on the letter is determined by adding five business days plus 30 calendar days to the estimated filing date.
  - D. See *IRM 5.12.6.3.7, Preparation and Delivery of Manual CDP Notices*.

**Example:**

A NFTL is mailed April 1, 2009. The CDP notice must be mailed by April 13, 2009 (i.e. April 1 plus three (3) business days plus five (5) business days). The taxpayer's response due date is May 13, 2009 (i.e. 30 days later).

2. The principal means of delivering CDP notices is by mail. The notice must be sent:
  - certified mail; or
  - registered mail, if the taxpayer resides outside the United States.
3. CDP notices generated for NFTLs filed out of the area will have the name and telephone number of the contact person for the originating area office.
4. In rare instances, it may be necessary to hand carry a NFTL to the recording office. Revenue officers will use the ICS manual NFTL option. Whenever a NFTL is manually prepared and filed, the CDP notice should also be manually prepared and issued.
5. If the NFTL is not prepared using ICS, obtain a Serial Lien Identification (SLID) number from the Automated Lien System (ALS) through Centralized Lien Operation (CLO) and provide the information necessary to complete the lien document, before filing the NFTL. If the NFTL is processed and filed through CLO, the CDP notices will also be generated and mailed systemically.

**Example:**

During a meeting with the taxpayer, he states that he is scheduled to file bankruptcy within the next few days. Based on Integrated Data Retrieval System (IDRS) research, it is determined that NFTLs have not been filed. The recording office is blocks from your meeting. A NFTL should be hand carried to the recording office.

6. When an additional NFTL is filed in a different jurisdiction at a later date for a tax period that has previously received a right to a hearing, a Letter 3171, *Notice of Additional Federal Tax Lien Filing*, is issued.

**Note:**

The NFTL being requested must be a duplicate of a previously issued NFTL. For example, a NFTL was filed against Joseph Blacksbury, for tax periods 30-200912 and 30-201012, in Richmond, Virginia, November 11, 2011. Additional property was located in 2012 and a NFTL was filed against Mr. Blacksbury for tax periods 30-200912 and 30-201012 in Montgomery, AL. Mr. Blacksbury would receive a L3171.

7. Enclose with each CDP notice, the following publications and forms:
  - Publication 594, *The IRS Collection Process*,
  - Publication 1450, *Instructions on How to Request a Certificate of Release of Federal Tax Lien*,
  - Publication 1660, *Collection Appeal Rights*,
  - Form 668(Y)(c), *Notice of Federal Tax Lien*, and
  - Form 12153, *Request for a Collection Due Process or Equivalent Hearing*.

**5.12.6.3.6.1 (10-14-2013)  
Issuing L3172 on Additional Assessment**

1. IRC § 6320 provides a due process hearing right when a statutory lien's existence for unpaid tax is reflected on an NFTL for the first time. One module may, over time, have more than one assessment (e.g. an additional audit assessment or certain penalty assessments). A CDP notice must be issued for any additional assessment that was not included on a previous NFTL.
2. When a NFTL is created on ALS, it will recognize if the assessment was included on a prior NFTL. If a new NFTL contains assessments that were not on previous NFTLs, ALS will systemically generate a CDP notice for that new NFTL. Check ALS to determine if a NFTL has been filed for the same type of tax and tax period prior to preparing the NFTL.

**Note:**

Any tax assessment will include the associated failure to file or pay penalties. An additional CDP notice is not required for new assessments of interest and penalty accruals that were included on a CDP notice.

**5.12.6.3.7 (10-14-2013)****Preparation and Delivery of Manual CDP Notices**

1. The CDP notice can be manually generated by using the Integrated Collection System (ICS) template. The notice must be sent to the last known address.
2. Input the correct address for notices being mailed to co-obligors (spouses or general partners) if the address on the NFTL is different than the address where the co-obligor is located. If you do not have access to ALS, secure E-mail the address to CLO. When mailing addresses are not available for the general partners' residences and the place of employment is not the partnership, revenue officers will attempt to provide the L3172 during face to face contact with the co-obligor(s). Each general partner, spouse or ex-spouse listed on the NFTL is entitled to a hearing. Issue L3172 by certified mail within five (5) business days as required by IRC § 6320.
3. If ALS is not used to generate the L3172, it is the responsibility of the employee making the NFTL filing determination to ensure that the CDP notice is issued and mailed timely.
4. Document the attempt to deliver the notice in the case file.
5. If the L3172 is prepared by the revenue officer when a new address is located in the case file or on master file and the new address was effective prior to the issuance of the original NFTL and CDP notice (i.e., the original CDP notice was not sent to the last known address), the revenue officer will issue a substitute L3172. Take the following actions:
  - A. Calculate the taxpayer's response due date as 30 days after the date on the L3172.
  - B. Print or type '*substitute*' across the top.
  - C. Obtain a certified mail label (USPS Form 3800, *Certified Mail Receipt*) from the post office.
  - D. Enclose the appropriate publications and forms (See *IRM 5.12.6.3.6.*)
  - E. Document the case file and include the certified mail number and the date mailed.
  - F. Request input or input new TC 971 with appropriate AC to indicate issuance of substitute CDP notice. See *IRM 5.12.6.3.18(5)* for list of Action Codes.

**Note:**

For a limited liability company, if the CDP notice was not sent to the last known address of the liable taxpayer, follow the procedures noted above to issue a substitute notice to the liable taxpayer. See *IRM 5.12.7.5.3, Limited Liability Company (LLC)*.

6. If the revenue officer elects to mail the L3172, when the taxpayer has not provided documentation to change the master file address, print or type '*duplicate*' across the top of a copy of the originally mailed L3172.
7. Retain the date stamped receipted copy of the certified mail label in your case file.

**Note:**

The receipted copy must be retained for 10 years after the end of the processing year.

**5.12.6.3.7.1 (10-14-2013)****Issuing a CDP Notice after Revocation of the Release**

1. Taxpayers are entitled to a CDP notice when a NFTL is filed after the revocation of a certificate of release of a tax lien, if they did not previously receive a CDP notice for the tax periods involved.

**Note:**

A CDP notice is issued for the first NFTL filed after January 19, 1999, the effective date of IRC § 6320, even if an NFTL was previously filed prior to the effective date.

2. In cases where there is an erroneous release and the taxpayer received CDP appeal rights with the original NFTL filing, and a new NFTL is filed, the taxpayer is not entitled to a new CDP notice. The taxpayer should request an appeal through the Collection Appeals Program (CAP). Additional guidance on equivalent hearings is found in *IRM 5.1.9.3.2.2.*
3. The employee requesting the NFTL filing is responsible for ensuring that the L3172 is prepared and mailed timely.

**5.12.6.3.8 (10-14-2013)****Amended NFTL and New CDP Notice**

1. IRC § 6320 requires that taxpayers be provided one appeal opportunity per tax period, per assessment.
2. A new CDP notice (L3172) is required when the tax period is corrected. A new 30 day response due date is required.

**Example:**

The taxpayer's name is misspelled (e.g., Jane Smith and the correct spelling is Smyth) and the tax period on the NFTL is in error (e.g., 2010 but the correct tax period is 2011). The taxpayer is entitled to a hearing for each tax period. The incorrect spelling of the taxpayer's name should also be corrected. A correction of the name only will not create a new CDP notice. A L3171 will be created.

**Note:**

A CDP Notice will not generate for changes to the MFT, TIN or name control.

3. ALS will generate the appropriate CDP notice. The notice will be printed and mailed from the Correspondence Production Services (CPS).
4. Amended NFTL requests may be forwarded to CLO for input to ALS or users may use the ALS "Amend" option. See *IRM 5.12.7*
5. If an NFTL is amended manually, the CDP notice must be mailed within five business days of the NFTL filing.
6. The requesting employee will send the new CDP Notice (L3172) by certified mail or registered mail (foreign addresses) to the taxpayer's last known address not more than five (5) business days after delivery of the NFTL to the recorder's office (i.e., the deemed filing date).
7. The new CDP notice (L3172) may, alternatively, be delivered to the taxpayer in person or left at his home or usual place of business (which includes his place of employment).

#### 5.12.6.3.9 (10-14-2013)

##### Issuing a Duplicate CDP Notice

1. If you determine that a CDP notice may not have reached the taxpayer or was returned by USPS (the notice was mailed to the correct last known address), you may send a duplicate copy to the taxpayer at the current address.

##### Note:

If the CDP notice **was not sent to the last known address**, issue a substitute (new) notice. The taxpayer is entitled to an extension to request a CDP hearing.

2. Clearly mark the copy "Duplicate".
3. When the notice was mailed to the correct last known address, the taxpayer is not entitled to an extension of time to request a CDP hearing. However, an equivalent hearing may be appropriate. See IRM 5.1.9.3.2.2, for additional equivalent hearing guidance.

##### Note:

ALS will not generate a L3172 for a duplicate NFTL. A duplicate NFTL is defined as an exact match to a NFTL currently found on ALS. If a second L3172 is issued for the same periods, the issuance of the notice does not give additional CDP rights to the taxpayer for periods previously afforded CDP hearing appeal rights.

#### 5.12.6.3.10 (10-14-2013)

##### Providing the L3172 to the Taxpayer's Authorized Representative/Power of Attorney (POA)

1. Employees responsible for making NFTL filing determinations are also responsible for ensuring that the taxpayer's authorized representative/POA receives a copy of the L3172. While there is no five business day certified mail requirement for the taxpayer's authorized representative/POA, a copy should be mailed as soon as possible.
2. Automated Collection System (ACS) and ICS systemically download this information to ALS. However, if a NFTL is rejected the POA information is not loaded to ALS and notice to the taxpayer's authorized representative is not generated. The POA information must be resubmitted to ALS.
3. If the mailing address is available when a NFTL is requested through ALS and the taxpayer's authorized representative is identified, you may mail the notice personally or secure E-mail the name and address to CLO. See *IRM 5.12.6.3.10.1* for procedures. The notice will be generated by the ALS and printed and mailed at CPS.

##### Note:

Make sure you include the taxpayer's name, TIN and tax periods in your request. Document the ICS case history with the date representative information was provided to CLO.

4. The copy of the L3172 will be mailed to the representative the same day as the taxpayer's, if possible, but in no instance shall it be mailed later than five days after the taxpayer's.
5. When you notify the taxpayer's authorized representative/POA, provide a copy of the L3172 attached to Letter 3262, *POA Notice of Lien Filing*, and all enclosures (Publications 594, 1450, 1660, Form 668(Y)(c), Form 12153). The L3262 informs the representative of the NFTL filing and explains that the L3172 was mailed to the taxpayer. The taxpayer is not entitled to additional CDP appeals rights based on the issuance of the POA notification.
6. When you notify the taxpayer's authorized representative/POA of an additional NFTL filing, attach Letter 3271. This letter explains that a NFTL has been filed in a different jurisdiction and that the taxpayer is not entitled to additional appeal rights because the appeal rights were provided with the original NFTL filing.

##### Note:

The taxpayer may request a CAP hearing with respect to the second NFTL filing.

#### 5.12.6.3.10.1 (10-14-2013)

##### Use ICS Macro to Secure E-mail POA Information to Lien Units

1. An ICS macro was developed that allows users to input POA information for copies of the CDP notice to be issued to POAs. This feature should be used **ONLY** when ICS Centralized Authorization File (CAF) data is not available. See IRM 5.12.6.3.10.2.
2. Use the following procedures to secure E-mail your POA information:

Step	Action
1	Access ICS Templates Listing
2	Select - "Miscellaneous/Publications".
3	Select - "Request to send 3172 to Power of Attorney."
4	Taxpayer SSN and Name will automatically populate, if you are in an ICS case
5	Enter the POA name and address
6	An E-mail will be generated with the appropriate Centralized Case Processing (CCP) E-mail address automatically included in the "To" line. The text of the E-mail message will include the information entered through the macro process.
7	Press send.

3. Multiple requests may be made using this option. You must complete a request for each POA.

#### 5.12.6.3.10.2 (10-14-2013)

##### ICS CAF POA Extract to ALS

1. Revenue officers will continue to request NFTLs through ICS.
2. ICS will systemically search the ICS CAF file to locate a taxpayer representative/POA authorized to receive notices. If the system matches at least one tax period on the NFTL with an authorized tax period on the Centralized Authorization File (CAF), the POA should be noticed of the NFTL filing.
3. A request to issue a CDP notice to the authorized POA will be sent to ALS at the time the NFTL is requested.
4. Use procedures in 5.12.6.3.10.1 when a POA copy of the CDP notice is required and the POA information is not on the ICS CAF. Revenue officers should ensure that ICS is updated with POA information not found on the CAF system.

#### 5.12.6.3.11 (10-14-2013)

##### Nominee and Alter-Ego Situations

1. The person identified as the nominee or alter-ego on a special condition NFTL may appeal the filing under the Collection Appeals Program (CAP) process. Persons identified as nominees or alter-egos are not entitled to a Collection Due Process hearing. See Q-B5 in Treasury Regulation 301.6320-1(b)(2).
2. The statutory lien attaches to all property the taxpayer has a right, title, or interest in even if that property is held in the name of another party. Only the taxpayer against whom the assessment is made and against whom the statutory lien has arisen is entitled to a CDP hearing. See Q-A1 in Treasury Regulation 301.6320-1(a)(2).



**Note:**

Refer to IRM 5.12.7.6 for additional information.

3. Letter 3177, *Notice of Federal Tax Lien Filing - Nominee and Alter-Ego*, must be manually prepared and sent to individuals identified as nominees or alter egos, with a copy of the lien notice. Certified mailing is not required. See IRM 5.12.7 and Q-A7 in Treasury Regulations 301.6320-1(a)(2).
4. The **taxpayer** in this situation (not the nominee or alter ego) is entitled to CDP rights under IRC § 6320 only if they have not previously been issued a IRC § 6320 notice for the assessments shown on the special condition NFTL. See Q-A1 in Treasury Regulation 301.6320-1(a)(2).
5. Per IRM 5.12.7, the taxpayer should have already received CDP rights (L3172) under IRC § 6320 because an NFTL is to be filed in the taxpayer's name before, or at the same time, the special condition NFTL is filed. Research ALS to confirm the situation.
6. If necessary, issue L3886, *Notice to Taxpayer of Nominee/Alter Ego Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320*, only if the taxpayer has **not** been issued notice of appeal rights (issued L3172) for the identified tax periods. *ALS will not generate L3886. Employees assigned the case must prepare the L3886 and ensure the response due date is calculated and the notice is sent certified mail within the required five business day mailing period.*
7. Document the notice mailing in the case file history.
8. Retain the date stamped receipted copy of the certified mail label (when issuance of CDP rights is applicable).

**5.12.6.3.12 (10-14-2013)**

**IRC § 6901 Transferee CDP Notification**

1. If an assessment is made against a Transferee pursuant to IRC § 6901 for the Transferor's (original taxpayer's) liability, the Transferee becomes a taxpayer. The Transferee when a notice of lien is filed is then entitled to Letter 3172 providing notice of their due process rights under IRC § 6320.
2. Before preparing a NFTL in transferee situations, review and follow procedures in IRM 5.12.7. Also follow any guidance provided by Counsel.
3. The taxpayer (transferor) will not receive a copy of the NFTL or notice of rights to a hearing.
4. Routine lien notice filing guidelines for creating a lien notice should be followed and transferee selected. When the NFTL is printed the L3172 will be created.
5. The CDP notice is printed and sent certified mail from one of the Correspondence Production Services sites within the five (5) business day time frame established by IRC § 6320.

**5.12.6.3.13 (10-14-2013)**

**Child Support Obligations**

1. There is no jurisdiction based on IRC § 6305 to restrain or review the assessment and collection of child support obligation balance dues. The Code states that the assessment and collection are not subject to review by the Secretary in any proceeding.
2. Accordingly, IRC § 6320, Collection Due Process, does not apply to this type of liability. Do not issue a right to a hearing notice (L3172).
3. The taxpayer does not have the right to request an appeal under the Collection Appeals Program.
4. Issue Letter 3527, *Notice of Federal Tax Lien Filing - Child Support Obligations*, with a copy of the NFTL.

**Note:**

Do not include child support obligations on NFTLs with tax liabilities.

5. This notice will not be generated by ALS. **Employees assigned the case must prepare L3527 and ensure that the notice is sent within the required five business day mailing period.**
6. There is no certified mail requirement for this letter.

**5.12.6.3.14 (10-14-2013)**

**Sending the CDP Hearing request to Appeals**

1. Requests for CDP hearings will be mailed directly, hand delivered or faxed to the revenue officer.

**Note:**

CDP hearing requests can be received via fax, if contact has been made with the taxpayer by phone or in person. The taxpayer history must be documented with the date of contact and the case file is documented that the taxpayer wishes to send the request by fax.

2. Employees may attempt to resolve issues with the taxpayer, however, this does not extend the 30 day period.

**Note:**

If you are trying to resolve issues with the taxpayer before the taxpayer has filed a request for a hearing with Appeals, it is essential to inform the taxpayer that their discussions do not extend the 30 day period in which a hearing may be requested.

3. IRM 5.1.9 allows 45 days to attempt to resolve the issue and an additional 45 days with GM concurrence.
4. If the taxpayer requested a hearing, but the case is fully resolved the request must nevertheless be forwarded to Appeals unless the taxpayer submits a written withdrawal of the CDP hearing request. You may request a written withdrawal on Form 12156. If the withdrawal is received after the hearing request was sent to Appeals, notify Appeals and forward the withdrawal, Form 12256, Withdrawal of Request for Collection Due Process or Equivalent Hearing under Section 6320 and or 6330 to Appeals for closure actions. Refer to IRM 5.1.9.3.3.1, Processing Withdrawal of Request for CDP Hearing. If a signed withdrawal is not secured the request must be sent to Appeals. When resolution is reached, explain to the taxpayer the option to withdraw the request for a CDP hearing. Refer to IRM 5.1.9.3.4, Controlling and Monitoring Cases While in Appeals. If the resolution reached is to withdraw the NFTL for an ongoing CDP lien hearing case, notify Appeals of the proposed action. Refer to IRM 5.1.9.5(5), Communication with Appeals for guidance regarding permitted ex parte communications with Appeals.
5. Requests for CDP hearings related to fuel excise tax liens will be forwarded immediately to the Appeals employee assigned the case.
6. Requests for appeals based on ACS lien filings will be mailed to the ACS Support Unit at the ACS site identified in the L3172.
7. Prepare a case file for Appeals. It should contain:
  - Form 3210;
  - Form 12153-A, *Referral Request for CDP Hearing and Request for Collection Due Process Inventory Tracking System (CDPTS) Input*;
  - a copy of the L3172;



- Collection Information Statement (CIS) or financial statement;
  - other correspondence from the taxpayer or POA;
  - the original or fax copy of Form 12153, Request for Collection Due Process or Equivalent Hearing;
  - the envelope in which the request was mailed, if available;
  - copy of Form 2848, Power of Attorney and Declaration of Representative, unless it is present on IDRS; and
  - any pertinent documentation/information in the case file.
8. Forward envelopes received with Form 12153, *Request for Collection Due Process or Equivalent Hearing*. The envelope or a faxed Form 12153 is important when determining the actual date of mailing and may be the deciding factor as to whether the taxpayer is entitled to a collection due process or equivalent hearing.
9. Refer to IRM 5.1.9.3.3.2, Preparing a Case for Transmittal to Appeals, for more detailed information.

**Note:**

Narrative statements to Appeals must be limited to a neutral list of documents and neutral statements regarding actions taken and documented in the case history. The manager must ensure this requirement is met and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. Refer to IRM 5.1.9.5, Communications with Appeals.

10. If the taxpayer is an in-business trust fund taxpayer (IBTF) that is not current with employment tax deposits, determine if it qualifies for the Rapid Response Appeals Process (RRAP) and process accordingly. Refer to IRM 5.1.9.3.3.2.1, Rapid Response Appeals Process (RRAP).
11. Fast Track Mediation (FTM) is available to taxpayers that qualify for a CDP or EH. A taxpayer can request FTM after a CDP notice is issued. Advise taxpayers considering FTM, that a request for FTM does not extend the time for filing a request for a CDP hearing. Taxpayers requesting FTM during the time period for filing a CDP hearing request must also submit a hearing request to preserve their right to a hearing. Refer to IRM 5.1.9.3.8, CDP and Equivalent Hearing Fast Track Mediation for the criteria for FTM.

**5.12.6.3.15 (10-14-2013)**

**Documenting CDP Notification**

1. The Service is required by law to notify a spouse/ex-spouse (if a joint return was filed), or business partner listed on the NFTL of collection due process appeal rights.
2. The Service established a policy to provide the taxpayer's representative or attorney with a copy of the appeal rights.
3. Revenue officers will document case histories with spouse/ex-spouse, business partner and POA notification, e.g., 6/6/2011, requested ALS send CDP notice to POA and ex-spouse. Provided new address for ex-spouse.
4. During the case review process, group managers will note in the case file whether revenue officers are documenting, where appropriate, that CDP notification has taken place in the above referenced situations.
5. If the taxpayer requests a CDP hearing in response to the NFTL filing, the revenue officer requesting the NFTL filing must process the request even if the case has been closed.

**5.12.6.3.16 (10-14-2013)**

**Invalid CDP Notices and Rescinding the Collection Due Process Notice**

1. If a CDP lien notice is invalid, a substitute notice must be issued. For situations warranting the issuance of a substitute CDP notice because the CDP notice was invalid, refer to IRM 5.1.9.3.2.4, Invalid CDP Notices and Rescinding a Valid CDP Notice.
2. A valid CDP lien notice may be rescinded only if:
  - within the time period for requesting a CDP hearing the Service agrees either to withdraw the NFTL or release the federal tax lien;

**Note:**

The Notice of NFTL Withdrawal or Certificate of Release of the lien need not be filed within the time period for requesting a hearing.

- the rescission is accomplished before the expiration of the time period for requesting a hearing; and
- the taxpayer has not requested a CDP hearing.

**Note:**

The CDP lien notice is valid and the taxpayer is entitled to a hearing if requested even though the NFTL is ineffective, for example, because a recording office never receives the NFTL or because the NFTL was filed in violation of the bankruptcy automatic stay. Refer to IRM 5.1.9.3.2.4(7).

3. Once the time period for requesting a CDP hearing has expired after the issuance of a valid CDP notice, the taxpayer has been afforded an opportunity for a hearing, and the notice may not be rescinded.
4. A NFTL filed in violation of the bankruptcy automatic stay must be withdrawn. Although the NFTL is ineffective, the CDP lien notice is valid. See IRM 5.1.9.3.2.4. Nevertheless, if the time period for requesting a CDP lien hearing has not yet expired and the taxpayer has not requested a hearing, you may rescind the CDP lien notice. See IRM 5.12.9.6.6
5. A NFTL should be withdrawn if filed when a taxpayer is in a combat zone, outside the United States away from his or her permanent duty station participating in a contingency operation, or hospitalized for an injury received while serving in the combat zone or contingency operation. Even if the NFTL is withdrawn, the CDP lien notice is still valid. See IRM 5.1.9.3.2.4. If the time period for requesting a hearing is still open (e.g., the taxpayer is still in the combat zone, participating in a contingency operation or hospitalized for an injury received while serving in the combat zone or contingency operation or the taxpayer has returned but the 180 or 30-day period remains open) and the taxpayer has not requested a hearing, you may rescind the CDP lien notice. For the purpose of calculating the 30 day period for requesting a CDP hearing, IRC § 7508 disregards the time spent in a combat zone or contingency operation away from the taxpayer's permanent duty station, plus any related hospitalization, plus 180 days. If the taxpayer has requested a hearing, the Service cannot rescind the CDP notice but the Service shall delay the CDP hearing in accordance with IRC § 7508.

**5.12.6.3.17 (10-14-2013)**

**Processing Lien Collection Due Process Notices Returned by the USPS**

1. L3172's returned by the United States Postal Service (USPS) are mailed to the requesting employee at the post of duty address listed in ALS or to the office designated by the function for address verification.
2. Within fourteen (14) calendar days from the date the requesting employee or the person designated the responsibility of processing returned mail, receives the returned notice in the appropriate office, the following actions must be taken:

- A. Research the returned undeliverable CDP notice on IDRS to determine if a more current address is available.
- B. Research ALS Notadd feature, to see other addresses where the notice was mailed (if authorized access to ALS).
- C. Request re-issuance of the notice, as required.
- D. Input the applicable TC 971 action code.

**Note:**

CDP notices returned as unclaimed or refused do not require research. CDP notices returned as unclaimed or refused require the input of the appropriate TC 971 AC 254 -255. Refer to *IRM 5.12.6.3.18*, Inputting Transaction Code 971 and Action Code to Indicate the Notice Status.

3. If the address was correct at the time the NFTL was requested, document the ICS history that the notice was returned even though it was mailed to the last known address.
4. Retain the original notice and envelope in the case file. You may also include the notice status in ALS using the Notadd option.
5. If the address was incorrect at the time the NFTL was requested, input the correct address using the ALS Notadd option to ensure a substitute (new) L3172 is created. If ALS access is not available, send a secure E-mail to Centralized Lien Operation (CLO) to update ALS. The request must reference the:
  - NFTL serial number (SLID);
  - certified mail number associated with the notice; and
  - current address for the taxpayer and co-obligor, if applicable.
6. Document the ICS history with the new current address and the date the new address was input to ALS.
7. If the address is the address of record at the time the lien filing was prepared, but the address was updated on IDRS within two cycles after that time, a courtesy copy of the notice may be, but is not required to be sent to the taxpayer's current address.
8. If a reissued CDP notice is returned, there is no need for additional research because the reissued notice was mailed to the last known address at the time, based on prior research. Document the history that the reissued notice was returned and retain the notice and envelope in the case file. Follow the procedures in *IRM 5.12.6.3.18* for inputting the appropriate transaction and action codes.

**5.12.6.3.18 (10-14-2013)  
Inputting Transaction Code 971 and Action Code to Indicate the Notice Status**

1. Transaction code (TC) 971 with an action code (AC) will be input to IDRS. Each action code provides the mail status of lien collection due process notices without ALS research and are applicable only to L3172. Requesting employees will input or request input of TC 971 AC 252 within 10 business days after manually preparing and issuing the NFTL and CDP notice.

**Note:**

ALS systemically posts the TC 971 AC 252 indicator on IDRS to reflect the issuance of the taxpayer's CDP notice. Expect to see the TC 971 AC 252 post on IDRS 10 days after the NFTL is printed in CLO for mailing to the recording office. If the TC 971 AC 252 does not post, contact the Field Office Resource Team (FORT) to ensure that either systemically or manually, the TC 971 AC 252 posts.

**Note:**

TC 971 Action codes 253-255 may be input without TC 971 AC 252 (mailed) being present on the module. However if you find that the TC 971 AC 252 was not uploaded, research the situation and request input of the code with the appropriate date.

2. Employees requesting and/or manually preparing the NFTL and L3172 will be responsible for requesting the input of TC 971 AC 252.
3. Within fourteen (14) calendar days of receipt of returned mail employees receiving or who are responsible for processing returned lien CDP notices will request the input of TC 971 AC 253-255 to **each** tax period listed on the NFTL.
4. When an ex-spouse/spouse or general partner's notice is returned, input the TC 971 with the appropriate action code and also input the cross-reference SSN on the primary account.

**Example:**

A NFTL was filed against John and Mary Black. John's notice was returned by USPS as undelivered on 7/15/2011. Mary received a separate notice and USPS returned it as refused on 08/04/2011. The account would appear as follows:

TC	DATE	AMOUNT	CYCLE	DLN	Variable Data
971	07152011	.00	20112808	xxxxx-xxx-xxxxx-x	ACT CD 253
971	08042011	.00	20113108	xxxxx-xxx-xxxxx-x	ACT CD 255 X-REF xxx-xx-xxxx

The same process applies for general partners listed on the NFTL. Use the appropriate CFOL command to locate the general partner's SSN, if necessary.

5. The following action codes are applicable only to lien collection due process notices.
  - A. AC 252 - Mailed (NOTE: For hand carried NFTLs, the date the CDP notice is mailed will be the AC 252 input date.)
  - B. AC 253 - Undelivered, input using the mail room or USPS date stamp, whichever is earlier.
  - C. AC 254 - Unclaimed, input using the mail room or USPS date stamp, whichever is earlier.
  - D. AC 255 - Refused, input using the mail room or USPS date stamp, whichever is earlier.
6. Field Collection employees will input the applicable TC 971 AC 253 - 255 to IDRS to reflect the status of the returned CDP notice. This can be accomplished by following standard IDRS input procedures or by using ALS Notadd feature. When ALS is used, the TC will systemically upload to IDRS. See ALS User Guide for instructions on Notadd.
7. If ALS access is not available, send a request to CLO to update ALS with the delivery results. The request must include:
  - NFTL serial number (SLID);
  - certified mail number associated with the notice; and
  - notice delivery results, i.e., undelivered, unclaimed, or refused.

8. Employees who manually prepare the NFTL and L3172 will be responsible for requesting the input of the CDP notice delivery results (TC 971 AC 253 -255).

#### **5.12.6.3.19 (10-14-2013)**

##### **Lien Filing During Levy Appeal**

1. There is no prohibition to filing a NFTL when a levy CDP appeal has been requested. A NFTL can be filed if it is deemed appropriate.
2. Prior to filing the NFTL, the collection group manager (GM) should contact the Appeals Team Manager (ATM) preferably by secure E-mail of the hearing officer assigned the case and inform them that a NFTL will be filed. Refer to IRM 5.1.9.5(5), Communication with Appeals.
3. Ascertain if Appeals has new information that would affect the decision to file the NFTL.
4. Attempt to notify the taxpayer of the lien filing determination.
5. If the taxpayer has already received lien CDP rights for the tax periods involved, advise the taxpayer of CAP appeal rights if they dispute the NFTL filing. Advise the taxpayer that the IRS will issue a CDP notice of lien filing if this is the first NFTL to be filed for the tax periods involved.

#### **5.12.6.4 (10-14-2013)**

##### **Collection Appeals Program**

1. The Collection Appeals Program (CAP) was implemented to provide taxpayers, or third parties with an opportunity to have collection actions reviewed by an impartial party outside the Collection function. CAP appealable collection actions are liens, levies, seizures, and installment agreement denials, modifications or terminations. In addition, CAP can be used to appeal other lien actions which include, the denial of a notice of withdrawal of NFTL and denials of discharge, subordination or nonattachment. Refer to IRM 5.12.9, Federal Tax Lien, Withdrawal of Notice of Federal Tax Lien; IRM 5.12.10, Federal Tax Liens, Lien Related Certificates; and IRM 5.1.9.4, Collection Appeals Program (CAP), for additional details.

##### **Note:**

A determination to deny an application for a withdrawal, discharge, subordination or nonattachment may be communicated to the applicant in writing or verbally. Denials communicated verbally should be followed up with written notification. In either instance, an explanation of the right to appeal must be provided to the applicant. Pub 1660, *Collection Appeal Rights*, may be used for this purpose.

2. CAP is the only appeal available before the NFTL filing. Taxpayers who dispute the proposed filing of the NFTL should be advised of appeal rights under CAP.
3. Provide the taxpayer with a copy of Publication 1660, *Collection Appeal Rights*, if an appeal is requested.
4. Inform the taxpayer that your decision must be discussed with your immediate supervisor before beginning the Collection Appeals process.
5. Document this information in the case history.

#### **5.12.6.4.1 (10-14-2013)**

##### **Exclusions from CAP**

1. Several collections issues have separate appeal procedures in place. When a taxpayer requests an appeal under CAP in error, advise the taxpayer of the correct appeal procedures. Refer to IRM 5.1.9.4.1, Exclusions from CAP.
2. CAP cannot be used to appeal the following:
  - NFTL filing determinations made by Appeals employees in CDP resolutions;
  - Collection's decision not to "release" a lien;
  - Actions under the control of a court;
  - Issues not within the scope of Internal Revenue laws; or
  - IRC § 6326 administrative appeal.

#### **5.12.6.4.2 (10-14-2013)**

##### **Request for a CAP Appeal**

1. If the taxpayer or third party requests a CAP appeal, the taxpayer or third party must first discuss the case with the Collection manager.
2. The Collection manager or designee must reply to the request for a CAP Appeal conference in a timely manner not to exceed two workdays.
3. If agreement is not reached at the manager conference, advise the taxpayer or third party that he or she can have the issue addressed by the Office of Appeals by filing a request in writing. Advise the taxpayer to use Form 9423, *Collection Appeal Request*.
  - A. If the taxpayer intends to submit a Form 9423, the taxpayer needs to let the manager or RO know within two business days of the conference with the manager, or collection action may resume (except for appeals related to Installment Agreements).
  - B. If the taxpayer mails the Form 9423, it must be postmarked within three business days after the date of the conference with the Collection manager to avoid collection action.

#### **5.12.6.4.3 (10-14-2013)**

##### **Sending the CAP request to Appeals**

1. The information needed for a CAP appeal will be either secure e-mailed or faxed to the Appeals Office. Cases should be secure e-mailed or faxed to the correct Appeals office location using the Appeals web site CAP Case Routing link.
2. A copy of the entire case file is not necessary and can be burdensome. On a case by case basis Appeals and Collection will determine what parts of the file are required to adequately address the appeal.
3. The Appeals file should include, at a minimum, the following information:
  - A. Form 9423 and any taxpayer correspondence which accompanied the CAP request.
  - B. Copies of the relevant lien documents.
  - C. Form 433A or Form 433B.
  - D. Any other relevant documents, such as copies of deeds, mortgages, counsel opinions, copies of appropriate financial documentation, and/or taxpayer correspondence.

E. In the fax transmittal or E-mail, include your name, E-mail address, telephone number, and fax number, include the taxpayer's name and telephone number, and, if applicable, the POA's name and telephone number. Also, indicate the date of the group manager conference.

F. Any narrative statement included on the fax transmittal or e-mail must be limited to a neutral list of documents and neutral statements regarding actions taken and documented in the case history without any further discussion regarding the strengths and weaknesses of the taxpayer's appeal. The manager must ensure this requirement is met and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. Refer to IRM 5.1.9.5, Communications with Appeals.

**Note:**

Communications between Appeals and other IRS employees are strictly limited to administrative and ministerial matters and the merits of the case cannot be discussed.

**5.12.6.4.4 (10-14-2013)**

**CAP Process**

1. The Appeals organization tries to resolve CAP cases within five business days of the receipt of the case by the Settlement Officer (SO). More complex CAP cases should normally be resolved within 15 business days.
2. If a taxpayer presents new information to Appeals that the revenue officer has not considered, Appeals may ask the revenue officer to review and comment on the information, in accordance with the ex parte requirements. See IRM 5.1.9.4.4, CAP Process.
3. When the filing of the NFTL is the subject of the appeal, further NFTL action is generally withheld unless appropriate to protect the government's interests. The group manager must concur with the planned action during the appeal. Prior to taking further NFTL action, check with Appeals to determine if they have any new information from the taxpayer that may affect the decision. Refer to IRM 5.1.9.5, Communications with Appeals.
4. Appeals will inform both the taxpayer and Collection of their decision as soon as possible within the five business day requirement. Decisions by Appeals are binding on the taxpayer and Collection.
5. If there is concern or disagreement with respect to a decision reached by Appeals refer to IRM 5.1.9.5.1, Disagreement with Appeals Decisions.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 7. Notice of Lien Preparation and Filing

##### 5.12.7 Notice of Lien Preparation and Filing

- 5.12.7.1 [Purpose](#)
- 5.12.7.2 [How the Lien Notice Document Is Constructed](#)
- 5.12.7.3 [Preparing the NFTL General Instructions](#)
- 5.12.7.4 [Manual NFTL Preparation](#)
- 5.12.7.5 [Name Line Considerations When Preparing NFTL](#)
- 5.12.7.6 [Special Condition NFTLs \(Nominee, Alter Ego, Transferee\)](#)
- 5.12.7.7 [Other Distinctive Filing Considerations](#)

##### Manual Transmittal

November 18, 2014

##### Purpose

(1) This transmits a topic based revision to IRM 5.12.7, Federal Tax Liens, Notice of Lien Preparation and Filing, to incorporate procedural changes based on the Affordable Care Act.

##### Background

A revision of IRM 5.12.7 has been done in order to incorporate changes associated with the Affordable Care Act and to make some editorial changes.

##### Material Changes

(1) The IRM contains the following substantial changes:

Item	IRM Subsection	Change
1	IRM 5.12.7.7.5	Titled, <i>Affordable Care Act's (ACA) Shared Responsibility</i> , has only been updated for the Affordable Care Act (ACA) Internal Revenue Code (IRC) [§ 5000A and § 4980H]. Content unrelated to the ACA provisions was not reviewed for currency or accuracy.

(2) Editorial correction: IRM 5.12.7.10.3(4) editorial change corrects the print days from the Centralized Lien Operation (CLO).

(3) Editorial correction: IRM 5.12.7.14.2.1(3), (5), and (6) editorial change adds street addresses with the PO Box addresses per Postal and Transport policy.

##### Effect on Other Documents

This material supersedes IRM 5.12.7, dated October 28, 2013.

##### Audience

SBSE Collection, Centralized Lien Operation, and Appeals

##### Effective Date

(01-01-2015)

Rocco A. Stecco  
Acting Director, Collection Policy  
Small Business/Self Employed Division

##### 5.12.7.1 (10-18-2013)

###### Purpose

1. Notices of Federal Tax Lien (NFTL) fulfill the requirement of IRC § 6323 for providing evidence to the creditors listed in IRC § 6323 of the statutory lien's existence and its effect on the taxpayer's property based on the filing date of the NFTL.
2. The purpose of this IRM is to convey instructions for preparing and filing Notices of Federal Tax Lien.

##### 5.12.7.2 (10-18-2013)

###### How the Lien Notice Document Is Constructed

1. The first thing to remember about a lien notice is that it can contain as many as 15 statutory liens (assessments) on one notice.
2. The name must properly identify whose statutory lien is being noticed. See *IRM 5.12.7.5* for a discussion on name line considerations.
3. There are two important statements on the lien notice. They are the notice purpose and the self-release clause.
4. In bold print at the top of the lien notice, Form 668 (Y) (c), is the statement declaring that statutory liens exist, the reason for filing the notice, and what the statutory liens attach to: "As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue."

5. After the taxpayer name and address the notice contains the self-release clause. Once the clause is executed, it has the effect of releasing both the underlying statutory lien and the lien notice: **"IMPORTANT RELEASE INFORMATION:** For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a)".

### 5.12.7.3 (10-18-2013)

#### Preparing the NFTL General Instructions

1. It is important that the information to be used when filing an NFTL is correct and that the NFTL is prepared and filed timely. This is the responsibility of the person assigned the balance due account.
2. Revenue officers at the GS-9 level and above have the authority to issue Form 668(Y)(c). All lien delegations are found in Delegation Order 5-4 found in IRM 1.2.44.5. The employee's name and identification number should be typed in the lower portion of the form and the title inserted in the appropriate block.
3. **Signatures are not required.** However, documents generated by the Automated Lien System (ALS) have facsimile signatures.
4. Part of NFTL preparation includes determining the last known address and any changes of address for taxpayers in order that Collection Due Process (CDP) and Power of Attorney (POA) notices are issued correctly.
5. Individual joint liability taxpayers where spouses are separated or divorced may each have a separate address and a separate POA.

#### Reminder:

It is important to ensure that all parties are appropriately informed of the lien notice filing and any associated CDP rights. See IRM 5.12.6, *Appeals Processes Involving Liens*.

6. If you have verified a change of address, be sure to update ENMOD to ensure IDRS and Master File reflect the taxpayer's most current data.
7. When encountering PO Box addresses during the NFTL preparation process, check for alternate addresses to ensure that NFTLs are filed with **all** appropriate recording offices.
  - A CDP notice should be mailed to both a PO Box as the "last known address" and the physical address identified. See IRM 5.12.6, *Appeals Processes Involving Liens*.
  - There have been occasions where a taxpayer will secure a post office box (PO Box) in a county other than their county of residence and then use that PO Box as the address on their return.
  - Take particular note of the correct filing location where a post office district reflects the mailing address in one county but due to local changes over time the actual property location is physically in another county. An NFTL must be filed with the recorder where the property is located.
8. Revenue officers will use ICS to prepare NFTLs for cases in their inventories, except NFTLs with special conditions (see *IRM 5.12.7.6*).
9. Revenue Officers have the ability to create modules on ICS for cases assigned to them but if problems are encountered, the Group managers will ensure that modules requiring NFTLs are created on ICS for:
  - A. periods that are not assigned to the revenue officer, or
  - B. do not exist on ICS.
10. Revenue officers will use the ICS lien notice template to create lien notices that require expedited processing, i.e., prompt assessments and/or jeopardy or termination situations.

#### Reminder:

Revenue officers need to ensure manually prepared lien notice documents redact the first five numbers of any Social Security Number (SSN).

11. Employees needing to adjust the taxpayer's name will **NOT** include SSNs in the name field. SSNs must be redacted and ALS cannot identify and redact an SSN located in the name field.
12. If the lien notice is being filed on a joint name line, both names must appear on the first name line. Use "and" or "&" between the names. This ensures both parties receive a CDP notice. Additional information can be found in IRM 5.19.12.2.2. This information can also be found in the entity section of the ALS User Guide Chapter Four.
13. NFTLs must show the taxpayer's last known address. Employees will **NOT** include SSN's in the street address field. The word "Local" will be used **ONLY** if it is part of the street name. "Local" alone is not sufficient for mailing purposes. Further, a city, state and zip code, must be input to the appropriate data fields.
14. Multiple statutory liens (assessments) against the same taxpayer may be included on one Form 668(Y)(c). Because single and joint liabilities do not belong on the same lien notice, exceptions that come up when there is a joint entity taxpayer are noted below.

#### Exception:

When one or more of the balance dues are Master File Tax (MFT) 55 assessments and the taxpayer is a joint entity. In this circumstance the MFT 55 assessments, which are assessed against one individual, must go on a separate lien notice under the liable taxpayer's name. MFT 55 assessments cannot be listed on the same NFTL with a non-liable party

#### Exception:

Lien Notices with MFT 31 modules should not be filed using a joint name line. Use "MFT31" as the tax type (MFT) when inputting NFTLs on MFT31 modules.

Otherwise:

<b>If</b>	<b>Then</b>
there are one or more statutory liens (balance due modules)	prepare a separate entry in every column for each module. The dollar amount for each unpaid statutory lien (balance of assessment) will be shown.
there are multiple statutory liens (assessments) within one balance due module	show the assessment dates and the balance of all statutory liens (unpaid assessments) including those penalties which carry a separate collection statute.
an accrued amount on an existing assessment remains outstanding and the assessed amount is paid	file an NFTL on the total accrued amount as of the date the NFTL is requested.

the NFTL should state the taxpayer's name correctly. Take the actions necessary to correct master file.

#### Note:

the taxpayer's name on the statutory lien (balance due) is incorrect

There may be instances when the name on the NFTL does not agree with what is on the balance due (e.g., if the statute has been extended on one taxpayer on a joint assessment, only the name of the still liable taxpayer should appear on the NFTL).

the statutory lien (balance due) entity shows the name of a third party, (e.g. accountant, attorney, etc.), and an NFTL is being filed attempt to identify the address of the taxpayer for use when filing the NFTL. If the address of the third party is used, do **not** show the name of the third party in the entity section. An NFTL name line should never show the name of a third party, the names of corporate officers, or the names of LLC members when the LLC is the liable taxpayer. When dealing with a "c/o" be sure that the name and address on the NFTL is that of the taxpayer.

15. **A joint NFTL** may be filed if a module changes from separate to joint filing status. This might occur if there has been an SFR assessment for an individual and they subsequently file a joint return with a spouse. The reason a joint NFTL may now be filed is because both spouses, by signing a joint return, have accepted responsibility for the liability on the module. Any previously existing NFTL for one of the spouses, filed prior to the status changing to joint, cannot be amended to add the joining spouse. A new NFTL listing both spouses would need to be filed. If filing against the joint name is prohibited (e.g. bankruptcy of one spouse only), file the new NFTL listing only the joining spouse. See also *IRM 5.12.7.5.5*.
16. **A partnership NFTL** where employment taxes are involved, should be prepared showing the words "a partnership" after the partnership name and list the names of known general partners (e.g., XYZ, a partnership, A, a partner, B, a partner, C, a partner).
  - When a general partner is listed on the NFTL, a copy of L3172 must be provided to both the partnership and the general partner. See *IRM 5.12.6, Appeals Processes Involving Liens*.
  - If there are more partner names which must be on the NFTL than can fit in the space for an ALS created NFTL nameline, then an ICS manual NFTL needs to be used. The manual NFTL provides the ability to add a second page which can then list the partners which did not fit on the face of the NFTL document.
  - File an NFTL in the jurisdiction where each general partner resides as well as where the partnership is located. When the place of filing changes, file a separate NFTL, i.e., file two NFTLs if the partnership and one of the general partners lives in a different jurisdiction, etc. Provide multiple address information to CLO, if appropriate, or create the NFTL. See also *IRM 5.12.7.5.2*.
17. **A corporation NFTL** should have the words "a corporation" after the corporate name, e.g., XYZ, Inc., a corporation. When the NFTL request is processed through ALS, the descriptor will automatically be added when "corporation" is the entity type selected. The phrase must be added when the NFTL is not processed through ALS.
18. **A Form 2290, Heavy Highway Vehicle Use Tax Return** NFTL should be prepared using the period beginning date (e.g. 07-01-2012) rather than the ending date (e.g. 06-30-2013). This is very important when there is more than one period for a specific TIN. The period beginnings must be used to separate each assessment to ensure that we receive the module satisfaction indicator from the master file when each module is satisfied.

#### 5.12.7.3.1 (10-18-2013)

##### Creating the Notice of Federal Tax Lien, Form 668(Y)(c)

1. Notices of Federal Tax Lien (except estate tax liens) will be filed through the ALS.
2. Generally lien notices are systemically created in ALS from ICS or ACS data uploads. When this is the case use the appropriate ICS (ICS User Guide, Chapter 13, *Federal Tax Lien*) or ACS (*IRM 5.19.4.6*) NFTL request process.
3. **ICS users** should update any incomplete address on ICS prior to requesting the lien notice through ICS. Revenue officers must check their ICS notifications daily for rejects. Rejects must be resolved and the NFTL reinput. Failure to follow these procedures will result in an NFTL not being filed.
4. When the NFTL request cannot be completed systemically, complete Form 12636, *Request for Filing or Refiling Notice of Federal Tax Lien* and secure email the form to the appropriate CLO team.
5. If ALS is used to create the lien notice, follow instructions in the ALS User Guide which can be accessed from the Automated Lien System web site.
6. ALS systemically redacts a portion of the SSNs on original lien notice filing requests issued after January 2006. Releases, withdrawals, revocations, etc., associated with NFTLs issued prior to January 2006 were issued with full SSNs. Effective January 2008, SSNs were partially redacted (xxx-xx-1234) on all documents sent to recording offices, including those where the original document was recorded with the full SSN.
7. **DO NOT** request NFTLs with SSNs or "Local" in the street address line, numbers (e.g., 12222) without a street name; a blank street name, etc.
8. ROs need to check their ICS notifications daily for rejects. Rejects must be resolved and the NFTL reinput. Failure to follow these procedures will result in an NFTL not being filed. **ALS will reject** to the originator:
  - A. any NFTL with an incomplete address.
  - B. any lien notice request that **does not have a current valid assessment date or is requested less than 10 days after assessment**. Revenue officers must not use projected assessment dates when requesting NFTL. Not filing an NFTL less than 10 days after assessment is a precaution. The establishment of the statutory lien requires that the taxpayer has received notice and demand and has neglected or refused to pay (IRC § 6321). Without the statutory lien a Notice of Federal Tax Lien cannot be filed.

If an NFTL is rejected by the recording office, CLO will secure e-mail the originator, attach a copy of the rejected document and explain the reason for the rejection.

9. The following information is used to create and maintain lien notice information in ALS:
  - A. Entity information: taxpayer identification number, name and address, as well as the name control.
  - B. Tax assessment information: MFT, tax period, assessment date, taxpayer identification number, last date for refiling, and the unpaid balance of assessment.
  - C. Recording Office information: place of filing and the recording office address.
  - D. Administrative information: employee name, assignment number, phone number and location.
10. If the user does not have access to ICS, ACS, or the ALS permissions to file or refile an NFTL, submit the request by secure E-mail to Centralized Lien Operation (CLO). See Form 12636, *Request for Filing or Refiling a Notice of Federal Tax Lien* and *IRM Exhibit 5.12.1-1* for the ALS Permissions chart.
11. CLO will complete requests received from revenue officers, Advisory, Insolvency, and other delegated functions. These requests from revenue officers should be rare and restricted to instances where the revenue officer does not have access to ICS or the lien notice cannot be filed through ICS, i.e., there is a access computer problem or some other impediment to access. Requests for lien notice filings from Advisory and Insolvency will also be limited because of existing ALS permissions in these functions to create lien notices and other lien documents created through ALS. See *IRM Exhibit 5.12.1-1* for the ALS Permissions' chart.

#### Note:

Amended and nominee/alter ego/transferee lien notices may require special handling, such as the suppression of the collection due process notice. Sufficient information will be input to ALS to ensure the appropriate CDP notice is generated.

#### 5.12.7.3.2 (10-18-2013)

##### Requesting NFTLs Using Form 12636



1. There are several types of employees who do not have cases assigned to them on ICS or ACS such as employees in the walk-in, correspondence, Appeals, Examination (Innocent Spouse examiners) and toll free areas. These and other employees may be able to research lien notice information using ALS, but do not have the capability to create documents in ALS or systemically request them.
2. For those employees needing to file lien notices who either do not have access or the special conditions for the lien notice do not fall within normal parameters, the Form 12636 is used to provide the needed information to CLO in order for them to create the needed document in ALS. Form 12636 is a PDF fillable form which can be saved to your computer and is found through the publishing catalog.
3. Send Form 12636 by secure E-mail to CLO for preparation of NFTLs.

**Note:**

There is also an ICS Template for ICS users.

4. Prior to submission the requesting employee will review Form 12636 to determine if all the information required to prepare the NFTL, including name and telephone number of the contact person for generation of the CDP notice, has been provided. This information is not available in CLO.

**Note:**

The lien unit may contact the requester for additional information, if necessary.

5. The employee requesting the NFTL will provide the entity information regarding any co-obligors (e.g. spouse, partners, etc.) and POA.
6. Requests received by CLO will be input to ALS within 5 business days of receiving the request.
7. ACS Support has responsibility for CDP follow up for walk-in, correspondence, Appeals, Examination (Innocent Spouse examiners), and toll free areas.
8. Employees with ALS access may research ALS using the taxpayer's TIN to determine if the NFTL has been created.

#### **5.12.7.4 (10-18-2013)**

##### **Manual NFTL Preparation**

1. In certain exigent circumstances, an NFTL may need to be filed more quickly than it can be when using ALS systemic print and mail delivery process. These situations necessitate the NFTL being manually prepared and personally delivered to the recording office.
2. A manually prepared NFTL can only be done through either ALS by skipping the systemic print and mail process or through ICS. In each situation the manual NFTL is manually printed and hand delivered.
3. As a general rule, these manual preparations are done by revenue officers who are personally carrying the NFTL to the recorders for filing.
4. Manually prepared and hand carried NFTLs will be kept to a minimum.

**Reminder:**

Redact the Redact the first five numbers of the SSNs.

#### **5.12.7.4.1 (10-18-2013)**

##### **Manually Prepared NFTLs Without ICS**

1. Employees who need to prepare an NFTL for immediate filing and who do not have access to ICS, need to either generate a SLID (Serial Lien Identification) number on ALS or contact CLO to secure a SLID.
2. The employee will create the lien notice on ALS by inputting all required information. If the employee does not have ALS input capabilities, secure e-mail Form 12636 to CLO requesting that a SLID be issued immediately. See also *IRM 5.12.7.6.4.5*.
3. Request that the printing of the NFTL be suppressed before the SLID is generated. If printing is not suppressed, a duplicate lien notice will be systemically generated.

**Reminder:**

CDP notices must be addressed as they will not be systemically generated for manually prepared lien notices outside of the ICS and ALS system.

4. Type the lien notice information, including the SLID number obtained from ALS, into Form 668(Y)(c).

**Note:**

**Only** SLID numbers generated by ALS will be used on NFTLs. Employees will **not** create (make-up) SLID numbers. NFTLs issued without systemically generated numbers will not be released by ALS.

This is important because IRC § 6325 requires that liens be released within 30 days of being satisfied or becoming unenforceable.

5. Print the NFTL on your local printer.
6. Make arrangements with a field employee, to have the NFTL hand carried to the recording office. Recording fees are to be paid by the employee and added to the employee's travel voucher for reimbursement UNLESS the filing fee exceeds normal costs AND the recorder accepts the billing support voucher (Form 3982). If the recorder accepts the Form 3982, instruct the recorder to fax the billing voucher to the CLO for payment.

**Note:**

Almost all recording offices are paid by Electronic Fund Transfers (EFT). CLO, in the past, arranged with some recording offices to allow ROs to add NFTL fees to the billing invoice. You will need to speak with the CLO team responsible for your area to determine if a similar method is still available. If so, provide the recording official with Form 3982, *Billing Support for Lien and Certificate Fees*.

7. After filing, the stamped document will be returned to the originator, who is responsible for inputting recording data on ALS within **4 calendar days of filing the NFTL**. If the employee does not have ALS input capabilities, the complete recording information must be sent via secure e-mail to CLO with the request that it be input to ALS.

**Reminder:**

If recording information is not input to ALS, timely lien release may not occur.

#### **5.12.7.4.2 (10-18-2013)**

##### **Manually Prepared NFTLs Using ICS**

1. Revenue officers hand carrying NFTLs for immediate filing will select the manual ICS lien notice process on the ICS system to receive a SLID notification via ICS to prepare NFTLs prior to requesting the NFTL. An ICS systemically created SLID is recognized by ALS.

**Note:**

CDP notices are systemically generated by ALS for ICS manually prepared lien notices. If there is a concern that the CDP notice will not be received within five business days of the NFTL filing, consider manual issuance of the CDP notice(s). See IRM 5.12.6, *Appeals Processes Involving Liens*.

- 2. Type the lien notice information, including serial number obtained from ICS, into the ICS template, Form 668(Y)(c).

**Reminder:**

Only SLID numbers generated by ICS or ALS will be used on NFTLs. Revenue officers will not create (make-up) SLID numbers. NFTLs issued without systemically generated numbers will not be released by ALS. Refer to the ICS User Guide for assistance or contact your manager.

- 3. Print the ICS template NFTL on your local printer.
- 4. When hand carried to the recording office, recording fees are to be paid by the employee and added to the employee's travel voucher for reimbursement UNLESS the filing fee exceeds normal costs AND the recorder accepts the billing support voucher (Form 3982, *Billing Support for Lien and Certificate Fees*). If the recorder accepts the Form 3982, instruct the recorder to fax the billing voucher to the CLO for payment.

**Note:**

Almost all recording offices are paid by Electronic Fund Transfers (EFT). CLO, in the past, arranged with some recording offices to allow ROs to add NFTL fees to the billing invoice. You will need to speak with the CLO team responsible for your area to determine if a similar method is still available. If so, provide the recording official with Form 3982.

- 5. Revenue officers are responsible for inputting recording data within **4 calendar days of filing the NFTL**. If the RO does not have ALS input capabilities, the complete recording information (including the taxpayer's name and TIN or the NFTL SLID) must be secure e-mailed to CLO for ALS input.

**Note:**

If recording data is not input to ALS, timely lien release may not occur.

**5.12.7.5 (10-18-2013)**

**Name Line Considerations When Preparing NFTL**

- 1. The name line of the lien notice identifies for creditors whose statutory lien we are noticing them about. The name has to be accurate enough for creditors to appropriately recognize and understand what property is encumbered. This section discusses entity considerations that need to be kept in mind when preparing NFTL for filing.

**5.12.7.5.1 (10-18-2013)**

**Use of Trade Names**

- 1. The abbreviation 'd/b/a' for 'doing business as' should be used only when an individual is actually doing business as a sole proprietor under a trade name, e.g., Edwin E. Kelly d/b/a Kelly's Garage. The abbreviation should never be used in a partnership situation.
- 2. The same degree of care should be exercised when using the abbreviation 't/a' for 'trading as'. This is used where a corporate, partnership, or LLC entity operates under a trade name other than the corporate, partnership, or LLC name, e.g., Werk Hard, Inc., t/a The Diggers.

**Caution:**

When the owner of an LLC is the liable taxpayer for employment taxes, the trade name of the LLC should **not** be included on the NFTL.

- 3. If the d/b/a or t/a name is included in the ICS "Secondary" name line field, create a new Name/Address record to include this information on the ICS "Primary Continued" name line field so it will appear on the NFTL.

**5.12.7.5.2 (10-18-2013)**

**Partnership**

- 1. General partners are individually liable for partnership debts, and separate assessments against them are not essential to sustain their individual liability. The separate liability of the partners is not an issue unless the partnership neglects or fails to pay the assessed liability.
- 2. Partnerships normally have one employer identification number (EIN).

<b>If</b> a single partnership has multiple outlets or businesses the same person established several partnerships	<b>Then</b> one EIN should be assigned to that partnership.  each partnership should be assigned a different EIN.  request an advisory opinion from Area Counsel through appropriate channels. See IRM 5.1.11.7.14, <i>Entity Changes</i> , for entity change procedures. BMF must reflect the name change.
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there is any doubt that a change in the name of a partnership will affect any NFTL filings **Note:** Although a change in name due to a change in membership of a partnership resulting from death, withdrawal, substitution or addition of a partner does not, in itself, effect a termination of a partnership for FICA or FUTA purposes, it does have an effect on the composition of the entity at law insofar as the collection of debts from the separate partners is concerned.

Area Counsel advises that a new form should be submitted based on any changes in a partnership adding to or changing a partnership entity prepare either a Form SS-4, Application for Employer Identification Number or Form 2363, Master File Entity Change.  
list all partners adding "PTR" following the name of the last partner.

- 3. A supplemental assessment is not required when adding a general partner's name to the partnership assessment. The Service's position is that the assessment and statutory lien against the partnership is also an assessment and statutory lien against each general partner.

**5.12.7.5.3 (10-18-2013)**

**Limited Liability Company (LLC)**

- 1. When filing an NFTL on a single member disregarded LLC entity, whether the name of the single member or the name of the LLC should appear on the lien notice document depends on the tax liability being collected.  
  - A. For collection of employment taxes incurred with respect to wages paid **on or after** January 1, 2009, the LLC is the taxpayer and the name on the lien notice document should be the name of the LLC. See Treasury Regulation 301.7701-2T(c)(2)(iv)(A).

B. For collection of certain excise tax liabilities imposed on or after January 1, 2008, the LLC is the taxpayer and the name on the lien notice document should be the name of the LLC. See Treasury Regulation 301.7701-2(c)(2)(v)(A).

2. For NFTLs filed with respect to collection of liabilities not addressed in (a) or (b) above, you must determine whether the LLC or the single member owner of the LLC is the liable taxpayer. See IRM 5.1.21, *Collecting from Limited Liability Companies*, for assistance in making that determination. If the single member is the taxpayer then only the name of the single member should be included on the lien notice document.

**Caution:**

Do not include the name of the disregarded entity. Such action would indicate to a potential creditor that the government has perfected a lien interest in the assets of the LLC. Including the name of the LLC would create a situation parallel to a "doing business as" or "trading as" secondary name line.

3. If the NFTL is incorrectly filed in the name of the disregarded LLC and the single member is not listed on the lien notice document, then file a new NFTL in the name of the single member.
- A. Withdraw the previously filed NFTL listing **only** the name of the disregarded entity.

**Caution:**

Depending on the facts of each case, an NFTL identifying the disregarded LLC as the taxpayer may be a valid notice against the single member owner. The Government's position is that an NFTL need not precisely identify the taxpayer; rather, the NFTL is valid if it substantially complies with the filing requirement so that constructive notice is provided to third parties. The Service loses priority when withdrawing NFTLs so consult with Area Counsel where the name of the LLC is very close to the name of the taxpayer. Allow Counsel to make a determination based on the case facts.

- B. Do not release the previously filed NFTL filed in the name of the disregarded entity. This action would extinguish the underlying statutory lien which under IRC § 6322 is associated with the assessment.
- C. Filing under the correct name will not preserve the priority of the NFTL filed under the name of the disregarded LLC
4. If the NFTL is incorrectly filed in the name of the disregarded LLC but the single member owner is also listed on the lien notice document, then correct the filed NFTL by removing the name of the disregarded LLC and referring back to the original NFTL.
- A. To correct a filed NFTL through the ALS application use the ALS AMEND program. The ALS AMEND program will supply the verbiage to connect the amended NFTL to the original NFTL.
- B. Use the Centralized Lien Operation (CLO) Form 13809, available through the Publishing web site, to request CLO amend the original NFTL.
- C. Issue a partial Withdrawal only if requested.
- D. Do not release the previously filed NFTL. The release will extinguish the underlying statutory lien which under IRC § 6322 is associated with the assessment.
5. The EIN used in the assessment should be used for the lien notice, despite the resulting mismatch between the entity name and the EIN, to ensure systemic notifications for the lien release in the Automated Lien system.

**Note:**

Certain mistakes on the NFTL are permissible so long as the name on the NFTL is sufficient to put third parties on notice of a lien outstanding against the single member. Thus, even if the EIN used in the assessment and in the NFTL is that of a disregarded entity, the NFTL is still valid when it is filed in the name of the single member.

**Reminder:**

If the name control and TIN on ALS are not the same, the TC582 and TC583 will not post. See *IRM 5.12.7.9.2* for name control mismatch instructions.

6. The entity type for the single member will dictate where the NFTL is filed with regard to the recording official specified in a state's version of the Uniform Federal Lien Registration Act.

**If the single member then the NFTL filing location is the**  
**is**

a corporation	Secretary of State or equivalent official specified in state law.
a partnership	location provided for partnership filing in state law. residence of the individual (for personal property).

**Note:**

an individual	To perfect the lien against real property, owned by the single member, state law generally requires filing with the jurisdiction where the property is physically located.
another LLC	location specified for the tax status elected by LLC or member status if single member LLC is also disregarded.

7. When filing an NFTL where the LLC is the liable taxpayer:
- select the name line that contains only the name of the LLC (and trade name, if applicable).
  - select the "Limited Liability Company" entity type when requesting NFTL through ICS.
  - select the "LLC" entity type when requesting an NFTL through ALS.
  - File it in the location specified for corporations in a state's version of the Uniform Federal Lien Registration Act .
8. If the liable taxpayer changes, due to changes in ownership, classification or regulations, special actions may be required:

**If the identity of the taxpayer changed...**  
From one period to the next resulting in a change of the taxpayer of record

**Then ...**

Separate NFTLs must be filed for each taxpayer, selecting the appropriate tax periods for each.

Separate calculation of the portion of liability attributable to each taxpayer is required

- There may be two separate NFTLs with different names but the same EIN and tax period with the appropriately allocated amounts of liability.

During a tax period

- Complete Form 12636, *Request for Filing or Refiling Notice of Federal Tax Lien*, for each liable taxpayer and send by secure email to the appropriate team in Centralized Lien Operation (CLO).

See IRM 5.1.21

### 5.12.7.5.3.1 (10-18-2013)

#### Creating New LLC Name Line Using ICS

1. The NFTL must properly identify the name of the taxpayer so that the public is placed on notice. You must determine whether the LLC or the owner is the liable taxpayer.
2. Care should be taken to ensure that the NFTL is filed properly by selecting the liable taxpayer's name and address and the correct location for filing under state law, depending on the identity of the taxpayer.
3. When creating a new name line using ICS, take the following steps.

Step	Action
1	To create a new name and address using only the name and address of the identified taxpayer, at the ICS Case Summary Screen, select Entity Detail
2	Select Name/Address then 'Add'
3	'From the 'Case Address' menu, if the LLC itself is the liable taxpayer, select the 'LLC-LLC is Liable Address'. To create a new name for the single member, select the LLC-Owner is Liable Address'.
4	The Domestic Address Format is preselected. Change if applicable.
5	Add the address record. For an LLC-Owner is Liable address, input of the Secondary TIN is a required field, either an SSN or an EIN
6	When filing an NFTL, if the LLC is the taxpayer, remember to select the 'Proprietorship' option on the ICS menu so that no entity type will be printed on the NFTL. If the owner is the taxpayer, select the entity type of the owner, IRM 5.1.21
7	Click 'Save'
8	If all information is correct, click 'yes' when prompted
9	Click 'Exit' to return to the Case Summary Screen

### 5.12.7.5.4 (10-18-2013)

#### Name Changes

1. Taxpayers may change names after the NFTL has been filed. To avoid disputes over lien priority in subsequently acquired assets, correct the NFTL reflecting the name or alias.
  - A. Place the new name on the first line.
  - B. Place the previous name on the second name line, preceded by either 'aka' for 'formerly known as'.
2. The DIAL (Delinquent Inventory Account Listing) interface does reduce the need for amended or corrected NFTLs. However, it is important to ensure that the name on the NFTL can be identified by public records searchers. Now that ALS has an AMEND application, use that application to correct NFTLs of this nature thus protecting the priority of the original NFTL.
3. The ALS AMEND application (see also *IRM 5.12.7.9.3*) will supply the verbiage to connect the amended NFTL to the original NFTL. Use CLO Form 13809, available through the Publishing web site, to request CLO amend the original NFTL.
4. Use this procedure when the taxpayer's name has been misspelled. See *IRM 5.17.2.3.5, Effect of Errors in Notice of Federal Tax Lien* for guidelines on whether the error makes the NFTL defective.

### 5.12.7.5.5 (10-18-2013)

#### Substitute for Return (SFR) Notices of Federal Tax Lien

1. When an SFR assessment is made against an individual as Married Filing Separate (MFS), that assessment is valid against that individual from the date of the SFR assessment until it is satisfied or expires. If the individual subsequently files a return, whether retaining or changing the filing status, the assessment is still valid against that individual from the date of the SFR.
2. Only the taxpayer and their spouse can elect to file a joint return. So a taxpayer with an MFS SFR assessment and their spouse may subsequently choose to file a Married Filing Joint (MFJ) return to replace the SFR assessment. In this situation the spouses become jointly liable. Where a spouse joins an existing SFR assessment, the joining spouse becomes liable for the tax from the date of the SFR assessment.

#### Example:

An SFR (MFS) where the MFJ replacement return lowers the module balance:  
 04/14/2010 a 30-200812 MFS SFR assessment is made against John Doe.  
 10/31/2010 a 30-200812 MFJ return is filed by John Doe and his joining spouse Jane Doe.  
 12/15/2010 a TC 291 posts reducing the SFR (now joint) assessment.  
 John Doe is liable for the adjusted assessment from the original assessment date 4/14/2010  
 Jane Doe is now liable for the assessment as adjusted from the original assessment date 4/14/2010.

#### Example:

An SFR (MFS) where the MFJ replacement return increases the module balance:  
 12/15/2010 same facts as above except that a TC290 posts increasing the module balance.  
 John Doe remains liable for the assessment from the original assessment date 4/14/2010  
 Jane Doe is now liable for the assessment originally assessed on 4/14/2010.  
 John and Jane Doe are both liable for the TC 290 amount assessed 12/15/2010.

3. The method of addressing NFTLs is as follows:

IF	AND	AND	THEN
SFR is assessed against primary spouse	NFTL is filed against primary spouse for the SFR assessment	MFJ return is filed which reduces the liability	No change should be made to NFTL on primary spouse. A new NFTL can be filed using the original SFR assessment date and showing both spouses (preferable method). A new NFTL can be filed using the joining spouse (only if filing against the primary spouse is prohibited). No change should be made to NFTL on primary spouse.
SFR is assessed against primary spouse	NFTL is filed against primary spouse for the SFR assessment	MFJ return is filed which increases the liability	A new NFTL can be filed showing both spouses and reflecting both the original SFR assessment date and the additional assessment date.
SFR is assessed against primary spouse	No NFTL is filed against primary spouse for the SFR assessment	MFJ return is filed which either reduces or increases the liability	A new NFTL can be filed showing both spouses and reflecting both the original SFR assessment date (and additional assessment date, if applicable).

4. Check with Area Counsel if the entity situation does not fit with the scenarios above. For example, a situation where an SFR MFS has been assessed against one spouse and then a MFJ return is filed using the joining spouse's SSN as the primary TIN. How the NFTL is addressed would depend on how the return is processed. Was the original SFR adjusted or abated as a result of the MFJ return filed? The statutory lien and its assessment must be accurately reflected on the NFTL.

#### 5.12.7.5.6 (10-18-2013) Consolidated Group NFTLs

1. A consolidated group is an affiliated group of corporations filing one consolidated tax return for the affiliated corporations. The corporations are connected through stock ownership and share a parent-subsidary relationship with the Common Parent of the affiliated group (in these situations referred to as a Consolidated Group). The Common Parent of the Consolidated Group files a consolidated income tax return to offset profits and losses of the affiliates.
2. Treasury Regulation 1.1502-6(a) imposes "several" liability for the consolidated tax liability of the group as a whole on the common parent and on each subsidiary which was a member of the consolidated group during any part of the consolidated return year. As a result, the IRS may collect from the common parent or from any such subsidiary for the unpaid tax liabilities of the consolidated group for the consolidated return year.
3. ALS has limited name line space so care must be taken when filing an NFTL for a Consolidated Group. Consult with Area Counsel, if there are questions. When an NFTL needs to be filed and the subsidiaries are too numerous to fit on the name line for ALS, a manual NFTL must be utilized. The manual NFTL can attach a second page listing the names which did not fit on the face of the NFTL. See *IRM 5.12.7.4* for manual NFTL preparation.

#### 5.12.7.5.7 (10-18-2013) Estate and Gift Tax

1. Estate and Gift Tax Liens are discussed in *IRM 5.5.8, Estate Tax Liens*.
2. To file a notice of the estate tax lien, Form 668(J) or Form 668(H) must be manually prepared
3. Manually post estate tax lien recording fees if applicable. These fees may be different than those fees used for recording Form 668(Y)(c).

#### 5.12.7.6 (10-18-2013) Special Condition NFTLs (Nominee, Alter Ego, Transferee)

1. Under certain circumstances a statutory lien continues to attach to transferred property even though an NFTL was not filed at the time of transfer. For example, the taxpayer (transferor) transfers property to a party (transferee) and does not receive adequate and full consideration in money or money's worth. The transferee is not considered a purchaser and so does not qualify for the protection of IRC § 6323. Those who are not protected by IRC § 6323 compete against the statutory lien rather than the filed notice. See IRC § 6323(h)(6) for a more complete definition of a purchaser. There are certain circumstances, even without a transfer, where the taxpayer has an interest in property owned by a third party. These circumstances include nominee and alter ego situations. A nominee is someone who holds legal title to the property while the taxpayer has a beneficial interest to which the statutory tax lien attaches. An alter ego situation is where the taxpayer and a third party are so closely aligned that legally they are regarded as having the same identity. Therefore, the taxpayer has a beneficial interest in all of the alter egos property to which the statutory lien attaches. As with the transfer discussed above, neither the nominee nor the alter ego have protection under IRC § 6323. See *IRM § 5.17.14.6, Nominee and Alter Ego Doctrines*.
2. Revenue Officers may encounter situations where the taxpayer has transferred property and circumstances indicate actual or constructive fraud. Property may have been acquired in the name of another person or entity and the taxpayer controls the property to such an extent that the title holder is possessed of 'color of title'. See *IRM 5.17.2, Federal Tax Liens* for nominee, alter ego, and transferee theory. Generally, no fraud is indicated if the transfer was made at a time when no tax liability had accrued or was anticipated or the taxpayer did not retain any use or control of the property. See also paragraph two in both *IRM 5.12.7.6.1 the Note*, and *IRM 5.12.7.6.3*.
3. An NFTL for a **nominee** situation contains a statement on the face of the NFTL. The statement expresses the lien's attachment, through the lien notice, to the specific property identified in the statement.
4. An NFTL in an **alter ego** situation will not be limited to certain identified property. Because of the broad nature of the lien asserted with alter egos, the facts of each case should be carefully considered before asserting an alter ego theory.
5. An NFTL for a **transferee** situation contains a statement on the face of the NFTL. The statement expresses the lien's attachment, through the lien notice, to the specific property identified in the statement.
6. Special NFTL condition lien notices are generally intended as a foundation for the pursuit of enforcement action such as levy, seizure, suit to foreclose a lien, or other related action. Collection and Counsel resources should be taken into consideration if the case collection action plan does not include pursuit of enforcement actions.

#### Note:

See *IRM 5.12.7.6.4* for instructions on the request, approval, and filing of special condition lien notices.

7. If an NFTL is filed in the name of the taxpayer before the transferee encumbers or sells the property to a valid purchaser, the government's lien interest is fully perfected. In these circumstances, the lien can be enforced by a seizure of the property from the transferee or subsequent valid purchaser, or by a suit to foreclose the lien. A special condition NFTL would not be required in this situation.
8. A special condition lien notice may **not** be filed without the written approval of Area Counsel.

#### 5.12.7.6.1 (10-18-2013) Nominee Lien Notices

1. A nominee is someone designated to act for another. In the context of the federal tax lien, a nominee is generally a third person who holds legal title to property of a taxpayer while the taxpayer enjoys full use and benefit of that property. The statutory lien attaches to all property and rights to property owned by the taxpayer even if a third person holds legal title. The third person can be any person listed in IRC § 7701 (a) (1).
2. A nominee situation normally involves a fraudulent conveyance or transfer of a taxpayer's property to avoid legal obligations. To establish attachment of the statutory lien in a nominee situation, it must be shown that while a third party may have legal title to the property, it is the taxpayer that owns the property and who enjoys the full use and benefit.

#### Note:

If there are fraud indicators associated with a property transfer prior to the assessment (i.e. statutory lien arising) and little evidence that the taxpayer controls or enjoys full use and benefit of the property, contact Area Counsel as soon as practicable to discuss making a suit referral to the Department of Justice.

3. Consider the following circumstances when developing your case:
  - A. the taxpayer is paying maintenance expenses,
  - B. the taxpayer is using the property as collateral for loans,
  - C. the taxpayer is paying state and local taxes on the property,
  - D. the taxpayer has the use or benefit from the property, or
  - E. other relevant facts. See also *IRM 5.17.2.5.7.2*.
4. The taxpayer may record fraudulent transfer documents that make it appear as if the transfer of the property was to a valid purchaser prior to the filing of the NFTL. For example, the taxpayer may record a warranty deed showing the alleged purchaser paid fair market value for the property instead of a quit-claim deed for love and affection. Examples of nominee situations include:

**Example:**

Minnie College owes \$70,000 for tax periods 200812 and 200912 assessed in April 2012. Minnie deeds property valued at \$250,000 to her daughter, Molly for no cost in January 2011. Minnie continues to maintain the property and uses it as collateral for obtaining a car in January 2012. Even though Molly lives on the property, Molly is a nominee of Minnie because consideration was not paid for the property.

**Example:**

Sam Smith is the beneficiary of an Illinois Land Trust, the corpus of which consists of land located in the state of Illinois. ABC Trust Co is designated as the trustee of the trust. Although under Illinois law the trustee is the legal owner of the land, Sam retains full use and benefit of the land, including control over disposition. Therefore ABC Trust Co is Sam's nominee with respect to the land held in the trust. A nominee lien should be filed in the county office where the land is located in the name of "ABC Trust Co, nominee of Sam Smith".

5. A nominee lien notice may **not** be filed without the written approval of Area Counsel.

**5.12.7.6.2 (10-18-2013)  
Alter-Ego Lien Notices**

1. The "alter-ego" (second self) doctrine has been summarized as follows: The obligation of a corporation will be recognized as those of another person, and vice versa, where it appears that the corporation is not only influenced and governed by that person, but there is such a unity of interest and ownership that the individuality or separateness, of the person and the corporation has ceased. Also the facts are such that adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote an injustice. The alter ego question does not concern property rights and should not focus on whether the taxpayer had a state-law enforceable property right in property. Rather, a proper alter ego analysis focuses on which entities are liable for the debt and whether two entities that are formally separate should be regarded as one.

**Note:**

It is generally more difficult to establish alter-ego relationships than a nominee situation.

2. There are two elements to the alter ego doctrine:
  - A. Unity of ownership and interest, and
  - B. Fraud or inequity would result from the failure to disregard the corporate entity.
3. Some factors pertinent to a determination to disregard the corporate entity are whether the individual:
  - A. is in a position of control or authority over the entity;
  - B. controls the entity to shield himself from personal liability;
  - C. uses the business entity for his or her own financial benefit;
  - D. uses the business entity to assume personal debts, or debts of another, or
  - E. uses personal funds to pay the business entity's debts.
4. Some facts establishing the factors in (3) above are:
  - A. commingling of funds and other assets,
  - B. failure to segregate funds of the separate entities,
  - C. an unauthorized diversion of corporate funds or assets to other than corporate uses,
  - D. treatment by an individual of the assets of the corporation as his own,
  - E. failure to obtain authority to issue stock or to subscribe to or issue the same,
  - F. holding out by an individual that he or she is personally liable for the debts of the corporation,
  - G. failure to maintain minutes or adequate corporate records, and the confusion of records of separate entities,
  - H. the identical equitable ownership in two entities,
  - I. the failure to adequately capitalize a corporation, the total absence of corporate assets, and under capitalization,
5. Explore the possibility of using the administrative process of jeopardy, transferee assessment, nominee lien notice, emergency lien foreclosure action, or emergency transferee or fraudulent conveyance suit before filing an NFTL in the name of an alter-ego.
6. Do not file an NFTL in the name of an alter-ego without legal review, advice, and written direction from Area Counsel as to:
  - A. the need for a supplemental assessment,
  - B. a new notice and demand, and
  - C. the language to be incorporated in the NFTL.
7. Refer to the Legal Reference Guide for Revenue Officers, IRM 5.17.2, for additional information.

**5.12.7.6.3 (10-18-2013)  
Transferee Lien Notices**

1. The term transferee can be a confusing concept because the term is used in different ways. In the context of this IRM section, transferee refers specifically when a statutory lien attaches to property and the property has been transferred by the taxpayer through a gift, bequest, devise, or inheritance before an NFTL could be filed. There is no requirement that the taxpayer retain use of or a beneficial interest in the property. With the approval of Area Counsel, a special condition lien notice naming the transferee and the property transferred may be filed.

**Example:**

William and Mary have outstanding tax liabilities but state they have no property and so cannot pay their liability. They gave their \$600,000 home to their son Bob after the liabilities and statutory lien arose but before an NFTL was filed. After which, they moved into leased property. The deed to the home is in Bob's name, he lives in the home, maintains it, and has used the home as collateral to finance his mortgage. Bob is a transferee because the statutory lien existed before the transfer and he did not pay for



the property.

2. Contact Area Counsel as soon as practicable to discuss making a suit referral to the Department of Justice if there are fraud indicators associated with a property transfer prior to the assessment (i.e. statutory lien arising) and little evidence that the taxpayer controls or enjoys full use and benefit of the property.
3. Other uses for transferee include:
  - A. An administrative transferee assessment under IRC § 6901. An IRC § 6901 assessment carries its own statutory federal tax lien. Normal NFTL filing procedures and appeal rights are followed.
  - B. A transferee judgment lien obtained through a suit to establish a transferee liability or set aside a fraudulent transfer. This transferee judgment lien is not the same as a statutory federal tax lien and can't be used as the basis to file a special condition transferee lien notice.
4. For more information about transferee situations, see the following references:
  - IRM 5.17.14, the *Legal Reference Guide for Revenue Officers - Fraudulent Conveyances and Transferee Liability*,
  - IRM 5.1.14.2, *Field Collection Techniques and Other Assignments* for information on Transferee liabilities assessed under IRC § 6901, and the
  - IRM 25.3, *Litigation and Judgments* series when pursuing a suit recommendations regarding fraudulent transfers.

#### 5.12.7.6.4 (10-18-2013)

##### Special Condition NFTL Approval Process: Request, Advisory Review, and Post-Approval

1. The request and approval of special condition NFTL involves a request from a revenue officer, approval by their manager, review by Advisory, and approval by Area Counsel.
2. Given the geographic diversity of the workforce, all review and approval work will be conducted, whenever possible, through electronic transmissions (generally via secure email).
3. The Revenue Officer's pre-approval request actions are the first step.

##### Note:

See also *IRM 5.12.7.6.4.1, Taxpayer NFTL Filing When Special Condition NFTL Filed*.

4. The revenue officer's manager is the second step in the approval process. If the special condition lien notice is a protective action only, consideration must be given to economic factors, and the resources of Field Collection and Area Counsel. Consideration of these factors will be reflected in the request package.
5. The third step is the review process in Advisory. See *IRM 5.12.7.6.4.4, Advisory Review Actions*.
6. The final step is the responsibility of Area Counsel. They must approve all special condition NFTL and any associated enforcement action, court action, or protective action recommended by the originating revenue officer.
7. If Area Counsel approves a special condition lien notice and associated enforcement action, generally they return the request package to Advisory (*IRM 5.12.7.6.4.4, Advisory Review Actions*) with any document perfections needed. There may be occasions because of time and/or inventory considerations where the revenue officer perfects the approved special condition NFTL. In either situation, perfecting the draft NFTL involves following Area Counsel's directions as to the name line, property description, and any other special identifying language.
8. Generally where a suit is anticipated and even though they have reviewed the draft suit package along with the special condition NFTL request, Area Counsel will need to have the suit package re-presented to them once the special condition lien notice has been filed.

#### 5.12.7.6.4.1 (10-18-2013)

##### Taxpayer NFTL Filing When Special Condition NFTL Filed

1. As part of the special condition NFTL request process, ensure that a regular NFTL, naming the taxpayer and covering the same statutory liens (assessments), is filed in real and personal property where the taxpayer resides before or at the time of the special condition NFTL filing.
2. Additionally, ensure that a regular NFTL is filed in the same location(s) as the special condition NFTL either before, or at the time of, filing the special condition NFTL. These actions will protect the government's interest in the event of bankruptcy or litigation.

#### 5.12.7.6.4.2 (10-18-2013)

##### Revenue Officer Request Actions

1. Revenue officer actions for a special condition NFTL request pre-approval include:
  - A. Identify, as part of case review and analysis, when the elements exist to pursue a special condition NFTL. See *IRM 5.12.7.6.1, IRM 5.12.7.6.2, IRM 5.12.7.6.3*, and *IRM 5.17.2.5.7*;
  - B. See *IRM 5.12.7.6.4.1, Taxpayer NFTL Filing When Special Condition NFTL Filed*;
  - C. Seek pre-submission advice on the merits of the case from Advisory or Area Counsel to ensure that the elements needed to substantiate the request have been established; and
  - D. Prepare the request.
2. The revenue officer prepares a memorandum request for a special condition NFTL outlining the elements of the case.
3. A draft special condition lien notice is prepared and included along with the request memorandum for approval. Counsel has advised that generally the request memorandum should specify the alternative proposed (nominee, alter ego, or transferee) and should not propose all three as alternatives. The draft special condition NFTL should reflect the proposed alternative in the draft name line. If Area Counsel approves the filing of the special condition NFTL, the draft NFTL will be rechecked and perfected based on the language provided by Area Counsel before it is filed. When preparing the draft NFTL, use the ICS instructions in *IRM 5.12.7.6.4.3* below.
4. **Do not use ALS** to create a special condition nominee or transferee NFTL because both require that a description of the property attached by the lien be included in the body of the NFTL. ALS does not have the capability to add text to the body of an NFTL. It allows, in addition to the entity information, only the standard information, i.e., MFT, tax period, TIN, etc. When a property description is needed, the NFTL must be manually prepared.
5. The request memorandum should:
  - A. Develop and substantiate the basis for a special condition NFTL.
  - B. Be able to withstand a court challenge (with minimal additional development).
  - C. If this is a transferee situation, focus of the request should be for advice as to the need for a supplemental assessment and a new notice and demand. See *IRM 5.1.14, Field Collection Techniques and Other Assignments* for IRC § 6901 requests.



D. Seek advice as to the name line to be used and any special language to be incorporated into the body of the NFTL.

E. Include enforcement plans, since special condition lien notices are generally intended for enforcement.

(i) If the plans are for levy or seizure, include the basis for those actions so that Area Counsel's approval can contain the approval for those actions as well. The actual forms will not be prepared until approval has been received.

(ii) If a suit to foreclose the lien is planned, outline that plan, as the suit's package will likely need the approval of this action prior to the suit's package preparation.

(iii) If the special condition lien notice is protective in nature, provide all relevant information to provide Area Counsel the background needed to determine whether a protective special condition lien notice is appropriate.

6. The request will be forwarded to the group manager for approval of the decision.

7. The manager approved request will be forwarded to Advisory for review.

8. Wherever possible, transmission of the request should occur electronically via secure email.

#### 5.12.7.6.4.3 (10-18-2013)

##### Preparing the Draft Special Condition NFTL

1. ICS steps to use in preparation of the draft special condition NFTL:

Step	Action
1	From the <b>Case Summary</b> screen, click "Entity Detail"
2	At "Entity Detail" , from the drop down menu, select "Name and Address"
3	Click "Add" to create a name/address entry for a special condition NFTL
4	Click "Case Address - Other Address"
5	Enter the name and special condition as provided by Area Counsel (e.g. "Jane Doe as nominee of John Doe" )
6	Enter the address, click "save" and click "exit" to exit this process
7	Next, in ICS from "within case" , select ICS Form 668Y Template
8	Click "Next" . A pop-up fill-in dialogue box appears
9	Skip the "Enter the Serial Number" field as no SLID should be placed on the draft document at this time
	Complete the entity section of the NFTL by entering:

A. name of the special condition entity

B. the name line phrase anticipated (e.g. Jane Doe as nominee of John Doe)

10

#### Note:

These two name line items will be perfected later by Area Counsel if the request is approved.

C. the name of the taxpayer

11 Enter the taxpayer's address

12 Enter the tax period information

For an asset specific notice, use the designated template field.

A. If the description is brief, enter:

"This special condition lien notice attaches to only the specified property described below"  
[insert property description]

13 **Example:**

Example: Seascope Yacht, VIN 65T23465, Location: Blackrock Court, Seaside, FL 94899.

B. If the property description is lengthy, enter

"This special condition lien notice attaches to only the specified property described in the attached exhibit."  
[attach a separate document with the property description]

14 Enter the filing location

15 Enter your t-sign number

16 Select "no" when asked if you want to add Form 3982

17 Click "save"

From the Print Manager, Click "Switch to Word" and review the document for accuracy.

#### Note:

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the typed property description may cause the bottom sections of the NFTL document to roll over to another page. To fix this, simply place your cursor over the empty rows, click "Table" on the Word Menu Bar (at the top), scroll down to the "Delete" command and over to "Rows" and click. This will delete the unused rows and roll up the unused sections from the other page back to the NFTL. Make sure to execute this fix on both pages of the NFTL.

#### Reminder:

If the ICS template is unavailable, prepare the NFTL using the PDF fillable version from the Publishing catalog.

#### 5.12.7.6.4.4 (10-18-2013)

##### Advisory Review Actions

1. Advisory generally becomes involved with a special condition NFTL request prior to submission of the request package. Advisors provide advice to revenue officers on the merits of the case and the substantiation needed for approval. The advisor will seek the assistance of Area Counsel, as needed, at this stage.

2. When receiving a special condition NFTL request package, Advisory opens an ICS NFOI 191 control.

3. Advisory is then responsible to review and perfect the request package for approval consideration. They are to ensure all the elements needed for the request have been provided and that the revenue officer has included adequate substantiation to prove their position.

#### Note:

See also *IRM 5.12.7.6.4.1, Taxpayer NFTL Filing When Special Condition NFTL Filed*

- Once the request is ready, Advisory will forward the request to Area Counsel for approval. Wherever possible, transmission of the request should take place electronically.
- Once the special condition lien notice and any associated enforcement actions have been approved, Advisory perfects the name line, special conditions, and, for any notices of nominee or transferee lien the property description, based on Area Counsel's instructions.
- Advisory then notifies the originating revenue officer of the approval and forwards the special condition NFTL and any attachments (generally via secure email) to CLO FORT (Field Office Resource Team) for processing at \*SBSE CCP FORT. See *IRM 5.19.12, Centralized Case Processing - Liens* for CCP procedures.

**Reminder:**

See also *IRM 5.12.7.6.4.1, Taxpayer NFTL Filing When Special Condition NFTL Filed*.

- As ALS does not issue any CDP notice letters or special condition NFTL letters when a special condition NFTL is filed, both the FORT and Advisory must ensure that the originating revenue officer has the information needed to send the appropriate CDP notice letter(s) and/or other letters timely as part of the filing process.
- Advisory will receive from the FORT, via secure email, a copy of the special condition NFTL, including the SLID assigned by ALS, sent to the recording office for filing. Again, Advisory must ensure that the FORT sends this to Advisory as soon as the special condition NFTL is printed and sent for filing.

**Note:**

If a SLID must be obtained by Advisory or the revenue officer, see *IRM 5.12.7.6.4.7* for methods of obtaining the serial lien identification number (SLID) when manually creating an NFTL.

- Advisory provides the originating revenue officer (generally via secure email) a copy of the special condition NFTL with a reminder to the revenue officer to monitor ALS for the posting of the recording information and to follow-up on the letters to be sent to the special condition entity, taxpayer, and any applicable Powers of Attorney.
- Advisory closes their ICS control.
- The FORT should be providing a copy (electronically scanned and secure emailed) of the filed special condition NFTL and any associated taxpayer NFTL with the recording information to both the originating revenue officer and Advisory. Advisory will associate this with their closed case file. The FORT will also retain an electronic copy of the filed special condition NFTL and any associated taxpayer NFTL for future reference.
- Subsequent levy or seizure enforcement action is at the Area Office's discretion once Area Counsel has approved the special condition theory in writing. Generally suit packages are re-presented to Advisory and Area Counsel once the special condition lien notice is in place.

**5.12.7.6.4.5 (10-18-2013)**

**Special Condition NFTL SLID Numbers**

- Normally the special condition NFTL SLID number will be generated by ALS when CLO inputs the information from the approved special condition NFTL after receiving it from Advisory. However, there may be situations when either the originating revenue officer or Advisory will need to generate the SLID.
- One way to request a SLID is to use Form 12636 to request it from CLO by fax or secure email to the group for the appropriate state.
- A second way to generate a SLID is through ICS. Through coordination with ALS, ICS can generate a SLID starting with the number 27. From the ICS Collection Activity Screen:
  - Select "Federal Tax Lien"
  - Request "Lien"
  - Verify the address information
  - From "Lien type"
  - Select "File Manually"
  - Type the SLID obtained from the ICS process into the ICS Form 668(Y)(c) template. Secure email the NFTL and any attachments to CLO and they will complete the billing and issuance process.
- A third way that **Advisory** can generate a SLID is through ALS, if they have permissions, by entering all applicable entity and tax information, and then:
  - Selecting the entity type as nominee to suppress the printing of the regular CDP notice. This selection automatically populates the first line of the lien notice with "Nominee of"
  - Suppressing the printing of the lien notice by answering (N) to the question "Print and Store" before inputting the revenue officer's assignment number.
  - Answering the question "On Voucher", for NFTL manually prepared and hand carried for filing, as "N".

**Exception:**

For filing with Boston United States District Court and for the Connecticut Secretary of State answer the "On Voucher" question "Y".

- However the SLID is generated, the revenue officer must ensure that CLO has a copy of the manually filed NFTL.

**5.12.7.6.4.6 (10-18-2013)**

**Post Approval Revenue Officer Actions**

- After receiving from Advisory a copy of the approved special condition lien notice and confirmation that the special condition NFTL has been sent for filing, the revenue officer **must within five (5) days** manually prepare and mail the appropriate letters informing the special condition entity and the taxpayer of the special condition NFTL filing and providing the taxpayer, if appropriate, the taxpayer's CDP notice. See *IRM 5.12.7.4 Manual NFTL Preparation* and *IRM 5.12.7.6.5 Appeal Rights for Special Condition NFTLs* for those instructions.

**Reminder:**

See also *IRM 5.12.7.6.4.1, Taxpayer NFTL Filing When Special Condition NFTL Filed*.

- When the special condition NFTL is processed through CLO and the FORT, the recording office will return the recording information to CLO. The revenue officer must follow-up to ensure the NFTL was properly filed and the court recording data entered into ALS. The FORT should be providing a copy (electronically scanned and secure emailed) of the filed NFTL with the recording information to both the originating revenue officer and Advisory.
- The revenue officer associates this special condition NFTL document, a copy of the approval memorandum from Area Counsel, and any other relevant documents with their case file.

4. The revenue officer proceeds with their intended case actions. See *IRM 5.12.7.6.6*.

#### 5.12.7.6.4.7 (10-18-2013)

##### Post Approval Exigent Circumstance Actions

1. Most special condition lien notices are processed routinely through the CLO FORT. Occasionally there are exigent circumstances such as an imminent property transfer or other jeopardy situation. In these situations the special condition lien notice is hand carried to the recording office for filing.

##### Reminder:

See also *IRM 5.12.7.6.4.1, Taxpayer NFTL Filing When Special Condition NFTL Filed*.

2. Either Advisory or the revenue officer will contact the CLO FORT by phone and follow-up with an electronic or faxed expedite Form 12636 request for a SLID number "only". The exigent circumstances will be explained and an electronic copy via secure email of the approved special condition NFTL will be provided to the FORT. This way the FORT will know to select an entity type in ALS for the special condition, suppress printing the NFTL for filing, and take this NFTL off the normal voucher system for filing fees.
3. The FORT creates a special condition NFTL in ALS to mirror the special condition NFTL based on ALS limitations and provides the SLID to the requestor. See *IRM 5.12.7.6.4.5* for those instructions.
4. The revenue officer then physically carries the special condition lien to the recording office for filing.
5. See *IRM 5.12.7.6.4.8* for instructions on paying filing fees.
6. The revenue officer **must within four (4) days** of physically filing the special condition NFTL, forward electronically via secure email a copy of the filed NFTL with recording information to both the FORT and Advisory.

##### Reminder:

If the recording data is not input to ALS, timely release may not occur.

7. The revenue officer **must within five (5) days** manually prepare and mail the appropriate letters informing the special condition entity and the taxpayer of the special condition NFTL filing and providing the taxpayer, if appropriate, the taxpayer's CDP notice. See *IRM 5.12.7.4, Manual NFTL Preparation* and *IRM 5.12.7.6.5 Appeal Rights for Special Condition NFTLs* for those instructions.
8. The revenue officer associates this special condition NFTL document, a copy of the approval memorandum from Area Counsel, and any other relevant documents with their case file.
9. The revenue officer proceeds with their intended case actions. See *IRM 5.12.7.6.6*.

#### 5.12.7.6.4.8 (10-18-2013)

##### Filing Fee Payment for Special Documents

1. Hand-Carried Documents for filing:
  - A. Revenue officers preparing special documents hand carried to recording offices may be required to pay the recording fee.
  - B. If recording fees are paid out-of-pocket, use the IRS' travel program for reimbursement.
  - C. Recording offices in some jurisdictions may accept the submission of Form 3982, *Billing Support for Lien and Certificate Fees*, for fee payment (*IRM 5.12.7.12.3*).
  - D. Fees may be more than the cost of a regular lien notice filing because of attachments. You should contact the recording office prior to hand carrying documents for filing to ensure the amount needed to file is available.
2. CLO Processed Documents for filing:
  - A. Revenue officers may also forward manually prepared documents via secure email or regular mail to CLO for processing and fee payment. These documents will be issued (mailed) with the next Tuesday or Thursday lien notice document issuance to recording offices, after receipt.

##### Example:

RO Smith forwards a manually prepared nominee lien notice, containing a property description in the body of the NFTL, to CLO via secure email Wednesday morning. The document is retrieved by CLO Wednesday afternoon. The normal document print cycle is Thursday. RO Smith's nominee lien notice will be batched and mailed with documents scheduled for the Thursday print cycle.

3. See also *IRM 5.12.7.6.4.1*.

#### 5.12.7.6.5 (10-18-2013)

##### Appeal Rights for Special Condition NFTLs

1. Persons assessed as transferees under IRC § 6901 have an assessment and statutory lien separate from the transferor/taxpayer entitling them to due process appeal rights. Ensure they are issued a Letter 3172, *Notice of Federal Tax Lien Filing and your Rights to a Hearing Under IRC 6320*.
2. Persons determined to be nominees, alter-egos, or transferees not assessed under IRC § 6901 are entitled to a post-filing appeal under the Collection Appeals Program (CAP).

**Manually issue** Letter 3177, *Letter Notifying of Federal Tax Lien Filing-Nominee or Alter-Ego*, and related publications after the lien notice has been filed.

##### Note:

Persons determined to be nominees, alter-egos, or transferees not assessed under IRC § 6901 do not meet the definition of eligibility for CDP rights. That definition is outlined in IRC §6320 and identifies the party to receive notice as the taxpayer against whose property the statutory lien has arisen. A statutory lien attaches to all of a taxpayer's property whether or not it is held by a third party. See also Treasury Regulation § 301.6320-1 *Question and Answer* numbers A7 and B5, *IRM 5.12.6*, and *IRM 5.17.2*.

3. The taxpayer is entitled to a collection due process hearing only the **first** time that the statutory lien appears on a lien notice and to a CAP appeal for the filing of an additional NFTL or a special condition NFTL.

##### Note:

See *IRM 5.12.7.6.4.1, Taxpayer NFTL Filing When Special Condition NFTL Filed*.

**The taxpayer letters to be issued are:**

<b>Letter</b>	<b>Issued when</b>	<b>Issued How</b>
Letter 3172, <i>Notice of Federal Tax Lien Filing and your Rights to a Hearing Under IRC 6320</i>	<b>first time filing</b>	Systemically: NFTL is issued through ALS
	<b>Note:</b> Ensure that the regular NFTL, when it is the first time, is filed before or at the same time as the special condition NFTL	Manually: exigent circumstances or NFTL created manually
Letter 3171, <i>Notice of Additional Federal Tax Lien Filing</i>	<b>additional filing</b>	Systemically: NFTL is issued through ALS
	for every special condition NFTL issued	Manually: exigent circumstances or NFTL created manually
Letter 3886, <i>Notice to Taxpayer of Nominee/Alter Ego Federal Tax Lien Filing</i>		Always issued manually

**Reminder:**

For exigent circumstances or manually created NFTL see also *IRM 5.12.7.6.4.7* and *IRM 5.12.7.4*.

4. Additional IRM references include: *IRM 5.12.6* and *IRM 5.17.2.4*.

**5.12.7.6.6 (10-18-2013)**

**Enforcement of Special Condition NFTL**

1. In determining what additional enforcement action should be taken (other than filing the NFTL), consideration must be given to the confusion in the chain of title and redemption rights of the taxpayer. These conditions may depress the marketability of any property.
2. A judicial lien foreclosure or seizure followed by suit to foreclose the NFTL will generally bring a greater sale price particularly for real property.
3. The administrative seizure and sale process may be used if prompt action is needed to protect the government's interest. Include any concerns and relevant facts in the request for opinion from Area Counsel.

**5.12.7.6.7 (10-18-2013)**

**Retention, Release, and Withdrawal of Special Condition NFTL**

1. Special condition NFTL documents and case files are unique in nature and have a need to be kept longer than the normal retention period. This allows for subsequent inquiries, collection actions, and eventual lien releases to be resolved timely.
2. Advisory will maintain the special condition NFTL, the Area Counsel authorization memorandum, and associated case histories for one year after the underlying tax liability has been satisfied or one year after the statutory period for collection has expired. See item 43 of Document 129900, *Records and Information Management Record Control Schedules*. Maintenance of the file may include transferring it to the appropriate Records Control Center as long as precautions are in place to ensure that the Special Condition NFTL may be timely released. Generally there will be other cases related to the special condition NFTL file such as a seizure file or suit to foreclose the lien. It may be appropriate to associate the special condition NFTL file with these other Advisory files.
3. The revenue officer file would be disposed of following normal procedures.
4. Releases of special condition NFTL are generally processed in the same manner as regular NFTL. The releases are systemically generated through ALS after ALS is notified by Master File of a satisfied module or ALS notes that the collection period has expired. But the release generated by ALS will have a different appearance from the manually prepared and filed special condition NFTL because ALS has certain limitations associated with name line and property descriptions. A recording office may choose to reject the document as too different from the original filing. If the recording office rejects an ALS generated release:
  - A. CLO and the FORT will utilize their retained copy of the manually created special condition NFTL to prepare and file a manual release.
  - B. The FORT may need to contact Advisory or the revenue officer for their retained copy in order to prepare a manual release.
5. A request for withdrawal of a special condition lien notice may be considered where all actions related to all the property associated with the special condition lien notice have been concluded but the underlying statutory lien is still open because the taxpayer's liability has not been satisfied. See *IRM 5.12.9 Notice of Lien Withdrawal*.

**5.12.7.7 (10-18-2013)**

**Other Distinctive Filing Considerations**

1. In addition to special consideration lien notices, there are other filing situations which are unusual and care must be taken to ensure that the documents filed are correct.

**5.12.7.7.1 (10-18-2013)**

**Jeopardy and Prompt Assessments NFTL**

1. Sometimes it is necessary to file a lien notice less than 10 days after an assessment is made or before an assessment has posted to IDRS. NFTLs calling for this type of action may be the result of one of the special conditions discussed above. Even if that is not the case, these NFTL require special attention in their creation, filing, and follow-up.
2. It is important that the information on the filed NFTL, on ALS, on ICS, and on IDRS is reflected correctly and consistently. These systems operate on different processing schedules which impacts when and how NFTL filing information posts to IDRS.
3. Creation of an NFTL with an assessment date less than 10 days old is a multi part process.
  - A. When there is no master file account, hold the lien notice until the account is established.
  - B. Revenue officers **must** request the SLID from the CCP FORT because ALS will reject an ICS SLID that is less than 10 days from the assessment date. See *IRM 5.1.4, Jeopardy, Termination, Quick and Prompt Assessments* for more information on jeopardy situations.

**Note:**

ALS contains an override of the "assessment less than 10 day" system block. ALS queries the creator, "Is this a jeopardy assessment? (y/n)". If the answer is "yes", ALS allows continuation of NFTL creation.

- C. If the NFTL will not be hand carried, allow the NFTL to be processed through the CLO normal printing and filing process.

- D. If the NFTL is being hand carried, request "printing" of the NFTL be suppressed in ALS. This will prevent a duplicate of the manual NFTL being generated for filing. The RO then uses the ALS jeopardy SLID when creating the manual NFTL in the ICS lien notice template. The NFTL can then be hand carried to the recording office as soon as the SLID is received. The revenue officer hand carrying the NFTL will have to pay the filing fee (*IRM 5.12.7.6.4.8*) and obtain the recording data.

**Reminder:**

The stored NFTL in ALS and the manual NFTL created in the ICS lien notice template need to match so that a later issued release by ALS will be accepted by the recording office.

- E. If the lien notice must be filed expeditiously and the filing location is other than where the originating revenue officer works, initiate an Other Investigation (OI) with the manager's approval. Utilize scanning and electronic transmission via secure email where possible. Note on the front of the OI that this is a jeopardy situation and that immediate filing of the NFTL is required. The group receiving the OI will hand carry the NFTL for filing with the recording office, pay the filing fee, and obtain the recording information. The acknowledgement copy of the 3210 with a copy of the filed document will immediately be returned to the originating office.
4. Non-ICS users needing to file an NFTL where the assessment date is less than 10 days old, must work directly with CLO to create the NFTL.
5. **The TC 582 lien indicator and TC 360 filing fee must be manually input to IDRS after the assessment posts. This is the primary responsibility of the lien notice initiator.** The NFTL initiator is to ensure that the TC 582 posts so that in the future when the NFTL needs to be released, ALS will be informed of the module closure.
6. Inadvertent lien releases are a risk with these NFTL because it takes time for the various systems to align their information with one another. The NFTL **originator must monitor the status** of the module frequently and work with CLO to physically pull any inadvertent releases before they can be mailed to the recording office. Monitor until the jeopardy or prompt assessment is in collection status.
7. Continue to monitor master file until the TC 360 (filing fee) posts and is the correct amount.

**5.12.7.7.2 (10-18-2013)**

**Preparing NFTLs Filed After Original CSED (NAOC)**

1. Notices filed after the original "collection statute expiration date" (CSED) passed but the statute remained open were referred to as "Portland" notices. They are now called an "NFTL After Original CSED" or NAOC. The original 10 year collection statute has passed yet the statute remains open because the CSED was extended or suspended.

**Example:**

A tax liability was assessed 10/20/2001. The taxpayer filed bankruptcy which suspended the statute and a new CSED calculation posted to IDRS of 12/20/2014. The NFTL was filed in December 2011. Since the filing occurred after the original 10 year statute would have expired, the system will prompt for a date and if nothing is entered places N/A or blank in column (e), the refile by date field.

2. When inputting these lien notices to ALS, the system will ask for the new CSED. Enter the current CSED date or, if the CSED is suspended, show all asterisks or a date that is at least 20 years after the assessment date.

**Note:**

When completing a Form 12636 request, it is essential to show the updated CSED for each period to be refiled. The updated CSED will be input to ALS. If the CSED is in suspense, the CSED field of Form 12636 should show all asterisks (\*\*/\*\*/\*\*\*\*) or a future date (e.g., original CSED plus 20 years). The CSED will update on ALS once the suspense status is resolved. Do **not** put N/A in the CSED field of Form 12636.

3. Whether there is a correct date, an incorrect date, no date, or an "N/A" in the refile by date field (column (e)), the rules for refiling do not change. The lien notice must be refiled timely according to IRC § 6323(g) in order for the lien's "notice" to remain valid against third parties and more importantly, that the statutory lien is not inadvertently released because of incorrect information in column "e".

4. Refile deadlines can be calculated using the formula below:

- A. Calculate the original refile deadline according to IRC § 6323(g)(3)(A), [e.g., 10/20/2001 + 10 years 30 days = 11/19/2011]
- B. For a second refile period deadline, calculate the refile period according to IRC § 6323(g)(3)(B), [the one year period ending 10 years after the first refile deadline, [e.g., 11/19/2011 + 10 years = 11/19/2021]
- C. For a third refile period deadline, calculate the refile period according to IRC § 6323(g)(3)(B), [the one year period ending 20 years after the first refile deadline, [e.g., 11/19/2011 + 20 years = 11/19/2031].
- D. Enter the date calculated using the above methodology in column (e) of the NFTL.

**Note:**

The refile period calculations for old assessments may vary due to prior law. Contact Advisory and Counsel if a tax assessment CSED or lien notice refile period ended prior to November 5, 1990. See IRM 5.12.2.20.2.1 for additional information.

- E. See also IRM 5.12.8.

5. When the module is satisfied, which for this example would be 12/20/2014, ALS will know to systemically issue a release.

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[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 8. Notice of Lien Refiling

##### 5.12.8 Notice of Lien Refiling

- 5.12.8.1 [Purpose](#)
- 5.12.8.2 [Introduction to Refile](#)
- 5.12.8.3 [Refiling Period](#)
- 5.12.8.4 [Refile Determination Responsibility](#)
- 5.12.8.5 [Refile Determination Criteria](#)
- 5.12.8.6 [Procedures for Refiling](#)
- 5.12.8.7 [Consequences and Corrections When Refiling Not Timely](#)
- 5.12.8.8 [Release of Refiled NFTL](#)
- 5.12.8.9 [Refile Report](#)
- Exhibit 5.12.8-1 [Lien Refiling Chart](#)

##### Manual Transmittal

October 14, 2013

##### Purpose

(1) This transmits the new IRM 5.12.8, Federal Tax Liens, Notice of Lien Refiling.

##### Background

A revision of the IRM 5.12 chapter has been done in order to consolidate and coordinate like topics, reduce duplication of content, and provide an overview, cross-references, and contacts.

##### Material Changes

- (1) Introduces new IRM with title of Notice of Lien Refiling which identifies the content contained in this IRM.
- (2) The following table provides a cross walk of sections MOVING TO IRM 5.12.8 FROM other IRM 5.12 location(s)

##### Moving from \_\_\_\_\_ to IRM 5.12.8

5.12.2.20  
Exhibit 5.12.2-2  
Exhibit 5.12.2-3  
5.12.6.3.10

- (3) Content rearranged to provide a better flow for the subject matter.
- (4) 5.12.8.2 added an introductory section for the topic.
- (5) 5.12.8.6.1 added section on instructions for preparing a refile using the Automated Lien System.
- (6) 5.12.8.6.2 added section for instructions for preparing a refile outside of the Automated Lien System. These instructions allow for the deletion of the outdated exhibit graphic file of a Notice of Federal Tax Lien (NFTL) refile and instructions.
- (7) 5.12.8.7 added a consequences of not refiling timely section.
- (8) 5.12.8.8 remove reference to CLO Functional Coordination assistance with refile reports.
- (9) Exhibit 5.12.8-1 redesigned to eliminate the dated graphic file.
- (10) Exhibit 5.12.8.2 NFTL Lien Refile example has been deleted. Instead the IRM 5.12.8.6.2, *Instructions for Refiling Outside of ALS* provides a link to the Publishing catalog version.

##### Effect on Other Documents

This material supersedes IRM 5.12.1, dated January 9, 2009, IRM 5.12.2 dated March 8, 2012, IRM 5.12.3 dated June 1, 2010, and IRM 5.12.6 dated July 16, 2010.

##### Audience

SBSE and W&I Collection, Centralized Lien Operation, and Appeals

##### Effective Date

(10-14-2013)

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##### 5.12.8.1 (10-14-2013)

##### Purpose



1. The purpose of this IRM is to convey instructions for refiling Notices of Federal Tax Lien (NFTL). This section discusses what a refile is, when and why it is needed, what the legal requirements are, where and how it is filed, and what happens if action is not taken to refile a NFTL.

### 5.12.8.2 (10-14-2013) Introduction to Refile

1. Refile notices (Form 668F) are special Notices of Federal Tax Lien (NFTL) which extend the life of the statutory lien and the NFTL. They are filed by the Service when there is a need to preserve the attachment of the statutory lien to a taxpayer's assets and the priority of the lien notice with regards to certain creditors. An example of this need would be a litigation case where court actions may extend well beyond the original life of the tax liability.
2. Refiling a lien notice within the required refiling period under IRC 6323(g) preserves the Service's priority position in relation to the four classes of creditors enumerated in IRC 6323(a).

#### 5.12.8.2.1 (10-14-2013) General Overview

1. The statutory lien arises with a taxpayer's failure to pay their tax liability after demand. If no lien notice is filed, the duration of the statutory lien is dependent solely on whether the statute to collect the tax liability remains open.
2. Once a lien notice is filed, the statutory lien has a certain dependence on the notice. While it remains true that the statutory lien is **always** extinguished when the liability is satisfied or the period to collect expires, the statutory lien can also be released through the self-releasing language on the NFTL. The self-releasing language can be triggered even if the collection period has been extended or suspended.
3. The reason for the self-releasing statement is to ensure that the law is met which requires a notification to creditors that the notice is no longer valid because the statutory lien has been released. IRC 6325 requires the Service to issue a release of lien not later than 30 days after the day on which the liability for the amount assessed has become legally unenforceable (or when such liability has been fully paid). When the Collection Statute Expiration Date (CSED) expires, the liability becomes legally unenforceable. Since a release statement must be made within 30 days of the tax liability becoming unenforceable, Form 668(Y)(c) is specifically designed to contain a trigger for the self-releasing statement and the trigger coincides with original CSED. This saves the Service from having to devote resources to manually releasing liens and lien notices when the CSED expires.
4. The trigger on the notice is found in column "e". The last day for refiling ("refile by" date) is the date in column "e" of the NFTL.

#### Note:

If the Service places "N/A" in column "e" or leaves this field blank, it means that the self-release language on Form 668(Y)(c) will not be operable to release the lien notice and acknowledge the expiration of the statutory lien. Since the underlying statutory lien expires when the CSED expires, irrespective of whether column "e" is left blank or contains an N/A, this means that any lien notice not containing a date in column "e" must still be appropriately released to acknowledge that the statutory lien has expired and any associated lien notice is no longer valid. The Automated Lien System (ALS) releases any lien notice if it receives a "closed" or "status 12" notification from master file.

5. When a column "e" date triggers the self-releasing statement, **both the statutory lien and the lien notice are released** even if the collection statute remains open.

#### Reminder:

The self-releasing statement on the lien notice is, "**IMPORTANT RELEASE INFORMATION:** For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a)".

6. For the majority of lien notices which have not been paid or satisfied prior to the expiration of the original CSED, the self-releasing language allows the Service a cost-effective way to fulfill its legal obligation to ensure that the public knows the lien and lien notice have been released.
7. When there is a need to continue the statutory lien and NFTL, the Form 668F is used to notify creditors that both the statutory lien and original NFTL continue in full force. However, a refile can only occur when a tax liability remains open and collectible because the CSED has been extended or suspended. Likewise, a release occurring where the CSED remains open and collection actions are proceeding will negatively impact those actions due to the release of the lien notice and statutory lien.
8. Even though a CSED remains open, a continuation of the statutory lien and lien notice is not required. The decision to refile is based on the circumstances of the case.
9. The first time a lien notice is refiled, the Service has 30 days beyond the original CSED to accomplish the task of refiling.
10. Once a lien notice has been refiled the first time, any subsequent refile period calculation and the new CSED (suspended or extended) calculation follow different rules. Since the subsequent refile period and CSED calculations differ, it becomes important to separately track **both** the end of the new CSED and the end of the refile period. Even if the period for refiling a notice is open, if the CSED expires, then the IRS is required to release the statutory lien and any associated notices within 30 days of the CSED expiration.

#### 5.12.8.2.2 (10-14-2013) Definitions

1. **CSED:** The collection statute expiration date is the date by which the Service must collect the debt owed or the authority to collect the debt expires (See IRM 5.1.19, *Collection Statute Expiration*). The CSED period is normally ten (10) years unless it has been extended or suspended such as by submitting an Offer in Compromise (see IRM 5.8.1, *Offer In Compromise, Overview*) or filing bankruptcy (see IRM 5.9.1, *Overview of Bankruptcy*). Other situations that can trigger a CSED extension or suspension are identified in IRM 5.1.19, *Field Collecting Procedures - Collection Statute Expiration*.
2. **Refile:** A lien notice refile is a renewal or continuation of both the statutory lien and lien notice. Action to refile can only be taken if the CSED has been extended or suspended. However, refiling is not needed for all cases in which the CSED has been extended or suspended. A refile determination is needed.
3. **Refile Period:** The year long time-frame during which the law allows a lien notice to be refiled by the Service. There are two types of refile periods.
  - A. **First Refile Period:** The year long original refile period which starts nine years and 30 days after the original assessment date and ends ten years and 30 days after the original assessment date. (IRC § 6323(g)(3)(A))
  - B. **Subsequent Refile Period:** The year long period starting nine years after the end of the previous refile period and ending ten years after the end of the previous refile period. (IRC § 6323(g)(3)(B))
4. **"Refile By" Date:** is the date by which a notice of lien must be refiled in order to meet the legal requirements and preserve both the statutory lien and original lien notice. This date is distinct and different from the CSED, which is when the liability is deemed unenforceable. Generally these two date computations run concurrently but will not if the CSED has been extended or suspended.

#### 5.12.8.2.3 (10-14-2013) Law

1. IRC § 6323(g) and Treasury Regulation § 301.6323(g)-1 contain the legal instructions, definitions, requirements, and regulations related to refiling lien notices.
2. The *effect of refiling* the notice is to continue both the statutory lien and lien notice. Refiling preserves the respective date with which the statutory lien and lien notice compete with other creditors.



3. The *effect of failure to refile* is to extinguish the statutory lien (if the notice contains a self-releasing statement) and invalidate the lien notice.

**Exception:**

When the IRS has commenced a suit or a levy and it is subsequent to that commencement the lapse of the statutory lien and lien notice occur (failure to refile), then any right the United States has to property or its proceeds is not altered, except when:

- (1) a person acquires an interest in the property for adequate consideration and does not have notice of and is not bound by the outcome of the proceeding.
- (2) the suit is dismissed.
- (3) the levy is released.

4. Since there is only one statutory lien but that statutory lien may be reflected on numerous lien notices, for a refile to be effective in continuing the statutory lien, every notice listing that statutory lien must be refiled. If the statutory lien is inadvertently released all notices associated with that statutory lien become invalid as of the date of the release. When this occurs and a statutory lien and notice are still needed, the statutory lien must be repaired first through revocation of the release before any notice can again be filed.
5. IRC 6323(g)(3) controls the refile status even if the NFTL column "e" is left blank or contains an N/A.

**5.12.8.3 (10-14-2013)  
Refiling Period**

1. The time period for refiling the NFTL has a starting and ending date. Therefore, a refiled Notice of Federal Tax Lien is invalid if it is filed outside (either before or after) the period for refiling. See IRC 6323(g)(3).
2. There are two types of refiling periods. The original refiling period described in IRC § 6323(g)(3(A)) and any subsequent refiling period IRC 6323(g)(3(B)). No matter which type of refile period is occurring the length of the period is the same and that length is twelve (12) months.
3. The subsection IRC 6323(g)(3(A) defines the **first**"required refiling period" as the one-year period that ends 30 days after the ten-year period following assessment of the tax. Stated differently, this is a one-year window of time that ends 30 days immediately after the CSED. To find the IRC 6323(g)(3(A)) refile period ending date use *Exhibit 5.12.8-1*.
4. All refile periods last 12 months. The IRC 6323(g)(3(A) refile period is determined by:
  - First, calculating the ending date of the refile period. For calculations of the ending date of the first required refile period see *Exhibit 5.12.8-1*.
  - Then, look back to that same date in the previous year
  - Finally, select the next calendar day after the look back date for the start of the refile period

**Example:**

For an assessment date of 04/18/2000 the IRC 6323(g)(3(A) refiling period is 05/19/2009 - 05/18/2010. The 5/18/2010 is obtained by following the direction in *Exhibit 5.12.8-1*. Then looking back one year, the date is 5/18/2009. The final step is to advance forward by one day which then identifies the first day of the refile period as 5/19/2009.

**Example:**

On March 1, 2002, an assessment of tax was made against A, a delinquent taxpayer, and a statutory lien for the amount of the assessment arose on that date because A neglected to pay after a demand for payment.  
On July 1, 2002, an NFTL was properly filed. The NFTL filed on July 1, 2002, is effective up to and including March 31, 2012.

The first required refiling period for the NFTL begins on April 1, 2011, and ends on March 31, 2012. A refiling of the NFTL during that one year period will extend the effectiveness of the March 1, 2002 statutory lien and the NFTL originally filed on July 1, 2002, up to and including March 31, 2022 or until the CSED expires, whichever date occurs the earliest.

The second refiling period for the NFTL begins on April 1, 2021, and ends on March 31, 2022 or until the CSED expires, whichever date occurs the earliest.

**Caution:**

There are some old cases, NFTL or judgments which will not fall into the instructions above. These old cases have unique refiling periods. Watch out for situations involving both a tax liability assessed and a NFTL refiled prior to the Revenue Reconciliation Act, effective November 5, 1990, extending the collection statute of limitations from six to ten years after assessment. In these limited cases the refile period(s) will have been calculated in six-year instead of ten-year increments. It is important in these situations for the Service to maintain its position, a position which could be negatively impacted by an incorrectly calculated refile period. When a lien of this nature is encountered, contact Advisory and Counsel for assistance in determining the correct refile period.

5. Subsection IRC 6323(g)(3(B) defines **subsequent** refile periods as the one-year period ending with the expiration of ten years after the close of the preceding refiling period. Stated differently, the starting and ending dates of subsequent refile periods are determined using the first (IRC 6323(g)(3(A)) refile period. Ten years are added to the end of the first (IRC 6323(g)(3(A) ) refile period. Any additional refile periods are calculated by adding ten year increments to the previous refile period. This means that if the CSED has been extended, whether due to suspension of the collection statute of limitations or the taxpayer's agreement to extend the statute, after the first refile, the CSED and refile period will no longer be calculated the same way. Subsequent refiles must follow IRC § 6323(g)(3(B) no matter when the CSED expires.

**Example:**

For an assessment date of 04/18/2000 the IRC 6323(g)(3(A) refiling period is 05/19/2009 - 05/18/2010.

For this example, the CSED has been extended to 6/12/2022 and the original NFTL was timely refiled on 4/20/2010.

The subsequent refile period is from 5/19/2019 - 5/18/2020. If the second refile occurs timely, the refile notice is valid until 5/18/2030 or until the CSED expires, whichever is first. In this example the CSED expires 6/12/2022.

Because the refile period ends after the CSED expires, the responsible revenue officer or advisor must track the dates to ensure that a lien release is filed no later than 7/12/2022, which is 30 days after the assessment becomes unenforceable. ALS does receive systemic alerts when a CSED expires, so the release should process systemically, but there is no self-releasing statement on a Form 668(F) and the Service is responsible to ensure that the release occurs. (See IRC § 6325)

6. Whether or not the CSED is running concurrently with the refile period or not:

**If a CSED expires...                      Then ...**

before the refile period ends the lien(s) and notice(s) must be released within 30 days of the CSED.

after the refile period ends    if appropriate, any lien notice(s) reflecting the statutory lien must be refiled to preserve both the statutory lien and lien notice(s).

**5.12.8.3.1 (10-14-2013)  
Column "e" and Refiling**

1. Any original NFTL will contain a date in column e of Form 668(Y)(c) which is ten years and 30 days after the original assessment date. A lien notice must be refiled on or

before that date.

**Example:**

An assessment date of April 1, 2002 with an NFTL filed September 28, 2003.

The date in column e will be May 1, 2012.

This means that May 2, 2012 both the statutory lien and NFTL will self-release and be extinguished.

If after the NFTL is filed, the taxpayer files a bankruptcy petition and the collection statute of limitations is suspended while levy is prohibited plus six months. The CSED will be extended for the period the statute was suspended.

If the CSED for the assessment has been extended to September 15, 2016, the NFTL must be refiled between May 2, 2011 and May 1, 2012.

The date in column e for the Form 668F should be entered as May 1, 2022.

However, the CSED is September 15, 2016, and the responsible revenue officer or advisor must keep track of CSED and ensure a release of any lien notice for the statutory lien (assessment) is filed no later than October 15, 2016.

2. A refiled NFTL will contain a date in column e which is ten years after the expiration of the previous refile period. Past practice has been to put nothing or NA in the Form 668F column e. The date in column e for any refile should be a date ten years after the expiration of the previous refile period. If at all possible the refile notice should reflect the correct "refile by" date.

**Example:**

Starting with the same facts in the example for paragraph (1), except assume there were multiple suspensions of the collection statute of limitations and the taxpayer agreed to extend the statute of limitations in connection with an installment agreement.

As a result, the CSED to September 15 2024.

The first refile notice must be filed between May 2, 2011 and May 1, 2012.

Enter May 1, 2022 in column e of this refile notice because it is the ending date of the **subsequent** refile period.

Because the CSED is extended beyond May 1, 2022, a second refile is needed and must be filed between May 2, 2021 and May 1, 2022.

For this second refile, the date in column e will be May 1, 2032.

However, the responsible revenue officer or advisor must keep track of the CSED and ensure a release of all the lien notices is filed no later than October 15, 2024.

3. The life of the refiled notice is set by law and will not change even if there is no date or an N/A in column e. The notice's validity is controlled by IRC § 6323(g).
4. Form 668(F) does not contain a self-release statement but the statutory lien will expire with the CSED so it is imperative that any lien notice (refile or other) which does not contain a self-releasing statement and trigger for that statement, must be monitored and released within 30 days of the CSED in compliance with IRC § 6325. ALS is systemically notified when a CSED expires and the module goes into status 12. This should release the refile appropriately but the Service remains responsible to ensure that the release occurs timely.

**5.12.8.3.2 (10-14-2013)**

**Refiling an NFTL After Original CSED (NAOC)**

1. In rare situations NFTLs are filed, for the first time, at a date later than the original CSED. These types of lien notices are called "NFTLs after original CSEDs" or NAOCs.
2. Refiling an NAOCs follows the IRC 6323(g)(3)(B) rule.

**Example:**

For an assessment date of 04/18/2000 the IRC 6323(g)(3)(A) refiling period is 05/19/2009 - 05/18/2010. For this example, the CSED has been extended to 6/12/2022 as a result of multiple suspensions of the collection statute of limitations and the taxpayer's agreement to extend the collection statute in connection with an installment agreement.

An NAOC was filed 12/21/2010.

The subsequent refile period is from 5/19/2019 - 5/18/2020.

The NAOC was refiled timely on 5/1/2020

The next refile period occurs 5/19/2029 - 5/18/2030 which keeps the notice valid until 5/18/2030 or until the CSED expires, whichever is first.

The refile by date in column e is 5/18/2030 but in this example the CSED expires 6/12/2022.

Because the refile period ends after the CSED expires, the responsible revenue officer or advisor must track the dates to ensure that a lien release is filed no later than 7/12/2022, which is 30 days after the assessment becomes unenforceable. ALS does receive systemic alerts when a CSED expires, so the release should process systemically, but there is no self-releasing statement on a Form 668(F) and the Service is responsible to ensure that the release occurs. (See IRC § 6325)

3. If there are difficulties using ICS when requesting the refile of an NAOC or if the refile NAOC request is being sent to CLO for processing, use Form 12636 to request CLO input the NAOC refile directly into ALS. Prior to completing the Form 12636, alert CLO that an unusual request is being forwarded. Flag the Form 12636 as a NAOC refile request.
4. See IRM 5.12.7.2 for more information about filing NAOC.

**5.12.8.4 (10-14-2013)**

**Refile Determination Responsibility**

1. All functions with active collection inventories are responsible for:
  - making timely refile determinations , and
  - ensuring the NFTL is refiled, if appropriate.
2. Collection Advisory is responsible for litigation cases, CNC and ACS mandatory follow-up cases.
3. Designated employees in the Automated Collection System Unit are responsible for active ACS cases.
4. Insolvency is responsible for cases assigned to the Automated Insolvency System (AIS).
5. Field Collection revenue officers are responsible for cases in their inventory. This determination is particularly relevant when preparing cases for litigation.

**5.12.8.5 (10-14-2013)**

**Refile Determination Criteria**

1. Consider refiling the NFTL if the statute date has been or will be extended or suspended by any action within the required refiling period (e.g. bankruptcy, OIC, filing suit against the taxpayer, etc.). All NFTLs filed after December 1982 will self-release ten years after the assessment regardless of any extension or suspension of the collection statute.

<b>If</b>	<b>Then</b>
the form used for the original filing was earlier than December 1982,	Failure to refile the notice during the refile period does not affect the validity of the statutory lien (i.e. the statutory lien is not extinguished) but failure to timely refile does affect the validity of the notice and, possibly, the IRS' lien priority position. Contact Advisory and Counsel with any questions.
Notices of Federal Tax Lien are filed	the form contains the "self-release" statement. Unless the notice is timely refiled, if appropriate, the self-release statement, when

on forms revised on December 1982 triggered by the date in column "e", releases both the statutory lien and associated lien notice(s) or later

2. Before any NFTL is refiled, each assessment must be examined to determine if the CSED has been suspended or extended beyond the original ten year period. Also determine if the original CSED will be suspended or extended in the near future (e.g. suit filed against the taxpayer).
3. The normal collection statute may be suspended or extended by:
  - A. Execution of Form 900, Tax Collection Waiver, in connection with entering into an installment agreement.
  - B. Offer in Compromise.
  - C. Assets of taxpayers in custody of a court in certain types of proceedings.
  - D. Judgment for the United States.
  - E. Absence of taxpayer from the United States continuously for six months.
  - F. Military deferments.
  - G. Filing a suit.
  - H. An extension executed between the taxpayer and the Service before a timely-filed levy is released after the CSED.
    - I. Wrongful seizure or lien on property of a third party.
    - J. Automatic stay in bankruptcy.
    - K. Filing of a request for relief from joint and several liability.
    - L. Filing a request for a Collection Due Process hearing.

See IRM 5.1.19 for an in depth discussion of what extends or suspends the CSED.

4. The extension or suspension of the CSED does not mean that an NFTL must automatically be refiled.
5. Each case must be analyzed regarding present and future assets to which the refiled NFTL might attach. The present balance owing on the statutory lien's debt would be another factor to be taken into consideration. Another consideration is maintaining the Service's priority in cases involving litigation and bankruptcy.
6. If there are multiple statutory liens (assessments) on the original NFTL, determine which are eligible to be refiled. Satisfied modules cannot appear on a refiled NFTL. And **only** those assessments with statutory liens within the refile period can be included on a Form 668F. Include as many statutory liens (assessments) as possible, where the open refile periods overlap on the original NFTL, on one Form 668F.

#### Example:

An NFTL contains six statutory liens (assessments) and a suit to foreclose those liens has been filed. The CSED for all six assessments has been suspended, but at this time only three of the statutory liens are within the year-long refile period.

This is the first refile period for any of the statutory liens and so the year-long refile period starts nine years and 30 days after the original assessment date and ends ten years and 30 days after the original assessment date. All three statutory liens have different assessment dates and so the refile period for each will also differ.

After calculating the refile dates for each of the three statutory liens (assessments), there is a two month window where their separate refile periods overlap. During that two-month overlapping window a cost effective Form 668F can be filed reflecting all three statutory liens (assessments).

7. Prior to refiling, check the current unpaid balance of assessment for the statutory liens (assessments) that will be included on the refile notice. The updated balances will be used when creating the refile notice.

If	Then
the refiled NFTL is prepared through ALS	ALS will block inclusion of any satisfied modules.
the entire assessed amount has been paid but unassessed accrued amounts remain outstanding	enter the total amount of the accruals as of the date the refiled NFTL is "manually prepared" . These amounts should be shown in column (f). Line through the words "Unpaid Balance of Assessment" and write in "Outstanding Balance" .
there is a de minimus amount due (e.g. less than \$2,500) on the assessed balance and there are unassessed accruals	enter the total amount owed plus accruals as of the date the refiled NFTL is "manually prepared" . Line through the words "Unpaid Balance of Assessment" and write in "Outstanding Balance" .
an original Notice of Federal Tax Lien lists more than one liability, and the assessment dates are different,	the refiled NFTL should list only the period(s) which meet the criteria for refiling.
there are multiple assessments within the same period, and the refile periods are different	care should be taken to only enter the balance for the assessment(s) being refiled. The Automated Lien System (ALS) will allow refiling of each specific assessment.
a Form 668(Y)(c) was filed in a given jurisdiction, but because of a change of residence a NFTL is to be refiled during the refiling period in another jurisdiction.	use Form 668F for refiling, even though Form 668(Y)(c) was never filed in that jurisdiction. Remember that the original NFTL in the previous location must also be refiled to maintain the statutory lien.

#### 5.12.8.6 (10-14-2013) Procedures for Refiling

1. Under normal circumstances, the Automated Lien System (ALS) should be used to create and forward for filing the refile notice. ALS will allow NFTLs to be refiled when the statute has expired against one person on a joint assessment. Check with the Centralized Lien Operation (CLO) site if there are any concerns whether to use a manual document or process. CLO normally prints and mails refiled documents. IRM 5.19.12, *Centralized Case Processing - Liens* contains their procedures on printing and mailing these documents.

#### 5.12.8.6.1 (10-14-2013) Instructions for Refiling Through ALS

1. **Without access to ALS:** The Centralized Lien Operation (CLO) will input refiles through ALS upon request.
  - A. Submit request to CLO on Form 12636 *Request for Filing or Refiling Notice of Federal Tax Lien*.
  - B. Form 12636 must include all information that needs to be updated, i.e., dollar amount, address, CSED.
  - C. It is essential to show the updated CSED for each period to be refiled so that the correct CSED may be input to ALS. If the CSED is in suspense due to litigation, the CSED field of Form 12636 should show all asterisks (\*\*/\*\*/\*\*\*\*) or a future date (e.g., CSED plus 20 years). The CSED will update on ALS once the suspense status is resolved. Do **not** put N/A in the CSED field of Form 12636.

D. Requests should be sent to CLO via secure email.

**Reminder:**

Allow for process time in CLO and mailing time when refiling NFTL at the end of a refile period otherwise the refile may not be filed timely.

2. **With access to ALS:** follow the instructions in the ALS User Guide Chapter 10.

**5.12.8.6.2 (10-14-2013)**

**Instructions for Refiling Outside of ALS**

1. At times, circumstances may exist that do not allow time for a refiled NFTL to be created, printed, and processed through ALS. In these cases prepare the refile using Form 668F from the Publishing catalog. ICS NFTL template cannot be used.
2. A refile SLID must be generated by ALS. It cannot be generated by ICS and it cannot be made-up. Use Form 12636 to contact CLO for a SLID. Inform them that the refile is being prepared outside of ALS and provide CLO the reason the refile notice is being prepared outside of ALS so they can include that in an ALS history item.
3. On the PDF enter the information as follows:
  - A. Enter the SLID from the original NFTL in the Serial Number Recorded field
  - B. Enter 1-800-913-6050 (CLO's number) in Lien Unit Phone field
  - C. Enter the Area where the notice is being prepared in the Area Field
  - D. Enter the taxpayer's name and address from the original NFTL
  - E. Enter in *columns a, b, c, d* the information from the original NFTL
  - F. Enter in *column e* next refile expiration date. (See *IRM 5.12.8.3.1* paragraph two (2) for an example of a **subsequent** refile period deadline as well as *IRM 5.12.8.2.2* for the definition.)
  - G. Enter in *column f* the updated Unpaid Balance of Assessment (UBA)
  - H. For the **Notice of Federal Tax Lien Refiling** box in the:
    - (1) *Serial Number* field enter the SLID assigned by ALS for the refile
    - (2) *Notice Filed at* field enter the Recording Office where the Form 668F will be filed
    - (3) *New TP name/TIN/address* fields enter only "new" information. If the information from the original NFTL is still current, then these fields will be left empty.
    - (4) *Signature for* field enter the name and phone number of the person filing the Form 668F. Then sign (signature must be someone with delegated authority - see Delegation Order 5-4 in *IRM 1.2.44.5*) for lien delegations.
    - (5) *Title* field enter the title of the person signing the Form 668F
    - (6) *Date* field enter the date the Form 668F is prepared.
  - I. Enter in the *Place of Filing* field the recording office as it appeared on the original NFTL
  - J. Enter in the *Total* field the total of the amount(s) listed in column f.
  - K. The remaining information fields are completed using the information from the original NFTL.
4. If there is a question about a deviation from any of the above instructions, contact Advisory and/or Area Counsel for instructions.
5. Secure email CLO a copy of the filed Refile lien notice including the recording information.

**5.12.8.6.3 (10-14-2013)**

**Address Change Procedures Affecting Refiling**

1. The refile lien notice should always reflect the taxpayer's current address.
2. A notice of change of a taxpayer's residence will be effective if it is received:
  - A. In writing from the taxpayer or his/her representative. Form 8822, *Change of Address* states the taxpayer's name and the address of the new residence. Process the Form 8822 to ensure that MF reflects the new address.
  - B. Through the National Change of Address database.
  - C. In a return or amended return of the same type of tax filed with the Internal Revenue Service by the taxpayer. The return or amended return must indicate that it is a change of address and correctly state the taxpayer's name, address of present residence and identification number required by IRC § 6109.
3.
 

<b>If</b>	<b>Then</b>
the new residence is located outside the United States	filing will be made in the District of Columbia.
more than one written notice of change of address is received on or before the 90th day	attempt to reasonably ascertain if property belonging to the taxpayer is located at the address, then, depending on the case facts, file as appropriate and contact Advisory and Counsel with any questions.
4. Other than the means specified above, no communication, either written or oral, will be considered as notice of a change of a taxpayer's residence.

**5.12.8.6.4 (10-14-2013)**

**Place for Refiling**

1. During the required refiling period, the NFTL is to be refiled in all cases in every office in which a prior NFTL (including a refiled notice) was filed. This refiling in all locations is extremely important for both real and personal property. If the refiling is not accomplished as and when required, all other NFTL and refiled NFTL are ineffective.
2. *IRM 5.12.7 Exhibit 2* contains the list of State Filing Locations.

**Note:**

If the state has redesignated its filing location for the specific type of property, the NFTL should be refiled in the new office designated by the state. The Uniform Federal Lien Act of the state should be checked to confirm where to file the certificate or notice.

3. When a CSFD has been or will be extended or suspended,

<b>If ...</b>	<b>And ...</b>	<b>Then ...</b>
---------------	----------------	-----------------

additional property is identified in a new location without a NFTL or refile on record

- it is prior to original CSED
- refiling determined to be appropriate
- original CSED has expired
- extended or suspended CSED remains valid
- file NFTL in the new location
- refile NFTL before end of refile period
- file NAOC
- see *IRM 5.12.8.3.2*

### 5.12.8.7 (10-14-2013) Consequences and Corrections When Refiling Not Timely

1. The NFTL announces to those described in section 6323(a) that a statutory lien exists and that the lien is effective with regards to them as of the date the notice is filed.
2. The release or self-release of the NFTL is conclusive that the underlying statutory lien is extinguished. If a notice of lien is not refiled, and the notice of lien contains a self-releasing statement, it will automatically release the statutory lien when the required refiling period ends. Along with the release of the statutory lien, the lien notice is invalidated at the end of the refile period. Neither continue to exist.
3. When the CSED remains open after the normal ten year collection period allowing for the continued collection of the liability **but the lien notice is not refiled**, neither the statutory lien nor the NFTL exist or are effective after the required refiling period expires. This means that **any** lien attachment to a taxpayer's property or creditor position related to that property is lost.

#### Exception:

The only exception is if the United States has commenced a judicial proceeding or levy action prior to the extinguishment of the statutory lien and NFTL. However, the United States has rights only to property or its proceeds when derived through the judicial action or levy. The United States has no rights to property if the proceeding is dismissed or a person acquired an interest in the property for adequate consideration without notice of the proceeding and who is not bound by its outcome.

4. If the statutory lien and notice expire while a CSED is open and the Service has need of both, the Service must revoke the release of the statutory lien in order to reinstate it. The revocation reestablishes the statutory lien with an effective date which is the date when it has been both mailed to the taxpayer and filed. The effective date **does not** reach back to the original assessment date. See *IRM 5.12.3* for instructions.
5. Once the statutory lien has been reinstated a new notice of lien may be filed. This new filing must meet the requirements of section IRC § 6323(f) and Treasury Regulation §301.6323(f)-1. It is effective from the date the new notice is filed. This new notice will be an NAOC. See *IRM 5.12.8* for instructions on filing an NAOC.

### 5.12.8.8 (10-14-2013) Release of Refiled NFTL

1. The Form 668F, used to refile a NFTL, is **not** self-releasing. The Service is responsible to see that all refiled lien notices are released when their associated CSED expires. A release **must** be filed for every refiled lien notice associated with the statutory lien (assessment) when an extended CSED has expired. It is required by IRC § 6325 within 30 days of the CSED expiration. ALS systemically receives notification from master file when a CSED expires as long as there is a transaction code (TC) 582 on the account and can then systemically process a release. However, the Service remains responsible for ensuring these releases are filed.
2. Filing Form 668Z, *Certificate of Release of Federal Tax Lien*, will extinguish the statutory lien and invalidated all notices. However, a certificate of release should be filed for each refiling, amendment, or correction associated with an original NFTL.
3. See *IRM 5.12.3* for release instructions.

### 5.12.8.9 (10-14-2013) Refile Report

1. A Potential Refile Report can be generated through ALS. The report reflects NFTLs expiring in the next 90 days. The report may be useful in identifying NFTLs that are within the refile period. Advisory has the primary responsibility for working the report and the instructions can be found with the ALS User Guides.

### Exhibit 5.12.8-1 Lien Refiling Chart

The following chart can be utilized to determine ending date for the first IRC § 6323(g)(3)(A) refile period. The ending date for this refile period can be found in the table below using the first horizontal header row at the top of the table and the first column on the left. To find the last day for refiling purposes, locate the month of the assessment date in the top horizontal heading and the day in the left vertical column. Go down and across until you locate the appropriate date. That month and date combined with the year of the original CSED becomes the ending date for the first refile period. Use the original Collection Statute Expiration Date (CSED), find that day in first column, use that day as the row. Next, follow the "day" row until the original CSED month column is located. The "month-day" listed there identifies the 30th day after assessment. Combine that "month-day" with the original CSED year to obtain the end of the first refile period. For calculation of subsequent refile periods see *IRM 5.12.8.3* and IRC 6323(g)(3)(B).

#### IRC § 6323(g)(3)(A) Refile Chart for Non-Leap Year Calculation of Ten Years Plus 30 Days After Original CSED

Day	Jan	Feb	Mar	Apr	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
1	1-31	3-03	3-31	5-01	5-31	7-01	7-31	8-31	10-01	10-31	12-01	12-31
2	2-01	3-04	4-01	5-02	6-01	7-02	8-01	9-01	10-02	11-01	12-02	01-01
3	2-02	3-05	4-02	5-03	6-02	7-03	8-02	9-02	10-03	11-02	12-03	01-02
4	2-03	3-06	4-03	5-04	6-03	7-04	8-03	9-03	10-04	11-03	12-04	01-03
5	2-04	3-07	4-04	5-05	6-04	7-05	8-04	9-04	10-05	11-04	12-05	01-04
6	2-05	3-08	4-05	5-06	6-05	7-06	8-05	9-05	10-06	11-05	12-06	01-05
7	2-06	3-09	4-06	5-07	6-06	7-07	8-06	9-06	10-07	11-06	12-07	01-06
8	2-07	3-10	4-07	5-08	6-07	7-08	8-07	9-07	10-08	11-07	12-08	01-07
9	2-08	3-11	4-08	5-09	6-08	7-09	8-08	9-08	10-09	11-08	12-09	01-08
10	2-09	3-12	4-09	5-10	6-09	7-10	8-09	9-09	10-10	11-09	12-10	01-09
11	2-10	3-13	4-10	5-11	6-10	7-11	8-10	9-10	10-11	11-10	12-11	01-10
12	2-11	3-14	4-11	5-12	6-11	7-12	8-11	9-11	10-12	11-11	12-12	01-11
13	2-12	3-15	4-12	5-13	6-12	7-13	8-12	9-12	10-13	11-12	12-13	01-12
14	2-13	3-16	4-13	5-14	6-13	7-14	8-13	9-13	10-14	11-13	12-14	01-13
15	2-14	3-17	4-14	5-15	6-14	7-15	8-14	9-14	10-15	11-14	12-15	01-14
16	2-15	3-18	4-15	5-16	6-15	7-16	8-15	9-15	10-16	11-15	12-16	01-15
17	2-16	3-19	4-16	5-17	6-16	7-17	8-16	9-16	10-17	11-16	12-17	01-16
18	2-17	3-20	4-17	5-18	6-17	7-18	8-17	9-17	10-18	11-17	12-18	01-17
19	2-18	3-21	4-18	5-19	6-18	7-19	8-18	9-18	10-19	11-18	12-19	01-18

20 2-193-224-195-206-197-208-199-1910-2011-1912-2001-19  
 21 2-203-234-205-216-207-218-209-2010-2111-2012-2101-20  
 22 2-213-244-215-226-217-228-219-2110-2211-2112-2201-21  
 23 2-223-254-225-236-227-238-229-2210-2311-2212-2301-22  
 24 2-233-264-235-246-237-248-239-2310-2411-2312-2401-23  
 25 2-243-274-245-256-247-258-249-2410-2511-2412-2501-24  
 26 2-253-284-255-266-257-268-259-2510-2611-2512-2601-25  
 27 2-263-294-265-276-267-278-269-2610-2711-2612-2701-26  
 28 2-273-304-275-286-277-288-279-2710-2811-2712-2801-27  
 29 2-280-004-285-296-287-298-289-2810-2911-2812-2901-28  
 30 3-010-004-295-308-297-308-299-2910-3011-2912-3001-29  
 31 3-020-004-300-006-300-008-309-3000-0011-3000-0001-30

**IRC § 6323(g)(3)(A) Refile Chart for Leap Year Calculation of Ten Years Plus 30 Days After Original CSED**

Day	Jan	Feb
Only January and February are impacted by a leap year. The remaining months will be the same as the chart above		
1	1-31	3-02
2	2-01	3-03
3	2-02	3-04
4	2-03	3-05
5	2-04	3-06
6	2-05	3-07
7	2-06	3-08
8	2-07	3-09
9	2-08	3-10
10	2-09	3-11
11	2-10	3-12
12	2-11	3-13
13	2-12	3-14
14	2-13	3-15
15	2-14	3-16
16	2-15	3-17
17	2-16	3-18
18	2-17	3-19
19	2-18	3-20
20	2-19	3-21
21	2-20	3-22
22	2-21	3-23
23	2-22	3-24
24	2-23	3-25
25	2-24	3-26
26	2-25	3-27
27	2-26	3-28
28	2-27	3-29
29	2-28	3-30
30	2-29	0-00
31	3-01	0-00

[More Internal Revenue Manual](#)





## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 9. Withdrawal of Notice of Federal Tax Lien

##### 5.12.9 Withdrawal of Notice of Federal Tax Lien

- 5.12.9.1 [Purpose](#)
- 5.12.9.2 [Withdrawal of the Filed Notice of Federal Tax Lien \(Overview\)](#)
- 5.12.9.3 [Conditions for NFTL Withdrawal](#)
- 5.12.9.4 [Taxpayer Requests for Withdrawal](#)
- 5.12.9.5 [Processing Withdrawal Requests](#)
- 5.12.9.6 [Approving the Withdrawal Request](#)
- 5.12.9.7 [Partial Withdrawal](#)
- 5.12.9.8 [Denying the Withdrawal Request](#)
- 5.12.9.9 [Requests for Withdrawal After the NFTL Has Been Released](#)
- 5.12.9.10 [Designated Payment Codes \(DPC\) Related to Liens and Lien Certificates](#)
- 5.12.9.11 [Documentation Requirements for Lien-Related Certificates](#)

##### Manual Transmittal

October 29, 2014

##### Purpose

(1) This transmits a revision to IRM 5.12.9, Federal Tax Lien, Withdrawal of Notice of Federal Tax Lien, to incorporate procedural changes based on the Affordable Care Act Provision 1501 (IRC § 5000A) and published interim guidance.

##### Material Changes

(1) This IRM has only been updated for the Affordable Care Act (ACA) Provision 1501 and the interim guidance, as identified below. Content unrelated to the ACA provision and interim guidance was not reviewed for currency or accuracy.

- 5.12.9.3.1. New paragraph added to address withdrawal when a Notice of Federal Tax Lien is inadvertently filed on a Shared Responsibility Payment assessment.
- 5.12.9.10. Definition of Designated Payment Code 07 updated pursuant to Interim Guidance memo SBSE-05-0714-0040, *Change to Definition of Designated Payment Code 07*.

(2) Editorial changes made throughout to include titles for IRM citations and to correct minor formatting problems.

##### Effect on Other Documents

This material supersedes IRM 5.12.9 dated October 14, 2013, and Interim Guidance memo SBSE-05-0714-0040, *Change to Definition of Designated Payment Code 07*, dated July 22, 2014.

##### Audience

SBSE and W&I Collection, Centralized Lien Operation, and Appeals

##### Effective Date

(01-01-2015)

Rocco A. Steco  
Acting Director, Collection Policy  
Small Business/Self Employed Division

##### 5.12.9.1 (10-14-2013)

###### Purpose

1. The purpose of this Internal Revenue Manual (IRM) is to provide instructions on the identification, analysis, recommendations, denial, and granting of Notice of Federal Tax Lien (NFTL) withdrawals.
2. See IRM Exhibit 5.12.1-2, *Glossary of Common Acronyms in IRM 5.12*, for common acronyms used in this section.
3. This IRM is for procedural use and does not provide instruction on the use of any system. Please consult User Guides as necessary.
  - Automated Lien System (ALS) User Guide: <http://mysbse.web.irs.gov/Collection/collsystems/als/userguide/default.aspx>
  - Integrated Collection System (ICS) User Guide: [http://icsweb.web.irs.gov/Docs/HTML/user\\_guide.htm](http://icsweb.web.irs.gov/Docs/HTML/user_guide.htm)

##### 5.12.9.2 (10-14-2013)

###### Withdrawal of the Filed Notice of Federal Tax Lien (Overview)

1. Internal Revenue Code (IRC) § 6323(j) gives the Service the authority to withdraw a Notice of Federal Tax Lien (NFTL) under certain circumstances, and to provide notice of the withdrawal to credit agencies.
2. Form 10916(c), *Withdrawal of Filed Notice of Federal Tax Lien*, is the document issued to withdraw an active NFTL.



3. A Withdrawal of the Notice of Federal Tax Lien differs from a Certificate of Release of Federal Tax Lien and the two cannot be used for one another. A Withdrawal only removes the effect of the NFTL whereas the Certificate of Release releases both the NFTL (paper document) and extinguishes the statutory tax lien.
4. Requests for withdrawals will be considered regardless of the date the notice of lien was filed.
5. Withdrawal of the NFTL is not mandatory except when the NFTL was filed in violation of the automatic stay in bankruptcy. Factors that put collection at risk, such as the taxpayer disposing of assets, should be considered prior to approving any withdrawal request.
6. Special condition NFTLs (e.g., nominee NFTLs) may be withdrawn if they meet the criteria provided in this section. Seek Area Counsel's advice as needed in cases.
7. Positions authorized to approve withdrawals are found in IRM 1.2.44.5, *Delegation Order 5-4 (Rev. 3)*.

### 5.12.9.3 (10-14-2013)

#### Conditions for NFTL Withdrawal

1. IRC § 6323(j) gives the Service the authority to withdraw a Notice of Federal Tax Lien (NFTL) under the following conditions:
  - the filing of the notice was premature or otherwise not in accordance with the Service's administrative procedures ( IRC § 6323(j)(1)(A));
  - the taxpayer entered into an agreement under IRC § 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise (IRC § 6323(j)(1)(B));
  - withdrawal of such notice will facilitate the collection of the tax liability (IRC § 6323(j)(1)(C)); or
  - with the consent of the taxpayer or the National Taxpayer Advocate, the withdrawal of such notice would be in the best interest of the taxpayer (as determined by the National Taxpayer Advocate) and the United States (IRC § 6323(j)(1)(D)).
2. This section provides details of each of those conditions.

### 5.12.9.3.1 (01-01-2015)

#### Withdrawal for Premature or Inadvertent Filings

1. A NFTL may be withdrawn if the filing was premature or otherwise not in accordance with administrative procedures (IRC § 6323(j)(1)(A)).

##### Example:

The person responsible for the filing of the NFTL has knowledge that the taxpayer has an undisputed credit available as the result of a filed return that will satisfy the liabilities on the lien, such as a carryback, overpayment, adjustment, etc. Filing of the NFTL is premature.

##### Example:

The taxpayer has filed bankruptcy and the NFTL is filed while the automatic stay is in effect. Filing of the NFTL is not in accordance with the Service's administrative procedures and must be withdrawn.

##### Example:

A revenue officer is assigned a bal due for collection. A CP 501 (Balance Due - Reminder) was sent to the taxpayer. NFTLs have been previously filed for other liabilities owed by the taxpayer. The CP 501 constitutes a reasonable effort to contact the taxpayer and filing of the NFTL for the additional balance due would not be premature. Unless it can be shown that one of the other provisions for withdrawal has been met, the NFTL should not be withdrawn.

##### Example:

A taxpayer has submitted an offer in compromise. During the course of the investigation a NFTL is filed because it becomes known that the taxpayer is dissipating assets and rejection of the OIC appears likely. If the taxpayer previously received notices warning that a NFTL could be filed at any time, the recording of the NFTL was not premature. Unless it can be shown that one of the other provisions for withdrawal has been met, it should not be withdrawn.

2. Withdrawal of the NFTL is mandatory when the NFTL is filed in violation of the automatic stay in bankruptcy.
3. If the NFTL is filed when then taxpayer is in a Combat Zone, is in the active military outside the United States away from his or her permanent duty station participating in a contingency operation, or hospitalized for an injury received while serving in the combat zone or contingency operation, the Notice of Federal Tax Lien should be withdrawn. (See IRM 5.1.7.9, *Accounts of Taxpayers Who Serve in a Combat Zone*, for further details on Combat Zone restrictions.)
4. A NFTL inadvertently filed for a Shared Responsibility Payment (SRP), shown on IDRS as MFT 35, must be withdrawn. SRP assessments are not subject to the filing of a NFTL.

##### Note:

If other assessments in addition to the SRP assessment are included on the NFTL, a partial withdrawal may be appropriate. (See *IRM 5.12.9.7, Partial Withdrawals*.)

5. When the person filing a NFTL knows or should have known about available credits as in example 1 above, the NFTL should be withdrawn.
6. Even though filing of the NFTL may have been premature or otherwise not in accordance with the Service's administrative procedures, a withdrawal may not always be appropriate. Generally, the NFTL should not be withdrawn if a new NFTL will be immediately filed after withdrawing the NFTL.
7. In situations where a NFTL was inadvertently filed in duplicate, issue Letter 2440. (See IRM 5.12.7.10.4, *Duplicate NFTL*.) A withdrawal of the duplicate filing may be considered if requested by the taxpayer, but caution should be taken so that only the duplicate filing is withdrawn.

##### Note:

If the duplicate filing was the result of the same NFTL serial number being filed twice, the withdrawal document must be manually prepared so as to leave the NFTL active on ALS.

8. Requests stating the NFTL was erroneous, as defined by IRC § 6326, should first be considered for release following procedures in IRM 5.12.3.9, *Erroneously Filed Notice of Federal Tax Lien*.

### 5.12.9.3.1.1 (10-14-2013)

#### Errors on Limited Liability Company NFTLs

1. Assessments in the name of a Limited Liability Company (LLC) may include the name of the LLC and the name of an owner; however, only the name of the liable taxpayer should appear on an NFTL. (See IRM 5.1.21, *Collecting from Limited Liability Companies*, to determine whether the LLC or the single member owner is liable.)
2. When an NFTL has been inadvertently filed using the name of any entity that is not the taxpayer, it must be amended or withdrawn. Use the following table to determine the proper action to take:

**If the NFTL shows...**

only the name of the entity that is not the liable taxpayer

the name of the liable taxpayer and the name of an entity that is not the liable taxpayer an amended NFTL, deleting the name of the entity that was not liable.

**Then request ...**

a withdrawal of the NFTL

3. Because the Service will lose its priority by withdrawing the NFTL, consult Area Counsel in cases where the name of the LLC is very close to the name of the single member owner.
4. See IRM 5.12.7.5.3, *Limited Liability Company (LLC)*, for additional information on filing NFTLs on LLCs.

**5.12.9.3.1.2 (10-14-2013)****NFTLs Filed in Designated Disaster Areas**

1. If an area is designated as a "disaster area" NFTLs requested prior to "disaster area" notification, but that were filed within the "disaster area" relief time-frame may be withdrawn. If a disaster is declared, employees who requested NFTLs prior to the disaster should:
  - review ICS histories to determine if the NFTL requested was withdrawn when the disaster was declared; and
  - determine if an -O Freeze was input to the taxpayer account;
2. If the NFTL is withdrawn, a new NFTL may be filed, if appropriate, when the disaster condition is reversed.
3. See IRM 25.16.1, *Disaster Assistance and Emergency Relief Program Guidelines*, for further information on disaster freezes.

**5.12.9.3.2 (10-14-2013)****Withdrawals in Installment Agreements Situations**

1. A NFTL may be withdrawn if the taxpayer has entered an installment agreement to satisfy the liability for which the lien was imposed, unless such agreement provides otherwise (IRC § 6323(j)(1)(B)).
2. Consider the following in determining whether the filing should be maintained.

**If...**

the installment agreement provided for the NFTL,

**Then...**

a request for withdrawal may not be granted.

**Note:**

Withdrawal may be appropriate under one of the other provisions.

the NFTL was not addressed in the installment agreement or as an additional condition of the agreement, the installment agreement (or an additional condition of the agreement) provided that a NFTL would be filed

withdrawal may be considered, but is not mandatory. a request for withdrawal may not be granted.

**Note:**

Withdrawal may be appropriate under one of the other provisions.

the installment agreement (or an additional condition to the agreement) provided that a NFTL may be filed withdrawal may be considered, but is not mandatory

**Note:**

There is a separate box on the agreement which may be used for additional conditions.

**Example:**

A taxpayer enters into an installment agreement that provides for the filing of a NFTL if the taxpayer defaults. The taxpayer pays the installments each month and has not defaulted. Ten months after entering into the agreement a NFTL is filed. Because the taxpayer is under an installment agreement and has not defaulted, the NFTL should be withdrawn because the taxpayer is in compliance with the terms of the agreement.

**5.12.9.3.2.1 (10-14-2013)****Special Provisions for Direct Debit Installment Agreements**

1. On April 7, 2011, the policy regarding withdrawals under IRC § 6323(j)(1)(B) was expanded to address situations in which a taxpayer enters a direct debit installment agreement (DDIA) to satisfy the liability.
2. The types of taxpayers that qualify for withdrawal of the NFTL under this DDIA provision is limited to:
  - Individual Master File (IMF);
  - Business Master File (BMF) (income tax only); or
  - BMF out of business (any type of tax).
3. Generally, a NFTL should be withdrawn if the taxpayer has entered a DDIA and has met the conditions specified in (4) through (10) below.
4. The aggregate unpaid balance of assessments on the DDIA is \$25,000 or less at the time of the request.
  - A. The unpaid balance of assessments includes tax, assessed penalty and interest, and all other assessments on the tax modules. It does not include accrued (i.e., unassessed) penalty and interest.
  - B. If pre-assessed taxes are included, the pre-assessed liability (including tax, penalty, and interest up to the date of expected assessment) plus unpaid balance of other assessments must be \$25,000 or less.
5. The total tax liability will be fully paid in 60 months or the agreement will be fully paid prior to the Collection Statute Expiration Date (CSED), whichever comes first.

**Note:**

For liabilities consisting of multiple assessments with different CSEDs, the agreement must fully pay each assessment before its respective CSED or within 60 months, whichever comes first.

**Note:**

Use Integrated Data Retrieval System (IDRS) Command Code (CC) ICOMP to determine the pay off time frame. (See IRM 5.14, *Installment Agreements*)

)

6. The taxpayer requests the withdrawal in writing. Form 12277, *Application for Withdrawal of Filed Notice of Federal Tax Lien*, is the preferred format for the taxpayer's request; however, any written request that provides sufficient information may be used for processing. (See *IRM 5.12.9.4*.)
7. The taxpayer is in compliance with other filing and payment requirements.
8. The DDIA is active and at least three consecutive electronic payments (generally received on a monthly basis) have been processed under the DDIA. Also, there have been no defaults in payment under this, or any previous, DDIA or any such default was not caused by the taxpayer.
9. The taxpayer did not previously have a withdrawal of NFTL for any of the modules included in the DDIA (e.g., TC 583 dc 03 on module). This excludes previous withdrawals for improper filing under IRC § 6323(j)(1)(A) (e.g., TC 583 dc 02 on module).
10. Taxpayers making payments under any other type of installment agreement are not eligible for consideration for withdrawal under the conditions specified in this section unless they convert to a DDIA and otherwise meet the conditions. Taxpayers are not precluded, however, from requesting a withdrawal under any other provision of the IRC § 6323(j).
  - A. A DDIA is normally indicated by a 03 in the Agreement Locator Number (ALN). A regular IA that is converted to a DDIA will have the ALN updated.
  - B. If a taxpayer states they have a DDIA but the ALN does not show 03, request the taxpayer provide documentation of the DDIA (e.g., an acknowledgement letter from the IRS, copies of bank statements showing the withdrawals, etc.).
11. If a taxpayer defaults on making payment under the DDIA after the NFTL is withdrawn, a new notice of lien may be filed, if appropriate.
12. If the taxpayer discontinues the DDIA and/or requests it be converted to a regular IA after the NFTL is withdrawn, a new NFTL may be filed.
13. The criteria in this section apply only to a taxpayer's eligibility for withdrawal consideration. They do not impact the criteria for a taxpayer's eligibility for a DDIA. (See *IRM 5.14.10, Payroll Deduction Agreements and Direct Debit Installment Agreements*, for DDIA requirements.)

### 5.12.9.3.3 (10-14-2013)

#### Withdrawal Will Facilitate Collection

1. A withdrawal facilitates collection if withdrawing the NFTL will result, either immediately or in the future, in a greater amount being collected by the IRS than had the NFTL been maintained. (IRC § 6323(j)(1)(C))
2. To determine if withdrawal of the NFTL will facilitate collection of the tax liability, consider all relevant case factors, including, but not limited to, the following:
  - A. Will the amount realizable by the U.S. or the chances of collecting the tax liability be increased?
  - B. If the NFTL was not already filed, do the conditions exist that would have allowed for NFTL forbearance? (See *IRM 5.12.2.3, Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations)*.)
  - C. Will the Service receive a payment against the liability? If so, would withdrawal of the NFTL to obtain a partial payment hamper the collection of the remaining balance due?
  - D. Will withdrawal enhance the taxpayer's ability to obtain additional credit; and how will additional credit affect the taxpayer's ability to pay the liability?
  - E. Is the NFTL the result of a defaulted installment agreement? Was a condition of the installment agreement that a NFTL would be filed in case of default?
  - F. Is there any possibility that a bankruptcy may be filed if the withdrawal is not obtained? If so, consider how the taxes would be treated in a bankruptcy proceeding. Are they dischargeable? Does the taxpayer own assets so that the filing of the NFTL would enhance the government's position as a secured creditor? Would the taxes be more or less collectible if the taxpayer filed bankruptcy?
  - G. Is the taxpayer pyramiding liabilities? Are all required returns filed? A NFTL should not be withdrawn if the taxpayer is not in compliance with filing and deposit requirements.
  - H. Will a lien subordination or discharge of certain property from the lien achieve the same result as a withdrawal? If so, a NFTL withdrawal is not appropriate.
  - I. Can the taxpayer furnish a bond or other acceptable security in the amount of the government's interest in assets if the NFTL is withdrawn? Note: If the taxpayer can furnish a bond for the full amount of the liability, the NFTL can be released. (See *IRM 5.12.3.3.3, Acceptance of a Bond - IRC § 6325(a)(2)*.)

#### Example:

A NFTL has been filed in the name of a taxpayer who has no assets, is unlikely to ever acquire assets of any real value, and has no other secured creditors. The taxpayer agrees to pay the balance of tax due through payroll deductions at a rate higher than the Service could obtain through a wage levy in order to get the NFTL withdrawn. The NFTL may be withdrawn because doing so will facilitate collection of the tax liability.

#### Example:

A NFTL has been filed in the name of a taxpayer owning minimal distrainable assets who is currently unemployed. The taxpayer is offered employment provided she is bondable. However, the bonding company refuses to issue a bond because the NFTL reduces the taxpayer's credit score to an unacceptable level. The taxpayer agrees to pay the balance of tax due through payroll deductions if the NFTL is withdrawn and she is able to begin working. The NFTL may be withdrawn, with the provision that it would be filed again in case of default, because doing so will facilitate collection of the tax liability.

#### Example:

A taxpayer requests withdrawal of a NFTL so that she can improve her credit score and purchase a new vehicle. The new vehicle is not necessary for her to perform her job duties or generate income which would assist in satisfying the liability. Withdrawal of the NFTL is not appropriate because doing so would not facilitate collection of the tax liability.

#### Example:

A taxpayer has been making installment payments for the past year and has two years of payments remaining. The taxpayer is a salesman and needs to purchase a new automobile in order to continue to generate the income that is being used to make the installment payments. The taxpayer verifies that he cannot obtain a new car loan or a lease because the existence of the NFTL causes his credit score to fall below an acceptable level. The NFTL may be withdrawn, with the provision that it would be filed again in case of default, because doing so will facilitate collection of the tax liability.

3. A determination that withdrawal will facilitate collection may originate with a Revenue Officer in the course of making a collection determination. Although a written request by the taxpayer for the withdrawal would not be needed in such a circumstance, the taxpayer must concur that the withdrawal is in his/her best interest.
4. When the taxpayer's account is not assigned to another IRS work unit and it is determined that withdrawal of the NFTL will facilitate collection, the Advisory employee should secure the taxpayer's proposal to pay the balance of the tax liability (or evidence of such a proposal to another function) and make a determination on the proposal's collection impact along with the recommendation for acceptance/denial of the request.

#### 5.12.9.3.4 (10-14-2013)

##### Best Interest Withdrawal Provisions

1. To be considered for a withdrawal under the best interest provisions (IRC § 6323(j)(1)(D)), two determinations are required:
  - one by the taxpayer or by the National Taxpayer Advocate (NTA) (or designee) with respect to the taxpayer; and
  - one by the Secretary (or designee).
2. A determination that withdrawal is in the best interest of the United States may be made by collection employees.
3. A taxpayer may request the withdrawal on the basis that it is in his or her best interest and the best interest of the United States without specifically requesting that the NTA make the determination on his or her behalf. A collection employee may also make a best interest determination independent of a taxpayer request provided the taxpayer or the NTA acting on behalf of the taxpayer consents to the withdrawal.
4. This IRM cannot address every scenario you may encounter. Apply your knowledge and experience to the case and use your judgment in making a determination. In making "best interest" determinations consider the following:
  - A. What will be the effect of withdrawing the notice of lien? Are there claims currently subordinate to the federal tax lien which will become superior?
  - B. What is the likelihood that the taxpayer will dispose of the property if the notice is withdrawn? Is there sufficient equity for this to be a concern?
  - C. Will tax collection be undermined if the notice is withdrawn and the taxpayer files for bankruptcy protection?
  - D. Are there other tools available, such as discharge or subordination, that will alleviate the taxpayer's problem without eliminating the protection offered by the filed notice of lien.
5. When making the best interest determination the expectation is that the government and the taxpayer will benefit from withdrawal of the notice.

<b>If...</b>	<b>Then...</b>
withdrawal is in the government's and taxpayer's best interest, (subject to approval at the managerial level),	the employee should follow the withdrawal procedures outlined.
it is determined that withdrawal would not be in the best interest of the government,	notify the taxpayer of the determination and explain his/her appeal rights.
Collection and Taxpayer Advocate disagree on best interests conditions being met	the National Taxpayer Advocate may issue a Taxpayer Assistance Order (TAO), when (s)he determines that it is in the best interest of the taxpayer.

##### Example:

A taxpayer contacts the Taxpayer Advocate Service (TAS) and requests that the NFTL filed in their name be withdrawn because it is in their best interest as well as in the best interest of the government. TAS determines that it is in the best interest of the taxpayer that the NFTL be withdrawn. TAS contacts Collection, requests that the NFTL be withdrawn, and, upon review, Collection determines that it is in the best interest of the government that the NFTL be withdrawn. Because TAS, representing the taxpayer, and the Service agree that it is in the best interests of both, the NFTL may be withdrawn.

##### Example:

A taxpayer requests that the NFTL be withdrawn so that he can refinance his home mortgage. In addition to refinancing the existing first mortgage, the taxpayer offers to borrow an additional amount to be applied as a partial payment of the liabilities listed on the NFTL. The taxpayer's lender will not make the loan unless the NFTL is withdrawn. Although withdrawal of the NFTL would be in the best interest of the taxpayer, and withdrawal of the NFTL would result in partial payment, it is not in the best interest of the government to withdraw the NFTL. A subordination certificate will better protect the government's interest by allowing for partial payment of the liability while continuing to secure the government's interest for the remaining taxes due.

##### Example:

The taxpayer in the above example requests that the NFTL be withdrawn so that he can refinance his home mortgage. In addition to refinancing the existing mortgage, the taxpayer offers to borrow an additional amount and full pay the liabilities listed on the NFTL. The taxpayer states that his lender will not make the loan unless the NFTL is withdrawn, even though a payoff statement is provided, the lender is aware that the NFTL will be paid off from the loan proceeds, and a revenue officer offers to attend the loan closing and provide an immediate lien release upon receipt of full payment. Further questioning of the taxpayer reveals that the NFTL is preventing the taxpayer's mortgage broker from placing the taxpayer's loan with a lender because the NFTL is lowering his credit score to an unacceptable level. Although other secured creditors have refused to give up their secured status in exchange for a promise of full payment, the taxpayer is hopeful that the government will agree to do so. Although withdrawal of the NFTL is in the best interest of the taxpayer, it is not a good business practice nor is it in the best interest of the government to relinquish its secured creditor status in exchange for a promise to pay.

##### Example:

A taxpayer enters into a two-year installment agreement conditioned upon the recording of a NFTL. One year later she requests withdrawal of the NFTL. All payments have been made timely and the taxpayer is requesting the withdrawal because it is harming her credit worthiness. Although withdrawal of the NFTL is in the best interest of the taxpayer, it is not a good business practice nor is it in the best interest of the government to relinquish its secured creditor status.

#### 5.12.9.3.4.1 (10-14-2013)

##### Withdrawal of Special Condition NFTLs

1. The taxpayer or the person subject to a special condition NFTL may request withdrawal of the special condition NFTL under any of the conditions of IRC 6323(j)(1). The determination to withdraw the NFTL will be based on whether the criteria has been met.

2. When the situation giving rise to the special condition NFTL has been resolved by addressing the interest of the IRS (e.g., property specified on nominee NFTL was sold and IRS received an amount equal to its interest), but a balance remains for the assessments shown on the NFTL, withdrawal of the special condition NFTL will generally be granted under IRC 6323(j)(1)(D). In such situations, the withdrawal may be issued without receiving a formal application, if the resolution is known to the approving office. Consult Counsel, as needed, if there are questions regarding the matter.

#### **5.12.9.4 (10-14-2013)**

##### **Taxpayer Requests for Withdrawal**

1. All requests for withdrawal of the Notice of Federal Tax Lien must be in writing. Preferably, taxpayers should use Form 12277, *Application for Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien*; however, any written request that contains the necessary information may be used.

##### **Note:**

A request may be accepted by fax if contact has been made with the taxpayer by phone and the taxpayer history file is documented with the date of the contact and notation is made that the taxpayer wishes to send the request by fax.

2. Requests for withdrawal must contain the following information:

- taxpayer's name;
- current address;
- taxpayer's identification number;
- a copy of the NFTL affecting the property, if available, or details about the NFTL;
- a statement explaining the basis for the withdrawal request; and
- authorization for disclosure of information to creditors, credit reporting agencies and financial institutions.

3. Requests must be signed by the taxpayer or a valid Power of Attorney (POA). In the event of a business taxpayer, the request must be signed by an appropriate officer or a POA.

A. If a request involving a NFTL on a joint liability is not signed by all co-obligors, initially consider it as a full withdrawal request (unless the taxpayer expresses otherwise). If during the review issues are found with the non-applying co-obligor(s) that may prohibit the issuance of the withdrawal, consider the request as if for a partial withdrawal and/or seek to secure the signature of the other co-obligor(s).

4. Attempts should be made to resolve any incomplete applications by contacting the taxpayer and advising of the additional information needed. Document the case history of the situation.
5. Subsequent requests for copies of approved withdrawal notices to be sent to creditors or financial institutions will contain the same information outlined in above.

#### **5.12.9.4.1 (10-14-2013)**

##### **Number of Requests to Submit**

1. Generally, withdrawal requests should be considered on a NFTL by NFTL basis; however, there may be situations in which multiple NFTLs may be covered by the same request. For instance, a taxpayer applying for withdrawal under premature filing would be applying for a specific NFTL whereas someone applying under best interest provisions may be wanting to look at all NFTLs together.
2. Consider taxpayer burden when providing guidance for completing Form 12277. Generally, if the conditions and reasons for withdrawal are the same for all the NFTLs, one Form 12277 referencing all the NFTLs is acceptable.
3. The same NFTL filed in separate locations for real and personal property may be considered under one request.

#### **5.12.9.5 (10-14-2013)**

##### **Processing Withdrawal Requests**

1. Requests will be reviewed by the Collection field employee assigned the taxpayer's case.
  - A. If there is no current assignment of the taxpayer's case, forward the request to Advisory in the area where the taxpayer lives or has its principal place of business.
  - B. If the taxpayer claims the NFTL was filed in violation of a bankruptcy stay, contact the Centralized Insolvency Operation (CIO) to determine where the withdrawal request should be sent.
2. Control the receipt of the request and document any actions relative to the review on the control system applicable to your function (e.g., Integrated Collection System (ICS), Automated Insolvency System (AIS)).
3. Review the case history as well as the documentation provided by the taxpayer.
4. Withdrawal may be granted under any of the four provisions provided by the Internal Revenue Code as outlined above.
  - A. If during the investigation it is clear the taxpayer cited the wrong provision for withdrawal and they would qualify for withdrawal had the correct provision been cited, contact the taxpayer to confirm their intent. If they request consideration under the correct provision, note the history and resume processing.

##### **Note:**

This step is to correct an obvious error made by a taxpayer unfamiliar with the withdrawal process. It does not mean the employee is required to search for additional reasons to grant a withdrawal.

5. Determine if sufficient documentation is provided to substantiate the withdrawal recommendation.
6. After completing the review, field employees will prepare a memorandum outlining the facts of the case and their recommendation on the withdrawal.

##### **Exception:**

Requests for withdrawal based on premature or inadvertent filing (IRC 6323(j)(1)(A)) can be worked by the revenue officer assigned the taxpayer's case without referring it to Advisory. If the request involves any other provisions, the revenue officer must refer the matter to Advisory.

7. Forward the memorandum with the application and appropriate documents through the group manager to Advisory.
8. Upon receipt of the memorandum or withdrawal request (if no collection assignment), Advisory will open a Non-Field Other Investigation (NFOI) control on ICS under code 143, Withdrawals, within 7 calendar days of receipt in the group.

#### 5.12.9.6 (10-14-2013)

#### Approving the Withdrawal Request

1. The positions authorized to approve/deny withdrawals are found in Delegation Order 5.4.
  - A. In most situations, the Advisory Group Manager will be the approving official.
  - B. Insolvency Group Managers are responsible for approving requests related to open bankruptcy cases.
  - C. Field Group Managers are only delegated approval authority for cases assigned to field revenue officers **and** that are submitted under IRC 6323(j)(1)(A).

**Note:**

The procedures in this section and following subsections are geared primarily to Advisory being the approving office; however, the procedures should be interpreted to apply to any office with delegated authority, unless expressly stated otherwise.

2. The approving office reviews the withdrawal package or request to ensure conditions for withdrawal have been met. The extent of the review will depend on the function/person submitting the package.
  - A. If the request is directly from the taxpayer, the approving office will complete a full review in accordance with the steps in *IRM 5.12.9.5* and make the withdrawal determination.
  - B. If Advisory/Insolvency is the approving office and the package is received from the Collection Field function and was concurred with by a Group Manager, Advisory/Insolvency only needs to conduct a cursory review.
  - C. If the withdrawal request is received from Appeals as the result of a timely Collection Due Process, Equivalent Hearing, or a Collection Appeal Program case, it will be processed in accordance with *IRM 5.1.9, Collection Appeal Rights*. The approving office only needs to confirm the accuracy of the Form 13794-W, *Request for Withdrawal of Notice of Federal Tax Lien*, while keeping in mind limitations on ex parte communications with Appeals as addressed in *IRM 5.1.9.5, Communications with Appeals*.

**Note:**

If the approving office fails to process Appeals' request within five days of receipt, Appeals may then utilize their authority under *IRM 1.2.44.5* and forward the Form 13794-W directly to Centralized Lien Processing Operation (CLO).

- D. If the package is received from any other function, the approving office will complete a full review of the package and application to confirm the withdrawal determination.
3. If the approving office disagrees with the request for withdrawal, it will advise the originator of the reasons for disapproval.

**Note:**

Disagreements with Appeals' determinations must follow *IRM 5.1.9.5.1*. Regardless of the disagreement, withdrawals resulting from a CDP determination **must not be delayed**.

4. The approving office prepares Form 13794-W, and, after securing the approving official's concurrence, forwards the form to CLO via secure email.
  - A. As an alternative to forwarding Form 13794-W to CLO, Advisory and Insolvency employees with appropriate permissions may input the withdrawal directly into the ALS. Manager's concurrence is still required. An ICS or AIS history entry by the manager meets this requirement.

**Note:**

With managerial approval, the ALS "Bypass Approval" option is available to Advisory and Insolvency employees. This option places documents directly into the ALS print queue. CLO intervention in the ALS approval process is not required.

**Note:**

For security purposes, the employee who recommends the withdrawal should not be the approving official for the recommendation and also input and approve the withdrawal on ALS.

5. The approving office should send Letter 4711, *Withdrawal Decision Letter*, to the taxpayer or POA, if applicable, advising of the withdrawal approval.
6. Actions taken by the approving office, including the manager's concurrence, will be documented on ICS.
7. Actions taken by CLO relative to the withdrawal can be viewed on ALS. Generally, CLO inputs requests within 5 days of receipt. Once the withdrawal is input on ALS, the approving office prints a facsimile copy of the withdrawal for the case file and closes its NFOI control, if applicable.

**Note:**

Recording information for the NFTL must be on ALS before the withdrawal can be generated. If the recording information is not present, obtain the recording information from the recording office or other reliable source and have it input to ALS.

8. Whenever an NFTL is released or withdrawn, a TC 583 with a definer code must be input to each module on the certificate. For withdrawals generated through ALS and processed by CLO, the TC 583 is systemically uploaded to Master File with the following designation codes:
  - DC 1 - released
  - DC 2 - withdrawal due to administrative error
  - DC 3 - withdrawal due to collection due process appeal rights
  - DC 4 - reversal
  - DC 5 - self-released (statute expiration).

#### 5.12.9.6.1 (10-14-2013)

#### Manual Preparation of Withdrawal Certificates

1. Withdrawal certificates should be prepared through ALS; however, if the taxpayer requests an immediate issuance of the certificate for an imminent circumstance, the certificate may be manually prepared.
2. Prepare Form 10916, *Withdrawal of Filed Notice of Federal Tax Lien*, using the ICS template or PDF fillable form from the intranet. Data on the Form 10916 should match the data shown on the NFTL.



**Note:**

Any manually prepared withdrawal form must include references to any refiled, amended, or corrected NFTLs associated with the original filing.

3. Manually prepared forms must be signed by a delegated approving official.
4. Provide the manually prepared certificate to the taxpayer or POA, if applicable, for recordation along with Letter 4026. Advise of the filing process and that they will be responsible for paying any filing fee.

**Note:**

Letter 4026 is a cover letter. Preferably it should be signed by the delegated approving official when the Form 10916 is signed. If it cannot be signed by the approving official, the Letter 4026 may be signed by another Service employee as long as the Form 10916 is appropriately approved.

5. Notify CLO of the issuance of the withdrawal by forwarding a copy of the withdrawal certificate or completing Form 13794-W. Make sure to indicate that the certificate was already issued so that ALS be updated accordingly.
6. Retain a copy of any manually prepared withdrawal forms in the case file.
7. Request input through normal channels of a TC 583 with the appropriate definer code to each module on the certificate.
  - DC 02 - withdrawal due to administrative error
  - DC 03 - withdrawal due to collection due process appeal rights

**5.12.9.6.2 (10-14-2013)****Use of Electronic Signatures on Withdrawal Documents**

1. Neither the Internal Revenue Code (IRC) nor Treasury regulations address the method in which lien certificates are to be signed; however, they both address the Secretary's authority to develop procedures associated with the use and acceptability of electronic signatures on forms and other documents.
2. Approval of documents must always be in accordance with Delegation Order 5-4. See IRM 1.2.44.5, *Delegation Order 5-4 (Rev. 3)*.
3. Manually prepared withdrawal certificates and their related letters and forms may be signed by the approving official via electronic means when a physical signature is not feasible.

**Note:**

Withdrawals should normally be generated through the Automated Lien System (ALS). Documents generated by ALS are digitally signed in accordance with the delegation order. The electronic signature described in this section is only for situations where manually prepared certificates are needed.

4. To sign a document electronically, the document must be converted to a Portable Data Format (PDF) using Adobe Acrobat and the approving official must create a signature file. The format of the electronic signature should adhere to certain standards.
  - A. The signature should not contain the email address, logo, location or other unnecessary information.
  - B. The signature should preferably be an actual/graphic signature file of the approving official or at the minimum should show the name of the approving official. It should not be the Standard Employee Identifier (SEID) as that is for internal use only.
  - C. The approving official should validate the signature so that the pdf question mark does not appear.
5. Approval must be granted on a case by case basis. The case history must be documented by the approving official to indicate the electronic or facsimile signing of the lien certificate and associated correspondence.
6. A printed copy of the electronically signed certificate must be retained as part of the case file for appropriate record keeping.
7. There may be hesitation from some recording offices to accept electronically signed lien certificates; however, they cannot refuse to record the documents as the IRS dictates the form and content of lien certificates. Recording offices may be referred to Publication 1468, *Guidelines for Notices of Federal Tax Lien and Centralized Lien Processing*, for more information.
8. Facsimile signatures must be protected in accordance with established IRS procedures.
  - A. Physical signature stamps are designated "High Security." Store signature stamps in accordance with IRM 10.2.15.3, *Protected Items/Data*, with reference to Exhibits 10.2.15-1 and 10.2.15-2. (See also IRM 1.4.6, *Managers Security Handbook*.)
  - B. All systems capable of reproducing electronic or PDF generated signatures for lien certificates must be official IRS computer systems and be password protected.
  - C. Ensure a record of approval is available for electronically generated, PDF generated, and stamped signatures.

**5.12.9.6.3 (10-14-2013)****Distribution of the Withdrawal Certificate**

1. After inputting the withdrawal information into ALS, Form 10916, *Withdrawal of Filed Notice of Federal Tax Lien*, or Form 10916A(c), *Withdrawal of Filed Notice of Federal Tax Lien After Release*, as applicable, is generated and distributed.
  - A. CLO will print Part 1 of the form and send it to the applicable recording office with the filing fee.
  - B. Correspondence Production Services (CPS) will print Part 2 of the form and mail it to the taxpayer with the corresponding cover letter, i.e., Letter 3044 or Letter 4026.

**Note:**

When withdrawal cover letters are printed through ALS, an address sheet is also printed with the most current address of the taxpayer known to ALS.

2. The Service will usually bear the cost of filing the withdrawal certificate. However, in situations where the taxpayer requests immediate issuance and the document is provided directly to the taxpayer for filing, the taxpayer will bear the cost of filing.
3. The approving office will request abatement of the filing fee for the original NFTL (TC 360) following standard IDRS adjustment procedures.
4. A facsimile copy of the withdrawal is available through ALS. Copies of the withdrawal form will not be returned by CLO to the requestor unless specifically requested.
5. Withdrawal documents, including partial withdrawals, should be generated through ALS. However, in situations where immediate issuance of the withdrawal is needed, the approving office will manually prepare Form 10916(c) and secure the approving official's signature. (See *IRM 5.12.9.6.1*.)
6. The withdrawal document should be issued to the recording office (or the taxpayer, if manually prepared) within 15 calendar days after approval.



#### 5.12.9.6.4 (10-14-2013)

##### Notifying Third Parties of Withdrawal

1. Pursuant to IRC § 6323(j)(2), taxpayers may request additional copies of the withdrawal form to be sent to specified third parties. These requests may be received with the initial withdrawal request or after the withdrawal is issued. The requests must be in writing from the taxpayer and provide the following information:
  - the taxpayer's name, current address, and taxpayer identification number with a brief statement authorizing the additional notifications;
  - a list of the names and addresses of any credit reporting agencies, financial institutions, or creditors to notify of the withdrawal;
  - a copy of the notice of withdrawal, if available (for requests subsequent to the issuance of the withdrawal); and
  - a statement authorizing disclosure of the information to the third parties.

##### Note:

Form 12277 contains the necessary disclosure authorization. Requests for third party notifications made in conjunction with the initial Form 12277 need only provide the names and addresses of the third parties.

2. Requests for third party notifications will be worked by the employee assigned the case or the approving office that issued the withdrawal.
3. Facsimile copies of the withdrawal may be obtained through ALS using the normal facsimile print option. If necessary, a copy of the Form 10916(c) may be requested through CLO. Copies of the withdrawal cover letter are not available through CLO and are not needed.
4. Letter 5046, *NFTL Withdrawal Third Party Cover Letter*, should be used to send the copy of the withdrawal to the specified third party. If L5046 is not available, a general cover letter prepared by the employee may be used. The letter should only contain basic information confirming the issuance of the withdrawal. The letter should not elaborate on the reason for the withdrawal nor provide any other information regarding the taxpayer's account, unless specifically requested and authorized by the taxpayer.
5. Document actions taken on the request. Control the request on ICS or AIS, as appropriate.
  - A. If the request for third party notification comes with the taxpayer's withdrawal request, no separate control needs to be opened.
  - B. If the request for third party notification comes after the withdrawal has been issued, open an ICS NFOI 148, Lien Priority Other.

#### 5.12.9.6.5 (10-14-2013)

##### Abating the NFTL Filing Fee

1. When a NFTL is withdrawn, the filing fee posted to the taxpayer's account for the NFTL (TC 360) is to be abated.
2. It is the responsibility of the office approving the withdrawal to request abatement of the original NFTL filing fee.
3. The request for abatement should follow standard procedures for making IDRS adjustments.

#### 5.12.9.6.6 (10-14-2013)

##### Rescission of CDP Rights for Withdrawals

1. Under IRC § 6320, a taxpayer is entitled to only one hearing with respect to each tax period identified on a NFTL. Even if the NFTL is withdrawn, the original CDP lien notice conveying the taxpayer appeal rights is valid. If a new NFTL is subsequently filed, the Service may not offer the taxpayer any additional opportunity to request a CDP hearing for the same tax period unless the original CDP lien notice has been rescinded.
2. The IRC neither expressly prohibits nor provides for rescission of a notice of a right to a hearing under section 6320. In general, the Service has the authority to rescind a section 6320 notice but such authority is limited.
3. The Service may rescind a CDP notice only if all the following are true:
  - The NFTL is being withdrawn under IRC § 6323(j)(1)(A), the filing of the NFTL was premature or not in accordance with administrative procedures (see *IRM* 5.12.9.3.1);
  - Within the time period for requesting a CDP hearing the Service agrees to withdraw the NFTL;
  - The rescission is accomplished by notifying the taxpayer in writing before the expiration of the time period for requesting a hearing; and
  - The taxpayer has not requested a CDP hearing.
4. The deadline for the time period to request a hearing is generally within 45 days of the TC 582 date shown on IDRS. If the withdrawal is being worked within that time frame, the exact deadline date must be found to make a determination on the rescission. The deadline date will be stated on the Letter 3172 or shown on ALS. If access to ALS or the letter is not available, contact the CLO and request a facsimile copy of the Letter 3172.

##### Note:

The Letter 3172 deadline date for requesting a hearing is extended if the taxpayer is in a combat zone, part of a contingency operation away from the taxpayer's permanent duty station, or recuperating during a qualified hospitalization, plus 180 days. Because the time period for requesting a hearing is extended, the time period for rescinding the section 6320 notice is also extended. Check IDRS for any TC 500 that may impact the deadline date. (See *IRM* 5.1.7.9, *Accounts of Taxpayers Who Serve in a Combat Zone*)

5. If the NFTL is being withdrawn because it was filed in violation of the bankruptcy automatic stay, the CDP notice may be rescinded if the limitations described above are met.
6. If the conditions for rescission are met, contact the employee/function that requested the NFTL or check the case history to confirm that the taxpayer has not requested a CDP hearing. If the taxpayer has requested a hearing, the CDP rights cannot be rescinded. The request must be forwarded and resolved by Appeals.

##### Reminder:

The withdrawal should be processed regardless of whether the CDP rights are rescinded or not.

7. If rescinding the CDP notice is appropriate, advise the taxpayer by issuing Letter 4711, *Withdrawal Decision Letter*. Ensure that the box regarding the rescission is checked.
8. After sending the L-4711 hold the case open for sufficient time to see if a "last minute" CDP request was submitted by the taxpayer. In the event a CDP hearing request is received after the L-4711 is issued, check the dates to see which was mailed first. If the taxpayer's request pre-dates the L-4711, the CDP rights cannot be rescinded.
9. After verifying that no CDP request was submitted, or that the hearing request was mailed after the date of the L-4711, reverse the TC 971 AC 252 on each module on the withdrawn NFTL.
10. Document the history regarding the rescission.

11. The Service is not required to rescind a CDP notice if the NFTL is ineffective (e.g., "lost lien").

#### 5.12.9.7 (10-14-2013) Partial Withdrawal

- Neither the Internal Revenue Code nor the Treasury Department's Regulations have provisions for issuing a partial withdrawal. However, circumstances may exist that require a partial withdrawal.
- A partial withdrawal is a special worded document that withdraws the NFTL only as it relates to a specific person or period listed on the NFTL.
- Consider a partial withdrawal in the following instances if one or more (but fewer than all) of the individuals or entities on the NFTL fit withdrawal criteria.

##### Example:

NFTL is filed on A and B for a joint liability. After they divorce, B requests a withdrawal and meets the criteria.

##### Example:

NFTL is filed on C and D for a joint liability. Prior to the filing of the NFTL, C filed bankruptcy. The NFTL was filed after the bankruptcy petition date in violation of the automatic stay. A partial withdrawal is needed to withdraw the NFTL against C only.

- When a taxpayer was never assessed the liability and should not have been included on the NFTL, follow the procedures at IRM 5.12.7.9, *NFTL Corrections*, to file an amended NFTL removing the non-liable taxpayer's name from the original NFTL. Although unnecessary, a partial withdrawal may be considered if requested.
- Partial withdrawals for certain periods listed on the NFTL are permissible, but generally should be issued only in unusual circumstances. The function of the withdrawal is to remove the effects of the NFTL from the taxpayer's assets. A partial withdrawal for certain periods on the NFTL would have little, if any, impact on the effect of the NFTL against the taxpayer's assets.

##### Example:

NFTL is filed on modules 30-200912 and 30-201012. It was subsequently determined that the taxpayer was not properly noticed on 30-201012 prior to the NFTL filing. No other basis for the withdrawal is demonstrated. Even though an argument could be raised to partially withdraw the NFTL with respect to 30-201012, the NFTL would still remain in place for the 30-200912 module. Thus the partial withdrawal would provide no benefit to the taxpayer or the government. The withdrawal request should be denied.

- Advisory or Insolvency approval is required for all partial withdrawals. Process partial withdrawal requests in the same manner as full withdrawal requests.
- Partial withdrawals should be processed through ALS. The documents generated by ALS will reflect the special wording as approved by Counsel.
- Use Form 13794-W to request partial withdrawals. Ensure the name of the person subject to the withdrawal is clearly noted.
- In rare situations where the partial withdrawal has to be manually prepared, ensure Form 10916 is properly completed.
  - Only the name of the non-liable taxpayer should be entered on the form. The NFTL is valid against the still liable taxpayer.
  - Enter the special wording of the partial withdrawal in the body of the Form 10916.

*\*PARTIAL WITHDRAWAL. With respect to tax liabilities for [Taxpayer A and B], [Taxpayer A] has met the provisions for withdrawal of the Notice of Federal Tax Lien for the liabilities identified above. The referenced notice of lien is Withdrawn only insofar as it relates to [Taxpayer A]. The Notice of Federal Tax Lien remains in effect against [Taxpayer B] from the original recordation date.*

*\*PARTIAL WITHDRAWAL. With respect to the tax liabilities for [Taxpayer A and B], the provisions have been met for withdrawal of the Notice of Federal Tax Lien for the liabilities identified above. The referenced notice of lien is Withdrawn only insofar as it relates to the tax periods specified. The notice of lien remains in effect for all other tax periods as shown on the original Notice of Federal Tax Lien from the original recordation date.*

C. Secure e-mail the document or mail to CLO for processing.

10. Do not post a TC 583 to master file for a partial withdrawal. Do not abate the TC 360 from the taxpayer's account.

#### 5.12.9.8 (10-14-2013) Denying the Withdrawal Request

- Only those with delegated authority to approve a withdrawal have the authority to deny a withdrawal request. (See IRM 1.22.4.5, *Delegation Order 5-4 (Rev. 3)*.) The employee assigned the case recommends acceptance or denial of the withdrawal application and can advise the taxpayer of their recommendation; however, unless delegated otherwise, the delegated official must approve the recommendation prior to formally notifying the taxpayer.
- The approving office reviews the withdrawal package or request to ensure conditions for withdrawal have not been met. The extent of the review will depend on the function submitting the package.
  - If the request is directly from the taxpayer, the approving office will complete a full review in accordance with the steps in 5.12.9.5 and make the withdrawal determination.
  - If Advisory is the approving office and the package is received from the Collection Field function and was approved by a Group Manager, Advisory only needs to conduct a cursory review.
  - If the package is received from any other function, the approving office will complete a full review of the package and application to confirm the withdrawal determination.
- The approving office prepares and sends Letter 4711, *Withdrawal Decision Letter*, to the taxpayer or POA, if applicable, advising of the denial. This letter contains information regarding the taxpayer's appeal rights as well as their right to discuss the denial with the immediate manager. Also, provide the taxpayer with:
  - Publication 1660, *Collection Appeal Rights for Liens, Levies, Seizures and Installment Agreement Terminations*, and
  - Form 9423, *Collection Appeal Request*.
- Note the case history with the reason for denial.
- Actions taken by the approving office, including the manager's concurrence, will be documented on ICS or AIS, as applicable.
- Advisory closes its NFOI control on ICS 10 calendar days after sending the denial letter, unless an appeal is requested.

7. Process any appeal requests received from the taxpayer in accordance with standard appeal processing. (See IRM 5.1.9, *Collection Appeal Rights*.)

#### 5.12.9.8.1 (10-14-2013)

##### Withdrawal Based on Appeals Decision

1. Taxpayers have the right to appeal a withdrawal denied by the approving office or ask for a withdrawal during other CAP situations pertaining to the NFTL. The issue of withdrawal may also arise if the taxpayer appeals the filing of the NFTL under CDP.
2. Appeals has the authority to make determinations regarding NFTL withdrawals using the same criteria as Collection. Procedures for Appeals' determinations on notices of lien can be found in IRM 8.22.7.9, *NFTL Withdrawals*.
3. Once a case is in Appeals, the responsibility for the decision to withdraw rests with Appeals. Contact with Appeals, while the case is open, is strictly limited by Rev. Proc. 2012-18 in order to avoid prohibited ex-parte communication. (See IRM 5.1.9.5, *Communications with Appeals*, for further details on acceptable communications with Appeals.)
4. Upon a decision, Appeals will issue either a decision (for CAP and equivalent hearing requests) or a determination letter (for CDP requests). If a NFTL withdrawal must be issued, Appeals will send a copy of its decision or determination letter and Form 13794-W, along with any other information that supports the decision to withdraw the NFTL, to the approving office, normally which is Advisory.

##### Note:

A copy of the decision or determination letter does not have to be present in the information received from Appeals for the approving office to process the Withdrawal.

5. The approving office will review and process Appeals determination in accordance with IRM 5.1.9, *Collection Appeal Rights*.
  - A. If Form 13794-W is received from Appeals on a CDP case, the withdrawal request must be immediately processed. Any dissent takes place only after the withdrawal action has been initiated and Appeals has closed their case. (See IRM 8.22.9.14, *Collection Disagrees with Appeals Resolution*.)
  - B. If Form 13794-W is received from Appeals on a CAP case, the withdrawal request is binding and should be immediately forwarded for input. Disagreements with the Appeals decision should be rare and limited to situations in which Appeals did not consider all the facts of the case. (See IRM 5.1.9.5, *Communications with Appeals*.)
6. The approving office will request the input of the withdrawal within five (5) business days. If the approving office fails to timely process the request, Appeals may use their delegated authority under IRM 1.2.44.5 to bypass the approving office and send the request directly to CLO.

#### 5.12.9.9 (10-14-2013)

##### Requests for Withdrawal After the NFTL Has Been Released

1. There is no legal prohibition on withdrawing a NFTL after the underlying lien has been released. A request for the withdrawal of a NFTL after the lien has been released may be considered under IRC § 6323(j)(1)(A), NFTL filed improperly, or 6323(j)(1)(D), best interests of the taxpayer and government.
2. A request under IRC § 6323(j)(1)(A) for withdrawal of a NFTL that has been released should generally be granted if all the following conditions apply:
  - The taxpayer requests the withdrawal in writing; and
  - The taxpayer demonstrates that the original NFTL filing was improper or otherwise not in accordance with IRS procedures. (See *IRM 5.12.9.3.1* for further guidance on this provision.)
3. A withdrawal under IRC § 6323(j)(1)(A) may be issued whether a certificate of release was issued or the NFTL self-released.
4. A request under IRC § 6323(j)(1)(D) for withdrawal of a NFTL where the underlying lien has been released will generally be granted if the following conditions apply:
  - The taxpayer requests the withdrawal in writing;
  - The taxpayer fully satisfied the liabilities on the NFTL;
  - A certificate of release was issued; and
  - The taxpayer is in compliance with filing requirements.
5. For purposes of withdrawal under this provision, "fully satisfied" includes:
  - Tax liability was fully resolved by payment or credit offset;
  - Most circumstances where the tax assessment was abated because the taxpayer is no longer liable for the tax (e.g., amended return filed, reconsideration of additional assessment, innocent spouse determination, identity theft, or judicial ruling);
  - Abatement of penalty and/or interest due to reasonable cause resulted in zero balance; or
  - The taxpayer completed terms of an offer in compromise, including any related collateral agreements.

##### Note:

The completion of the five-year compliance period after acceptance of the offer is not a condition to determine "fully satisfied."

6. For this purpose, "fully satisfied" does not include:
  - Expiration of the statutory period for collection;
  - Discharge of taxes in bankruptcy; or
  - NFTLs that were improvidently or erroneously released and are subject to revocation.
7. For purposes of this section of the IRM, "in compliance with filing requirements" includes:
  - All required Individual Master File (IMF) and Business Master File (BMF) returns, including information returns, for the prior three years have been filed; and
  - Current Estimated Tax Payments and Federal Tax Deposits (FTDs) have been paid.
8. If the taxpayer has an unfiled return during any of the past three years, or appears to be delinquent with FTDs or Estimated Tax Payments, further investigation may be necessary as determined on a case-by-case basis. The taxpayer will be considered to be in compliance if the return was, or can be, closed for one of the following reasons:
  - Not liable for the tax period;
  - Income below the filing requirement;

- Little or no tax due or due a refund; or
  - No longer liable for filing.
9. The taxpayer may be requested to supply additional information, as necessary, to complete this determination.
10. Generally, withdrawals will not be granted under IRC section 6323(j)(1)(D) for self-released liens unless extenuating circumstances are present. The determination to grant such request will be made on a case-by-case basis and with Advisory managerial approval. Examples of extenuating circumstances are as follows:

**Example:**

A taxpayer is attempting to secure a license required for their vocation (e.g., realtor, insurance sales), but the record of the self-released NFTL is impeding their ability to obtain the license. A review of the account shows the tax liabilities listed on the NFTL were reported as uncollectible due to economic hardship of the taxpayer for most of the ten-year collection period, and the taxpayer had no assets of value. The statutory period for collection on the liabilities has expired. The taxpayer is in compliance with current and the prior three years' tax obligations. Withdrawal of the self-released lien may be granted.

**Example:**

The taxpayer has tentatively been offered an employment position if the self-released lien is withdrawn. The lien self-released due to statute expiration, and the taxpayer is in compliance with all current filing requirements. There is no indication the taxpayer had the ability to make payments, had any assets, or paid unsecured creditors instead of the IRS. Withdrawal of the self-released lien may be granted.

**Example:**

The taxpayer owes tax liabilities that were not included on the self-released lien and are not on any open NFTL. The taxpayer is now in a position to restructure a loan to pay the open liabilities but the self-released lien is hindering that process. The taxpayer is in compliance with current filing requirements. A withdrawal of the self-released lien may be granted.

11. To consider self-released liens for withdrawal, the taxpayer must be in compliance with filing requirements, as stated in (7) above, and the statutory period(s) for collection for the liability(ies) on the NFTL must have expired. Liens that self-released in error and are subject to revocation do not qualify for withdrawal under these procedures. NFTLs that are comprised of a mix of fully satisfied and expired liabilities should be evaluated on a case-by-case basis.
12. NFTLs that contain liabilities that have not been satisfied or expired are not subject to withdrawal under these procedures in this section; however, taxpayers may receive consideration of the withdrawal by following established procedures for requesting a withdrawal of a filed NFTL.
13. In situations where more than one person is named on the NFTL (e.g., joint liability) and only one person applies for the withdrawal after release, the application should be treated as a request for a full withdrawal. However, if the applying taxpayer meets the requirements stipulated above but the other, non-applying taxpayer listed on the NFTL does not, a partial withdrawal after release may be issued.

**5.12.9.9.1 (10-14-2013)  
Processing Withdrawals After Release**

1. To process requests for withdrawal after release, follow the procedures in *IRM 5.12.9.5* through 5.12.9.11 with the following exceptions noted in this section.
2. Since the liabilities associated with the released lien have been satisfied, assignment of the request will be based on whether the taxpayer owes other liabilities. If the taxpayer has other balance due modules, the request should be reviewed by the Collection field employee assigned to those modules. If the taxpayer owes no other modules or the case is not assigned, the request will usually be forwarded to Advisory for review.
3. The authority to approve withdrawals after release is found in *IRM 1.2.44.5, Delegation Order 5-4 (Rev. 3)*.

<b>If the withdrawal request is for a(n)...</b>	<b>Then authority to process/approve/deny lies with...</b>
released NFTL related to an active case assigned to the field	the Field Collection Group Manager
released NFTL not related to any assigned case	Advisory, Insolvency, or CLO
expired, i.e., self-released, NFTL regardless of any related assignment	Advisory

4. Use Form 10916(A), *Withdrawal of Notice of Federal Tax Lien After Release*, for these post-release withdrawals.
5. Use Letter 3044, *Withdrawal After Release Cover Letter*, to send a copy of the withdrawal after release to the taxpayer. For withdrawals generated through ALS, this letter is printed at CPS.

**Note:**

When Form 10916(A) is manually prepared, the Letter 3044 should also be signed by the delegated approving official. If it cannot be signed by the approving official, the Letter 3044 may be signed by another Service employee as long as the Form 10916(A) is appropriately approved.

6. Since this withdrawal occurs after the original tax liability was satisfied, no adjustments will be made to the taxpayer's account to abate the Transaction Code (TC) 360 lien fees previously assessed. Also, no additional filing fee will be charged to the taxpayer's account for the cost of the withdrawal filing.

**5.12.9.9.2 (10-14-2013)  
Withdrawal Requests for NFTLs No Longer on ALS**

1. ALS retains records of released NFTLs for five years. After that time the records are purged from the system. Occasionally, a request may be received for withdrawal of a NFTL that is no longer on ALS.

**Note:**

Although very rare, it is possible that a NFTL may not be ALS because it was manually filed (i.e., not through CLO) and the information was never loaded onto ALS.

2. Ask the taxpayer to provide a copy of the NFTL that was filed. Explain that it is not on our computer system and we need to have a copy of the originally filed NFTL in order to work the withdrawal request.
3. Upon receiving a copy of the document, verify it is a NFTL and not some other type of lien.
  - A. If it is not a NFTL, inform the taxpayer that we cannot assist them.
  - B. If it is a NFTL, again check ALS both by TIN and by SLID to see if the NFTL is present and can be processed following standard procedures.

**Note:**

If the taxpayer is asking for withdrawal of a recorded judgment, no action can be taken. Withdrawals only apply to NFTLs. Advise DOJ and/or Counsel of the request.

4. Make a determination if withdrawal of the released lien is appropriate by following *IRM 5.12.9.9*.

5. Manually prepare Form 10916(A) and Letter 3044 using the ICS template or the PDF fillable version from the intranet.

**Note:**

Do not recreate the NFTL on ALS for the purpose of generating a withdrawal after release.

6. Send the manual withdrawal to CLO and ask them to file the withdrawal in the appropriate recording office. In doing this, include a message to CLO advising them that the NFTL is no longer on ALS and therefore the withdrawal does not need to be added to the system. CLO will handle payment of the cost of recordation.
  - A. Since the NFTL has fallen off ALS due to age, it may also have been archived at the recording office level and therefore problems may arise when trying to record the withdrawal document. If this unique situation exists, which may only present itself after trying to record the document, mail the original withdrawal to the taxpayer, explain the situation, and let the taxpayer pursue filing with the recording office, if they still desire to do so.
7. Send a copy of the withdrawal and cover letter to the taxpayer.
8. Control the case and document actions related to the request on ICS or AIS, as appropriate.

**5.12.9.10 (01-01-2015)**

**Designated Payment Codes (DPC) Related to Liens and Lien Certificates**

1. IRM 5.1.2.8.1, *Designated Payment Codes*, provides detailed instructions on the use of DPCs and who may use them.
2. Generally, employees should use one of the following DPCs, depending on the basis for the payment:
  - 07 - full or partial payoff of the NFTL
  - 53 - discharges
  - 55 - subordinations
  - 56 - NFTL withdrawals
  - 57 - judicial and non-judicial foreclosures
  - 58 - redemptions and releases of right of redemption
  - 59 - estate tax liens and payments as the result of the filing of a proof of claim in a probate proceeding

**Note:**

DPC 07 is used when the payment received is expressly for full or partial payoff of the NFTL, as evidenced by accompanying NFTL payoff letter (e.g., L-3640, L-3640A, L-3641), copy of the NFTL, or statement of the taxpayer or third party as documented in appropriate history.

**5.12.9.11 (10-14-2013)**

**Documentation Requirements for Lien-Related Certificates**

1. Use ICS to control and monitor lien certificate cases. For field revenue officers, control will be through the assigned bal due or OI on ICS. For Advisory, a lien certificate case should be loaded into ICS within 7 calendar days of receipt.
2. Use ICS to record actions taken on all applications for lien-related certificates. Document histories in a clear and complete manner so that actions relative to the case are readily understood. (See IRM 5.13.6.8.12, *Attribute 702: Employee Case/History Documentation*, for further details regarding case histories.)
3. Document the following in ICS histories regarding applications, investigations and issuance of all lien certificates:
  - A. Date application or request was received.
  - B. Identity of the employee assigned to work the investigation. Enter the name and title of the advisor or other employee reviewing the application/request/investigation. If, on a particular case, the ICS history entry is completed by an employee other than the employee working the case, then ensure that ALL employees working the case are identified in the history entry. When a case is transferred from one employee to another, ensure the name, title and employee number of the employee conducting the investigation is entered in ICS.
  - C. Description of type of application.
  - D. Code section under which the application/request was submitted.
  - E. List of attachments and other documentation received.
  - F. If appropriate, an analyses of other lienholders' positions.
  - G. When appropriate, an analysis regarding "best interest of the government" considerations including a computation of the government's interest that shows the amount received is the government's interest.
  - H. Any Counsel advice received, including the name and phone number of attorney.
    - I. All communications with the applicant regarding the application for the certificate.
  - J. Date certificate or denial letter was issued.
  - K. Name and title of employee issuing the certificate.
  - L. The name and title, if applicable (e.g. power of attorney, title agent, etc.), to whom the certificate was issued and their relationship to the taxpayer or applicant.
  - M. Once a certificate is issued and if payment is received in exchange for the certificate, the amount received. If there is any difference in the amount expected and the amount received, explain and reconcile.
4. If delays in case action occur, document the reason in the ICS history.
5. Retain full information and documentation regarding approvals/denials of taxpayer requests in well organized case files, so that all documents can be easily located by any Service employee with a need to access the information. See 5.12.9.11.1 regarding necessary documents to be kept in case files after closure.

**5.12.9.11.1 (10-14-2013)**

**Documents Kept In Case Files**

1. Keep original or copies of all documents that relate to investigations of lien certificate applications. Specifically, keep the following in case-files during investigation of applications, and after investigations are complete:

- original application and attachments;
  - a copy (or facsimile) of the NFTL to which the application or investigation applies;
  - all documents referenced in the ICS history; and
  - a facsimile copy of the certificate or letter issued as a result of the investigation.
2. Maintain documentation in an orderly manner so it may be consulted if further actions are necessary on the case.
  3. Retain files as specified in Document 12990, *Records and Information Management Records Control Schedules*.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 10. Lien Related Certificates

##### 5.12.10 Lien Related Certificates

- 5.12.10.1 [Purpose](#)
- 5.12.10.2 [Certificates Relating to Liens \(Overview\)](#)
- 5.12.10.3 [Discharge of Property](#)
- 5.12.10.4 [Discharges in Special Circumstances](#)
- 5.12.10.5 [Equitable Subrogation](#)
- 5.12.10.6 [Subordination of Lien](#)
- 5.12.10.7 [Applications for Discharge & Subordination Certificates](#)
- 5.12.10.8 [Issuance of Discharge and Subordination Commitment Letters](#)
- 5.12.10.9 [Preparation and Issuance of Discharge and Subordination Certificates](#)
- 5.12.10.10 [Designated Payment Codes \(DPC\) Related to Liens and Lien Certificates](#)
- 5.12.10.11 [OIC Payments and Discharges \(or Subordinations\)](#)
- 5.12.10.12 [Denial of Applications for Discharge or Subordination](#)
- 5.12.10.13 [Certificate of Nonattachment](#)
- 5.12.10.14 [Issuance of Certificate of Nonattachment](#)
- 5.12.10.15 [Denial of Request for Certificate of Nonattachment](#)
- 5.12.10.16 [Revocation of Certificate of Nonattachment](#)
- 5.12.10.17 [Documentation Requirements for Lien-Related Certificates](#)
- Exhibit 5.12.10-1 [Subordination to Factors - Agreement](#)

##### Manual Transmittal

October 14, 2013

##### Purpose

(1) This transmits the new IRM 5.12.10, Federal Tax Liens, Lien Related Certificates.

##### Background

A revision of the IRM 5.12 chapter has been done to consolidate and coordinate like topics, reduce duplication of content, and provide an overview, cross-references, and contacts.

##### Material Changes

(1) Introduces new IRM with title "Lien Related Certificates," which identifies the content contained herein.

(2) The content of the section was taken primarily from former IRM 5.12.3 and 5.12.6 and Interim Guidance (IG) memos that have been issued. Some former sections were broken into multiple sections so guidance could be expanded.

(3) From the wording of the previous IRM sections, editorial changes made throughout and verbiage updated for form and systemic changes.

(4) The following table provides a cross walk of sections moving to IRM 5.12.10 and the nature of the changes involved.

New IRM Number	Old IRM Number(s)	Material Change
5.12.10.2	5.12.3.11	Added clarifying verbiage to definitions
5.12.10.3	5.12.3.12	Restructured section
5.12.10.3.1	5.12.3.12.1.1	n/a
5.12.10.3.2	5.12.3.12.1.2	Split Part Payment and No Value into separate sections.
5.12.10.3.3	5.12.3.12.1.2	Split Part Payment and No Value into separate sections.
5.12.10.3.3.1	IG SBSE 05-0313-0030	New section on short sales
5.12.10.3.3.2	IG SBSE 05-0313-0030	New section on HAFA provisions.
5.12.10.3.4	5.12.3.12.1.3	Added instruction to consult Counsel.
5.12.10.3.5	5.12.3.12.2	Restructured section and added guidance regarding third party applications.
5.12.10.3.5.1	5.12.3.12.2.1	Clarified Counsel's role in third party applications.
5.12.10.3.5.2	5.12.3.12.2.2	Editing changes to highlight waiver wording.
5.12.10.3.5.3	5.12.3.12.2.4; 5.12.3.12.2.5	Combined with 5.12.3.12.2.4 and 5.12.3.12.2.5 for comprehensive procedures.
5.12.10.3.5.4	5.12.3.12.3; 5.12.3.12.3.1	Consolidated 5.12.3.12.3 and 5.12.3.12.3.1
5.12.10.3.5.5	5.12.3.12.3.3	n/a
5.12.10.3.6	5.12.3.12.1	Expanded section to address compliance checks.
5.12.10.4	n/a	New section to combine similar subsections
5.12.10.4.1	5.12.3.16.1	n/a
5.12.10.4.2	5.12.3.17	n/a
5.12.10.4.3	n/a.	New section on Department of Justice discharges
5.12.10.4.4	5.12.3.18	n/a
5.12.10.4.4.1	5.12.3.19	n/a
5.12.10.4.4.2	5.12.3.20	n/a
5.12.10.5	5.12.3.21	New section to define equitable subrogation
5.12.10.5.1	5.12.3.21	Clarified wording of situations involving subrogation



5.12.10.6	5.12.3.13	Revised and restructured section
5.12.10.6.1	5.12.3.13	Split section into separate subsections to address each code provision
5.12.10.6.1.1	IG SBSE-05-1212-103	New section on subordination to factors
5.12.10.6.2	5.12.3.13	Split section into separate subsections to address each code provision
5.12.10.6.2.1	n/a	New section on HAMP and HARP situations.
5.12.10.6.2.2	n/a	New section on subordination to reverse mortgages
5.12.10.6.3	5.12.3.12.1	Expanded section to address compliance checks.
5.12.10.7	5.12.3.14	Included reference to application forms
5.12.10.7.1	5.12.3.14.1	Added clarifications for time frames
5.12.10.7.2	n/a	New section on requesting additional information
5.12.10.7.3	5.12.3.14.2	Added time frames and clarified OI procedures
5.12.10.7.4	n/a	New section on allowable expenses
5.12.10.7.4.1	5.12.3.14.3	Restructured for easier reading
5.12.10.7.5	5.12.3.14.4	n/a
5.12.10.7.5.1	5.12.3.14.4.1	n/a
5.12.10.7.6	5.12.3.14.5	Time frames clarified.
5.12.10.8	5.12.3.15	Clarified when commitment and denial letters should be issued.
5.12.10.9	5.12.3.16	Clarified documents needed for distribution of certificates
5.12.10.9.1	IG SBSE-05-0513-0039	New section on electronic signatures.
5.12.10.10	5.12.3.40	Clarified use of DPCs
5.12.10.11	n/a	New section on OIC payments in discharge or subordination situations
5.12.10.12	5.12.3.22	Revised to provide more details on issuance of denial letters
5.12.10.13	5.12.3.24	Expanded definitions of possible situations.
5.12.10.13.1	5.12.3.24	New section on processing applications
5.12.10.14	5.12.3.24.1	n/a
5.12.10.15	n/a	New section on denial procedures
5.12.10.16	5.12.3.23	n/a
5.12.10.17	IG SBSE-05-0113-013	New section on documentation
Exhibit 5.12.10-1	IG SBSE-05-0613-0053	New exhibit of forbearance agreement in factor situations

### Effect on Other Documents

This material supersedes IRM 5.12.1, dated January 9, 2009; IRM 5.12.2 dated March 8, 2012; IRM 5.12.3 dated June 1, 2010; IRM 5.12.6 dated July 16, 2010; and Interim Guidance memos SBSE-05-0613-0053, Subordination to Factoring Agreements, dated June 28, 2013; SBSE-05-0313-0030, Certificates of Discharge in Short Sale Situations, dated March 29, 2013; SBSE-05-0513-0039, Electronic Signatures on Lien Certificates and Associated Correspondence, dated May 16, 2013; and SBSE-05-0113-0013, Advisory Internal Revenue Manual Changes, dated January 31, 2013.

### Audience

SBSE and W&I Collection, Centralized Lien Operation, and Appeals

### Effective Date

(10-14-2013)

Michelle C. Alvarado  
Acting Director, Collection Policy  
Small Business/Self Employed Division

### 5.12.10.1 (10-14-2013)

#### Purpose

1. The purpose of this IRM is to provide instructions on the identification, analysis, recommendations, denial, and granting of lien certificates such as discharge, subordination, and non-attachment.
2. See IRM Exhibit 5.12.1-2 for common acronyms used in this section.
3. This IRM is for procedural use and does not provide instruction on the use of any system. Please consult User Guides as necessary.
  - Automated Lien System (ALS) User Guide: <http://mysbse.web.irs.gov/Collection/collsystems/als/userguide/default.aspx>
  - Integrated Collection System (ICS) User Guide: [http://icsweb.web.irs.gov/Docs/HTML/user\\_guide.htm](http://icsweb.web.irs.gov/Docs/HTML/user_guide.htm)

### 5.12.10.2 (10-14-2013)

#### Certificates Relating to Liens (Overview)

1. Internal Revenue Code (IRC) § 6325(a) provides for the release of a lien when a taxpayer has fully satisfied the liability, the statutory period for collection has expired, or a bond is accepted for payment of the liability. (See IRM 5.12.3.) Prior to the time when a lien can be released, there are situations in which the effect of the lien on property has to be addressed. Other sections of IRC § 6325 contain provisions to address these situations.
2. Aside from a release, there are four main methods to address the effect of a lien on a specific piece of property. Which method to follow depends on the circumstances of the request.
  - A. Discharge (IRC § 6325(b)) - removes the lien from specific property. This is most often used when the taxpayer is selling or transferring ownership of a piece of property after the Notice of Federal Tax Lien (NFTL) is filed.
  - B. Subordination (IRC § 6325(d)) - elevates another creditor's lien to a priority position above the Service's lien. This is generally used when a taxpayer is refinancing or obtaining additional financing after a NFTL has been filed.
  - C. Nonattachment (IRC § 6325(e)) - denotes that a lien does not attach to a particular entity. This is generally used when there is a dispute over the attachment of the lien or to clarify that a person of similar name is not, in fact, the taxpayer named on the NFTL.
  - D. Withdrawal (IRC § 6323(j)) - removes the effect of the NFTL from public record and abandons the priority of the NFTL under IRC § 6323(a).

#### Note:

See IRM 5.12.9 for guidance on withdrawals.

- This section reviews the criteria for discharges, subordinations, and nonattachments and details the procedures for each process. Consult IRM 5.17.2 for issues regarding property ownership and lien priority determinations.

### 5.12.10.3 (10-14-2013) Discharge of Property

- A discharge is the process of removing a specific piece of property from the effects of the Federal tax lien (FTL). The discharge process is governed by IRC § 6325(b).
- The types of discharge are described in the chart below.

IRC section	Discharge permitted if:	Document(s) issued
6325(b)(1)	the remaining property of the taxpayer has a fair market value that is double the sum of the amount of the FTL plus other liens that have priority over the FTL.	Form 669(A), <i>Certificate of Discharge of Property From Federal Tax Lien Under Sec. 6325(b)(1) of the Internal Revenue Code</i>
6325(b)(2)(A)	an amount equal to the value of the government's interest in the property is paid in partial satisfaction of the liability. To qualify the taxpayer must be divested of all interest in the property after the sale.	Letter 403, <i>Conditional Commitment</i> , and Form 669(B), <i>Certificate of Discharge of Property From Federal Tax Lien Under Sec. 6325(b)(2)(A) of the Internal Revenue Code</i>
6325(b)(2)(B)	it is determined that the interest of the United States in the property to be discharged from the lien has no value. To qualify the taxpayer must be divested of all interest in the property after the sale.	Letter 402, <i>Conditional Commitment</i> , and Form 669(C), <i>Certificate of Discharge of Property From Federal Tax Lien Under Sec. 6325(b)(2)(B) of the Internal Revenue Code</i>
6325(b)(3)	the proceeds of the sale are held as a fund subject to the liens and claims of the government in the same manner and priority as was the property that was discharged. To qualify the taxpayer must be divested of all interest in the property after the sale.	Form 669(H), <i>Certificate of Discharge of Property From Federal Tax Lien Under Sec. 6325(b)(3) of Internal Revenue Code</i> .
6325(b)(4)	the third party owner, not the taxpayer, deposits the value of the government's interest in the property in cash or provides an acceptable bond.	Form 669(G), <i>Certificate of Discharge of Property From Federal Tax Lien Sec. 6325(b)(4) of the Internal Revenue Code</i> .

- The instructions for applying for a discharge can be found in Publication 783, *How to Prepare an Application for a Certificate of Discharge of Federal Tax Lien*. Standardized application Form 14135, *Application for Certificate of Discharge of Federal Tax Lien*, is also available for use. Taxpayers may also be directed to a video on the discharge process located at <http://www.irsvideos.gov/Individual/IRSLiens>.
- A discharge request must meet one of the specified conditions of IRC § 6325(b) to be approved. Any agreement to discharge property subject to a federal tax lien that does not ensure that one of the specified conditions under section 6325(b) is met would exceed the Service's discharge authority under section 6325(b).
- After the discharge of specifically described real or personal property from a federal tax lien, the lien continues in full force and effect on all other property or rights to property of the taxpayer.
- Authority to approve discharges is limited to Advisory and Insolvency Group Managers. See IRM 1.2.44.4.

#### 5.12.10.3.1 (10-14-2013) Property Double the Amount of the Liability, IRC § 6325(b)(1)

- A certificate of discharge may be issued if it is determined that the remaining property of the taxpayer has a fair market value that is double the sum of the amount of the FTL plus other liens with priority over the FTL.

A. Compute the amount necessary to issue a Form 669(A) as follows:

#### Example:

\$1,000 federal tax lien  
 \$5,000 prior encumbrances (senior to the federal tax lien)  
 ±100 real estate tax lien (super priority)  
 \$6,100  
 \$6,100 x 2 = \$12,200 fair market value necessary for discharge under IRC § 6325(b)(1)

- Issuance of a certificate of discharge under this provision should address the best interest of the government.
- An application under IRC § 6325(b)(1) will not be considered unless the taxpayer is in filing compliance, is current with Federal Tax Deposits (FTD) or estimated income tax (ES) payments, and balance due accounts have been addressed, e.g., the taxpayer has made arrangements to pay, submitted an offer in compromise, been deemed uncollectible due to hardship, etc.

#### 5.12.10.3.2 (10-14-2013) Part Payment, IRC § 6325(b)(2)(A)

- Issue Form 669(B) covering any part of the property subject to the federal tax lien if an amount is paid in part satisfaction of the liability secured by the lien. The amount cannot be less than the value of the government's interest in the property to be discharged and the taxpayer must be divested of all interest in the property.

#### Note:

Consider all facts and circumstances of the case when determining the amount to be paid, including all other liens and encumbrances with priority over the government's lien.

- Foreclosing mortgagees may use this administrative provision rather than joining the United States as a party in a judicial foreclosure action. Discharge of lien eliminates the government's right of redemption if the United States were joined as a party defendant. See 28 United States Code (U.S.C.) 2410(c).
- In determining the value of the government's interest in property to be discharged from a federal tax lien under IRC § 6325(b)(2), consideration may, in certain situations, be given to the "forced sale value," as distinguished from the "fair market value" of the property.
  - Use of forced sale value as a valuation method is encouraged if market conditions, including depressed comparable sales, have resulted in lower values on properties; and if taxpayers will be assisted by the discharge of the lien by the property. However, while applicants may suggest use of "forced sale value", it is Advisory's decision if it will be used.
  - Document any disagreement with use of "forced sale value" in the case history, along with documentation of comparable sales data, prevailing market conditions, or other information that does not support its use as a method for determining the value of the property for the discharge.
- Reasonable and necessary expenses, including fees and taxes that are treated as expenses of sale are allowed in calculating the amount necessary for discharge of the lien from a property. See IRM 5.12.10.7.4 for further details.
- If sale preparation expenses are incurred (sometimes called "staging" expenses by realtors) and it is demonstrated that they either hastened the sale or increased the amount received at sale, then allow the expenses. In particular, if prevailing economic conditions are poor, and "staging" will assist in selling a property, providing a taxpayer with an avenue to make payment on their taxes, allow these expenses so long as the expense is reasonable and ordinary in the state where the property was, or is being, sold.

6. Under no circumstances will the determined interest of the United States, payment of which interest is necessary for issuance of a discharge under IRC § 6325(b)(2)(A), be reduced in order to allow payment to an interest that is junior to the federal tax lien.
7. Because making an application and deposit (or providing a bond) under IRC § 6325(b)(4) provides a judicial remedy not available for an application and payment made under § 6325(b)(2)(A), third party owners of property applying for a certificate of discharge under § 6325(b)(2)(A) must waive, in writing, their rights to make a deposit allowed under § 6325(b)(4) and to file suit for return of the deposit or accepted bond allowed under IRC § 7426(a)(4)
8. Unless the waiver has been provided in writing, the Service will treat an application made by an owner of the property (other than the taxpayer) as an application made under § 6325(b)(4), with all funds treated as a deposit. For the required waiver language, see *IRM 5.12.10.3.5.2*.

#### **5.12.10.3.3 (10-14-2013)**

##### **No Value, IRC § 6325(b)(2)(B)**

1. Issue Form 669(C) when it is determined that the interest of the United States in the property subject to the federal tax lien is valueless.

**Note:**

Consider all facts and circumstances of the case when determining the amount to be paid, including all other liens and encumbrances with priority over the government's lien.

2. Foreclosing mortgagees may use this administrative provision rather than joining the United States as a party in a judicial foreclosure action. Discharge of lien eliminates the government's right of redemption if the United States were joined as a party defendant. See 28 U.S.C. 2410(c).
3. In determining the value of the government's interest in property to be discharged from a federal tax lien under IRC § 6325(b)(2), consideration may be given to the "forced sale value," as distinguished from the "fair market value" of the property.
  - A. Use of forced sale value as a valuation method is encouraged if market conditions, including depressed comparable sales, have resulted in lower values on properties; and if taxpayers will be assisted by the discharge of the lien by the property. However, while applicants may suggest use of "forced sale value", it is Advisory's decision if it will be used.
  - B. Document any disagreement with use of "forced sale value" in the case history, along with documentation of comparable sales data, prevailing market conditions, or other information that does not support its use as a method for determining the value of the property for the discharge.

#### **5.12.10.3.3.1 (10-14-2013)**

##### **No Value - Short Sales**

1. Applications relative to "short sales" should be considered under IRC § 6325(b)(2)(B). A short sale occurs when the senior lien holder agrees to accept less than the total amount owed as satisfaction for its lien claim.

**Example:**

A bank has a priority mortgage claim for \$600,000, but, due to the significant decline in the real property market, the bank agrees to a sale of the mortgaged property for \$300,000. Because the senior lien attaches to all the equity in the property, generally the lien interest of the United States in short sale properties is valueless.

2. To facilitate the sale of the property in these situations, the senior lien holder might negotiate the payment of expenses to be taken from its settlement amount. In certain situations, these expenses might be greater than normal closing costs allowed by the Service and might include creditors that would otherwise be junior to the Service. This action by the senior lien holder to carve proceeds out of its priority claim to pay these expenses does not create an equity interest on the part of the taxpayer which may be reached by the IRS lien.
3. Provided there is no fraudulent aspect to the payment distribution and the lien interests of the Service in other properties of the taxpayer is not being harmed, the Service has no authority to require payment of the sum that otherwise would have gone to the senior lien holder.

**Example:**

A bank has a priority mortgage claim for \$600,000, but the bank agrees to a sale of the mortgaged property for \$300,000. The bank determines that out of the \$300,000 sales price, it will allow \$15,000 of expenses to be paid. Most of the \$15,000 is for normal closing costs, but \$5,000 of it is for a homeowner's association fee, which is junior in priority to the IRS, and \$2,000 is for state transfer taxes. Because the payments made for the homeowner's association fee and the state transfer taxes are made from proceeds attributable to the bank's priority lien interest and the interest of the Service in the property to be discharged is valueless, the Service cannot condition discharge upon payment of any part of the amount going to these expenses.

4. Occasionally, the senior lien holder may allow part of its proceeds to be paid to the taxpayer as a form of incentive. If these payments are taken from the senior lien holder's equitable interest, the payment would not have a bearing on calculating the government's interest in the property. This payment to the taxpayer, however, is an asset that may be levied. The decision to levy should be made judiciously based on the facts of the case.

**Note:**

The issue of the levy should have no detrimental effect on the issuance of the discharge. If there is no interest in the real estate, a no equity discharge should be granted upon sufficient proof of closing and transfer. If the proceeds going to the taxpayer are levied, the receipt or non-receipt of those funds would be something to address under levy procedures.

5. In normal (non-short) sale situations, where the lien claim of the bank is fully paid and the federal tax lien attaches to surplus proceeds, the Service's lien interest must be satisfied in accordance with IRC § 6325(b) before the property can be discharged from the lien. Creditors junior to the Service interest are not entitled to payment from the proceeds that belong, by priority, to the Service.

#### **5.12.10.3.3.2 (10-14-2013)**

##### **Home Affordable Programs**

1. The Home Affordable Foreclosure Alternatives Program (HAFA), part of the Home Affordable Modification Program (HAMP), was enacted by Treasury Department Supplemental Directive 09-01 to assist individuals behind on their mortgage payments. Property sales conducted under HAFA have certain restrictions that may affect discharge determinations.
2. Payments to junior creditors under HAFA cannot exceed \$6,000 in aggregate. Also, the payments are: limited to 6% of the amount due the junior creditor; should be paid in the order of priority; and must be reflected on the HUD-1 Settlement Statement.
3. An investor (purchaser) can be reimbursed, on a three (3) to one (1) matching basis, up to \$2,000, for facilitating the release of subordinate lien holders. In other words, for each three dollars an investor pays to secure release of a subordinate lien, the investor will be entitled one dollar of reimbursement up to a maximum \$2,000. For junior lien holders to qualify for payment and investors to qualify for reimbursement, the junior lien holders must agree to release their liens with respect to the property.
4. The seller under HAFA is entitled to an incentive payment of \$3,000 to assist with relocation expenses. To qualify, the property must be the seller's principal residence and the amount must be shown on the HUD-1 Settlement Statement.

A. This relocation payment has no bearing on the taxpayer's equity in the property and, therefore, the Service cannot require payment of the sum as a condition of discharge; however, it is a payment that could be levied. As a matter of policy, the Service will not levy this payment unless flagrant conduct circumstances exist. (See IRM 5.11.6) A levy on this relocation allowance must be approved by the Territory Manager.

B. Taxpayers who receive a relocation payment through this provision are not eligible to request the relocation expense allowance described in *IRM 5.12.10.7.5*.

5. Payments to the seller/taxpayer outside of this provision of HAFA may be income that can be attached by levy. If additional payments are to be made to the taxpayer, investigate the nature of the payment to determine if it can be reached by levy. Consult with management and Area Counsel as needed. If it is an asset that can be levied, you must exercise discretion in determining whether to proceed with levy action.
6. The limitations of HAFA as described above have no effect upon the discharge authority in regular short sale situations. In other words, if the sale is not being conducted under the provisions of HAFA, the Service has no authority to require payment of amounts paid to junior creditors from the senior lien holder's proceeds as a condition of discharge of the subject property. If the sale is subject to the provisions of HAFA, the Service can ensure that the terms are being properly followed, but still cannot require payment of any sum to which we are not entitled.
7. When a discharge application involving a short sale is received and information indicates that proceeds are being provided to a junior creditor, the purchaser, or the taxpayer, contact the mortgage company to determine if it is a loan service provider operating under the provisions of HAFA.
  - A. If the sale is under HAFA, evaluate the distribution according to the HAFA terms described above and notify the mortgage company of any discrepancies found.
  - B. If the sale is not under the provisions of HAFA, process the request following standard procedures outlined in *IRM 5.12.10.7*. Presuming no issues are identified, the discharge application can be approved following existing IRM procedures.

#### **5.12.10.3.4 (10-14-2013)**

##### **Substitution of Proceeds of Sale**

1. Issue a certificate of discharge under IRC § 6325(b)(3) on any part of the property subject to a tax lien if the property is sold and the Internal Revenue Service agrees that the proceeds of the sale are to be held as a fund subject to the liens and claims of the United States in the same manner and with the same priority as such liens and claims had with respect to the discharged property.
2. If property has been sold pursuant to a substituted sales agreement with the Service, any third party who claims an interest to all or any part of the funds may, within nine months after the date of the agreement, bring suit in a district court of the United States under IRC § 7426(a)(3).
3. Consult Counsel to review any proposed escrow agreements.
4. Reasonable and necessary expenses incurred in connection with the sale of the property or administration of the sale proceeds will be paid from the proceeds of the sale before the satisfaction of any claims. (See *IRM 5.12.10.7.4*.)

#### **5.12.10.3.5 (10-14-2013)**

##### **Right of Substitution of Value, IRC § 6325(b)(4)**

1. A third party owner has the right under IRC § 6325(b)(4) to receive a certificate of discharge on any property subject to a lien if the third party owner:
  - deposits an amount equal to the value of the government's interest in the property, as determined by the Service; or
  - furnishes an acceptable bond in a like amount sufficient to cover the government's interest in the property.
2. The deposit described in (1)(a) above can be cash, cashier's check, certified funds, or a bond as described in *IRM 5.6.1..*
3. All amounts received based on third party applications for the issuance of a discharge will be treated as deposits under IRC § 6325(b)(4), unless a written waiver is received.
4. For a cashier's check, cash, or other type of certified funds received, take the following steps:
  - A. Prepare a memo detailing the circumstances of the case.;
  - B. Prepare a posting document and deposit the funds into Account 4730, Miscellaneous Deposit Fund Account.
  - C. Transmit all of the above to the Campus attached to Form 3210, Document Transmittal.
  - D. Retain a copy of all documents in Advisory for follow up.
5. Follow established procedures for processing and disposition of any bond received (*IRM 5.6.1.2.1*). Advisory procedures are found in *IRM 5.6.1.5*.
6. A control number will be assigned by the Campus.
7. The third party owner may request the return of the deposit or a release of the bond on the grounds that the Service's determination of value is incorrect.
  - A. If the third party owner makes such a request, specific reasons for the disagreement with the Service's determination of value must be presented.
  - B. If a request is made, the Service's determination should be reconsidered in light of any arguments or proof presented by the third party.
  - C. If the Service determines that the actual value is less than the prior determination of value, then the deposit should be returned or the bond released in accordance with the reconsidered determination, provided the redetermination is made before the Service applies the amount deposited to the tax liability or collects on the bond.

##### **Note:**

*IRM 5.1.19.3.11* provides information regarding wrongful liens and suspension of the running of the period of limitations on collection with regard to IRC § 6325(b)(4)

8. Third party owners have 120 calendar days after the day the certificate of discharge is issued to file a civil suit. If suit is not filed, the Service has 60 calendar days to apply the deposit, collect on the bond, or refund any excess amount. See *IRM 5.12.10.3.5.3*.

##### **Note:**

The applicant should be advised that the judicial provisions of IRC § 7426(a)(4) are the exclusive remedy for seeking the return of funds deposited under IRC § 6325(b)(4). An administrative levy claim or a wrongful levy suit under IRC § 7426(a)(1) are not available. (See Revenue Ruling 2005-50).

9. When the case is resolved, prepare the necessary documentation to have either all or part of the money refunded to the third party or applied to the taxpayer's account.
10. A third party who co-owns property with the taxpayer may request a discharge under this provision; however, the taxpayer may not use this provision.
11. Third party owners of property applying for a certificate of discharge under § 6325(b)(2)(A) must waive, in writing, their rights to make a deposit allowed under § 6325(b)(4) and to file suit for return of the deposit or accepted bond allowed under § 7426(a)(4). Unless the waiver has been provided in writing, the Service will treat an application made by an owner of the property (other than the taxpayer) as an application made under § 6325(b)(4), with all funds treated as a deposit.

12. See *IRM 5.12.10.3.5.5* for effect on the statutory period of limitations.

#### **5.12.10.3.5.1 (10-14-2013)**

##### **Area Counsel Approval**

1. Area Counsel must approve all third party requests for discharge under IRC § 6325(b)(4) prior to issuance of the certificate.

#### **5.12.10.3.5.2 (10-14-2013)**

##### **Application for IRC § 6325(b)(4) Discharge**

1. Follow procedures outlined in *IRM 5.12.10.3* and Publication 783 when providing information regarding applications for discharge of property under IRC § 6325(b)(4).
2. Inform third party property owners of the requirement of a written waiver of their rights under IRC § 6325(b)(4) and § 7426(a)(4) if they elect to request a discharge under § 6325(b)(2)(A). The signed and dated waiver must state:

*"I understand that an application and payment made under § 6325(b)(2)(A) does not provide the remedy available under § 7426(a)(4). In making such an application/payment, I waive the option to have the payment treated as a deposit under § 6325(b)(4) and waive the right to request the return of funds and to bring an action under § 7426(a)(4)."*

#### **5.12.10.3.5.3 (10-14-2013)**

##### **Disposition of Deposit**

1. The government will refund (at the prevailing overpayment rate) the difference between the Service's estimated value and the actual value of its interest and will release the bond if a civil action determines that:
  - the unsatisfied liability giving rise to the lien can be satisfied from a source other than such property; or
  - the value of the government's interest in the property is less than the Secretary's prior determination.
2. If within 120 calendar days after the certificate is issued the third party owner takes no action under IRC § 7426(a)(4), then within 60 calendar days after the end of the 120-day period take the following steps:
  - A. Apply the amount deposited or collect on the bond to satisfy the liability secured by the lien.
  - B. Refund with interest (at the prevailing overpayment rate) any amount that is not used to satisfy the liability.
3. Use established procedures for processing any overpayments.

#### **5.12.10.3.5.4 (10-14-2013)**

##### **Civil Action - Substitution of Value**

1. If a certificate of discharge is issued to a third party owner under IRC § 6325(b)(4), the third party owner may, within 120 calendar days of the certificate being issued, bring a civil action against the government in a district court of the United States, for a determination of whether the value of the government's interest in the property is less than the value determined by the Secretary.
2. No other action may be used for this determination.
3. If the court decides that the Secretary's determination of the value in the property exceeds the actual value of the governments interest in the property under IRC § 6325(b)(4), then the court will grant a judgment ordering:
  - a refund of the amount deposited that exceeds the government's interest,
  - a release of a bond to the extent that the aggregate amount exceeds the value determined by the court.

#### **5.12.10.3.5.5 (10-14-2013)**

##### **Suspension of Running of the Statute**

1. IRC § 6503(f) directs that the running of the period of limitations under IRC § 6502 will be suspended for the period beginning on the date the person becomes entitled to a certificate of discharge and ending on the date that is 30 calendar days after the earlier of:
  - the earliest date on which the Secretary no longer holds any amount as a deposit or bond under § 6325(b)(4) by reason of such deposit or bond being used to satisfy the unpaid tax or is being refunded or released; or
  - the date the judgment secured under IRC § 7426(b)(5) becomes final.
2. The running of the statute of limitations will be suspended only with respect to the amount of the assessment equal to the value of the interest of the government in the property plus interest, penalties, additions to tax and any additional associated amount.

#### **5.12.10.3.6 (10-14-2013)**

##### **General Factors for a Certificate of Discharge**

1. As indicated above, there are several provisions for issuing a certificate of discharge. Although each is different, some factors should always be considered.
2. Follow procedures outlined in *IRM 5.12.10.7* and Publication 783, *How to Apply for a Certificate of Discharge from Federal Tax Lien*, when providing information regarding applications for discharge of property.
3. Conduct full compliance checks when applications for discharge are submitted by taxpayers. If taxpayers are not in full compliance with filing and payment requirements, request returns be filed and balance due accounts paid; however, process discharge applications regardless of compliance check outcomes unless information received indicates that the discharge itself is not in the best interest of the government.

##### **Note:**

As an exception, for applications under IRC § 6325(b)(1), taxpayers must be in compliance.

##### **Note:**

For third party applications, a compliance check on the taxpayer is not required.

4. Field Revenue Officers receiving applications for discharge relative to cases in their inventory should do the following:
  - A. Conduct full compliance check as described in (3) above. There is no prohibition on processing discharges if taxpayers are not in compliance with paying and filing requirements, but use the application as an opportunity to fully explore the taxpayer's compliance. Set deadlines for payment and filing if appropriate.



B. Bring Advisory into the investigation early. Work with Advisory on property valuation, as needed, and to ensure the investigation is being worked in accordance with established policies and procedures.

5. When making discharge determinations in states that allow "entireties" ownership and the lien is only against one of the owners, the government's interest will generally be determined to be one half of the value of the property. For example, under IRC § 6325(b)(2)(A), the taxpayer generally must pay the Service one-half the proceeds of the sale in partial satisfaction of the liability secured by the FTL.
6. Calculating the interest of the government in a discharge situation generally begins with the fair market value (FMV) of the property. FMV is often described as what a willing buyer offers to pay a willing seller in an "arm's length" transaction; however, other factors may be present that inappropriately impact that definition, such as a relationship between the buyer and seller, an attempt to quickly sell the property to defeat the efforts of a creditor, etc. FMV is best determined by considering at least one appraisal by a disinterested third party along with other sources of valuation deemed appropriate by the approving official.

**Note:**

If a market valuation has been done on the subject property by a Property Appraisal and Liquidation Specialist (PALS), it may be considered as an appraisal for the FMV determination.

7. Approval of discharges is delegated to Advisory and Insolvency Group Managers. See Delegation Order 5-4 in IRM 1.2.44.5.

**5.12.10.4 (10-14-2013)**

**Discharges in Special Circumstances**

1. Occasionally, discharge applications will be received from the taxpayer or third party applicant that involve special circumstances. This subsection addresses some of those situations.

**5.12.10.4.1 (10-14-2013)**

**Certificate of Discharge in Bankruptcy Court Sales**

1. The bankruptcy court has inherent power to sell property within its jurisdiction free and clear of liens. Therefore, when a sale is made upon the order of a bankruptcy court, its purchaser takes the property unencumbered by the federal tax lien, and the federal tax lien should be considered transferred to the proceeds of the sale.

**Note:**

The bankruptcy court order should provide that all liens attach to the sales proceeds with the same priority they had in the property. IRM 5.17.8.12(4). If the court's order does not include the federal tax lien or does not provide that the federal tax lien attaches to the proceeds with the same priority as to the property, consult Area Counsel.

2. When property is sold upon the order of a bankruptcy court, and the purchaser applies for a certificate of discharge of federal tax lien, the purchaser, or other interested party will be advised to submit an affidavit to Advisory containing:

- a statement of the facts concerning the sale;
- a legal description of the property; and
- attach a properly certified copy of the court order.

3. If it is determined that the application is sufficient, issue a certificate using the appropriate form.

**5.12.10.4.2 (10-14-2013)**

**Certificate of Discharge in Foreclosure Proceedings**

1. Foreclosing mortgagees taking title to property by a deed in lieu of foreclosure when the government's lien interest is valueless should be encouraged to request discharges under IRC § 6325(b)(2)(B) rather than join the United States in a judicial proceeding. It is to their advantage because it eliminates the government's right of redemption and it allows the government to avoid costly litigation proceedings.
2. Issue the certificate upon receipt of proof that the taxpayer's right, title or interest in the property has been eliminated and that the government's lien interest is valueless.
3. Do not issue a certificate of discharge during the pendency of a judicial foreclosure proceeding. Notify the U.S. attorney of the request for a certificate.
4. Do not consider a request for a certificate of discharge from a party who has nonjudicially foreclosed and has given adequate notice to the Advisory Group Manager under IRC § 7425. If they wish to eliminate the government's right of redemption, advise them of the procedures for obtaining a release of that right. Instructions for application are in Publication 487, *How to Prepare Application to Release Property Secured by Federal Tax Lien*. See IRM 5.12.5 for further information on redemptions.

**5.12.10.4.3 (10-14-2013)**

**Discharge and Subordination Recommendations by Department of Justice**

1. Occasionally, Advisory will receive a recommendation for discharge or subordination from the Department of Justice (DOJ) in relation to a case they are litigating.
2. Advisory may provide feedback to DOJ, as needed; however, because of DOJ's settlement authority over the litigation, Advisory must take any discharge or subordination action as directed by DOJ. See IRM 25.3.

**5.12.10.4.4 (10-14-2013)**

**Certain Government Agency Discharges**

1. To reduce litigation costs and make property readily marketable, the Veterans Administration (VA), Small Business Administration (SBA), and Federal Housing Administration (FHA) have agreed to accept title to property subject to a junior federal tax lien, provided the payment (if any) required to secure a discharge of property from the tax lien does not exceed the increased cost which would be incurred by them if a mortgagee elected to foreclose by a judicial, rather than by a nonjudicial, proceeding.
2. Upon receipt of such requests, the Service will cooperate in discharging from junior federal tax liens property acquired by these agencies in connection with their Loan Guaranty or Direct Loan Salvage operations.
3. The procedures described in this section apply only to applications received from the VA, SBA, or FHA requesting discharge of property from a junior federal tax lien which has been or is to be acquired by one of those agencies.
4. Issue a certificate of discharge if a federal agency has foreclosed nonjudicially and given adequate notice when the agency considers the NFTL to be a cloud on the title.
5. These procedures do not apply when the United States has already been joined as a party to a judicial foreclosure proceeding or when the insured mortgagee forecloses and has not assigned the mortgage or deed of trust to the VA, SBA or FHA.

**5.12.10.4.4.1 (10-14-2013)**

**Applications for Discharge (VA, SBA, or FHA)**

1. Applications for certificates of discharge will be submitted by the VA, SBA, or FHA when they have been notified that the mortgagee has acquired the property and has conveyed it or elected to convey it to the VA, SBA or FHA.

2. The property will have been appraised by a designated or staff appraiser of the appropriate agency based on the market value of the property at the time of foreclosure. The appraisal will be accepted as the fair market value of the property in determining the government's interest under the federal tax lien. A Field investigation will not be required.
3. The amount shown in the concluding paragraph of the application serves only to place a ceiling on the amount the particular agency may pay for the issuance of a discharge. If it is determined that the federal tax lien interest has value in excess of the amount which the agency is legally permitted to pay, they should be advised and the discharge application file closed.
4. In accordance with an agreement with VA or FHA, when it has been determined that a notice of lien had been filed more than 30 calendar days prior to a nonjudicial sale, an application for the discharge of the property will be made. No notice will be given under IRC § 7425 in these cases.

#### **5.12.10.4.4.2 (10-14-2013)**

##### **Issuance of Certificate of Discharge (VA, SBA, or FHA)**

1. If it is found that the interest to which the federal tax lien attaches is valueless, deliver Form 669(C) to the VA, SBA, or FHA.
2. If it is determined that the interest to which the federal tax lien attaches has value, Advisory will prepare a statement stating the exact amount required for the requested discharge. The original and two copies of the statement will be sent to the VA, SBA, or FHA.
3. When a statement signed by the responsible agency official is received, stating that the amount required for the issuance of the discharge is satisfactory, deliver Form 669(B). No payment will be made at the time of delivery, but will be deferred until the certificate is filed with the proper recording official.
  - A. After the certificate is properly filed, the VA, SBA, or FHA will remit payment in the form of a U.S. Treasury Check to the Advisory Group Manager.
  - B. If payment is not received within 60 calendar days after the date the certificate was delivered, a follow up will be made to determine when payment will be remitted.
4. In the event the VA, SBA, or FHA does not acquire the property or agree to accept it from the mortgagee, the certificate will be returned to the area director for cancellation. The canceled certificate will be associated with the application for discharge.

#### **5.12.10.5 (10-14-2013)**

##### **Equitable Subrogation**

1. The doctrine of equitable subrogation is expressly recognized by IRC § 6323(i)(2), to the extent it exists under state law. Although laws vary from state to state, the following statements can generally be made about subrogation:
  - A. It substitutes one person in place of another with respect to a lawful claim or right.
  - B. It arises when a junior creditor or lien holder pays off, on a dollar for dollar basis, an encumbrance senior to the NFTL in order to protect its interests. This may include refinanced mortgages by the same or different financial institutions.
  - C. There is no certificate that needs to be issued for the subrogation. It is by operation of law and is defined in each state's law, where applicable (see local law guides on the Chief Counsel web site).
  - D. Subordination of the tax lien is not necessary if a creditor meets the requirements of subrogation; however, financial institutions usually want a Certificate of Subordination in these situations so questions of lien priority are addressed in the public record.
2. Advisors must be familiar with applicable state laws and consult with Area Counsel, as needed, in order to determine the government's interest in property when a claim of equitable subrogation is made.

##### **Note:**

See IRM 5.17.2.7.1.17 for additional information regarding issues of subrogation.

#### **5.12.10.5.1 (10-14-2013)**

##### **Applications for Discharge Involving a Claim of Equitable Subrogation**

1. Applications for discharge under IRC §§ 6325(b)(2)(A), 6325(b)(2)(B), or 6325(b)(4) are sometimes submitted by third parties who either purchased property without having discovered a previously recorded NFTL or who purchased property at a foreclosure sale without the government having been properly noticed under IRC § 7425. These buyers will claim a right of equitable subrogation to the extent of encumbrances they paid that had priority over the NFTL prior to the sale.
2. Few third parties meet the definition of a party entitled to rights of subrogation as defined by any state's law. However, courts are highly inclined to expand the definition if it can be shown that a failure to do so will result in the unjust enrichment of one party at the expense of another. Therefore, unless the facts do not support an argument for equitable subrogation, or where such argument is clearly not supported by state law, claims of equitable subrogation in these cases will be recognized when calculating the government's lien interest, unless, based on local law, Area Counsel advises otherwise.
3. If a third party purchases a property without recognizing the attachment of the lien as described above, determine what the government's interest would have been had the Service been involved in the transaction by following the general guidelines in this section.
4. When an application has been received for property that was not transferred through foreclosure:
  - A. Calculate the amount that would have been required for a discharge had an application been submitted prior to sale.
  - B. Then, from the forced sale value deduct the amount of the prior encumbrance(s) paid by the purchaser. Do not deduct expenses of sale.
  - C. Compare the calculations of (a) and (b). The calculation that results in the higher amount, if any, will be the government's interest that must be paid in order for a discharge to be issued.

##### **Note:**

Accepting a lesser amount for the certificate than would have been required had the application been made prior to the sale would unacceptably reward the applicant for not taking action to obtain a discharge certificate until after the property was sold.



**Example:** One month after the sale of property the purchaser discovers that a NFTL in the amount of \$50,000 against the seller was recorded prior to the sale. The property sold for its fair market value of \$100,000. Prior encumbrances and reasonable expenses of sale totaled \$70,000 and \$10,000 respectively.

- If the application for discharge had been made at the time of the sale, a payment of \$20,000 (\$100,000 - \$70,000 - \$10,000 = \$20,000) would have been required in order for a discharge certificate to be issued.
- If the government foreclosed the lien and the property sold for a forced sale value of \$75,000, and assuming counsel advised that the purchaser would likely be granted subrogation rights equal to the \$70,000 prior mortgage that was paid when the property was purchased, \$5,000 would be realized (\$75,000 - \$70,000 = \$5,000).
- Since a foreclosure was not involved, the higher payment of \$20,000 must be paid in order for a discharge certificate to be issued.

5. When an application has been received for property that was transferred through foreclosure without the government having been properly noticed under IRC § 7425:

- Using the forced sale value, deduct the amount of the prior encumbrance(s) paid by the purchaser.
- The resulting calculation is the amount of the government's interest that must be paid in order for a discharge to be issued.

**Example:**

At its own foreclosure sale a bank bids \$95,000 (the amount of the delinquent mortgage) and purchases property with a fair market value of \$100,000 and a forced sale value of \$80,000. The bank then discovers that proper notice of the foreclosure was not given to the government leaving a NFTL undisturbed. The bank applies for a discharge. Since the forced sale value of the property is less than the amount of the mortgage that had priority over the NFTL, a discharge certificate may be issued without requiring any payment.

**Example:**

Same facts as the above example but the delinquent mortgage was \$70,000 and that is the amount paid for the property at the foreclosure sale. A payment of \$10,000 (\$80,000 - \$70,000 = \$10,000) must be made in order for a discharge certificate to be issued.

**5.12.10.6 (10-14-2013)  
Subordination of Lien**

- Subordination is the process of allowing a junior creditor a position ahead of the Service lien with respect to any part of property subject to the Federal tax lien. The subordination process is governed by IRC § 6325(d).
- The types of subordination are described in the chart below.

IRC section	Subordination criteria	Document(s) issued
6325(d)(1)	There is paid over to the Service an amount, on a dollar for dollar basis, equal to the amount of the interest of the NFTL or interest to be subordinated.	Letter 4053, <i>Conditional Commitment to Subordinate Federal Tax Lien</i> , and Form 669(D), <i>Certificate of Subordination of Property from Federal Tax Lien</i> ,
6325(d)(2)	It is determined that the interest of the United States in any part of the property covered by the NFTL will ultimately be increased by the subordination and ultimate collection of the outstanding liability will thereby be facilitated.	Letter 4053, <i>Conditional Commitment to Subordinate Federal Tax Lien</i> , and Form 669(D), <i>Certificate of Subordination of Property from Federal Tax Lien</i> ,.
6325(d)(3)	It is determined that the United States will be adequately secured after subordination of a lien imposed by IRC § 6324.	Form 669(F), <i>Certificate of Subordination of Federal Estate Tax Lien</i> ,

- The Service is not required to issue a subordination but may do so when it is in the best interest of the government.
- The instructions for applying for a subordination can be found in Publication 784, *How to Prepare an Application for a Certificate of Subordination of Federal Tax Lien*. Standardized application Form 14134, *Application for Certificate of Subordination of Federal Tax Lien*, is also available for use. Taxpayers may also be referred to a video on the subordination process at <http://www.irsvideos.gov/Individual/IRSLiens>.
- Typically, the NFTL would be subordinated to a lender loaning money to the taxpayer and securing the loan with a mortgage or deed of trust.
- In the case of entireties property, the Service generally will treat the value of the taxpayer's interest as one-half of the value of the entireties property.
- When the outstanding liability is not assigned to another IRS work unit and it is determined that collection will be facilitated by the subordination, the Advisory employee should secure the taxpayer's proposal to pay the balance of the tax liability (or evidence of such a proposal to another function) and make a determination on the proposal's collection impact along with the recommendation for acceptance/denial of the request.
- If a taxpayer seeks a certificate of subordination for the purpose of financing the purchase of property financed by a purchase money mortgage or a purchase money security interest which qualifies for priority over a previously filed notice of federal tax lien as explained in Revenue Ruling 68-57, provide the taxpayer with Publication 785, *Purchase Money Mortgages, Purchase Money Security Interests, and Subordination of the Federal Tax Lien*, which explains why a certificate of subordination is not needed and will not be provided if requested.
- Procedures for handling requests for subordination of a federal estate tax lien under IRC § 6325(d)(3) can be found in IRM 5.5.8.

**5.12.10.6.1 (10-14-2013)  
Receive Amount for Lien Interest - IRC § 6325(d)(1)**

- This type of subordination is generally used when the taxpayer is obtaining financing to pay toward the tax liability.

**Example:**

The taxpayer wants to secure a second mortgage against his property and use the proceeds to pay toward the NFTL.

**Example:**

The taxpayer has a mortgage that is senior to the NFTL. The taxpayer wants to refinance the mortgage and increase the amount owed. He proposes to pay the Service the amount that the mortgage is increased.

- If a taxpayer seeks a certificate of subordination for the purpose of obtaining cash or paying other debts not secured by a senior lien on the property (for example, in the case of a home equity loan), the Service will apply IRC § 6325(d)(1). Generally, payment of junior liens or non-secured debts is not allowed in the subordination process unless the payment ultimately enhances collection of the tax liability.

**5.12.10.6.1.1 (10-14-2013)  
Subordination to Factoring Agreements**

1. A factoring agreement is an arrangement between a business and a third party agent whereby the agent assumes the rights regarding the account receivables for the business. Generally the agreement provides for the agent to deduct a percentage of what is collected on an on-going basis, but it may also involve a lump sum payment to the business. The business normally enters such agreements to improve their cash flow. Prior to entering into any such agreement, the business must address the lien's attachment to the accounts receivable.
2. A subordination of the government's lien interest in accounts receivable to the security interest of a lender is permitted in accordance with IRC § 6325(d)(1) or (d)(2).
3. Granting a subordination on accounts receivable should be limited to the accounts receivable (AR) existing on the issuance date of the subordination certificate but may include those coming into existence during the specified period of the subordination.
4. The subordination must be for a period no longer than one year. If the subordination is for an in-business taxpayer that has not paid the preceding quarterly trust fund tax, the period cannot be for longer than 90 calendar days.
5. Any request for extension must be treated and worked as a new application. All subordination requests must meet standard approval criteria.
6. Documentation provided by the taxpayer and histories noted in the file must clearly show that subordination of the government's priority will facilitate collection of the taxes due.
7. Since periodic payments are involved, a signed installment agreement (Form 433-D) must be secured in conjunction with the subordination and be subject to the normal termination and default provisions.
  - A. This must include a requirement to make timely Federal Tax Deposits if the taxpayer has an open Form 941 filing requirement.
  - B. This must also include a requirement to make timely Form 1040ES payments if the taxpayer is self-employed.
  - C. These provisions will also apply to the subordination.
  - D. The installment agreement provisions may be modified by Advisory if the amount received from the subordination is less than the monthly amount on the installment agreement; however, if the amount received is more than the amount called for by the installment agreement this is not necessary.
8. The description of the assets included in the subordination certificate must read, "*all [or specific] accounts receivable belonging to [taxpayer name] in existence on mm/dd/yyyy and coming into existence prior to mm/dd/yyyy.*" If only specific accounts receivable are subject to a factoring agreement, describe the specific accounts receivable to be included on the subordination certificate.

**Note:**

The federal tax lien will likely have priority on unlisted accounts receivable.

9. For cases assigned to Field Collection (FC) revenue officers, the following are required:
  - A. A complete investigation of the taxpayer's ability to pay; and
  - B. A Trust Fund Recovery Penalty (TFRP) investigation must be completed or in process before granting an in-business installment agreement as outlined in IRM 5.14.7.

**Note:**

A condition of the installment agreement should be to update financial information annually if a request to extend the subordination is anticipated.

10. For applications to subordinate to a factor on taxpayer trust fund accounts not assigned to a revenue officer, Advisory will initiate a TFRP investigation and may issue an OI to Field Collection on cases for which field actions are necessary.
  - A. These OIs, sent by Advisory, are mandatory OIs for the field.
  - B. The information and any recommendations on the TFRP investigation, along with any information on an installment agreement, should be forwarded to Advisory.
  - C. Advisory will follow the direction in IRM 5.7.3.2(4) regarding completing TFRPs on cases that cannot be loaded to the Automated Trust Fund Recovery Program (ATFR), i.e., non-status 26 cases.
11. An attachment should be made to the Form 669(D) to list the terms of the subordination, including termination for failure to make payments or failure to live up to the terms of the installment agreement. The factoring agent will be given written notification of the termination of the subordination on accounts receivable.
  - A. If the taxpayer defaults on their IA, standard IA termination procedures will be followed, including time allowance for the taxpayer to appeal. See IRM 5.14.11.
  - B. The factoring agent is not entitled to any appeal rights if the subordination is terminated.
12. If the taxpayer wishes additional clarification of the terms of the agreement, Exhibit 5.12.10-1 provides a "forbearance agreement" that may be used in addition to (but not in lieu of) the Form 669(D).

**Note:**

The use of this agreement is not required by the Service. Similar Forbearance Agreements approved by any Area Counsel may be used in lieu of the one provided in the exhibit.

13. Regardless of whether the subordination application was processed by Advisory or the Field, process installment agreements associated with subordinations to factors normally. Use the closure method for the installment agreement specified by IRM 5.14. If the taxpayer is in business and there are trust fund taxes owed, close the installment agreement as an IBTFIA and send it to Centralized Case Processing (CCP) for monitoring.
14. Payments should be made directly from the factor, where possible. Request that factors send the payments to the local Advisory address that approved the subordination.
15. Advisory will close its OI once the subordination is approved and open a new "other/misc 148" OI to monitor and:
  - receive and post payments;
  - ensure the taxpayer is in compliance with the subordination; and
  - ensure timely 1040ES payments are made if the taxpayer is self-employed.
16. If it is a CCP monitored agreement, CCP will monitor the payment agreement as follows:
  - A. Monitor payments by seeing them post on IDRS.
  - B. Monitor the case for FTDs and any other criteria provided in IRM 5.14.
17. Subordinations can be terminated for failure to make payments, but they cannot be revoked. Ensure a full copy of the subordination certificate and termination notice are retained in the advisory case-file and the ICS history is documented regarding any termination action.

18. While the lien interest in listed receivables is subordinated, the lien is not subordinated on other assets such as real property, bank accounts, machinery and equipment and vehicles, unless specifically stated.

#### 5.12.10.6.2 (10-14-2013)

##### Facilitating Ultimate Collection - IRC § 6325(d)(2)

1. This type of subordination is generally used when the taxpayer is entering financing but will not be making an immediate payment toward the tax liability. It is intended that this authority will be used similar to those conditions under which an ordinary, prudent businessman would subordinate rights in a debtor's property in order to secure long-run benefits.
2. Issuance of a subordination under this section is allowable if it can be shown that:
  - doing so will ultimately result in an increase in the amount realizable by the U.S. in the property (or any other property owned by the taxpayer), or
  - that the ultimate collection of the tax liability will be facilitated by the subordination.
3. The Service will apply this section for taxpayers seeking subordination of the FTL in connection with a "dollar for dollar" refinancing of a senior lien. Any such requests though must still demonstrate a benefit to the government.

##### Example:

The taxpayer has a mortgage that is senior in priority to the NFTL. The taxpayer is having difficulty making his mortgage payments and wants to refinance the mortgage to a lower interest rate, and thus lower payments. The taxpayer cannot borrow any additional funds at this time to apply toward the NFTL. Refinancing will allow the taxpayer to retain the equity in his property and will enhance his ability to make payments on the tax liability.

4. A subordination of the government's lien interest in current and/or future accounts receivable to the security interest of a lender is allowable under IRC § 6325(d)(1) or (2).

#### 5.12.10.6.2.1 (10-14-2013)

##### Subordination in HAMP and HARP Situations

1. The Home Affordable Modification Program (HAMP) is for homeowners who are behind in their principal residence mortgage and in danger of foreclosure. It is a no cost mortgage modification to decrease the amount of the monthly payment by lowering the interest rate and/or extending the payment term. In some cases, a portion of the debt may be forgiven.
2. Qualifications for a HAMP include:
  - the home is the primary residence;
  - the mortgage is less than or equal to \$729,750;
  - the mortgage was obtained before January 1, 2009;
  - borrowers housing payment including principal, interest, property taxes, homeowner's association dues, and insurance exceeds 31% of gross (before tax) monthly income; and
  - there is a documentable hardship -- either a significant reduction in income or increase in expenses that was beyond the borrower's control--and there is a stable source of income sufficient to make a modified payment.
3. The HAMP is generally a two step process.
  - A. If the borrower qualifies, there is usually a trial period testing whether the lower mortgage payment can be maintained.
  - B. Only after a successful trial period is the HAMP finalized.
4. HAMP provides for loan modifications rather than refinances. It does not provide cash back to the borrower or increase the loan amount. Also, there is no set requirement throughout the country to record the modified loan documents. So even if a NFTL is filed the Service may or may not be aware of a HAMP modification.
5. Presuming the modification does not affect the seniority of the NFTL or the amount of money senior to it, then a subordination is generally not required. If the lender or taxpayer intends to record the HAMP, then issuance of a subordination certificate may be needed to ensure an accurate title record.

##### Note:

A subordination under these circumstances follows Internal Revenue Code (IRC) Section 6325(d)(2). Avoiding foreclosure helps maintain the value of the property the lien attaches to and reduced mortgage payments assist taxpayers to ultimately pay their tax liabilities.

##### Note:

If a taxpayer fails with their HAMP, the next step may be requesting a discharge due to a short sale.

6. The Home Affordable Refinance Program (HARP) is a refinance for creditworthy homeowners who are "underwater" on the value of their home but are not behind in their mortgage(s). The purpose of the program is to lower the interest rate to the allowable minimum.
7. Qualifications for a HARP include the borrower:
  - owns a one- to four-unit home;
  - has a mortgage that is owned or guaranteed by Fannie Mae or Freddie Mac;
  - has no late mortgage payments (more than 30 days late) in the last 12 months; and
  - owes no more than 125% of the value of the home on the first mortgage (combined loan-to-value ratio can be higher).

##### Note:

Only the first mortgage is refinanced.

8. HARP does not provide any cash back to the borrower nor increase the loan amount, but it is a refinance so the borrower/taxpayer should request a certificate of subordination.

#### 5.12.10.6.2.2 (10-14-2013)

##### Subordination to Reverse Mortgages

1. A subordination of the government's lien interest to a loan that pays a stream of payments back to the owner of a property (a reverse mortgage) may be permitted under certain circumstances, under IRC § 6325(d)(2).

- A. Prior to consideration of a subordination of this type, first consider requesting that the taxpayer borrow the maximum amount of equity on the property and apply for a subordination of the federal tax lien under IRC § 6325(d)(1).
  - B. If the taxpayer is unable to borrow on the property or the government will receive more by subordination to a reverse mortgage, then approval of a subordination to the reverse mortgage is possible.
  - C. Document the ICS case history regarding the considerations above prior to agreeing to subordinate the government's interest to a reverse mortgage.
2. All payments made by lenders from reverse mortgages must be paid to Service.

**Note:**

If a taxpayer is wanting to borrow to improve or maintain the property, this will likely not meet the definition of a reverse mortgage. The request should be processed as a regular subordination request.

3. Documentation must clearly show that subordination of the government's priority will facilitate collection of the taxes due. Other criteria for subordination must also be met.
4. The time frame of these subordinations is equal to the time frame of the reverse mortgage.
5. The description of the note to which the government's interest is subordinated must be clearly described in the application. Lenders generally include some form of unrealized "interest due" in notes that secure reverse mortgages. This is permitted because otherwise lenders have no financial incentive to approve these loans.
  - A. Ensure the interest rate charged for the loan is reasonable considering prevailing rates, market conditions, taxpayer credit history, amount of loan, term of loan, and other relevant factors.

**Note:**

Variable rate reverse mortgages should not be approved.

- B. Ensure the amount secured by the note for payment of interest and other allowed expenses does not exceed the amount of interest that would accrue given the stated interest rate of the loan.
  - C. Reasonable expenses, including closing costs, are allowed for these loans.
  - D. Ensure the total amount of expenses is not exceeded.
  - E. Explain any discrepancies in the ICS case history.
6. Request that lenders make the payments on these reverse mortgages and that they be sent to the local Advisory office that approved the subordination.
7. Since periodic payments are normally involved, a signed installment agreement (Form 433-D) must be secured in conjunction with the subordination and will be subject to the normal termination and default provisions.
  - A. This must include a requirement to make timely Federal Tax Deposits if the taxpayer has an open Form 941 filing requirement.
  - B. This must also include a requirement to make timely Form 1040ES payments if the taxpayer is self-employed.
  - C. These provisions will also apply to the subordination.
8. For cases assigned to FC revenue officers, a complete investigation of the taxpayer's ability to pay and the TFRP investigation must be completed or in process before granting an in-business installment agreement as outlined in IRM 5.14.7
9. For applications to subordinate to reverse mortgages on trust fund accounts not assigned to a FC revenue officer:
  - A. Advisory will initiate a TFRP investigation and may issue an OI to FC on cases for which field actions are necessary.
  - B. These OIs, sent by Advisory, are mandatory OIs for the field.
  - C. The information and any recommendations on the TFRP investigation, along with any information on an installment agreement, should be forwarded to Advisory.
  - D. Advisory will follow the direction in IRM 5.7.3.2(4) regarding completing TFRPs on cases that cannot be loaded to ATFR (non-St 26 cases).
10. Once the note is signed and filed, include a copy of the recorded note, with all filing notations (i.e. book, page, recordation number) with the subordination case file. The case file will remain in active inventory until the full terms of the subordination are met.
11. Regardless of whether the subordination application was processed by Advisory or FC, process installment agreements normally. Use the closure method for the installment agreement specified by IRM 5.14. If the taxpayer is in business and there are trust fund taxes owed, close the installment agreement as an In-business Trust Fund Installment Agreement (IBTFIA) and send it to Centralized Case Processing (CCP) for monitoring.
12. Advisory will close their OI once the subordination is approved and open a new "other/misc 148" OI to monitor and:
  - receive and post payments;
  - ensure the taxpayer is in compliance with the subordination; and.
  - ensure timely 1040ES payments are made if the taxpayer is self-employed.
13. If it is a CCP monitored agreement, CCP will monitor the payment agreement as follows:
  - A. Monitor payments by seeing them post on IDRS.
  - B. Monitor the case for FTDs and any other criteria provided in IRM 5.14.
14. Subordinations cannot be revoked for failure to make payments, nor for failure to make federal tax deposits; however, installment agreements associated with the subordinations may be terminated if their terms are not met.
15. While the lien interest in listed receivables is subordinated, the lien is not subordinated on other assets such as real property, bank accounts, machinery and equipment and vehicles, unless specifically stated.
16. The federal tax lien remains on the property, subordinated only in the amount specified by the subordination, and subordinated only to the instrument specified in the subordination certificate.

**5.12.10.6.3 (10-14-2013)**

**When to Issue a Certificate of Subordination**

1. Subordination is a discretionary act. Generally, subordinations will be issued only when it is in the best interest of the government.

- Follow procedures outlined Publication 784, *How to Apply for a Certificate of Subordination of Federal Tax Lien*, when providing information regarding applications for subordinations.
- Conduct full compliance checks when applications for subordination are submitted. If taxpayers are not in full compliance with filing and deposit requirements, request returns be filed and payments be current. Compliance checks should also include the taxpayer's proposal for resolving the outstanding tax liability.

**Note:**

There is no prohibition on processing subordination requests if taxpayers are not in compliance with filing and paying requirements; however, non-compliance issues would be a factor in considering the best interest of the government.

- Field Revenue Officers receiving applications for subordination relative to cases in their inventory should do the following:
  - Conduct full compliance check as described in (3) above. Use the application as an opportunity to fully explore the taxpayer's compliance. Set deadlines for payment and filing if appropriate.
  - Bring Advisory into the investigation early. Work with Advisory on property valuation, as needed, and to ensure the investigation is being worked in accordance with established policies and procedures. See *IRM 5.12.10.7.3*.
- Approval of subordinations is delegated to Advisory and Insolvency Group Managers. See Delegation Order 5-4 in *IRM 1.2.44.5*.

**5.12.10.7 (10-14-2013)**

**Applications for Discharge & Subordination Certificates**

- Any person desiring a certificate must submit a written application executed under penalties of perjury. The form and content of the applications are contained in the following publications:
  - Discharge - Pub. 783, *Instructions on how to apply for a Certificate of Discharge of Property From Federal Tax Lien*,
  - Subordination - Pub. 784, *How to Prepare an Application for a Certificate of Subordination of Federal Tax Lien*
  - Subordination of Estate Tax Lien - Pub. 1153, *How to Apply for Certificate of Subordination of Estate Tax Lien Under IRC § 6325(d)(3)*
  - Nonattachment - Pub. 1024, *How to Prepare an Application for a Certificate of Nonattachment of Federal Tax Lien*
- To assist taxpayers with the process, application forms are also available from the internet. The use of these forms is not mandatory, but should be strongly encouraged.
  - Form 14135, *Application for Certificate of Discharge of Property from Federal Tax Lien*.
  - Form 14134, *Application for Certificate of Subordination of Federal Tax Lien*.
- Also available to assist applicants is a video on the IRS website titled "Selling or Refinancing When There Is an IRS Lien." See <http://www.irsvideos.gov/Individual/IRSLiens>.

**5.12.10.7.1 (10-14-2013)**

**Submission of Applications**

- Applications for certificates, together with all necessary documentation, should be directed to the Revenue Officer assigned the taxpayer's case, if applicable, or directly to the Advisory Group Manager for the state where the property is located.
- Use ICS to control and monitor the case.
  - Revenue officers will document their activity as part of their assigned bal due.
  - Advisory will open an NFOI under 141 Discharge or 142 Subordination within 7 calendar days of receiving the application in the group.
- Document the date that the application was received when the case is opened on ICS.
- Upon receipt, examine each application for completeness. If the application is incomplete or improper, the applicant should be contacted no later than 21 calendar days from receipt of the package.
- Do not reject applications for incompleteness unless the missing information will not allow for a thorough investigation. Every effort should be made to accept the application for processing, provided the information submitted would enable a proper investigation to be conducted.
- The Advisory Group Manager may waive the appraisal requirement if other acceptable evidence of the value of the property is submitted.
- See *IRM 5.5.8* for guidance on evaluating discharge and subordination applications relating to estate tax liens.
- In situations involving a foreclosure proceeding where a sale is pending, a recommendation for acceptance or denial should be made within 14 calendar days of receipt in the group of the complete application. In all other situations, the recommendation should be within 30 calendar days, unless more expeditious action is necessary.
- Document any cause of delay in the ICS history.

**5.12.10.7.2 (10-14-2013)**

**Requests for Additional Information - Actions if Not Received**

- Upon receipt of an application, complete a thorough analysis to determine if there is a need for additional information.
- When additional information is needed to make a determination on the application, contact the applicant no later than 21 calendar days from receipt of the initial package. Depending on the extent of the information needed, any time constraints, and other factors, the information may be requested verbally or in writing. Letter 4025 or 4027 should be used for this purpose. Whether verbally or in writing, a deadline for response should be clearly communicated.

**Note:**

When verbal requests for information are made, it is best to follow up the conversation with a letter to ensure expectations and deadlines are clearly communicated.

- Generally, response deadlines should be 30 days; however, time-frames for action should be consistent with the facts of the case. For example, if a sale is pending, document the history regarding this fact, including the date of sale and schedule a timely follow-up action.
- If additional information is not received by the established deadline, the application and case may be closed for insufficient information.
- Should the taxpayer provide the additional information subsequent to the closing of the application, open a new control for the case and resume processing the application.

**5.12.10.7.3 (10-14-2013)**

**Investigation of Discharge and Subordination Applications**

1. Advisory will use all available resources to determine whether to issue a certificate of discharge or subordination. If additional information is needed, the applicant will be contacted no later than 21 calendar days from the receipt in the group of the initial package.
2. Verify the information submitted in the application by contacting the:
  - Service employee assigned the delinquent account
  - applicant,
  - applicant's representative,
  - taxpayer,
  - taxpayer's representative,
  - real estate firms, title companies,
  - holders of encumbrances, or
  - any other person or entity that might have relevant information.
3. For applications received directly in Advisory, if it is determined that a field investigation is required before a final decision can be made to discharge the property or to subordinate the lien, then an OI will be initiated.
  - A. If the application relates to a foreclosure proceeding, then flag the application to indicate that the revenue officer's report must be returned to Advisory within 7 calendar days.
4. Applications which require a field investigation will be investigated promptly by a revenue officer. The revenue officer will:
  - investigate and verify each item contained in the application, or which should have been contained in the application; and
  - complete Form 3033, *Investigation of Discharge or Subordination*, on each investigation completed.
5. Unless there is evidence the process might not involve an arm's length transaction, the appraisals submitted will normally be accepted and a separate investigation to determine the value of the property is not needed.
6. Escrow funds, a potential payment source, should be considered and accounted for when working discharge investigations. However, if during the course of the investigation it is disclosed that the first encumbrance(s) exceeds the value of the property, it will not be necessary to investigate and verify subsequent encumbrances, even though they were recorded prior to the filing of the NFTL.
7. When investigating applications in which the property is encumbered by a home equity line of credit:
  - A. In cases where the credit line is drawn down after the Notice of Federal Tax Lien is filed, it is necessary to determine if the mortgagee/lender has a security interest in the real property in question. Often, a credit line is approved for a specific amount, but that entire amount is not turned over to the taxpayer. The taxpayer may draw against this amount as he wants. Also, the credit line may be approved for a specific amount and the entire amount was distributed to the taxpayer, but was done so some time ago and the taxpayer has paid down the amount owed. In these cases, the mortgage is recorded showing the encumbrance as the approved amount of the credit line, not the amount actually borrowed.
  - B. The amount of money or money's worth that changed hands should always be verified. To be a holder of a security interest the mortgagee must first meet the two-pronged test of IRC § 6323(h)(1). (See IRM 5.17.2 for further explanation.) It is also necessary to determine the timing of disbursements on a line of credit. Although the mortgage or deed of trust will reflect the full amount of the line of credit, only the amount disbursed prior to the period ending 45 calendar days after the recording of the NFTL (or sooner if actual notice of the lien is given) will have priority over the NFTL. A possible exception to the above is when the funds are specifically earmarked for construction or improvement of real property and the agreement was entered into prior to the NFTL filing.
8. Evaluate the priority of all liens and judgments to determine the interests of the Government in the property. See IRM 5.17.2 for further information on priorities and consult Area Counsel, as needed, for questionable situations.
9. If the taxpayer/applicant misses any established deadline, including submitting required documentation and/or payment, the employee will take follow-up action within ten (10) calendar days of the deadline, including closing the case if appropriate. The ICS Advisory case file should reflect all actions taken and deadlines established. If documentation and/or payment are received after the ICS NFOI has been closed, create a new ICS NFOI to complete the investigation and make an appropriate recommendation.
10. When circumstances dictate, the employee should use problem solving and negotiation techniques, and in so doing consider the taxpayer's, POA's, or third party's perspective when working toward case resolution.

#### **5.12.10.7.4 (10-14-2013)**

##### **Allowable expenses**

1. Certain expenses may be treated as reasonable and necessary expenses for the financial transaction and should be considered in calculating the amount of the government's interest. These expenses, which do not have to be present, may include, but are not limited to:
  - fees related to the application process such as title report, appraisal, etc.;
  - fees inherent to the transaction, such as realtor commission or loan origination fee;
  - costs associated with the administration of the proceeds;
  - payment of transfer taxes including *ad valorem* taxes, "document stamp fees", "transfer stamps," and "transfer fees", if their assessment and collection is required on sales in the jurisdiction where the sale occurred/will occur (exception: some commercial sales, see 5.12.10.7.4.1 below) ; and
  - recordation fees.
2. Allowance of the expenses listed in (1) is prohibited if:
  - monies were or will be paid to the taxpayer;
  - the fees are not mandated by state, county or other local jurisdictional law;
  - the fees are not applied to all sales of the same type; or
  - the fees are excessive or unusual.
3. In certain sale situations, the buyer and seller may agree to a slightly higher selling price in exchange for the seller paying additional closing costs. Normally, this is done to facilitate the loan process of the buyer but may also be used to enhance the marketability of the property. These seller (i.e., taxpayer) paid costs may be allowable as an expense if, among other factors, they were specifically negotiated in the sales contract; are reasonable given the selling price and the amount of other normal expenses



allowed; are in accordance with local laws and standards; and do not significantly impact the equitable interest of the government or the amount that might otherwise be realized from the transaction.

4. If expenses are incurred (sometimes called "staging" expenses by realtors) and it is demonstrated that they either hastened the sale or increased the amount received at sale, then allow the expenses. In particular, if prevailing economic conditions are poor, and "staging" will assist in selling a property, providing a taxpayer with an avenue to make payment on their taxes, allow these expenses so long as the expense is reasonable and ordinary in the state where the property was, or is being, sold.
5. The determined interest of the United States necessary for issuance of a discharge or subordination should not be reduced in order to allow payment to an interest that is junior to the federal tax lien.

#### 5.12.10.7.4.1 (10-14-2013)

##### Applications for Discharge With Commercial Real Estate Transfer Tax

1. Some states have enacted a real estate transfer tax equal to a percentage (e.g., 3.5%) of certain commercial real estate transactions and insist that an amount equal to the prospective tax liability be remitted at closing.
2. Such taxes have no priority status under IRC § 6323(b)(6) against the NFTL. The cited section applies to general real property ad valorem taxes, special assessments for public improvements or the cost of public utilities. As a prospective liability at the time of transfer, a transfer tax has no status as an assessed liability perfected as a security interest with respect to the NFTL.
3. A discharge of federal tax lien should not be issued for less than the full value of the Service's claim on the equity in the subject property. The transfer tax will not be accorded priority status or treated as an expense of sale.
4. If an application includes a provision for such a transfer tax, the amount claimed will be disallowed.

#### 5.12.10.7.5 (10-14-2013)

##### Request for Relocation Expense Allowance

1. In certain discharge situations, when selling a principal residence, taxpayers will be allowed limited funds from sale proceeds to pay relocation costs. Payment of these costs will be considered if the taxpayer demonstrates a need for this relief.

##### Note:

It is important to remember that funds received under the relocation expense allowance provision will not reduce the taxpayer's tax liability.

2. The relocation allowance will be deducted from the Service's interest in the property. Junior lien holders are not impacted and have no entitlement to the funds.
3. Use the following criteria when considering the relocation expenses allowance.
  - A. The property being sold must be the principal residence.
  - B. Requests from taxpayers owning multiple pieces of real property generally will not be considered.
  - C. Taxpayers must demonstrate an "inability to pay" relocation costs and provide documentation for specific expenses on Form 12451, *Request for Relocation Expense Allowance*. Relocation expenses are subject to limitations based on the local standard "cost of living" locality tables, for the location of the new residence.
  - D. The Service must receive a partial payment of the tax liability." No value" discharges will not be considered for relocation allowance.
  - E. If the taxpayer is receiving funds for relocation from another lien holder, they will not be considered for this relocation allowance.

#### 5.12.10.7.5.1 (10-14-2013)

##### Procedures for Consideration of Relocation Expense Allowance

1. To receive consideration, taxpayers must provide supporting documentation for expenses as an attachment to Form 12451, *Request for Relocation Expenses Allowance*. Supporting documentation may consist of:
  - Proposed rental agreement
  - Estimates from moving companies
  - Truck rental estimates
  - Utility hookups, etc.
2. Reviewers will examine Form 12451 and the attached documentation for completeness and contact the taxpayer for any additional information.
3. A determination will be made as to whether the taxpayer has sufficient funds available to pay reasonable relocation expenses. Information such as financial statements, recent bank statements, and last filed return can be used in this determination. Generally, cases in 53 status (excluding closing codes 03 and 12) do not require another "hardship" determination.
4. The relocation allowance should be calculated by multiplying the National Standard for the new residence locale and family size times a factor of 2.5. (See IRM Exhibit 5.15.1-2, National Standards).

##### Note:

**As a general rule, this will be the maximum allowance considered.**

##### Example:

\$1,000 Amount allowed for "Family of 3" from National Standards Table  
x 2.5 Established Factor  
\$2,500 Maximum relocation allowance

5. The relocation allowance will be the lesser of actual relocation expenses approved or the National Standard amount determined by the above formula. Adjustments in the maximum allowance may be considered on a case-by-case basis if extenuating circumstances exist, such as age, health, disability, etc.
6. If the taxpayer is moving within the same locale, the 2.5 factor will still apply.
7. In all instances, there **must** be net proceeds available to apply to the tax liability.

#### 5.12.10.7.6 (10-14-2013)

##### Form 3033, Investigation of Request for Certificate of Discharge or Subordination

1. All revenue officer reports of investigation will be promptly entered on Form 3033, *Investigation of Request for Certificate of Discharge or Subordination*. The application should be carefully examined to make certain that the property is adequately and properly described.
2. The revenue officer will submit the report, together with the copy of the application and all exhibits, to the Advisory Group Manager, for review and approval.
3. In the case of an application relating to a foreclosure proceeding, a complete investigation, including initial review and any necessary contact, shall result in a recommendation for acceptance/denial within fourteen (14) calendar days after receipt in the group of the application. In all other cases, recommendation should be made within 30 calendar days unless more expeditious action may be necessary. Document any cause of delay in the ICS history.
4. Advisors will either complete Form 3033 or summarize the computation of the government's interest in the ICS history, supported by documentation in the case file.
5. After a completed Form 3033 is received, Advisory has ten (10) calendar days to make the recommendation to accept or deny the application for a certificate.

#### 5.12.10.8 (10-14-2013)

##### Issuance of Discharge and Subordination Commitment Letters

1. Advisory or Insolvency Managers have the authority to approve or deny a discharge or subordination request.
2. When additional information is requested but is not received by the specified deadline, close the case as no response. If the additional information is subsequently received, open a new case on ICS and resume processing.
3. Review the completed application and determine if the discharge or subordination proposed by the applicant is appropriate. If there are discrepancies between what is proposed by the taxpayer and what is determined as acceptable by the Service, including the amount of the government's interest in the transaction, contact the applicant and attempt to resolve.

##### Reminder:

Failing to resolve discrepancies prior to issuance of a decision letter could impede the taxpayer's appeal rights.

4. Issue the appropriate commitment letter when the application is acceptable and there is a tentative agreement with the applicant regarding the amount of the government's interest.
  - Letter 402, *Conditional Commitment to Discharge Certain Property from Federal Tax Lien*
  - Letter 403, *Conditional Commitment to Discharge Certain Property from Federal Tax Lien (Value)*
  - Letter 4053, *Conditional Commitment to Subordinate Federal Tax Lien*

##### Note:

These letters are available as ICS templates and as PDF fillable forms from the Publishing website. The templates can be modified to include additional text, if needed. The use of local letters as a substitute is not permitted.

5. Issue a denial letter when the proposed request is not acceptable or discrepancies in the amount of the government's interest cannot be resolved. *IRM 5.12.10.12*.
6. After the issuance of the commitment letter, take follow-up actions based on the applicant's response as shown in the table.

##### If within 30 calendar days from the date of commitment to complete the transaction... Then...

Required documentation and payment are submitted by the applicant	Issue the appropriate certificate following <i>IRM 5.12.10.9</i> . Close the NFOI on ICS.
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Required documentation and payment are **not** submitted by the applicant

##### Note:

If documentation and payment are subsequently received and the facts relative to the case have not substantially changed, open a new NFOI and resume processing of the case by issuing the certificate.

Consider the basis for the request and extend the deadline, if appropriate.

##### Note:

The applicant requests an extension of the deadline to submit the required documentation and payment

Deadlines should generally not be extended more than an additional 30 days.

##### Caution:

Extensions may impact the payoff amounts and costs associated with the transaction. Recalculation of the closing statement may be necessary.

#### 5.12.10.9 (10-14-2013)

##### Preparation and Issuance of Discharge and Subordination Certificates

1. Prepare the appropriate discharge or subordination form in duplicate. These forms are available as ICS templates or as PDF fillable forms from the Publishing website.
  - A. Certificates may reference multiple lien filings.
  - B. Block or line out the unused area in the description portion of the form so as to prevent the insertion of a description of other property.
  - C. Do not modify form or content of lien certificates at the request of local recording offices.
  - D. Redact SSNs that may appear on the certificate.
2. Upon receipt of the closing documents, ensure the requirements listed in the conditional commitment letter have been met. Generally this includes:
  - reviewing the copy of the recorded deed (for discharge) or mortgage (for subordination) for accuracy;
  - reviewing the copy of the final settlement statement and reconcile any differences from the preliminary statement to ensure proper accounting of all funds; and
  - if applicable, receiving payment of the amount specified in certified funds or a method described in 5.12.10.10.
3. Deliver the original of executed Forms 669 to the applicant after all requirements are met. Advise the applicant of their responsibility to file the document with the appropriate recording office.

**Note:**

If any payment received is not by certified funds, withhold issuance of the certificate until it is verified that the payment has cleared.

4. Post all payments received in conjunction with certificate applications on the date of receipt.
  - A. As stated in conditional commitment letters, issuance of certificates are conditioned upon the taxpayer's agreement that payments will be applied in the best interest of the government as determined by the Service.
5. It is the responsibility of the applicant to record the certificate unless a particular recording agency will only record certificates presented by the Service. If Advisory must record the certificate, no recording fee need be collected from the applicant.

**5.12.10.9.1 (10-14-2013)****Use of Electronic Signatures on Lien Certificates**

1. Neither the Internal Revenue Code (IRC) nor Treasury regulations address the method in which lien certificates are to be signed; however, they both address the Secretary's authority to develop procedures associated with the use and acceptability of electronic signatures on forms and other documents.
2. Approval of documents must always be in accordance with Delegation Order 5-4. See IRM 1.2.44.5.
3. Lien-related certificates and their associated letters and forms may be signed by the approving official via electronic means or by authorized stamp when a physical signature is not feasible.
4. To sign a document electronically, the document must be converted to a Portable Data Format (PDF) using Adobe Acrobat and the approving official must create a signature file. The format of the electronic signature should adhere to certain standards.
  - A. The signature should not contain the email address, logo, location or other unnecessary information.
  - B. The signature should preferably be an actual/graphic signature file of the approving official or at the minimum should show the name of the approving official. It should not be the Standard Employee Identifier (SEID) as that is for internal use only.
  - C. The approving official should validate the signature so that the PDF question mark does not appear.
5. Approval must be granted on a case by case basis. The ICS history must be documented by the approving official to indicate the electronic or facsimile signing of the lien certificate and associated correspondence.
6. A printed copy of the electronically signed certificate must be retained as part of the case file for appropriate record keeping.
7. Some recording offices may be reluctant to accept electronically signed lien certificates; however, they cannot refuse to record the documents as the Service dictates the form and content of lien certificates. Recording offices may be referred to Publication 1468, *Guidelines for Notices of Federal Tax Lien and Centralized Lien Processing*, for more information.
8. Facsimile signatures must be protected in accordance with established IRS procedures.
  - A. Physical signature stamps are designated "High Security." Store signature stamps in accordance with IRM 10.2.15.3(b) with reference to Exhibits 10.2.15-1 and 10.2.15-2. (See also IRM 1.4.6, Managers Security Handbook).
  - B. All systems capable of reproducing electronic or PDF generated signatures for lien certificates must be official IRS computer systems and be password protected.
  - C. Ensure a record of approval is available for electronically generated, PDF generated, and stamped signatures.

**5.12.10.10 (10-14-2013)****Designated Payment Codes (DPC) Related to Liens and Lien Certificates**

1. IRM 5.1.2.8.1 provides detailed instructions on the use of DPCs and who may use them.
2. Generally, employees should use one of the following DPCs, depending on the basis for the payment:
  - 07 - NFTL payoff
  - 53 - discharges
  - 55 - subordinations
  - 56 - NFTL withdrawals
  - 57 - judicial and non-judicial foreclosures
  - 58 - redemptions and releases of right of redemption
  - 59 - estate tax liens and payments as the result of the filing of a proof of claim in a probate proceeding.

**5.12.10.11 (10-14-2013)****OIC Payments and Discharges (or Subordinations)**

1. Sometimes taxpayers request that payments received based on discharges or subordinations also be applied to offers in compromise (OICs). In these situations Advisory and OIC units must be aware of the policies and procedures provided in this section to ensure consistent processing.
2. Work cases involving OICs and discharges (or subordinations) along with Centralized Offer in Compromise (COIC) personnel. Locate the appropriate COIC unit, which is based on the state in which the taxpayer resides, by going to the IRS intranet SERP page. Procedures that direct COIC Units to work with Advisory will be included in IRM 5.8.10.6 in its next revision.
3. Taxpayers may request that payments derived from discharges or subordinations be used to pay the Tax Increase Prevention and Reconciliation Act (TIPRA) portion of offer payments, or the *non-TIPRA* portion of the offers.

**Note:**

The Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005 requires taxpayers to submit a portion of the proposed offer amount, unless a waiver applies. This is known as the initial TIPRA payment. (This is in addition to the \$150 application fee.) Never apply proceeds from a discharge/subordination to the user fee.

4. Use the guidance in the following sections to determine if and when payments from a discharge (or subordination) may be allocated to OICs and the effect, if any, on the TIPRA portion of the offer. See also IRM 5.8.10.6 for further details.

**5.12.10.11.1 (10-14-2013)****Discharge (or Subordination) Before OIC**

1. Use the procedures in this section when:
  - the application for discharge (or subordination) was approved; the certificate was issued, and the proceeds were applied (with a discharge/subordination DPC); and then
  - the taxpayer submits an offer in compromise showing an offer amount that includes the equity in the real property that no longer exists because of the discharge (or subordination).
2. Do not use the proceeds from the discharge (or subordination) as any part of an offer payment. The equity received from the property was applied to reduce the tax liability and it is not in the government's interest to apply the (previously posted) proceeds to an OIC.
3. If the offer amount relies on the equity from property that no longer exists because of a prior discharge (or subordination), advise the taxpayer that the amount of the offer, and amount of mandatory initial TIPRA payment, should be reduced.

#### **5.12.10.11.2 (10-14-2013)**

##### **Discharge (or Subordination) Simultaneous with OIC**

1. Use the procedures in this section when the taxpayer simultaneously submits an application for discharge (or subordination) and an OIC and requests that the discharge (or subordination) proceeds be included in the OIC amount.
2. TIPRA provides that Service must make decisions on OICs within two years from the "received date." If the Service does not make a decision on the OIC after two years, the OIC is automatically accepted. To ensure the government's interest is protected, Advisory and COIC managers will ensure cases involving both OICs and discharges (or subordinations) are worked timely.
3. Date stamp the offer "received."
4. Before processing the discharge or subordination, require the taxpayer to execute a Form 3040, *Authorization to Apply Offer in Compromise Deposit to Liability*. In the signature block, have them write the word "irrevocable". Submit a copy of the Form 3040 to the appropriate COIC site and retain the signed Form 3040 in the case file.
5. Within two (2) business days, prepare Form 657, *Offer in Compromise/Revenue Officer Report*. Write "Discharge /Subordination Request" in red ink at the top of the Form 657. This will alert COIC not to consider the OIC a "solely to delay collection" case.
6. In accordance with IRM 5.8.10.6, forward the Form 657 with a copy of the application for discharge (or subordination) and all offer documents (Form 656, Form 433A/B, Form 656A, support documents, and payments, if applicable) to the appropriate COIC site via overnight mail.
7. Review the discharge (or subordination) application within one week of receipt. If additional documentation or information is needed request it immediately.
8. Recommend acceptance or rejection of the discharge (or subordination) application following normal procedures.
  - A. If the discharge (or subordination) is rejected, promptly notify COIC and the taxpayer.
  - B. If the discharge (or subordination) application is approved, apply payment from the discharge (or subordination) using Advisory DPC Codes.
9. If during the review of the discharge (or subordination), notification is received that the OIC is not processable or rejected, continue the review to completion. Contact the taxpayer to notify them that any proceeds from the discharge (or subordination) will be applied to the tax liability.

#### **5.12.10.11.3 (10-14-2013)**

##### **Discharge (or Subordination) After OIC**

1. Use the procedures in this section when:
  - the taxpayer requests a discharge (or subordination) while an offer is pending or
  - after an offer in compromise has been accepted but before the payment terms have been met and the taxpayer intends to include the proceeds in the offer amount.
2. Upon initial review of the discharge (or subordination) application if it is determined the taxpayer has a pending Offer in Compromise, contact the taxpayer and determine if they intend the proceeds of the discharge (or subordination) to be included in the Offer amount.
  - A. If the taxpayer wants the proceeds included in the offer amount, follow the procedures in 5.12.10.11 above.
  - B. If the taxpayer does not want the proceeds included in the offer amount, work the discharge (or subordination) independent of the OIC. Apply any proceeds received following standard procedures.
3. Contact COIC and inform them of the taxpayer's decision regarding the inclusion of the proceeds in the offer amount. Contact COIC again after the funds are applied and/or the investigation is complete so they may resume processing of the OIC.
4. Upon initial review of the discharge (or subordination) application if it is determined that an Offer in Compromise has been accepted, contact the OIC unit to find out the terms of the agreement.
  - A. The proceeds of the discharge must be applied toward the offer amount. If the taxpayer wants to apply the proceeds in another manner including keeping the proceeds, the discharge should be denied. If the taxpayer agrees to apply to proceeds to the offer amount then complete the investigation and notify the OIC monitoring unit when the proceeds are received.
  - B. If the proceeds for the discharge will full pay the offer amount, consult with OIC in issuing a release of lien instead of a discharge.
  - C. If the proceeds for the discharge exceed the balance remaining on the OIC, a discharge is not appropriate. Since the government is bound by the payment terms of an accepted OIC, the taxpayer should be advised upon receipt of the remaining balance of the offer amount, the NFTL will be released. Discussion with MOIC may be appropriate to coordinate the receipt of funds and release of the NFTL.

#### **5.12.10.12 (10-14-2013)**

##### **Denial of Applications for Discharge or Subordination**

1. Advisory or Insolvency Managers have the authority to approve or deny a discharge or subordination request.
2. When working toward case resolution, employees should, to the extent appropriate, use problem solving and negotiation techniques and consider the taxpayer's, POA's, or third party's perspective. After a complete application has been received and agreement cannot be reached on the amount of the government's interest and/or other terms of the discharge or subordination, the application must be denied.
3. A determination to deny an application for discharge or subordination may be communicated verbally to the applicant; however, the determination to deny must also be communicated to the applicant in writing.
4. Use the following letters to communicate the denial determination:
  - Letter 4025, *Letter Advising of Action on Application for Discharge of Property From Federal Tax Lien*, or

- Letter 4027, *Letter Advising of Action on Application for Subordination of Federal Tax Lien*

**Note:**

Letters are available from the ICS templates or as PDF fillable forms on the Publishing Services website. The letters are multipurpose. Check the applicable box to indicate the determination made. The use of local letters, as a substitute for these letters, is not permitted.

- Letters 4025 and 4027 contain an additional blank field which may be used to provide further details regarding the denial. If it is necessary to relay additional information to taxpayers beyond what is available in the letter template, include an attachment to the applicable letter. Additions to letters require group manager approval.

**Note:**

When communicating the determination, the employee will provide the customer with technical guidance that is accurate and communicated in a clear, concise, professional, easy to understand manner. Any explanation or guidance should address all relevant issue(s) clearly in language understandable to someone unfamiliar with service terms, acronyms and jargon.

- Enclose Publication 1660, *Collection Appeal Rights*, with the determination letter.
- Document the case history with the reason(s) for denial.
- Advisory closes its NFOI control on ICS 10 (ten) calendar days after sending the denial letter.
- Process any appeal requests received from the taxpayer in accordance with standard appeal processing. (See IRM 5.1.9).

**5.12.10.13 (10-14-2013)**

**Certificate of Nonattachment**

- IRC § 6325(e) provides for the issuance of a certificate of nonattachment when any person, because of similarity of names or otherwise, is or may be injured by the appearance that a NFTL attaches their property.
- A certificate of nonattachment is most commonly requested when a third party has a name similar to that of the taxpayer named on the NFTL; however, it may also be requested when there is a question over the attachment of a NFTL on certain property.

**Example:**

The taxpayer, John Q. Public, owes BMF taxes as a sole proprietor. A NFTL is filed showing the name of John Q. Public dba Public Services. Another person, Jonathan Q. Public, resides in the same area but has no relation or involvement to the taxpayer or his business. If the lien against the taxpayer presents problems for Jonathan Q. Public, he may apply for a certificate of nonattachment.

**Example:**

The taxpayer, John Doe, owed income taxes individually and a NFTL was filed. The taxpayer married Jane Doe and they jointly purchased real property at 123 Main Street. Prior to the marriage, Jane had inherited a different parcel of real estate at 456 Elm Street and she retained sole ownership through their marriage. John did not provide anything for the maintenance of Jane's property. John and Jane Doe are now divorced. Jane is attempting to borrow money using the real estate at 456 Elm Street as collateral. Although John Doe had no interest in the property under state or local law, the title company questions the attachment of the lien to the property. Jane Doe may apply for a certificate of nonattachment.

- A certificate of nonattachment indicates that the NFTL is filed against the taxpayer and the third party and their property identified in the certificate are not encumbered by the NFTL.

**Note:**

A withdrawal of a filed NFTL is not a substitute for a certificate of nonattachment. A withdrawal removes the effects of the NFTL from all property belonging to the taxpayer, but indicates the taxpayer still owes the liability and could detrimentally impact the government's interest on other property. See IRM 5.12.9 for withdrawal procedures.

- Often inquiries will be received from individuals whose address appears on the NFTL as it was the last known address of the taxpayer. In these situations:
  - Explain that the address on the NFTL is only a mailing address for the taxpayer and that the lien would only attach the property at the address if the taxpayer has an interest in the property. Sample wording of the key paragraph for that letter could be as follows:  
**Sample Wording:** *A federal tax lien attaches to all property in which the named taxpayer has an interest. The address shown on the notice of federal tax lien is only present for mailing purposes and does not mean that the property at that address is attached by the lien. If the taxpayer does not now, nor ever had, a legal interest in the property at that address, the lien should not attach to that property.*  
*You may present this letter to any financial institution or other creditor to clarify the matter. If there are still questions about the notice of lien affecting your property, you may request a certificate of nonattachment by following the procedures in the enclosed Publication 1024.*
  - If the individual insists on a certificate of nonattachment, advise of the application process.
- A person wishing to obtain a certificate of nonattachment should be furnished Publication 1024, *How to Prepare an Application for a Certificate of Nonattachment of Federal Tax Lien*.
- A certificate of nonattachment is used to assist a third party and generally should only be considered when lien certificates available to the taxpayer (e.g., discharge, subordination) are not appropriate. There are times, however, when another type of lien certificate is issued but a need for a nonattachment remains. Consideration of a request for a nonattachment is not necessarily precluded by the issuance of other lien documents or certificates.

**If the following was previously issued...**

Amended Notice of Federal Tax Lien to remove non-liable person (IRM 5.12.7.9.2)

Withdrawal of the NFTL against the taxpayer under IRC 6323(j) (IRM 5.12.9)

Special condition NFTL (e.g. nominee/alter ego NFTL)

**Then a nonattachment may be considered if...**

Circumstances arise that show the applicant is still harmed by the existence of the NFTL.

A third party continues to be harmed by the appearance that a lien remains.

It has been determined that person/entity is not a nominee/alter ego of the taxpayer or that the special condition NFTL was filed in error.

**5.12.10.13.1 (10-14-2013)**

**Review of Request for Certificate of Nonattachment**

- Applications are referred directly to the Advisory Group Manager for review.
- Advisory should first evaluate if a nonattachment is necessary to resolve the issue (e.g., mailing address confusion, NFTL on former spouse with no property attachment implications, etc.). If it does not appear a nonattachment is needed, Advisory should contact the applicant and attempt to resolve questions. If applicant insists on nonattachment, Advisory will continue processing request.
- Advisory will evaluate if there is any attachment of the lien to the applicant's property by considering applicable state and local laws on property ownership. Advisory should also be aware of factors that indicate the taxpayer is exercising control or authority over the property even though no legal ownership is claimed.

4. Advisory will determine from the information furnished and from internal sources whether a certificate should be issued. Additional information may be requested from the applicant as needed. An OI may be issued if a field investigation is required and Area Counsel may be asked for an opinion if necessary.
5. Advisory will control its work on the request on ICS under NFOI 149, Certificates of Non-Attachment.

#### **5.12.10.14 (10-14-2013)**

##### **Issuance of Certificate of Nonattachment**

1. If it is determined that the applicant is not the taxpayer whose name appears on the NFTL and that the lien did not, or does not now, attach to the applicant's property, Advisory will prepare Letter 1628, *Certificate of Nonattachment of Federal Tax Lien*.

##### **Note:**

- See IRM 1.2.44.5 for the delegation of authority to sign Letter 1628.
2. Provide the applicant with the certificate and instructions to record it, unless the applicant requests that the Service perform the recording.
3. The cost for recording will not be collected from the applicant or the taxpayer. The Service will absorb the cost unless the applicant chooses to record the certificate.
4. See *IRM 5.12.10.9.1* regarding electronic approvals of Letter 1628.

#### **5.12.10.15 (10-14-2013)**

##### **Denial of Request for Certificate of Nonattachment**

1. Determinations to deny an application for a certificate of nonattachment must be communicated in writing.
2. There is not a standardized letter to deny the request. Follow the format of Letter 4025 and, as appropriate, include a brief description of the reason for the determination.
3. Advise the applicant of applicable appeal rights and enclose Publication 1660, *Collection Appeal Rights*, with the letter.
4. Process any appeal requests received from the taxpayer in accordance with standard appeal processing. (See IRM 5.1.9).

#### **5.12.10.16 (10-14-2013)**

##### **Revocation of Certificate of Nonattachment**

1. IRC § 6325(f)(2) provides for a revocation of a certificate of nonattachment if it is determined that the certificate was issued erroneously or improvidently. This would generally only occur if information is obtained after issuance of the certificate that shows the applicant was responsible for the liabilities on the NFTL and/or the property specified on the certificate was encumbered by the NFTL.
2. There is no form for a revocation of a certificate of nonattachment. Consult with Counsel regarding the wording of the document.
3. The revocation shall be accomplished by:
  - Notifying the applicant in writing that the certificate of nonattachment is being revoked; **AND**
  - Filing the notification of revocation in the same location where the certificate of nonattachment was filed.
4. If appropriate, file a new notice of federal tax lien to ensure the government's interest in the taxpayer's property is protected.

#### **5.12.10.17 (10-14-2013)**

##### **Documentation Requirements for Lien-Related Certificates**

1. Use ICS to control and monitor lien certificate cases. For field revenue officers, control will be through the assigned BAL DUE or OI on ICS. For Advisory, a lien certificate case should be loaded into ICS within 7 calendar days of receipt.
2. Use ICS to record actions taken on all applications for lien-related certificates. Document histories in a clear and complete manner so that actions relative to the case are readily understood. See IRM 5.13.2.7 for further details regarding case histories.
3. Document the following in ICS histories regarding applications, investigations and issuance of all lien certificates:
  - A. Date application or request was received.
  - B. Identify the employee assigned to work the investigation. Enter the name and title of the advisor or other employee reviewing the application/request/investigation. If, on a particular case, the ICS history entry is completed by an employee other than the employee working the case, then ensure that ALL employees working the case are identified in the history entry. When a case is transferred from one employee to another, ensure the name, title and employee number of the employee conducting the investigation is entered in ICS.
  - C. Description of type of application, including the form number of the certificate being sought by the applicant.
  - D. Code section under which the application/request was submitted.
  - E. List of attachments and other documentation received.
  - F. If appropriate for the type of certificate and there are other lienholders, an analysis of other lienholders' positions or a completed Form 3033, *Investigation of Request for Certificate of Discharge or Subordination*.
  - G. When appropriate, an analysis regarding "best interest of the government" considerations including a computation of the government's interest that shows the amount received is the government's interest.
  - H. Any Counsel advice received, including the name and phone number of the attorney.
    - I. All communications with the applicant regarding the application for the certificate.;
  - J. Date certificate or denial letter was issued.
  - K. Name and title of employee issuing the certificate.
  - L. The name and title, if applicable (e.g. power of attorney, title agent, etc.), to whom the certificate was issued and their relationship to the taxpayer or applicant.
  - M. Once a certificate is issued and if payment is received in exchange for the certificate, the amount received. If there is any difference in the amount expected and the amount received, explain and reconcile.
4. If delays in case action occur, document the reason in the ICS history.



5. Retain full information and documentation regarding approvals/denials of requests in well organized case files, so that all documents can be easily located by any Service employee with a need to access the information. (See 5.12.10.17.1 regarding necessary documents to be kept in case files after closure.

#### **5.12.10.17.1 (10-14-2013)**

##### **Documents Kept In Case Files**

1. Keep original or copies of all documents that relate to investigations of lien certificate applications. Specifically, keep the following in case-files during investigation of applications, and after investigations are complete:
  - Original application and attachments;
  - A copy (or facsimile) of the NFTL to which the application or investigation applies;
  - Copy of the form or worksheet for distribution of proceeds of a sale, if applicable;
  - All documents referenced in the ICS history; and
  - A copy of the signed certificate or letter issued as a result of the investigation.
2. Maintain documentation in an orderly manner so it may be consulted if further actions are necessary on the case.
3. Retain files as specified in Document 12990 , Records and Information Management Records Control Schedules..

#### **Exhibit 5.12.10-1**

##### **Subordination to Factors - Agreement**

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## Part 5. Collecting Process

### Chapter 12. Federal Tax Liens

#### Section 11. Lien Special Topics

##### 5.12.11 Lien Special Topics

- 5.12.11.1 [Purpose](#)
- 5.12.11.2 [Identity Theft Overview](#)
- 5.12.11.3 [Return Preparer Misconduct](#)
- 5.12.11.4 [Procedures for Natural Disasters and NFTL Filing](#)
- 5.12.11.5 [Procedures for an Automated Lien System Disaster](#)

##### Manual Transmittal

October 14, 2013

##### Purpose

(1) This transmits the new IRM 5.12.11, Federal Tax Liens, Lien Special Topics.

##### Background

A revision of the IRM 5.12 chapter has been done to consolidate and coordinate like topics, reduce duplication of content, and provide an overview, cross-references, and contacts.

##### Material Changes

(1) Introduces new IRM with title of Lien Special Topics covering the topics of identity theft and disaster as they relate to notice of lien and lien certificate processing.

(2) The following table provides a cross walk of sections MOVING TO IRM 5.12.11 FROM other IRM 5.12 location(s)

##### Moving from \_\_\_\_\_ to IRM 5.12.11

5.12.2.25

5.12.6.10

(3) 5.12.11.2 updated reference to Form 14039 which is the IRS' Identity Theft Affidavit and removed reference to the Federal Trade Commission's Identity Theft Affidavit

(4) 5.12.11.2 has been updated to reflect current guides and information locations.

(5) 5.12.11.3 added for return preparer misconduct.

##### Effect on Other Documents

This material supersedes IRM 5.12.1, dated January 9, 2009, IRM 5.12.2 dated March 8, 2012, IRM 5.12.3 dated June 1, 2010, and IRM 5.12.6 dated July 16, 2010.

##### Audience

SBSE and W&I Collection, Centralized Lien Operation, and Appeals

##### Effective Date

(10-14-2013)

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##### 5.12.11.1 (10-14-2013)

###### Purpose

1. The purpose of this IRM is to provide instructions on the identification, analysis, recommendations, and processes for identity theft as they relate to liens, lien notices, and lien certificates.

##### 5.12.11.2 (10-14-2013)

###### Identity Theft Overview

1. Identity theft is the use of another person's identifying information stolen from a wide variety of places and through a wide variety of means. If identity theft is established, the appropriate steps should be taken immediately to ensure the innocent taxpayer is not harmed.
2. With respect to the IRS, identity theft manifests itself in several ways.
  - A. It is used to defraud the government of funds through the filing of fraudulent refund claims.
  - B. In many instances it victimizes an innocent taxpayer by impeding his or her ability to get a refund from us.
  - C. In some cases the Identity Theft is for personal or business purposes such as obtaining employment.
  - D. Fraudulent filings may also cause us to initiate an adverse enforcement action against the innocent taxpayer.

E. For a more in depth discussion of the ways in which identity theft can manifest itself, see IRM 10.5.3, *Identity Protection Program*.

3. For Collection purposes, IRM 5.1.12.2, *Identity Theft*, and any associated Interim Guidance should be followed in resolving these cases.

#### 5.12.11.2.1 (10-14-2013)

##### Identity Theft and Liens

1. Notices of Federal Tax Lien may have been filed against taxpayers indicating there is a statutory lien against the victim(s) of identity theft. (See IRM 5.12.2.4 (5) (e) for information on lien notice filing determinations in identity theft situations).
2. The IRS has standards when requesting documentation and resolving cases involving identity theft. See IRM 5.1.12.2 and IRM 10.5.3 for those standards and instructions.
3. Because of the variety of types of identity theft, there are now differing solutions for Revenue Officers to follow. See IRM 10.5.3, *Identity Protection Program*. IRM 10.5.3.2.5, *Identity Theft Tracking Indicators*, IRM 10.5.3.2.6, *Initial Allegation or Suspicion of Tax-Related Identity Theft - Identity Theft Indicators*, and IRM 10.5.3.2.7, *Overview - Identity Theft Supporting Documentation*.
4. Taxpayers may also be directed to IRS.gov for the following information:
  - A. [Taxpayer Guide to Identity Theft](#).
  - B. [Identity Protection](#).
  - C. [Helpful resources: Publications, articles, YouTube videos and other identity theft related outreach](#).
  - D. [Publication 4535, Identity Theft Prevention and Victim Assistance](#), and
  - E. [Form 14039, Identity Theft Affidavit](#).
5. Internal IRWeb information on this topic can be found at, Identity Protection (Identity Theft).

#### 5.12.11.2.2 (10-14-2013)

##### Recorded NFTLs

1. This section provides instructions where an NFTL has been filed and:
  - you establish identity theft has occurred, and
  - you have taken the appropriate case action steps to adjust the liability.
2. Where the NFTL will retain a tax liability for the taxpayer after the identity theft abatement(s), below are the potential resolutions that can be utilized if requested by the taxpayer:
  - If only a portion of an existing module's liability is abated then amend the NFTL. (See IRM 5.1.12.2, *Identity Theft Case Resolution*, and IRM 5.12.7.9.3, *Amending the NFTL Using the ALS Amend Option*).

##### Example:

An NFTL is filed on the taxpayer's 2007 income tax showing an original assessment on a Transaction Code (TC) 150 along with an additional assessment (TC 290). The TC 290 additional assessment is subsequently found to have been the result of Identity Theft and is abated. The NFTL can be amended to remove the additional assessment.

- If an entire module's liability is abated but the NFTL contains other modules which will not be abated, a partial release may be requested under the IRC § 6326 erroneous lien provisions. See IRM 5.12.3, *Lien Release and Related Topics*, for those instructions.

##### Example:

An NFTL has been filed for the taxpayer's 2008, 2009, and 2010 income tax liabilities. The 2010 liability is subsequently found to have been the result of Identity Theft and is abated in full. A partial erroneous lien release may be issued for the 2010 liability.

3. If the requested abatement results in eliminating the tax liability for all the periods listed on an NFTL, request a release under IRC § 6326 erroneous lien provisions. See IRM 5.12.3, *Lien Release and Related Topics*, for those instructions. Ensure that the release under IRC § 6326 is requested before the liability is abated and before a systemic release is issued through the Automated Lien System (ALS).
4. A withdrawal of the lien notice may be considered in lieu of or in addition to an amended lien notice or erroneous lien release. (See IRM 5.12.9, *Withdrawal of Notice of Federal Tax Lien*). The withdrawal recommendation must include not only the identity theft determination but any additional factors the withdrawal is being consider under.
5. Document the ICS and the Automated Lien System (ALS) case histories with the identity theft determination and the actions taken.

#### 5.12.11.2.3 (10-14-2013)

##### Unrecorded NFTLs

1. NFTLs may be corrected prior to being mailed to the recording office. Immediately contact Centralized Lien Operation (CLO) via secure email, followed by a phone call to request the correction.
2. Corrections must be made before 8:00 AM Eastern Time on Tuesday and Thursday. (CLO prints all documents twice weekly.)
3. Document the ICS and ALS history with any change(s) requested.

#### 5.12.11.2.4 (10-14-2013)

##### Where CLO Refers Identity Theft Receipts

1. Centralized Lien Operation refers all cases regarding identity theft to the function currently controlling the case.
  - A. Status Code 26 - to the requesting field employee
  - B. Status Code 71 - to the appropriate OIC Unit
  - C. Status Code 72 where the last TC 520 on module is cc 70, 71, 73, 74, 75, 80 or 82 - to the appropriate Area Advisory office

##### Note:

TC 520 cc 71 - 74 are cases generally assigned to either Exam or Counsel.

##### Note:

TC 520 cc 76 and 77 are cases assigned to Appeals.

- D. Status Code 72 where the last TC 520 on the module is cc 76 or 77 - to the appropriate Appeals office
  - E. Status Code 72 where the last TC 520 on module is cc 60-67, 81, 83-89 - to the Centralized Insolvency Office
  - F. Innocent Spouse - identified by MFT 31, TC 971, AC 104 - if appropriate, to the Cincinnati Innocent Spouse Unit
  - G. Cases no longer in inventory are referred to the Area Advisory office where the taxpayer resides.
2. CLO documents the referral in the ALS history, including the date the referral is made, the status and name of the employee or office where the referral was forwarded.
3. These are all the actions CLO is required to take. The function identified by CLO takes over and will follow the instructions in *IRM 5.12.11.2.2*, *IRM 5.1.12.2*, *Identity Theft*, and any associated Interim Guidance.

### 5.12.11.3 (10-14-2013)

#### Return Preparer Misconduct

1. Return Preparer Misconduct can occur when a tax return preparer completes a return for a taxpayer and, without the taxpayer's knowledge, makes changes to the return, which results in an improper refund to the preparer or a third party. Taxpayers may not know there is an issue until the IRS contacts them about the return well after refunds have been issued. See also [Interim Guidance SBSE-05-0613-0034, Return Preparer Fraud or Misconduct](#), any successor Interim Guidance, or IRM 5.1.27 when the guidance is incorporated into the IRM.
2. If a taxpayer alleges that this type of misconduct has occurred and a lien notice determination is or needs to be made, defer the filing determination until the circumstances are clarified. Taxpayers can report this activity on a [Form 14157, Return Preparer Complaint](#) accompanied by a [Form 14157-A, Tax Return Preparer Fraud or Misconduct Affidavit](#).
3. If return preparer misconduct is confirmed and a lien notice has been filed, follow the instructions in IRM 5.12.3.9, *Erroneously Filed Notice of Federal Tax Lien*, to initiate an erroneous lien release.

### 5.12.11.4 (10-14-2013)

#### Procedures for Natural Disasters and NFTL Filing

1. A major disaster is defined as any natural catastrophe in any part of the United States which causes sufficient damage to warrant major disaster assistance. Disasters may also be caused by terrorist or military action. Throughout the IRM, the term disaster encompasses all of the above causes. When a disaster or other emergency occurs and if the situation is beyond the capabilities of local and state authorities, the Governor may request that the President declare a "major disaster" or an "emergency". IRM 25.16.1, *Disaster Assistance and Emergency Relief, Program Guidelines*, contains an overview and service wide disaster policies. Field Collection guidelines can be found in IRM 5.1.12.3, *Disaster Assistance and Emergency Relief Overview*. See also the SBSE web page Disaster Assistance and Emergency Relief. Taxpayers can be directed to [Disaster Assistance and Emergency Relief for Individuals and Businesses](#).
2. Collection Policy will simultaneously notify the CLO Program Manager as well as Compliance Services Operations when disaster procedures are implemented prior to a nationwide notification and will provide zip codes based on information obtained from master file and the Headquarters disaster recovery analyst.
3. The printing of the NFTL triggers the issuance of CDP notices. When the impact of the disaster may affect postal services, Policy may elect to stop the issuance of lien documents until a postal delivery determination is made. These procedures will be implemented as needed.
4. Functional Coordinators will input the appropriate state or zip codes into ALS to ensure that lien notices are not created.
5. Collection Policy will simultaneously notify CLO and Operations when to resume NFTL generation. This decision will be based on the disaster provisions used nationwide (See IRM 25.16.1).

### 5.12.11.5 (10-14-2013)

#### Procedures for an Automated Lien System Disaster

1. The following procedures will be followed if there is an ALS disaster (the database is not available), as identified by headquarters personnel, lasting three days or more, and when the recording offices are not impacted. Lien documents will not be filed in electronic filing courts without contingency plans, i.e., Manhattan, NY, US District Court, Boston, MA, Minnesota, LA County, CA, and the Connecticut Secretary of State.
2. Lien documents will be prepared for jeopardy/termination or hardship situations.
3. Revenue officers and advisors will:
  - A. use ICS template forms to prepare lien documents.
  - B. create a SLID using the area/group/territory/employee TSIGN, then sequential numbering, e.g., 211003231222-01,
  - C. file documents locally, when appropriate.
  - D. attach prepared documents to Form 3210 for lien documents requiring filing in other areas and secure e-mail a request to file the document after determining the appropriate group. The receiving group will file the lien document and return recording information to the requesting employee within 7 calendar days.
  - E. post transaction codes TC 582 to set *lien filed* indicator and TC 360 with the appropriate filing fee.
  - F. document case histories, including the date forwarded to CLO and the serial number from (3)(b).
  - G. secure e-mail CLO copies of **recorded documents**.
4. Employees without ICS access will use the Intranet fillable forms to prepare lien documents. Requests will be secure emailed to CLO. The procedures outlined in (3)(a) through (3)(g) will be followed.
5. When an NFTL is issued, the appropriate collection due process notice with enclosures will be prepared and mailed by requesting employees. Certified or registered mail will be used when appropriate. Issue one of the following notices:
  - A. Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320*,
  - B. Letter 3171, *Notice of Federal Tax Lien Filing*,
  - C. Letter 3177, *Letter Notifying of Federal Tax Lien Filing-Nominee or Alter-Ego*,
  - D. Letter 3527, *Notice of Federal Tax Lien Filing - Child Support Obligation*,
  - E. Letter 3886, *Notice to Taxpayer of Nominee/Alter-Ego of Federal Tax Lien Filing*.
6. Employees will document case histories with lien notice filing or release request information. Include sufficient information to identify the request.

7. When ALS production resumes, CLO will input these documents to the database using *SCreate* from documents provided by the requesting employee.

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