

# **Handbook 5.12**

## **Federal Tax Liens Handbook**

### **Chapter 1- 12**

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# Handbook 5.12

## Federal Tax Liens Handbook

### Chapter 1

### Lien Filing Requirements

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#### Contents

- [5.12] 1.1 Responsibility
  - [5.12] 1.1.1 Management of the Lien Program and the Automated Lien System
- [5.12] 1.2 Creation and Duration of Lien
- [5.12] 1.3 Approval Process
  - [5.12] 1.3.1 Review Process
  - [5.12] 1.3.2 Approving the NFTL
- [5.12] 1.4 Taxpayer Contact
- [5.12] 1.5 Problem Resolution Program
- [5.12] 1.6 Estate and Gift Tax Liens
- [5.12] 1.7 Recording Fees
- [5.12] 1.8 Designated Payment Code
- [5.12] 1.9 Lien Priorities
  - [5.12] 1.9.1 Priority of Certain Other Interests
  - [5.12] 1.9.2 45-Day Disbursement Period
  - [5.12] 1.9.3 Priority of Interest and Expenses
- [5.12] 1.10 Considerations Before Filing
- [5.12] 1.11 Filing Outside the U.S.
- [5.12] 1.12 Procedural Guidelines (Overview)
- [5.12] 1.13 Filing Notice Guidelines
- [5.12] 1.14 Notice Preparation (Overview)
  - [5.12] 1.14.1 Notice Preparation
  - [5.12] 1.14.2 Use of Trade Names
  - [5.12] 1.14.3 Name Changes
- [5.12] 1.15 Nonfiling of Notices of Lien
- [5.12] 1.16 Special Rules
  - [5.12] 1.16.1 Actual Notice or Knowledge of Lien Requirement
- [5.12] 1.17 Refiling Notice of Lien
  - [5.12] 1.17.1 Criteria for Refiling
  - [5.12] 1.17.2 Required Refiling Period
  - [5.12] 1.17.3 Place for Refiling
  - [5.12] 1.17.4 Address Change Procedures Affecting Refiling
  - [5.12] 1.17.5 Procedures and Responsibilities for Refiling
    - [5.12] 1.17.5.1 Processing DTR of Form 4356 (Notice of Overpayment Applied to Unpaid Tax)
  - [5.12] 1.17.6 Release of Refiled Notice of Federal Tax Lien
  - [5.12] 1.17.7 Original Notice of Lien After Refiling Period
- [5.12] 1.18 Special Notice of Federal Tax Liens Filing Conditions (Overview)
  - [5.12] 1.18.1 Transferee and Nominee Cases
  - [5.12] 1.18.2 "Alter Ego" Doctrine--Corporations
  - [5.12] 1.18.3 Partnership
  - [5.12] 1.18.4 Limited Liability Corporation

- [5.12] 1.19 Place for Filing of Notice of Federal Tax Lien (Overview)
  - [5.12] 1.19.1 Place for Filing of Notice
  - [5.12] 1.19.2 Filing of Notice by Mail
  - [5.12] 1.19.3 Liens Filed in Other Districts
    - [5.12] 1.19.3.1 ALS Other District Lien Filing
- [5.12] 1.20 Notice of Claim--Documented Vessels
  - [5.12] 1.20.1 Documented Vessel Abstract
  - [5.12] 1.20.2 Notice of Claim
- [5.12] 1.21 Assistance Requests
  - [5.12] 1.21.1 Procedures for Filing
  - [5.12] 1.21.2 Preparation of MCARs on Form 668(Y)
  - [5.12] 1.21.3 Procedures for Refiling and Release
- [5.12] 1.22 Copies of Notices to Third Parties
  - [5.12] 1.22.1 Insurance Companies
- [5.12] 1.23 Disclosure of Amount of Outstanding Lien
- [5.12] 1.24 Automated Lien System Filing Requests
- [5.12] 1.25 Fees Input to IDRS
- [5.12] 1.26 Lien Filed Indicators
  - [5.12] 1.26.1 Input of Indicators to IDRS
  - [5.12] 1.26.2 Removing Indicators
- [5.12] 1.27 Suspense File
- [5.12] 1.28 Annual Purge
- [5.12] 1.29 Maintenance of Notice of Lien
  - [5.12] 1.29.1 Correcting Notices of Federal Tax Lien Documents (Overview)
  - [5.12] 1.29.2 Correcting Errors
  - [5.12] 1.29.3 Other Types of Errors
- [5.12] 1.30 Resolution of NFTL Related Unpostable Transactions (Overview)
  - [5.12] 1.30.1 End of Day (EOD) Control List
  - [5.12] 1.30.2 Unpostable Resolution
- Exhibit [5.12] 1-1 Lien Refiling Chart
- Exhibit [5.12] 1-2 Form 668-F
- Exhibit [5.12] 1-3 (Reference)  
Required by the Coast Guard--Notice of Claim of Lien
- Exhibit [5.12] 1-4 (Reference)  
Satisfaction of Mortgage
- Exhibit [5.12] 1-5 Notice of Lien (MCAR)

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## **[5.12] 1.1 (02-22-2000)**

### **Responsibility**

1. Special Procedures function (SPf) has the responsibility for:
  - Processing and maintaining files of the Notice of Federal Tax Lien (NFTL),
  - Issuance of certificates relating to NFTLs such as discharges and subordinations.
2. Local management may designate some other functional area for input and retrieval of data on an automated lien system. Instructions in this section for forwarding documents to SPf includes the designated function.

### **[5.12] 1.1.1 (02-22-2000)**

#### **Management of the Lien Program and the Automated Lien System**

1. Management is responsible for:
  - A. Ensuring that the lien filing criteria are adhered to.
  - B. Ensuring that lien requests are timely processed.
  - C. Establishing positive lines of communication with Information Systems Management.
  - D. Working requests for discharge, subordination, withdrawal, and non-attachment timely.

- E. Responding promptly to requests for lien payoff information.
  - F. Providing taxpayers with copies of lien documents.
  - G. Ensuring that the Automated Lien System is efficiently managed and that procedures in the Collection Manager's Handbook are followed.
  - H. Establishing liaisons between the Automated Call Site (ACS), Service Centers and the District Office (DO) to enable problems associated with lien processing to be effectively and efficiently resolved.
  - I. Ensuring that NMF liens on the Automated Lien System database are released timely.
  - J. Establishing procedures which minimize manually created liens (i.e., liens created by revenue officers to hand carry to recording offices). Ensure that manually created liens are prepared in accordance with IRM procedures.
  - K. Establishing a quality review of all liens prior to recording.
  - L. Ensure that all ALS reports are generated and worked timely.
  - M. Ensure that RRA 98 (Collection Due Process) notices are mailed timely.
2. Managers will review the release audit trail on ALS monthly to ensure that only authorized users are releasing liens.

## **[5.12] 1.2 (02-22-2000)**

### **Creation and Duration of Lien**

1. A Federal Tax Lien (FTL) is created by statute and attaches to a taxpayer's property and rights to property for the amount of the liability. This is the "statutory" or "silent" FTL. Requirements for establishing the FTL are contained in IRC 6321. The following must happen:
  - A. An assessment must have been made;
  - B. A demand for payment must have been made;
  - C. The taxpayer must have neglected or refused to pay.
2. The FTL will continue until the liability is satisfied or becomes unenforceable by lapse of time.

## **[5.12] 1.3 (02-22-2000)**

### **Approval Process**

1. A determination to file a Notice of Federal Tax Lien by revenue officers below GS-9 must be reviewed and approved by the supervisor prior to the notice actually being filed.
2. Appropriate disciplinary action may be taken against the employee or supervisor if review procedures are not adhered to.

## **[5.12] 1.3.1 (02-22-2000)**

### **Review Process**

1. The supervisor of revenue officers below GS-9 is required to:
  - Review the taxpayer's information,
  - Verify that a balance is due, and
  - Affirm that the lien 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 summary of any information the taxpayer provides that may affect the decision to file a lien;
  - If the taxpayer provided information, an explanation of the employee's review and findings; and
  - Verification that the amount is owed, e.g., the balance due has been checked on IDRS;
3. Consider the following when determining if lien filing is appropriate:
  - The taxpayer's responsiveness to attempts at contact and collection;
  - Information known about the taxpayer's financial condition;
  - The taxpayer's history of delinquency,
  - The taxpayer's efforts to pay the tax,
  - Whether current taxes are being paid or there are returns not filed,
  - Whether there is a lien already filed.

**NOTE:**

This information must be clearly marked in the history.

**[5.12] 1.3.2 (02-22-2000)**

**Approving the NFTL**

1. Revenue Officer group managers will note their review and approval using the manager's queue on their automated systems.
2. Liens filed by Dyed Fuel Compliance Officers below GS-9 will be reviewed and signed by the Examination supervisor.
3. When it is necessary that a manual (typed or handwritten) NFTL be prepared, supervisors will sign the NFTL for employees below GS-9.
4. In all cases, document the case file.

**[5.12] 1.4 (02-22-2000)**

**Taxpayer Contact**

1. Make reasonable efforts, before filing the NFTL to contact the taxpayer to advise that a NFTL may be filed if payment is not made.
2. Contact may be made by:
  - telephone
  - delivered in person
  - mailing a notice or letter to the last known address.
3. Give the taxpayer an opportunity to make payment or other security arrangements. Explain the effect of the NFTL filing on normal business operations or their credit rating.
4. Certain restrictions have been placed on the Service regarding contact with taxpayers. See IRC Section 6304, Fair Tax Collection Practices.
5. If the taxpayer disagrees with the proposed lien filing advise the taxpayer of his right to appeal. Discuss both the Collection Appeals Process (CAP) and the Collection Due Process (CDP) under RRA 98. Advise the taxpayer that they will receive a 6320 notice. See IRM 5.12.3.

**[5.12] 1.5 (02-22-2000)**

**Problem Resolution Program**

1. Taxpayer Advocate cases and Applications for Taxpayer Assistance Orders may be initiated because of lien actions. See new IRM 5.1 (General) for criteria and procedures.

**[5.12] 1.6 (02-22-2000)**

**Estate and Gift Tax Liens**

1. Obtain a serial lien identification (SLID) number from the ALS Unit before preparing your lien. The Form 668(J) or Form 668(H) **must be manually prepared** .
2. Estate and gift tax liens are discussed in IRM 5.5, Chapter 8, Insolvency/Decedent Estate, and Estate Taxes Collecting Handbook.
3. Manually post estate tax lien recording fees if applicable. These fees may be different than those fees used for recording the Form 668(Y)(C).

**NOTE:**

Process all estate tax liens through the Automated Lien System. The Collection Due Process Notice will be generated accordingly.

## **[5.12] 1.7 (02-22-2000)**

### **Recording Fees**

1. Districts are encouraged to arrange with local officials for the periodic billing of any recording fees, preferably on a monthly basis.
2. Use Form 3915, Processing Notices and Releases of Federal Tax Lien and Other Related Certificates, or any locally acceptable form as an accompanying document when arrangements have been made for periodic billing.
3. Special Procedures function will prepare Form 1334, Requisition for Equipment, Supplies, or Services, to obtain a money order if payment is required at the time of filing. Submit Form 1334 to the imprest fund cashier for an advance of funds to purchase the money order, including its fee.
4. If imprest funds are not available, reimbursement should be claimed on a monthly basis on SF1012, Travel Voucher. Receipts for all NFTL fees claimed must be submitted with the SF1012.

## **[5.12] 1.8 (02-22-2000)**

### **Designated Payment Code**

1. A designated payment is a voluntary payment designated by the taxpayer to be applied in a particular manner, i.e., kind of tax, specific tax period, etc. These designations are normally followed by the Service.
2. In the absence of a designation by the taxpayer, payments will be applied in a manner consistent with the provisions of Rev. Rul 73-305, unless a specific statute, regulation or procedure designates otherwise.
3. A designated payment code (DPC) is mandatory on all Collection initiated posting vouchers for transaction codes 640, 670, 680, 690, 693 and 700. DPCs serve three purposes:
  - A. They are used to identify payments that are designated for trust fund or non-trust fund employment and excise taxes.
  - B. DPCs are used to indicate application of payments for a specific liability.
  - C. DPCs also identify the event which resulted in the payment.
4. Use DPC 07 when applying payments secured for the release of a notice of federal tax lien or to secure a certificate of discharge or subordination.

#### **NOTE:**

The mere fact that a lien has been filed does not indicate that the payment is due to the filing of a NFTL. In this case, the appropriate DPC should be used.

## **[5.12] 1.9 (02-22-2000)**

### **Lien Priorities**

1. The Federal Tax Lien (FTL) is not valid against purchasers, holders of security interests, mechanics lienors, and judgment lien creditors until a Notice of Federal Tax Lien (NFTL) has been filed. The filing of the NFTL notifies creditors that the FTL exists. The FTL is valid against certain creditors named at the time the lien is filed. Refer to IRC 6321. The exception to this is the ten "superpriorities."
  - Securities
  - Motor vehicles
  - Retail purchases
  - Casual sales
  - Possessory liens
  - Real property tax and special assessment liens
  - Small repairs and improvements of residential real property
  - Attorneys liens
  - Certain insurance contracts
  - Passbook loans
2. These priorities are fully defined in the LRG.
3. Purchase money security interests and purchase money mortgages have priority over a previously filed NFTL, if protected under local law. (Refer to Rev. Rul. 68-57).

4. RRA 98 provides that for tax years beginning in 1999 and thereafter, the higher exemption amounts will be indexed annually for inflation (consistent with the cost-of-living adjustment (COLA) amounts for the applicable tax year) and rounded to the nearest multiple of \$10.

### **[5.12] 1.9.1 (02-22-2000)**

#### **Priority of Certain Other Interests**

1. Advances made after or property coming into existence after the NFTL is filed have priority if granted by local law. Protection under local law must be the same that is provided against a judgment lien creditor at the time the NFTL is filed.
2. The priority position of unrecorded instruments, particularly mortgages, should be governed by local law. See LRG 242.
3. Home Equity Line of Credit--it is advisable to investigate the facts of the case to determine how the funds were used to determine the priority of the Federal Tax Lien. If the funds are drawn after the NFTL is filed, determine if the mortgage/lender has a security interest in the real property. Verify the amount of money or money's worth that changed hands. Determine if:
  - A. The entire amount was turned over to the taxpayer;
  - B. The taxpayer is allowed to draw against the funds as he wants;
  - C. A specific amount was approved;
  - D. The taxpayer paid down the amount owed.

### **[5.12] 1.9.2 (02-22-2000)**

#### **45-Day Disbursement Period**

1. The FTL generally has priority with respect to security interests in property held before the NFTL is filed, if the filing is a result of disbursements made after the 46th day after the filing of the NFTL. See LRG 258.5.

### **[5.12] 1.9.3 (02-22-2000)**

#### **Priority of Interest and Expenses**

1. Interest and certain expenses have the same priority as the related lien or security interest. See IRC 6323(e) and LRG 259.

### **[5.12] 1.10 (02-22-2000)**

#### **Considerations Before Filing**

1. The employee assigned the TDA is responsible for safeguarding the government's interest. There are no rules to meet all Notice of Federal Tax Lien (NFTL) filing situations.
2. Persons assigned TDAs must exercise judgment in deciding whether or not a NFTL should be filed.

### **[5.12] 1.11 (02-22-2000)**

#### **Filing Outside the U.S.**

1. No collection activity can be taken against property located outside the U.S., its territories or possessions, without an agreement or treaty with the situs country.

### **[5.12] 1.12 (02-22-2000)**

#### **Procedural Guidelines (Overview)**

1. The employee assigned the TDA is responsible for safeguarding the government's interest. There are no rules to meet all Notice of Federal Tax Lien (NFTL) filing situations, therefore, the person assigned the TDA must exercise judgment in deciding whether or not a NFTL should be filed.



## [5.12] 1.13 (02-22-2000)

### Filing Notice Guidelines

1. A NFTL filing determination must be made on all assigned cases including reactivated TDAs within established time frames, at least 10 calendar days after taxpayer contact. When possible, verbally advise the taxpayer of the NFTL filing.
2. Determining when to file a NFTL:
- 3.

If	Then
the aggregate unpaid balance of assessment (UBA) is \$5,000 or more	file a NFTL. <i>Note:</i> Determine the need to file a NFTL when an additional assessment is posted to the TDA from the Daily Transaction Register. Use the transaction code date as the date of assessment for the liability when filing the NFTL.
an installment agreement is \$25,000 or more	file a NFTL.
an open account with an aggregate UBA of \$5,000 or more is being reported as currently not collectible	file a NFTL. NOTE: Due to Collection Due Process Appeal Rights hold case for 45 days before closing or archiving case file.
a case involving both assessed and preassessed periods will be reported currently not collectible	the NFTL filing may be held up to include both periods on the NFTL.
the property is exempt by the Federal Bankruptcy Code or state insolvency proceeding	file a NFTL to protect the government's interest.
the taxpayer resides outside the U.S. and has known assets,	file a NFTL. Contact requirements are waived.
the party on which a levy is to be served is likely to file a priority claim under IRC 6323(a) or (c)	file a NFTL even though there is no mandatory NFTL filing requirement prior to service of the notice of levy on wage, salaries, commissions, etc.
No history is required to support the following nonfilings. Exceptions to these may be made when it is in the best interest of the government. Do not file if:	
A. The aggregate unpaid balance of assessment is less than \$5,000.	
B. A NFTL has already been filed and the subsequent liability is less than \$2000. (NOTE: when subsequent liabilities reach \$5000 file a lien.)	
C. The taxpayer is a corporate entity has gone through a liquidating bankruptcy or receivership regardless of dollar amount.	
D. The taxpayer is a defunct corporation, unless it is necessary to protect the government's interest in the liquidation of assets.	
E. A nonpaying officer when an adjustment to the Trust Fund Recovery Penalty is pending because the assessment has been paid by more than one officer.	
F. A taxpayer is deceased and there are no assets. SPF will make the decision to file in asset cases.	
G. The taxpayer resides abroad and has no known assets in the U.S.	
H. There is an indication that the liability has been satisfied or that credits are available to satisfy the liability.	
I. The taxpayer is a financial institution under control of the Resolution Trust corporation (RTC). See the section on WITHDRAWAL OF FILED NOTICE OF FEDERAL TAX LIEN, if a NFTL has been filed.	
J. The taxpayer has filed bankruptcy. Section 362(a) of the Bankruptcy code imposes an automatic stay that includes all creditors. A NFTL may be filed once the stay is lifted and SPF concurs.	

If a NFTL is filed and the taxpayer used another person's SSN, the service center entity control unit will provide a temporary SSN for use when correcting the Notice of Federal Tax Lien. Accrued interest and penalties added to tax should be collected during the limitation period for collecting the tax. This limitation period does not apply to bad checks, fraud penalty or certain other penalties that carry a separate collection statute expiration date.

**[5.12] 1.14 (02-22-2000)**

**Notice Preparation (Overview)**

1. The correct and timely preparation of the Notice of Federal Tax Lien (NFTL) is the responsibility of the employee assigned the case. All NFTLs must be filed through the Automated Lien System (ALS), unless there is an expedite situation. Refer to Section 1.425, Automated Lien System filing Requests.
2. Revenue officers will examine their assigned TDA inventory for accounts where the collection statute has been extended and determine if refiling is appropriate.
3. The Special Procedures function will be responsible for NFTL refiling determinations on suspended cases:
  - A. Proof of claim
  - B. Judgment or other legal action
4. SPf is responsible for making waiver and NFTL refiling determinations on mandatory follow-ups for currently not collectible accounts when necessary.
5. The Automated Collection System is responsible for waiver and NFTL refiling on active ACS cases.
6. Use the Automated Lien System to refile NFTLs under normal circumstances.

**[5.12] 1.14.1 (02-22-2000)**

**Notice Preparation**

1. The employee assigned the case should:
  1. Review the Notice of Federal Tax Lien for accuracy.
  2. Retain a copy of the filed NFTL in the case file (Part 2 after it has been returned from the recording office or an ALS facsimile).
  3. Mail Parts 1 and 2 to the recording office.
  4. Mail Part 3 to the taxpayer.
2. Multiple assessments against the same taxpayer may be included on one Form 668(Y).
- 3.

If	Then
there are one or more TDAs without multiple assessments	prepare a separate entry in each column for each TDA.
there are multiple assessments on one TDA	show the assessment dates of all unpaid assessments including those penalties which carry a separate collection statute.
an unassessed accrued amount remains outstanding and the assessed amount is paid	file a NFTL on the total accrued amount as of the date the NFTL is requested.
the taxpayers name on the TDA is incorrect	the NFTL should state the taxpayer's name correctly. Take the actions necessary to correct masterfile. <i>Note:</i> There may be instances when the name on the NFTL does not agree with what is on the TDA, e.g., if the statute has been extended on one individual on a joint assessment due to a waiver. Only that taxpayer's name should appear on the NFTL.
the TDA has the name of a third party, i.e., accountant, attorney, etc., and a NFTL is being filed against a corporation,	ensure that the address on the NFTL is the taxpayer's. A NFTL should never show the name and/or address of a third party or the names of corporate officers. When dealing with "c/o" be sure that the name and address on the NFTL is that of the taxpayer.

Where a partnership is the taxpayer and employment taxes are involved, the NFTL should be prepared showing the words "a partnership" after the partnership name AND list the names of all the known general partners, e.g.,

- A. XYZ, a partnership,
- B. A, a partner
- C. B, a partner
- D. C, a partner.

**NOTE:**

When a partner is listed on the NFTL, a copy of L3172 must be provided. See IRM 5.12.3.1.4.2.

File a NFTL in the jurisdiction where each 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 partners live in a different jurisdiction, etc. Provide multiple address information, if appropriate. The NFTL should be prepared showing the words "a corporation" after the corporate name, e.g., XYZ, Inc., a corporation. Revenue officers at the GS-9 level and above have the authority to sign Form 668(Y). The employee's name and employee identification number should be typed in the lower portion of the space for his/her signature and the title inserted in the appropriate block. The signature may be performed manually or by facsimile method. In the latter case, the employee whose signature appears on the form is responsible for its execution. Use the period when beginning date (07-01-92) rather than the period ending date (06-30-93) when preparing a NFTL for a Form 2290, Heavy Vehicle Use Tax Return. 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 masterfile when each module is satisfied.

### **[5.12] 1.14.2 (02-22-2000)**

#### **Use of Trade Names**

1. The abbreviation "d/b/a" for "doing business as" should be used only where 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 or partnership entity operates under a trade name other than the corporate or partnership name, e.g., Werk Hard, Inc., t/a The Diggers.

### **[5.12] 1.14.3 (02-22-2000)**

#### **Name Changes**

1. Taxpayers may change names after a NFTL has been filed. To avoid disputes over lien priority in subsequently acquired assets, file another NFTL reflecting the new name or alias.
  1. Place the new name on the first line.
  2. Place the previous name on the second name line, preceded by either "aka" for "also known as" or "fka" for "formerly known as."
  3. Add the following statement to reference the original NFTL: "This Notice of Federal Tax Lien is filed to modify Notice of Federal Tax Lien number (serial number), recorded (date), in Book \_\_\_\_\_, Page \_\_\_\_\_, by reflecting a new or proper name."
2. Use this procedure when the taxpayer's name has been misspelled. See 235 of IRM 57(26)0, Legal Reference Guide for Revenue Officers for guidelines on errors that make a NFTL defective.
3. With the advent of the DIAL interface, "amended" or "corrected" NFTLs should be rare. Amended or corrected NFTLs could affect the priority of the original NFTL.

### **[5.12] 1.15 (02-22-2000)**

#### **Nonfiling of Notices of Lien**

1. A decision not to file a Notice of Federal Tax Lien will be supported by a history entry that clearly states the reasons why the filing of the NFTL will either hamper collection, is not proper due to doubt as to liability or when, in the revenue officer's judgment, information forthcoming, could lead to either of the above. Decisions to nonfile will be kept to these categories.
2. The history must also contain a follow-up date by which the revenue officer will receive information needed or by which a NFTL will be filed.
3. Managerial approval will not be required.
4. The acceptance of other collateral to ensure payment such as a surety bond or mortgage for the forbearance by the district director from the filing of the Notice of Federal Tax Lien should be fully considered.
5. A recommendation for nonfiling should be reevaluated upon receipt of another TDA or an additional assessment.

## [5.12] 1.16 (02-22-2000)

### Special Rules

1. Special rules apply in some instances when filing a Notice of Federal Tax Lien.

## [5.12] 1.16.1 (02-22-2000)

### Actual Notice or Knowledge of Lien Requirement

1. IRC 6323(l) defines actual notice or knowledge of a Federal tax lien. The burden is on the Internal Revenue Service to show the existence of actual notice or knowledge whether such notice is material in determining the priority of a Federal tax lien as against a competing lien or interest.
2. Section 1-201 of the Uniform Commercial Code is cited in part for your guidance for when a person has knowledge or received notice.
3. "(25) A person has 'notice' of a fact when
4. "(a) he has actual knowledge of it; or
5. "(b) he has received a notice or notification of it; or
6. "(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists." A person 'knows' or has 'knowledge' of a fact when he has actual knowledge of it. 'Discover' or 'learn' or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this subtitle. .
7. "(26) A person 'notifies' or 'gives' a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person 'receives' a notice or notification when
8. "(a) it comes to his attention; or
9. "(b) it is duly delivered at the place of business through which the contact was made or at any other place held out by him as the place for receipt of such communications."

## [5.12] 1.17 (02-22-2000)

### Refiling Notice of Lien

1. Refile the NFTL to maintain the continuity of priority established by the original filing when the collection period is extended.
2. Consider refiling the NFTL if the statute date has been extended or suspended by any action within the required refiling period.
- 3.

If	Then
the form used for the original filing was earlier than 12/82,	failure to file at the appropriate time does not affect the validity of the filing. However, it does nullify the effect of the prior filing.
Notices of Federal Tax Lien are filed on forms revised on 12/82 or later	the form "self-releases" unless timely refiled. These forms are considered as both a NFTL and a release.

Release of the NFTL is conclusive that the underlying, statutory FTL is extinguished. Follow procedures in Section 2 for revocation and reinstatement procedures. Potential Refile Reports will be worked monthly. Where applicable, ALS Units will route the appropriate information to the unit or employee responsible for the case for refiling determination. SPF will make refile determinations for CNC mandatory follow-up and ACS cases. Requests for refiles will be input through ALS.

## [5.12] 1.17.1 (02-22-2000)

### Criteria for Refiling

1. Before any NFTL is refiled, each assessment should be examined to determine that the statutory period for collection has been suspended or extended beyond the normal ten-year period beginning with the assessment date.
2. The normal collection statute may be suspended or extended by:
  - A. Execution of Form 900, Tax Collection Waiver.
  - B. Offer in compromise.

- C. Assets of taxpayer in custody of a court in certain types of proceedings.
  - D. Judgment for the United States.
  - E. Absence of taxpayer from United States.
  - F. Military deferments.
  - G. Appropriate actions suspending or extending the collection statute.
3. The extension of the statutory period for collection does not mean that a NFTL must be automatically refiled. Each case should be analyzed regarding present and future assets to which the refiled NFTL might attach. The present balance still due on the FTL would be another factor to be taken into consideration.

**[5.12] 1.17.2 (02-22-2000)**  
**Required Refiling Period**

1. The time period for refiling NFTL have a starting and an ending date. Therefore, a refiled Notice of Federal Tax Lien is invalid if it is filed before the period for refiling as well as if it is filed after the period for refiling.
2. The refiling period lasts for 1 year. For the first refiling, the period begins nine years and 30 days from the date of assessment and ends 10 years and 30 days from the date of assessment. For example, if the assessment date is 3/1/85, the first refiling period will be 3/31/94--3/31/95. For subsequent refilings, each period begins nine years after the end of the previous refiling period and ends 1 year later. An example using the first refiling period above is that the second refile period would be 3/31/04--3/31/05.
3. As a general rule refiling should occur between July 1 and November 30 each year in order to allow sufficient time for processing a notice of change of address at the Service Center. For calculation of the required refiling period, see Exhibit 5.12.1-1.
4. The following is an example of the "Required Refiling Period" --On March 1, 1985, an assessment of tax was made against A, a delinquent taxpayer, and a FTL for the amount of the assessment arose on that date. On July 1, 1985, a NFTL was properly filed. The NFTL filed on July 1, 1985, is effective up to and including March 31, 1995. The first required refiling period for the NFTL begins on April 1, 1994, and ends on March 31, 1995. A refiling of NFTL during that period will extend the effectiveness of the NFTL filed on July 1, 1985, up to and including March 31, 2005. The second required refiling period for the NFTL begins on April 1, 2004, and ends on March 31, 2005.

**[5.12] 1.17.3 (02-22-2000)**  
**Place for Refiling**

1. During the required refiling period, the NFTL is to be refiled:
  - A. In all cases in every office in which a prior NFTL (including a refiled notice) was filed, and
  - B. In the proper office in the State where a new residence is located, if, 90 days or more prior to the date of refiling, the Service receives written information concerning a change in the taxpayer's residence.
  - C.

If	Then
the new residence is located outside the United States	refiling will be made in the District of Columbia. This refiling is extremely important in the case of personal property. If it is not accomplished as and when required, all other refilings are ineffective.
more than one written notice of change of address is received on or before the 90th day,	the most recent one will be used for purposes of refiling, whether or not the taxpayer resides there on the date of refiling.

**[5.12] 1.17.4 (02-22-2000)**  
**Address Change Procedures Affecting Refiling**

1. Except as provided below, a notice of change of a taxpayer's residence will be effective only if it is received in writing from the taxpayer or his/her representative (Form 8822, Change of Address), relates to an unpaid tax liability of the taxpayer, and states the taxpayer's name and the address of the new residence.

2. The notice of change of a taxpayer's residence will be effective if it is contained in a return or amended return of the same type of tax filed with the Internal Revenue Service by the taxpayer.
3. 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.
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] 1.17.5 (02-22-2000)**

**Procedures and Responsibilities for Refiling**

1. Under normal refile circumstances, the Automated Lien System (ALS) should be used.
2. At times, circumstances may exist that do not allow time for a refiled NFTL to be created through ALS. In these cases Form 668-F should be prepared as shown in Exhibit 5.12.1-2.
3. ALS Units will print the Potential Refile Report and forward information on suspended cases to the appropriate function or employee for a refile determination. ACS and Form 53 mandatory follow-up determinations will be made by SPF.
4. Prior to refiling, all balances must be updated to reflect the current unpaid balance of assessment. Satisfied modules should not appear on a refiled NFTL.
- 5.

If	Then
the refiled NFTL is prepared through ALS	ALS will automatically not include 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 requested. These amounts should be shown in column (f).
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) 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 668-F for refiling, even though Form 668(Y) was never filed in that jurisdiction.

ALS will allow NFTLs to be refiled when the statute has expired against one person on a joint assessment.

**[5.12] 1.17.5.1 (02-22-2000)**

**Processing DTR of Form 4356 (Notice of Overpayment Applied to Unpaid Tax)**

1. Entity changes will be received on the DTR or on Form 4356.
2. Upon receipt of the DTR or Form 4356, the revenue officer with the TDA, should attach it to the file with the notation on the history sheet "Note New Address When Reviewing for Refiling Notice of Federal Tax Lien."
3. Since computer paragraph 44 is a "turnaround" notice, the new address should be noted on the TDA history as well as a reference to the source of the changed address, i.e., CP 44.

**[5.12] 1.17.6 (02-22-2000)**

**Release of Refiled Notice of Federal Tax Lien**

1. The Form 668-F, used to refile a NFTL, is not self-releasing. File a certificate of release when an extended statutory period for collection has expired.
2. Filing Form 668(Z), will extinguish the NFTL and remove all notices from the record. Each refile, amended or corrective associated with an original NFTL must be identified on the certificate of release.

### **[5.12] 1.17.7 (02-22-2000)**

#### **Original Notice of Lien After Refiling Period**

1. Occasionally it is necessary to refile an original NFTL after the end of the first refiling period. The ALS system will prompt you for the CSED. When the NFTL document is printed, ALS will print "N/A" in the "last day for refiling" block.

### **[5.12] 1.18 (02-22-2000)**

#### **Special Notice of Federal Tax Liens Filing Conditions (Overview)**

1. 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 only "color of title." This may result in an administrative transferee assessment, suit to assert a transferee liability, or a suit to set aside a fraudulent conveyance.

### **[5.12] 1.18.1 (02-22-2000)**

#### **Transferee and Nominee Cases**

1. A transferee Notice of Federal Tax Lien (NFTL) may be used to subject property to the government's Federal Tax Lien (FTL) when property has been transferred or acquired in the name of a third party with the taxpayer's funds. Some state laws may not recognize transferee NFTL without the judicial process or it may not be possible to show that the taxpayer acquired the property.
2. If the transferee NFTL is not possible, but facts show that the taxpayer treats the property as his or her own, a nominee NFTL may be filed. District Counsel will advise which type of NFTL to file. Consider the following circumstances in developing your case:
  - the taxpayer is paying maintenance expenses
  - using the property as collateral for loans
  - paying state and local taxes on the property.
3. You may not file a nominee or transferee NFTL without the written approval of District Counsel.
  - Cases should be developed to withstand court challenge.
  - Focus on the conveyance of the title.
  - Requests should be for advice as to the need for a supplemental assessment, a new notice and demand and the language to be incorporated in the NFTL or levy.
  - Prepare a report containing all of the facts of the case to accompany the request.
4. Subsequent enforcement action is at the district's discretion once District Counsel has approved application of the nominee or transferee theory in a case.
5. In determining what additional enforcement action should be taken, consideration much given to the confusion in the chain of title and redemption rights by the taxpayer. These circumstances may depress the sale of the property.
6. A judicial lien foreclosure or seizure followed by suit to foreclose the NFTL will generally bring a greater sale price particularly for real property.
7. The administrative seizure and sale process may be used if prompt action is needed to protect the government's interest. If there is any doubt, request an opinion from District Counsel.

### **[5.12] 1.18.2 (02-22-2000)**

#### **"Alter Ego" Doctrine--Corporations**

1. The "alter ego" (other 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 an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote an injustice.
2. There are two elements to the alter ego doctrine:
  - A. Unity of ownership and interest,

- B. Fraud or inequity would result from the failure to disregard the corporate entity.
- 3. There is no exact formula as to when the doctrine can be applied. Some factors pertinent to a determination to disregard the corporate entity 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 undercapitalization.
- 4. Explore the possibility of using the administrative process of a jeopardy transferee assessment, emergency lien foreclosure action or emergency transferee or fraudulent conveyance suit before filing a NFTL in the name of an alter ego.
- 5. Do not file a NFTL in the name of an alter ego without legal review, advice and written direction from District Counsel as to:
  - the need for a supplemental assessment,
  - a new notice and demand, and
  - the language to be incorporated in the NFTL and levy.

**[5.12] 1.18.3 (02-22-2000)**

**Partnership**

1. 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. See IRC 6321 and 6303.
2. Partnerships normally have one employer identification number (EIN).
- 3.

If	Then
a single partnership has multiple outlets or businesses	one EIN should be assigned to that partnership.
the same person established several partnerships	each partnership should be assigned a different EIN.
there is any doubt that a change of name will effect a change in entity, i.e., deaths of a partner, withdrawal or addition of a partner for FICA or FUTA purposes	request an advisory opinion from District Counsel through appropriate channels. See IRM 5.1 (General), Request for Entity Change, for entity change procedures. BMF must reflect the name change.
District Counsel advises that a new form should be submitted	prepare either a Form SS-4, Application for Employer Identification Number or Form 2363, Master File Entity Change
adding to or changing a partnership entity	list all partners adding "PTR" following the name of the last partner.

A supplemental assessment will not be required when adding an individual partner's name to the partnership assessment. The Service will rely on the preposition that the assessment against the partnership creates a FTL against each individual partner.

**[5.12] 1.18.4 (02-22-2000)**

**Limited Liability Corporation**

1. Do not add the names of members/owners of limited liability corporations (LLC) to notices of federal tax lien because they are not directly liable for employment tax debts incurred by the LLC. This also applies when the LLC is treated as a partnership for tax purposes under "check the box" regulations.
2. Use the "sole proprietor" option when requesting liens through ALS.



## **[5.12] 1.19 (02-22-2000)**

### **Place for Filing of Notice of Federal Tax Lien (Overview)**

1. A Notice of Federal Tax Lien (NFTL) encumbers motor vehicles, airplanes and vessels in the same manner as other personal property when a NFTL is filed in the recording office designated by state law as the residence of the taxpayer.
2. Do not file Form 668(Y) with Departments of Vehicles, FAA or the U.S. Coast Guard or similar agencies. (See IRC 6323(f)(5).)

## **[5.12] 1.19.1 (02-22-2000)**

### **Place for Filing of Notice**

1. Under state laws:
  - A. Real property--file in one office within the state (or county, or other governmental subdivision) as designated by the laws of the state, where the property subject to the Federal Tax Lien (FTL) is located.
  - B. Personal property--whether tangible or intangible, file in one office within the state (or county, or other governmental subdivision), as designated by the laws of the state, where the property is located (located at the residence of the taxpayer at the time the NFTL is filed). See Section 1.15 and IRC 6323(f)(1)(A)(ii).
2. With clerk of district court--File in the office of the clerk of the United States district court for the judicial district where the property subject to the FTL is located, whenever the State has not by law designated one office which meets the requirements of (1) above; or
3. With recorder of deeds of the District of Columbia--File in the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

## **[5.12] 1.19.2 (02-22-2000)**

### **Filing of Notice by Mail**

1. Arrange with local officials for the acceptance (for filing) of NFTL by mail. If necessary, have a transmittal accompany Parts 1 and 2 of the NFTL, Form 3915, Processing Notices and Releases of Federal Tax Lien and Other Related Certificates. A self-addressed postage paid envelope, E-25C, will be enclosed for the return of Part 2.
2. If arrangements cannot be made with local officials to accept NFTL for filing by mail or circumstances dictate immediate action, NFTL should be delivered personally to the proper recording official.
3. Receipted copies will be returned to the Special Procedures function (SPf) or other designated function at the districts discretion.
4. Part 3 will be sent to the taxpayer as notification of filing.

## **[5.12] 1.19.3 (02-22-2000)**

### **Liens Filed in Other Districts**

1. A NFTL may be filed in any Internal Revenue district, regardless of where the assessment is outstanding. Form 2209, Courtesy Investigation, should be prepared to request an out-of-district NFTL filing, unless, because of time, a telephone or teletype request is necessary. The receiving district will prepare and file Form 668(Y), Notice of Federal Tax Lien through ALS. A TC 582 will automatically be generated.
2. The Form 2209 will contain sufficient information to enable the receiving district to properly prepare the NFTL and determine the proper place of filing. The Form 2209 must also indicate whether the NFTL is to reach real or personal property or both. This is necessary as the recording official may be different in certain states.
3. After recording, the receiving office should input the recording data onto their data base and transmit Part 2 of the NFTL with the recording data to the originating office.
4. The Form 2209 and Part 2 of the Form 668(Y) will be associated with the related TDA file.
5. Once modules are satisfied, a module satisfied notice will be generated to each district that previously requested a TC582. A systemic release will be generated automatically and will be forwarded to the proper recording office.

### **[5.12] 1.19.3.1 (02-22-2000)**

#### **ALS Other District Lien Filing**

1. Out of district liens may be filed using the Automated Lien System.
2. Call the receiving district to obtain the court identification number and the exact spelling of the recording office (including whether the input should be upper case, lower case, or initial caps).
3. The Form 668(Y) will be printed in the receiving district with the name and phone number of the employee requesting the lien filing.
4. The appropriate lien notice (L3171 or L3172) will be generated and mailed from the originating district.

### **[5.12] 1.20 (02-22-2000)**

#### **Notice of Claim--Documented Vessels**

1. A documented vessel:
  - at a minimum weighs over 5 tons,
  - is used for commercial purposes, and
  - is owned by a United States citizen.
2. These vessels are registered with the U.S. Coast Guard under the vessels name rather than the name of the owner.

### **[5.12] 1.20.1 (02-22-2000)**

#### **Documented Vessel Abstract**

1. An abstract obtained from the National Vessel Documentation Center (NVDC) will provide the:
  - history of the vessel
  - bills of sale
  - Maritime liens,
  - satisfaction of mortgage
  - assignments and amendments on file.
2. A payment of \$25 (money order only) must accompany each request for an abstract that is obtained from the National Vessel Documentation Center (NVDC).
3. Prepare a letter or FAX to NVDC with the following information:
  - official number of vessel, if known,
  - Service employee's name and telephone number,
  - location where the abstract should be sent
  - owner's name, hull number and name of vessel
4. If requesting an abstract via FAX or by telephone, contact the NVDC at (800) 799-8362 to obtain payment instructions,
5. Written requests should be sent to National Vessel Documentation Center, 2039 Stonewall Jackson Drive, Falling Waters, West Virginia 25419-9502.

### **[5.12] 1.20.2 (02-22-2000)**

#### **Notice of Claim**

1. Determinations to file a Notice of Federal Tax Lien on taxpayers who own documented vessels requires that a Notice of Claim (Exhibit 5.12.1-3) be filed with the U.S. Coast Guard with a copy of the Notice of Federal Tax Lien attached.
2. Filing a Notice of Claim assures that the documented vessel can be tied to the owner and that the vessel cannot be transferred out from under the Notice of Federal Tax Lien.

#### **NOTE:**

***A Notice of Claim can be filed ONLY if a preferred mortgage exists on the vessel.  
The Notice of Federal Tax Lien does not constitute a preferred mortgage.***

3. The Notice of Federal Tax Lien must be filed in accordance with IRC 6323(f) even though you are filing a Notice of Claim.

4. Prepare the Satisfaction of Mortgage document (Exhibit 5.12.1-4) when the liability is satisfied.
5. Forward the notarized document to the U.S. Coast Guard where the Notice of Claim was filed.

### **[5.12] 1.21 (02-22-2000)**

#### **Assistance Requests**

1. Certain tax treaties have clauses where our treaty partners can request assistance from the Service to collect taxes owed them by individuals residing in the United States. The mutual collection treaty partners are France, Sweden, Denmark, Canada and the Netherlands.
2. All MCARs from the treaty partners are received and processed by the Assistant Commissioner (International), Office of Taxpayer Service and Compliance, Collection Division, Special Procedures function, Headquarters Branch (CP:IN:D:C).
3. The Service can take distraint action against U.S. assets to collect these foreign taxes. To do this, it may be necessary to file a Notice of Federal Tax Lien.

### **[5.12] 1.21.1 (02-22-2000)**

#### **Procedures for Filing**

1. The filing of the Notice of Federal Tax Lien (NFTL) will be limited to real property only, unless a seizure of personal property is anticipated. See IRM 5.1 (General).
2. A request for NFTL filing can be initiated by CP:IN:D:C via Form 2209, Courtesy Investigation, or by the district revenue officer working a MCAR investigation. These requests will not be processed through ALS. These NFTLs must be prepared manually.
3. CP:IN:D:C will maintain a control file of all Notices of Federal Tax Lien that are filed on MCARs.

### **[5.12] 1.21.2 (02-22-2000)**

#### **Preparation of MCARs on Form 668(Y)**

1. The district office will process all MCAR lien requests as follows:
  1. Use the format shown in Exhibit 5.12.1-5, as a guide to prepare Form 668(Y), Notice of Federal Tax Lien. The information needed to complete Form 668(Y) is provided with the MCAR investigation sent to the district office.
  2. Contact CP:IN:D:C to secure the serial number for the NFTL. CP:IN:D:C will keep a control log of all serial numbers issued. Do not use any other number except the serial number provided by CP:IN:D:C.
  3. Use the Taxpayer Control Number (TCN) assigned to the MCAR assessment by CP:IN:D:C as the Identifying Number on Form 668(Y) if the Taxpayer Identification Number (TIN) is not known.
  4. Use the Last Day for Refiling collection statute date provided by the treaty partner.
2. The Notice of Federal Tax Lien will be filed in the appropriate recording office. Return a copy of the NFTL to CP:IN:D:C.
3. Do not request input of TC 582 or TC 360 for the NFTL filing fee. NFTL fees are not assessed against MCAR taxpayers.

### **[5.12] 1.21.3 (02-22-2000)**

#### **Procedures for Refiling and Release**

1. CP:IN:D:C will be responsible for determining whether to refile these NFTLs and for requesting the release of NFTLs even though district offices file NFTLs for MCARs.
2. Notices of Federal Tax Lien for refiling and Certificates of Release will be:
  1. Prepared by CP:IN:D:C
  2. Forwarded to the appropriate district office for recording.
3. No TC 582 or TC 360 will be input and no NFTL fees will be assessed against MCAR taxpayers.

### **[5.12] 1.22 (02-22-2000)**

#### **Copies of Notices to Third Parties**

1. The Federal tax lien (FTL) under IRC 6321 attaches to "all property and rights to property" of the person or entity liable for the tax. This very broad statutory language has been interpreted as including all real,

- personal, and intangible property of greatly varying natures, as well as future interests, and property acquired by the taxpayer after the lien has come into existence.
2. Since the FTL attaches to after-acquired property the FTL may be enforced administratively by levy; that is, use of a levy to collect taxes is not limited to property or rights to property of the taxpayer in existence at the time the assessment is made.
  3. The effect of a levy on other than wages and salary is not prospective; that is, service of a levy or notice of levy upon the taxpayer or a third person, respectively, results in a seizure of property or rights to property in possession of either party at the time of service of levy. Should property come into possession of the taxpayer or third party following such service, another levy should be made to seize the property, notwithstanding the fact that the Federal tax lien attaches itself automatically to such after-acquired property.
  4. In order to establish uniformity in giving the required actual notice or knowledge, a copy of the appropriate Notice of Federal Tax Lien (NFTL) will be delivered to the person(s) requiring the notice.

### **[5.12] 1.22.1 (02-22-2000)**

#### **Insurance Companies**

1. A copy of the filed NFTL lien should be furnished to an insurance company to meet the actual notice requirement described in Chapter 5.6.1.

### **[5.12] 1.23 (02-22-2000)**

#### **Disclosure of Amount of Outstanding Lien**

1. District directors are authorized to disclose information concerning the amount of the outstanding obligation secured by the FTL to any person who demonstrates that he/she possesses a right or intends to obtain a right in the property. See (11)(13)0:(2) of IRM 1272, Disclosure of Official Information Handbook.
2. It is suggested that district directors designate to Chiefs, Special Procedures function, SPf advisor/reviewers group managers and revenue officers, authority to determine whether or not to disclose such information.
3. Any person, other than the taxpayer, desiring information as to the amount of the obligation outstanding in order to decide whether to acquire the property covered by the FTL (when a NFTL has been filed) must submit a written request (see IRC 6103(k)(2)) to the district director stating the reasons the information is desired and properly identifying the NFTL in question.
4. The requested information will be furnished using Letter 1038(DO), Response to Inquiries About Release of Federal Tax Lien.
5. The Chief, SPf and employees designated the authority to execute Forms 668(Y), may disclose the amount of the outstanding obligation secured by the NFTL to title companies, lending institutions, etc. If the inquiry is for the purpose of satisfying the outstanding FTL, a written request is not required per IRC 6103(k)(6).

### **[5.12] 1.24 (02-22-2000)**

#### **Automated Lien System Filing Requests**

1. All Notices of Federal Tax Liens (NFTL), including Estate and Gift tax liens, should be filed through the Automated Lien System. See the ALS User's Guide for additional information.
2. Manually prepared NFTLs should be kept to a minimum:
  1. Provide the ALS unit with the information necessary to prepare the NFTL.
  2. Secure the SLID # and include on the NFTL. Securing the SLID # ensures that the lien filed indicators and TC 360 input requests are generated for NFTLs when prepared through the ALS.
  3. Forward the recording information to the ALS unit after the NFTL has been recorded.
3. Parts 1 and 2 will be sent to the recording office. Part 3 will be mailed to the taxpayer. Part 2 will be forwarded to the requestor unless instructed otherwise by the district.
4. Internal Revenue Regulations permit Electronic Lien Filing (ELF) with recording jurisdictions. Contact the Regional and National Office for details.

## **[5.12] 1.25 (02-22-2000)**

### **Fees Input to IDRS**

1. Input fees to file or release manually prepared NFTLs when the NFTL is forwarded for input.

#### **NOTE:**

TC 360 should always appear on a module that has a TC 582 lien-filed indicator (LFI) present.

2. Input of fees for systemically generated NFTLs is accomplished by having ALS generate a file to the service center. Files are generated weekly on Friday and include fees through close of business Wednesday of the same week.
3. A 24 hour delay of the transaction code going to the data file allows for corrections resulting from quality review of NFTL documents.
4. A listing will generate for transaction code 360 associated with NMF accounts. A request for posting MARS must be prepared and forwarded to the service center on Form 3244 (Payment Posting Voucher).

## **[5.12] 1.26 (02-22-2000)**

### **Lien Filed Indicators**

1. Lien filed indicators should appear on any module that has a TC 582 posted.

## **[5.12] 1.26.1 (02-22-2000)**

### **Input of Indicators to IDRS**

1. The lien-filed indicator (LFI) on ALS generated NFTLs will be systemically input through IDRS to all tax modules that are included on a notice of federal tax lien. The LFI is the primary means by which districts are notified that modules are satisfied and that a release of the NFTL is in order.
2. The input of LFI's is accomplished by having the automated system generate and forward a tape or file to the Service Center for input. This tape or file will be generated weekly and will include ACS NFTLs to take advantage of the LFI upload tape.
3. A T/C 582 is not generated to NMF accounts.
4. Request input of TC 582 for a lien file indicator and TC 360 for recording fees for all manually prepared liens, including estate tax liens, if applicable.

## **[5.12] 1.26.2 (02-22-2000)**

### **Removing Indicators**

1. Whenever an FTL is released, the related LFIs must be removed from IDRS/Master File. However, if the TDA is non-Master File and no LFI is present for that module on IDRS, no action is necessary.
2. The LFI is removed when the automated system generates a file or tape to the service center for the input of TC 583's.

## **[5.12] 1.27 (02-22-2000)**

### **Suspense File**

1. When the Parts 1 and/or Part 2 of Form 668(Y) are returned from the various recording offices, they should be forwarded to SPF or other designated function.
2. Input court data into the database as soon as possible after receipt.
3. Forward Part 1 or 2 to the requester.
4. The Automated Lien System (ALS) contains a report that will identify NFTLs that have been sent to a recording office but which, after a given period of time, have not been updated with the recorded data. See IRM 114.1 (Compliance and Customer Service Manager's Handbook) for SPF procedures. ALS report and log information is found in both the ALS User's and Manager's Guides.

## [5.12] 1.28 (02-22-2000)

### Annual Purge

1. NFTLs must be removed from the database one year after the date they are satisfied or have expired. This is accomplished by using the purge module of ALS. Periodic purging of the database removes outdated information and improves overall system performance. Verify that backups have been performed before proceeding with the purge.

## [5.12] 1.29 (02-22-2000)

### Maintenance of Notice of Lien

1. The Chief, Special Procedures of other designated collection function assigned administration of the ALS database will have primary responsibility for maintaining a file of recorded notices of lien and related documents.
2. To guard against loss of data, the automated file must be backed up. The back up media should be stored so that it is protected from loss or destruction.

## [5.12] 1.29.1 (02-22-2000)

### Correcting Notices of Federal Tax Lien Documents (Overview)

1. The ALS database should always contain Notice of Federal Tax Lien (NFTL) records that mirror information contained in the document that has been filed.
2. The IDRS name control displayed on ALS does not appear on the Notice of Federal Tax Lien and can be changed when found to be different than the name control on IDRS or masterfile.
3. Changes will not be made to any other part of the record after it has been mailed.

## [5.12] 1.29.2 (02-22-2000)

### Correcting Errors

1. Some errors, such as an incorrect name, will make the Notice of Federal Tax Lien invalid while other errors such as TIN, MFT, and PERIOD will prevent the module satisfaction notification from posting.
2. Incorrect NFTLs must be linked to either a corrected NFTLs and/or corrected information.
3. Module satisfaction notification must be associated with correct TIN/name control and MFT/period and tied back to the incorrect NFTL so that the Certificate of Release can be generated for BOTH the correct and incorrect notice upon satisfaction or expiration. A "dummy" NFTL called a "Not to be Filed" lien is prepared by the ALS unit to do this.
4. Guidance is provided in IRM 57(16)0, Legal Reference Guide, regarding errors in the taxpayer's name as it appears on the notice.
- 5.

If	Then
it is determined that the NFTL should be corrected	file a new NFTL.
the error on the original NFTL was made to the name control portion of the name line only and a new NFTL is not filed	change the name control on the original NFTL record.

## [5.12] 1.29.3 (02-22-2000)

### Other Types of Errors

1. Listed below is a chart that explains how to correct other types of errors.
- 2.

ERROR TYPE	EXPLANATION
Taxpayer Identification Number (TIN)	This error type does not require a corrected NFTL document. Prepare a "dummy NFTL" in the database.
MFT and/or Period	This type of error does not require a correct NFTL document. Prepare a "dummy lien" in the database.

Assessment Date	A corrected NFTL document is required. The life of the NFTL is directly related to this date. The last day for refiling is computed within ALS based on the assessment date. If the assessment date is incorrect, the last day for refiling will be computed incorrectly. Do not prepare a "dummy NFTL."
Dollar Amount	No action is required.
Address	No action is required to correct the original NFTL. If the city, state and/or zip code are incorrect, a new NFTL may have to be filed in the correct recording office.

**[5.12] 1.30 (02-22-2000)**

**Resolution of NFTL Related Unpostable Transactions (Overview)**

1. There are a number of reasons why transactions do not post. Below we discuss the unposted transaction and how it should be resolved.

**[5.12] 1.30.1 (02-22-2000)**

**End of Day (EOD) Control List**

1. Weekly each district uploads to the service center all transaction code (TC) 582 and 583 for the previous week's created and released Notices of Federal Tax Liens (NFTL). These transactions are input to the Integrated Data Retrieval System (IDRS) through END of Day (EOD) processing. EOD processing is the first validity check that is performed on any transaction attempting to post to IDRS.
2. TC 582 and 583 transactions which drop from EOD processing will appear on an EOD control list. This list will be used by the district to make appropriate corrections to allow the transaction to be reinput.
3. EOD control lists are created in the service center computer room and forwarded to the Service Center Collection Branch. SCCB separates the records by district office and forwards the list to the Automated Lien System (ALS) unit manager in the appropriate district.
4. Districts will review the dropped transactions, determine the reason the transaction dropped and take necessary corrective action to reinput. The most common errors will be name control/TIN and MFT/period mismatch, much like unpostables.
5. The list will show the following:
- 6.

LINE...	WILL...
1	indicate that the record dropped from processing.
2	Show the reason the record dropped.
3	have the following data fields marked:
	Taxpayer Identification Number (TIN),
	Masterfile Tax (MFT),
	Tax Period,
	Name Control,
	Transaction Code and
	District.

**[5.12] 1.30.2 (02-22-2000)**

**Unpostable Resolution**

1. District office ALS will receive a Nullified Distribution List from the service center for resolution weekly. This is a list of TC 582 which have not posted.
2. Computer generated source documents for unpostable TC 360 will also be received weekly. TC 360 will not come to the district office on a nullified distribution list.
3. Unpostables will be worked within 5 workdays of receipt.
4. The most common unpostable conditions are TIN/name control mismatch and MFT/period mismatch. Some of the reasons these conditions occur are:
  - A. An input document was prepared incorrectly or data was transcribed incorrectly.

- B. The NFTL request was prepared with incorrect information and generated an incorrect systemic transaction record.
- 5. To correct the unpostable condition, do the following:
  - 1. Check the ALS to determine if the information on the unpostable record matches the corresponding information on the ALS NFTL record.
  - 2. Make the appropriate corrections to the unpostable and reinput the transaction code with the correct information, if the information on the unpostable does not match.
  - 3. Check IDRS and/or masterfile to attempt to determine what the correct information is if the information matches.
  - 4. Reinput the unpostable record with the correct information.

**NOTE:**

If the ALS NFTL record is incorrect refer to Section 1.51, Correcting Notices of Federal Tax Lien Documents for the appropriate procedures.

- 6. Take no further action to correct unpostables for TC 360 transaction ONLY, with an unpostable code of 197 (IMF) and unpostable code 347 (BMF). These transactions unposted because the TC 360 attempted to post to an inactive account. Reinput the income TC 360 unpostables and remove any with UPC 197 and UPC 347.
- 7. Close the open IDRS control base as part of the resolution process. SCCB will send SPF a Case Control Age List weekly of SPF cases by IDRS employee number and age of case. This listing may be used by SPF as a monitoring device that open control bases are being closed timely.
- 8. SPF will receive Accounts Maintenance Transcripts reflecting a TC 360 and there is no liability open on the module where the TC 360 is posted. It should not be assumed that the TC 360 is automatically a NFTL fee. Upon receipt of the transcripts do the following:
  - 1. Research ALS to determine if the NFTL was filed for the taxpayer entity on the transcript.
  - 2. Input TC 582 if necessary and correct the TC 360 posting if the NFTL is found for this entity.

**Exhibit [5.12] 1-1 (02-22-2000)  
Lien Refiling Chart**

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	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	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	2-19	3-22	4-19	5-20	6-19	7-20	8-19	9-19	10-20	11-19	12-20	01-19
21	2-20	3-23	4-20	5-21	6-20	7-21	8-20	9-20	10-21	11-20	12-21	01-20
22	2-21	3-24	4-21	5-22	6-21	7-22	8-21	9-21	10-22	11-21	12-22	01-21
23	2-22	3-25	4-22	5-23	6-22	7-23	8-22	9-22	10-23	11-22	12-23	01-22



24	2-23	3-26	4-23	5-24	6-23	7-24	8-23	9-23	10-24	11-23	12-24	01-23
25	2-24	3-27	4-24	5-25	6-24	7-25	8-24	9-24	10-25	11-24	12-25	01-24
26	2-25	3-28	4-25	5-26	6-25	7-26	8-25	9-25	10-26	11-25	12-26	01-25
27	2-26	3-29	4-26	5-27	6-26	7-27	8-26	9-26	10-27	11-26	12-27	01-26
28	2-27	3-30	4-27	5-28	6-27	7-28	8-27	9-27	10-28	11-27	12-28	01-27
29	2-28	0-00	4-28	5-29	6-28	7-29	8-28	9-28	10-29	11-28	12-29	01-28
30	3-01	0-00	4-29	5-30	6-29	7-30	8-29	9-29	10-30	11-29	12-30	01-29
31	3-02	0-00	4-30	0-00	6-30	0-00	8-30	9-30	00-00	11-30	00-00	01-30

**LEAP YEAR ON REVERSE SIDE**

NOTE- When the assessment date is December 2 or later, go to January of the next year and add 10 years. IRS 6321  
 - (LIEN REFILING PERIOD IS: 9 YEARS 30 DAYS TO 10 YEARS 30 DAYS)

**Exhibit [5.12] 1-1 (02-22-2000)**

**Lien Refiling Chart**

		Leap Year		
(Reference: IRM 535(11).3)		JAN.	FEB.	
1	1-31		3-02	THE REMAINING MONTHS WILL BE THE SAME AS THE CHART ON THE REVERSE SIDE.
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	

Instruc To find the last day for refiling purposes, locate the month of the assessment date in the top horizontal  
 tions: heading and the day in the left vertical column. Go down and across until you locate the appropriate date.

**Exhibit [5.12] 1-2 (02-22-2000)**  
**Form 668-F**

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**Instructions for Form 668-F**

1. Enter identification number assigned by recorder to Form 668.
2. Enter identification number assigned by recorder to Form 668-F.
3. Serial number assigned to refiled notice to be prefixed with location code.
4. Recorder's identification number for refiling (enter after acknowledgment by recorder).
5. Filing/recording office at which Form 668-F is to be filed.
6. Date refiled (enter after acknowledgment by recorder).
7. Taxpayer's residence address at time of refiling, if known.
8. Manual signature of authorized delegate.
9. Title of delegate.

**Exhibit [5.12] 1-3 (02-22-2000)**

**(Reference)**

**Required by the Coast Guard--Notice of Claim of Lien**

---

Notice of Claim of Lien dated \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ is hereby filed by (name and address) ----, on the whole of the vessel \_\_\_\_\_ (Name) \_\_\_\_\_ . Official Number \_\_\_\_\_ , for the purpose of securing the payment of said debt which was caused by \_\_\_\_\_ sole owner(s) of the vessel for (what lien is for) \_\_\_\_\_ .

Date of creation of Lien \_\_\_\_\_

Signature and date

State of \_\_\_\_\_

I certify that I know or have satisfactory evidence that (name of person) \_\_\_\_\_ signed this instrument. On oath this person stated that he/she was authorized to execute the instrument and acknowledge it as the (title) \_\_\_\_\_ of the Internal Revenue Service for the Internal Revenue Service to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Signature of Notary: \_\_\_\_\_

**Exhibit [5.12] 1-4 (02-22-2000)**

**(Reference)**

**Satisfaction of Mortgage**

---

\_\_\_\_\_ do(es) hereby certify that a  
(MORTGAGEE)

certain indenture of Preferred Mortgage dated--made and executed by \_\_\_\_\_

(MORTGAGOR)

to secure payment of \_\_\_\_\_ dollars, on the whole of the vessel called \_\_\_\_\_ , Official Number \_\_\_\_\_ , and recorded in the office of the Documentation Officer at \_\_\_\_\_ , on (Date) \_\_\_\_\_ at ----, in Preferred Mortgage Book No. \_\_\_\_\_ , Instrument No. \_\_\_\_\_ , is paid and it do(es) consent that the same be discharged of record.

In testimony whereof, the mortgagee, \_\_\_\_\_

ha(s)(ve) hereunto set hand and seal.

(Date) \_\_\_\_\_

SIGNATURE

TITLE

STATE OF \_\_\_\_\_

COUNTY OR JUDICIAL DISTRICT \_\_\_\_\_

Be it known that on (Date) \_\_\_\_\_  
personally appeared before me \_\_\_\_\_  
to me known to be the \_\_\_\_\_ of the said corporation that executed the within and foregoing instrument and  
acknowledged the within instrument to be the free and voluntary act and deed of said corporation for the uses and  
purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument by direction of  
the board of directors of said corporation.

In testimony whereof, I have hereunto set my hand and seal

(Date) \_\_\_\_\_ .

Notary Public in and for the  
State of \_\_\_\_\_  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**Exhibit [5.12] 1-5 (02-22-2000)**  
**Notice of Lien (MCAR)**

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**Exhibit [5.12] 1-2 (02-22-2000)**  
**Form 668-F**

Form 668 (Y)

Department of the Treasury - Internal Revenue Service

Rev. January 1981

# Notice of Federal Tax Lien Under Internal Revenue Laws

District Serial Number For Optional Use by Recording Office

NAME OF DISTRICT

98YYNNNNN

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is given that taxes (including interest and penalties) have been assessed against the following-named taxpayer. Demand for payment of this liability has been made, 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.

Name of Taxpayer FIRST NAME LINE  
SECOND NAME LINE

Residence STREET ADDRESS  
CITY, STATE ZIP CODE

**IMPORTANT RELEASE INFORMATION:** With respect to each assessment listed below, unless notice of lien is refiled by the date given in column (d), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
INCOME	MM/DD/YY	98-NCA-NNNNN OR NNN-NN-NNNN	MM/DD/YY	MM/DD/YY	\$ NNNNNNNNNNNN
THIS AMOUNT IS DUE, OWING AND UNPAID TO THE GOVERNMENT OF [TREATY PARTNER] AND IS BEING COLLECTED ON BEHALF OF [TREATY PARTNER] UNDER THE PROVISIONS OF ARTICLE [NN] OF THE UNITED STATES - [TREATY PARTNER] INCOME TAX CONVENTION AND APPLICABLE PROVISIONS OF THE INTERNAL REVENUE LAWS OF THE UNITED STATES.					

Place of Filing NAME LINE  
STREET ADDRESS  
CITY, STATE ZIP CODE Total \$ NNNNNNNNNNNN

This notice was prepared and signed at \_\_\_\_\_ CITY, STATE \_\_\_\_\_, on this,

the NN day of MONTH, 19 YEAR.

Signature ORIGINATOR'S NAME Title ORIGINATOR'S TITLE

NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien.  
Rev. Rul. 71-408, 1971-2 C.B. 408

Form 668 (Y) (Rev. 1-81)

Part 1 - Kept By Recording Office

**Form 668-F**

(References: IRM 535(11).71 and 535(11).8)

Form <b>668-F</b> (Rev. February 1985)	Department of the Treasury — Internal Revenue Service <b>Notice of Federal Tax Lien Under Internal Revenue Laws</b>	
District _____	Serial number _____	For Optional Use by Recording Office

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is given that taxes (including interest and penalties) have been assessed against the following-named taxpayer. Demand for payment of this liability has been made, 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.

Name of taxpayer \_\_\_\_\_

Residence \_\_\_\_\_

① \_\_\_\_\_  
② \_\_\_\_\_

Kind of Tax (a)	MFT (b)	Tax Period Ended (c)	Date of Assessment (d)	Identifying Number (e)	Unpaid Balance of Assessment (f)

Place of filing \_\_\_\_\_ Total ▶ \$ \_\_\_\_\_

<b>Notice of Federal Tax Lien Refiling</b>	
IRS serial number _____ ③	Recorder's identification number _____ ④
Notice filed with _____ ⑤	Date _____ ⑥
Taxpayer's address (if different than shown above) _____ ⑦	
Signature _____ ⑧	Title _____ ⑨

This notice was prepared and signed at \_\_\_\_\_  
on this the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_  
Signature \_\_\_\_\_ Title \_\_\_\_\_

**Note:** Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien. Rev. Rul. 71-406, 1971-2 C.B. 409.

# Handbook 5.12

## Federal Tax Liens

### Chapter 2

#### Certificates Relating to Liens

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#### Contents

- [\[5.12\] 2.1 Certificates of Release \(Overview\)](#)
- [\[5.12\] 2.2 Conditions of Release](#)
  - [\[5.12\] 2.2.1 Liability is Satisfied](#)
  - [\[5.12\] 2.2.2 Liability is Unenforceable](#)
  - [\[5.12\] 2.2.3 Acceptance of a Bond](#)
  - [\[5.12\] 2.2.4 Acceptance of an Offer](#)
    - [\[5.12\] 2.2.4.1 OIC Funded by Lending Institutions](#)
  - [\[5.12\] 2.2.5 Trust Fund Recovery Penalty](#)
  - [\[5.12\] 2.2.6 Bankruptcy Discharge of One Party on a Jointly Filed Lien](#)
- [\[5.12\] 2.3 Request for Release of Lien by Taxpayer](#)
  - [\[5.12\] 2.3.1 Processing Taxpayer Requests for Lien Release](#)
  - [\[5.12\] 2.3.2 Satisfied or Unenforceable Taxpayer Accounts](#)
  - [\[5.12\] 2.3.3 Full Payment in Exchange for Immediate Lien Release](#)
- [\[5.12\] 2.4 Request for Release](#)
  - [\[5.12\] 2.4.1 Request for Release in Another District](#)
- [\[5.12\] 2.5 Erroneously Filed Notice of Federal Tax Lien](#)
- [\[5.12\] 2.6 Certificate of Release](#)
- [\[5.12\] 2.7 Disposition of Certificate of Release](#)
- [\[5.12\] 2.8 Authority to Execute Certificate of Release of Lien](#)
- [\[5.12\] 2.9 Other Certificates Relating to Liens \(Overview\)](#)
- [\[5.12\] 2.10 Discharge of Property](#)
  - [\[5.12\] 2.10.1 When to Issue a Certificate of Discharge](#)
  - [\[5.12\] 2.10.2 Right of Substitution of Value](#)
    - [\[5.12\] 2.10.2.1 District Counsel Approval](#)
    - [\[5.12\] 2.10.2.2 Applications for Discharge](#)
    - [\[5.12\] 2.10.2.3 Refund Deposit with Interest](#)
    - [\[5.12\] 2.10.2.4 Processing the Refund](#)
    - [\[5.12\] 2.10.2.5 Use of Deposit If Action to Contest Lien Not Filed](#)
  - [\[5.12\] 2.10.3 Civil Action to Release Erroneous Lien](#)
    - [\[5.12\] 2.10.3.1 Form of Relief--Substitution for Value](#)
    - [\[5.12\] 2.10.3.2 Interest Allowed on Refund of Deposit](#)
    - [\[5.12\] 2.10.3.3 Suspension of Running of the Statute](#)
- [\[5.12\] 2.11 Subordination of Lien](#)
- [\[5.12\] 2.12 Applications for Certificates](#)
  - [\[5.12\] 2.12.1 Submission of Applications](#)
  - [\[5.12\] 2.12.2 Investigation of Applications](#)
  - [\[5.12\] 2.12.3 Request for Relocation Expense Allowance](#)
    - [\[5.12\] 2.12.3.1 Procedures for Consideration of Relocation Expense Allowance](#)
  - [\[5.12\] 2.12.4 Report of Investigation](#)

- [5.12] 2.13 Preparation of Certificates
  - [5.12] 2.13.1 Certificate of Discharge in Bankruptcy Court Sales
- [5.12] 2.14 Certificate of Discharge in Foreclosure Proceedings
- [5.12] 2.15 Certain Government Agency Discharges
- [5.12] 2.16 Applications for Discharge (VA, SBA, or FHA)
- [5.12] 2.17 Issuance of Certificate of Discharge (VA, SBA, FHA)
- [5.12] 2.18 Issuance of Certificate of Discharge or Subordination
- [5.12] 2.19 Revocation of Certificates
- [5.12] 2.20 Non-attachment of Lien
  - [5.12] 2.20.1 Certificate of Non-attachment
  - [5.12] 2.20.2 Issuance of Certificate of Non-attachment
- [5.12] 2.21 Reinstatement of Lien
- [5.12] 2.22 Filing of Certificates and Notices
- [5.12] 2.23 Withdrawal of the Filed Notice of Federal Tax Lien (Overview)
- [5.12] 2.24 Taxpayer Requests
- [5.12] 2.25 Withdrawal is Warranted
- [5.12] 2.26 Denial of Withdrawal
- [5.12] 2.27 Notice of Lien Withdrawal Will Facilitate Collection of the Tax Liability
- [5.12] 2.28 Best Interest Withdrawal Provisions
- [5.12] 2.29 Installment Agreements and the Notice of Withdrawal
- [5.12] 2.30 Administrative Appeal Rights--Erroneous Lien Filings
  - [5.12] 2.30.1 Request for Administrative Appeal
  - [5.12] 2.30.2 Other Referral Requests
- Exhibit [5.12] 2-1 Form 668(Z)
- Exhibit [5.12] 2-2 Form 668(Z)
- Exhibit [5.12] 2-3 Pattern Letter 2411-P--Certificate of Duplication of the Federal Tax Lien
- Exhibit [5.12] 2-4 Pattern Letter 544
- Exhibit [5.12] 2-5 Form 669-A and Instructions
- Exhibit [5.12] 2-6 Pattern Letter P-403
- Exhibit [5.12] 2-7 Pattern Letter P-402
- Exhibit [5.12] 2-8 Letter 1629(P)
- Exhibit [5.12] 2-9 Letter 1628(P)
- Exhibit [5.12] 2-10 Withdrawal Notice
- Exhibit [5.12] 2-11 Withdrawal Cover Letter
- Exhibit [5.12] 2-12 Pattern Letter 2424
- Exhibit [5.12] 2-13 Pattern Letter 2423
- Exhibit [5.12] 2-14 Form 668(Z)
- Exhibit [5.12] 2-15 Administrative Appeal of Liens
- Exhibit [5.12] 2-16 Pattern Letter 2421
- Exhibit [5.12] 2-17 Department of the Treasury -- Internal Revenue Service

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## **[5.12] 2.1 (03-22-2000)**

### **Certificates of Release (Overview)**

1. IRC 6325(a) requires the issuance of a release of Federal Tax Lien within 30 days of the date on which:
  - A. The liability is satisfied,
  - B. A bond is accepted, or
2. Employees authorized to execute the release must verify that the liability is satisfied or unenforceable.
3. Employees must use designated payment code (DPC) 07 when posting payments that are the result of a NFTL.

## **[5.12] 2.2 (02-02-1999)**

### **Conditions of Release**

1. Systemic releases will be generated when all modules on a NFTL are satisfied. Module satisfied notices are generated by Masterfile whenever a module containing a TC 582 has been satisfied. Satisfied notices are

produced weekly and must be processed within 48 hours of receipt. An analysis of the ALS database is completed systemically to determine if the Notice of Federal Tax Lien should be released.

2. Systemic releases will not be generated on NMF Accounts. Revenue officers must request a manual release through the unit responsible for the Automated Lien System (ALS) for all assigned NMF cases.

### **[5.12] 2.2.1 (02-02-1999)**

#### **Liability is Satisfied**

1. Issue of a release of a NFTL within 30 days after the taxpayer's outstanding obligation covered by the lien (including any interest, additional amount, addition to the tax, or assessable penalty, together with any additional costs that may have accrued) is fully satisfied by payment or by abatement. See 2(11)1 of IRM 57(16)0, Legal Reference Guide for Revenue Officers and IRC 6325(a)(1).
2. A NFTL may be released when the aggregate unpaid balance, including accruals, does not exceed the amount in 372 of LEM V.
3. Where payment is made by personal check, the 30-day release period will begin after 7 working days. This will permit sufficient time for the check to clear. A release may be issued immediately upon presentation of the canceled check.
4. Accounts satisfied by cash, money order, certified check, cashier's check or guaranteed draft drawn on any organization that is authorized to do business under state or federal laws relating to financial institutions, may be released immediately upon payment.
- 5.

#### **If**

the District Director has reason to doubt the financial stability of an institution,

a guaranteed draft is not duly paid,

payment is received to secure a release, certificate of discharge or subordination,

#### **Then**

he may reject the tender of the institution's guaranteed draft.

the United States will have a lien on all assets of the institution in the amount of the draft.

use the designated payment code of 07 (DPC-07) when preparing the posting voucher.

### **[5.12] 2.2.2 (02-02-1999)**

#### **Liability is Unenforceable**

1. The word "unenforceable" means unenforceable as a matter of law, and not merely uncollectible.
2. NFTL filed on forms revised 12/82 or later do not require that a separate certificate of release be issued when the statutory period for collection has expired unless the NFTL has been refiled or a request is made for a separate release.
3. NFTL refiled on Form 668-F, Notice of Federal Tax Lien, are not self-releasing. A certificate of release must be filed when the liability becomes unenforceable.

### **[5.12] 2.2.3 (02-02-1999)**

#### **Acceptance of a Bond**

1. Issue a release of a NFTL within 30 days of accepting a bond based on 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, in the discretion of the district director, collateral may be accepted within established limits (see IRC 7101). The acceptability of a surety, other than a Treasury approved surety, will be determined on a case by case basis.

### **[5.12] 2.2.4 (03-22-2000)**

#### **Acceptance of an Offer**

1. When an offer in compromise, including a collateral agreement, is accepted, the NFTL will be released, when:
  - A. the payment of the offered amount including any accrued interest, has been paid;



- B. all other terms and conditions of the offer are in compliance at the time the release is requested. This includes refund recoupment, collateral and future compliance issues.
2. Requests for the issuance of a certificate of release may be made by those OIC Units with ALS access. These requests will appear in the lien manager's queue for approval.
  3. OIC Units without ALS access will FAX supporting documentation to the appropriate lien unit. Requests for releases will not be approved until this action is taken.
  4. Only those offers that do not have extenuating circumstances, e.g., innocent spouse, non-petitioning spouse, co-obligors, etc., should be requested using ALS. See Exhibit 5.12.2-2.

#### **[5.12] 2.2.4.1 (03-22-2000)**

### **OIC Funded by Lending Institutions**

1. When the offered amount is paid by a lending institution, request that the certificate of release be prepared by the Special Procedures function. The designated SPf employee will sign the certificate of release. **Do not date, the certificate will be dated upon receipt of payment.**

#### **NOTE:**

SPf must be instructed not to mail the release to the recording office.

2. SPf will forward the certificate of release to the assigned revenue officer at the time the taxpayer is informed that his 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.
4. Provide the taxpayer Notice 48 that explains the process to have the certificate of release recorded.
5. Forward a copy of the certificate of release to SPf to update the ALS database.

#### **[5.12] 2.2.5 (02-02-1999)**

### **Trust Fund Recovery Penalty**

1. Issue a Certificate of Release of Federal Tax Lien to the nonpaying officer(s) on a trust fund recovery penalty assessment when one officer has fully paid the liability. This will be done even though the liability has not been abated pending the expiration of the statutory period within which a claim for refund by the paying officer may be made.

#### **[5.12] 2.2.6 (02-02-1999)**

### **Bankruptcy Discharge of One Party on a Jointly Filed Lien**

1. When one party of a jointly filed NFTL files bankruptcy and is discharged, a transaction code 400 will be used to adjust the joint account.
2. The TC 400 will not cause the module to go to Masterfile status 12 and therefore the module will not cause a notification of satisfaction to be passed to the Automated Lien System (ALS). The jointly filed NFTL will not be released.
3. A manual Certificate of Release will be prepared. See Exhibit 5.12.2-1 and 5.12.2-2.

#### **[5.12] 2.3 (02-02-1999)**

### **Request for Release of Lien by Taxpayer**

1. Procedures for requesting release of Lien by the taxpayer are described in this section.

#### **[5.12] 2.3.1 (02-02-1999)**

### **Processing Taxpayer Requests for Lien Release**

1. Issue a certificate of release within 30 calendar days of receipt of a properly completed request in the district where the NFTL is filed. Any request which is incorrect or incomplete will not trigger the 30 day release period.
2. Notify the taxpayer when additional information is needed to identify the NFTL to be released or give the reason why a certificate of release will not be issued.

3. Timely release of the NFTL is essential. Under the Taxpayer Bill of Rights, Section 6240 (new IRC 7432), taxpayers are provided with the right to sue the Federal Government if the Service knowingly or negligently fails to release a NFTL. 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.
4. Prior to being awarded damages, the taxpayer is required to request a release of NFTL in writing.
5. Publication 1450, Request for Release of Federal Tax Lien, describes the conditions under which a Certificate of Release of Federal Tax Lien may be issued and the required content of the request.
6. An immediate or expedite release will be defined as one requested when the liability has been satisfied for a period beyond 30 days from the date of satisfaction or when the taxpayer wants to pay the liability to secure a release for such things as the transfer of property or the completion of other financial transactions.
7. Occasionally, the Service erroneously files duplicate NFTL and the taxpayer may request the release of the duplicate. If the liability has not been satisfied, respond to the taxpayer using Pattern Letter P-2411. This pattern letter will act as a release and filing will be at the option of the taxpayer. See Exhibit 5.12.2-3.

### **[5.12] 2.3.2 (02-02-1999)**

#### **Satisfied or Unenforceable Taxpayer Accounts**

1. Follow these procedures:
- 2.

<b>If</b>	<b>Then</b>
the taxpayer states that the liability is satisfied or unenforceable	check ALS to determine if a release has been issued.
a release has not been issued, the liability satisfied and the last date for refile or CSED has not passed	check IDRS to determine if the modules on the notice of lien are in status 12 and 30 days (37 days for personal checks) have elapsed from the date of payment. <ol style="list-style-type: none"> <li>1. Prepare a manual release.</li> <li>2. Forward a copy to ALS to update the database.</li> </ol>
the module is unenforceable,	<ol style="list-style-type: none"> <li>1. Prepare a manual release.</li> <li>2. Forward a copy to ALS to update the database.</li> </ol>
there is no record that the NFTL has been satisfied on ALS or IDRS	<ol style="list-style-type: none"> <li>1. Request that the taxpayer submit a written request to the attention of the Chief, SPF in the district where the NFTL was filed.</li> <li>2. Provide the taxpayer with Publication 1450, Request for Release of Federal Tax Lien.</li> </ol>

### **[5.12] 2.3.3 (02-02-1999)**

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

1. When a taxpayer wants to pay the liability in full to secure immediate release do the following:
  1. Ensure that funds are certified.
  2. Prepare a manual release.
  3. Forward a copy to ALS to update the database.
  4. Provide Notice 48 to the taxpayer.
  5. Advise the taxpayer that he/she will have to file the certificate if the release needs to be recorded immediately.

### **[5.12] 2.4 (02-02-1999)**

#### **Request for Release**

1. Districts are notified by the service center that accounts have been satisfied by means of a module satisfied notice. These notices are generated for all full paid modules that were in TDA or suspended status and a Lien Filed Indicator (LFI) input to the module. The majority of NFTL releases are generated by the systemic processing of the module satisfied notice.

2. The ALS system release module is used to enter lien release information not covered by a module satisfied notice. Basic audit trail data as well as how the lien was satisfied, the requesting employee, and the approving official is also displayed using the program. The lien release is assigned to the Manager's Queue for electronic signature and is produced when it has been approved.
3. If a liability is satisfied by cash or by a certified or cashier's check an immediate release of the NFTL is required, the reverse of Part 2 of the Form 668(Y), or other locally adopted form, should be immediately completed and sent to SPf or other designated function where the release will be prepared without waiting for the module satisfied notice to be received.
4. The need to request immediate release of liens should be restricted to:
  - A. taxpayer requests, or
  - B. pending property transactions that would be delayed by normal processing.
5. When the LFI is not present on a module, the reverse of Part 2 of Form 668(Y), or other locally devised form, should be completed and forwarded to SPf or other designated function, to generate the release.
6. Complete the reverse of Part 2 of Form 668(Y), or other designated form, to release NFTL with multiple periods listed where one or more of the periods were satisfied prior to January 1988. A module satisfied notice will not be issued to set the satisfied indicator in the lien database to systemically release the NFTL when the last period is satisfied.

### **[5.12] 2.4.1 (02-02-1999)**

#### **Request for Release in Another District**

1. An out-of-district release will be generated by a module satisfied tape or file sent to each district that had previously requested input of a TC 582. A systemic release will be generated automatically and forwarded to the proper recording office.
2. A telephone call will be made to SPf in the releasing district when immediate release is needed.
3. The receiving district will generate the release through the automated system and forward it to the proper recording office.

### **[5.12] 2.5 (03-22-2000)**

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

1. The definition of an erroneously filed NFTL (IRC 6326) is a NFTL filed during the presence of one of the following conditions:
  - A. the liability was satisfied prior to the NFTL filing;
  - B. Any tax liability which was assessed in violation of deficiency procedures in IRC 6213;
  - C. the statute of limitations for collection expired prior to filing of the NFTL.
  - D. the tax liability was assessed in violation of Title II of the United States Code (the Bankruptcy Code).
2. When an erroneous filing situation is identified, a Certificate of Release and Pattern Letter P-544, (Exhibit 5.12.2-4) must be issued by Special Procedures within 14 days, where practical. A memorandum outlining the facts should be prepared immediately and forwarded to SPf.
3. When circumstances warrant immediate action, the facts of the case should be given to Special Procedures by telephone for preparation of the letter. The memorandum must still be prepared and forwarded to SPf.
4. The letter should be signed by the District Director or other persons authorized to sign on his/her behalf. It is recommended that the authority be delegated to the Chiefs, Collection and Special Procedures function.
5. 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 authority to disclose the information.
6. Filing and release fees will be waived on erroneously filed NFTLs.

### **[5.12] 2.6 (02-02-1999)**

#### **Certificate of Release**

1. Issue a Certificate of Release only after all assessments covered by the NFTL meet the criteria for release even though a certificate could be issued when each assessment is satisfied or becomes unenforceable.
2. If a specific request is received from a taxpayer to issue a release of satisfied or unenforceable modules, forward the request to SPf or other designated function for a partial release of the NFTL.

### **[5.12] 2.7 (02-02-1999)**

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

1. Form 668(Z) or 668-F will be mailed or presented to the proper recording office.
2. Attach Form 3915, Processing Notices and Releases of Federal Tax Lien and Other Related Certificates, and mark the appropriate block on the form, when certificates are mailed and a transmittal document is necessary.
3. A self-addressed, postage and fee paid envelope will accompany certificates of release if a receipt is requested.
4. In some instances the taxpayer may insist upon personally recording the release. In those cases, the fee for filing the certificate of release of lien will not be collected from the taxpayer. Notice 48 is provided for transmitting certificates to taxpayer.
5. The payment of release fees should be handled the same as filing fees.

### **[5.12] 2.8 (02-02-1999)**

#### **Authority to Execute Certificate of Release of Lien**

1. District Directors may redelegate (IRC 6325) the authority to issue Certificates of Release of Federal Tax Liens.
2. Authority may be redelegated to the following officers.
  - A. Chief, Collection Field function
  - B. Group managers
  - C. Chief, Special Procedures function (SPf),
  - D. Revenue officers Grade 9 and above,
  - E. Advisors Grade 11 and above,
  - F. Other designated employees in charge of SPf,
  - G. Chief, Automated Lien System Unit or Section (no grade restriction).
3. Facsimile signature stamps may be used for large volumes of releases.

### **[5.12] 2.9 (03-22-2000)**

#### **Other Certificates Relating to Liens (Overview)**

1. There are a number of certificates that relate to the lien. The distinction between the certificates are:
  - A. Release--operates to completely extinguish the lien.
  - B. Discharge--removes certain property from the effect of a tax lien.
  - C. Subordination--relegates our lien to a lower priority position.
  - D. Non-attachment--denotes that a person of like or similar name is not, in fact, the taxpayer.
  - E. Revocation--issued when a lien was erroneously released or in connection with a breached collateral agreement with an offer in compromise.

### **[5.12] 2.10 (03-22-2000)**

#### **Discharge of Property**

1. The "discharge" of property from a Federal Tax Lien removes certain specifically described realty or personalty from the effect of the lien. The lien continues in full force and effect on all other property or rights to property of the taxpayer.
2. Types of discharges are:
  - IRC 6325(b)(1) bases the discharge on the fact that property of the taxpayer remaining has a fair market value double the sum of the amount of the FTL. Issue Form 669-A.
  - IRC 6325(b)(2)(A) bases the discharge on partial satisfaction of the liability determined to be not less than the value of the government's interest in the property. To qualify the taxpayer must be divested of all interest in the property. Issue Form 669-B.
  - IRC 6325(b)(2)(B) bases the discharge on evidence that the property of the taxpayer has no value to the government. Issue Form 669-C.

- IRC 6325(b)(3) bases the discharge on the proceeds of the sale being held as a fund subject to the liens and claims of the government in the same manner and priority as the property that was discharged.
- IRC 6325(b)(4) bases the discharge on the third party's right to substitute the value of the property in cash or an acceptable bond to cover the government's interest in the property.

### **[5.12] 2.10.1 (03-22-2000)**

#### **When to Issue a Certificate of Discharge**

1. You may issue a certificate of discharge if you determine whether the property remaining subject to the lien has a fair market value of at least double the amount of the unsatisfied tax liability secured by the NFTL, plus double the amount of all other liens and encumbrances having priority over the Government's lien.
  - A. Compute the amount necessary to issue a Form 669-A, Certificate of Discharge under IRC 6325(b)(1) as follows:
  - B.

Example:

\$1,000 Federal Tax Lien  
 5,000 Prior Encumbrances (Senior to the Federal Tax Lien)  
 100 Real Estate Tax Lien (Superpriority)  
 \$6,100 Total  
 × 2

\$12,200 Fair Market Value Necessary for Discharge Under IRC 6325(b)(1).

Issue Form 669-B, Certificate of Discharge Under 6325(b)(2)(A), 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 should not 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.

Issue a Form 669-C, when no equity determinations are made. Foreclosing mortgagees may use the administrative provisions rather than joining the United States as a party in a judicial foreclosure action. IRC 6325(b)(2)(A) or IRC 6325(b)(2)(B). The administrative process eliminates the government's right of redemption if the United States were joined as a party defendant. See 28 U.S.C. 2410(c). Further, the United States need not become involved in unnecessary litigation. In determining the value of the government's interest in property to be discharged from a Federal tax lien, consideration will be given to the "forced value," as distinguished from the "fair market value" of the property. IRC 6325(b)(2) Issue a certificate of discharge on any part of the property subject to a tax lien if the property is sold and, it's agreed to by the Internal Revenue Service, 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. IRC 6325(b)(3) 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. Refer to IRM 5.12.2.12.3 if taxpayers request consideration of "relocation expenses" as part of their discharge application under IRC 6325(b)(2)(A) and 6325(b)(3).

### **[5.12] 2.10.2 (03-22-2000)**

#### **Right of Substitution of Value**

1. At the request of the non-taxpayer owner 6325(b)(4), a certificate of discharge will be issued on any property subject to a lien if the non-taxpayer owner:
  - deposits an amount equal to the value of the government's interest in the property, or,
  - furnishes an acceptable bond in a like amount sufficient to cover the government's interest in the property.
2. Follow procedures outlined in IRM 5.6.1.2.1, for processing and disposition of the bond and Special Procedures function procedures are found in IRM 5.6.1.5.

3. Third parties have 120 days after the day the certificate of discharge is issued to file suit. If suit is not filed, the Service has 60 days to either apply the deposit, collect on the bond, or refund any excess amount.
4. If you receive a cashier's check, cash, or other type of certified funds:
  - Prepare a memo detailing circumstances of the case.
  - Prepare posting document and deposit money into account 4730, Miscellaneous Deposit Fund Account.
  - Transmit all of the above to service center Form 3210.
  - Retain a copy of all documents in SPf for follow-up.
5. A control number will be assigned by the service center. Associate received copy of Form 3210 with SPf file for future follow-up.
6. When the case is resolved prepare necessary documentation to either have the money refunded to the third party or applied to the taxpayer's account.

#### **[5.12] 2.10.2.1 (03-22-2000)**

#### **District Counsel Approval**

1. District Counsel must approve all third-party requests for discharge prior to issuance of the certificate.

#### **[5.12] 2.10.2.2 (02-02-1999)**

#### **Applications for Discharge**

1. Follow procedures outlined in IRM 5.12.2.12 and Publication 783 when providing taxpayer's information regarding applications for discharge of property under IRC 6325(b)(4).

#### **[5.12] 2.10.2.3 (03-22-2000)**

#### **Refund Deposit with Interest**

1. The government will refund the difference between the Service's estimated value and the actual value of that interest (at the overpayment rate) and will release the bond if it is determined 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 of such value.

#### **[5.12] 2.10.2.4 (03-22-2000)**

#### **Processing the Refund**

1. Use established procedures for processing overpayments.
2. Interest must be paid at the prevailing overpayment rate on any amount refunded.

#### **[5.12] 2.10.2.5 (02-02-1999)**

#### **Use of Deposit If Action to Contest Lien Not Filed**

1. If no action is taken within a 120 days after the certificate is issued under IRC 7426(a)(4), to contest the filing of the lien, within 60 days after the end of the 120 day period:
  - Apply the amount deposited or collect on the bond, the amount necessary to satisfy the liability secured by the lien.
  - Refund with interest at the overpayment rate, any amount that is not used to satisfy the liability.

#### **EXCEPTION:**

If the property is owned by the person with the unsatisfied liability on which the lien is based then the right for substitution does not apply.

### [5.12] 2.10.3 (03-22-2000)

#### **Civil Action to Release Erroneous Lien**

1. If a certificate of discharge is issued (IRC 6325(b)(4)) to any person for any property, then within 120 days of the certificate being issued, the person may bring 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.

### [5.12] 2.10.3.1 (02-02-1999)

#### **Form of Relief--Substitution for Value**

1. If the court determines that the Secretary's determination of the value in the property exceeds the actual value of the government's interest in the property under IRC 6325(b)(4), then the court will grant a judgment ordering:
  - A refund of the amount deposited,
  - A release of a bond to the extent that the aggregate amount exceeds the value determined by the court.

### [5.12] 2.10.3.2 (02-02-1999)

#### **Interest Allowed on Refund of Deposit**

1. In the case of a judgment which orders a refund of any amount, the Secretary will pay interest from the date the amount was received to the date of payment of the judgment.

### [5.12] 2.10.3.3 (02-02-1999)

#### **Suspension of Running of the Statute**

1. Suspend the collection statute of limitations where any assessment has been made for which a lien has been filed on any property. The running of the period of limitations under IRC 6502 will be suspended for a period equal to the period beginning on the date the person becomes entitled to a certificate of discharge and ending on the date that is 30 days after the earlier of:
  - the earliest date on which the Secretary no longer holds any amount as a deposit or bond under section 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] 2.11 (02-02-1999)

#### **Subordination of Lien**

1. IRC 6325(d)(1) and (2) provides for the subordination of any NFTL on any part of the property subject to the NFTL. This includes subordination of IRC 6324A liens.
2. IRC 6325(d)(3) provides a more liberalized criteria for subordinating IRC 6324B liens only. These three criteria are as follows:
- 3.

#### **If**

there is paid over to the Service an amount, on a dollar for dollar basis, equal to the amount of the NFTL or interest to be subordinated,

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

#### **Then**

issue Certificate of Subordination (Form 669-D). The typical situation would be the subordination of the lien to one who would furnish private financing on a part of the property.

issue Certificate of Subordination of Federal Tax Lien (Form 669-E). It is intended that this authority will be used by the Service under conditions similar to those under which an ordinary, prudent businessman would

facilitated,

it is determined that the United States will be adequately secured after subordination.

subordinate rights in a debtor's property in order to secure additional long run benefits.

issue Certificate of Subordination of Federal Estate Tax Lien (Form 669-F) in the case of any lien imposed by Section 6324B.

## **[5.12] 2.12 (02-02-1999)**

### **Applications for Certificates**

1. Any person desiring a certificate will submit to the District Director, in whose district the property is located, a written application in duplicate, executed under penalties of perjury. The form and content of the applications are contained in the following Publications:
  - A. Discharge--Pub. 783
  - B. Subordination--Pub. 784
  - C. Subordination of Estate Tax Lien--Pub. 1153
  - D. Non-attachment--Pub. 1024

## **[5.12] 2.12.1 (02-02-1999)**

### **Submission of Applications**

1. Applications for certificates, together with all necessary evidence, will be submitted directly to the Chief, Special Procedures function.
2. Examine each application for completeness. Publication 1153, How to Prepare Application for Certificate of Subordination of Federal Estate Tax Lien Under Section 6325(d)(3) of the Internal Revenue Code, requires two appraisals or estimates be submitted.
  - one of the estimated value of the property to be subordinated
  - one of the estimated value of the property remaining subject to the estate tax lien.
3. The district director may waive the appraisal requirement. If the application is incomplete or improper, the applicant should be promptly advised.
4. 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, provided the information submitted would enable a proper investigation to be conducted.
5. Any request for discharge of property subject to the lien imposed by IRC 6324A or 6324B received by SPf will be forwarded immediately to the Estate and Gift tax group manager for review and approval. If the request is approved, the Estate and Gift tax manager will advise the SPf by memorandum. The memorandum shall contain sufficient information to enable preparation of Pattern Letter 1886(P).
6. Use the AWCS to control and monitor the case.

## **[5.12] 2.12.2 (02-02-1999)**

### **Investigation of Applications**

1. SPf will use all available resources to determine whether to issue a certificate of discharge or subordination. 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 need not be conducted.
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.



**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,

the assessment was made in a foreign district,

the application is under IRC 6325(b)(2) and relates to a foreclosure proceeding,

Applications which require a field investigation will be investigated promptly by a revenue officer. The revenue officer assigned the investigation of the application will investigate and verify each item contained in the application, or which should have been contained in the

application. 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 for the revenue officer to investigate and verify subsequent encumbrances, even though they were recorded prior to the filing of the NFTL. With the creation of the Home Equity Line of Credit it is now advisable to investigate the facts of the case to determine the specific use of the mortgage funds when determining the priority of the Federal Tax Lien against the Home Equity Line of Credit.

**Then**

Form 2209, will be initiated. SPf will complete Form 3033, Investigation of Discharge or Subordination, on each investigation completed in SPf.

promptly notify the Chief, SPf for the district with the assessment that an investigation has been initiated and request the status of the NFTL(s) from which the discharge is sought.

the application should be flagged to indicate that the revenue officer's report must be returned to the SPf within 7 days.

- 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 passed onto 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 section 6323(h)(1). (See LRG 257 for further explanation) 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.
- C. If any payment is received while working the investigation, use designated payment code 07 (DPC-07) when preparing the posting voucher.

### [5.12] 2.12.3 (03-22-2000)

#### Request for Relocation Expense Allowance

1. In certain 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. Allowance of the expense would reduce taxpayer burden, increase the amount realized by the United States, facilitate the collection of the tax.

**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:
  - Property is limited to principal residences only,
  - Taxpayers owning multiple pieces of real property generally will not be considered,
  - Taxpayers must demonstrate an "inability to pay" relocation costs and provide documentation for specific expenses on Form ,
  - Relocation expenses are subject to limitations based on the National Standard "cost of living" locality tables, for the location of the new residence,

- IRS must receive a partial payment of the tax liability that will increase the amount realized and facilitate the collection of the liability. "No value" discharges will not be considered for relocation allowance.

### **[5.12] 2.12.3.1 (03-22-2000)**

#### **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 Expense Allowance. Supporting documentation may consist of:
  - Proposed rental agreement,
  - Estimates from moving companies,
  - truck rental estimates,
  - utility hook-ups, etc.
2. Reviewers will examine Form 12451 and attached documentation for completeness and contact taxpayers for any additional information.
3. A determination will be made to ascertain if the taxpayer has sufficient funds available to pay reasonable relocation expenses. Information such as financial statements, recent bank statements, and last file return could be used in this determination. Generally, cases in hardship 53 status (excluding closing codes 03 and 12) would 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 5300-50, 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

The relocation allowance will be the lesser of actual relocation expenses approved or the National Standard amount determined by the formula above. Adjustments in the maximum allowance may be considered on a case-by-case basis if extenuating circumstances exist, i.e., age, health, disability, etc. If the taxpayer is moving within the same locale, the 2.5 factor still would apply. In all instances, there **must** be net proceeds available to apply to the tax liability.

### **[5.12] 2.12.4 (02-02-1999)**

#### **Report of Investigation**

1. All revenue officer reports of investigation will be prepared on Form 3033, Investigation of Request for Certificate of Discharge or Subordination, promptly upon completion of the investigation. 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 Chief, Special Procedures function, for review and approval.
3. All reports will be submitted promptly upon completion. In the case of an application relating to a foreclosure proceeding, the report shall be completed within 7 days after receipt of the investigation and, in all other cases, within 30 days.

### **[5.12] 2.13 (02-02-1999)**

#### **Preparation of Certificates**

1. Prepare Forms 669-A (Exhibit 5.12.2-5) through F in duplicate. The unused area in the description portion of the form will be blocked or lined out so as to prevent the insertion of description of other property.
2. Deliver the original of executed Forms 669 to applicants.

3. If Forms 669-B or D are prepared, they should not be issued until the specified amount is received in the same form required for an immediate lien release.
4. Post payments using Designated Payment Code 07 (DPC-07) when preparing the posting voucher.
5. If the assessment is in a district other than that from which the certificate is issued, Forms 669 will be prepared in triplicate. The triplicate copy will be sent to the district with the assessment to be associated with the lien file.

### **[5.12] 2.13.1 (02-02-1999)**

#### **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 by 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.
2. When property is sold by a bankruptcy court, and the purchaser desires to obtain a certificate of discharge of Federal tax lien, the purchaser, or other interested party will be advised to submit an affidavit to the Special Procedures function (SPf) 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, a certificate should be issued on the appropriate form.

### **[5.12] 2.14 (03-22-2000)**

#### **Certificate of Discharge in Foreclosure Proceedings**

1. Foreclosing mortgagees should be encouraged to request discharges under IRC 6335(b)(2) 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 would eliminate costly litigation proceedings for the government.
2. Advise the foreclosing parties that they will be furnished a commitment letter within 30 days of receipt of their application.
3. Issue the certificate upon receipt of proof that the taxpayer has been removed of right, title or interest in the property.
4. Do not issue a certificate of discharge during the pendency of a suit. Notify the U.S. attorney of the request for a certificate.
5. Normally, a commitment letter should not be issued to parties who are nonjudicially foreclosing and have given adequate notice to the District Director under IRC 7425. If they wish to eliminate the government's right of redemption, they should be advised of the procedures for obtaining a release of that right. Instructions for application are in Publication 487.
6. Issue a discharge if a federal agency has foreclosed nonjudicially and given adequate notice when the agency feels that the lien remains a cloud on the title.

### **[5.12] 2.15 (03-22-2000)**

#### **Certain Government Agency Discharges**

1. To reduce litigation costs and make property readily marketable, the Veteran's 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 applies only to applications received from VA, SBA, or FHA requesting discharge from a junior federal tax lien on property which has been or is to be acquired by one of those agencies.
4. These procedures do not apply where 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] 2.16 (02-02-1999)**

#### **Applications for Discharge (VA, SBA, or FHA)**

1. Applications for certificates of discharge submitted by the VA, SBA, or FHA will be submitted in duplicate, 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. 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 days prior to a nonjudicial sale, an application for the discharge of the property will be made. No notice will be given under IRC 7525 in these cases.

### **[5.12] 2.17 (02-02-1999)**

#### **Issuance of Certificate of Discharge (VA, SBA, FHA)**

1. Form 669-C shall be delivered to the VA, SBA or FHA and the duplicate associated with the application, if it is found that the federal tax lien is valueless.
2. If it is determined that the federal tax lien interest has value, the SPf will prepare in quadruplicate 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. When the certificate is properly filed, the VA, SBA, or FHA will forward payment, in the form of a U.S. Treasury Check, to the District Director.
  - B. If payment is not received within (60) sixty days after the date the certificate was delivered, a follow up will be made to determine the approximate time payment will be received.
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 district director for cancellation. The canceled certificate will be associated with the application for discharge.

### **[5.12] 2.18 (02-02-1999)**

#### **Issuance of Certificate of Discharge or Subordination**

1. Special Procedures function (SPf), will review the revenue officer's report to determine the priority of the Federal tax lien and ensure that the information furnished is sufficient to issue a certificate of discharge.
2. Issuance of the certificate is conditioned upon the taxpayer's agreement that payments be applied in the best interest of the government as determined by the Service (Exhibit 5.12.2-6).
3. Issue certificates after approval of the revenue officer's report.
4. Retain a copy of the application, revenue officer's report, and other related documents in SPf.
5. Reports will be forwarded to District Counsel only when an advisory legal opinion is needed on a specific issue. When the advisory legal opinion is received from District Counsel, the Chief, SPf, will advise the applicant of the decision.

### **[5.12] 2.19 (02-02-1999)**

#### **Revocation of Certificates**

1. *Revocation of a certificate of release or non-attachment and the reinstatement of the NFTL to which the certificate relates is provided by law. See IRC 6325(f)(2). (Exhibit 5.12.2-7)*
2. *A certificate of revocation may be issued when it has been determined that either the release of FTL was issued:*

- A. *Erroneously, or*
- B. *In connection with a collateral agreement entered into in connection with a compromise under IRC 7122 which has been breached, and if the period of limitation on collection after assessment has not expired.*
- 3. *Issue a Certificate of Revocation to revoke a self-releasing NFTL in those instances when a new NFTL has been filed late.*
- 4. *File a new Notice of Federal Tax Lien to protect the validity of the lien after the Certificate of Revocation is filed. See IRC 6323(a).*
- 5. *When revocation is in order, a request will be sent to Special Procedures to prepare the certificate and to file a new NFTL.*

## **[5.12] 2.20 (02-02-1999)**

### **Non-attachment of Lien**

- 1. Persons wishing to obtain a certificate of non-attachment should be furnished a copy of Publication 1024.
- 2. Applications will be referred directly to the Chief, Special Procedures function (SPF) for review and consideration.
- 3. Issue a certificate of non-attachment when a NFTL has been filed and there has been a confusion of names. The person (other than the person against whom the tax was assessed) may be injured by the appearance that a NFTL has been filed.

## **[5.12] 2.20.1 (02-02-1999)**

### **Certificate of Non-attachment**

- 1. A person may submit an application for a Certificate of Non-attachment when there has been confusion, such as similarity in names, resulting in the appearance that a Notice of Federal Tax Lien has been filed against that person. If the determination is made that this condition did occur, the Service is required to issue a Certificate of Non-attachment of Federal Tax Lien certifying that the property of an individual is free from a NFTL. The issuance of a Certificate of Non-attachment will also apply to applications submitted by an innocent spouse.
- 2. The Chief, SPF will determine from the information furnished and from data available in the district office whether a certificate should be issued.
- 3.

#### **If**

it is determined that a field investigation is required before a final decision can be made, any doubt exists,

#### **Then**

a Form 2209, Courtesy Investigation, will be prepared and sent to the appropriate office. refer the matter to District Counsel for an advisory legal opinion,

## **[5.12] 2.20.2 (02-02-1999)**

### **Issuance of Certificate of Non-attachment**

- 1. When it is determined that the Federal tax lien did not attach or does not now attach to the property, the Chief, Special Procedures function, will prepare, in duplicate, a certificate of non-attachment (Exhibit 5.12.2-9).
- 2. Mail or present the original to the proper recording office in the same manner as a lien release. Cost for recording will not be collected from the taxpayer.

## **[5.12] 2.21 (02-02-1999)**

### **Reinstatement of Lien**

- 1. When a certificate of release has been revoked under the above conditions, the NFTL may be reinstated by:
  - A. Mailing notice of the revocation to the person against whom the tax was assessed at the last known address, and
  - B. By filing notice of the revocation in the same office in which the NFTL relates to 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 in accordance with (1)b. above.

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. This requires the filing of a new NFTL. The date of the new filing is the date from which priorities will be determined as against the category of persons in the cited Code section.
5. When reinstating a FTL, care must be taken to insure the proper NFTL is filed. For example:
- 6.

<b>If</b>	<b>And</b>	<b>Then</b>
an erroneous release was issued	the collection period remaining is still within the original 10 year statute	a new 668(Y) reflecting the same refile date that was contained on the original notice of lien is required.
a refiled NFTL was not timely filed	the original NFTL self-released,	update the CSED on ALS. The new 668(Y) will show "N/A" in column E, Last Day for Refiling.
an original NFTL was not filed during the initial 10 year statute,		the extended CSED should be input into ALS. The printed document will reflect "N/A" in Column E, Last Day for Refiling.
The amount to be shown on the "new" NFTL should be the total balance due at the time of filing the "new" notice.		

### **[5.12] 2.22 (02-02-1999)**

#### **Filing of Certificates and Notices**

1. All certificates and notices will be filed in the same office where the original filing took place.
2. Expenses related to the filing or recording of certificates will be borne by the Government. Duplicates will be associated with the applications held by the Special Procedures function (SPf).
3. *In the 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.*

### **[5.12] 2.23 (03-22-2000)**

#### **Withdrawal of the Filed Notice of Federal Tax Lien (Overview)**

1. IRC 6323(j) gives the Service the authority to withdraw Notices of Federal Tax Liens (NFTL) under certain circumstances as well as provide notice to credit agencies. The NFTL may be withdrawn under the following conditions:
  - A. the filing of the notice was premature or otherwise not in accordance with the Service's administrative procedures;
  - B. the taxpayer entered into an agreement under Section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,
  - C. withdrawal of such notice will facilitate the collection of the tax liability, or
  - D. 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.
2. It is necessary that a Withdrawal of the Notice of Federal Tax Lien be prepared rather than a Certificate of Release of Federal Tax Lien, since the certificate releases both the paper lien and the underlying Federal Tax Lien.
3. Withdrawal notices may be used if:
  - A. the responsibility unit has knowledge that the taxpayer has a credit available that would satisfy the lien (i.e., carryback, overpayment, adjustment, etc.),
  - B. the taxpayer has filed for bankruptcy and the Federal Tax Lien was filed when the automatic stay was in effect (filing is not in compliance with the Bankruptcy Code),
  - C. the lien is filed against institutions under control of the FDIC as successor to the Resolution Trust Corporation (RTC).

4. Requests for withdrawals will be considered regardless of the date the notice of lien was filed.
5. Withdrawal of the Notice of Federal Tax Lien is not mandatory.

### **[5.12] 2.24 (02-02-1999)**

#### **Taxpayer Requests**

1. All requests for withdrawal of the Notice of Federal Tax Lien must be in writing and must contain the following:
  - taxpayer's name,
  - current address,
  - taxpayer's identification number,
  - a copy of the NFTL affecting the property, if available, and
  - statement or basis for the withdrawal request.
2. Taxpayers must provide written authorization for disclosure of information to creditors, credit reporting agencies and financial institutions.
3. Route taxpayer requests to the office with control of the case.
4. Forward cases to the Special Procedures function in the district where the taxpayer lives or has its principal place of business when there is no open case in Collection.
5. Subsequent requests for copies of approved withdrawal notices to be sent to creditors or financial institutions will contain the same information outlined in (1) above.

### **[5.12] 2.25 (02-02-1999)**

#### **Withdrawal is Warranted**

1. When a withdrawal is warranted:
  - A. Prepare a brief statement explaining the circumstances of the case.
  - B. Prepare the Withdrawal of Filed Notice of Federal Tax Lien, and a cover letter to the taxpayer (refer to Exhibits 5.12.2-10 and 5.12.2-11).

#### **NOTE:**

The withdrawal notice will also be used when filings are in violation of the automatic stay in a bankruptcy estate.

2. The withdrawal notice must include any refile, amended, or corrected NFTL associated with the original filing, if applicable.
3. Forward to the Chief, Special Procedures function for signature.
4. Prepare the withdrawal notice in triplicate and file in the appropriate recording office within 10 days of notification from the taxpayer. The Service will bear the cost of filing.
5. When the Service's copy is returned note the recording information in the ALS history screen.
6. Forward a copy of the signed notice and a cover letter to the taxpayer after signature.
7. Provide copies of the withdrawal notice to creditors, credit reporting agencies, or any financial institution with a written request from the taxpayer. This request must also contain the authority to disclose the information.
8. Retain a copy of the withdrawal in SPf. (This requirement will be removed once the process is automated via ALS).

### **[5.12] 2.26 (03-22-2000)**

#### **Denial of Withdrawal**

1. Employees assigned the case are authorized to deny withdrawal of the notice of federal tax lien.
2. Notify the taxpayer that the request is denied.
3. Inform the taxpayer of his or her appeal rights as well as their right to discuss the denial with the immediate manager.
4. Provide the taxpayer with:

- Publication 1660, Collection Appeal Rights for Liens, Levies, Seizures and Installment Agreement Terminations, and
  - Form 9423, Collection Appeal Request.
5. Note the history with the reason for denial.

**[5.12] 2.27 (02-02-1999)**

**Notice of Lien Withdrawal Will Facilitate Collection of the Tax Liability**

1. Determine if withdrawal of the NFTL will facilitate collection of the tax liability, by considering the following:
  - A. Will the amount realizable by the U.S. increase the chances of collecting the tax liability?
  - B. Will the U.S. be adequately secured under IRC 6324B provisions?
  - C. Will the Service receive a lump sum amount against the liability?
  - 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?
  - F. Is there any possibility that a bankruptcy may be filed if the withdrawal is not obtained?
  - G. Is the taxpayer pyramiding liabilities?
2. Follow the procedures outlined in Sections 2.25 and 2.26, once a determination has been made.

**[5.12] 2.28 (03-22-2000)**

**Best Interest Withdrawal Provisions**

1. Two determinations are required:
  - one by the National Taxpayer Advocate or the designee for the National Taxpayer Advocate, and
  - one by the Secretary or the designee for the Secretary.
2. A determination that withdrawal is in the best interest of the government and the taxpayer may be made by collection employees.
3. There is no way every scenario you encounter can be covered. 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, for example subordination, that will alleviate the taxpayer's problem without eliminating the protection offered by the filed notice of lien.
4. When making the best interest determination the expectation is that the Service and the taxpayer will benefit from withdrawal of the notice.
- 5.

<b>If</b>	<b>Then</b>
<p>withdrawal is in the government's and taxpayer's best interest, (subject to approval at the managerial level),</p> <p>it is determined that withdrawal would not be in the best interest of the government,</p> <p>the case involves imminent, significant hardship,</p>	<p>the employee should follow the withdrawal procedures outlined above.</p> <p>notify the taxpayer of the determination and explain his/her appeal rights.</p> <p>the National Taxpayer Advocate may resolve disagreements by issuing a Taxpayer Assistance Order (TAO), when (s)he determines that it is in the best interest of the taxpayer.</p>
<p>Follow the procedures in 2.25 when withdrawal is warranted and 2.26 for denial.</p>	



## [5.12] 2.29 (02-02-1999)

### Installment Agreements and the Notice of Withdrawal

1. Consider whether the NFTL was inadvertently filed or whether this is a case in which the filing should be maintained.
- 2.

**If**  
the installment agreement provided for the notice,

**Then**  
a request for withdrawal may not be granted.

*Note:* Withdrawal may be appropriate under one of the other provisions of the Taxpayer Bill of Rights.

the NFTL was not addressed in the installment agreement,  
the agreement provides for the Notice of Federal Tax Lien to be filed as an additional condition to the agreement,

withdrawal may be considered, but is not mandatory.

a request for withdrawal may not be granted.

*Caution:* There is a separate box on the agreement which may be used for additional conditions.

the NFTL was not addressed as an additional condition, withdrawal may be considered, but is not mandatory. Follow the appropriate procedures outlined above for granting or denying a withdrawal request.

## [5.12] 2.30 (03-22-2000)

### Administrative Appeal Rights--Erroneous Lien Filings

1. Persons against whom a Notice of Federal Tax Lien (NFTL) was filed have the right to appeal the filing of the NFTL. The appeal is the administrative remedy to correct erroneous NFTL filings. (See IRC 6326).
2. Requests must be handled expeditiously and should be addressed to the District Director, attn: Chief, Special Procedures function, in the district where the Notice of Federal Tax Lien was filed.
3. The administrative appeals process:
  - may not be used to challenge the underlying deficiency leading to the encumbrance of the NFTL.
  - must be appealed within one year after the taxpayer becomes aware of the erroneously filed NFTL.
4. All collection actions will be withheld during the administrative appeals process, unless collection is in jeopardy.
5. The Service must issue a Certificate of Release within 14 days after determining the filing was erroneous.
6. The release must include a statement that the filing of the NFTL was erroneous. 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 whether or not it is challenged in administrative review procedures.
7. Taxpayers may request an appeal under the Collection Appeals Program (CAP) and may also be entitled to a Collection Due Process Appeal (CDP). See IRM 5.12.3.

## [5.12] 2.30.1 (03-22-2000)

### Request for Administrative Appeal

1. Requests for an administrative appeal under IRC 6326 must meet the following requirements:
  1. be in writing,
  2. provide the taxpayer's name, current address and TIN,
  3. include a copy of the NFTL as filed, if available,
  4. state the grounds on which the request is made (notice of deficiency was mailed to the wrong address, etc.),
  5. provide the canceled check or other evidence of payment, if liability satisfaction is claimed.
  6. provide information identifying the bankruptcy court, docket number and petition date.

**If**

the request does not meet the administrative appeal criteria,

a request disputes the tax, penalty or interest due,

you can adjust the liability,

the taxpayer does not provide adequate substantiation that the assessment is incorrect

the request does not meet the administrative appeal criteria and the taxpayer believes the filing is incorrect and identifies another issue (i.e., math error),

Follow the steps listed below to process the request for appeal.

1. Research IDRS to determine the status of the liability,
2. Respond to the taxpayer using Pattern Letter 2423 to identify the reason the request does not meet the administrative appeal criteria and that his/her request is being referred to another function for action. See Exhibit 2-13.
3. Obtain the name and telephone number of the contact point to be used in the letter.
- 4.

**If**

the liability on the NFTL is in ACS inventory or in the queue

the liability on the NFTL is in notice status (e.g., reactivated TC 530 case),

the liability on the NFTL has been assigned to CFf,

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 masterfile (e.g., CNC, below tolerance).

the request meets the administrative appeal criteria,

the request cannot be immediately resolved,

the liability on the NFTL is not present on IDRS,

during the resolution period of the request, the deferred tax module becomes active,

Special Procedures function will respond to all requests that meet the criteria within 30 days.

**If**

the taxpayer has provided proof that the liability was satisfied prior to the filing of NFTL,

the liability was assessed in violation

of the automatic stay in bankruptcy (Title 11),

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

**Then**

respond to the appealing party using Pattern Letter 2424. See Exhibit 2-12.

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.

process the request.

**Then**

forward the request to the ACS call site.

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. SPf should research and resolve the request or refer the request to the appropriate function for resolution.

forward the request to CFf, attention of the revenue officer assigned the TDA.

use the CFOL commands, IMFOL and BMFOL to view the accounts. SPf should then resolve the request or refer the request to the appropriate functional area for resolution. establish and maintain a control record of all applicable requests.

research IDRS to determine the status of the liability and advise the employee/function assigned to the case of the taxpayer's request.

it may have aged off IDRS and is in an inactive status present on the masterfile (e.g., CNC, below tolerance).

Initiate the request for a master file transcript by the input of CC MFTRD. This will bring the tax module data down onto IDRS within 24 hours. SPf should monitor the master file status of this liability with a weekly input of CC MFTRD until the resolution of the request.

notify the appropriate function of the request received.

**Then**

follow the procedures shown in IRM 5341 for adjustment and payment tracer action.

prepare a Form 3870, Request for Adjustment to abate the assessment.

issue a certificate of release.

it is determined that a NFTL was erroneously filed, issue a certificate of release.

**Note:**

It is not necessary to delay issuance of the release until after the credit or abatement appears on IDRS. See Exhibit 2-14 for the additional statement that should be typed on the front of the Form 668(Z). All reference to IRC section 6325 should be blocked out.

Provide the appealing party with a copy of the certificate of release attached to Pattern Letter 544. See Exhibit 5.12.2-4.

1. Reverse the Lien Filed Indicator.
- 2.

**If**  
the liability was in ACS inventory or in the queue,  
the liability is in notice status,

**Then**  
notify the ACS call site of the determination;  
notify the service center revenue officer or SCCB  
Branch chief of the determination;  
inform the revenue officer of the issuance of the  
certificate of release.

the liability is assigned to CFF,

take the appropriate corrective action to resolve the  
liability.

the liability was not present on IDRS (e.g., CNC, below  
tolerance) and was being monitored by SPf,

Update the control record to reflect the nature, date of determination and date of the certificate of release. Issue the certificate of release expeditiously, to the extent practical, within 14 days after the determination that the filing of the NFTL was erroneous. See IRC section 6326(b). Inform the taxpayer using Pattern Letter 2424, Exhibit 5.12.2-12, when a valid determination is made.

Determine further case action as follows:

1. Reverse any CC STAUP on notice status accounts.
- 2.

**If**  
the liability is in ACS inventory or in the queue,  
the liability has been assigned to CFF  
there are in any inactive liabilities being monitored by SPf,

**Then**  
notify the ACS call site of the determination.  
inform the revenue officer of the determination.  
it should remain in the current masterfile status.

Update the control record to reflect the nature and date of the determination. Responses to taxpayer correspondence must be initiated within 30 calendar days from the earliest "I.R.S. RECEIVED" date (See IRM 5.1 (General)).

However, every effort should be made to provide quality responses in less time. The action office must initiate an interim reply letter within 30 days, when it is not possible to meet the 30 day "I.R.S. RECEIVED" date. Additional interim letters will be sent if necessary. An interim letter must:

1. Identify the reason a final response is delayed.
2. Specify when the final response will be mailed.
3. Include the name, telephone number, and organizational code symbols for reference purposes as a contact point. Where feasible, the contact point should be someone familiar with the issues.

---

## [5.12] 2.30.2 (03-22-2000)

### Other Referral Requests

1. All other requests for review under IRC 6326 for the filing of a NFTL that meet the appropriate criteria, should be forwarded to Examination for determination.
2. This includes requests involving Substitute for Return (SFR) and CP 2000 cases.
  1. Referral should be made to Examination using Form 3449, Referral Report to Examination addressed to "PSP", Planning and Special Programs. See Exhibit 5.12.2-15.
  2. Identify on the top of the Form 3449 "Administrative Appeal of Lien".
  3. Submit related cases, to the extent possible, to Examination together.
  4. Place the CSED on the transmittal, Form 3449, for any case in which the period has less than 6 months to run.
  5. Transmit each case with an imminent statute date under a separate Form 3449.

6. 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.
7. Issue Pattern Letter 2421 advising the appealing party that his/her request has been received and provide the taxpayer with a contact point for any further inquiries relative to their request. See Exhibit 5.12.2-16.
3. Examination will have 30 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 overaged and follow-up with Examination.
- 4.

If Examination determines that the NFTL was erroneously filed,

**Then**

they will return Part 2 of Form 3449 to SPf indicating the nature and date of the determination.

1. SPf will issue a certificate of release.
2. Perform any further case action as described above.

assessment was incorrectly made,

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.

assessment is valid

Examination will indicate this determination on Part of Form 3449. Upon receipt of this determination, perform further case action as described above.

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

Exhibit [5.12] 2-1 (02-02-1999)

Form 668(Z)

Exhibit [5.12] 2-2 (02-02-1999)

Form 668(Z)

Exhibit [5.12] 2-3 (02-02-1999)

**Pattern Letter 2411-P--Certificate of Duplication of the Federal Tax Lien**

**CERTIFICATE OF DUPLICATION  
OF THE FEDERAL TAX LIEN**

To Whom It may Concern:

I certify that I am the appointed and qualified District Director of the Internal Revenue Service charged by law with the duty of enforcing the Internal Revenue Code and the collection of Internal Revenue taxes owed the United States government. I also certify that the Federal tax lien against \_\_\_\_\_ (taxpayer) \_\_\_\_\_ filed at \_\_\_\_\_ (location) \_\_\_\_\_ on \_\_\_\_\_ (date) \_\_\_\_\_ with lien number \_\_\_\_\_ and recording number \_\_\_\_\_ is a duplicate of the Federal tax lien recorded at (location) \_\_\_\_\_ on \_\_\_\_\_ (date) \_\_\_\_\_ with lien number \_\_\_\_\_ and recording number \_\_\_\_\_.

This certificate by no means implies that the Federal tax lien is being released, discharged, subordinated, or revoked. The underlying tax liability is still due and owing.

Witness my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

District Director of Internal Revenue

By: \_\_\_\_\_

Chief, Special Procedures Function

Exhibit [5.12] 2-4 (02-02-1999)

**Pattern Letter 544**

Person to Contact:

Contact Telephone Number:

Refer Reply to:

Date:

Dear (Name of Taxpayer):

We apologize for the concern and inconvenience we caused you by the (improvident) (erroneous) filing of a Notice of Federal Tax Lien Under Internal Revenue Law, number \_\_\_\_\_ (appropriate number or numbers). The lien(s) referred to in the notice filed with the (filing official) on (date) in the amount of (dollars) has (have) been released. We are enclosing a copy of this letter, since you may want to furnish it to your employer, bank, or other individual or organization.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

\_\_\_\_\_  
District Director

By \_\_\_\_\_  
(Signature and Title)

Enclosure:

Copy of this letter/

Copy of the Certificate of

Release of Federal Tax Lien

Exhibit [5.12] 2-5 (02-02-1999)

Form 669-A and Instructions

Exhibit [5.12] 2-5 (Cont.) (02-02-1999)

Form 669-A and Instructions

Exhibit [5.12] 2-5 (Cont. 3) (02-02-1999)

Form 669-A and Instructions

**Exhibit [5.12] 2-6 (03-22-2000)**

**Pattern Letter P-403**

---

(Name and address of applicant)

CONDITIONAL COMMITMENT TO DISCHARGE CERTAIN PROPERTY FROM FEDERAL TAX LIEN

RE: (Name and address of taxpayer)

(Salutation)

Your application for a certificate of discharge under the provisions of section 6325(b)(2)(A) of the Internal Revenue Code has been investigated. Based on the information furnished, I have determined that the interest of the United States under the Federal tax lien(s) outstanding against the taxpayer named above in the following described property is at present \_\_\_\_\_ enter amount \_\_\_\_\_ (\$\_\_\_\_\_).

(Enter legal description of property)

Unless later circumstances disclose interest of the United States in the property to be greater than the amount shown above, I will, on payment of such amount, less any amount which the United States may subordinate, and on a proper showing that the taxpayer has been divested or right, title, and interest to the property exclusive of any right of redemption, issue a certificate discharging the property from the Federal tax lien(s) outstanding against the taxpayer named above. The discharge is also conditioned upon the taxpayer's agreement that the payment will be applied in the best interest of the government.

You are allowed to advertise that you have obtained a conditional commitment to discharge the property described above from the Federal tax lien.

Sincerely yours,

District Director of Internal Revenue

By: \_\_\_\_\_

**Exhibit [5.12] 2-7 (02-02-1999)  
Pattern Letter P-402**

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Name and address  
of applicant

CONDITIONAL COMMITMENT TO DISCHARGE CERTAIN  
PROPERTY FROM FEDERAL TAX LIEN

RE: (Name and address of taxpayer)

(Salutation)

Your application for a certificate of discharge under the provisions of section 6325(b)(2)(B) of the Internal Revenue Code has been investigated. Based on the information furnished, I have determined that the interest of the United States under the Federal tax lien(s) outstanding against the taxpayer named above in the following described property is at present valueless.

(Enter legal description of property)

I will withhold issuance of a certificate of discharge, however, until the taxpayer through the foreclosure proceeding has been divested of all right, title, and interest (exclusive of any right of redemption) in the property. Unless later circumstances disclose value to the interest of the United States in the property described above, I will on a proper showing that the taxpayer has been divested of all of his right, title, and interest to the property (exclusive of any right of redemption), issue a certificate discharging the property from the Federal tax lien(s) outstanding against the taxpayer named above.

You are allowed to advertise that you have obtained a conditional commitment to discharge the property described above from the Federal tax lien.

Sincerely yours,

\_\_\_\_\_  
District Director of Internal Revenue

By: \_\_\_\_\_  
Signature and Title

**Exhibit [5.12] 2-8 (02-02-1999)  
Letter 1629(P)**

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**REVOCATION OF CERTIFICATE OF RELEASE OF FEDERAL TAX LIEN**

I certify that we mistakenly issued a certificate of [release/nonattachment] of the Notice of Federal Tax Lien against (name and address of taxpayer).

The Notice of Federal Tax Lien, serial number \_\_\_\_\_, was for \$ \_\_\_\_\_ dollars. We filed it on (month, day, year) with the [(name of office where filed), state of \_\_\_\_\_/or with the Clerk of the United States District Court for the (location if required, such as Northern or Southern) District of (state name)].

We failed to refile this lien within the time frame required by law. Because of this, the original Notice of Federal Tax Lien operated as a certificate of release. For an explanation, see the "IMPORTANT RELEASE INFORMATION" block on the original Notice of Federal Tax Lien.

I declare that the certificate of [release/non attachment] of the federal tax lien identified above is revoked and the lien is reinstated, as provided under Internal Revenue Code, Section 6325(f)(2).

\*\* If you have any questions, you may call (employee's name) at (telephone number) between the hours of \_\_\_\_\_ and \_\_\_\_\_. [If this number is outside your local calling area there will be a long distance charge.]

\_\_\_\_\_  
Director of (name of district) District  
Internal Revenue Service

by \_\_\_\_\_  
 (Signature and Title)

Original to recording office  
 Copy to taxpayer  
 File copy  
 \*\* Use for taxpayer's copy only

Exhibit [5.12] 2-9 (02-02-1999)  
 Letter 1628(P)

<b>CERTIFICATE OF NONATTACHMENT OF FEDERAL TAX LIEN</b>	
TO WHOM IT MAY CONCERN:	
I certify that I am the appointed and qualified District Director of Internal Revenue charged by law with the duty of collecting and enforcing the collection of internal revenue taxes due the United States. I also certify that the Federal tax lien against all property and rights of property belonging to _____ (Name and address of taxpayer) _____ based on an assessment of _____ tax for the year _____ against _____ did not attach, and does not now attach, to any separate property of _____ or the following described property:*	
Notice of the lien in the sum of _____ dollars (\$ _____) was filed on _____ with the _____, State of _____, or with the Clerk of the United States District Court for the _____ District of _____, on _____ 19 __, as provided by section 6323 of the Internal Revenue Code, (** or the corresponding provision of prior law).	
The reason for this action is that it has been determined that _____ (Name and address of applicant) _____ is not liable for tax under the above assessment.	
Witness my hand at _____ this _____ day of _____ 19__.	
_____ District Director of Internal Revenue	
By: _____ (Signature and Title)	
* Delete inapplicable phrase, either "any separate ..." or "or the following ..."	
** Include when applicable.	

Exhibit [5.12] 2-10 (03-22-1999)  
 Withdrawal Notice

<b>Form 10916(c) (April 98)</b>		<b>Department of the Treasury -- Internal Revenue Service Withdrawal of Filed Notice of Federal Tax Lien</b>	
District	Serial Number	<i>For Otional Use by Recording Office</i>	
I certify that as to the following-named taxpayer, the requirements of section 6323(j) of the Internal Revenue Code have been satisfied for the taxes listed below and for all statutory additions. Therefore, the Internal Revenue Service has withdrawn the lien provided by Code section 6321 for these taxes and additions. The proper officer in the office where the notice of internal revenue tax lien was filed on _____, is authorized to note the books to show the withdrawal of this lien for these taxes and additions.			
Name of Taxpayer			
Residence			

**Exhibit [5.12] 2-10 (03-22-1999)  
Withdrawal Notice**

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
Place of Filing					Total \$

**Exhibit [5.12] 2-10 (03-22-1999)  
Withdrawal Notice**

This notice was prepared and signed at _____, on this, the _____ day of _____, _____.	
Signature	Title

**Exhibit [5.12] 2-10 (03-22-1999)  
Withdrawal Notice**

Cat. No. 24586T

Part 1--Recording Office

Form 10916(c) (Rev. 4-98)

**Exhibit [5.12] 2-11 (02-02-1999)  
Withdrawal Cover Letter**

Person to Contact:  
Telephone Number:  
Reply to:  
Date:

Dear (Name of Taxpayer):

Recently the IRS filed a Notice of Federal Tax Lien against your property. The original Notice of Federal Tax Lien is no longer in effect. We have enclosed a copy of the "Withdrawal of Filed Notice of Federal Tax Lien", for your records, which we recorded with the (filing official) where the original Notice of Federal Tax Lien was filed.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

\_\_\_\_\_  
District Director  
By \_\_\_\_\_  
(Signature and Title)

Enclosure:  
Copy of this letter  
Withdrawal of Filed Notice of Federal Tax Lien



**Exhibit [5.12] 2-12 (02-02-1999)  
Pattern Letter 2424**

---

Person to Contact:  
Contact Telephone Number:  
Refer Reply to:  
Date:

Dear (Name of Taxpayer):

We received your request for the administrative appeal of the filing of the Notice of Federal Tax Lien Under Internal Revenue Law, number \_\_\_\_\_. However, based on IRC Section 6326 your request does not meet the criteria for an administrative appeal as described below:

\_\_\_\_\_ A balance due existed on your account at the time IRS filed the Notice of Federal Tax Lien Under Internal Revenue Law.

\_\_\_\_\_ The tax was assessed prior to the date shown on the petition for bankruptcy, (Title 11) so the assessment was not in violation of the automatic stay provision.

\_\_\_\_\_ A bankruptcy court order authorized the assessment to be made while the automatic stay was in effect.

\_\_\_\_\_ The tax period of the assessment is after the date shown on the petition for bankruptcy and is not subject to the automatic stay provision.

\_\_\_\_\_ The legal requirements for establishing the deficiency were followed and the notice requirements were properly and timely met.

\_\_\_\_\_ The statute of limitations for the collection of any tax due was in effect at the time the Notice of Federal Tax Lien Under Internal Revenue Law was filed.

\_\_\_\_\_ The intent of the appeal process is to correct any erroneous filing of notices of lien and is not to be used for the purpose of disputing the calculation of tax, penalty or interest.

\_\_\_\_\_ If you have a basis for disputing the underlying liability for which a federal tax lien was filed, please send us your substantiation or contact the person whose name and number are shown above. Alternatively, you may pay the total tax liability including any penalty with interest due and then file Form 1040X, Amended U.S. Individual Income Tax Return; Form 1120X, Amended U.S. Corporation Income Tax Return; or Form 843 to claim a refund.

\_\_\_\_\_ Other:

If you have any questions, please contact the person whose name and telephone number are shown above. If you write to us, please include your telephone number and the most convenient time to call so that we may contact you if we need additional information.

Sincerely yours,  
District Director

Enclosures:  
Form 843

**Exhibit [5.12] 2-13 (02-02-1999)  
Pattern Letter 2423**

---

Person to Contact:  
Contact Telephone Number:  
Refer Reply to:  
Date:

Dear (Name of Taxpayer):

We received your request for the administrative appeal of the filing of the Notice of Federal Tax Lien Under Internal Revenue Law, number \_\_\_\_\_. However, based on IRC Section 6326 your request does not meet the criteria for an administrative appeal for the reasons shown below:

\_\_\_\_\_ A balance due existed on your account at the time IRS filed the Notice of Federal Tax Lien Under Internal Revenue Law.

\_\_\_\_\_

The tax was assessed prior to the date shown on the petition for bankruptcy, (Title 11) so the assessment was not in violation of the automatic stay provision.

\_\_\_\_\_

A bankruptcy court order authorized the assessment to be made while the automatic stay was in effect.

\_\_\_\_\_

The tax period of the assessment is after the date shown on the petition for bankruptcy and is not subject to the automatic stay provision.

\_\_\_\_\_

The legal requirements for establishing the deficiency were followed and the notice requirements were properly and timely met.

\_\_\_\_\_

The statute of limitations for the collection of any tax due was in effect at the time the Notice of Federal Tax Lien Under Internal Revenue Law was filed.

\_\_\_\_\_

The intent of the appeal process is to correct any erroneous filing of notices of lien and is not to be used for the purpose of disputing the calculation of tax, penalty or interest.

\_\_\_\_\_

If you have a basis for disputing the underlying liability for which a federal tax lien was filed, please send us your substantiation or call the person whose name and number are shown above. Alternatively, you may pay the total tax liability including any penalty with interest due and then file Form 1040X, Amended U.S. Individual Income Tax Return; Form 1120X, Amended U.S. Corporation Income Tax Return; or Form 843 to claim a refund.

\_\_\_\_\_

Other:

We are reviewing the other issues you identified in your letter and will provide you with a further response.

If you have any questions, please contact the person whose name and telephone number are shown above. If you write to us, please include your telephone number and the most convenient time to call so that we may contact you if we need additional information.

Sincerely yours,  
District Director

Enclosure:

Form 843

Exhibit [5.12] 2-14 (02-02-1999)

Form 668(Z)

Exhibit [5.12] 2-15 (02-02-1999)

Administrative Appeal of Liens

Exhibit [5.12] 2-16 (02-02-1999)

Pattern Letter 2421

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Person to Contact:

Contact Telephone Number:

Refer Reply to:

Date:

Dear (Name of Taxpayer):

We received your request for the administrative appeal of the filing of the Notice of Federal Tax Lien under Internal Revenue Law, number \_\_\_\_\_. We are in the process of considering your request and we will provide you with a further response within 30 days.

If you have any questions, please contact the person whose name and telephone number are shown above. If you write to us, please include your telephone number and the most convenient time to call so that we may contact you if we need additional information.

Sincerely yours,  
District Director

Exhibit [5.12] 2-17 (02-02-1999)

Department of the Treasury -- Internal Revenue Service

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Whereas, \_\_\_\_\_  
Of \_\_\_\_\_, City of \_\_\_\_\_,  
County of \_\_\_\_\_, State of \_\_\_\_\_,  
is indebted to the United States for unpaid internal revenue tax in the sum of  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ )  
as evidenced by:

**Exhibit [5.12] 2-17 (02-02-1999)**  
**Department of the Treasury -- Internal Revenue Service**

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Notice of Federal Tax Lien Serial Number (a)	Recording Information (b)	Date Recorded (c)	Taxpayer Identification Number (d)	Amount Shown On Lien (e)
--	---------------------------------	-------------------------	--	--------------------------------

**Exhibit [5.12] 2-17 (02-02-1999)**  
**Department of the Treasury -- Internal Revenue Service**

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Whereas, to secure the collection of said tax, notice of the lien of the United States,  
attaching to all the property and rights to property of the said taxpayer on account of said tax  
indebtedness, was filed with the \_\_\_\_\_  
\_\_\_\_\_ for the  
\_\_\_\_\_, and also with the \_\_\_\_\_  
\_\_\_\_\_, in accordance with the applicable provisions  
of law.

Whereas, the lien of the United States, listed above, for the said tax has attached to  
certain property described as:

Whereas, the District Director of Internal Revenue has determined that the value of the  
interest of the United States in the foregoing property, under and by virtue of its aforesaid tax  
lien, amounts to the sum of \_\_\_\_\_ dollars  
(\$ \_\_\_\_\_ ) and has authorized the issuance, under the provisions of section  
6325(b)(4) of the Internal Revenue Code, of a certificate discharging the above-described  
property from the tax lien of the United States upon the deposit of cash or posting of a bond of  
the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_ ) to be  
applied in part satisfaction of the liability in respect of the tax hereinbefore stated which sum has  
been paid to be so posted/deposited and the receipt of same by me is hereby acknowledged from  
\_\_\_\_\_.

Now, therefore, this instrument witness, that I, \_\_\_\_\_  
District Director of Internal Revenue at \_\_\_\_\_, charged by  
law with the duty of collecting and enforcing the collection of internal revenue taxes due the  
United States, and charged with the assessment hereinbefore stated, do, pursuant to the  
provisions of section 6325(b)(4) of the Internal Revenue Code, discharge property heretofore  
described from the aforesaid tax lien, saving and reserving, however, the force and effect of said  
tax line against and upon all other property and rights to property to which said lien is attached,  
wheresoever situated.

Witness my hand at \_\_\_\_\_, on this,  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature Title

---

Form 668(2)

Department of the Treasury - Internal Revenue Service

Rev. April 1984

## Certificate of Release of Federal Tax Lien

District	Serial Number	For Optional Use by Recording Office
Sacramento	010000	

I certify that as to the following named taxpayer, the requirements of section 6325 (a) of the Internal Revenue Code have been satisfied for the taxes listed below and for all statutory additions. Therefore, the lien provided by Code section 6321 for these taxes and additions has been released. The proper officer in the office where the notice of internal revenue tax lien was filed on October 13 1988, is authorized to note the books to show the release of this lien for these taxes and additions.

Name of Taxpayer David B Baker only\*  
David B Baker only, in the liability of David B Baker and Margaret Mary Baker

## Residence

688 Pine Street  
Sacramento, CA 99999

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12-31-85	123-45-6787	10-03-88	11-02-94	\$6,133.30
1040	12-31-82	123-45-6787	09-29-86	10-29-92	6,956.12
*With respect to the liabilities of David B. Baker only, the income tax 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 subject lien only insofar as it relates to David B. Baker in the liability of David B. Baker and Margaret Mary Baker. The lien is not released as it relates to Margaret Mary Baker, 987-65-4321N					
Place of Filing County Recorder Contra Costa County Martinez, CA 94553					Total \$ 12,626.03

This certificate was prepared and signed at Sacramento, CA on this,

the 14th day of May, 19 92

Signature C. Roper	Title Chief, Insolvency Section Special Procedures Branch
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(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Certificate of Release of Federal Tax Lien Rev. Rul. 71-485, 1971-2 C.B. 409)

Form 668(2) (Rev. 4-84)

Form **668(Z)**

(Rev. April 1964)

Department of the Treasury - Internal Revenue Service

**Certificate of Release of Federal Tax Lien**District \_\_\_\_\_ Serial Number \_\_\_\_\_ For Optional Use by Recording Office

I certify that as to the following-named taxpayer, the requirements of section 6325 (a) of the Internal Revenue Code have been satisfied for the taxes listed below and for all statutory additions. Therefore, the lien provided by Code section 6321 for these taxes and additions has been released. The proper officer in the office where the notice of internal revenue tax lien was filed on \_\_\_\_\_, 19\_\_\_\_, is authorized to note the books to show the release of this lien for these taxes and additions.

Name of Taxpayer Frances Perry only.\* Frances Perry only, in the liability of George Johnson & Frances Perry as partners of Galaxy Sales Co.

Residence

973 East 73rd Street  
New York, New York 10021

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Paying (e)	Unpaid Balance of Assessment (f)
941	3-31-76	12-3456789	11-21-76	12-21-82	\$5,173.42
941	6-30-76	12-3456789	11-26-76	12-26-82	2,143.86
941	9-30-76	12-3456789	11-26-76	12-26-82	13,436.50
*The withholding and Federal Insurance Contribution tax liabilities secured by the subject lien have been compromised only with respect to the liability of Frances Perry for such taxes. This justified the issuance of this certificate which releases the subject lien only insofar as it relates to Frances Perry in the liability of George Johnson and Frances Perry, d/b/a Galaxy Sales Company.					
Place of Filing <u>Register, City of New York New York County 31 Chambers Street New York, New York 10007</u>				<b>Total</b>	<b>\$ 20,753.78</b>

This certificate was prepared and signed at 120 Church Street, New York, New York 10007, on this

the 12th day of January, 19 78

Signature

/s/ Charles Bush

Title

Revenue Officer

(NOTE: Certificate of officer authorized by law to take acknowledgements is not essential to the validity of Certificate of Release of Federal Tax Lien Rev. Rul. 71-466, 1971-2 C.B. 408.)

Form 668(Z) (Rev. 4-64)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE  
CERTIFICATE OF DISCHARGE OF PROPERTY FROM FEDERAL TAX LIEN  
(SEC. 6325(d)(1) of the Internal Revenue Code)

WHEREAS, 1  
Of 2, City of \_\_\_\_\_,  
County of \_\_\_\_\_, State of \_\_\_\_\_,  
is indebted to the United States for unpaid internal revenue tax in the sum of 3  
Dollars (\$ \_\_\_\_\_)

as evidenced by:

NOTICE OF FEDERAL TAX LIEN SERIAL NUMBER (a)	RECORDING INFORMATION (b)	DATE RECORDED (c)	TAXPAYER IDENTIFICATION NUMBER (d)	AMOUNT SHOWN ON LIEN (e)
			<u>4</u>	

WHEREAS, to secure the collection of said tax, notice of the lien of the United States, attaching to all the property and rights to property of the said taxpayer on account of said tax indebtedness, was filed with the 5 for the \_\_\_\_\_, and also with the 5 \_\_\_\_\_, in accordance with the applicable provisions of law.

WHEREAS, the lien of the United States, stated above, for said tax has attached to certain property described as:

7

- 1 Name of taxpayer as shown on notice of lien
  - 2 Street address of taxpayer
  - 3 Spell out amount of tax liability as of date of discharge
  - 4 Account, Social Security and/or Employer Identification Number
  - 5 Recording official and jurisdiction
  - 6 Use if more than one recordation of notice of lien
  - 7 Full legal description of property including street address (Real Property) or detailed description (Personal Property)
- Prepare in duplicate
  - Original to applicant for recording
  - Duplicate to be retained in lien file
  - The face of all Forms 669 (A thru F) are completed in the same manner

(Use this space for continued description of property)

①

Whereas, the District Director of Internal Revenue has determined that the value of the interest of the United States in the foregoing property, under and by virtue of its aforesaid tax lien, amounts to the sum of \_\_\_\_\_  
② \_\_\_\_\_ dollars (\$ \_\_\_\_\_) and has authorized the issuance, under the provisions of section 6325(b)(2)(A) of the Internal Revenue Code, of a certificate discharging the above-described property from the tax lien of the United States upon the payment of the sum of \_\_\_\_\_  
③ \_\_\_\_\_ dollars (\$ \_\_\_\_\_) to be applied in part satisfaction of the liability in respect of the tax hereinbefore stated which sum has been paid to be so applied, and the receipt of which sum by me is hereby acknowledged: \_\_\_\_\_  
④ \_\_\_\_\_

Now, therefore, this instrument witnesseth, that I, \_\_\_\_\_  
⑤ \_\_\_\_\_, District Director of Internal Revenue at \_\_\_\_\_  
⑥ \_\_\_\_\_, charged by law with the duty of collecting and enforcing the collection of internal revenue taxes due the United States, and charged with the assessment hereinbefore stated, do, pursuant to the provisions of section 6325(b)(2)(A) of the Internal Revenue Code, discharge the property heretofore described from the aforesaid tax lien, saving and reserving, however, the force and effect of said tax lien against and upon all other property or rights to property to which said lien is attached, where-so-ever situated.

Witness my hand at \_\_\_\_\_  
⑦ \_\_\_\_\_, on this \_\_\_\_\_  
the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Signature

⑧

Title

NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Discharge of Federal Tax Lien.  
Rev. Pub. 71-468, 1971-2, C.B. 409.

U.S. GOV. PRINTING OFFICE: 1971

Form 669-B (Rev. 2-62)

1 Continue full description of property. Block or line-out unused portion.

2 The amount determined to be the interest of the United States in the property to be discharged.

3 Taxpayer's interest to be paid prior to discharge.

4 District Director's name.

5 District Director's name.

6 District designation.

7 Place of execution—city and state.

8 Typed name of District Director and manual signature of Director's delegate with "by" after it.

• The reverse of Form 669-B and D are completed in the same manner.

①

WHEREAS, the District Director of Internal Revenue having determined that the amount realizable by the United States from the property herein described, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of a certificate subordinating the tax lien of the United States and that the ultimate collection of the tax liability will be facilitated by such subordination is authorized to issue such certificate under the provisions of section 6325(d)(2) of the Internal Revenue Code.

NOW, THEREFORE, THIS INSTRUMENT WITNESSETH, That I, ②, District Director of Internal Revenue at ③, charged by law with the duty of collecting and enforcing the collection of internal revenue taxes due to the United States, and charged with the assessment hereinbefore stated, do, pursuant to the provisions of section 6325(d)(2) of the Internal Revenue Code, subordinate the aforesaid tax lien, in the amount hereinbefore stated to the instrument herein described as ④

saving and reserving, however, the force and effect of said tax lien against and upon all other property or rights to property to which said lien is attached, wheresoever situated.

WITNESS my hand at ⑤, on this, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

SIGNATURE ⑥	TITLE
----------------	-------

Note: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Subordination of Federal Tax Lien. Rev. Rul. 71-466, 1971-2 C. B. 409.

1. Continue full description of property. Block or line-out unused portion.
2. District Director's name
3. District designation—e.g. Philadelphia, Chicago etc.
4. Describe instrument to which our lien will subordinate
5. Place of execution—city and state
6. Typed name of District Director and manual signature of Director's delegate with "by" in front of it.



# Certificate of Release of Federal Tax Lien

District	Serial Number	For Optional Use by Recording Office
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~~I certify that as to the following named taxpayer, the requirements of section 6325 (a) of the Internal Revenue Code have been satisfied for the taxes listed below and for all statutory additions. Therefore, the lien provided by Code section 6321 for these taxes and additions has been released. The proper officer in the office where the notice of internal revenue tax lien was filed on \_\_\_\_\_, 19\_\_\_\_, is authorized to note the books to show the release of this lien for these taxes and additions.~~

Name of Taxpayer

Residence

Kind of Tax <small>(a)</small>	Tax Period Ended <small>(b)</small>	Identifying Number <small>(c)</small>	Date of Assessment <small>(d)</small>	Last Day for Refiling <small>(e)</small>	Unpaid Balance of Assessment <small>(f)</small>
I certify that under the provisions of IRC Section 6326, the filing of the Notice of Federal Tax Lien Under Internal Revenue Law under IRC Section 6321 was erroneous. Therefore, the Notice of Federal Tax Lien Under Internal Revenue Law for the taxes listed above has been released.					

Place of Filing	<b>Total</b>	<b>\$</b>
-----------------	--------------	-----------

This certificate was prepared and signed at \_\_\_\_\_, on this,

the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Signature	Title
-----------	-------

(NOTE: Certificate of officer authorized by law to take acknowledgements is not essential to the validity of Certificate of Release of Federal Tax Lien Rev. Rul. 71-466, 1971-2 C.B. 409)

# Referral Report

To  a. Examination Division  c. Employee Plans Division  
 b. Exempt Organization Division  d. Service Center Examination Branch

**Part A—To be completed by Collection Activity**

1. Name and address of taxpayer Robert C. Grimes 1333 American Bank Bldg. Cleveland, Ohio 44101		Taxpayer identification number EIN: 34-1234567
2. Trade name and business address (if different from item 1) Acme Mortgage Finance 1333 American Bank Bldg. Cleveland, Ohio 44101		3. Name and address of employer
4. Period and class of tax 8412 8	5. Last period for which return was filed 8812	6. Referral information <input type="checkbox"/> a. Refusal to file or sign return <input type="checkbox"/> b. Underreported tax <input checked="" type="checkbox"/> c. Other
7. Additional information that will assist the receiving office (taxpayer's reason for refusing to file return; basis for determining underreported tax; estimated tax due and basis for computation; etc. Continue on reverse if additional space is needed)		

8. Referring Employer's Signature	Telephone number 999-9999	Employee number 999999999	Date 1/1/89
9. Supervisor's Signature	Telephone number 999-999	Date 1/1/89	

**Part B—To be completed by Receiving Office**

1. Disposition of Referral <input type="checkbox"/> a. Accepted on classification (no significant tax potential) <input type="checkbox"/> b. Surveyed <input type="checkbox"/> c. Net deficiency for credits 5 <input type="checkbox"/> d. Taxpayer not liable for return <input type="checkbox"/> e. No change (re: Referrals concerning underreported tax)	
2. Receiving Office's signature and title	Date

# Handbook 5.12

## Federal Tax Liens Handbook

### Chapter 3

### Appeals Process and Claims for Damages

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#### Contents

- [5.12] 3.1 Appeals
  - [5.12] 3.1.1 Collection Appeals Program
  - [5.12] 3.1.2 Due Process Hearing
    - [5.12] 3.1.2.1 Hearing Issues
    - [5.12] 3.1.2.2 Requirement of Investigation
    - [5.12] 3.1.2.3 Judicial Review of Determination
  - [5.12] 3.1.3 Suspension of Collection and Statute of Limitation
  - [5.12] 3.1.4 Notice FTL Filing Preparation
    - [5.12] 3.1.4.1 Issuing the Notice
      - [5.12] 3.1.4.1.1 Power of Attorney (POA)/Taxpayer Representative
    - [5.12] 3.1.4.2 Manually Prepared Notices
    - [5.12] 3.1.4.3 Undelivered Mail
    - [5.12] 3.1.4.4 Nominee, Transferee and Alter-Ego Situations
  - [5.12] 3.1.5 Request for an Appeal
    - [5.12] 3.1.5.1 Lien Filing During Levy Appeal
    - [5.12] 3.1.5.2 Levy During Lien Due Process
- [5.12] 3.2 Failure to Release Liens Under IRC 6325
- [5.12] 3.3 Administrative Claim Procedures
- [5.12] 3.4 Evaluation of Claim for Damages Under IRC 7432
- [5.12] 3.5 Reimbursement of Damages and Costs for Failure to Release Lien Under IRC 6325
- [5.12] 3.6 Civil Cause of Action for Unauthorized Collection Action
- [5.12] 3.7 Administrative Claim Procedures
  - [5.12] 3.7.1 Claims for Damages by Third Parties
    - [5.12] 3.7.1.1 Administrative Remedies
    - [5.12] 3.7.1.2 Payment Authority
- [5.12] 3.8 Evaluation of Claim for Damages Under IRC 7433
- [5.12] 3.9 Reimbursement of Damages and Costs
- [5.12] 3.10 Data for Defense of Suits
- [5.12] 3.11 Subpoenas and Requests for IRS Personnel to Testify or Produce Records
- [5.12] 3.12 Administrative Claim Report
  - Exhibit [5.12] 3-1 Pattern Letter P--2730
  - Exhibit [5.12] 3-2 Pattern Letter P--2731
  - Exhibit [5.12] 3-3 Pattern Letter P--2732
  - Exhibit [5.12] 3-4 Pattern Letter P--2733
  - Exhibit [5.12] 3-5 FMS Form 195
  - Exhibit [5.12] 3-6 FMS Form 196
  - Exhibit [5.12] 3-7 FMS Form 197
  - Exhibit [5.12] 3-8 FMS Form 197
  - Exhibit [5.12] 3-9 Pattern Letter P--2734
  - Exhibit [5.12] 3-10 Letter 3172(DO)

- Exhibit [5.12] 3-11 Letter 3171(DO)
  - Exhibit [5.12] 3-12 Letter 3177(DO)
- 

## **[5.12] 3.1 (02-22-2000)**

### **Appeals**

1. Taxpayers may have two opportunities to appeal collection actions:
  - Collection Appeals Program, and
  - Collection Due Process Hearing
2. **Case file should not be closed or archived during the period (45 days) in which the taxpayer has to respond. Case files must be forwarded to Appeals along with the Form 12153, Request for Collection Due Process Hearing.**

## **[5.12] 3.1.1 (02-22-2000)**

### **Collection Appeals Program**

1. The Collection Appeals Program (CAP) was implemented to provide taxpayers 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 or terminations. In addition to NFTLs, appealable lien actions include the denial of a notice of withdrawal of NFTL and denials of certificates of discharge, subordination or nonattachment. An appeal to CAP is also allowed for taxpayers who want to dispute the SPf decision on administrative appeal of liens. Refer to IRM 5.1.9.
2. You should provide the taxpayer with a copy of Publication 1660, Collection Appeal Rights, if an appeal is requested.
3. You should inform the taxpayer that your decision must be discussed with your immediate supervisor before beginning the Collection Appeals process.

## **[5.12] 3.1.2 (02-22-2000)**

### **Due Process Hearing**

1. Effective January 19, 1999, under IRC 6320, the Internal Revenue Service must notify taxpayers in writing of their right to a Collection Due Process Hearing with an Appeals Officer following the filing of a Notice of Federal Tax Lien. When a request for Collection Due Processing Hearing is timely, the taxpayer also establishes the right to judicial review of the Appeals determination.
2. Taxpayers may be entitled to a due process hearing under Internal Revenue Code 6320 if a timely request for a hearing is received. See IRM 5.1.9.
3. If the due process hearing is not requested within the 30 day time period, the taxpayer will be given an equivalent hearing. The equivalent hearing allows the taxpayer to raise the same issues as a due process hearing, however, the taxpayer cannot appeal the IRS decision to a court.
4. A notice of lien filing is required to be sent to the taxpayer not more than **5 business days** after the NFTL is filed. The notice must be:
  - A. Given in person,
  - B. Left at the residence or usual place of business to the taxpayer, or
  - C. Sent by certified or registered mail to the taxpayer's last known address.

#### **NOTE:**

**Use registered mail only if the taxpayer resides outside the United States.  
There is no international certified mail.**

5. The notice will include:
  - A. The amount of unpaid tax,
  - B. The right to request a hearing during a 30 day period beginning on the day following the 5th business day after the filing of the NFTL.
  - C. Administrative appeals (i.e., meet with employee's supervisor, Collection Appeal Program, etc.) available to the taxpayer with respect to the lien and procedures relating to appeal.
  - D. The provisions of IRC 6320. (These provisions are explained in Publication 1660).

### [5.12] 3.1.2.1 (07-26-2000)

#### Hearing Issues

1. Certain issues and considerations must be undertaken during the hearing process. The taxpayer may raise any relevant issue relating to the unpaid tax including:
  - appropriate spousal defenses,
  - challenges to the appropriateness of the collection action,
  - collection alternatives including, posting of a bond, substitution of other assets, installment agreement, offer in compromise,
  - challenges to the existence or amount of the underlying tax liability .

(*Note:* This issue may be raised only if the person did not receive a statutory notice of deficiency for the tax liability or did not have any other opportunity to dispute the tax liability, i.e., a type of tax for which a statutory notice of deficiency was not sent and no appeal was offered.)
2. An issue may not be raised at the hearing if:
  - the issue was raised and considered at a previous hearing about a notice of levy or seizure under IRC 6330 or in any other previous administrative or judicial proceeding, and
  - the person raising the issue participated meaningfully in the previous hearing or proceeding.

### [5.12] 3.1.2.2 (02-22-2000)

#### Requirement of Investigation

1. The appeals officer at the hearing will obtain verification that the requirements of all applicable law or administrative procedures have been met. You may be asked to clarify certain issues. As a basis for the determination, the Appeals Officer will consider:
  - the verification presented,
  - issues raised, and
  - whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concerns of the person that the collection action be no more intrusive than necessary.

### [5.12] 3.1.2.3 (02-22-2000)

#### Judicial Review of Determination

1. The taxpayer has 30 days to appeal the determination from the Appeals Officer. The determination may be appealed to the Tax Court, or if the Tax Court does not have jurisdiction, to a U.S. District Court.
2. If a court determines that the appeal was in the wrong court, the taxpayer has 30 days after the court determination of incorrect filing to file the appeal in the correct court.
3. The Office of Appeals will retain jurisdiction with respect to any determination, including subsequent hearings requested by the person who requested the original hearing on issues regarding:
  - collection actions taken or proposed with respect to Appeals' determination, and,
  - changes in circumstances affecting Appeal's determination, after the person has exhausted all administrative remedies, i.e., CAP.

### [5.12] 3.1.3 (07-26-2000)

#### Suspension of Collection and Statute of Limitation

1. If a hearing is timely requested, the running of the period of limitation will be suspended from receipt of the request for the period during which the hearing and associated court appeals are pending. 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 a court. If appealed to court, the suspension ends when the case becomes final. The period of limitation for collection will not expire before 90 days after a determination becomes final. See IRM 5.1.9 for procedures on suspending the statute.
2. Levy action under any circumstances will be suspended during the appeals process. Certain other collection actions such as offsets, summonses to collect information and suits to collect may occur.

## [5.12] 3.1.4 (07-26-2000)

### Notice FTL Filing Preparation

1. The notice for a right to a hearing will be generated:
  - when the original lien filing (after 1/18/1999) is requested;
  - only once if liens are filed in multiple jurisdictions for the same tax period;
  - only for the first NFTL filing after January 18, 1999 (even if a NFTL was previously filed for the same taxable period before the effective date).
  - when subsequent assessments are made and a lien is requested;
  - for individual taxpayers
  - for partnerships and corporations;
  - 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.
2. The notice for a right to a hearing will not be generated for refiled liens.
3. The NFTL will be mailed to the recording office, then the L3172 (DO), Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, will be:
  - generated on ALS three workdays from the date the NFTL is printed,
  - mailed on the day it is printed, but not later than two workdays after printing.
  - sent certified mail.

#### NOTE:

**The taxpayer's copy of the NFTL will be mailed with the collection due process notice.**

4. TC 582 indicates that a lien was requested. If requested through ALS it is also an indication that the L3172 notice will be generated. Check ALS to determine when the L3172 was mailed.
5. File the receipted (date stamped) copy of the certified mail register (Post Office Form 3877) in the ALS Unit. Registers and receipts for outgoing certified mail for the L3172 may be destroyed 10 years after the end of the processing year.
6. Facsimile copies may be generated by revenue officers and other employees as necessary.
7. Maintain current revenue officer and customer service employee information, i.e., name, telephone, unique identifiers, etc. ALS uses this data to generate contact information for the notice.

## [5.12] 3.1.4.1 (02-22-2000)

### Issuing the Notice

1. The Service is required to notify taxpayers after a NFTL has been filed. The Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 (Letter 3172 (DO), Exhibit 5.12.3-10) must be mailed within 5 business days after the filing of the NFTL.

#### NOTE:

**The taxpayer's 30 day period for requesting a hearing begins the day following the 5 business day period after the filing of the NFTL.**

2. Letter 3171 (DO) (Exhibit 5.12-3-11), will be generated by ALS when a lien is filed in a different jurisdiction at a later date for a tax period that has previously received a right to a hearing notice. There is no requirement to send this letter certified mail.
3. Liens filed out of district will have the name and telephone number of the contact person for the originating district.
4. When a lien is handcarried to a recording office for filing, the employee **must** obtain a SLID number from SPf before the lien is recorded. Following this procedure will ensure that the L3172 is generated and mailed timely. This procedure includes liens generated manually using ICS.

### [5.12] 3.1.4.1.1 (02-22-2000)

#### Power of Attorney (POA)/Taxpayer Representative

1. Revenue officers and other employees responsible for making lien filing determinations are responsible for ensuring that, when a power of attorney is involved, the person(s) holding the power receives a copy of the notice of filing and the NFTL. While there is no 5 business day mailing requirement, a copy should be mailed as soon as possible. If the name and address is available, forward the information to the ALS Unit. The POA copy will be mailed the same day as the L3172 but not later than 5 days after.
2. ACS Support Function in SCCB will fax ACS screen prints (entity and/or comment screen) that contain the POA names and addresses the day after the ACS tape is run.
3. If the faxed screen prints are provided before the taxpayer's copy of the lien is printed, the POA's copy must be mailed the same day the taxpayer's notice is mailed but not later than 5 days after.
4. Note the POA information and date mailed in the ALS history.

### [5.12] 3.1.4.2 (07-26-2000)

#### Manually Prepared Notices

1. The L3172 can be generated by ALS using the Notadd option. Co-obligor (spouse with a different address or individual partners) information must be entered into ALS before the notice is generated.

#### NOTE:

Remember to provide multiple address information, if appropriate.

2. Manual preparation of L3172 (DO) will be necessary if the above process is not used. Each individual partner in a partnership listed on the NFTL must receive a L3172 by certified mail.
3. When mailing addresses are not available for the partners' residence and the place of employment is not the partnership, **revenue officers will serve** the notice to the partner.
4. Lien units will fax copies of co-obligor liens to the appropriate employee for L3172 (DO) preparation and mailing, if address information is not received. The five (5) business day mailing requirement applies.
5. Lien units will create the L3172 using Notadd if addresses are provided prior to the generation of the L3172.
6. If the notice is manually prepared and:
  - A. a new address is located, issue a new L3172 calculating the taxpayers 30 day response due period beginning the day after the date the L3172 is dated, print substitute across the top, send certified mail and input the date on the ALS history screen
  - B. Issue a duplicate copy of the L3172 when the taxpayer has not provided documentation to change their master file address.
7. Certified mail numbers and receipts will be obtained from the post office.
8. Revenue officers will retain the stamped receipt in the case file. ALS Units not using the certified mail register will retain the stamped receipt in the same manner as the Form 3877.

### [5.12] 3.1.4.3 (07-26-2000)

#### Undelivered Mail

1. Undelivered mail will be worked daily.
2. When mail is returned undeliverable check IDRS to make sure that the address is correct.
- 3.

If the address  
is.... then....

the last known  
address, forward the notice and envelope to the appropriate employee to be associated with the case file.

not the last  
known address, forward the returned notice and envelope to the appropriate employee to be retained in the case file. Add the new address to master file, if appropriate, then mail a new notice to the correct address.

Use the ALS Notadd option to document return of the L3172 and to create a new L3172, if appropriate. Revenue officers will search their case file for a different address. If appropriate, a new lien should be filed. If a new address is found, add the appropriate information to ALS to generate a L3172. Do not return undelivered mail to ACS. Enter

the appropriate information in the Notadd option of ALS. Verify the IDRS address. If the address is not correct and IDRS has a new address, issue a new L3172. If the address is correct, note the ALS history "Verified IDRS address" and destroy the notice.

#### **[5.12] 3.1.4.4 (02-22-2000)**

### **Nominee, Transferee and Alter-Ego Situations**

1. Persons identified as nominees, or alter-egos are not entitled to a Collection Due Process Notice (Letter 3172(DO)). Attach Letter 3177 (DO) when you mail the lien. There is no requirement to send this notice certified mail. Also, there are new provisions available under IRC 6325(b)(4). See IRM 5.12.2.10.
2. The nominee or alter-ego is entitled to appeal under CAP.
3. The **taxpayer** in nominee, or alter-ego lien situations **must** receive the right to a hearing notice if there has not already been a notice for all periods on the lien. The notice will not be generated by ALS. Employees must ensure that the date is calculated and that the notice is sent certified mail.
4. Certified mail receipts will be attached to the case file. The certified mail number and date of mailing must be entered in the history section of ALS.

#### **[5.12] 3.1.5 (02-22-2000)**

### **Request for an Appeal**

1. A taxpayer may appeal any action related to the filing of a NFTL (i.e., underlying liability (under the circumstances), filing, withdrawal, discharge, etc.) Detailed Appeals procedures are contained in IRM 5.1.
2. Requests for appeal hearings will be mailed directly to the revenue officer or ACS. Employees may attempt to resolve issues with the taxpayer, however, this does not extend the 30 day period. If an agreement is reached, the request must still be sent to Appeals. 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 that you inform the taxpayer that your discussions do not extend the 30-day period in which the taxpayer may request a hearing with Appeals.
3. Appeal requests related to dyed diesel fuel liens will be forwarded immediately to the Examination employee by SPf when received.
4. Forward envelopes received with Form 12153, Request for Collection Due Process Hearing, received after the 30-day response period has lapsed to the office of Appeals with the Appeals case file. 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.

#### **[5.12] 3.1.5.1 (02-22-2000)**

### **Lien Filing During Levy Appeal**

1. A lien may be filed, using standard lien filing criteria during the period prior to the taxpayer requesting a levy appeal.
2. When a levy appeal has been requested, a lien may not be filed unless the government's interest is at risk. The following are examples of when you may want to file a lien.
  - A. The taxpayer is an in-business corporation, pyramiding liabilities.
  - B. Individual or business assets are being liquidated; or
  - C. The taxpayer has threatened to file bankruptcy.

#### **[5.12] 3.1.5.2 (02-22-2000)**

### **Levy During Lien Due Process**

1. Generally, within five business days after a Notice of Federal Tax Lien (NFTL) is filed, Letter 3172 is sent to taxpayers telling them about the NFTL and informing them of their Collection Due Process Appeal Rights.
2. If the notice requirements in 5.11.1.2.1 have been satisfied, Letter 3172 does not create a new waiting period before a Notice of Levy can be issued. However, once the taxpayer appeals the lien filing, generally, no Notices of Levy will be issued during the administrative or judicial appeal. See 9.3.3 of IRM 5.1 General Handbook, for a description, of when property can be levied during the appeals process.

#### **EXAMPLE:**



On April 5, 1999, a Notice of Federal Tax Lien is filed and Letter 3172 is sent to the taxpayer on April 7. The taxpayer appeals the NFTL on April 29. Until April 29, as long as the notice requirements in 5.11.1.2.1 have been satisfied, a Notice of Levy can be issued to collect the amount that is owed, including the periods that are included in Letter 3172.

### **[5.12] 3.2 (02-22-2000)**

#### **Failure to Release Liens Under IRC 6325**

1. 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 filed Notice of Federal Tax Lien (NFTL). See IRC 7432 and IRC 6325 of the Code.
2. Taxpayers must exhaust all administrative remedies available within the Internal Revenue Service prior to initiating a civil action in federal district court.
3. Taxpayers must:
  - A. submit an administrative claim for damages (IRC 7432).
  - B. submit a written request for a release of NFTL to the district where the NFTL was filed.
  - C. exhaust any other administrative procedures that the Internal Revenue Service has made available in order to mitigate damages.

### **[5.12] 3.3 (02-22-2000)**

#### **Administrative Claim Procedures**

1. Title 26, part 301, Section 7432-1, of the Code of Federal Regulations (CFR) contains the administrative claim procedures for the Internal Revenue Code Section 7432.
2. Send the administrative claim to the District Director, Attn: Chief Special Procedures function, of the district where the taxpayer currently resides or the district in which the Notice of Federal Tax Lien was filed. There is no standard form used in preparing a claim. It must, however, contain the following information:
  - A. The name, current address, current home and work telephone numbers and any convenient times to be contacted and the taxpayer identification number of the taxpayer making the claim;
  - B. A copy of the Notice of Federal Tax Lien affecting the taxpayer's property, if available;
  - C. A copy of the request for the release of lien made in accordance with section 301.6325-1(f) of the Code of Federal regulations.
  - D. The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);
  - E. A description of the damages incurred by the taxpayer filing the claim (including copies of any available substantiating documentation or evidence);
  - F. 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
  - G. The signature of the taxpayer or the taxpayer's duly authorized representative.
3. Each claim will be reviewed by SPf to insure that it contains the required information.
4. Notify the taxpayer of deficiencies and that the claim is not processable in writing within 14 days of receipt of the claim, when the claim does not contain the information requested in (1) above.

#### **NOTE:**

This is not considered a rejection of the claim because a claim meeting the requirements of Treasury Regulation 301.7433-1 has not been filed.

5. Use Pattern Letter 2730 (see Exhibit 5.12.3-1) to notify the taxpayer of any claim deficiencies.
6. If the claim was for a NFTL filed in another district forward the claim and all supporting documentation to that district office. Notify the taxpayer through Pattern Letter 2731. (See Exhibit 5.12.3-2.)
7. Administrative review of the claim must be completed within 30 days of receipt of a processable claim.

## **NOTE:**

The taxpayer may bring suit either upon:

- notice of rejection of the claim, or
  - the tolling of a 30 day period from the receipt of a processable claim.
8. A taxpayer must file an action in federal district court within two years after the cause of action occurs. If the taxpayer files an administrative claim within the last 30 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.
  9. Use Pattern Letter 2732 (Exhibit 5.12.3-3) or Pattern Letter 2733 (Exhibit 5.12.3-4) 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. Authority to sign these letters should be redelegated no lower than the Chief, Collection Division.
  10. There is no further administrative appeal of a claim for damages under this section if the claim is denied. The remedy provided by the statute is the institution of a suit.

### **[5.12] 3.4 (02-22-2000)**

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

1. The statutory elements contained in IRC 7432 must be applied to each processable claim. Address the following issues in determining if a claim is administratively allowable:
  - A. Did an outstanding NFTL against the taxpayer cause the taxpayer to sustain direct, economic damages?
  - B. Should the IRS have released the NFTL under the provisions of Internal Revenue Code section 6325?
  - C. Did the taxpayer promptly notify the IRS and subsequently did the IRS fail to take immediate action to release the NFTL?
2. Evaluate the facts and circumstances of each case.
3. The reviewer must determine if the IRS knowingly or negligently failed to release a NFTL under IRC section 6325 and whether the failure caused direct, economic damages which the taxpayer could not avoid.

#### **REMINDER:**

If the appropriate Internal Revenue employee fails to use due diligence, or act as a reasonable person would to release a lien under section 6325, the failure to release the lien is negligent.

4. The reviewer must ascertain when, in time, the taxpayer became aware of the violation or should have become aware of the violation.
  - A. Claims filed more than two years after the violation must receive special scrutiny. This means that the violation occurred more than two years from the 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 IRS' failure to release the NFTL.
  - D. Claims filed outside the two-year limitation will be rejected.
5. Certain criteria guide the amount of an administrative settlement, if any is authorized, under this section. For example:
  - A. the amount of the award is to be reduced by the amount of such damages which could have reasonably been lessened by the taxpayer;
  - B. only actual, direct economic damages are recoverable in an administrative claim. No costs are recoverable in an administrative claim. To the extent that any costs are recoverable under section 7432, such costs are recoverable only in a court proceeding.
6. The Collection determination to accept or reject each claim will be reviewed by District Counsel for agreement.
7. Release the Notice of Federal Tax Lien when damages are awarded.

### **[5.12] 3.5 (02-22-2000)**

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

1. IRC 7342 provides that the Service will reimburse taxpayers for damages resulting from IRS' failure to release a NFTL under IRC section 6325. The following criteria must be present in all cases:
  - A. The Service acknowledges that the NFTL should have been released under section 6325 previously.
  - B. The Service evaluates the taxpayers administrative claim for damages and agrees that the damages were incurred and that the Service is responsible for the reimbursement of said damages allowable under this section.
2. If an administrative claim is filed with the approving official, Collection personnel involved with the filing 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.
3. 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 SPf employee 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, discuss with district counsel.
4. When a claim is approved, prepare an original and three copies of:
  - FMS Form 195--Judgment Fund Payment Request (Admin. Award) (Exhibit 5.12.3-5)
  - FMS Form 196--Judgment Fund Award Data Sheet (Exhibit 5.12.3-6)
  - FMS Form 197--Voucher for Payment of Judgments, Compromise Settlements and Administrative Awards (Exhibit 5.12.3-7)
  - FMS Form 198--Judgment Fund Award Data Sheet--Additional Deductions (complete this form only if appropriate) (Exhibit 5.12.3-8)
5. Forward the original voucher (FMS Form 197, Exhibit 5.12.3-7) to the taxpayer for signature under cover of Pattern Letter 2733. (See Exhibit 5.12.3-4)
6. When the Form is received from the taxpayer, the approving official will sign the FMS Form 197.
7. Mail a signed copy of the FMS Form 197 to the taxpayer.
8. Forward the original and three copies with the forms described in (4) above to the Judgment Fund Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Room 6N34, US GAO Building, 441 G Street, N.W., Washington, D.C. 20548.
9. In cases where the taxpayer requests a check in lieu of electronic deposit, FMS will return the check to the contact person listed on Form 196 for disbursement to the taxpayer.
10. Mail the check to the taxpayer with a cover letter (locally designed) that specifies the date and the amount of the check.

### **[5.12] 3.6 (02-22-2000)**

## **Civil Cause of Action for Unauthorized Collection Action**

1. The Technical and Miscellaneous Revenue Act of 1988, (P.L. 100-647), added Section 7433, Civil Damages for Certain Unauthorized Collection Actions, to the Internal Revenue Code. This section was amended by Section 3102 of the Internal Revenue Service Restructuring and Reform Act of 1998. This section allows the federal government to be sued for damages in federal district court when, in connection with the collection of at tax, any officer or employee of the Internal Revenue Service recklessly, intentionally or negligently disregards any provision of the Internal Revenue Code of the related Treasury Regulations. The waiver of sovereign immunity applies to any action taken after November 10, 1988, the date of the enactment of this law. Employees, acting in the performance of their duties, whose actions are challenged under this Code Section will not be held personally liable in such an action. Subsection (e) was added to allow taxpayers to petition the bankruptcy court for actual economic damages and costs if the IRS willfully violated the automatic stay or discharge injunction.
2. For actions of officers or employees after July 22, 1998, the taxpayer must exhaust all administrative remedies available within the Internal Revenue Service prior to initiating a civil action in federal district court. For proceedings commenced after July 30, 1996, and before July 22, 1998, the taxpayer is not required to exhaust administrative remedies. However, the court may reduce the amount of damage, if it

finds that the taxpayer has not exhausted administrative remedies. In order to exhaust administrative remedies, the taxpayer must submit an administrative claim for damages in accordance with the regulations under section 7433. In addition, the taxpayer must exhaust any other administrative procedures that the Internal Revenue Service has made available to remedy the specific wrongful action in order to mitigate damages. For example, a taxpayer who alleges that an employee of the Internal Revenue Service wrongfully filed a Notice of Federal Tax Lien knowing that the taxpayer had already paid his or her entire liability, must administratively appeal the filing of the notice of lien and ask for a Certificate of Release of lien under I.R.C. 6326 before the taxpayer may pursue an action in federal district court.

3. If a taxpayer is successful in a court action, he or she may recover the sum of the actual, direct economic damages suffered by the taxpayer as the proximate result of the reckless or intentional action. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent they result in direct monetary losses.
4. Costs of the action payable from a suit under this provision are; fees of the clerk and marshal; fees of the court reporter for all or part of any stenographic transcript necessary for use in the case; costs of printing and witnesses; costs for securing regular as well as certified true copies of documents used in the proceeding; docket and filing fees; and, payments made to court appointed experts and interpreters.
5. Litigation and administrative costs are not recoverable under this section. Litigation costs which may include attorney's fees, may, however, be recoverable under Internal Revenue Code Section 7430, Awarding of Costs and Certain Fees. Administrative costs (including any costs incurred getting the Service to rectify its wrongful act and costs incurred pursuing an administrative claim for damages under section 7433) are not recoverable under section 7430. However, administrative costs incurred after the date a bankruptcy petition is filed may be awarded under Section 7433(e) for violations of the automatic injunction.
6. Payment Authority--Claims under this provision will be paid out of funds appropriated for judgments, awards, and compromise settlements under section 1304 of title 31 of the United States Code.

### **[5.12] 3.7 (02-22-2000)**

#### **Administrative Claim Procedures**

1. Title 26, part 301, Section 7433-1, of the Code of Federal Regulations contains administrative claim procedures for Internal Revenue Code Section 7433. The administrative claim is to be sent to the District Director, Attn: Chief, Special Procedures function of the district where the taxpayer currently resides or, when dealing with a corporate entity, the district where the corporate headquarters is located. There is no standard form used in preparing a claim. The claim must contain the following information:
  - A. The name, current address, current home and work telephone numbers and any convenient times to be contacted, and the taxpayer identification number of the taxpayer making the claim;
  - B. The grounds, in reasonable detail, for the claim (including a complete description of the act and copies available substantiating documentation or correspondence with the Internal Revenue Service);
  - C. A description of the damages incurred by the taxpayer filing the claim (including copies of any available substantiating documentation or evidence);
  - D. The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (including copies of any available substantiating documentation or evidence); and
  - E. The signature of the taxpayer or the taxpayer's duly authorized representative.
2. Each claim will be reviewed by SPf to insure that it includes this information. A proponent whose claim does not include the information requested in (1) above will be notified in writing, within 14 days of the receipt of the claim, of the deficiencies and advised that the claim is not processable. This is not considered a rejection of the claim because a claim meeting the requirements of Treasury Regulation 301.7433-1 has not been filed. Pattern Letter 2730 (see Exhibit 4-1) should be used to notify the taxpayer of the deficiencies in the claim.
3. Administrative review of the claim should be completed as soon as possible but must be completed within 6 months of receipt of a processable claim. The taxpayer may bring suit either when the notice of rejection of the claim is received or when the 6 month period from the receipt of a processable claim begins. A taxpayer must file an action in federal district court within two years after the cause of action occurs. If the taxpayer files an administrative claim within the last 6 months of the period of limitations, the taxpayer can file suit any time after the administrative claim is filed.

4. A cause of action occurs under this provision when the taxpayer has reasonable opportunity to discover all essential elements of a possible civil action for damages in federal district court under section 7433.
5. Pattern Letter 2732 (see Exhibit 5.12.3-3) or Pattern Letter 2733 (see Exhibit 5.12.3-4) is to be used to notify the taxpayer of the results of the administrative review of the claim. If only a portion of the claim is being approved, both pattern letters will be sent to the taxpayer at the same time. Authority to sign these letters should be redelegated no lower than Chief, Collectible Division.
6. There is no further administrative appeal of a claim for damages under this section if the claim is denied. The remedy provided by the statute is the institution of a suit.

### **[5.12] 3.7.1 (02-22-2000)**

#### **Claims for Damages by Third Parties**

1. Recovery of damages is permitted by a third party in a wrongful levy suit. If it is determined that any officer or employee of the Internal Revenue Service recklessly, intentionally or by reason of negligence, disregarded the provisions of the Code. The defendant will be liable to the plaintiff in an amount equal to the lesser of \$1,000,000 (\$100,000 in the case of negligence) or the sum of:
  - Actual, direct economic damages sustained by the plaintiff as a result of the reckless, intentional or negligent disregard by the officer or employee (reduced by the amount of damages awarded under subsection (b), and
  - The costs of the action.

### **[5.12] 3.7.1.1 (02-22-2000)**

#### **Administrative Remedies**

1. A judgment for damages will not be awarded unless the court determines that the plaintiff has exhausted all administrative remedies within the Internal Revenue Service.

### **[5.12] 3.7.1.2 (02-22-2000)**

#### **Payment Authority**

1. Claims filed under this section will be paid from funds appropriated under section 1304 of title 31, United States Code. Procedures for filing a claim remain unchanged.

### **[5.12] 3.8 (02-22-2000)**

#### **Evaluation of Claim for Damages Under IRC 7433**

1. The statutory elements contained in IRC 7433 must be applied to each processable claim. In determining whether a claim is administratively allowable the reviewer must determine whether:
  - A. An officer or employee of the IRS intentionally, negligently or recklessly disregarded any legal or regulatory provision of the Internal Revenue Code in connection with the collection of any Federal tax knowing that such action probably would cause taxpayer to sustain direct, economic damages; or knowing facts that would lead a reasonable third party to believe that failure to meet the legal or regulatory requirements of the Internal Revenue Code probably would cause a taxpayer to incur a direct, economic damages; or
  - B. Based on the facts and circumstances of the case, the officer or employee violated the legal or regulatory requirements of the Internal Revenue Code expressly to cause damage to the taxpayer.
2. The facts and circumstances of each case must be evaluated. The reviewer must determine if the alleged infraction did, in fact, take place. He or she must also determine whether or not the infraction was a reckless, intentional or negligent disregard for the law, contained in (1) above.
3. The reviewer must also seek to ascertain when, in time, the taxpayer became aware of the violation or should have become aware of the violation. Claims filed more than two years after the violation must receive special scrutiny. This means that the unauthorized action may have occurred more than two years from the date of the claim. This is because 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. The reviewer must determine when the taxpayer knew or should have known of the violation. Claims filed outside the two year limitation will be rejected.
4. Certain criteria guide the amount of an administrative settlement, if any is authorized, under this section. For example:

- A. the amount of the award is to be reduced by the amount such damages could have reasonably been lessened by the taxpayer;
  - B. Only actual, direct economic damages are recoverable in an administrative claim. No costs are recoverable in an administrative claim. To the extent that any costs are recoverable under section 7433, such costs are recoverable only in a court proceeding; and
  - C. the actual, direct economic damage reimbursement can not exceed \$1,000.00 or \$100,000 in the case of negligence.
5. Acceptance or rejection of each claim will be reviewed by District Counsel for agreement.

### **[5.12] 3.9 (02-22-2000)**

#### **Reimbursement of Damages and Costs**

1. IRC 7433 provides that claims will be made out of the judgment fund caused by collection actions in which an IRS employee recklessly, intentionally or negligently disregarded the Internal Revenue Code or any other regulation promulgated under the Code. The following criteria must be present in all these cases:
  - A. The Service acknowledges that the Internal Revenue Code was recklessly, intentionally or negligently violated by an employee or employees of the Service.
  - B. The Service evaluates the taxpayers administrative claim for damages and agrees that the damages were incurred and that the United States is responsible for the reimbursement of said damages allowable under this section.
2. If a administrative claim is filed with the approving official, Collection personnel involved with the collection action 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.
3. If the claim is made without proof or proper substantiation of damages, then the taxpayer should be contacted immediately and be told of the requirement to provide verification that these damages have been incurred. If the taxpayer adequately substantiates only a portion of the claim, the entire claim should be sent back to the taxpayer with a complete explanation of what is required in order to complete the processing of the claim. See Exhibit 5.12.3-1.
4. When a claim is approved, prepare an original and three copies of FMS Form 195 (see Exhibit 5.12.3-5). Forward the original voucher form to the taxpayer for signature under cover of Pattern Letter 2733. (See Exhibit 5.12 3-4)
5. When the Form is received from the taxpayer, the approving official will sign the FMS Form 195. Send the taxpayer a copy of the signed Form 195. Be sure to include a complete mailing address on the form so that FMS can mail a copy of the voucher with payment information back to the originating office for our records. Forward the original and three copies of Form 1145 with the Pattern Letter 2734 (see Exhibit 5.12.3-9) to the General Government Division--(GGD)--Claims Group, U.S. Government Accounting Office, 441 G Street, N.W., Washington, D.C. 20548.

### **[5.12] 3.10 (02-22-2000)**

#### **Data for Defense of Suits**

1. The Chief, SPf, will see that any narrative report that is necessary to reflect the factual situation is prepared and that other data requested or required by counsel are secured. Specific reporting forms are not prescribed for use in all types of defense suits. However, Form 4477, Form 4479 and Form 4480 will be used for interpleaders and suits in the nature of an interpleader and also for other defense suits when appropriate. Form 4481 will be used in all cases to transmit to counsel the transcript, administrative files, reports and other documents required.
2. Upon receipt of a complaint and summons or a request for data, the Chief, SPf, will determine the periods of tax liability in question and take action to secure a transcript, if necessary.
3. Form 4844 will be prepared and forwarded to Centralized Services function to secure the administrative files.
4. The Chief, SPf, will determine the need for special document requirements from the complaint filed. These documents may include:
  - A. notices of lien filed and refiled--In cases where priority of lien is in issue (i.e., Section 2410, Title 28, USC cases).
  - B. Consent to Extend the Time to Assess Tax, Form 872, or Tax Collection Waiver, Form 900, in cases where timeliness of assessment or collection is in issue.

- C. copies of offers in compromise, Proofs of Claim and data as to court proceedings--In cases where the collection statute may be in issue (i.e., discharge of tax liabilities under the provisions of the Bankruptcy Act).
  - D. other information or documents may include, but are not limited to notices of levy, seizure and sale documents, statutory notices (90-day letter for assessment notice and demand, etc.), data as to whether a jeopardy assessment is involved, data as to the existence and/or validity of competing liens and/or claims (including copies of instruments when necessary). Form 4479 may be used for this purpose.
5. In most cases the required data can and should be gathered even before a request is received from the U.S. Attorney or Chief Counsel since SPf will normally have received notification of the pending suit through direct sources.
  6. The Chief, SPf, will immediately see that required data is secured and will follow-up on all requisitions for tax returns and requests for investigations. The data should be sent to district counsel no later than the 45th day after the complaint or petition was filed. Counsel should be advised of any delay by telephone.
  7. If data or documents required are, in part, in another district or region, the receiving office will expeditiously initiate action to secure the data and will be responsible for securing and furnishing the data to the requester.
  8. If requests for data or documents are received which require all or substantially all documents to be secured from another service center or region, the receiving office (SPf) will promptly notify, by telephone, the service center involved of the request and the documents required. The request for data will then be forwarded by mail. The office originating the request (U.S. Attorney or district counsel) should also be notified that the request has been transferred. The transferee will assume responsibility for securing and furnishing the data to the requester.
  9. If a request from counsel requires additional investigation or examination by either a revenue agent or revenue officer, the Chief, SPf, will have a copy of the request handcarried to the Chief, Examination Division, or Chief, Collection function, as applicable, and request that the investigations be given preferential treatment and that the information be furnished as soon as possible.

### **[5.12] 3.11 (02-22-2000)**

#### **Subpoenas and Requests for IRS Personnel to Testify or Produce Records**

1. Subpoenas and requests for Service personnel to testify or to produce records in all cases not involving the administration of Internal Revenue laws, should be routed as quickly as possible to the disclosure officer of the district or regional office to which the employee is assigned or, in matters involving National Office employees, to the Disclosure and Security Division, National Office, attention CP:EX:DS. It is important that this information be provided without delay in order that necessary authorization be obtained within the time allowed by the court. If time is crucial, the matter should also be reported by telephone to the disclosure officer or Disclosure and Security Division, as appropriate. For further guidelines, see Chapter (36)00 of New IRM 1.3, Disclosure of Official Information Handbook (formerly IRM 1272).
2. Requests by a government attorney for Service personnel to testify or produce records on behalf of the government in referred tax cases may be complied with and do not require prior approval.
3. Subpoenas and requests not served on behalf of the government for Service personnel to testify or produce records in referred tax cases (with the exception of Tax Court subpoenas) require authorization and should be routed as quickly as possible to the Deputy Regional Counsel (General Litigation) or Tax Litigation Division of the office of Chief Counsel, depending on the nature of the case, so that necessary authorization may be obtained.
4. It is the Disclosure Officer's responsibility to arrange for district counsel to assist, or an attorney of the Department of Justice (including U.S. Attorneys) to represent subpoenaed/requested employees, as necessary, so that arrangements may be made for a representative of Counsel or the U.S. Attorney's office to brief the employee and to appear at the proceeding, as necessary.
5. See Delegation Order No. 156, for the managerial levels with the authority to determine whether an employee will be permitted to testify or produce Service documents subpoenaed or requested in connection with judicial and administrative proceedings. If the delegated official determines that the employee may not testify or produce the records subpoenaed or requested (in whole or in part), district counsel or the representative of the U.S. Attorney's office will, as necessary, appear before the court with the employee and inform the court that the information may not be disclosed and explain the reason for the information being so protected.

6. If the delegated official's instructions are not received by the time set for appearance, the employee will appear before the court, with the disclosure officer, district counsel or the representative of the U.S. Attorney's office, as necessary. The court should be advised that, pursuant to 26 CFR 301.9000-1, the employee may not testify or produce Service documents until the delegated official has considered the contents of the subpoena or request and has authorized a Service employee to comply. The employee or the disclosure officer, district counsel or the representative of the U.S. Attorney's Office should request additional time in which to receive instructions. If the court does not grant the delay, the employee will decline to disclose the records or information sought. However, an attempt will be made to contact the party seeking the information prior to the appearance time so that continuance might be obtained, if appropriate.

**[5.12] 3.12 (02-22-2000)**  
**Administrative Claim Report**

1. Prepare a quarterly report listing all claims paid. Each reporting period begins at the start of the fiscal year. The report will provide the following information.
  - Quarter ending date
  - Taxpayer name
  - TIN
  - Amount of check
  - Date of check
2. Forward reports to: Director, Office of Special Procedures, CP:CO:C:SP, 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: Lien Analyst.

**Exhibit [5.12] 3-1 (02-22-2000)**  
**Pattern Letter P--2730**

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Date of this Letter:  
Person to Contact:  
Telephone Number:  
Reply To:

Dear [ Name of Taxpayer ],

We are sorry, but we can't process your claim for damages under Internal Revenue Code section [ *enter 7432, "Civil Damages for Failure to Release a Lien" ...or...7433, "Civil Damages for Certain Unauthorized Collection Actions"* ] because

*[enter the reasons the claim cannot be processed. Describe any missing or incomplete information. Be specific. ]*

We are not rejecting your claim. Since the claim you filed did not meet the requirements of Treasury Regulation [ 301.7432-1...or...301.7433-1 ], you have not actually filed a valid claim. If you file another claim in the future that meets those requirements, we will consider it.

Sincerely yours,

**Exhibit [5.12] 3-2 (02-22-2000)**  
**Pattern Letter P--2731**

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Date of this Letter:  
Person to Contact:  
Telephone Number:



Reply To:

Dear [ Name of Taxpayer ],

We are sorry, but we cannot process your claim for damages under Internal Revenue Code section 7432, "Civil Damages for the Failure to Release a Lien," in this district, because the lien you are writing about was filed in the district shown below.

[ enter the name and address of the district ]

We are forwarding your claim to that district. The staff there will decide whether to accept or reject your claim, and will send you their decision soon.

**Exhibit [5.12] 3-3 (02-22-2000)**  
**Pattern Letter P--2732**

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Department of the Treasury  
Internal Revenue Service  
Address

Date of this Letter:  
Person to Contact:  
Telephone Number:  
Reply To:

Dear [ Name of Taxpayer ],

We have reviewed your claim for damages under Internal Revenue Code section [ enter 7432, Civil Damages for the Failure to Release a Lien or...7433, Civil Damages for Certain Unauthorized Collection Actions ]

We are denying your claim for the following reasons:

[ enter the specific reasons. ]

or

We are denying a portion of your claim for the following reasons;

[ enter the specific reasons ]

You are entitled to make another administrative appeal of this decision. However, if you wish to take further action, you may file a civil action for damages under Treasury Regulation [ enter 301.7432-1...or...301.7433-1 ] in federal district court. You have 2 years from the date of the action you believe caused you damage to take your case to court.

Sincerely yours,

**Exhibit [5.12] 3-4 (02-22-2000)**  
**Pattern Letter P--2733**

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Department of the Treasury  
Internal Revenue Service  
Address

Date of this Letter:  
Person to Contact:  
Telephone Number:

Dear [ Name of Taxpayer ],

We have approved your claim for damages under Internal Revenue Code section [ enter 7432, Civil Damages for

*the Failure to Release a Lien...or...7433, Civil Damages for Certain Unauthorized Collection Actions ]*

or

We have approved a portion of your claim for damages under Internal Revenue Code section [ enter 7432, Civil Damages for Failure to Release a Lien...or...7433, Civil Damages for Certain Unauthorized Collection Actions ].

Please sign and date the enclosed voucher and return it to us. We will send you a signed copy for your records. We will send you a check within six to eight weeks after we receive your signed voucher.

If you have any questions, please contact the person whose name and telephone number are shown at the top of this letter.

Sincerely yours,

District Director

Enclosure:

Voucher

Exhibit [5.12] 3-5 (02-22-2000)

FMS Form 195

Exhibit [5.12] 3-6 (02-22-2000)

FMS Form 196

Exhibit [5.12] 3-6 (Cont.) (02-22-2000)

FMS Form 196

Exhibit [5.12] 3-7 (02-22-2000)

FMS Form 197

Exhibit [5.12] 3-7 (Cont.) (02-22-2000)

FMS Form 197

Exhibit [5.12] 3-8 (02-22-2000)

FMS Form 197

**Exhibit [5.12] 3-9 (02-22-2000)**

**Pattern Letter P--2734**

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Date of this Letter:

Person to Contact:

Telephone Number:

General Government Division--Claims Group

U.S. General Accounting Office

441 G Street N.W.

Washington, DC 20548

Dear Claims Group,

Please process and pay the enclosed Voucher for Payment Under Internal Revenue Code section 7432 or 7433.

The claimant(s) has (have) signed the voucher and I have approved it on behalf of the Commissioner of Internal Revenue through redelegated authority.

I have enclosed an original and three copies of the voucher. Please return a completed copy to my office when you have finished your processing.

Sincerely yours,

District Director

Enclosure:  
Voucher and copies

**Exhibit [5.12] 3-10 (02-22-2000)**  
**Letter 3172(DO)**

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Date:

CERTIFIED MAIL

TP Name  
Address  
City, State, ZIP

Social Security or Employer  
Identification Number:

Person to Contact:  
Telephone Number:

**Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320**

This letter is to inform you that we have filed a Notice of Federal Tax Lien and that you have a right to a hearing to discuss collection options and liability issues. The enclosed Publication 1660, Collection Appeal Rights, explains your right to a hearing.

The amount of the unpaid tax is:

<u>Type of Tax</u>	<u>Period</u>	<u>Amount</u>
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In order to excise your right to a hearing, you must file your request by \_\_\_\_\_.  
A copy of the request form is attached. It must be sent to: (district address).

A notice of Federal Tax Lien was filed on \_\_\_\_\_, with respect to these taxes. The total amount you owe for the period(s) includes interest and other additions such as penalties and lien fees. You must pay all of the taxes, interest and other additions in order to obtain a release of the lien. Call the number above to obtain your current balance.

The lien attaches to all property you currently own and to all property you may acquire in the future. It may also damage your credit rating and hinder your ability to obtain additional credit.

We will reissue a Certificate of Release of Notice of Federal Tax Lien within 30 days after you pay the debt or have us adjust it. We also will release the lien within 30 days after we accept a bond that you submit, guaranteeing payment of the debt.

Procedures for requesting a Certificate of Release are in the enclosed Publication 1450, Request for Release of Federal Tax Lien.

Sincerely,

Chief, Special Procedures

Enclosures:  
Pub. 1660  
Pub. 1450  
Form 668Y, Notice of Federal Tax Lien  
Form 12153, Request for Collection Due Process Hearing

**Exhibit [5.12] 3-11 (02-22-2000)**  
**Letter 3171(DO)**

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Date:

TP Name  
Address  
City, State, ZIP

Social Security or Employer  
Identification Number:

Person to Contact:  
Telephone Number:

**Notice of Additional Federal Tax Lien Filing**

This letter is to inform you that we have filed a Notice of Federal Tax Lien in \_\_\_\_\_.  
The enclosed Form 668(Y), Notice of Federal Tax Lien, contains the type of tax, the tax period and the initial amount of the debt.

The total amount you owe for the period(s) includes interest and other additions such as penalties and lien fees. You must pay all of the taxes, interest and other additions in order to obtain a release of the lien. Call the number above to obtain your current balance.

The lien attaches to all the property you currently own and to all property you may acquire in the future. It also may damage your credit rating and hinder your ability to obtain additional credit.

We will issue a Certificate of Release of Notice of Federal Tax Lien within 30 days after you pay the debt or have us adjust to it. We also will release the lien within 30 days after we accept a bond that you submit, guaranteeing payment of debt.

Procedures for requesting a certificate of release are in the enclosed Publication 1450, Request for Release of Federal Tax Lien.

Sincerely,

Chief, Special Procedures

Enclosures:  
Pub. 1450  
Form 668Y, Notice of Federal Tax Lien

**Exhibit [5.12] 3-12 (02-22-2000)**  
**Letter 3177(DO)**

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Date:

TP Name  
Address  
City, State, ZIP

Taxpayer Identification Number:  
Person to Contact:  
Telephone Number:

**Notice of Federal Tax Lien Filing -- Nominee or Alter-Ego**

You have been identified as the nominee or alter-ego for \_\_\_\_\_. This letter is to inform you that we have filed a Notice of Federal Tax Lien. You have the right to appeal this decision. Your rights are explained in

the enclosed Publication 1660, Collection Appeal Rights.

There may be other ways that this issue can be resolved. Contact the person named above for further information.

One of the options you have is to request a Certificate of Discharge from the Federal Tax Lien. However, before we will issue a discharge, you must pay the amount due (including interest and other additions) or post a bond guaranteeing payment. The enclosed Publication 783, Instructions on how to apply for a Certificate of Discharge From Federal Tax Lien, is enclosed to provide guidance on how to request a certificate of discharge.

We will issue a Certificate of Release of Federal Tax Lien within 30 days after you pay the tax due or within 30 days after a bond has been accepted guaranteeing payment.

Sincerely,

Chief, Special Procedures

Enclosure:

Publication 1660, Collection Appeal Rights

Publication 783, Instructions on how to apply for a Certificate  
of Discharge From Federal Tax Lien

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# Judgment Fund Payment Request (Admin. Award)

FOR FMS USE ONLY: Z-

*General Instructions:* Use this form to transmit to FMS a request to certify an administrative award against the United States for payment from the Judgment Fund, under 31 U.S.C. § 1304.

Date: \_\_\_\_\_

Judgment Fund Branch  
Funds Management Division  
Financial Management Service  
Department of the Treasury  
Room 6N34  
US GAO Building  
441 G Street, NW  
Washington, DC 20548  
(Telephone 202-874-8380)

Matter of: \_\_\_\_\_

Dear Sir or Madam:

I have been authorized to administratively settle the claims made against the United States in the captioned matter. As described in the enclosed documentation, I certify that all of the criteria required by law for the approval of claims pursuant to the authorities specified in sections 7(a), 8(a), 9(a), and 10(a) of the enclosed FMS 196: Judgment Fund Award Data Sheet, have been satisfied, that an award has been made against the United States in this matter, and that any portions of the award required to be paid from agency funds are being paid from those funds.

I believe that this award qualifies for payment pursuant to 31 U.S.C. § 1304. Accordingly, I request that you certify this award for payment from the Judgment Fund established by that law. Enclosed are completed copies of FMS 196: Judgment Fund Award Data Sheet; FMS 197: Voucher for Payment of Judgments, Compromise Settlements, & Administrative Awards; and all other enclosures required by FMS regulations. Unless payment by electronic funds transfer is indicated on FMS 196, please have the check sent to the agency contact shown in item 5(c) of FMS 196.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (printed or typed)

\_\_\_\_\_  
Title and Agency

Enclosures: Judgment Fund Award Data Sheet  
FMS-197: Voucher for Payment of Judgments, Compromise Settlements, & Administrative Awards

*Incomplete submissions will be returned to the submitter without action.*

Financial Management Service



Judgment Fund Award Data Sheet

**Instructions:** Both sides of this form must be completed. Use separate forms or schedules for separate payments to separate persons (for instance, separate awards to co-plaintiffs, or to an insurer and the insured). If extra space is needed (for instance, for class actions and multi-claimant awards attach additional copies of

For FMS use only: z-

1. Claim/Case

a. Name of claim/case: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

b. Claimant/Plaintiff's file # (if known): \_\_\_\_\_

c. If litigative award

ii. Court name: \_\_\_\_\_

iii. Docket #: \_\_\_\_\_

iv. Justice Dept compromise settlement?  Yes  No

d. Date award made (mo/day/year): \_\_\_/\_\_\_/\_\_\_

e. Brief description of facts giving rise to claim/case:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. Claimant/Plaintiff's Counsel (if any)

a. Name & address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. Agency Information

a. Submitting agency: \_\_\_\_\_

b. Submitting agency's file #: \_\_\_\_\_

c. Submitting agency's contact:

i. Name & address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ii. Phone No.: ( ) \_\_\_\_\_-\_\_\_\_\_

iii. Fax No.: ( ) \_\_\_\_\_-\_\_\_\_\_

d. If agency subject to claim/suit is not submitting agency:

i. Subject agency: \_\_\_\_\_

ii. Subject agency's file #: \_\_\_\_\_

e. Statutory function claim/case arose under: \_\_\_\_\_  
 \_\_\_\_\_

f. If claim is within Contract Disputes Act, 41 U.S.C. §§ 601, 612

i. Name & address of agency reimbursement contact: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ii. Phone No.: ( ) \_\_\_\_\_-\_\_\_\_\_

iii. Contract No.: \_\_\_\_\_

iv. B.C.A. No.: \_\_\_\_\_

2. Claimant/Plaintiff

a. Name & address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

b. If claim is for back pay, give claimant's

i. Social Security Number: \_\_\_\_\_

ii. Birth date (mo/day/year): \_\_\_/\_\_\_/\_\_\_

3. Payee name (if different from claimant/plaintiff named above)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

6. If Payment will be made in a Foreign Currency

a. Country & currency \_\_\_\_\_  
 \_\_\_\_\_

FAILURE TO FULLY COMPLETE THIS FORM WILL RESULT IN ITS RETURN TO THE SUBMITTER

### Judgment Fund Award Data Sheet: Instructions for Lines 7-15

Itemization of Amounts Payable from the Judgment Fund	Amounts to be Paid
	A
<b>7. Principal</b>	
7a. Citation to legal authority	
<b>8. Attorney Fees</b>	
8a. Citation to legal authority	
<b>9. Costs</b>	
9a. Citation to legal authority	
<b>10. Interest</b>	
10a. Citation to legal authority	
10b. Applicable interest rate (%) for award shown	
10c. Compound interest period (daily, yearly, etc.), if any	
10d. Beginning and ending dates for interest accrual	
<b>11. Total Amounts Payable from the Judgment Fund</b>	

- All If payment will be in a foreign currency, specify all monetary data in that currency.
- 7-10 If amounts for fees, costs, or interest were included in the principal amount (stated on line 7) as part of a "lump sum" award, enter "INCLUDED ABOVE" in the white area of column A, for each such item. Enter "NONE" for any of these items (principal, fees, costs, or interest) for which no amount was awarded/included.
7. Enter the principal amount payable (excluding attorney fees, costs, and interest) in the column A white area. Cite the legal authority for that award (for instance, "FTCA, 28 USC 2672" or "5th Amend. Reg. Taking") in the gray area below the amount.
8. Enter attorney fee (if any) payable in column A white area. Cite legal authority for that award (for instance, "EAJA, 28 USC 2412(b)") in the gray area below the amount.
9. Enter costs payable (if any) in column A white area. Cite legal authority for that award (for instance, "EAJA, 28 USC 2412(a)") in the gray area below the amount.
10. If interest was payable and is calculable by the submitting agency, enter total amount in column A white area. Cite legal authority for that award (for instance, "Back Pay Act, 5 USC 5596(b)(2)") in the gray area below the amount, and, if known, the rate, compounding period (if any), and the dates interest accrual begins and ends.
11. Add and enter the total of amounts shown in white areas of lines 7 through 10.

Deductions to be Made from Amounts Payable from the Judgment Fund	Amounts to be Deducted		
	A	B	C
<b>12. Itemized Deductions</b>			
12a. Reason for deduction shown			
12b. Entity and program to receive the deduction			
12c. Appropriation account to receive deduction			
12d. Address of entity to receive the deduction			
<b>13. Deductions from Other Pages (No. of add'l pages=_____)</b>			
<b>14. Total Amount to be Deducted</b>			
<b>15. Net Amount Payable to Claimant/Plaintiff from the Judgment Fund</b>			

12. Starting in column A white area, enter any deductions specified in the judgment or settlement agreement, or to be set off under 31 USC 3728. Place each deduction in its own column and indicate in the gray areas below if the reason (for instance "debt setoff, 31 USC 3728" or "FICA withholding") for it and the recipient's name, address, and appropriation account. If more than 3 deductions, attach additional sheets. If there are no deductions, enter "NONE" in column A white area.
13. Enter the number of extra pages (if any) attached for line 12 deductions in the space provided. Enter total amount from all additional pages used.
14. Enter the total amounts shown in all columns of line 12 (A, B, & C) and line 13 (A).
15. Subtract the amount in line 14 from that in line 11. If greater than 0, enter the difference on line 15. If the difference is 0 or less, enter "NONE" on line 15.

**Privacy Act Statement**

This information is required in accordance with 31 U.S.C. § 1304 and 5 U.S.C. § 552. The data you furnish will be used to effect certification of your claim. The information may be shared with other branches with FMS for the purpose of certifying your claim. Failure to provide this information may result in your claim being returned to you.



VOUCHER FOR PAYMENT OF  
JUDGMENTS, COMPROMISE SETTLEMENTS, & ADMINISTRATIVE AWARDS  
Use attachments if additional space is needed. See reverse for additional instructions.

Voucher No. \_\_\_\_\_  
Schedule No. \_\_\_\_\_  
Claim No. \_\_\_\_\_

A. PAYMENT DATA:

- (1) Submitting Agency/Office: \_\_\_\_\_
- (2) Agency/Office Mailing Address: \_\_\_\_\_
- (3) Payee(s): \_\_\_\_\_
- (4) Amount: \_\_\_\_\_ \$
- (5) Electronic Funds Transfer (EFT) Information:
  - (a) Payee Account Name: \_\_\_\_\_
  - (b) Payee Account #: \_\_\_\_\_
  - (c) ABA Bank #: \_\_\_\_\_
  - (d) Bank Name & Address: \_\_\_\_\_
- (6) Briefly Identify Claim: \_\_\_\_\_

PAID BY

B. ACCEPTANCE BY CLAIMANT(S) (NOTE: This form should not be signed by the claimant(s) if another release signed by the claimant(s) is attached.)

I (We), the claimant(s) and beneficiaries, do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me (us), on my (our) heirs, executors, administrators or assigns, and agree that said acceptance constitutes a complete release by me (us), my (our) heirs, executors, administrators or assigns of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising now or in the future from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries (including wrongful death), damages to property, breaches of contract or law, and any other acts or omissions, and the consequences thereof resulting, and to result, from the same subject matter that gave rise to the claim for which I (we) or my (our) heirs, executor, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States and against the employee(s) of the Government whose acts or omissions gave rise to the claim by reason of the same subject matter. I (We) further agree to reimburse, indemnify and hold harmless the United States, its agents, servants and employees from any and all claims or causes of action, including wrongful deaths, that arise or may arise from the acts or omissions that gave rise to the claim by reason of the same subject matter.

Date \_\_\_\_\_, 19 \_\_\_\_\_  
SIGN ORIGINAL ONLY \_\_\_\_\_  
(Claimants sign above)

C. AGENCY APPROVING OFFICIAL:

This claim has been fully examined in accordance with \_\_\_\_\_ (Statutory Cite)  
and approved in the amount of \_\_\_\_\_  
Signed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

D. AGENCY CERTIFYING OFFICER:

Pursuant to the authority vested in me, I certify that this voucher is correct and proper for payment in the amount of \_\_\_\_\_  
Signed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

E. OTHER ACCOUNTING INFORMATION AND CERTIFICATIONS

# Part 5

## Collection Activity

### Chapter 12

#### Federal Tax Liens

#### Section 4

### Judicial/Nonjudicial Foreclosures

#### Contents

- 5.12.4 Judicial/Nonjudicial Foreclosures
    - 5.12.4.1 Foreclosure Proceedings
    - 5.12.4.2 Judicial Foreclosures
      - 5.12.4.2.1 Processing Joinders in Judicial Foreclosures
      - 5.12.4.2.2 Right to Redeem Property Sold at Judicial Sale
    - 5.12.4.3 Nonjudicial Foreclosures
      - 5.12.4.3.1 Notice of Nonjudicial Sale
    - 5.12.4.4 Review of IRC 7425 Notice
    - 5.12.4.5 Adequacy of IRC 7425 Notice
    - 5.12.4.6 Acknowledgment of Notice
    - 5.12.4.7 Disclosure of Adequacy of Notice
    - 5.12.4.8 Notice of Nonjudicial Sale of Perishable Goods
      - 5.12.4.8.1 Definition of Perishable Goods
    - 5.12.4.9 Consent of Nonjudicial Sale of Property Free of Lien
      - 5.12.4.9.1 Application for Consent
      - 5.12.4.9.2 Processing Applications
      - 5.12.4.9.3 Determining the Date of Nonjudicial Sale
      - 5.12.4.9.4 Form of Consent
    - 5.12.4.10 Processing Notices of Nonjudicial Sales
    - 5.12.4.11 Right to Redeem Property Sold at Nonjudicial Sale
    - 5.12.4.12 Investigation Guidelines--Judicial/Nonjudicial Sales
    - 5.12.4.13 Reimbursement for Payments to a Senior Lienor
      - 5.12.4.13.1 Payments to Senior Lienor for Which Reimbursement May Be Requested
      - 5.12.4.13.2 Review of Requests for Reimbursement
    - 5.12.4.14 Soliciting Agreements to Bid
      - 5.12.4.14.1 Commercial Advertising
      - 5.12.4.14.2 Deposit Submitted With Agreement to Bid
  - Exhibit 5.12.4-1 Letter 1840 (DO)
  - Exhibit 5.12.4-2 Pattern Letter P-597
  - Exhibit 5.12.4-3 Letter 1879(P)
  - Exhibit 5.12.4-4 Pattern Letter P-338
-

#### **5.12.4.1 (05-28-1998)**

##### **Foreclosure Proceedings**

1. Foreclosing mortgagees should be encouraged to request discharges rather than join the United States in a judicial proceeding (IRC 6325(b)(2)). It would be to their advantage to eliminate the Government's right of redemption and to the Government's advantage to eliminate lengthy litigation.
  2. A commitment letter will be furnished to foreclosing parties within thirty days of receipt of their application. Certificates will be issued after receipt of proof that the taxpayer has been removed of right, title or interest in the property.
  3. A commitment letter should not be issued to parties who are nonjudicially foreclosing and have given adequate notice to the District Director under IRC 7425. If they wish to eliminate the Government's right of redemption, they should be advised of the procedure for obtaining a release of that right. The instructions for application are in Publication 487.
  4. If a Federal agency has foreclosed nonjudicially 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.
- 

#### **5.12.4.2 (05-28-1998)**

##### **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 upon, 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. A Certificate of Discharge will not be issued during the pendency of litigation without the prior approval of District Counsel.

#### **5.12.4.2.1 (05-28-1998)**

##### **Processing Joinders in Judicial Foreclosures**

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 district director, Attention: Chief, Special Procedures function, when the United States or the District 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 district 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, Special Procedures will establish a file and 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. In districts where experience has shown that judicial foreclosures are consistently non-productive in terms of surplus sale proceeds or redemption potential, the U.S. Attorney should be encouraged to file the most brief answer possible. This could possibly be as little as an acknowledgment that the liens are still in existence, a reference to attached copies of the NFTL and a statement that the current balances due on the NFTLs will be furnished at such time that the court may request. Once a response has gone to the U.S. Attorney, you are authorized to close the case unless it meets the criteria for a redemption investigation. The U.S. Attorney will continue to receive requested information even though the case is closed.
5. SPf 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.
6. Each district is responsible for establishing the time frame and methodology for following up. The established procedures should strive to provide a minimum of 90 days remaining available to conduct a redemption investigation.

#### **5.12.4.2.2 (05-28-1998)**

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

1. When a foreclosure action, to which the United States has been made a party, involves an encumbrance which is prior in right to the Government's NFTL, the 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., the junior tax lien is extinguished on that particular property. The law of the United States with respect to a FTL arising under the Internal Revenue laws allows a period of not less than 120 days or the period allowable for redemption under State law, whichever is longer, to exercise its right of redemption in the case of real property.
2. If the foreclosure action involves an encumbrance which is junior to the Government's FTL/NFTL, the sale of the property shall be made without disturbing the FTL/NFTL of the United States 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. While the sale of property under 28 USC 2410 by the holder of a superior lien has the effect of discharging property involved from the Federal tax lien/NFTL, the Government's rights have not ended at this point. 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.
4. This still does not terminate the Government's rights; 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 so that it might be resold 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.
5. SPf generally will not 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.
6. Revenue officers will provide to the Chief, SPf by the date specified in the Form 2209:
  - a completed Form 4376, Report of Investigation (IRC 7425 or 2410 USC), or
  - memorandum in accordance with IRM 5.12.5.6.4,
  - the original history sheet, and
  - any other information requested by the U.S. Attorney.
7. In cases where it appears that redemption may be feasible, revenue officers will retain:
  - the Form 2209,
  - the original Form 4376 and,
  - send a copy of the Form 4376, and any other information requested by the U.S. Attorney to the Chief, SPf by the due date of the Form 2209. The procedures in IRM 5.12.5.2 will be followed after the sale is held.

---

#### **5.12.4.3 (05-28-1998)**

### **Nonjudicial Foreclosures**

1. Property can be discharged from the effects of a FTL/NFTL when the holder of a superior lien forecloses by a nonjudicial sale under IRC 7425(b). A foreclosure by a junior lienholder does not affect the FTL/NFTL.

### **5.12.4.3.1 (05-28-1998)**

#### **Notice of Nonjudicial Sale**

1. Except for perishable goods, 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 District Director, Attention: Chief, Special Procedures function, in the district 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 nonjudicial 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.
  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 District Director's 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 district director 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, District Counsel should be consulted to determine if the Service has a redemption right.
- 

### **5.12.4.4 (05-28-1998)**

#### **Review of IRC 7425 Notice**

1. Prior to determining the adequacy of the 7425 notice SPf will consider, based on the information provided with the notice, whether or not there is a need to work a Right of Redemption. SPf will follow instructions in IRM 5.12.5.1.
2. 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 Taxpayer Delinquent Account (TDA) 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, note the SPf file.

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### **5.12.4.5 (05-28-1998)**

#### **Adequacy of IRC 7425 Notice**

1. Once it has been determined that an investigation will be worked, only those notices will be reviewed for adequacy.
2. The notice will be considered adequate if it contains the information shown below.
  - A. The name and address of the person submitting the notice of sale.
  - B. A copy of each Notice of Federal Tax Lien (Form 668(Y)) affecting the property to be sold, or the internal revenue district named, the name and addresses of the taxpayer, and the date and place of filing of the notice.
  - C. With respect to the property to be sold, a detailed description, including location, of the property affected by the NFTL (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title); the date, time, place, and terms of the proposed sale of the property; and in the case of a sale of perishable property described in IRM 5.12.4-8, a statement of the reasons the property is believed to be perishable.

- D. The approximate amount of the principal obligation, including interest, due the person selling the property and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.
  3. The notice will be considered inadequate if it does not contain the information described in (2) above. Written notification of the items of information which are inadequate will be given to the person who submitted the notice. Use Pattern Letter 1840(DO), Exhibit 5.12.4-1.
  4. In any case where it has been determined that the government has no interest in the property, and the Right of Redemption will not be exercised, no written notification of inadequacy should be sent to the person who submitted the notice.
  5. In case of an inadequate notice, the District Director may, in 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.
- 

#### **5.12.4.6 (05-28-1998)**

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

1. A written request that the receipt of a notice of sale be acknowledged will be honored if the notice of sale is submitted in duplicate.
2. The authority to acknowledge IRC 7425 Notices, and to reject them because of inadequacies, is delegated to the District Director. It is suggested that this authority be redelegated to the Chiefs, Collection function, Special Procedures function, and Field function.

#### **5.12.4.7 (05-28-1998)**

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

1. The District Director 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 District Director a written request which clearly describes the property sold, identifies the applicable NFTL, gives the reasons for requesting the information, and states the name and address of the person making the request.
- 

#### **5.12.4.8 (05-28-1998)**

##### **Notice of Nonjudicial Sale of Perishable Goods**

1. IRC 7425(c)(3) provides that, the notice requirements discussed above, a sale described in IRC 7425(b) of property liable to perish or become greatly reduced in value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the NFTL or title of the United States if notice of the sale is given, in writing, by registered or certified mail, or by personal service to the District Director's office, Attention, Chief, Special Procedures function, before such sale. The proceeds (exclusive of costs) of the sale shall be held as a fund, for not less than 30 days after the date of the sale, subject to the FTL/NFTL and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold.
2. The notice of sale of perishable goods shall contain the same information required in IRM 5.12.4.5.
3. If the seller fails to hold the proceeds of the sale in accordance with the provisions of IRC 7425(c)(3), the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so 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.
4. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the district director of the postponement. For provisions relating to the authority of the district director 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, see new IRM 5.1(General).

#### **5.12.4.8.1 (05-28-1998)**

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

1. The term "perishable goods" means any 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.

#### **5.12.4.9 (05-28-1998)**

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

1. A nonjudicial sale of property will discharge or divest the property of the lien or title of the United States if the district in which the sale occurs consents to the sale of the property free of the NFTL or title.
2. Consent to the sale may be given when adequate protection is afforded the FTL/NFTL or title. 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 property is assigned to the district director,
  - D. assignment of proceeds in excess of prior encumbrances is secured, or
  - E. any other circumstances acceptable to the district.
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 district 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 will be approved by the district director (IRC 7425). It is suggested that this authority be redelegated to the Chiefs, Collection function, Special Procedures function, and Field function.

#### **5.12.4.9.1 (05-28-1998)**

##### **Application for Consent**

1. Any person desiring the district director'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 2 copies of the information required in Publication 786.

#### **5.12.4.9.2 (05-28-1998)**

##### **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 in nature and the Government's interest is less than the criteria established under IRM 5.12.5.1.1 for redemption investigations.
2. If the property is real in nature 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.

#### **5.12.4.9.3 (05-28-1998)**

##### **Determining the Date of Nonjudicial 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 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.

#### 5.12.4.9.4 (05-28-1998)

##### Form of Consent

1. When consent to a nonjudicial foreclosure sale is given, the consent letter, prepared in triplicate by the Special Procedures function, 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 district director or the person delegated.
  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, Chief, Special Procedures function, will prepare in triplicate a letter of nonconsent 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 District Director or the person delegated.
- 

#### 5.12.4.10 (05-28-1998)

##### Processing Notices of Nonjudicial Sales

1. Each district, with the concurrence of the Regional Chief Compliance Officer will establish criteria for when to perform a redemption investigation. 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.

##### **REMINDER:**

The overall objective in establishing the criteria is to ensure that a redemption is made whenever appropriate and that unproductive investigations are kept to a minimum.

The productivity of investigations should not necessarily be judged on the basis of the redemptions that such investigations generate. Frequently, our inquiries about possible redemption lead to lien payoffs and releases of our right of redemption.

2. The only time SPf 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, SPf should request District Counsel to provide the 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 Taxpayer Delinquent Account (TDA) 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 SPf file will be noted.
5. The Chief SPf will issue a Courtesy Investigation (Form 2209) no earlier than 30 days prior to the scheduled date of sale. Whenever possible, efforts by SPf should be made to 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.



6. The revenue officer need not attend the sale, unless specifically directed by SPf. 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.
7. In the event the sale produces an amount in excess of prior encumbrances (surplus proceeds), a Notice of Levy, or other written notice of liability, may be used to reach this surplus.
8. The Report of Investigation (IRC 7425 and 2410 USC) will be prepared to provide a basis for a recommendation to exercise the right of redemption. The redemption period may be as little as 120 days and would therefore require prompt completion of investigations and processing of recommendations.

#### **5.12.4.11 (05-28-1998)**

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

1. IRC 7425(d) provides for the redemption by the Government of real property sold in a nonjudicial 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.
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#### **5.12.4.12 (05-28-1998)**

### **Investigation Guidelines--Judicial/Nonjudicial Sales**

1. If the sale is of real property, 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. Upon completion, Form 4376 and the history sheet will be forwarded to the Special Procedures function.
2. When considering whether to recommend redemption,
  - A. determine by observation, independent appraisal (or both), the fair market value of the property, and
  - B. search local records to determine what encumbrances are prior to the foreclosing instrument, and the amounts outstanding on such encumbrances.
3. If the amount bid on the property, plus the amount of all encumbrances prior to the foreclosing interest equals or exceeds the fair market value of the property, the revenue officer should close the investigation and report his or her findings to SPf.
4. When the fair market value reasonably exceeds the sum of the amount paid by the purchaser and the amount of all liens senior to the foreclosing encumbrance, redemption of the property should be considered. At any time while redemption is under consideration, Collection personnel should be alert to whether liens prior to the foreclosing encumbrance are outstanding and, if so, whether arrangements have been made to satisfy or make payments on them. The Service has no authority to use the Revolving Fund to make direct payments on such encumbrances.
5. Before property is redeemed, it should be reviewed for potential toxic waste problems. If the potential exists, the clean up cost should be considered before the property is redeemed.
6. If the revenue officer decides tentatively to recommend redemption, he or she will:
  - A. notify the purchaser of their rights; and,
  - B. locate parties who may be interested in submitting agreements to bid for the property.

#### **5.12.4.13 (05-28-1998)**

### **Reimbursement for Payments to a Senior Lienor**

1. Regulations under IRC 7425(d) or 2410 of Title 28 provides that whenever redemption is contemplated, the Service must notify the purchaser (or successor in interest) of property at a foreclosure sale that:
  - A. the purchaser (or successor in interest) has the right to request reimbursement for certain payments made to a senior lienor; and,
  - B. if the Government redeems the property and the purchaser (or successor in interest) has submitted a reimbursement request that meets the requirements of the regulations, he or she has the right to be reimbursed for such payments.
2. 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.

3. The Service's notice to the purchaser must be hand-delivered or sent by certified or registered mail. Pattern Letter P-597 (Exhibit 5.12.4-2) should be used for this purpose.

#### **5.12.4.13.1 (05-28-1998)**

### **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. a payment of principal or interest to a holder of a lien that was, immediately before the foreclosure sale, senior to the lien foreclosed; and/or,
  - B. a payment by an escrow agent of a real property tax or special assessment lien which was senior to the lien foreclosed.
2. No later than 15 calendar days after the Service sends the notice, the purchaser's request for reimbursement must be mailed or delivered to the IRS office specified in the notice.
3. The request must consist of a written, itemized statement, signed by the claimant, of the amount paid to the senior lienor for which reimbursement is claimed, together with supporting evidence; and, a waiver or other document that will be effective, upon redemption, to discharge the property from any interest in or lien on the property arising under local law with respect to the payment made to the senior lienor; or transfer to the United States any interest or lien.
4. 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 District Director 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.
5. If the right to redeem is not exercised or a request for reimbursement is withdrawn, the revenue officer will promptly return to the purchaser (or successor in interest) the waiver or other document referred to in (2)(b) above by certified or registered mail or by hand delivery.

#### **5.12.4.13.2 (05-28-1998)**

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

1. The revenue officer 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 SPf to District Counsel for review.
2. 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 unless the District Director notifies the purchaser that the Service has denied the amount claimed. Any such notification of denial must:
  - A. be sent 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; and
  - B. state the reason for such denial.
3. Requests for reimbursement generally will be denied only in cases where:
  - A. the reimbursement request was not timely delivered and reasonable cause was not shown; or
  - B. the waiver or other document required to be submitted with the reimbursement request was not submitted or was unsatisfactory; or
  - C. evidence of payment to a bona fide senior lienor was not submitted or was unsatisfactory.

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#### **5.12.4.14 (05-28-1998)**

### **Soliciting Agreements to Bid**

1. Before recommending redemption of real property, the revenue officer must obtain at least one offer to bid on the property. The revenue officer may mail the Pattern Letter P-1879 (Exhibit 5.12.4-3) to each name shown on the public auction bidders list maintained in his/her district office to solicit these bids. 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 revenue officer 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.

**5.12.4.14.1 (05-28-1998)**

**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) . . . Parties interested in purchasing the property after redemption should telephone (give number)."
3. The expense of advertising for agreements to bid will be satisfied from the Program Costs Account, Sub-object Class 2504, Expenses of Seizure and Sale (Exhibit 5 of IRM 1623, Financial Management Code Handbook). The voucher should reflect "Direct Charge to Activity 37."
4. The taxpayer's account will not be debited for these expenses even if the property is not sold.

**5.12.4.14.2 (05-28-1998)**

**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. The agreement to bid should be similar to IRM Exhibit 5.12.4-4.
2. A deposit of less than 20 percent may be secured, with group manager approval, but 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 should not be made a matter of routine as there is a greater potential for a bidder to default on an small amount. We want to avoid, at all costs, redeeming property and having to sell it at a loss for lack of a serious bidder.
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 district 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 submitted to the cashier for safekeeping.

**Exhibit 5.12.4-1 (05/28/98)  
Letter 1840 (DO)**

Internal Revenue Service		Department of the Treasury	
District Director			
Date:		In re:	
		Person to Contact:	
		Contact Telephone Number:	
<b>Information Copy Only</b>			
We are returning your notice of nonjudicial sale because it is inadequate. This letter is a NOTICE OF INADEQUACY, which we are required to send to you. We have shown the information needed 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 District 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), 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.
	Notice of sale not given 25 days before the sale.
Please resubmit your notice with the copy of this letter attached within sufficient time so that we receive it at least 25 days before the sale. An envelope is enclosed for your convenience.	
In case we find it necessary to contact you for further information, when you respond please include your telephone number and area code where we can reach you between 8 a.m. and 4:30 p.m.	

**Exhibit 5.12.4-1 (05/28/98)  
Letter 1840 (DO)**

Strip in "District Director, (City) District" 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. Region will strip in facsimile signature if one is requested.)
(over)	Letter 1840(DO) (Rev. 7-84)
If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.	
	Sincerely yours,

		District Director
Enclosures:		
Notice of nonjudicial sale		
Copy of this letter		
Envelope		
		Letter 1840(DO) (Rev. 7-84)

**Exhibit 5.12.4-2 (05/28/98)  
Pattern Letter 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 ( <b>Enter date, and number of days after</b> ) 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 the 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. 10-89)		
(Reference: IRM 535(23).1)		
- 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]
		Revenue Officer
Enclosures: Publication 487 Attachment Copy of this letter Envelope		
Form P-597 (Rev. 10-78)		

Exhibit 5.12.4-2 (05/28/98)  
Pattern Letter P-597

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. 10-78)

Exhibit 5.12.4-3 (05/28/98)  
Letter 1879(P)

		Person to Contact:
		Telephone Number:
		Refer Reply to:
		Date:
To Prospective Purchasers of Real Property:		
The Internal Revenue Service is seeking to redeem and sell the real property located at (Street address) .		
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 Internal Revenue Service must obtain a written agreement to bid, secured by a deposit of 20% of the amount of the bid. The deposit must be in the form of a cashier's or certified check, a bank or postal money order, a certificate of deposit, or an irrevocable letter of credit. If redeemed, the property will be sold pursuant to Section 7506 of the Internal Revenue Code subject to any prior outstanding mortgages, encumbrances, or other liens that may be superior to the lien of the United States.		
For additional information please contact (Revenue Officer's Name) at the address and telephone number shown above.		
		Sincerely,
		Revenue Officer

Exhibit 5.12.4-4 (05/28/98)  
Pattern Letter P-338

<b>(Because of limited use, the National Office will not provide a form for this purpose.)</b>	
<b>AGREEMENT TO BID</b>	
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 60 days from the date of this agreement.	
<b>(Description of Property)</b>	
*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 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 amount, my deposit, but not more than \$200, will be retained by the Internal Revenue Service as liquidated damages.	
Signature ____ Date	
*These paragraphs should be omitted if a deposit is not required.	



# Handbook 5.12

## Federal Tax Liens Handbook

### Chapter 5

### Redemptions

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#### Contents

- [5.12] 5.1 Processing Recommendations to Excise Redemption Rights
  - [5.12] 5.1.1 Redemption Investigations
- [5.12] 5.2 Processing of Recommendations to Exercise Redemption Rights
  - [5.12] 5.2.1 Revolving Fund for Property Redemption
  - [5.12] 5.2.2 Advances from the Revolving Fund
- [5.12] 5.3 Tender of Amount to Redeem
  - [5.12] 5.3.1 Proffer of Money
  - [5.12] 5.3.2 Proper Person
  - [5.12] 5.3.3 Amount To Be Paid
- [5.12] 5.4 Redemption Certificate
  - [5.12] 5.4.1 Certificate of Redemption
  - [5.12] 5.4.2 Preparation and Disposition of Certificate
  - [5.12] 5.4.3 Filing Certificate
- [5.12] 5.5 Administration of Redeemed Property
  - [5.12] 5.5.1 Lease and Sale of Redeemed Property
  - [5.12] 5.5.2 Lease of Redeemed Property
  - [5.12] 5.5.3 Transmittal of Proceeds
  - [5.12] 5.5.4 Report of Sale
  - [5.12] 5.5.5 Deed to Real Property
  - [5.12] 5.5.6 Application of Funds From Sale
- [5.12] 5.6 Release of Right of Redemption--Judicial Sales
  - [5.12] 5.6.1 Applications for Release of Right of Redemption--Judicial Sale
  - [5.12] 5.6.2 Investigation of Applications
  - [5.12] 5.6.3 Referral of Applications
  - [5.12] 5.6.4 Report of Investigation
  - [5.12] 5.6.5 Disposition of Application
- [5.12] 5.7 Release of Right of Redemption--Nonjudicial Sales
  - [5.12] 5.7.1 Application for Release of Right of Redemption--Nonjudicial Sales
  - [5.12] 5.7.2 Investigation of Applications
  - [5.12] 5.7.3 Report of Investigation
  - [5.12] 5.7.4 Referral of Applications--Nonjudicial
  - [5.12] 5.7.5 Disposition of Applications
  - Exhibit [5.12] 5-1 Federal Tax Lien Revolving Fund Request
  - Exhibit [5.12] 5-2 FTL REVOLVING FUND

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#### **[5.12] 5.1 (02-22-2000)**

#### **Processing Recommendations to Excise Redemption Rights**

1. Each district, with the concurrence of the Regional Chief Compliance Officer, is responsible for establishing criteria for conducting redemption investigations.

## **[5.12] 5.1.1 (02-22-2000)**

### **Redemption Investigations**

1. When establishing the criteria, consider:
  - A. the dollar amount of the liability,
  - B. the type of property involved,
  - C. the economic conditions of a particular locality,
  - D. the practical impact of local law, and
  - E. any other significant factor.
2. Once established, the criteria are subject to annual review by the Regional Chief Compliance Officer to ensure that they remain relevant.
3. Guidelines should be established for SPf to gather all available information regarding the value of the property, before requesting an investigation by the field.
4. Before property is redeemed, it should be reviewed for potential toxic waste problems. If the potential exists, clean up cost should be considered before the property is redeemed.

#### **NOTE:**

The overall objective in establishing the criteria is to ensure that a redemption is made whenever appropriate and that unproductive investigations are kept to a minimum. The productivity of investigations should not necessarily be judged on the basis of the redemptions that such investigations generate. Frequently, our inquiries about possible redemption lead to lien payoffs and releases of our right of redemption.

## **[5.12] 5.2 (02-22-2000)**

### **Processing of Recommendations to Exercise Redemption Rights**

1. Upon receipt of the revenue officer's report, which must indicate that a prospective purchaser(s) has been secured, the Chief, Special Procedures functions will:
  1. Review the report.
  2. Sign Form 4376, Report of Investigation.
  3. assign a serial number to the case.

#### **NOTE:**

The serial number shall be prefixed by the region and district location code and the symbol "RED" followed by the next sequential four digit figure, e.g., 902RED0001. The sequential numbering will be begun with 0001 in each district.

4. control the redemption using ICS.
5. enter the assigned serial number on ICS.
6. the information in the history section of ICS will include the date of redemption; amount redeemed for; amount sold for by the government; amount of tax liability satisfied; and the date and place certificate recorded.
2. When it is determined the redemption will be made, the Chief, SPf will:
  1. Forward an original and one copy (with enclosures) of the revenue officer's report to District 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.
  2. Transmit to District Counsel immediately or as soon as possible, but not later than 60 days from the date of the sale.
  3. Forward a copy of the revenue officer's report and District Counsel's determination to the district director for information.
  4. Prepare a memorandum to be signed by the Chief, SPf to request an advance from the revolving fund (see IRC 7810) and provide the following information extracted from the revenue officer's report:

5.

serial number.  
amount required to redeem.  
date of sale.  
date redemption right expires.  
forced sale value.  
date funds required.  
amount prospective purchaser will pay for property.  
approximate repayment date.  
name and address of taxpayer.  
person/organization to whom check is payable.  
IRS office and person to whom check should be sent.

The request for funds for the redemption of real property will be mailed or faxed to the Office of the Assistant Commissioner (Collection) through the Office of Program/Process Analysis (OP:CO:C:PA) in the National Office by the Chief, Special Procedures function. The time period to exercise our right of redemption is 120 days. It is, therefore, necessary to process as promptly as possible requests for funds. Allow three days for a written response to requests for revolving fund advances.

The National Office plan manager will determine availability of funds and the priority for disbursement when available funds may be insufficient to meet two or more requests, to avoid depletion of the fund. The plan manager will forward a memorandum to the Chief, SPf to certify that funds are available. The memorandum will serve as documentation of an approved request for funds for the redemption of real property. The Chief, SPf will request obligation/disbursement of approved funds from the Beckley Administrative Service Center and will forward approval documents to the Beckley Administrative Service Center when received. Based on authorization from the plan manager, the regional Accounting Section will prepare SF 1166, Voucher and Schedule of Payments, to issue the check payable to the person or organization named in the authorization. The check will be mailed to the IRS employee designated by the authorization. The Chief, SPf will follow-up on the authorization for redemption within 60 days from the initial approximate repayment date or any subsequent repayment date if the funds have not been repaid. If there is a delay in repayment to the fund, the Chief, SPf will advise both the Beckley Administrative Service Center and the Office of Program/Process Analysis by memorandum, giving the serial number, amount to redeem, explanation for the delay, and the new estimated repayment date.

### **[5.12] 5.2.1 (02-22-2000)**

#### **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 power 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. The remaining proceeds are applied in satisfaction of the taxpayer's liability. Any surplus is returned to the parties legally entitled to them.
4. If SPf cannot determine who is entitled to the surplus funds, the case will be referred to district counsel for an advisory legal opinion prior to making disposition of the proceeds.

### **[5.12] 5.2.2 (02-22-2000)**

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

1. When the Revenue Officer secures a bidder, a report will be forwarded to Chief, SPf. The following information is required in the revenue officer's report:
  - A. serial number
  - B. amount required to redeem
  - C. estimated forced sale value of property
  - D. amount of agreed bid
  - E. date check needed
  - F. date of sale
  - G. date redemption right expires

- H. approximate repayment date and
  - I. person or organization to whom check is payable
  - J. IRS office and person to whom check should be sent.
2. Advances will be returned immediately when a redemption is canceled.
  3. Forward a copy of the cancellation notice to the redemption coordinator.
  4. Prepare and provide a quarterly report to the Office of Program/Process Analysis on the status of cases open over 60 days. Include the:
    - redemption serial number,
    - expected repayment date,
    - status of the redemption, and
    - an explanation when there is a need to extend the repayment date.

### **[5.12] 5.3 (02-22-2000)**

#### **Tender of Amount to Redeem**

1. Tender is defined as a proffer of money. There must be an actual proffer of money as distinguished from mere proposal or proposition to proffer it.

### **[5.12] 5.3.1 (02-22-2000)**

#### **Proffer of Money**

1. The employee who has been designated to tender the amount required to redeem should be accompanied by at least one witness, preferably by a Special Procedures advisor or technician or an attorney from District Counsel.
2. In the event that the tender to redeem is refused, a joint report of the transaction should be prepared and forwarded through the Special Procedures function to District Counsel for an advisory opinion and guidance as to the next action to be taken in contemplation of local law procedures.
3. The report should include a request for instructions as to the immediate disposition of the check that had been tendered; i.e., deposit in Director's account, pay into Registry of a Court, etc.
4. See IRM 5.12.5.4 for preparation and disposition of the certificate.

### **[5.12] 5.3.2 (02-22-2000)**

#### **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 District Counsel should be solicited to ascertain the proper party and amount to be tendered.

### **[5.12] 5.3.3 (02-22-2000)**

#### **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] 5.4 (02-22-2000)**  
**Redemption Certificate**

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

**[5.12] 5.4.1 (02-22-2000)**  
**Certificate of Redemption**

1. If a district director exercises the right of redemption he or she 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 district director is authorized to issue the certificate of redemption. Preparation and disposition of the certificate of redemption will be accomplished by Special Procedures function.
3. There is no authority to redelegate the authority to sign the certificate of redemption below the district director's level.

**[5.12] 5.4.2 (02-22-2000)**  
**Preparation and Disposition of Certificate**

1. District Counsel will provide the Chief, Special Procedures function (SPF) or other designated employee in charge of the function, 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 SPf and disposed of as follows:
  - A. Original to be filed with recording official.
  - B. Duplicate to be retained by SPf.
4. SPf will be responsible for periodic follow-up action until the redeemed property is disposed of.

**[5.12] 5.4.3 (02-22-2000)**  
**Filing Certificate**

1. The district should promptly cause the certificate to be recorded in the proper registry of deeds.
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. District Counsel should be requested to indicate the proper place for recording the certificate in each jurisdiction.

**[5.12] 5.5 (02-22-2000)**  
**Administration of Redeemed Property**

1. The Chief, Special Procedures function (SPf), will periodically request from the Area office involved the current status of redeemed properties.
2. The group manager will see that redeemed property located within the jurisdiction of the Area office is maintained as determined necessary. 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, are also applicable to redeemed property.
3. Estimated expenses expected to be incurred in connection with the preservation or sale of the property should be reported by memorandum to the Resources Management Division or, if applicable, to the regional Fiscal Management Branch so that necessary funds may be obligated. The memorandum should identify the property and provide the amount of expenses.

### **[5.12] 5.5.1 (02-22-2000)**

#### **Lease and 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 District Director of the district 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 district director.
2. If real property consisting of a single parcel is situated in more than one Internal Revenue district, the responsibility for the administration and disposition of the property will be that of the district director under whose direction the property was redeemed. If there is doubt as to which district director is to have charge of the property, the pertinent facts should be reported to the National Office Collection (Attention: OP:CO:C:SP) so that a designation may be made.

### **[5.12] 5.5.2 (02-22-2000)**

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

1. Real property may be leased if it is determined that it will be in the possession of the district director 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 Chief, Special Procedures function (SPf), based upon the circumstances, including any recommendation of the Area office involved. However, the final decision rests with the district director and his or her approval must be secured before the property is offered since the director must sign the lease.
2. If it is determined that redeemed property will be leased and a prospective lessee has been secured, the Chief, SPf, should request that District 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 Chief, SPf. District Counsel should be furnished the following information:
  - A. name and address of the lessee.
  - B. district 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 District Counsel, the Chief, SPf, will:
  - A. review the lease to see that it conforms to the intent of the parties involved.
  - B. forward original and duplicate to the district director for his or her signature.
4. After the district director has signed the lease agreement, both copies will be returned to the Chief, SPf, who will:
  - 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. If a payment is not received within a reasonable time after the due date, the Chief, SPf, should contact the lessee to secure payment. If payment is not received, District Counsel should be consulted as to the legal action required.

### **[5.12] 5.5.3 (02-22-2000)**

#### **Transmittal of Proceeds**

1. A transmittal memorandum entitled "Proceeds from the Sale of Redeemed Property" and any accompanying remittances will be forwarded to SPf. The memorandum will contain the following:

- A. name and address of the taxpayer as shown on the Form 4376 submitted at the time redemption of the property was recommended.
  - B. name and address of the purchaser.
  - C. 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. SPf will transmit the memorandum, remittances, and the purchaser's deposit (if any) held by the cashier to the regional Fiscal Management Branch. SPf will be responsible for returning any other deposits submitted with unsuccessful agreements to bid unless the depositor defaulted on the agreement.
  3. Where payment of the full purchase price is deferred, the purchaser's deposit will be promptly forwarded to the regional Fiscal Management Branch 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 deposit should be forwarded in the same manner as directed in (1) above except that the memorandum will be entitled "Deposit from Sale of Redeemed Property." The purchaser's payment of the balance of the purchase price should be processed following instructions in (1) above with a copy of the memorandum which transmitted the deposit attached to that transmitting the balance of the proceeds.

### **[5.12] 5.5.4 (02-22-2000)**

#### **Report of Sale**

1. SPf 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 revenue officer 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. 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.
  - D. tabulation of bids.
3. Upon receipt of the reports, SPf will:
  - A. note the ICS history screen.
  - B. forward the duplicate report, with any vouchers not previously submitted, to the regional Fiscal Management Branch.
  - C. file the original of the report and attachments in a suspense file pending receipt of the deed from District Counsel. When the net proceeds of sale are received, they will be applied in accordance with IRM 5.12.5.5.6.
4. Forward a closing report with the information outlined in Exhibit 5-2 to the Office of Program/Process Analysis (OP:CO:C:PA).

### **[5.12] 5.5.5 (02-22-2000)**

#### **Deed to Real Property**

1. Regulations under IRC 7506 provide that, upon payment in full of the purchase price, the district director will issue a deed to the purchaser.
2. The deed will be prepared in duplicate by the Special Procedures function (SPf) and forwarded to District Counsel for approval. When the approved deed is received in the district director's office, the Chief, SPf, will:

- A. remove the original report of sale from the suspense file.
- B. secure the signature of the district director 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 related Record of Disposition of Redeemed Property case file.

## **[5.12] 5.5.6 (02-22-2000)**

### **Application of Funds From Sale**

1. Immediately after the sale, the entire gross proceeds should be forwarded to the Beckley Administrative Service Center for processing distribution.
2. The district memorandum transmitting the remittance should:
  - identify the transaction for which the funds were advanced so that no difficulty will be encountered in restoring the amount of the advance,
  - identify taxpayer's account to which the excess over the amount advanced is to be applied, and
  - request that a copy of the transmittal be returned to the district office with the excess funds so that the district will have no difficulty properly applying the excess funds.
    - A. When partial proceeds from the sale are received, the following information must be provided the serial number of the case, the total advanced from the fund, the amount realized from the sale, the amount of any partial proceeds previously submitted, the amount being submitted, the amount to be recorded as a replenishment of the fund, the amount of loss to the FTLRF estimated, and the amount of administrative costs incurred above proceeds estimated for loss incurred.
    - B. When full or final proceeds are received, the following additional information must be provided: the amount of administrative costs, the amount of tax liability satisfied, the amount of any surplus, the amount of loss to the FTLRF, and the amount of administrative costs incurred above proceeds.
    - C. The district office will forward a copy of the supporting documentation to the Regional Chief Compliance Officer.
    - D. The Chief, SPf will notify the Plan Manager, Office of Program/Process Analysis, AC (Collection), (OP:CO:C:PA) National Office immediately by FAX. The FAX will include all of the information listed in (1)a. and b., as applicable.
3. Upon its receipt, the fiscal management disbursing officer will deposit the check, credit the appropriation with the amount originally disbursed to the district, and forward the remainder by check to the district director for credit to the taxpayer's account. Any legitimate expenses incurred in the sale will first be deducted from this amount and the net amount will actually be credited to the taxpayer's account by the district office.
4. If the revolving fund is not reimbursed within 60 days of the approximate date set for repayment, the Chief, SPf will initiate a memorandum to the Beckley Administrative Service Center to explain why the redemption or sale was postponed, the serial number of the case, amount to redeem, and to indicate the new proposed repayment date. If the proposed redemption has been canceled, the check advanced for the redemption of property will be returned without delay to the Beckley Administrative Service Center.
5. If the revolving fund is not reimbursed by the new repayment date because of default, litigation, etc., the Chief, SPf will submit a status report monthly, until such time as the fund is reimbursed.
6. Funds realized by the Government from the sale of redeemed property are to be applied in the same manner as in the case of funds realized from levy proceedings. A record of the distribution of all redemption proceeds will be maintained in the redemption file that is kept by SPf.
7. If there are surplus proceeds, SPf will deposit those funds in the Deposit Fund Account located at the Service Center. A memorandum will be completed in triplicate. 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 proceeds; and,
  - D. date of the sale.



8. The original of the memorandum will be used as a posting document to submit the funds to the Collection function teller. A copy of the memorandum will be placed in the Redemption file and in the "Surplus Proceeds--Redemption Sale" File to be established.
9. Record of the excess proceeds will be referenced in the history section of ICS. Indicate the amount as "Surplus Proceeds--Redemption Sale."
10. Junior lienholders are generally not entitled to the excess proceeds from sale of redeemed property, and they should not be notified.
11. Excess proceeds will be refunded to the taxpayer. Interest should be paid on excess proceeds from sale of redeemed property refunded to the taxpayer. (IRC 6611).

### **[5.12] 5.6 (02-22-2000)**

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

1. Whenever a judicial sale of real estate is made to satisfy a lien that is prior to that of the United States, the United States shall have not less than 120 days from the date of that sale within which to redeem the property. (See Section 2410(c) of Title 28 U.S.C.)
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.
3. Any person desiring a release of right of redemption in respect of a Federal tax lien arising from a judicial proceeding shall submit to the United States Attorney for the district 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. OLD-225, requesting that the right be released. Form No. OLD-225 may be secured by applicants from the office of the United States Attorney.
4. The approval of the release of the right of redemption rests with the district director. If desired, this authority may be redelegated to the Chief, Special Procedures function.

### **[5.12] 5.6.1 (02-22-2000)**

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

1. Whenever a judicial sale of real estate is made to satisfy a lien that is prior to that of the United States, the United States will have not less than 120 days from the date of that sale within which to redeem the property. (See Section 2410(c) of Title 28 U.S.C.)

### **[5.12] 5.6.2 (02-22-2000)**

#### **Investigation of Applications**

1. Applications in which field work is required shall be investigated promptly by a revenue officer in order that final disposition may be made by the Special Procedures function within 20 days. The revenue officer 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 revenue officer shall gather sufficient facts in order that a determination may be made as to whether the United States should release its right of redemption.

### **[5.12] 5.6.3 (02-22-2000)**

#### **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 district office will be referred to the Special Procedures function (SPf) 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 SPf for verification and recommendation. Applications received in the district office from any Federal agency may be processed by SPf 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 there is information in SPf 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. An exception to the general rule may be determined by the Chief, SPf. 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. SPf will complete Part B of any application that does not require a field investigation. Before a recommendation is made, SPf 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] 5.6.4 (02-22-2000)**

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

1. The revenue officer's report of investigation will be prepared when the investigation is completed. District management will determine whether the report will be on Form 4376, Report of Investigation or in memorandum form. The report will specifically state whether the appraisers involved are disinterested and qualified.
2. Revenue officers will refer their report, together with the copy of the application and all exhibits, to the Group Manager, who will upon approval, forward the entire file to the Special Procedures function for review and approval.

#### **[5.12] 5.6.5 (02-22-2000)**

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

1. Upon receipt of the revenue officer's report, the Special Procedures function (SPf) will review it to ensure that there is sufficient information to determine whether the right of redemption should be released. The Chief, SPf, will complete the application by indicating the Service's recommendation, over the Director's signature.
2. Upon completion of the recommendation, the original and one copy of the application, with copies of the revenue officer's report attached, will be forwarded to District Counsel. A copy of the application, the set of appraisals and a copy of the revenue officer's report will be filed by the SPf.
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] 5.7 (02-22-2000)**

##### **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. Authority to release any such right of redemption is delegated to the district director for the district in which the property is located. In any case involving a private request, a consideration equal to the value of the right of redemption is required and must be paid for the release.
3. 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.
4. Any questions arising as to the value of the right of redemption shall be referred to District Counsel for an advisory opinion.

### **[5.12] 5.7.1 (02-22-2000)**

#### **Application for 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.

### **[5.12] 5.7.2 (02-22-2000)**

#### **Investigation of Applications**

1. Applications in which field work is required will be investigated promptly by a revenue officer in order that final disposition may be made by the Special Procedures function within 20 days of receipt. The revenue officer will verify every item contained in the application, or which should have been in the application.
2. The revenue officer 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.
3. Except in unusual cases, it will not be necessary for the revenue officer to secure outside appraisals to establish the value of the property prior to making a recommendation.

### **[5.12] 5.7.3 (02-22-2000)**

#### **Report of Investigation**

1. The revenue officer's report of investigation shall be prepared upon completion of the investigation. District management will determine whether the report will be on Form 4376, Report of Investigation or in memorandum form. 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 revenue officer to be forwarded with the daily report.

### **[5.12] 5.7.4 (02-22-2000)**

#### **Referral of Applications--Nonjudicial**

1. Applications for release of right of redemption, and all necessary evidence, will be sent by applicants to the district director, attention: Chief, Special Procedures function (SPf), for the district 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.
2. If an application is complete and proper, a field investigation will not be required unless there is information in SPf 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. An exception to the general rule may be determined by the Chief, SPf. 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.
3. Applications arising out of nonjudicial proceedings will be processed promptly. Cases should be forwarded to district counsel when an advisory opinion is needed on a specific issue.
4. The Chief, SPf, will prepare a release of the right of redemption for the signature of the district director. If desired, authority to issue such releases may be redelegated to the Chief, SPf. The release shall be prepared in duplicate, the original to be given the applicant, upon receipt of the amount determined to be the Government's interest, and the duplicate to be retained by the SPf.
5. Any payment secured for the release of the right of redemption shall be applied to the taxpayer's outstanding liability.
6. Because of limited use, the National Office will not print and furnish a form for the release of the right of redemption. District counsel should provide the Chief, SPf, instructions as to the form to be used in each jurisdiction.

