



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

March 26, 2013

Control Number: SBSE-05-0313-014
Expiration Date: March 26, 2014
Impacted: IRM 5.9.5.9
IRM 5.9.8.16.4
IRM 5.9.9.9.3
IRM 5.9.17.5.4

MEMORANDUM FOR DIRECTOR, CAMPUS FILING AND PAYMENT COMPLIANCE
DIRECTOR, ADVISORY AND INSOLVENCY

FROM: Scott D. Reisher /s/ **Scott D. Reisher**
Director, Collection Policy

SUBJECT: Bankruptcy and Notice of Federal Tax Lien (NFTL) Filing

This memorandum provides interim guidance for the situations in which Field Insolvency should file a Notice of Federal Tax Lien (NFTL), and incorporates instructions previously provided by the Director of the Field Insolvency organizations. Please disseminate this information to all affected personnel within your organizations. These procedures will be incorporated into Internal Revenue Manual (IRM) 5.9.5.9; 5.9.8.16.4.1; 5.9.9.9.3; and 5.9.17.5.4.

Background

On January 9, 2007, the Director of Advisory, Insolvency & Quality (now Advisory & Insolvency) issued a memorandum to Field Insolvency directing that NFTLs were to be filed in the following situations, absent a sound business reason not to file:

1. Dismissed cases where the Unpaid Balance of Assessment (UBA) is over \$5,000.
2. Discharged cases where the UBA for the nondischargeable taxes is over \$5,000.
3. Chapters 12 and 13 postpetition periods over \$5,000 where the plan has been confirmed and the postpetition liability has not been made part of the plan under section 1305 or a local rule.

4. Chapter 11 postconfirmation periods with an UBA over \$5,000, for business cases only (not individual Chapter 11 plans).
5. Postpetition liabilities in Chapter 7 cases where the case has been closed, but is still open on AIS and the UBA is over \$5,000.
6. When a single member disregarded LLC files bankruptcy, but the single member is not in bankruptcy, a NFTL should be filed against the single member where the member's individual UBA is over \$5,000.

Field Insolvency employees continue to operate under the NFTL filing directive set out in the Director's memorandum. The directive, however, has not been revised to account for changes in IRS procedures, including the Fresh Start initiative which increased the minimum UBA at which a NFTL is to be filed to \$10,000. The directive has also not been incorporated into the Internal Revenue Manual.

Accordingly, the directive contained in the Director's January 9, 2007 memorandum is being revised to reflect current policy and procedures, and as a prelude to incorporation into the Internal Revenue Manual.

Procedures

Field Insolvency employees should file a NFTL in the following situations:

1. Dismissed cases where the UBA is over \$10,000.
Cases can be identified by running the Lien Determination Report on AIS. Caseworkers should pull reports using both the Centralized Insolvency Operation (CIO) Standard Employee Identifier (SEID) for the appropriate territory, and the caseworker's SEID, within the appropriate date parameters. These two reports will pull the dismissed cases for which a NFTL should be filed in both the CIO's inventory and the caseworker's inventory in the field. Caseworkers should include any postpetition liabilities accrued in an individual Chapter 11 case or in a Chapter 13 case on the NFTL.
2. Chapter 12 cases of individuals where there is a postpetition UBA over \$10,000, where the plan has been confirmed and the postpetition liability has not been made part of the plan.
Caseworkers should be aware that there is no provision for filing claims for postpetition taxes of an individual debtor in a Chapter 12 case. One situation in which the individual debtor may incur postpetition tax liability is when there is a postpetition sale or other disposition of farm assets used in the debtor's farming operation. When the debtor is an individual, taxes arising from a postpetition sale of assets must be paid when they become due, and should not be provided for in the plan. In any such situation involving an individual postpetition liability, a NFTL is appropriate when there is an UBA over \$10,000 and all other filing criteria have been met.

3. Chapter 11 cases of entities other than individuals where there is a postconfirmation liability with an UBA over \$10,000.

A NFTL should only be filed for postconfirmation liabilities in cases in which the debtor is not an individual. The NFTL should not include any preconfirmation tax liabilities.

4. When a single member disregarded LLC files bankruptcy, but the single member is not in bankruptcy, a NFTL should be filed against the single member where the single member's UBA is over \$10,000.

This requirement will generally apply to employment tax liabilities incurred for periods prior to January 1, 2009, and to excise tax liabilities incurred for periods prior to January 1, 2008, where the single member is liable for such tax liabilities of the LLC.

Caseworkers are no longer required to determine on a routine basis whether a NFTL should be filed in discharged cases, for postpetition liabilities in open Chapter 13 cases, or for postpetition liabilities in Chapter 7 cases.

In all NFTL filing situations, caseworkers should:

- Determine that the situation meets the determination and filing requirements for Notices of Federal Tax Lien found in IRM 5.12.2. This includes making a reasonable effort to contact the taxpayer, if one has not already been made. Issuance of the statutory assessment notice and the balance due notices sent during the collection process will generally constitute a reasonable effort. Caseworkers may still wish to contact the debtor to request full payment and warn of the possible filing of a NFTL in an attempt to resolve the case without the need to file it.
- Verify that the automatic stay is not in effect for the periods included on the NFTL.
- Verify that the periods included on the NFTL are not otherwise included in a confirmed plan, and that the plan does not prohibit taking any collection actions for the periods included.
- Determine whether or not a sound business reason exists to justify filing a NFTL.
- Document the AIS history explaining the decision to file or to refrain from filing a NFTL, along with a description of all NFTL filing actions taken.

If you have questions, please contact me, or a member of your staff may contact Deborah Fowler, Tax Analyst.

cc: Director, Campus Compliance Services
 Director, Field Collection
www.irs.gov