



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

July 23, 2012

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Impacted: IRM 5.9.17, IRM 1.4.51

MEMORANDUM FOR DIRECTOR, CAMPUS FILING AND PAYMENT COMPLIANCE
DIRECTOR, ADVISORY AND INSOLVENCY
DIRECTORS, COLLECTION AREA OPERATIONS

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

SUBJECT: Reissuance of Insolvency Monitoring of Lien Releases

The purpose of this memorandum is to reissue interim guidance SBSE-05-0911-077 dated September 29, 2011, titled, Reissuance of Insolvency Monitoring of Lien Releases. The guidance was originally issued through SBSE-05-1209-071 dated December 16, 2009 and was subsequently reissued as SBSE-05-1110-060 dated November 17, 2010. Please disseminate this information to all affected personnel within your reorganization.

This memorandum provides interim guidance on policies and procedures for monitoring the timely determination of release of Notices of Federal Tax Lien (NFTL) for cases receiving a discharge through bankruptcy and reaffirms the need to properly document the Automated Insolvency System (AIS) history. These procedures will be incorporated into IRM 5.9.17 and IRM 1.4.51.

Background

Per Internal Revenue Code (IRC) § 6325(a), liens must be released within 30 days when liabilities are satisfied or have become unenforceable. When a debtor receives a discharge in a bankruptcy proceeding, IRM 5.9.17.4.2 provides specific timeframes in which a collection determination must be made with respect to exempt or abandoned property. The Service's statutory lien survives the bankruptcy for property excluded from the bankruptcy estate whether or not an NFTL has been filed. If a valid NFTL has been filed pre-petition, the lien survives as to abandoned or exempt property. The lien also attaches to the appreciation in value of any assets to which the lien attached on the petition date up to the amount of the unpaid tax liability secured by the lien. In general,

Field Insolvency has 45 calendar days to make and document a collection determination from the date the case is transferred back to the Field from the Centralized Insolvency Operations (CIO) or from notification of discharge if the Field retained control of the case. If an Other Investigation (OI) to Field Collection is necessary, Field Insolvency has an additional 45 days to make and document a collection determination.

Procedures

In order to achieve the lien determination timeframes, managers in all Field Insolvency offices and the CIO will monitor lien release determinations by generating the AIS Court Closure Follow-up Report on a monthly basis to identify those cases for which a discharge was granted and a release of NFTL may be required. When it is determined that the lien should be released, follow the procedures of IRM 5.9.17.18 to ensure NFTLs are timely released.

Discharged cases are easily identified by a discharge (DC) beside the discharge date in the Court Dismissal or Discharge column on the Court Closure Follow-Up Report. To further identify cases that may require the release of a NFTL, lien research will be conducted in the taxpayer information data stored the AIS Case file. The results of the NFTL research should be fully documented in the AIS history. Additionally, the AIS history should be documented with the actions taken with respect to the determination regarding the release of the NFTL as prescribed by IRM 5.9.5.4(1).

If there are no dischargeable liabilities requiring a lien release, the AIS history should be documented accordingly. Finally, when the procedures detailed in IRM 5.9.17.4.2 have been followed and a determination has been made to proceed with collection in the case or to close the case without further collection action, the AIS history should be documented with a definitive statement and reasons to support either decision per IRM 5.9.17.4.2 (7).

IRM 1.4.51, IRM 5.9.17.3, IRM 5.9.17.4, and IRM 5.9.17.18, provide policies and procedures regarding timely lien release and will be updated to incorporate this interim guidance.

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

cc: www.irs.gov