



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS
DIRECTOR, ADVISORY AND INSOLVENCY
DIRECTOR, FILING AND PAYMENT COMPLIANCE (SB)
DIRECTOR, FILING AND PAYMENT COMPLIANCE (WI)
DIRECTOR, CAMPUS COMPLIANCE SERVICES
(CINCINNATI)

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

SUBJECT: Revision to Interim Guidance for Withdrawal of Notice of Federal Tax
Lien after Release

The purpose of this memorandum is to revise the Interim Guidance (IG), previously issued with control number SBSE-05-0611-037, for processing requests for withdrawal of notices of federal tax lien after the lien has been released. This memorandum clarifies satisfaction requirements as they relate to Offers in Compromise, expands guidance relative to partial withdrawals, and updates procedures based on recent programming and form changes. Internal Revenue Manual (IRM) 5.12.3, Certificates Relating to Liens, will be revised to include the information in this memorandum. Please ensure that this information is distributed to all affected employees in your organization.

Internal Revenue Code (IRC) section 6323(j)(1) provides that the Internal Revenue Service (IRS) may (but is not required to) withdraw a Notice of Federal Tax Lien (NFTL) if it is determined that certain criteria are met, including situations when the filing was premature or not in accordance with administrative procedures (section 6323(j)(1)(A)) or the withdrawal would be in the best interests of the taxpayer and the United States (section 6323(j)(1)(D)). Effective immediately, we are establishing a policy to allow a withdrawal under paragraphs (A) and (D) of section 6323(j)(1) when the taxpayer requests a withdrawal after the lien has been released.

This Interim Guidance memorandum sets forth the procedures for these withdrawals based on the current delegation orders. Additional guidance will be provided as revisions to the delegation orders are implemented.

The guidance contained herein regarding conditions for withdrawal is specific to situations where the lien has been released. Conditions for other types of withdrawals remain unchanged. Taxpayers may apply for a withdrawal under any provision of IRC 6323(j)(1), and, except as otherwise described in this memorandum, all procedures in IRM 5.12.3 and 5.12.6 for evaluating and processing requests for withdrawal remain in effect.

Post-release Lien Withdrawals Under IRC 6323(j)(1)(A)

A request for withdrawal of a NFTL under IRC 6323(j)(1)(A) should generally be granted if the following conditions apply:

- The taxpayer requests the withdrawal in writing;
Note: Form 12277, *Application for Withdrawal of Filed Notice of Federal Tax Lien*, is the preferred format for the taxpayer's request; however, any written request that provides sufficient information may be used for processing (see IRM 5.12.3.32); and
- The taxpayer demonstrates that the original NFTL filing was improper or otherwise not in accordance with IRS procedures.

A withdrawal under this provision may be issued whether a certificate of release was issued or the NFTL self-released.

Post-release Lien Withdrawals Under IRC 6323(j)(1)(D)

A request for withdrawal of a NFTL under IRC 6323(j)(1)(D) where the underlying lien has been released will generally be granted if the following conditions apply:

- The taxpayer requests the withdrawal in writing;
Note: Form 12277, *Application for Withdrawal of Filed Notice of Federal Tax Lien*, is the preferred format for the taxpayer's request; however, any written request that provides sufficient information may be used for processing (see IRM 5.12.3.32).
- The taxpayer fully satisfied the liabilities on the NFTL;
- A certificate of release was issued; and
- The taxpayer is in compliance with filing requirements.

For purposes of this memorandum, "fully satisfied" includes:

- Tax liability was fully resolved by payment or credit offset;
- Most circumstances where the tax assessment was abated because the taxpayer is no longer liable for the tax (e.g., amended return filed, reconsideration of additional assessment, innocent spouse determination, or judicial ruling);

- Abatement of penalty and/or interest due to reasonable cause resulted in zero balance; or
- The taxpayer completed terms of an offer in compromise, including any related collateral agreements. **Note:** The completion of the five-year compliance period after acceptance of the offer is not a condition to determine “fully satisfied.”

“Fully satisfied” generally does not include:

- Expiration of the statutory period for collection;
- Discharge of taxes in bankruptcy; or
- NFTLs that were improvidently or erroneously released and are subject to revocation.

For purposes of this memorandum, “in compliance with filing requirements” includes:

- All required Individual Master File (IMF) and Business Master File (BMF) returns, including information returns, for the prior three years have been filed; and
- Current Estimated Tax Payments and Federal Tax Deposits (FTDs) have been paid.

If the taxpayer has an unfiled return during any of the past three years, or appears to be delinquent with FTDs or Estimated Tax Payments, further investigation may be necessary as determined on a case-by-case basis. The taxpayer will be considered to be in compliance if the return was, or can be, closed for one of the following reasons:

- Not liable for the tax period;
- Income below the filing requirement;
- Little or no tax due or due a refund; or
- No longer liable for filing.

The taxpayer may be requested to supply additional information, as necessary, to complete this determination.

Generally, withdrawals will not be granted for self-released liens under IRC section 6323(j)(1)(D) unless extenuating circumstances are present. The determination to grant such request will be made on a case-by-case basis **and with managerial approval**. Examples of possible extenuating circumstances are as follows:

Example: A taxpayer is attempting to secure a license required for their vocation (e.g., realtor, insurance sales), but the record of the self-released NFTL is impeding their ability to obtain the license. A review of the account shows the tax liabilities listed on the NFTL were reported as uncollectible due to economic hardship of the taxpayer for most of the ten-year collection period, and the taxpayer had no assets of value. The statutory period for collection on the liabilities has expired. The taxpayer is in compliance with current and the prior three years’ tax obligations. Withdrawal of the self-released lien may be granted.

Example: The taxpayer has tentatively been offered an employment position if the self-released lien is withdrawn. The lien self-released due to statute expiration, and the taxpayer is in compliance with all current filing requirements. There is no indication the taxpayer had the ability to make payments, had any assets, or paid unsecured creditors instead of the IRS. Withdrawal of the self-released lien may be granted.

Example: The taxpayer owes tax liabilities that were not included on the self-released lien and are not on any open NFTL. The taxpayer is now in a position to restructure a loan to pay the open liabilities but the self-released lien is hindering that process. The taxpayer is in compliance with current filing requirements. A withdrawal of the self-released lien may be granted.

To consider self-released liens for withdrawal, the taxpayer must be in compliance with filing requirements, as stated above, and the statutory period(s) for collection for the liability(ies) on the NFTL must have expired. Liens that self-released in error and are subject to revocation do not qualify for withdrawal under these procedures. NFTLs that are comprised of a mix of fully satisfied and expired liabilities should be evaluated on a case-by-case basis. NFTLs that contain liabilities that have not been satisfied or expired are not subject to withdrawal under these procedures; however, taxpayers may receive consideration of the withdrawal by following established procedures for requesting a withdrawal of a filed NFTL.

In situations where more than one person is named on the NFTL (e.g., joint liability) and only one person applies for the withdrawal, the application for withdrawal should be treated as a request for a full withdrawal. However, if the applying taxpayer meets the requirements stipulated above but the other, non-applying taxpayer listed on the NFTL does not, a partial withdrawal after release may be issued.

Note: The Automated Lien System (ALS) is not programmed to generate partial withdrawals after release. These partial withdrawals, and corresponding cover letter, must be manually prepared and issued. Follow normal guidance for filing manual lien documents.

Procedures

Requests for withdrawal of a released NFTL will be processed as follows:

1. Requests will be reviewed by the Collection field employee assigned other balance due modules of the taxpayer. If the taxpayer owes no other modules or the case is not assigned, the request will be forwarded to Advisory for review.

Note: The current residence of the taxpayer determines which Advisory office the request should be referred. (See Publication 4235) This supersedes guidance found in Interim Guidance SBSE-05-0411-036.
2. The reviewing employee will control the receipt of the request and document any actions relative to the review on the control system applicable to the employee's function (e.g., Integrated Collection System (ICS)).
3. The reviewing employee will ensure that the conditions for withdrawal set forth above are met.
 - a. If the conditions are not met, the employee will issue Letter 4711, *Withdrawal Decision Letter*, to the taxpayer denying the request and informing the taxpayer of their appeal rights under the Collection Appeal Program (CAP).
 - b. If conditions for withdrawal are met, the reviewing employee will:
 - prepare a memorandum outlining the case facts and recommending the withdrawal;

- secure his/her manager's approval; and
 - forward the memorandum, withdrawal request, and other pertinent documents to Advisory for approval.
4. Upon receipt, Advisory will open a Non-Field Other Investigation (NFOI) control on ICS, if not already done, and review the withdrawal package. The extent of the review will depend on the function submitting the package.
 - a. If the package is received from the Collection Field function and was approved by a Group Manager, Advisory only needs to conduct a cursory review.
 - b. If the package is received from any other function, Advisory will complete a full review of the package and application and make the withdrawal determination.

Note: Requests for withdrawal received from Appeals as the result of a timely Collection Due Process, Equivalent Hearing, or a Collection Appeal Program case will be processed in accordance with IRM 5.1.9. Advisory only needs to confirm the accuracy of the Form 13794-W, *Request for Withdrawal of Notice of Federal Tax Lien*.
 5. Upon concurrence of the withdrawal by Advisory management, Advisory will prepare and forward Form 13794-W to Centralized Lien Processing (CLP) or input the withdrawal into the Automated Lien System (ALS).

Note: Requests and documents forwarded to CLP should be by secure email.
 6. Form 10916, *Withdrawal of Filed Notice of Federal Tax Lien*, will be generated from ALS and distributed.
 - a. CLP will print Part 1 of the form and send it to the applicable recording office with the filing fee.
 - b. Consolidated Production Services (CPS) will print Part 2 of the form and mail it to the taxpayer with the corresponding Letter 3044, *Withdrawal After Release Cover Letter*, also generated from ALS.
 7. Advisory will close its NFOI control on ICS after transmitting the Form 13794-W to CLP. Actions taken by CLP relative to the withdrawal can be viewed on ALS. As part of their closing actions, Advisory may send Letter 4711 to the taxpayer advising of the withdrawal determination.

Since this withdrawal occurs after the original tax liability was satisfied, no adjustments will be made to the taxpayer's account to abate the Transaction Code (TC) 360 lien fees previously assessed. Also, no additional lien fee will be charged to the taxpayer's account for the cost of the withdrawal filing.

Pursuant to IRC 6323(j)(2), taxpayers may request additional copies of the withdrawal form to be sent to specified third parties. These requests will be worked by the employee assigned the case or Advisory. Copies of the Form 10916 may be obtained through CLP. Copies of the withdrawal cover letter are not available through CLP and are not needed. A general cover letter prepared by the employee may be used to send the copy of the withdrawal form to the specified third party.

In addition to the above:

- The procedures for distributing copies of all approved withdrawal documents will be revised to be consistent with this memorandum. Specifically, Advisory will forward Form 13794-W to CLP or input the withdrawal to ALS directly. CPS will issue a copy of the withdrawal to the taxpayer with the Withdrawal Cover Letter systemically generated from ALS.
- Letter 4026 will be used as the cover letter for all regular withdrawal requests (i.e., those done before the lien is released).

Except as otherwise described in this memorandum, all procedures in IRM 5.12.3 and 5.12.6 for evaluating and processing requests for withdrawal remain in effect.

If you have any questions, please contact me, or a member of your staff may contact Marc Aronin, Program Manager or Kyle Romick, Senior Program Analyst.

cc: Director, Appeals
www.irs.gov