



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
Washington, DC 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

October 7, 2008

Control Number: SB/SE -05-1008-054  
Expires: October 7, 2009  
IRM Impacted: IRM 5.12.2.20,  
IRM 25.3.2

MEMORANDUM FOR DIRECTOR, ADVISORY, INSOLVENCY AND QUALITY  
DIRECTORS, COLLECTION AREA OPERATIONS

FROM: Frederick W. Schindler /s/ Frederick W. Schindler  
Director, Collection Policy

SUBJECT: Procedures for Protecting and Suspending the Statutory Period for  
Collection in Suits and Timely Refiling Notices of Federal Tax Liens

This memorandum provides interim guidance regarding procedures for protecting the Collection Statute Expiration Date (CSED) in cases where the expiration date is imminent. These procedures will be incorporated in Internal Revenue Manual (IRM) 25.3, Litigation and Judgments. Additionally, clarification is provided regarding the criteria for refiling Notices of Federal Tax Lien (NFTLs). Please ensure that this information is distributed to all affected employees within your organization.

Background

Section 6502 of the Internal Revenue Code (IRC) provides that an assessed tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun within 10 years after the assessment of the tax (unless the 10-year period has been otherwise extended and/or suspended – see IRM 5.1.19.6). If a court proceeding to collect the tax is commenced before the CSED, IRC § 6502(a) provides that the period during which the tax may be collected by levy is extended and does not expire until the tax liability or a judgment arising from the tax liability is satisfied or becomes unenforceable. Generally, a suit to reduce tax claims to judgment is the court proceeding brought by the United States to extend the CSED. See IRM 5.17.4.7, Suits by the United States, Suit to Reduce Tax Claim to Judgment. Once the suit is filed, the running of the CSED is extended pursuant to IRC § 6502(a). In order to reflect this extension on the tax module, Transaction Code 520 with Closing Code 80 (TC 520 CC 80) must be input on Integrated Data Retrieval System (IDRS) before the CSED. Any requests for input of TC 520 CC 80 should be made by Advisory personnel to ensure proper (Non-Insolvency) Litigation Accounts Management System (LAMS) case controls are maintained.

### Protecting the CSED when the Expiration Date is Imminent

As a general rule, suit recommendations must be forwarded to Counsel with sufficient time remaining on the CSED to allow for sufficient review of the suit recommendation, analysis of any legal issues, preparation of the suit letter, and time for the Department of Justice to file the suit. While Counsel has established emergency procedures for cases where the CSED falls within 20 working days and no suit letter has been sent to the Department of Justice, Counsel should not be asked to use these procedures except in the rarest of cases.

Recognizing that circumstances may arise where a suit recommendation cannot be submitted to Counsel until shortly before the CSED, steps must be taken to ensure that the CSED is protected on IDRS. Such actions may also be necessary if a suit recommendation is submitted in a timely fashion, but the Department of Justice does not bring the action until shortly before the CSED. When the CSED is imminent, a TC 608 is automatically generated on IDRS (usually two weeks before the actual CSED). This results in the tax module being zeroed out and could result in NFTLs being released. To prevent this from happening, a TC 520 CC 80 needs to be input at least three weeks prior to the CSED. Generally, a TC 520 CC 80 should not be input before the suit is actually filed because the CSED suspension is not in effect until that date. However, situations have arisen where a TC 608 posted to the account even though the Department of Justice was able to file suit shortly before the CSED.

To avoid this situation, Advisory should request the input of a TC 520 CC 80 (using the actual date of input as the transaction date) to prevent a TC 608 from posting in cases that

- have been referred to Counsel for suit, or not yet been so referred but will be; and,
- involve a CSED within four weeks or less.

Because the early posting of the TC 520 CC 80 will begin the suspension of the CSED prior to the date that suit is actually filed, this entry must be reversed (by requesting input of TC 522, no closing code) if suit is not actually filed before the CSED. If suit is timely filed, there is no need to correct the entry because filing the suit suspends the running of the statute until the liability for the tax or a judgment arising from the tax is satisfied or becomes unenforceable.

Note, however, that the suit must be filed prior to the CSED in order for this suspension to take effect. Additionally, the fact that the TC 520 CC 80 was input prior to the date the suit was actually filed, and the actual date that suit was filed, must be recorded in the Integrated Collection System (ICS) history, and advisors must be prepared to explain the discrepancy in these dates if it becomes an issue in the litigation. Only Advisory is authorized to request the input of TC 520 CC 80 in suits referred, or to be referred, to Counsel.

If a TC 608 posts prematurely in a case where a suit has been timely filed, actions must be taken to reestablish the assessed balances and to revoke the premature release of any NFTLs. If the TC 608/TC 583's are pending (PN) on TXMOD, take the following actions:

- Check ALS to see if the issuance of physical certificate(s) of release is pending. If so, contact the Centralized Lien Processing Operations (CPLO) to see if mailing of the certificate(s) can be stopped.
- Request immediate input of TC 520 CC 80, using a transaction code input date that is at least one (1) day prior to the CSED.
- If the NFTL certificate(s) of release have already been issued, make a determination as to possible harm to the Government's priority and the related suit action.
- Advise Area Counsel and the Department of Justice immediately, and proceed as directed relative to submitting revocations of the erroneous NFTL releases and filing of new NFTL's (see IRM 5.12.3.23, Revocation of Certificate of Release or Nonattachment, and IRM 5.12.3.25, Reinstatement of Lien).

### Criteria for Refiling NFTLs

IRM 5.12.2.20.1, Criteria for Refiling, provides as follows:

- (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:

\* \* \*

- g. Filing a suit [to reduce the liability to judgment].

A NFTL should not be refiled if the CSED is about to expire and no action will be taken to extend or suspend it. However, if an action that will extend or suspend the CSED is to be taken, such as filing a suit to reduce assessment to judgment, there is no legal requirement that the CSED be extended or suspended before the NFTL can be refiled. The Service's authority to refile a NFTL during the required refiling period, which is the one-year period ending 30 days after the expiration of the 10-year period following assessment, is independent of the Government's authority to extend the CSED by filing a lawsuit to reduce a tax liability to judgment. Consequently, if the CSED is imminent and the case has been referred to the Department of Justice for the filing of a lawsuit, the Service is not required by law to wait until receiving confirmation of the suit filing before refiling a NFTL. There is no "pre-mature" lien refiling in the sense that a refiling is invalid if effectuated before a lawsuit is filed in this situation. IRC § 6323(g) requires only that the refiling occur within the required refiling period. IRM 5.12.2.20.1 will be clarified accordingly.

If a NFTL is refiled and for some reason the CSED is not suspended or extended by the timely filing of a suit to reduce assessments to judgment, then the NFTL must be released within 30 days of learning that the CSED expired. See IRC § 6325(a)(1), (a certificate of release of any lien must be issued no later than 30 days after the day on which the IRS finds that the liability

has become legally unenforceable). Advisors must follow-up on all cases in which suit recommendations are forwarded to Area Counsel to determine whether suit was timely filed and, if not, whether corrective actions need to be taken.

If you have any questions concerning these procedures, please feel free to contact me, or a member of your staff may contact Delores Dillmann, Program Analyst. Field employees should raise any concerns through the appropriate management chain.

cc: Frank J. Chan, Program Manager, Philadelphia Compliance Services, Centralized Case Processing Operations  
Associate Chief Counsel, Procedure and Administration  
SB/SE Division Counsel  
[www.irs.gov](http://www.irs.gov)