July 19, 2013

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

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

SUBJECT: Filing Notices of Federal Tax Lien on Restitution-Based
       Assessments

The purpose of this memorandum and its two attachments is to provide guidance regarding the procedures of preparing Notices of Federal Tax Lien (NFTL) for restitution-based assessments related to a criminal conviction.

These procedures will ultimately be located in the *proposed* IRM 5.12.7, *Federal Tax Liens, Notice of Lien Preparation and Filing*, and *proposed* Exhibit 5.12.7-3, *Restitution NFTL*.

If you have any questions, please contact me or Theresa A. Miliote, Program Manager, or a member of your staff may contact Christine Kalcevic, Senior Program Analyst. Field employees should raise any concerns through the appropriate management chain.

Attachments (2)

cc: Deputy Division Counsel, SB/SE
  Deputy Chief Counsel (Operations)
  Director, Field Collection
  Director, Abusive Transactions and Technical Issues
  Director, Policy, Quality & Case Support, Office of Appeals
  Director, Filing and Payment Compliance
  www.irs.gov

IRM 5.12.7.5.8, Restitution-Based Assessment NFTLs

1. Following the conviction of a defendant for a criminal tax violation or tax-related offense, the court may order the defendant to pay restitution to the IRS. Restitution is discussed in IRM 5.1.5.

2. A restitution module will post as a Master File Tax (MFT) 31 and can be identified by Transaction Code (TC) 971 with action code (AC) 102. A TC 290, 298, or 300 assessment will use reason codes 141 through 149 to describe the source of the assessment (IMF or BMF and if there is a duplicate civil assessment). Also a TC 971 with AC 180 through 189 will reflect the type of tax and tax periods for which restitution was ordered (i.e., the underlying tax source). There will be a TC 971 that may have a dollar amount reference on the module. The reference dollar amount represents the amount of assessable restitution duplicated on another module. The Notice and Demand (Letter 4885) is issued manually and its issuance date is notated on the module as the date associated with the TC 971 AC 806.

   Note: When a module contains both a TC 971 AC 102 and a TC 971 with AC 180 through 189 consider pulling the Document Locator Number (DLN) source document to determine the appropriate course of action to be taken. IDRS research should also be secured on all cross referenced modules that were identified in the TC 971 AC 180-189.

3. Generally, restitution is ordered against an individual taxpayer and is assessed on the MFT 31 restitution module under the SSN of the defendant taxpayer. While it is possible for a business entity to be both convicted of a tax crime and ordered to pay restitution, it is a rare occurrence. Assessable restitution could arise in any criminal case where restitution is ordered for failure to pay any tax imposed under the IRC. For example, an individual could be ordered to pay restitution for an employment or income tax violation of his or her business. Regardless of the underlying source of the tax loss, the SSN of the individual taxpayer ordered to pay restitution will be used for the MFT 31 account.

4. The same determination and filing criteria apply when filing NFTL for the statutory liens of unpaid restitution-based assessments as apply with other balance due accounts. See IRM 5.12.2.

5. NFTLs for these statutory liens:

   a. **must** be manually prepared because of the special programming used for making restitution-based assessments in master file, and

   b. **must list only** the specific MFT 31 restitution taxpayer and the statutory liens for the associated restitution-based assessments made against that taxpayer.

This is important to remember because multiple taxpayers may be jointly and severally liable to pay restitution for the same underlying tax liability.

6. To create a manual NFTL for restitution-based assessments, use the ICS Form 668(Y)(c) template.

   Reminder: Redact the first five SSN digits on any manually prepared NFTL.

   Example: Taxpayer A is ordered to pay restitution for the unpaid employment tax of ABC, Inc., a corporation formerly owned by the taxpayer. In this situation, the restitution-based assessments will be made on the MFT 31 account using Taxpayer A's SSN, not the EIN of ABC, Inc. Generally, any restitution payments made by Taxpayer A will be applied against both the restitution-based assessment made against Taxpayer A on MFT 31, and the employment tax liability assessed under the EIN of ABC, Inc.

7. When preparing the manual NFTL, the "Kind of Tax" field identifies both the underlying tax liability used to calculate the restitution amount and the fact that the assessment is a restitution-based assessment. The Automated Lien System (ALS) has been programmed to accept an "R" followed by the form number of the underlying tax source.

   Example: Taxpayer A was both convicted of criminal evasion of tax under IRC § 7201 and ordered to pay restitution to the IRS in the amount of $60,000. This restitution amount was calculated based on tax loss for **income taxes** for the 2005 and 2006 tax years in the amounts of $25,000 and $35,000, respectively. **ENTER R1040** in the "Kind of Tax" field to correctly identify the statutory lien(s) of each of these assessments.

   Example: Taxpayer B was both convicted of criminal failure to collect or pay tax under IRC § 7202 and ordered to pay restitution in the amount of $30,000. This restitution amount was calculated based on the tax loss resulting from the taxpayer's failure to pay **employment taxes** in the amount of $10,000 for each of the last three quarters of 2007. **ENTER R941** in the "Kind of Tax" field to correctly identify the statutory lien(s) for each of these assessments.

8. In addition to identifying restitution-based assessments by placing an "R" in front of the form number in the "Kind of Tax" column, the following statement should be typed on the face of the NFTL:

   Pursuant to IRC § 6201(a)(4), these assessments reflect the amount of restitution ordered payable to the IRS.

   The instructions for creating a manual restitution lien notice are in the attached **Example Restitution Lien Notice**.

9. Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320*, must be manually issued when filing a restitution NFTL (See IRM 5.12.1.2.7). The taxpayer is not stripped of his or her collection due process rights even though the statute allowing the IRS to assess restitution restricts a taxpayer's ability to challenge the underlying tax liability (IRC § 6201(a)(4)(C)). The revenue officer or Advisory Probation Liaison (APL) who prepares the NFTL is responsible for manually issuing the Letter 3172 and following the instructions for manually issuing the letter and inputting the TC 971 AC 252 on the tax module.

Form **668(Y)** (Rev. 10-1999)	Department of the Treasury - Internal Revenue Service ## Notice of Federal Tax Lien	
SB/SE Central Area	Serial Number 000000011	*For Optional Use by Recording Office*

Insert serial number obtained from ALS

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, 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, in

List only one taxpayer against whom a restitution assessment has been made

Name of Taxpayer

A C TAXPAYER

Residence
123 MAIN STREET
HOMETOWN, OH 45999

List the taxpayer's last known address.

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of lien is refiled by the date given in column (e), 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)
R1040	12/31/2005	XXX-XX-6789	10/01/2010	10/31/2020	25,000.00
Insert an "R" and then the form number of the type of tax for which restitution was ordered	*TC 971 with action codes 180 through 189 will reflect the type of tax and tax periods for which restitution was ordered*	*All restitution assessments use SSN. Redact the first five digits of the SSN*	*List the date on which the restitution assessment was made on the MFT 31 account*	*Ten years and 30 days from the date in column d*	*Include only accruals under the Internal Revenue Code. Do not include interest that may accrue under Title 18*

****Pursuant to IRC § 6201(a)(4), these assessments reflect the amount of restitution ordered payable to the IRS.****

Type the above statement on the face of the notice

Place of Filing COUNTY RECORDER ANY COUNTY HOMETOWN, OH 45999	Total	$25,000.00

This notice was prepared and signed at HOMETOWN, OH, on this, the <u>31</u> day of <u>DECEMBER, 2012</u>

Signature , Employee # -	**Title** **REVENUE OFFICER** , Phone # - 999-555-5555

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

Part 1 – Recording Office

Form **668(Y)** (Rev. 10-1999)