



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

December 28, 2012

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

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

SUBJECT: Reissuance of Interim Guidance for Withdrawal of Notice of
Federal Tax Lien in Direct Debit Installment Agreement Situations

This is a reissuance of the Interim Guidance originally signed April 7, 2011, under control number SBSE-05-0411-036 and reissued March 13, 2012, under control number SBSE-05-0312-029. The purpose of the Interim Guidance is to provide instruction for processing requests for withdrawal of notices of federal tax lien when the taxpayers are in an established Direct Debit Installment Agreement (DDIA). 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) 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 if the taxpayer has entered into an installment agreement (section 6323(j)(1)(B)). Effective immediately, we are expanding current policy to allow a withdrawal under section 6323(j)(1)(B) when the taxpayer has entered into a DDIA (subject to the conditions specified below).

This Interim Guidance memorandum sets forth the procedures for this type of expanded withdrawal 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 DDIA situations. Conditions for other types of withdrawals remain unchanged. Taxpayers may apply for a withdrawal under any provision of IRC 6323(j), including 6323(j)(1)(B), 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.

Procedures

The following types of taxpayers qualify for withdrawal of the NFTL under this DDIA provision:

- Individual Master File (IMF);
- Business Master File (BMF) (income tax only); or
- BMF out of business (any type of tax).

Generally, a request for withdrawal under this provision will be approved if all of the following conditions are met:

- The aggregate unpaid balance of assessments is \$25,000 or less;
Note: The unpaid balance of assessments includes tax, assessed penalty and interest, and all other assessments on the tax modules. It does not include accrued (i.e., unassessed) penalty and interest.
- If pre-assessed taxes are included, the pre-assessed liability (including tax, penalty, and interest up to the date of expected assessment) plus unpaid balance of other assessments must be \$25,000 or less;
- The total tax liability will be fully paid in 60 months, or the agreement will be fully paid prior to the Collection Statute Expiration Date (CSED), whichever comes first (Use Integrated Data Retrieval System (IDRS) Command Code (CC) ICOMP);
- 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 is in compliance with other filing and payment requirements;
- The taxpayer is under a DDIA;
- At least three consecutive electronic payments (generally received on a monthly basis) have been processed under the DDIA and there have been no defaults in payment under this, or any previous, DDIA; and
- The taxpayer did not previously have a withdrawal of lien for any of the modules included in the DDIA (e.g. TC 583 dc 03 on module). This excludes previous withdrawals for improper filing under IRC 6323(j)(1)(A) (e.g., TC 583 dc 02 on module).

Requests for withdrawal from taxpayers in a DDIA will be processed as follows:

1. Requests will be reviewed for the Collection field employee assigned the taxpayer's case or, if the case is not assigned, forwarded to Advisory for review.
Note: The taxpayer's residence determines to which Advisory office the request should be referred (see Publication 4235).
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 DDIA withdrawal set forth above are met.
 - a. If the conditions are not met, the employee will issue a letter to the taxpayer denying the request and informing the taxpayer of their appeal rights under the Collection Appeals 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 on the memorandum; 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 to 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 Appeals 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:
 - a. Prepare and forward Form 13794-W to Centralized Lien Processing (CLP) or input the withdrawal directly into the Automated Lien System (ALS); and
 - b. Prepare and forward Letter 4026, *Withdrawal Cover Letter*, to CLP.
Note: Requests and documents forwarded to CLP should be by secure email.
6. CLP will print the Form 10916, *Withdrawal of Filed Notice of Federal Tax Lien*, from ALS and then:
 - a. Send Part 1 to the applicable recording office with the filing fee; and
 - b. Associate Part 2 with the corresponding Letter 4026 and mail the withdrawal to the taxpayer.

7. Advisory will close its NFOI control on ICS after transmitting the documents to CLP. Actions taken by CLP relative to the withdrawal can be viewed on ALS.

Taxpayers making payments under any other type of installment agreement are not eligible for consideration for withdrawal under the conditions specified above unless they convert to a DDIA and otherwise meet the conditions. Taxpayers are not precluded, however, from requesting a withdrawal under any provision of the IRC 6323(j).

If a taxpayer defaults on making payment under the DDIA after the NFTL is withdrawn, a new notice of lien may be filed, if appropriate.

Note: The above revisions apply only to a taxpayer's eligibility for withdrawal consideration. They do not impact the criteria for a taxpayer's eligibility for a DDIA.

In addition to the above:

- The method of distributing copies of other 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, and CLP will issue a copy of the withdrawal to the taxpayer with the Withdrawal Cover Letter provided by Advisory.
- 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 Theresa Miliote, Program Manager or Kyle Romick, Senior Program Analyst.

cc: Director, Field Collection
Director, Campus Compliance Services (SB)
Director, Compliance (W&I)
Chief, Appeals
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