

## IRM PROCEDURAL UPDATE

**DATE: 10/31/2016**

**NUMBER: sbse-05-1016-1610**

**SUBJECT: New ACA Subsection; Levy Information; Procedures for Filing NFTL**

**AFFECTED IRM(s)/SUBSECTION(s): 5.19.4**

**CHANGE(s):**

**IRM 5.19.4.1.2 is a new subsection on Affordable Care Act (ACA) - Employer Shared Responsibility Provision (ESRP) §4980H.**

1. Large employers (generally, employers with at least 50 full-time employees, including full-time equivalents employees, in the prior calendar year) may be assessed an employer shared responsibility payment (ESRP) under IRC 4980H(a) if they do not offer health insurance with minimum essential coverage (MEC) to full-time employees (and their dependents) and at least one full-time employee receives a premium tax credit (PTC) under IRC 36B. The ESRP may also be assessed under IRC 4980H(b) if the employer offers MEC to its full-time employees (and their dependents), but at least one full-time employee receives a PTC because the employer's insurance MEC was not affordable or did not provide minimum value.
2. Unlike the individual SRP assessments in which no enforced collection action is taken, the ESRP assessments may be included when issuing a levy or filing a Notice of Federal Tax Lien when an employer fails to pay the ESRP imposed by IRC 4980H.
3. The ESRP assessments are processed on the BMF (Business Master File) under MFT43.

**IRM 5.19.4.3.1(5) paragraph b was swapped with paragraph a to clarify procedures for ensuring the taxpayer has received CDP.**

5. Before requesting an LT11, ensure that it is required on at least one tax module by checking the modules for "PRI FNL NOT" and "SEC FNL NOT" dates. If dates are present for all balance due modules, this may indicate that Collection Due Process (CDP) requirements are met; however, further analysis is required:

**NOTE:** A tax module having a subsequent assessment on the account, including additional failure to pay penalties for additional taxes after the issuance of a collection due process notice (TC 971 AC069) must also receive a collection due process notice on the subsequent assessment prior

to levy issuance. A failure to do so would violate the taxpayer's collection due process rights. An exception to this rule involves assessments of accrued interest and failure to pay penalties. (See IRM 5.1.9.3.1)

**NOTE:** The date of the CDP notice generally must be at least 10 days after the 23C date.

- a. Carefully review each tax module on IDRS to determine if a new CDP notification is needed. Check ACS Comments or AMS History for any specific instructions pertaining to LT11 issuance.
- b. Check for ASMT+ Indicator in the Alerts section. An ASMT+ indicator on the Entity screen means the assessed balance on one or more ACS modules has increased, usually with a TC290 or TC300. The same indicator is on the Tax Module Screen next to the affected tax modules. By law, the taxpayer must be sent a CDP notice for any additional tax assessments. A new LT11 must be issued before levying on a module to collect an additional tax assessment.
- c. If it is determined that another LT11 is **not** needed document AMS annotating which tax periods were reviewed and reason another CDP notice is not needed. Remove the ASMT+ indicator by entering History code ASMT. Make a levy determination and take next action immediately, following the procedures in IRM 5.19.4.3.4.
- d. Follow the procedures in the table below when issuing an LT11 when an ASMT+ indicator is present

If specific tax modules need to be excluded on ACS from LT11 issuance	Then
and the tax module screen shows an asterisk in front of each tax module	remove the asterisk from any module on the Tax Module Screen that does not need a new due process notice. Confirm the removal using History Code CS00 before paging to another screen or requesting a letter. Failure to confirm the screen change with History Code CS00 before moving to another screen will cause the system to fail to recognize your intention to exclude any tax modules from a letter or levy.
and you are excluding tax modules from two or more MOD screens	a separate CS00 entry is required for each screen
confirm the screen changes with the CS00	enter LT11 & document in ACS Comments what tax module(s) will be on the LT11

**Figure 5.19.4-1a**

If specific tax modules need to be excluded from LT11 issuance on AMS	Then
and the module screen shows yes in the include column for each tax module	<ol style="list-style-type: none"> <li>1. click on the module to activate</li> <li>2. click on the include box to remove the check mark</li> <li>3. Click update to confirm the removal before going to another screen or requesting a letter. The yes in the include box will change to no. If you do not click on update before moving to another screen, the system will not recognize your intent to exclude any tax modules from letter or levy.</li> </ol>
and you are excluding more than one tax module, you must click on each one	follow the same procedure as stated above
confirm the no in the include column	send LT11 and document AMS History what tax module(s) will be on the LT11

**Figure 5.19.4-2a**

**IRM 5.19.4.3.1(12) added reference for issuance of FEDCON levy.**

12. Federal Contractor Levy (FEDCON) - The Small Business Jobs Act of 2010 permits the IRS to issue a levy on a taxpayer prior to providing them with their Collection Due Process notice and hearing if the taxpayer is a federal contractor. Employees must refer to the instructions in IRM 5.19.4.3.1.2 to determine if issuing a FEDCON levy is appropriate.

**IRM 5.19.4.3.1.2 added guidance for issuance of FEDCON levy.**

1. The Small Business Jobs Act of 2010 amended IRC 6330(f) and (h), to permit the IRS to issue any levy on a taxpayer prior to providing them with their Collection Due Process (CDP) notice and hearing if the taxpayer is a federal

contractor. In addition, FEDCON levies may be served during a timely requested pre- or post-levy CDP hearing or judicial review of such hearing to collect liabilities for all outstanding balance due periods including periods that are the subject of the hearing.

2. A FEDCON levy is discretionary. The Service has the option to issue a pre-levy CDP notice to federal contractors, if the situation warrants.
3. The presence of an unreversed TC971 ac647 on the account entity indicates the taxpayer is a Federal Contractor. A federal contractor can also be identified on ACS by the presence of "**FEDCN**" in the Alert section.
4. ACS employees may issue FEDCON levies to collect any IMF or BMF liability, for which the IRC 6331(d), Notice of Intent to Levy (CP 504 notice) period has expired, if the taxpayer is a federal contractor.
  - a. If the CP 504 notice was not issued, issue the LT11. Document the case history regarding the FEDCON determination.
  - b. If the CP504 notice was issued, issue the levy. An LT75, post CDP letter, will automatically generate.
5. For additional information on levies to federal contractors served through the FPLP, see IRM 5.11.7.2.3.4

**IRM 5.19.4.6.2(5) revised (a) and (b) to clarify procedures for identifying the address of the secondary taxpayer when requesting NFTLs on joint liabilities**

5. IRC 6320 gives taxpayers the right to request a hearing after the filing of a Notice of Federal Tax Lien. The taxpayer must request a CDP hearing no later than 30 days after the expiration of five business days after the date the NFTL is filed. The date the NFTL is filed is the date the NFTL is received by the recording office. Because the Service does not ordinarily obtain this date from the recording office, the Service uses an estimated filing date on the Letter 3172 to provide the taxpayer with a "must file" date (the date by which the IRC 6320 hearing request must be submitted). The estimated filing date is calculated by adding 3 business days to the NFTL mailing date. In other words, the Service assumes that the recording office will receive the NFTL 3 business days after it is mailed. The "must file" date on the letter is then determined by adding 5 business days plus 30 calendar days to the estimated filing date. Letter 3172 is used to notify the taxpayer of their appeal rights and deadline for response. This letter **MUST** be issued to all taxpayers identified on the NFTL **and** to their authorized representatives.

**NOTE:** History Code FM10 must be entered twice when filing a NFTL when a Letter 3172 is sent to someone other than an authorized third party already listed on the CAF.

- a. Employees **MUST** identify situations where the Letter 3172 (DO) must be sent to someone **OTHER THAN** the primary taxpayer at the entity address. For example, a secondary taxpayer on a joint liability who does not reside at the primary taxpayer entity address.

**NOTE:** When ACSWeb Case Overview and AMS Account Summary shows an SDS alert, check the Spouse Data Screen as it may have a different address for a liable spouse.

**REMINDER:** Individuals who are jointly liable may have different POAs. It is the requestor's responsibility to ensure information about all authorized POAs is included with the NFTL request.

- b. Employees **MUST** enter the name(s) and address(es) of each person identified who is not the primary taxpayer in ACS comments or on the NFTL request document, Form 12636, to be sent to the Centralized Lien Processing Operation (CLO). The address for the lien unit may be found under the who/where tab on SERP, <http://serp.enterprise.irs.gov/databases/who-where.dr/als.dr/case-processing-lien-units.htm>
- c. If a NFTL will be filed only on notice status modules per IRM 5.19.4.6.1(1), enter on the NFTL request document, Form 12636, the literals LETTER 3172 followed by the name and address of each ADDITIONAL person who must be issued the Letter 3172(DO).
- d. If a NFTL will be filed on status 22 (ACS) modules per IRM 5.19.4.6.1(2), or on both notice and ACS modules per IRM 5.19.4.6.1(3), enter in AMS History the literal LETTER 3172 followed by the name and address of each ADDITIONAL person who must be issued the Letter 3172(DO). Enter FM10 twice, alerting ACS Support in the service center to check ACS Comments or AMS History for additional information. If you need approval for NFTL filing, recommend this action to a manager or designated employee. In perfecting the NFTL for filing, ACS support will forward the information to the lien unit.

**NOTE:** If a representative is not authorized to receive information on all of the tax modules included on the NFTL, the specific tax modules for which that person is authorized must be shown in ACS Comments or AMS History comments or on the Form 12636.

**REMINDER:** Strict adherence to these procedures is the only way that all persons are notified timely of their statutory right to request a hearing. Failure to do so can have serious consequences in processing the affected accounts.