The Lien Process — Your Options
Statutory Lien

• Creation of a Lien (IRC § 6321)
  – Demand and Neglect/Refusal to Pay
• Duration of a Lien (IRC § 6322)
  – Assessment until Liability Satisfied or Unenforceable
• Attachment – United States v. Craft
Federal Tax Lien Priority (IRC § 6323(a))

- Unfiled – Non-Arm’s Length Transactions (Gifts, Related Party)
- Filed - Purchasers for Value, Security Interest Holders, Mechanic’s Lienors, or Judgment Lien Creditors
National Taxpayer Advocate 2009 Annual Report to Congress

• Most Serious Problem # 2
• One-size-fits-all Lien Filing Policies
  – Circumvent the Spirit of the Law
  – Fail to Promote Future Tax Compliance
  – Unnecessarily Harm Taxpayers
Long-Term Impact of NFTL on Taxpayers

- Reduces credit score by ≈ 100 points when initially filed
- Paid tax lien reported on credit history for seven (7) years after payment
- Unpaid liens remain on credit reports from ten years to indefinitely
Long-Term Impact of NFTL (cont.)

• May prevent employment
• Drive up the taxpayer’s costs
• When filed against a small business
  – negatively affects ability to obtain financing
  – may force closing of business
IRS Lien Policies and Procedures

- Pre-filing Requirements
  - Balance due over $5,000

- Appeal rights
  - Pre-filing - Collection Appeal Program
  - Post-filing - Collection Due Process
NFTL Filing Criteria

- IRM 5.12.2.4.1, *Criteria for Filing a NFTL*
- IRM 5.12.2.4.2, *Criteria for Not Filing the NFTL*
- IRM 5.19.4.5.2, *Lien Filing Determinations*
- IRM 5.19.4.5.3, *When Not to File a Lien*
Lien Certificates

• Release - IRC § 6325(a)
• Withdrawal - IRC § 6323(j)
• Discharge - IRC § 6325(b)
• Subordination - IRC § 6325(d)
• Nonattachment - IRC § 6325(e)
• Erroneous Lien Filing - IRC § 6326(b)
Case Scenarios

• NFTL withdrawal for a small business
• Impact of NFTL on Employment
• Subordination of NFTL in mortgage modification
• Erroneous lien filing
• NFTL Withdrawal after lien release
IRS Lien Functions and Offices

- Centralized Lien Unit (Cincinnati)
- Technical Services (Advisory) Group
  - Withdrawal
  - Discharge
  - Subordination
  - Nonattachment
- Publication 4235, *Collection Advisory Group Addresses*
To Contact TAS

- Call 1-877-777-4778
- Visit http://www.irs.gov/advocate
- File Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance order)

For Updated Information