

Office of Chief Counsel
Internal Revenue Service
memorandum

POSTN-114966-10
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date: May 6, 2010

to: Nina E. Olson
National Taxpayer Advocate

from: Judith M. Wall 
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subject: Delegated Authority to Make Lien Determinations in Non-streamlined Installment Agreement Cases

ISSUE

Whether the Taxpayer Advocate Service (TAS) has the delegated authority to make a determination as to whether it is appropriate to file a Notice of Federal Tax Lien (NFTL) when placing a taxpayer into a non-streamlined installment agreement (NSIA).

CONCLUSION

No. TAS does not have the delegated authority to make an NFTL determination when placing a taxpayer into an NSIA.

BACKGROUND

Delegation Order No. 13-2 (Rev. 1), IRM 1.2.50.3, specifically provides that TAS has the authority "to [a]ccept installment agreements under the procedures contained in Internal Revenue Manual (IRM) 5.19.1.5.4, [*Can Pay by Installments*] (or successor provisions)." IRM 5.19.1.5.5, the successor provision, describes the four types of installment agreements that TAS employees can accept:

- (1) streamlined (up to \$25,000),
- (2) non-streamlined (up to \$100,000),
- (3) guaranteed (up to \$10,000), and
- (4) in-business trust fund express (up to \$10,000).

An NFTL determination is not required for installment agreement types (1), (3), and (4), but it is required for (2) NSIAs. In order for a TAS employee to take such action, such authority must have been delegated to TAS. Thus, in working NSIA cases, questions have arisen as to whether a TAS employee has the delegated authority to make an NFTL determination.

DISCUSSION

In May 2003, the National Taxpayer Advocate (NTA) convened a TAS task force to review TAS current delegated authorities. In response to the study, in August 2007, Acting Commissioner Brown issued a memorandum to all functions to explain what authorities were being delegated to TAS. The details of that memorandum were subsequently incorporated into Delegation Order No. 13-2 (Rev. 1), IRM 1.2.50.3 (effective March 3, 2008). The central premise underlying this new delegation order is that the authorities delegated to TAS should not conflict with TAS's role as an advocate for the taxpayer. TAS's authorities should be routine and nonsubstantive, and TAS should not be taking action on a case if such action could be appealed by the taxpayer.

First, note that the reference to IRM 5.19.1.5.4 in the Delegation Order also includes references to the subsections within that section (*i.e.*, it includes IRM 5.19.1.5.4.1, IRM 5.19.1.5.4.2, IRM 5.19.1.5.4.3, etc.). When the Delegation Order became effective, IRM 5.19.1.5.4.1 [*Installment Agreement Overview*] contained the following:

Caution: Aggregate assessed balances greater than \$25,000 require a financial analysis to determine the correct amount the taxpayer should pay. See IRM 5.19.1.4 for financial analysis procedures.

Turning to the version of IRM 5.19.1.4 [*Analyze Taxpayer's Ability to Pay*] that existed in March of 2008, the procedures required the IRS to "[f]ile a Notice of Lien" before preparing an installment agreement. Thus, when Delegation Order 13-2 (Rev. 1) specified that TAS had the authority to accept installment agreements, the procedures at that time required that an NFTL had to be filed.

Since Delegation Order 13-2 (Rev. 1) was signed, the procedures in IRM 5.19.1.5.4 were moved to IRM 5.19.1.5.5 [*Installment Agreements*]. IRM 5.19.1.5.5(19) expressly provides that "[f]or non-streamlined IA (NSIA) accounts of more than \$5,000, **request lien filing** [emphasis added]. For lien filing procedures, see IRM 5.19.4.5.1 and IRM 5.19.4.6.1." IRM 5.19.4.5.1 and IRM 5.19.4.6.1 provide procedures for getting the lien filed. They do not provide the procedures for making a lien determination. IRM 5.19.4.5.2 [*Lien Filing Determinations*] provides the following instructions for installment agreements:

File a NFTL when BOTH of the following conditions exist:

- a. Aggregate assessed balance is at or above \$5,000
- b. A Collection Information Statement (CIS) is required.

Note: No CIS is required for payment extensions up to 120 days, or for streamlined IMF installment agreements, so an NFTL is not required.

Thus, under the procedures in effect today, as well as the procedures that were in effect in March of 2008 when Delegation Order 13-2 (Rev. 1) was signed, an NFTL is required for NSIAs. In addition, note that TAS employees do not have the authority to sign an NFTL. See Delegation Order 5-4, IRM 1.2.44.4.

When Delegation Order 13-2 (Rev. 1) was drafted, certain authorities (*e.g.*, authority to accept installment agreements) were specifically listed. But the vast majority of authorities delegated to TAS were linked to authorities delegated to Accounts Management employees, and there simply were too many authorities to list all of them separately in the Delegation Order. Therefore, Delegation Order No. 13-2 (Rev. 1) also provides that TAS has the authority “[t]o perform the duties assigned to Accounts Management employees under the procedures contained in IRM 3.11.6.6(1), IRM 5.19, and IRM 21.1 through 21.7 (or successor provisions) (but only those Accounts Management duties in existence as of October 1, 2007).” As discussed above, IRM 5.19 does not provide TAS with the authority to make an NFTL determination when placing a taxpayer into an NSIA. Furthermore, IRM 3.11.6.6(1) is inapplicable, as it does not involve NFTL determinations. Lastly, IRM Parts 21.1 through 21.7 do not delegate the authority to make an NFTL determination to Accounts Management employees. The only provisions in IRM Parts 21.1 thru 21.7 that discuss NFTL determinations are found in IRM 21.3.4.14.3.2. The provisions in this entire IRM chapter apply only to Field Assistance employees working in Taxpayer Assistance Centers, not Accounts Management employees. See IRM 21.3.4.1. Thus, because nothing in IRM 21.1 through IRM 21.7 gives Accounts Management employees the authority to make an NFTL determination, TAS employees likewise do not have the authority to make an NFTL determination.

If an NFTL is filed, the taxpayer may appeal the NFTL filing by requesting a CDP or CAP hearing with Appeals. Thus, consistent with the foundational premise that TAS should not be taking action in a case if such action could be appealed by the taxpayer, Delegation Order No. 13-2 (Rev. 1) does not provide TAS with the delegated authority to make NFTL determinations in NSIA cases. TAS employees working cases involving NSIAs should consider whether, based on the taxpayer’s individual circumstances, it is appropriate to advocate that an NFTL not be filed because the NFTL filing would create harm or otherwise impede collection of tax. If the TAS employee (in consultation with the LTA) determines that it is appropriate to advocate that an NFTL not be filed, the TAS employer should forward an operations assistance request to the Operating Division requesting that the NSIA be accepted without the filing of an NFTL.¹

¹ See TAS Interim Guidance on Recommending the Non-filing of Notices of Federal Tax Lien in Certain Situations (Mar. 30, 2010).