



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

DEPUTY COMMISSIONER

June 10, 2010

MEMORANDUM FOR NINA E. OLSON, NATIONAL TAXPAYER ADVOCATE

FROM:

  
Steven T. Miller  
Deputy Commissioner for Services and Enforcement

SUBJECT:

Taxpayer Advocate Directives 2010-1, 2010-2 and 2010-3

Pursuant to Delegation Order No. 13-1, which grants the Deputy Commissioner the authority to modify or rescind any form of Taxpayer Advocate Directive, this memorandum sets forth the modifications of Taxpayer Advocate Directives (TADs) 2010-1, 2010-2 and 2010-3.<sup>1</sup>

### **Background**

#### **Issuance of TADs**

On January 20, 2010, the National Taxpayer Advocate issued three Taxpayer Advocate Directives.

Taxpayer Advocate Directive 2010-1 was issued to the Commissioner, Wage and Investment Division, and the Commissioner, Small Business/Self-Employed Division to:

1. Immediately discontinue the policy of automatic NFTL filing on CNC hardship accounts with an unpaid balance of \$5,000 or more.
2. Within 30 days of the date of the TAD, in consultation with the National Taxpayer Advocate, issue interim guidance to all IRS contact employees to base lien filing determinations on a thorough review of information (including IRS and available third party information) concerning the taxpayer's assets, income, and the value of the equity in the assets; and after weighing all facts and circumstances, to determine that: (A) the NFTL will attach to property; and (B) the benefit to the government of the NFTL filing outweighs the harm to the taxpayer and NFTL filing will not jeopardize taxpayer's ability to comply with the tax laws in the future; and to make a documented good faith attempt at personal contact using internal and external databases.

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<sup>1</sup> See Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Directives* (Jan. 17, 2001). See also IRM 13.2.1.6.1 *Tax Appeal Process*.

3. Within 90 days of the date of the TAD, in consultation with the National Taxpayer Advocate, revise the IRM to reflect (2) above.
4. Within 10 days of the date of the TAD, in consultation with the National Taxpayer Advocate, issue interim guidance to require managerial approval for NFTL filings in all cases where the taxpayer has no assets, regardless of the employee's grade level.
5. Within 90 days of the date of the TAD, in consultation with the National Taxpayer Advocate, revise the IRM to reflect (4) above.

Taxpayer Advocate Directive 2010-2 was issued to the Commissioner, Wage and Investment Division, and the Commissioner, Small Business/Self-Employed Division to:

1. Within 45 days of the date of the TAD, in consultation with the National Taxpayer Advocate, issue interim guidance to allow, upon request of taxpayer, withdrawal of an NFTL if one of the statutory withdrawal criteria is satisfied, even if the underlying lien has been released.
2. Within 90 days of the date of the TAD, in consultation with the National Taxpayer Advocate, revise the IRM to provide guidance on when withdrawal of an NFTL is appropriate in cases in which the lien has already been released.
3. Include the complete TAS training video, *Taxpayer Rights: Collection Case Studies*, in the mandatory annual continuing professional education (CPE) training about exercising judgment and discretion before and after NFTL filing for collection employees and managers in the Collection Field Function and develop separate training in consultation with the TAS for employees and managers in Automated Collection Systems.

Taxpayer Advocate Directive 2010-3 was issued to the Commissioner, Small Business/Self-Employed Division to:

1. Within 10 days of the date of the TAD, provide the National Taxpayer Advocate with the names of SB/SE employees to be included in a joint SB/SE-TAS workgroup for review, resolution, adjustment or correction of all accounts with collection statute expiration dates (CSEDs) extended beyond 15 years after assessment (plus any statutory suspensions).
2. Within 180 days of the date of the TAD, identify and review all accounts with CSEDs extended beyond 15 years after assessment through the joint SB/SE-TAS workgroup, and
  - (A) abate the tax and additions to tax for accounts with CSEDs extended beyond 15 years after assessment (plus any statutorily required

suspensions) that would have already expired if limited to 15 years, unless exceptional circumstances exist, and notify the taxpayers involved, and

(B) adjust the CSEDs to reflect the statutory period for collection of 15 years (plus any statutorily required suspensions) for accounts with CSEDs that will not expire after their extensions are limited to 15 years from assessment, notify the taxpayers involved, and if necessary, correct these CSEDs for statutory suspensions incorrectly calculated.

3. Within 10 days of the date of the TAD, issue interim guidance limiting any CSED extended by a Form 900 (Tax Collection Waiver) in connection with an installment agreement post-1998 to 15 years (plus any statutory suspensions).

## **Appeals**

Taxpayer Advocate Directive 2010-1 was appealed by the Commissioner, Wage and Investment Division, and the Commissioner, Small Business/Self-Employed Division on substantive and procedural grounds. Following appeal of TAD 2010-1, on March 31, 2010, the National Taxpayer Advocate sustained TAD 2010-1.

Taxpayer Advocate Directive 2010-2 was appealed by the Commissioner, Wage and Investment Division, and the Commissioner, Small Business/Self-Employed Division on substantive and procedural grounds.

Taxpayer Advocate Directive 2010-3 was appealed by the Commissioner, Small Business/Self-Employed Division on substantive and procedural grounds.

## **Modification of Taxpayer Advocate Directives 2010-1, 2010-2 and 2010-3**

### **Taxpayer Advocate Directive 2010-1**

Determining appropriate lien procedures requires a balancing of taxpayer issues and protecting the government's interest. The Internal Revenue Service recognizes that many people may be having difficult times financially. We have taken a number of steps recently to help ease the burden on financially distressed taxpayers (See e.g., IR-2010-29, March 9, 2010).

The IRS fully appreciates the views and concerns expressed by the Office of the National Taxpayer Advocate. However, making significant fundamental changes to lien policies and procedures such as those directed in TAD 2010-1 have the potential to materially affect the revenue collected for the United States. Thus, any potential changes should be carefully considered and supported by clear and consistent data as to the effect of the changes including the rights and obligations of taxpayers, effective

and efficient resource allocation and revenue collected or foregone. In order to consider the specific directives of TAD 2010-1, additional study is necessary.

The Office of the National Taxpayer Advocate is participating with the IRS in the conduct of an extensive review of the overall collection processes of the IRS (the "Collection Process Study"). Among other areas, this review is examining issues related to lien utilization. The results and recommendations of this effort are necessary before making any fundamental changes to the lien policies and procedures of the IRS. In addition, before making fundamental changes, additional study by IRS Research Analysis and Statistics is necessary as to specific issues raised in the TAD. We expect to proceed cautiously and anticipate that changes would be tested in pilot programs before implementing IRS-wide.

Please note that Counsel had advised that the Service fully adheres to both the letter and spirit of the IRS Restructuring and Reform Act of 1998<sup>2</sup> when it complies with procedures currently set forth in the IRM.

Taxpayer Advocate Directive 2010-1 is modified to require:

1. Within 30 days of this memorandum, the Commissioner, Wage and Investment Division, and the Commissioner, Small Business/Self-Employed Division to commence work with IRS Research Analysis and Statistics to design and conduct a study to specifically determine the utility of filing NFTLs on CNC hardship accounts. The study will also examine the effect of lien filings on cases with no assets. The study will be undertaken with the input of TAS Research and should be completed as expeditiously as possible.
2. Modifications to the lien program of the IRS as included in the directive will be reconsidered, including the use of pilot programs as appropriate, after completion of the study referred to in (1) and after completion of the Collection Process Study currently in progress and the receipt of its final recommendations.

#### **Taxpayer Advocate Directive 2010-2**

Consistent with the agreement by the National Taxpayer Advocate and the Commissioner, Wage and Investment Division, and Commissioner, Small Business/Self-Employed Division, Taxpayer Advocate Directive 2010-2 is modified to require:

1. Within 60 days of this memorandum, the Commissioner, Wage and Investment Division, and the Commissioner, Small Business/Self-Employed Division, will put into clearance guidance on when the withdrawal of an NFTL is appropriate in cases in which the lien has been released and one of the statutory withdrawal criteria is satisfied. Such guidance will be developed in consultation with the Office of Chief Counsel and the Office of the National Taxpayer Advocate and

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<sup>2</sup> Pub. L. No. 105-206.

will include specific examples to illustrate when the statutory criteria under IRC section 6323(j) are satisfied, specifically addressing examples of when the withdrawal is in the best interest of both the taxpayer and the United States.

2. The IRM to be revised timely after final clearance of the guidance referred to in (1) above.
3. The inclusion of the complete TAS training video, *Taxpayer Rights: Collection Case Studies*, in group meeting settings for collection employees and managers in the Collection Field Function. While the video's content should not be modified, it may include additional materials such as introductions and may be shown over various timeframes. In addition, for delivery in fiscal year 2011, W&I and SB/SE will, in consultation with the Office of the National Taxpayer Advocate and the Office of Chief Counsel, develop a separate training video for employees and managers in Automated Collection Systems.

### **Taxpayer Advocate Directive 2010-3**

Consistent with the agreement by the National Taxpayer Advocate and the Commissioner Small Business/Self-Employed Division, Taxpayer Advocate Directive 2010-3 is modified to require:

1. SB/SE is to provide the name of an employee to represent SB/SE on a joint SB/SE-TAS working group for review, resolution, adjustment or correction as warranted of all accounts with collection statute expiration dates (CSEDs) extended beyond 15 years after assessment. This action has already been completed as SB/SE has provided the name of a program manager to coordinate this effort for SB/SE.
2. SB/SE, as part of the SB/SE-TAS working group referred to above, and in coordination with the Office of Chief Counsel, is to review accounts with CSEDS extended beyond 15 years after assessment to determine on a case-by-case basis whether alternative resolutions can be reached. For such cases, as authorized under section 6404(c), SB/SE is to abate tax on a case-by-case basis when the administrative and collection costs involved would not warrant collection of the amount due. This review would include cases in which CSEDs were extended post-1998.

Please note, Counsel had advised that the Commissioner does not have the authority to rescind, modify or cancel a waiver of the collection statute of limitations as directed by TAD 2010-3 or the authority to abate taxes and the additions to taxes across the board. Counsel has advised that authority to abate tax must be exercised on a case-by-case basis and must fit within one of the allowable abatement criteria under IRC section 6404.

If you have any questions, please contact me, or a member of your staff may contact Nikole C. Flax, Assistant Deputy Commissioner for Services and Enforcement, at (202) 622-6860.

cc: Richard E. Byrd, Jr.,  
Commissioner, Wage and Investment Division

Christopher Wagner  
Commissioner, Small Business/Self-Employed Division