

Release that Lien! (Please...)

By Claudia A. Hill

Claudia Hill, Editor-in-Chief of the Journal, provides an overview of the mechanics of federal tax liens, resources for obtaining lien releases and IRS contact information to facilitate obtaining lien releases.

IRS Collection has certain tools at its disposal when it wants a person to pay up. One of the most common of these tools is a tax lien, and corresponding Notice of Federal Tax Lien (NFTL). Typically, a *notice of lien* is put into effect when the IRS has been repeatedly unable to collect a tax debt from a taxpayer, and when they decide that some “motivation” is required to get the person to pay up. The purpose of a tax lien is to put the public on notice that a lien has been placed on a taxpayer’s property. A lien essentially gives the government a legal claim to the taxpayer’s property as security for a tax debt, preventing the owner from being able to sell those assets without authorization or release by the IRS. *Where to file and what is secured by the NFTL is dependent on state law. In most cases, once filed, the lien attaches to all of the taxpayer’s property and rights to property.*

Once the information is released to the state recording offices and the District of Columbia Recorder of Deeds, it is public information and is not of a confidential nature. Once a lien is filed, a taxpayer’s credit rating may be harmed. The presence of the NFTL on credit reports may make it difficult for the taxpayer to get a loan to buy a house or a car, get a new credit card, or sign a lease. A taxpayer’s representative provides great assistance to their client by helping them resolve their tax liability as quickly as possible, before a lien is filed. When it is too late to prevent the filing, the task often becomes assisting the client in getting the lien released.

Over the past few years, the IRS has changed the process practitioners use to obtain lien releases. This

article provides an overview of the mechanics of federal tax liens and IRS contact information to facilitate obtaining lien releases.

Federal Tax Lien Basics

The federal tax lien may arise in connection with any kind of federal tax, including but not limited to income tax, gift tax, forgiven debt or estate tax.

Code Sec. 6321 provides, if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belong to such person.

The term “assessment” refers to the statutory assessment made by the IRS under Code Sec. 6201 (that is, the formal recording of the tax in the official books and records of the U.S. Department of the Treasury). Generally, the “person liable to pay any tax” described in Code Sec. 6321 must pay the tax within ten days of the written notice and demand.¹ If the taxpayer fails to pay the tax within the ten-day period, the tax lien arises automatically (*i.e.*, by operation of law), and is effective retroactively to (*i.e.*, arises at) the date of the assessment, even though the ten-day period necessarily expires after the assessment date.

Once these requirements are met, a *statutory* lien is created for the amount of tax debt. By filing notice of lien, creditors are publicly notified that the IRS has a claim against all the taxpayer’s property, including property acquired after the lien is filed. The NFTL is used by courts to establish priority in certain situations, such as bankruptcy proceedings or sales of real

Claudia A. Hill, EA, M.B.A., is the Owner and Principal of Tax Mam, Inc., an association of Enrolled Agents in Cupertino, California, and the Editor-in-Chief of the Journal of Tax Practice & Procedure.

estate. Depending on the state where the taxpayer resides and where the property is located, the lien attaches to all the taxpayer's property (such as their house or car) and to all rights to property (such as accounts receivable, if they are a business). The full amount of the lien will remain a matter of public record until it is paid in full, including all accruals and additions.

Code Sec. 6322 covers the period of lien. Unless another date is specifically fixed by law, the lien imposed by Code Sec. 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

Under the doctrine of *Glass City Bank of Jeanette, Pa.*,² the tax lien applies not only to property and rights to property owned by the taxpayer at the time of the assessment, but also to after-acquired property (i.e., to any property owned by the taxpayer during the life of the lien).

The statute of limitations under which a federal tax may become "unenforceable by reason of lapse of time" is found at Code Sec. 6502. For taxes assessed on or after November 6, 1990, the lien generally becomes unenforceable ten years after the date of assessment. For taxes assessed on or before November 5, 1990, a prior version of Code Sec. 6502 provides for a limitations period of six years after the date of assessment. Various exceptions may extend the time periods.

Lien Inquiries

For questions regarding basic lien inquiries such as routine lien releases and lien payoff amounts, contact the Centralized Lien Unit by calling the toll free telephone number (1-800-913-6050).

When faced with a complex lien issue, consider contacting the Collection Technical Services (TS) Advisory function. TS Advisory is a collection compliance function that interacts with taxpayers on complex lien issues such as: Certificate of Discharge, Subordination, Subrogation, Non-Attachment, Withdrawal and other complex lien issues. *Publication 4235, Technical Services Advisory Group Addresses* provides

physical office addresses, fax and telephone contact points for assistance.

Payoff Amount

The full amount of assessed lien will remain a matter of public record until it is paid in full, including all accruals and additions. However, at any time the taxpayer may request an updated lien payoff amount to show the remaining balance due by calling the toll-free customer service telephone number at 1-800-913-6050 or faxing to 1-859-669-3805. An IRS employee will issue the taxpayer a letter with the current amount that must be paid before the Notice of Federal Tax Lien will be released.

A taxpayer's representative provides great assistance to their client by helping them resolve their tax liability as quickly as possible, before a lien is filed.

Appealing the Filing of a Lien

The law requires the IRS to notify taxpayers in writing not more than five business days after the filing of a lien. The notice may be given in person, left it at the taxpayer's home or usual place of business, or send it by certified or registered mail to the last known address. Taxpayers may ask an IRS manager to review their case, and may request a Collection Due Process hearing with the Office of Appeals by filing a request for a hearing with the office listed on their notice. The CDP hearing must be requested by the date shown on their notice, generally within 30 days of notice. Some of the issues to be discussed at the CDP hearing include:

- whether the taxpayer paid all taxes owed before the IRS filed the lien,
- whether the IRS assessed the tax and filed the lien when the taxpayer was in bankruptcy, and subject to the automatic stay during bankruptcy,
- whether the IRS made a procedural error in an assessment,
- whether the time to collect the tax (called the statute of limitations) expired before the IRS filed the lien,
- whether the taxpayer had an opportunity to dispute the assessed liability,
- whether the taxpayer wishes to discuss the collection options, or
- whether the taxpayer wishes to make spousal defenses.

At the conclusion of the Collection Due Process hearing, the IRS Office of Appeals will issue a determination. That determination may support the continued existence of the filed federal tax lien or it may determine that the lien should be released or withdrawn. If the taxpayer disagrees with Appeals' determination, there is a 30-day period starting with the date of determination, in which the taxpayer may request judicial review in a court of proper jurisdiction. IRS Publication 1660, *Collection Appeal Rights*, provides more information on the process.

Withdrawing Liens

By law, a filed notice of tax lien can be withdrawn if:

- the notice was filed too soon or not according to IRS procedures,
- the taxpayer entered into an installment agreement to pay the debt on the notice of lien (unless the agreement provides otherwise),
- withdrawal will speed collecting the tax, or
- withdrawal would be in the taxpayer's best interest (as determined by the Taxpayer Advocate), and in the best interest of the government.

The IRS will give the taxpayer a copy of the withdrawal, and if requested in writing, will send a copy to other institutions they name.

Applying for a Discharge of a Federal Tax Lien

If the taxpayer is giving up ownership of property, such as when their home is sold, they may apply for a Certificate of Discharge. Each application for a discharge of a tax lien releases the effects of the lien against one piece of property. Note that when certain conditions exist, a third party may also request a Certificate of Discharge. If the taxpayer is selling their primary residence and funds will be applied toward the lien amount, they may apply for a taxpayer relocation expense allowance. Certain conditions and limitations apply. IRS Publication 783, *Instructions on How to Apply for a Certificate of Discharge of Property from the Federal Tax Lien*, provides additional details on this process.

Making the IRS Lien Secondary to Another Lien

In some cases, a federal tax lien can be made secondary to another lien. That process is called subordination. Tax lien subordination enables a tax-

payer to secure financing for the purpose of making a payment towards their federal tax liability. Because a federal tax lien gives the government a secured interest in any property that is subject to the lien, potential lenders are not willing to loan money to taxpayers with a tax lien unless they can obtain a security interest superior to that of the IRS lien. By subordinating the lien, the IRS allows a lender to take a superior interest ahead of any IRS claims on value of the property. In return, the IRS will require that it receive ALL proceeds in excess of sales costs and amounts due to lien holders who are senior to the IRS (the mortgage holder, etc.), up to the amount of taxes owed. While there is no specific IRS form for subordination or discharge of a federal tax lien, the process is very specific. And although it is quite common, it is also sometimes difficult to achieve without help from a professional. As long as the IRS is receiving the full proceeds (other than closing costs) from the sale or refinance of a property, the IRS will generally grant subordination.

The normal processing time for subordination may be as long as 30 to 60 days. However, when there is danger of losing the loan, the IRS may expedite the certificate at the taxpayer's or representative's request. Additional information is available in IRS Publication 784, *How to Prepare Application for Certificate of Subordination of Federal Tax Lien*.

Release of the Notice of Federal Tax Lien

In order to have the record of a lien released a taxpayer must obtain a Release of the Notice of Federal Tax Lien, per Code Sec. 6325. Generally, the IRS will not issue a notice of release of lien until the tax has either been paid in full or the IRS no longer has a legal interest in collecting the tax. The IRS has standardized procedures for lien releases, discharges and subordination. In situations that qualify for the removal of a lien, the IRS will generally remove the lien within 30 days and the taxpayer may receive a copy of the Certificate of Release of Federal Tax Lien.

The IRS is required by law to timely release fully paid and unenforceable liens. To facilitate that process, the IRS has established standardized procedures to expedite requests for lien discharge, release and subordination nationwide. The IRS has created a centralized lien unit at the Cincinnati IRS Campus to assist taxpayer representatives, lenders, and escrow or title companies requesting a balance due or payoff statement for a No-

tice of Federal Tax Lien. IRS Publication 1468, *Internal Revenue Service Guidelines for Notices of Federal Tax Liens and Centralized Lien Processing*, provides greater detail on the standardized procedures.

Releasing a Lien

Code Sec. 6325(a) directs the IRS to release a federal tax lien after a tax liability becomes fully paid or legally unenforceable. The IRS will usually issue a Release of the Notice of Federal Tax Lien:

- within 30 days after the tax due is satisfied (including interest and other additions) by paying the debt or by having it adjusted, or

- within 30 days after IRS accepts a bond submitted by the taxpayer, guaranteeing payment of the debt.

In addition, the taxpayer must pay all fees that a state or other jurisdiction charges to file and release the lien. These fees will be added to the amount owed. IRS Publication 1450, Request for Release of Federal Tax Lien, provides additional information.

If these terms are met and the IRS hasn't released the lien within 30 days, taxpayers can ask for a Certificate of Release of Federal Tax Lien. The taxpayer or authorized representative may make the request by contacting the Centralized Lien Processing Unit at 1-800-913-6050. The certificate provided will not show the official recording

Figure 1: Case Processing Address and Phone Numbers

State	Team	Fax Number	State	Team	Fax Number
District of Columbia	201	859-669-3805	Mississippi	205	859-669-3805
Delaware	201	859-669-3805	Oklahoma	205	859-669-3805
Florida	201	859-669-3805	Tennessee	205	859-669-3805
Maryland	201	859-669-3805	Texas	205	859-669-3805
North Carolina	201	859-669-3805			
South Carolina	201	859-669-3805	Alaska	206	859-669-5152
Virginia	201	859-669-3805	Arizona	206	859-669-5152
			Colorado	206	859-669-5152
Kentucky	202	859-669-5152	Hawaii	206	859-669-5152
Michigan	202	859-669-5152	Idaho	206	859-669-5152
New Jersey	202	859-669-5152	Illinois	206	859-669-5152
Ohio	202	859-669-5152	Indiana	206	859-669-5152
Pennsylvania	202	859-669-3805	Kansas	206	859-669-5152
West Virginia	202	859-669-5152	Iowa	206	859-669-5152
			Minnesota	206	859-669-5152
Connecticut	203	859-669-4954	Missouri	206	859-669-5152
Maine	203	859-669-4954	Montana	206	859-669-5152
Massachusetts	203	859-669-4954	Nebraska	206	859-669-5152
New Hampshire	203	859-669-4954	Nevada	206	859-669-5152
New York	203	859-669-4954	New Mexico	206	859-669-5152
Rhode Island	203	859-669-4954	North Dakota	206	859-669-5152
Vermont	203	859-669-4954	Oregon	206	859-669-5152
			South Dakota	206	859-669-5152
Puerto Rico	204	859-669-4961	Utah	206	859-669-5152
			Washington	206	859-669-3805
Alabama	205	859-669-3805	Wisconsin	206	859-669-5152
Arkansas	205	859-669-3805	Wyoming	206	859-669-5152
Georgia	205	859-669-3805			
Louisiana	205	859-669-3805	California	207	859-669-4954

information. For a copy of the recorded certificate, the recording office where the Certificate of Release of Federal Tax Lien was filed must be contacted.

Usually 10 years after a tax is assessed, a lien releases automatically if IRS has not filed it again. If IRS knowingly or negligently does not release a Notice of Federal Tax Lien when it should be released, the taxpayer may sue the federal government, but not specific IRS employees, for damages.

How to Request a Certificate of Release of Federal Tax Lien³

A request on behalf of the taxpayer must contain the following information:

- date of request
- name and address of taxpayer
- one copy of each Notice of Federal Tax Lien you want released
- why you want IRS to release the lien

If the tax has been paid, enclose a copy of either of the following:

- an Internal Revenue receipt
- a canceled check
- any other acceptable proof

Be sure to include a telephone number with the best time for IRS contact should additional information be needed. As always, the IRS cannot disclose taxpayer information to a third party without a properly completed authorization, typically Form 2848, *Power of Attorney and Declaration of Representative*, signed by the taxpayer, so be sure to include it.

The IRS may need to research the account to confirm the taxpayer no longer has a liability. They will provide a release once they have done so. If the taxpayer has an immediate or urgent need for a Certificate of Release of Federal Tax Lien, local information is available through Technical Services Advisory Groups, at the addresses, telephone and fax numbers shown in Publication 4235. Be prepared to show proof of payment. If a balance needs to be paid, the IRS will accept payments with a certified check, cashier's check, or postal or bank money order to receive the Certificate of Release.

When requesting a balance due/payoff amount for tax liabilities identified on a federal tax lien be prepared to provide the following:

- name of taxpayer
- Social Security Number and/or Employer Identification Number

- the date for the requested computation to be computed through
- identify yourself, provide proof of authorization to represent the taxpayer, and include your telephone number and address

The IRS will provide two copies of all payoff letters by mail. Payoff letters cannot be faxed. One copy of the payoff letter must be returned with the payment to ensure proper application and timely release of the lien. Payoff computations may take up to 14 calendar days to process. The IRS considers the successfully completed fax transmission or mailing certification will serve as the taxpayer's acknowledgement.

Taxpayers or their representative who prefer to write may mail the request with any required documents to:

Internal Revenue Service

CCP—Lien Unit

P.O. Box 145595

Stop 8420G (enter Team Number from list in Figure 1)

Cincinnati, OH 45250-5595

Or, fax the request to the appropriate number listed in Figure 1.

Other Requests

Use Publication 4235, *Technical Services Advisory Group Addresses*, to find local addresses to mail the request when requesting the following certificates related to the Notice of Federal Tax Lien. A written request with any required documents should be mailed to IRS, Attn: Technical Services Advisory Group Manager, to the appropriate address on Publication 4235.

- *How to Prepare an Application to Release Property Secured by Federal Tax Lien* (Publication 487, Catalog No. 46553K)
- *Instructions on how to apply for a Certificate of Discharge of Property From Federal Tax Lien* (Publication 783, Catalog No. 46755I)
- *How to Prepare an Application for a Certificate of Subordination of Federal Tax Lien* (Publication 784, Catalog No. 46756T)
- *Nonjudicial Sale of Property and Application for Consent to Sale* (Publication 786, Catalog No. 46757E)
- *How to Prepare an Application for a Certificate of Nonattachment of Federal Tax Lien* (Publication 1024, Catalog No. 46878I)

- *Instructions on How to Request a Certificate of Release of Federal Tax Lien* (Publication 1450, Catalog No. 10665H)
- *Application of Withdrawal of Filed Form 668(Y)* (Form 12277, Catalog No. 27939C)

ENDNOTES

- ¹ Reg. §601.103(a).
- ² *Glass City Bank of Jeanette, Pa.*, SCt, 45-2 USTC ¶9449, 326 US 265, 66 SCt 108.
- ³ IRS Publication 1650 provides Instructions on How to Request a Certificate of Release of Federal Tax Lien.

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