

Handbook 5.12

Federal Tax Liens Handbook

This file contains selected sections from the Federal Tax Liens Handbook, published as part of the Internal Revenue Manual on the Internal Revenue Service web page. Tables of contents have been eliminated so the file could be reduced from approximately 151 pages in M.S. Word. Text was copied directly from HTML into M.S. Word. The object of this consolidated file is to provide essentials of what is required for a Notice of Federal Tax Lien to be properly executed, what needs to be done to initiate an administrative appeal, and how to go about removing the notices when files improperly then recovering costs and damages.

Chapter 1

Lien Filing Requirements

[5.12] 1.1 (02-22-2000)

Responsibility

1. Special Procedures function (SPf) has the responsibility for:
 - o Processing and maintaining files of the Notice of Federal Tax Lien (NFTL),
 - o Issuance of certificates relating to NFTLs such as discharges and subordinations.
2. Local management may designate some other functional area for input and retrieval of data on an automated lien system. Instructions in this section for forwarding documents to SPf includes the designated function.

[5.12] 1.1.1 (02-22-2000)

1. Management is responsible for:
 - G. Ensuring that the Automated Lien System is efficiently managed and that procedures in the Collection Manager's Handbook are followed.

[5.12] 1.2 (02-22-2000)

Creation and Duration of Lien

1. A Federal Tax Lien (FTL) is created by statute and attaches to a taxpayer's property and rights to property for the amount of the liability. This is the "statutory" or "silent" FTL. Requirements for establishing the FTL are contained in IRC 6321. The following must happen:
 - A. An assessment must have been made;
 - B. A demand for payment must have been made;
 - C. The taxpayer must have neglected or refused to pay.

[5.12] 1.3 (02-22-2000)

Approval Process

1. A determination to file a Notice of Federal Tax Lien by revenue officers below GS-9 must be reviewed and approved by the supervisor prior to the notice actually being filed.
2. Appropriate disciplinary action may be taken against the employee or supervisor if review procedures are not adhered to.

[5.12] 1.3.1 (02-22-2000)

Review Process

1. The supervisor of revenue officers below GS-9 is required to:
 - o Review the taxpayer's information,
 - o Verify that a balance is due, and
 - o Affirm that the lien filing is appropriate given the taxpayer's circumstances, considering the amount due and the value of the property or rights to property.
2. In all cases revenue officers must document the following information:
 - o A summary of any information the taxpayer provides that may affect the decision to file a lien;
 - o If the taxpayer provided information, an explanation of the employee's review and findings; and
 - o Verification that the amount is owed, e.g., the balance due has been checked on IDRS;
3. Consider the following when determining if lien filing is appropriate:
 - o The taxpayer's responsiveness to attempts at contact and collection;
 - o Information known about the taxpayer's financial condition;
 - o The taxpayer's history of delinquency,
 - o The taxpayer's efforts to pay the tax,
 - o Whether current taxes are being paid or there are returns not filed,
 - o Whether there is a lien already filed.

NOTE:

This information must be clearly marked in the history.

[5.12] 1.3.2 (02-22-2000)

Approving the NFTL

1. Revenue Officer group managers will note their review and approval using the manager's queue on their automated systems.
2. Liens filed by Dyed Fuel Compliance Officers below GS-9 will be reviewed and signed by the Examination supervisor.
3. When it is necessary that a manual (typed or handwritten) NFTL be prepared, supervisors will sign the NFTL for employees below GS-9.
4. In all cases, document the case file.

[5.12] 1.4 (02-22-2000)

Taxpayer Contact

1. Make reasonable efforts, before filing the NFTL to contact the taxpayer to advise that a NFTL may be filed if payment is not made.
2. Contact may be made by:
 - o telephone
 - o delivered in person
 - o mailing a notice or letter to the last known address.
3. Give the taxpayer an opportunity to make payment or other security arrangements. Explain the effect of the NFTL filing on normal business operations or their credit rating.
4. Certain restrictions have been placed on the Service regarding

contact with taxpayers. See IRC Section 6304, Fair Tax Collection Practices.

5. If the taxpayer disagrees with the proposed lien filing advise the taxpayer of his right to appeal. Discuss both the Collection Appeals Process (CAP) and the Collection Due Process (CDP) under RRA 98. Advise the taxpayer that they will receive a 6320 notice. See IRM 5.12.3.

[5.12] 1.5 (02-22-2000)

Problem Resolution Program

1. Taxpayer Advocate cases and Applications for Taxpayer Assistance Orders may be initiated because of lien actions. See new IRM 5.1 (General) for criteria and procedures.

[5.12] 1.6 (02-22-2000)

Estate and Gift Tax Liens

1. Obtain a serial lien identification (SLID) number from the ALS Unit before preparing your lien. The Form 668(J) or Form 668(H) must be manually prepared .
2. Estate and gift tax liens are discussed in IRM 5.5, Chapter 8, Insolvency/Decedent Estate, and Estate Taxes Collecting Handbook.
3. Manually post estate tax lien recording fees if applicable. These fees may be different than those fees used for recording the Form 668(Y)(C).

NOTE:

Process all estate tax liens through the Automated Lien System. The Collection Due Process Notice will be generated accordingly.

[5.12] 1.8 (02-22-2000)

Designated Payment Code

1. A designated payment is a voluntary payment designated by the taxpayer to be applied in a particular manner, i.e., kind of tax, specific tax period, etc. These designations are normally followed by the Service.
2. In the absence of a designation by the taxpayer, payments will be applied in a manner consistent with the provisions of Rev. Rul 73-305, unless a specific statute, regulation or procedure designates otherwise.
3. A designated payment code (DPC) is mandatory on all Collection initiated posting vouchers for transaction codes 640, 670, 680, 690, 693 and 700. DPCs serve three purposes:
 - A. They are used to identify payments that are designated for trust fund or non-trust fund employment and excise taxes.
 - B. DPCs are used to indicate application of payments for a specific liability.
 - C. DPCs also identify the event which resulted in the payment.
4. Use DPC 07 when applying payments secured for the release of a notice of federal tax lien or to secure a certificate of discharge or subordination.

NOTE:

The mere fact that a lien has been filed does not indicate that the payment is due to the filing of a NFTL. In this case, the appropriate DPC should be used.

[5.12] 1.11 (02-22-2000)

Filing Outside the U.S.

1. No collection activity can be taken against property located outside the U.S., its territories or possessions, without an agreement or treaty with the situs country.

[5.12] 1.17.1 (02-22-2000)

Criteria for Refiling

1. Before any NFTL is refiled, each assessment should be examined to determine that the statutory period for collection has been suspended or extended beyond the normal ten-year period beginning with the assessment date.
2. The normal collection statute may be suspended or extended by:
 - A. Execution of Form 900, Tax Collection Waiver.
 - B. Offer in compromise.
 - C. Assets of taxpayer in custody of a court in certain types of proceedings.
 - D. Judgment for the United States.
 - E. Absence of taxpayer from United States.
 - F. Military deferments.
 - G. Appropriate actions suspending or extending the collection statute.
3. The extension of the statutory period for collection does not mean that a NFTL must be automatically refiled. Each case should be analyzed regarding present and future assets to which the refiled NFTL might attach. The present balance still due on the FTL would be another factor to be taken into consideration.

[5.12] 1.18.1 (02-22-2000)

Transferee and Nominee Cases

1. A transferee Notice of Federal Tax Lien (NFTL) may be used to subject property to the government's Federal Tax Lien (FTL) when property has been transferred or acquired in the name of a third party with the taxpayer's funds. Some state laws may not recognize transferee NFTL without the judicial process or it may not be possible to show that the taxpayer acquired the property.
2. If the transferee NFTL is not possible, but facts show that the taxpayer treats the property as his or her own, a nominee NFTL may be filed. District Counsel will advise which type of NFTL to file. Consider the following circumstances in developing your case:
 - o the taxpayer is paying maintenance expenses
 - o using the property as collateral for loans
 - o paying state and local taxes on the property.
3. You may not file a nominee or transferee NFTL without the written approval of District Counsel.
 - o Cases should be developed to withstand court challenge.

- o Focus on the conveyance of the title.
 - o Requests should be for advice as to the need for a supplemental assessment, a new notice and demand and the language to be incorporated in the NFTL or levy.
 - o Prepare a report containing all of the facts of the case to accompany the request.
4. Subsequent enforcement action is at the district's discretion once District Counsel has approved application of the nominee or transferee theory in a case.
 5. In determining what additional enforcement action should be taken, consideration much given to the confusion in the chain of title and redemption rights by the taxpayer. These circumstances may depress the sale of the property.
 6. A judicial lien foreclosure or seizure followed by suit to foreclose the NFTL will generally bring a greater sale price particularly for real property.
 7. The administrative seizure and sale process may be used if prompt action is needed to protect the government's interest. If there is any doubt, request an opinion from District Counsel.

[5.12] 1.19 (02-22-2000)

Place for Filing of Notice of Federal Tax Lien (Overview)

1. A Notice of Federal Tax Lien (NFTL) encumbers motor vehicles, airplanes and vessels in the same manner as other personal property when a NFTL is filed in the recording office designated by state law as the residence of the taxpayer.
2. Do not file Form 668(Y) with Departments of Vehicles, FAA or the U.S. Coast Guard or similar agencies. (See IRC 6323(f)(5).)

[5.12] 1.19.1 (02-22-2000)

Place for Filing of Notice

1. Under state laws:
 - A. Real property--file in one office within the state (or county, or other governmental subdivision) as designated by the laws of the state, where the property subject to the Federal Tax Lien (FTL) is located.
 - B. Personal property--whether tangible or intangible, file in one office within the state (or county, or other governmental subdivision), as designated by the laws of the state, where the property is located (located at the residence of the taxpayer at the time the NFTL is filed). See Section 1.15 and IRC 6323(f)(1)(A)(ii).
2. With clerk of district court--File in the office of the clerk of the United States district court for the judicial district where the property subject to the FTL is located, whenever the State has not by law designated one office which meets the requirements of (1) above; or
3. With recorder of deeds of the District of Columbia--File in the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

[5.12] 1.19.3.1 (02-22-2000)

ALS Other District Lien Filing

1. Out of district liens may be filed using the Automated Lien System.
2. Call the receiving district to obtain the court identification number and the exact spelling of the recording office (including whether the input should be upper case, lower case, or initial caps).
3. The Form 668(Y) will be printed in the receiving district with the name and phone number of the employee requesting the lien filing.
4. The appropriate lien notice (L3171 or L3172) will be generated and mailed from the originating district.

[5.12] 1.22 (02-22-2000)

Copies of Notices to Third Parties

1. The Federal tax lien (FTL) under IRC 6321 attaches to "all property and rights to property" of the person or entity liable for the tax. This very broad statutory language has been interpreted as including all real, personal, and intangible property of greatly varying natures, as well as future interests, and property acquired by the taxpayer after the lien has come into existence.
2. Since the FTL attaches to after-acquired property the FTL may be enforced administratively by levy; that is, use of a levy to collect taxes is not limited to property or rights to property of the taxpayer in existence at the time the assessment is made.
3. The effect of a levy on other than wages and salary is not prospective; that is, service of a levy or notice of levy upon the taxpayer or a third person, respectively, results in a seizure of property or rights to property in possession of either party at the time of service of levy. Should property come into possession of the taxpayer or third party following such service, another levy should be made to seize the property, notwithstanding the fact that the Federal tax lien attaches itself automatically to such after-acquired property.
4. In order to establish uniformity in giving the required actual notice or knowledge, a copy of the appropriate Notice of Federal Tax Lien (NFTL) will be delivered to the person(s) requiring the notice.

[5.12] 1.24 (02-22-2000)

Automated Lien System Filing Requests

1. All Notices of Federal Tax Liens (NFTL), including Estate and Gift tax liens, should be filed through the Automated Lien System. See the ALS User's Guide for additional information.
2. Manually prepared NFTLs should be kept to a minimum:
 1. Provide the ALS unit with the information necessary to prepare the NFTL.
 2. Secure the SLID # and include on the NFTL. Securing the SLID # ensures that the lien filed indicators and TC 360 input requests are generated for NFTLs when prepared

- through the ALS.
3. Forward the recording information to the ALS unit after the NFTL has been recorded.
 3. Parts 1 and 2 will be sent to the recording office. Part 3 will be mailed to the taxpayer. Part 2 will be forwarded to the requestor unless instructed otherwise by the district.
 4. Internal Revenue Regulations permit Electronic Lien Filing (ELF) with recording jurisdictions. Contact the Regional and National Office for details.

[5.12] 1.27 (02-22-2000)
Suspense File

1. When the Parts 1 and/or Part 2 of Form 668(Y) are returned from the various recording offices, they should be forwarded to SPF or other designated function.
2. Input court data into the database as soon as possible after receipt.
3. Forward Part 1 or 2 to the requester.
4. The Automated Lien System (ALS) contains a report that will identify NFTLs that have been sent to a recording office but which, after a given period of time, have not been updated with the recorded data. See IRM 114.1 (Compliance and Customer Service Manager's Handbook) for SPf procedures. ALS report and log information is found in both the ALS User's and Manager's Guides.

[5.12] 1.29.1 (02-22-2000)
Correcting Notices of Federal Tax Lien Documents (Overview)

1. The ALS database should always contain Notice of Federal Tax Lien (NFTL) records that mirror information contained in the document that has been filed.
2. The IDRS name control displayed on ALS does not appear on the Notice of Federal Tax Lien and can be changed when found to be different than the name control on IDRS or masterfile.
3. Changes will not be made to any other part of the record after it has been mailed.

[5.12] 2.2.1 (02-02-1999)
Liability is Satisfied

1. Issue of a release of a NFTL within 30 days after the taxpayer's outstanding obligation covered by the lien (including any interest, additional amount, addition to the tax, or assessable penalty, together with any additional costs that may have accrued) is fully satisfied by payment or by abatement. See 2(11)1 of IRM 57(16)0, Legal Reference Guide for Revenue Officers and IRC 6325(a)(1).
2. A NFTL may be released when the aggregate unpaid balance, including accruals, does not exceed the amount in 372 of LEM V.
3. Where payment is made by personal check, the 30-day release period will begin after 7 working days. This will permit sufficient time for the check to clear. A release

may be issued immediately upon presentation of the canceled check.

4. Accounts satisfied by cash, money order, certified check, cashier's check or guaranteed draft drawn on any organization that is authorized to do business under state or federal laws relating to financial institutions, may be released immediately upon payment.

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| If | Then |
| the District Director has | reason to doubt the financial stability of an institution, |
| | institution's guaranteed draft. |
| | the United States will have a |
| a guaranteed draft is not duly lien on all assets of the | paid, |
| | institution in the amount of |
| | the draft. |
| payment is received to secure | use the designated payment code |
| a release, certificate of | of 07 (DPC-07) when preparing |
| discharge or subordination, | the posting voucher. |

[5.12] 2.2.2 (02-02-1999)
Liability is Unenforceable

1. The word "unenforceable" means unenforceable as a matter of law, and not merely uncollectible.
2. NFTL filed on forms revised 12/82 or later do not require that a separate certificate of release be issued when the statutory period for collection has expired unless the NFTL has been refiled or a request is made for a separate release.
3. NFTL refiled on Form 668-F, Notice of Federal Tax Lien, are not self-releasing. A certificate of release must be filed when the liability becomes unenforceable.

[5.12] 2.3 (02-02-1999)
Request for Release of Lien by Taxpayer

1. Procedures for requesting release of Lien by the taxpayer are described in this section.

[5.12] 2.3.1 (02-02-1999)
Processing Taxpayer Requests for Lien Release

1. Issue a certificate of release within 30 calendar days of receipt of a properly completed request in the district where the NFTL is filed. Any request which is incorrect or incomplete will not trigger the 30 day release period.
2. Notify the taxpayer when additional information is needed to identify the NFTL to be released or give the reason why a certificate of release will not be issued.
3. Timely release of the NFTL is essential. Under the Taxpayer Bill of Rights, Section 6240 (new IRC 7432), taxpayers are provided with the right to sue the Federal Government if the Service knowingly or negligently fails to release a NFTL. Recovery is limited to actual, direct

economic damages sustained by the taxpayer which, but for the actions of the IRS, would not have been sustained, plus the costs of the action.

4. Prior to being awarded damages, the taxpayer is required to request a release of NFTL in writing.
5. Publication 1450, Request for Release of Federal Tax Lien, describes the conditions under which a Certificate of Release of Federal Tax Lien may be issued and the required content of the request.
6. An immediate or expedite release will be defined as one requested when the liability has been satisfied for a period beyond 30 days from the date of satisfaction or when the taxpayer wants to pay the liability to secure a release for such things as the transfer of property or the completion of other financial transactions.
7. Occasionally, the Service erroneously files duplicate NFTL and the taxpayer may request the release of the duplicate. If the liability has not been satisfied, respond to the taxpayer using Pattern Letter P-2411. This pattern letter will act as a release and filing will be at the option of the taxpayer. See Exhibit 5.12.2-3.

[5.12] 2.3.2 (02-02-1999)

Satisfied or Unenforceable Taxpayer Accounts

1. Follow these procedures:

| | |
|--|---|
| If the taxpayer states that the liability is satisfied or unenforceable | Then check ALS to determine if a release has been issued. check IDRS to determine if the a release has not been issued, the liability satisfied and the are in status 12 and 30 days last date for refile or CSED (37 days for personal checks) has not passed |
|--|---|

1. Prepare a manual release.
2. Forward a copy to ALS to update the database.

the module is unenforceable, 1. Prepare a manual release.

2. Forward a copy to ALS to update the database.
Request that the taxpayer
there is no record that the submit a written request to
NFTL has been satisfied on ALS 1. the attention of the Chief,
or IDRS SPf in the district where
the NFTL was filed.
Provide the taxpayer with
2. Publication 1450, Request for Release of Federal Tax Lien.

[5.12] 2.4 (02-02-1999)
Request for Release

1. Districts are notified by the service center that accounts have been satisfied by means of a module satisfied notice. These notices are generated for all full paid modules that were in TDA or suspended status and a Lien Filed Indicator (LFI) input to the module. The majority of NFTL releases are generated by the systemic processing of the module satisfied notice.
2. The ALS system release module is used to enter lien release information not covered by a module satisfied notice. Basic audit trail data as well as how the lien was satisfied, the requesting employee, and the approving official is also displayed using the program. The lien release is assigned to the Manager's Queue for electronic signature and is produced when it has been approved.
3. If a liability is satisfied by cash or by a certified or cashier's check an immediate release of the NFTL is required, the reverse of Part 2 of the Form 668(Y), or other locally adopted form, should be immediately completed and sent to SPf or other designated function where the release will be prepared without waiting for the module satisfied notice to be received.
4. The need to request immediate release of liens should be restricted to:
 - A. taxpayer requests, or
 - B. pending property transactions that would be delayed by normal processing.
5. When the LFI is not present on a module, the reverse of Part 2 of Form 668(Y), or other locally devised form, should be completed and forwarded to SPf or other designated function, to generate the release.
6. Complete the reverse of Part 2 of Form 668(Y), or other designated form, to release NFTL with multiple periods listed where one or more of the periods were satisfied prior to January 1988. A module satisfied notice will not be issued to set the satisfied indicator in the lien database to systemically release the NFTL when the last period is satisfied.

[5.12] 2.5 (03-22-2000)
Erroneously Filed Notice of Federal Tax Lien

1. The definition of an erroneously filed NFTL (IRC 6326) is a NFTL filed during the presence of one of the following conditions:
 - A. the liability was satisfied prior to the NFTL filing;
 - B. Any tax liability which was assessed in violation of deficiency procedures in IRC 6213;
 - C. the statute of limitations for collection expired prior to filing of the NFTL.
 - D. the tax liability was assessed in violation of Title II of the United States Code (the Bankruptcy Code).
2. When an erroneous filing situation is identified, a Certificate of Release and Pattern Letter P-544, (Exhibit 5.12.2-4) must be issued by Special Procedures within 14

- days, where practical. A memorandum outlining the facts should be prepared immediately and forwarded to SPf.
3. When circumstances warrant immediate action, the facts of the case should be given to Special Procedures by telephone for preparation of the letter. The memorandum must still be prepared and forwarded to SPf.
 4. The letter should be signed by the District Director or other persons authorized to sign on his/her behalf. It is recommended that the authority be delegated to the Chiefs, Collection and Special Procedures function.
 5. At the taxpayer's written request a copy of the release and letter of apology may be furnished to creditors or credit bureaus. Instruct the taxpayer to provide names, mailing addresses, and authority to disclose the information.
 6. Filing and release fees will be waived on erroneously filed NFTLs.

[5.12] 2.6 (02-02-1999)
Certificate of Release

1. Issue a Certificate of Release only after all assessments covered by the NFTL meet the criteria for release even though a certificate could be issued when each assessment is satisfied or becomes unenforceable.
2. If a specific request is received from a taxpayer to issue a release of satisfied or unenforceable modules, forward the request to SPf or other designated function for a partial release of the NFTL.

[5.12] 2.8 (02-02-1999)
Authority to Execute Certificate of Release of Lien

1. District Directors may redelegate (IRC 6325) the authority to issue Certificates of Release of Federal Tax Liens.
2. Authority may be redelegated to the following officers.
 - A. Chief, Collection Field function
 - B. Group managers
 - C. Chief, Special Procedures function (SPf),
 - D. Revenue officers Grade 9 and above,
 - E. Advisors Grade 11 and above,
 - F. Other designated employees in charge of SPf,
 - G. Chief, Automated Lien System Unit or Section (no grade restriction).
3. Facsimile signature stamps may be used for large volumes of releases.

[5.12] 2.9 (03-22-2000)
Other Certificates Relating to Liens (Overview)

1. There are a number of certificates that relate to the lien. The distinction between the certificates are:
 - A. Release--operates to completely extinguish the lien.
 - B. Discharge--removes certain property from the effect of a tax lien.

- C. Subordination--relegates our lien to a lower priority position.
- D. Non-attachment--denotes that a person of like or similar name is not, in fact, the taxpayer.
- E. Revocation--issued when a lien was erroneously released or in connection with a breached collateral agreement with an offer in compromise.

[5.12] 2.10.3 (03-22-2000)

Civil Action to Release Erroneous Lien

1. If a certificate of discharge is issued (IRC 6325(b)(4)) to any person for any property, then within 120 days of the certificate being issued, the person may bring civil action against the government in a district court of the United States, for a determination of whether the value of the government's interest in the property is less than the value determined by the Secretary.
2. No other action may be used for this determination.

5.12] 2.23 (03-22-2000)

Withdrawal of the Filed Notice of Federal Tax Lien (Overview)

1. IRC 6323(j) gives the Service the authority to withdraw Notices of Federal Tax Liens (NFTL) under certain circumstances as well as provide notice to credit agencies. The NFTL may be withdrawn under the following conditions:
 - A. the filing of the notice was premature or otherwise not in accordance with the Service's administrative procedures;
 - B. the taxpayer entered into an agreement under Section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,
 - C. withdrawal of such notice will facilitate the collection of the tax liability, or
 - D. with the consent of the taxpayer or the National Taxpayer Advocate, the withdrawal of such notice would be in the best interest of the taxpayer (as determined by the National Taxpayer Advocate) and the United States.
2. It is necessary that a Withdrawal of the Notice of Federal Tax Lien be prepared rather than a Certificate of Release of Federal Tax Lien, since the certificate releases both the paper lien and the underlying Federal Tax Lien.
3. Withdrawal notices may be used if:
 - A. the responsibility unit has knowledge that the taxpayer has a credit available that would satisfy the lien (i.e., carryback, overpayment, adjustment, etc.),
 - B. the taxpayer has filed for bankruptcy and the Federal Tax Lien was filed when the automatic stay was in effect (filing is not in compliance with the Bankruptcy Code),
 - C. the lien is filed against institutions under control of the FDIC as successor to the Resolution Trust

Corporation (RTC).

4. Requests for withdrawals will be considered regardless of the date the notice of lien was filed.
5. Withdrawal of the Notice of Federal Tax Lien is not mandatory.

[5.12] 2.24 (02-02-1999)

Taxpayer Requests

1. All requests for withdrawal of the Notice of Federal Tax Lien must be in writing and must contain the following:
 - o taxpayer's name,
 - o current address,
 - o taxpayer's identification number,
 - o a copy of the NFTL affecting the property, if available, and
 - o statement or basis for the withdrawal request.
2. Taxpayers must provide written authorization for disclosure of information to creditors, credit reporting agencies and financial institutions.
3. Route taxpayer requests to the office with control of the case.
4. Forward cases to the Special Procedures function in the district where the taxpayer lives or has its principal place of business when there is no open case in Collection.
5. Subsequent requests for copies of approved withdrawal notices to be sent to creditors or financial institutions will contain the same information outlined in (1) above.

[5.12] 2.25 (02-02-1999)

Withdrawal is Warranted

1. When a withdrawal is warranted:
 - A. Prepare a brief statement explaining the circumstances of the case.
 - B. Prepare the Withdrawal of Filed Notice of Federal Tax Lien, and a cover letter to the taxpayer (refer to Exhibits 5.12.2-10 and 5.12.2-11).
- NOTE:
The withdrawal notice will also be used when filings are in violation of the automatic stay in a bankruptcy estate.
2. The withdrawal notice must include any refile, amended, or corrected NFTL associated with the original filing, if applicable.
 3. Forward to the Chief, Special Procedures function for signature.
 4. Prepare the withdrawal notice in triplicate and file in the appropriate recording office within 10 days of notification from the taxpayer. The Service will bear the cost of filing.
 5. When the Service's copy is returned note the recording information in the ALS history screen.
 6. Forward a copy of the signed notice and a cover letter to

- the taxpayer after signature.
7. Provide copies of the withdrawal notice to creditors, credit reporting agencies, or any financial institution with a written request from the taxpayer. This request must also contain the authority to disclose the information.
 8. Retain a copy of the withdrawal in SPf. (This requirement will be removed once the process is automated via ALS).

[5.12] 2.26 (03-22-2000)
Denial of Withdrawal

1. Employees assigned the case are authorized to deny withdrawal of the notice of federal tax lien.
2. Notify the taxpayer that the request is denied.
3. Inform the taxpayer of his or her appeal rights as well as their right to discuss the denial with the immediate manager.
4. Provide the taxpayer with:
 - o Publication 1660, Collection Appeal Rights for Liens, Levies, Seizures and Installment Agreement Terminations, and
 - o Form 9423, Collection Appeal Request.
5. Note the history with the reason for denial.

[5.12] 2.30 (03-22-2000)
Administrative Appeal Rights--Erroneous Lien Filings

1. Persons against whom a Notice of Federal Tax Lien (NFTL) was filed have the right to appeal the filing of the NFTL. The appeal is the administrative remedy to correct erroneous NFTL filings. (See IRC 6326).
2. Requests must be handled expeditiously and should be addressed to the District Director, attn: Chief, Special Procedures function, in the district where the Notice of Federal Tax Lien was filed.
3. The administrative appeals process:
 - o may not be used to challenge the underlying deficiency leading to the encumbrance of the NFTL.
 - o must be appealed within one year after the taxpayer becomes aware of the erroneously filed NFTL
4. All collection actions will be withheld during the administrative appeals process, unless collection is in jeopardy.
5. The Service must issue a Certificate of Release within 14 days after determining the filing was erroneous.
6. The release must include a statement that the filing of the NFTL was erroneous. This ensures that the public records contain a statement that the filing was not attributable to the taxpayer and will assist in repairing the taxpayer's credit or other financial records. A Certificate of Release must be issued on any erroneously filed NFTL whether or not it is challenged in administrative review procedures.
7. Taxpayers may request an appeal under the Collection Appeals Program (CAP) and may also be entitled to a Collection Due Process Appeal (CDP). See IRM 5.12.3.

[5.12] 2.30.1 (03-22-2000)

Request for Administrative Appeal

1. Requests for an administrative appeal under IRC 6326 must meet the following requirements:
 1. be in writing,
 2. provide the taxpayer's name, current address and TIN,
 3. include a copy of the NFTL as filed, if available,
 4. state the grounds on which the request is made (notice of deficiency was mailed to the wrong address, etc.),
 5. provide the canceled check or other evidence of payment, if liability satisfaction is claimed.
 6. provide information identifying the bankruptcy court, docket number and petition date.

If the request does not meet the administrative appeal criteria, respond to the appealing party using Pattern Letter 2424. See Exhibit 2-12.

a request disputes the tax, penalty or interest due, attempt to secure the basis for the claim from the taxpayer.

you can adjust the liability, make the adjustment. the taxpayer does not provide adequate substantiation that the assessment is incorrect, advise the taxpayer to pay the liability and file a claim.

the request does not meet the administrative appeal criteria and the taxpayer believes the filing is incorrect and identifies another issue (i.e., math error), process the request.

* Follow the steps listed below to process the request for appeal.

1. Research IDRS to determine the status of the liability,
2. Respond to the taxpayer using Pattern Letter 2423 to identify the reason the request does not meet the administrative appeal criteria and that his/her request is being referred to another function for action. See Exhibit 2-13.
3. Obtain the name and telephone number of the contact point to be used in the letter.

If the liability on the NFTL is in ACS inventory or in the queue, Then forward the request to the ACS call site. input a CC STAUP to IDRS for the appropriate number of cycles and reference the receipt of a request for lien release in the IDRS history section. SPf should

reactivated TC 530 case), research and resolve the request or refer the request to the appropriate function for resolution.

the liability on the NFTL forward the request to CFf, has been assigned to CFf, attention of the revenue officer assigned the TDA.

the liability on the NFTL is use the CFOL commands, IMFOL and not present on IDRS, it may BMFOL to view the accounts. SPf have aged off IDRS and is in should then resolve the request an inactive status present or refer the request to the on the masterfile (e.g., appropriate functional area for CNC, below tolerance). resolution. the request meets the establish and maintain a control administrative appeal record of all applicable criteria, requests.

research IDRS to determine the the request cannot be status of the liability and immediately resolved, advise the employee/function assigned to the case of the taxpayer's request.

it may have aged off IDRS and is in an inactive status present on the masterfile (e.g., CNC, below tolerance). Initiate the request for a master file transcript by the liability on the NFTL is the input of CC MFTRD. This will not present on IDRS, bring the tax module data down onto IDRS within 24 hours. SPf should monitor the master file status of this liability with a weekly input of CC MFTRD until the resolution of the request.

during the resolution period of the request, the deferred notify the appropriate function tax module becomes active, of the request received.

* Special Procedures function will respond to all requests that meet the criteria within 30 days.

If Then
the taxpayer has provided proof that the liability was follow the procedures shown in satisfied prior to the IRM 5341 for adjustment and filing of NFTL, payment tracer action.
the liability was assessed in violation of the prepare a Form 3870, Request for automatic stay in bankruptcy Adjustment to abate the (Title 11), assessment.
the statute of limitations has expired prior to the issue a certificate of release. filing of the NFTL,
it is determined that a NFTL was erroneously filed, issue a certificate of release.

It is not necessary to delay issuance of the release until after the credit or abatement appears

1. Identify the reason a final response is delayed.
 2. Specify when the final response will be mailed.
 3. Include the name, telephone number, and organizational code symbols for reference purposes as a contact point. Where feasible, the contact point should be someone familiar with the issues.
-

+ [5.12] 3.1 Appeals

[5.12] 3.1 (02-22-2000)
Appeals

1. Taxpayers may have two opportunities to appeal collection actions:
 - o Collection Appeals Program, and
 - o Collection Due Process Hearing
2. Case file should not be closed or archived during the period (45 days) in which the taxpayer has to respond. Case files must be forwarded to Appeals along with the Form 12153, Request for Collection Due Process Hearing.

[5.12] 3.1.1 (02-22-2000)
Collection Appeals Program

1. The Collection Appeals Program (CAP) was implemented to provide taxpayers with an opportunity to have collection actions reviewed by an impartial party outside the Collection function. CAP appealable Collection actions are liens, levies, seizures and installment agreement denials or terminations. In addition to NFTLs, appealable lien actions include the denial of a notice of withdrawal of NFTL and denials of certificates of discharge, subordination or nonattachment. An appeal to CAP is also allowed for taxpayers who want to dispute the SPf decision on administrative appeal of liens. Refer to IRM 5.1.9.
2. You should provide the taxpayer with a copy of Publication 1660, Collection Appeal Rights, if an appeal is requested.
3. You should inform the taxpayer that your decision must be discussed with your immediate supervisor before beginning the Collection Appeals process.

[5.12] 3.1.2 (02-22-2000)
Due Process Hearing

1. Effective January 19, 1999, under IRC 6320, the Internal Revenue Service must notify taxpayers in writing of their right to a Collection Due Process Hearing with an Appeals Officer following the filing of a Notice of Federal Tax Lien. When a request for Collection Due Processing Hearing is timely, the taxpayer also establishes the right to judicial review of the Appeals determination.
2. Taxpayers may be entitled to a due process hearing under

- Internal Revenue Code 6320 if a timely request for a hearing is received. See IRM 5.1.9.
3. If the due process hearing is not requested within the 30 day time period, the taxpayer will be given an equivalent hearing. The equivalent hearing allows the taxpayer to raise the same issues as a due process hearing, however, the taxpayer cannot appeal the IRS decision to a court.
 4. A notice of lien filing is required to be sent to the taxpayer not more than 5 business days after the NFTL is filed. The notice must be:
 - A. Given in person,
 - B. Left at the residence or usual place of business to the taxpayer, or
 - C. Sent by certified or registered mail to the taxpayer's last known address.

NOTE:

Use registered mail only if the taxpayer resides outside the United States. There is no international certified mail.

5. The notice will include:
 - A. The amount of unpaid tax,
 - B. The right to request a hearing during a 30 day period beginning on the day following the 5th business day after the filing of the NFTL.
 - C. Administrative appeals (i.e., meet with employee's supervisor, Collection Appeal Program, etc.) available to the taxpayer with respect to the lien and procedures relating to appeal.
 - D. The provisions of IRC 6320. (These provisions are explained in Publication 1660).

[5.12] 3.1.2.1 (07-26-2000)

Hearing Issues

1. Certain issues and considerations must be undertaken during the hearing process. The taxpayer may raise any relevant issue relating to the unpaid tax including:
 - o appropriate spousal defenses,
 - o challenges to the appropriateness of the collection action,
 - o collection alternatives including, posting of a bond, substitution of other assets, installment agreement, offer in compromise,
 - o challenges to the existence or amount of the underlying tax liability .

(Note: This issue may be raised only if the person did not receive a statutory notice of deficiency for the tax liability or did not have any other opportunity to dispute the tax liability, i.e., a type of tax for which a statutory notice of deficiency was not sent and no appeal was offered.)
2. An issue may not be raised at the hearing if:
 - o the issue was raised and considered at a previous hearing about a notice of levy or seizure under IRC 6330 or in any other previous administrative or judicial proceeding, and
 - o the person raising the issue participated

meaningfully in the previous hearing or proceeding.

[5.12] 3.1.2.2 (02-22-2000)

Requirement of Investigation

1. The appeals officer at the hearing will obtain verification that the requirements of all applicable law or administrative procedures have been met. You may be asked to clarify certain issues. As a basis for the determination, the Appeals Officer will consider:
 - o the verification presented,
 - o issues raised, and
 - o whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concerns of the person that the collection action be no more intrusive than necessary.

[5.12] 3.1.2.3 (02-22-2000)

Judicial Review of Determination

1. The taxpayer has 30 days to appeal the determination from the Appeals Officer. The determination may be appealed to the Tax Court, or if the Tax Court does not have jurisdiction, to a U.S. District Court.
2. If a court determines that the appeal was in the wrong court, the taxpayer has 30 days after the court determination of incorrect filing to file the appeal in the correct court.
3. The Office of Appeals will retain jurisdiction with respect to any determination, including subsequent hearings requested by the person who requested the original hearing on issues regarding:
 - o collection actions taken or proposed with respect to Appeals' determination, and,
 - o changes in circumstances affecting Appeal's determination, after the person has exhausted all administrative remedies, i.e., CAP.

[5.12] 3.1.3 (07-26-2000)

Suspension of Collection and Statute of Limitation

1. If a hearing is timely requested, the running of the period of limitation will be suspended from receipt of the request for the period during which the hearing and associated court appeals are pending. The suspension will end when the decision of the Appeals office becomes final, i.e., 30 days after issuance of the determination if it is not appealed to a court. If appealed to court, the suspension ends when the case becomes final. The period of limitation for collection will not expire before 90 days after a determination becomes final. See IRM 5.1.9 for procedures on suspending the statute.
2. Levy action under any circumstances will be suspended during the appeals process. Certain other collection actions such as offsets, summonses to collect information

and suits to collect may occur.

[5.12] 3.1.4 (07-26-2000)

Notice FTL Filing Preparation

1. The notice for a right to a hearing will be generated:
 - o when the original lien filing (after 1/18/1999) is requested;
 - o only once if liens are filed in multiple jurisdictions for the same tax period;
 - o only for the first NFTL filing after January 18, 1999 (even if a NFTL was previously filed for the same taxable period before the effective date).
 - o when subsequent assessments are made and a lien is requested;
 - o for individual taxpayers
 - o for partnerships and corporations;
 - o when there is a joint liability each spouse will be sent the same notice in a separate envelope addressed respectively to each spouse at their last known address.
2. The notice for a right to a hearing will not be generated for refiled liens.
3. The NFTL will be mailed to the recording office, then the L3172 (DO), Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, will be:
 - o generated on ALS three workdays from the date the NFTL is printed,
 - o mailed on the day it is printed, but not later than two workdays after printing.
 - o sent certified mail.

NOTE:

The taxpayer's copy of the NFTL will be mailed with the collection due process notice.
4. TC 582 indicates that a lien was requested. If requested through ALS it is also an indication that the L3172 notice will be generated. Check ALS to determine when the L3172 was mailed.
5. File the receipted (date stamped) copy of the certified mail register (Post Office Form 3877) in the ALS Unit. Registers and receipts for outgoing certified mail for the L3172 may be destroyed 10 years after the end of the processing year.
6. Facsimile copies may be generated by revenue officers and other employees as necessary.
7. Maintain current revenue officer and customer service employee information, i.e., name, telephone, unique identifiers, etc. ALS uses this data to generate contact information for the notice.

[5.12] 3.1.4.1 (02-22-2000)

Issuing the Notice

1. The Service is required to notify taxpayers after a NFTL has been filed. The Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 (Letter 3172 (DO),

Exhibit 5.12.3-10) must be mailed within 5 business days after the filing of the NFTL.

NOTE:

The taxpayer's 30 day period for requesting a hearing begins the day following the 5 business day period after the filing of the NFTL.

2. Letter 3171 (DO) (Exhibit 5.12-3-11), will be generated by ALS when a lien is filed in a different jurisdiction at a later date for a tax period that has previously received a right to a hearing notice. There is no requirement to send this letter certified mail.
3. Liens filed out of district will have the name and telephone number of the contact person for the originating district.
4. When a lien is handcarried to a recording office for filing, the employee must obtain a SLID number from SPf before the lien is recorded. Following this procedure will ensure that the L3172 is generated and mailed timely. This procedure includes liens generated manually using ICS.

[5.12] 3.1.4.1.1 (02-22-2000)

Power of Attorney (POA)/Taxpayer Representative

1. Revenue officers and other employees responsible for making lien filing determinations are responsible for ensuring that, when a power of attorney is involved, the person(s) holding the power receives a copy of the notice of filing and the NFTL. While there is no 5 business day mailing requirement, a copy should be mailed as soon as possible. If the name and address is available, forward the information to the ALS Unit. The POA copy will be mailed the same day as the L3172 but not later than 5 days after.
2. ACS Support Function in SCCB will fax ACS screen prints (entity and/or comment screen) that contain the POA names and addresses the day after the ACS tape is run.
3. If the faxed screen prints are provided before the taxpayer's copy of the lien is printed, the POA's copy must be mailed the same day the taxpayer's notice is mailed but not later than 5 days after.
4. Note the POA information and date mailed in the ALS history.

[5.12] 3.1.4.2 (07-26-2000)

Manually Prepared Notices

1. The L3172 can be generated by ALS using the Notadd option. Co-obligor (spouse with a different address or individual partners) information must be entered into ALS before the notice is generated.

NOTE:

Remember to provide multiple address information, if appropriate.

2. Manual preparation of L3172 (DO) will be necessary if the above process is not used. Each individual partner in a partnership listed on the NFTL must receive a L3172 by

- certified mail.
3. When mailing addresses are not available for the partners' residence and the place of employment is not the partnership, revenue officers will serve the notice to the partner.
 4. Lien units will fax copies of co-obligor liens to the appropriate employee for L3172 (DO) preparation and mailing, if address information is not received. The five (5) business day mailing requirement applies.
 5. Lien units will create the L3172 using Notadd if addresses are provided prior to the generation of the L3172.
 6. If the notice is manually prepared and:
 - A. a new address is located, issue a new L3172 calculating the taxpayers 30 day response due period beginning the day after the date the L3172 is dated, print substitute across the top, send certified mail and input the date on the ALS history screen
 - B. Issue a duplicate copy of the L3172 when the taxpayer has not provided documentation to change their master file address.
 7. Certified mail numbers and receipts will be obtained from the post office.
 8. Revenue officers will retain the stamped receipt in the case file. ALS Units not using the certified mail register will retain the stamped receipt in the same manner as the Form 3877.

[5.12] 3.1.5 (02-22-2000)
Request for an Appeal

1. A taxpayer may appeal any action related to the filing of a NFTL (i.e., underlying liability (under the circumstances), filing, withdrawal, discharge, etc.) Detailed Appeals procedures are contained in IRM 5.1.
2. Requests for appeal hearings will be mailed directly to the revenue officer or ACS. Employees may attempt to resolve issues with the taxpayer, however, this does not extend the 30 day period. If an agreement is reached, the request must still be sent to Appeals. If you are trying to resolve issues with the taxpayer before the taxpayer has filed a request for a hearing with Appeals, it is essential that you inform the taxpayer that your discussions do not extend the 30-day period in which the taxpayer may request a hearing with Appeals.
3. Appeal requests related to dyed diesel fuel liens will be forwarded immediately to the Examination employee by SPf when received.
4. Forward envelopes received with Form 12153, Request for Collection Due Process Hearing, received after the 30-day response period has lapsed to the office of Appeals with the Appeals case file. The envelope or a faxed Form 12153 is important when determining the actual date of mailing and may be the deciding factor as to whether the taxpayer is entitled to a collection due process or equivalent hearing.

[5.12] 3.1.5.1 (02-22-2000)

Lien Filing During Levy Appeal

1. A lien may be filed, using standard lien filing criteria during the period prior to the taxpayer requesting a levy appeal.
2. When a levy appeal has been requested, a lien may not be filed unless the government's interest is at risk. The following are examples of when you may want to file a lien.
 - A. The taxpayer is an in-business corporation, pyramiding liabilities.
 - B. Individual or business assets are being liquidated;
or
 - C. The taxpayer has threatened to file bankruptcy.

[5.12] 3.1.5.2 (02-22-2000)

Levy During Lien Due Process

1. Generally, within five business days after a Notice of Federal Tax Lien (NFTL) is filed, Letter 3172 is sent to taxpayers telling them about the NFTL and informing them of their Collection Due Process Appeal Rights.
2. If the notice requirements in 5.11.1.2.1 have been satisfied, Letter 3172 does not create a new waiting period before a Notice of Levy can be issued. However, once the taxpayer appeals the lien filing, generally, no Notices of Levy will be issued during the administrative or judicial appeal. See 9.3.3 of IRM 5.1 General Handbook, for a description, of when property can be levied during the appeals process.

EXAMPLE:

On April 5, 1999, a Notice of Federal Tax Lien is filed and Letter 3172 is sent to the taxpayer on April 7. The taxpayer appeals the NFTL on April 29. Until April 29, as long as the notice requirements in 5.11.1.2.1 have been satisfied, a Notice of Levy can be issued to collect the amount that is owed, including the periods that are included in Letter 3172.

[5.12] 3.2 (02-22-2000)

Failure to Release Liens Under IRC 6325

1. Taxpayers have the right to sue the Federal Government for damages in federal district court if any officer or employee of the Internal Revenue Service knowingly or by reason of negligence, fails to release a filed Notice of Federal Tax Lien (NFTL). See IRC 7432 and IRC 6325 of the Code.
2. Taxpayers must exhaust all administrative remedies available within the Internal Revenue Service prior to initiating a civil action in federal district court.
3. Taxpayers must:
 - A. submit an administrative claim for damages (IRC 7432).
 - B. submit a written request for a release of NFTL to the

district where the NFTL was filed.

- C. exhaust any other administrative procedures that the Internal Revenue Service has made available in order to mitigate damages.

[5.12] 3.3 (02-22-2000)

Administrative Claim Procedures

1. Title 26, part 301, Section 7432-1, of the Code of Federal Regulations (CFR) contains the administrative claim procedures for the Internal Revenue Code Section 7432.
2. Send the administrative claim to the District Director, Attn: Chief Special Procedures function, of the district where the taxpayer currently resides or the district in which the Notice of Federal Tax Lien was filed. There is no standard form used in preparing a claim. It must, however, contain the following information:
 - A. The name, current address, current home and work telephone numbers and any convenient times to be contacted and the taxpayer identification number of the taxpayer making the claim;
 - B. A copy of the Notice of Federal Tax Lien affecting the taxpayer's property, if available;
 - C. A copy of the request for the release of lien made in accordance with section 301.6325-1(f) of the Code of Federal regulations.
 - D. The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);
 - E. A description of the damages incurred by the taxpayer filing the claim (including copies of any available substantiating documentation or evidence);
 - F. The dollar amount of the claim, including any damages that have not yet been incurred but that are reasonably foreseeable (including copies of any available substantiating documentation or evidence); and
 - G. The signature of the taxpayer or the taxpayer's duly authorized representative.
3. Each claim will be reviewed by SPf to insure that it contains the required information.
4. Notify the taxpayer of deficiencies and that the claim is not processable in writing within 14 days of receipt of the claim, when the claim does not contain the information requested in (1) above.

NOTE:
This is not considered a rejection of the claim because a claim meeting the requirements of Treasury Regulation 301.7433-1 has not been filed.
5. Use Pattern Letter 2730 (see Exhibit 5.12.3-1) to notify the taxpayer of any claim deficiencies.
6. If the claim was for a NFTL filed in another district forward the claim and all supporting documentation to that district office. Notify the taxpayer through Pattern Letter 2731. (See Exhibit 5.12.3-2.)
7. Administrative review of the claim must be completed

within 30 days of receipt of a processable claim.

NOTE:

The taxpayer may bring suit either upon:

- o notice of rejection of the claim, or
 - o the tolling of a 30 day period from the receipt of a processable claim.
8. A taxpayer must file an action in federal district court within two years after the cause of action occurs. If the taxpayer files an administrative claim within the last 30 days of the two-year period of limitations, the taxpayer may file an action in federal district court any time after the administrative claim is filed.
 9. Use Pattern Letter 2732 (Exhibit 5.12.3-3) or Pattern Letter 2733 (Exhibit 5.12.3-4) to notify the taxpayer of the results of the administrative review of the claim. If only a portion of the claim is approved, both pattern letters will be sent to the taxpayer at the same time. Authority to sign these letters should be redelegated no lower than the Chief, Collection Division.
 10. There is no further administrative appeal of a claim for damages under this section if the claim is denied. The remedy provided by the statute is the institution of a suit.

[5.12] 3.4 (02-22-2000)

Evaluation of Claim for Damages Under IRC 7432

1. The statutory elements contained in IRC 7432 must be applied to each processable claim. Address the following issues in determining if a claim is administratively allowable:
 - A. Did an outstanding NFTL against the taxpayer cause the taxpayer to sustain direct, economic damages?
 - B. Should the IRS have released the NFTL under the provisions of Internal Revenue Code section 6325?
 - C. Did the taxpayer promptly notify the IRS and subsequently did the IRS fail to take immediate action to release the NFTL?
 2. Evaluate the facts and circumstances of each case.
 3. The reviewer must determine if the IRS knowingly or negligently failed to release a NFTL under IRC section 6325 and whether the failure caused direct, economic damages which the taxpayer could not avoid.
- REMINDER:
- If the appropriate Internal Revenue employee fails to use due diligence, or act as a reasonable person would to release a lien under section 6325, the failure to release the lien is negligent.
4. The reviewer must ascertain when, in time, the taxpayer became aware of the violation or should have become aware of the violation.
 - A. Claims filed more than two years after the violation must receive special scrutiny. This means that the violation occurred more than two years from the date of the claim. The taxpayer has two years in which to file a claim.
 - B. The taxpayer's two year limitation to bring suit

- begins at the point when the taxpayer has had a reasonable opportunity to discover all essential elements in a possible cause of action.
- C. The reviewer must determine when the taxpayer knew or should have known of IRS' failure to release the NFTL.
 - D. Claims filed outside the two-year limitation will be rejected.
5. Certain criteria guide the amount of an administrative settlement, if any is authorized, under this section. For example:
- A. the amount of the award is to be reduced by the amount of such damages which could have reasonably been lessened by the taxpayer;
 - B. only actual, direct economic damages are recoverable in an administrative claim. No costs are recoverable in an administrative claim. To the extent that any costs are recoverable under section 7432, such costs are recoverable only in a court proceeding.
6. The Collection determination to accept or reject each claim will be reviewed by District Counsel for agreement.
7. Release the Notice of Federal Tax Lien when damages are awarded.

[5.12] 3.5 (02-22-2000)

Reimbursement of Damages and Costs for Failure to Release Lien Under IRC 6325

1. IRC 7342 provides that the Service will reimburse taxpayers for damages resulting from IRS' failure to release a NFTL under IRC section 6325. The following criteria must be present in all cases:
 - A. The Service acknowledges that the NFTL should have been released under section 6325 previously.
 - B. The Service evaluates the taxpayers administrative claim for damages and agrees that the damages were incurred and that the Service is responsible for the reimbursement of said damages allowable under this section.
2. If an administrative claim is filed with the approving official, Collection personnel involved with the filing of the NFTL may be asked to prepare a memo explaining the facts of the case. This should include any documentation which confirms or contradicts the taxpayer's statements.
3. If the claim is made without proof or proper substantiation of damages, the taxpayer should be contacted immediately and told of the requirement to provide verification that these damages have been incurred. The SPf employee charged with reviewing and making the initial determination should approach this task with the recognition that it is possible that actual economic damages can accrue as a result of untimely NFTL releases. When faced with issues that do not present a clear-cut solution, discuss with district counsel.
4. When a claim is approved, prepare an original and three copies of:
 - o FMS Form 195--Judgment Fund Payment Request (Admin. Award) (Exhibit 5.12.3-5)

- o FMS Form 196--Judgment Fund Award Data Sheet (Exhibit 5.12.3-6)
 - o FMS Form 197--Voucher for Payment of Judgments, Compromise Settlements and Administrative Awards (Exhibit 5.12.3-7)
 - o FMS Form 198--Judgment Fund Award Data Sheet--Additional Deductions (complete this form only if appropriate) (Exhibit 5.12.3-8)
5. Forward the original voucher (FMS Form 197, Exhibit 5.12.3-7) to the taxpayer for signature under cover of Pattern Letter 2733. (See Exhibit 5.12.3-4)
 6. When the Form is received from the taxpayer, the approving official will sign the FMS Form 197.
 7. Mail a signed copy of the FMS Form 197 to the taxpayer.
 8. Forward the original and three copies with the forms described in (4) above to the Judgment Fund Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Room 6N34, US GAO Building, 441 G Street, N.W., Washington, D.C. 20548.
 9. In cases where the taxpayer requests a check in lieu of electronic deposit, FMS will return the check to the contact person listed on Form 196 for disbursement to the taxpayer.
 10. Mail the check to the taxpayer with a cover letter (locally designed) that specifies the date and the amount of the check.

[5.12] 3.6 (02-22-2000)

Civil Cause of Action for Unauthorized Collection Action

1. The Technical and Miscellaneous Revenue Act of 1988, (P.L. 100-647), added Section 7433, Civil Damages for Certain Unauthorized Collection Actions, to the Internal Revenue Code. This section was amended by Section 3102 of the Internal Revenue Service Restructuring and Reform Act of 1998. This section allows the federal government to be sued for damages in federal district court when, in connection with the collection of at tax, any officer or employee of the Internal Revenue Service recklessly, intentionally or negligently disregards any provision of the Internal Revenue Code of the related Treasury Regulations. The waiver of sovereign immunity applies to any action taken after November 10, 1988, the date of the enactment of this law. Employees, acting in the performance of their duties, whose actions are challenged under this Code Section will not be held personally liable in such an action. Subsection (e) was added to allow taxpayers to petition the bankruptcy court for actual economic damages and costs if the IRS willfully violated the automatic stay or discharge injunction.
2. For actions of officers or employees after July 22, 1998, the taxpayer must exhaust all administrative remedies available within the Internal Revenue Service prior to initiating a civil action in federal district court. For proceedings commenced after July 30, 1996, and before July 22, 1998, the taxpayer is not required to exhaust administrative remedies. However, the court may reduce the

amount of damage, if it finds that the taxpayer has not exhausted administrative remedies. In order to exhaust administrative remedies, the taxpayer must submit an administrative claim for damages in accordance with the regulations under section 7433. In addition, the taxpayer must exhaust any other administrative procedures that the Internal Revenue Service has made available to remedy the specific wrongful action in order to mitigate damages. For example, a taxpayer who alleges that an employee of the Internal Revenue Service wrongfully filed a Notice of Federal Tax Lien knowing that the taxpayer had already paid his or her entire liability, must administratively appeal the filing of the notice of lien and ask for a Certificate of Release of lien under I.R.C. 6326 before the taxpayer may pursue an action in federal district court.

3. If a taxpayer is successful in a court action, he or she may recover the sum of the actual, direct economic damages suffered by the taxpayer as the proximate result of the reckless or intentional action. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent they result in direct monetary losses.
4. Costs of the action payable from a suit under this provision are; fees of the clerk and marshal; fees of the court reporter for all or part of any stenographic transcript necessary for use in the case; costs of printing and witnesses; costs for securing regular as well as certified true copies of documents used in the proceeding; docket and filing fees; and, payments made to court appointed experts and interpreters.
5. Litigation and administrative costs are not recoverable under this section. Litigation costs which may include attorney's fees, may, however, be recoverable under Internal Revenue Code Section 7430, Awarding of Costs and Certain Fees. Administrative costs (including any costs incurred getting the Service to rectify its wrongful act and costs incurred pursuing an administrative claim for damages under section 7433) are not recoverable under section 7430. However, administrative costs incurred after the date a bankruptcy petition is filed may be awarded under Section 7433(e) for violations of the automatic injunction.
6. Payment Authority--Claims under this provision will be paid out of funds appropriated for judgments, awards, and compromise settlements under section 1304 of title 31 of the United States Code.

[5.12] 3.7 (02-22-2000)

Administrative Claim Procedures

1. Title 26, part 301, Section 7433-1, of the Code of Federal Regulations contains administrative claim procedures for Internal Revenue Code Section 7433. The administrative claim is to be sent to the District Director, Attn: Chief, Special Procedures function of the district where the taxpayer currently resides or, when dealing with a corporate entity, the district where the corporate

headquarters is located. There is no standard form used in preparing a claim. The claim must contain the following information:

- A. The name, current address, current home and work telephone numbers and any convenient times to be contacted, and the taxpayer identification number of the taxpayer making the claim;
 - B. The grounds, in reasonable detail, for the claim (including a complete description of the act and copies available substantiating documentation or correspondence with the Internal Revenue Service);
 - C. A description of the damages incurred by the taxpayer filing the claim (including copies of any available substantiating documentation or evidence);
 - D. The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (including copies of any available substantiating documentation or evidence); and
 - E. The signature of the taxpayer or the taxpayer's duly authorized representative.
2. Each claim will be reviewed by SPf to insure that it includes this information. A proponent whose claim does not include the information requested in (1) above will be notified in writing, within 14 days of the receipt of the claim, of the deficiencies and advised that the claim is not processable. This is not considered a rejection of the claim because a claim meeting the requirements of Treasury Regulation 301.7433-1 has not been filed. Pattern Letter 2730 (see Exhibit 4-1) should be used to notify the taxpayer of the deficiencies in the claim.
 3. Administrative review of the claim should be completed as soon as possible but must be completed within 6 months of receipt of a processable claim. The taxpayer may bring suit either when the notice of rejection of the claim is received or when the 6 month period from the receipt of a processable claim begins. A taxpayer must file an action in federal district court within two years after the cause of action occurs. If the taxpayer files an administrative claim within the last 6 months of the period of limitations, the taxpayer can file suit any time after the administrative claim is filed.
 4. A cause of action occurs under this provision when the taxpayer has reasonable opportunity to discover all essential elements of a possible civil action for damages in federal district court under section 7433.
 5. Pattern Letter 2732 (see Exhibit 5.12.3-3) or Pattern Letter 2733 (see Exhibit 5.12.3-4) is to be used to notify the taxpayer of the results of the administrative review of the claim. If only a portion of the claim is being approved, both pattern letters will be sent to the taxpayer at the same time. Authority to sign these letters should be redelegated no lower than Chief, Collectible Division.
 6. There is no further administrative appeal of a claim for damages under this section if the claim is denied. The remedy provided by the statute is the institution of a suit.

[5.12] 3.7.1.1 (02-22-2000)

Administrative Remedies

1. A judgment for damages will not be awarded unless the court determines that the plaintiff has exhausted all administrative remedies within the Internal Revenue Service.

[5.12] 3.7.1.2 (02-22-2000)

Payment Authority

1. Claims filed under this section will be paid from funds appropriated under section 1304 of title 31, United States Code. Procedures for filing a claim remain unchanged.

[5.12] 3.8 (02-22-2000)

Evaluation of Claim for Damages Under IRC 7433

1. The statutory elements contained in IRC 7433 must be applied to each processable claim. In determining whether a claim is administratively allowable the reviewer must determine whether:
 - A. An officer or employee of the IRS intentionally, negligently or recklessly disregarded any legal or regulatory provision of the Internal Revenue Code in connection with the collection of any Federal tax knowing that such action probably would cause taxpayer to sustain direct, economic damages; or knowing facts that would lead a reasonable third party to believe that failure to meet the legal or regulatory requirements of the Internal Revenue Code probably would cause a taxpayer to incur a direct, economic damages; or
 - B. Based on the facts and circumstances of the case, the officer or employee violated the legal or regulatory requirements of the Internal Revenue Code expressly to cause damage to the taxpayer.
2. The facts and circumstances of each case must be evaluated. The reviewer must determine if the alleged infraction did, in fact, take place. He or she must also determine whether or not the infraction was a reckless, intentional or negligent disregard for the law, contained in (1) above.
3. The reviewer must also seek to ascertain when, in time, the taxpayer became aware of the violation or should have become aware of the violation. Claims filed more than two years after the violation must receive special scrutiny. This means that the unauthorized action may have occurred more than two years from the date of the claim. This is because the taxpayer's two year limitation to bring suit begins at the point when the taxpayer has had a reasonable opportunity to discover all essential elements in a possible cause of action. The reviewer must determine when the taxpayer knew or should have known of the violation. Claims filed outside the two year limitation will be rejected.

4. Certain criteria guide the amount of an administrative settlement, if any is authorized, under this section. For example:
 - A. the amount of the award is to be reduced by the amount such damages could have reasonably been lessened by the taxpayer;
 - B. Only actual, direct economic damages are recoverable in an administrative claim. No costs are recoverable in an administrative claim. To the extent that any costs are recoverable under section 7433, such costs are recoverable only in a court proceeding; and
 - C. the actual, direct economic damage reimbursement can not exceed \$1,000.00 or \$100,000 in the case of negligence.
5. Acceptance or rejection of each claim will be reviewed by District Counsel for agreement.

[5.12] 3.9 (02-22-2000)

Reimbursement of Damages and Costs

1. IRC 7433 provides that claims will be made out of the judgment fund caused by collection actions in which an IRS employee recklessly, intentionally or negligently disregarded the Internal Revenue Code or any other regulation promulgated under the Code. The following criteria must be present in all these cases:
 - A. The Service acknowledges that the Internal Revenue Code was recklessly, intentionally or negligently violated by an employee or employees of the Service.
 - B. The Service evaluates the taxpayers administrative claim for damages and agrees that the damages were incurred and that the United States is responsible for the reimbursement of said damages allowable under this section.
2. If a administrative claim is filed with the approving official, Collection personnel involved with the collection action may be asked to prepare a memo explaining the facts of the case. This should include any documentation which confirms or contradicts the taxpayer's statements.
3. If the claim is made without proof or proper substantiation of damages, then the taxpayer should be contacted immediately and be told of the requirement to provide verification that these damages have been incurred. If the taxpayer adequately substantiates only a portion of the claim, the entire claim should be sent back to the taxpayer with a complete explanation of what is required in order to complete the processing of the claim. See Exhibit 5.12.3-1.
4. When a claim is approved, prepare an original and three copies of FMS Form 195 (see Exhibit 5.12.3-5). Forward the original voucher form to the taxpayer for signature under cover of Pattern Letter 2733. (See Exhibit 5.12 3-4)
5. When the Form is received from the taxpayer, the approving official will sign the FMS Form 195. Send the taxpayer a copy of the signed Form 195. Be sure to include a complete mailing address on the form so that FMS can mail a copy of the voucher with payment information back to the

originating office for our records. Forward the original and three copies of Form 1145 with the Pattern Letter 2734 (see Exhibit 5.12.3-9) to the General Government Division--(GGD)--Claims Group, U.S. Government Accounting Office, 441 G Street, N.W., Washington, D.C. 20548.

[5.12] 3.10 (02-22-2000)

Data for Defense of Suits

1. The Chief, SPf, will see that any narrative report that is necessary to reflect the factual situation is prepared and that other data requested or required by counsel are secured. Specific reporting forms are not prescribed for use in all types of defense suits. However, Form 4477, Form 4479 and Form 4480 will be used for interpleaders and suits in the nature of an interpleader and also for other defense suits when appropriate. Form 4481 will be used in all cases to transmit to counsel the transcript, administrative files, reports and other documents required.
2. Upon receipt of a complaint and summons or a request for data, the Chief, SPf, will determine the periods of tax liability in question and take action to secure a transcript, if necessary.
3. Form 4844 will be prepared and forwarded to Centralized Services function to secure the administrative files.
4. The Chief, SPf, will determine the need for special document requirements from the complaint filed. These documents may include:
 - A. notices of lien filed and refiled--In cases where priority of lien is in issue (i.e., Section 2410, Title 28, USC cases).
 - B. Consent to Extend the Time to Assess Tax, Form 872, or Tax Collection Waiver, Form 900, in cases where timeliness of assessment or collection is in issue.
 - C. copies of offers in compromise, Proofs of Claim and data as to court proceedings--In cases where the collection statute may be in issue (i.e., discharge of tax liabilities under the provisions of the Bankruptcy Act).
 - D. other information or documents may include, but are not limited to notices of levy, seizure and sale documents, statutory notices (90-day letter for assessment notice and demand, etc.), data as to whether a jeopardy assessment is involved, data as to the existence and/or validity of competing liens and/or claims (including copies of instruments when necessary). Form 4479 may be used for this purpose.
5. In most cases the required data can and should be gathered even before a request is received from the U.S. Attorney or Chief Counsel since SPf will normally have received notification of the pending suit through direct sources.
6. The Chief, SPf, will immediately see that required data is secured and will follow-up on all requisitions for tax returns and requests for investigations. The data should be sent to district counsel no later than the 45th day after the complaint or petition was filed. Counsel should

- be advised of any delay by telephone.
7. If data or documents required are, in part, in another district or region, the receiving office will expeditiously initiate action to secure the data and will be responsible for securing and furnishing the data to the requester.
 8. If requests for data or documents are received which require all or substantially all documents to be secured from another service center or region, the receiving office (SPf) will promptly notify, by telephone, the service center involved of the request and the documents required. The request for data will then be forwarded by mail. The office originating the request (U.S. Attorney or district counsel) should also be notified that the request has been transferred. The transferee will assume responsibility for securing and furnishing the data to the requester.
 9. If a request from counsel requires additional investigation or examination by either a revenue agent or revenue officer, the Chief, SPf, will have a copy of the request handcarried to the Chief, Examination Division, or Chief, Collection function, as applicable, and request that the investigations be given preferential treatment and that the information be furnished as soon as possible.

[5.12] 3.11 (02-22-2000)

Subpoenas and Requests for IRS Personnel to Testify or Produce Records

1. Subpoenas and requests for Service personnel to testify or to produce records in all cases not involving the administration of Internal Revenue laws, should be routed as quickly as possible to the disclosure officer of the district or regional office to which the employee is assigned or, in matters involving National Office employees, to the Disclosure and Security Division, National Office, attention CP:EX:DS. It is important that this information be provided without delay in order that necessary authorization be obtained within the time allowed by the court. If time is crucial, the matter should also be reported by telephone to the disclosure officer or Disclosure and Security Division, as appropriate. For further guidelines, see Chapter (36)00 of New IRM 1.3, Disclosure of Official Information Handbook (formerly IRM 1272).
2. Requests by a government attorney for Service personnel to testify or produce records on behalf of the government in referred tax cases may be complied with and do not require prior approval.
3. Subpoenas and requests not served on behalf of the government for Service personnel to testify or produce records in referred tax cases (with the exception of Tax Court subpoenas) require authorization and should be routed as quickly as possible to the Deputy Regional Counsel (General Litigation) or Tax Litigation Division of the office of Chief Counsel, depending on the nature of the case, so that necessary authorization may be obtained.

4. It is the Disclosure Officer's responsibility to arrange for district counsel to assist, or an attorney of the Department of Justice (including U.S. Attorneys) to represent subpoenaed/requested employees, as necessary, so that arrangements may be made for a representative of Counsel or the U.S. Attorney's office to brief the employee and to appear at the proceeding, as necessary.
5. See Delegation Order No. 156, for the managerial levels with the authority to determine whether an employee will be permitted to testify or produce Service documents subpoenaed or requested in connection with judicial and administrative proceedings. If the delegated official determines that the employee may not testify or produce the records subpoenaed or requested (in whole or in part), district counsel or the representative of the U.S. Attorney's office will, as necessary, appear before the court with the employee and inform the court that the information may not be disclosed and explain the reason for the information being so protected.
6. If the delegated official's instructions are not received by the time set for appearance, the employee will appear before the court, with the disclosure officer, district counsel or the representative of the U.S. Attorney's office, as necessary. The court should be advised that, pursuant to 26 CFR 301.9000-1, the employee may not testify or produce Service documents until the delegated official has considered the contents of the subpoena or request and has authorized a Service employee to comply. The employee or the disclosure officer, district counsel or the representative of the U.S. Attorney's Office should request additional time in which to receive instructions. If the court does not grant the delay, the employee will decline to disclose the records or information sought. However, an attempt will be made to contact the party seeking the information prior to the appearance time so that continuance might be obtained, if appropriate.

[5.12] 3.12 (02-22-2000)

Administrative Claim Report

1. Prepare a quarterly report listing all claims paid. Each reporting period begins at the start of the fiscal year. The report will provide the following information.
 - o Quarter ending date
 - o Taxpayer name
 - o TIN
 - o Amount of check
 - o Date of check
2. Forward reports to: Director, Office of Special Procedures, CP:CO:C:SP, 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: Lien Analyst.

Pattern Letter P--2730

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Date of this Letter:
Person to Contact:

Telephone Number:
Reply To:

Dear [Name of Taxpayer],

We are sorry, but we can't process your claim for damages under Internal Revenue Code section [enter 7432, "Civil Damages for Failure to Release a Lien" ...or...7433, "Civil Damages for Certain Unauthorized Collection Actions"] because

[enter the reasons the claim cannot be processed.
Describe any missing or incomplete information.
Be specific.]

We are not rejecting your claim. Since the claim you filed did not meet the requirements of Treasury Regulation [301.7432-1...or...301.7433-1], you have not actually filed a valid claim. If you file another claim in the future that meets those requirements, we will consider it.

Sincerely yours,

Exhibit [5.12] 3-2 (02-22-2000)
Pattern Letter P--2731

Date of this Letter:
Person to Contact:
Telephone Number:
Reply To:

Dear [Name of Taxpayer],

We are sorry, but we cannot process your claim for damages under Internal Revenue Code section 7432, "Civil Damages for the Failure to Release a Lien," in this district, because the lien you are writing about was filed in the district shown below.

[enter the name and address of the district]

We are forwarding your claim to that district. The staff there will decide whether to accept or reject your claim, and will send you their decision soon.

Exhibit [5.12] 3-3 (02-22-2000)
Pattern Letter P--2732

Department of the Treasury Date of this Letter:
Internal Revenue Service Person to Contact:
Address Telephone Number:
Reply To:

Dear [Name of Taxpayer],

We have reviewed your claim for damages under Internal Revenue Code section [enter 7432, Civil Damages for the Failure to Release a Lien or...7433, Civil Damages for Certain Unauthorized Collection Actions]

We are denying your claim for the following reasons:

[enter the specific reasons.]

or

We are denying a portion of your claim for the following reasons;

[enter the specific reasons]

You are entitled to make another administrative appeal of this decision. However, if you wish to take further action, you may file a civil action for damages under Treasury Regulation [enter 301.7432-1...or...301.7433-1] in federal district court. You have 2 years from the date of the action you believe caused you damage to take your case to court.

Sincerely yours,

Exhibit [5.12] 3-4 (02-22-2000)
Pattern Letter P--2733

Department of the Treasury Date of this Letter:
Internal Revenue Service Person to Contact:
Address Telephone Number:

Dear [Name of Taxpayer],

We have approved your claim for damages under Internal Revenue Code section [enter 7432, Civil Damages for the Failure to Release a Lien...or...7433, Civil Damages for Certain Unauthorized Collection Actions]

or

We have approved a portion of your claim for damages under Internal Revenue Code section [enter 7432, Civil Damages for Failure to Release a Lien...or...7433, Civil Damages for Certain Unauthorized Collection Actions].

Please sign and date the enclosed voucher and return it to us. We will send you a signed copy for your records. We will send you a check within six to eight weeks after we receive your signed voucher.

If you have any questions, please contact the person whose name and telephone number are shown at the top of this letter.

Sincerely yours,

District Director

Enclosure:
Voucher

Exhibit [5.12] 3-5 (02-22-2000)
FMS Form 195

Exhibit [5.12] 3-6 (02-22-2000)
FMS Form 196

Exhibit [5.12] 3-6 (Cont.) (02-22-2000)
FMS Form 196

Exhibit [5.12] 3-7 (02-22-2000)
FMS Form 197

Exhibit [5.12] 3-7 (Cont.) (02-22-2000)
FMS Form 197

Exhibit [5.12] 3-8 (02-22-2000)
FMS Form 197

Exhibit [5.12] 3-9 (02-22-2000)
Pattern Letter P--2734

Date of this Letter:
Person to Contact:
Telephone Number:

General Government Division--Claims Group
U.S. General Accounting Office
441 G Street N.W.
Washington, DC 20548

Dear Claims Group,

Please process and pay the enclosed Voucher for Payment
Under Internal Revenue Code section 7432 or 7433.

The claimant(s) has (have) signed the voucher and I have
approved it on behalf of the Commissioner of Internal Revenue
through re delegated authority.

I have enclosed an original and three copies of the
voucher. Please return a completed copy to my office when you
have finished your processing.

Sincerely yours,

District Director

Enclosure:
Voucher and copies

Exhibit [5.12] 3-10 (02-22-2000)
Letter 3172(DO)

Date:

5.12.4.1 (05-28-1998)

Foreclosure Proceedings

1. Foreclosing mortgagees should be encouraged to request discharges rather than join the United States in a judicial proceeding (IRC 6325(b)(2)). It would be to their advantage to eliminate the Government's right of redemption and to the Government's advantage to eliminate lengthy litigation.
2. A commitment letter will be furnished to foreclosing parties within thirty days of receipt of their application. Certificates will be issued after receipt of proof that the taxpayer has been removed of right, title or interest in the property.
3. A commitment letter should not be issued to parties who are nonjudicially foreclosing and have given adequate notice to the District Director under IRC 7425. If they wish to eliminate the Government's right of redemption, they should be advised of the procedure for obtaining a release of that right. The instructions for application are in Publication 487.
4. If a Federal agency has foreclosed nonjudicially and given adequate notice, they may feel that the lien remains a cloud upon the title. As an accommodation to that agency, a discharge will be issued.

5.12.4.2 (05-28-1998)

Judicial Foreclosures

1. Section 2410 of Title 28 of the United States Code is the authority under which the United States consents to be sued in suits to quiet title, to foreclose a mortgage or other lien upon, to partition, to condemn, or interpleader suits, or suits in the nature of interpleader with respect to Property on which the United States has or claims a mortgage or other lien.
2. A Certificate of Discharge will not be issued during the pendency of litigation without the prior approval of District Counsel.

The balance of this chapter should be read concerning nonjudicial sales. It appears that IRS may dispose of perishable commodities only via nonjudicial sale. Otherwise, other lien holders may dispose of property via nonjudicial sale. On behalf of the government, IRS may exercise redemption of property providing there is at least one bidder willing to pay the redemption price.

Chapter 5

Redemptions

[5.12] 5.1 (02-22-2000)

Processing Recommendations to Excise Redemption Rights

1. Each district, with the concurrence of the Regional Chief Compliance Officer, is responsible for establishing criteria for conducting redemption investigations.

[5.12] 5.1.1 (02-22-2000)

Redemption Investigations

1. When establishing the criteria, consider:
 - A. the dollar amount of the liability,
 - B. the type of property involved,
 - C. the economic conditions of a particular locality,
 - D. the practical impact of local law, and
 - E. any other significant factor.
2. Once established, the criteria are subject to annual review by the Regional Chief Compliance Officer to ensure that they remain relevant.
3. Guidelines should be established for SPf to gather all available information regarding the value of the property, before requesting an investigation by the field.
4. Before property is redeemed, it should be reviewed for potential toxic waste problems. If the potential exists, clean up cost should be considered before the property is redeemed.

NOTE:

The overall objective in establishing the criteria is to ensure that a redemption is made whenever appropriate and that unproductive investigations are kept to a minimum. The productivity of investigations should not necessarily be judged on the basis of the redemptions that such investigations generate. Frequently, our inquiries about possible redemption lead to lien payoffs and releases of our right of redemption.