

FEDERAL TAX LIENS

3.1

Appeals

- (1) Taxpayers may have two opportunities to appeal collection actions:

- ! Collection Appeals Program, and
- ! Collection Due Process Hearing

3.1.1

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.

3.1.2

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 a 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. This suspends further collection action until the matter is resolved under the Due Process procedures. Allow fifteen days after the end of the 30 day period for receipt of the request. If a hearing has not been requested, resume collection action.

- (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 of 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 registered 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 the appeal.
 - D. The provisions of IRC 6320. (These provisions are explained in Publication 1660).

3.1.2.1 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:
 - ! appropriate spousal defenses,
 - ! challenges to the appropriateness of the collection action,
 - ! collection alternatives including, posting of a bond, substitution of other assets, installment agreement, offer in compromise,
 - ! 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).

- (2) An issue may not be raised at the hearing if:
- ! 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
 - ! the person raising the issue participated meaningfully in the previous hearing or proceeding.

3.1.2.2

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:
- ! the verification presented,
 - ! issues raised, and
 - ! 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.

3.1.2.3

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:
- ! collection actions taken or proposed with respect to Appeals' determination, and,
 - ! changes in circumstances affecting Appeal's determination, after the person has exhausted all administrative remedies, i.e., CAP

3.1.3

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 sittings to collect may occur.

3.1.4

Notice FTL Filing Preparation

- (1) The notice for a right to a hearing will be generated:
 - ! when the original lien filing (after 1/18/1999) is requested;
 - ! only once if liens are filed in multiple jurisdictions for the same tax period;
 - ! 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.)
 - ! when subsequent assessments are made and a lien is requested;
 - ! for individual taxpayers
 - ! for partnerships and corporations;
 - ! 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. The same notice will be sent to each spouse addressed respectively to the husband at his last known address and his wife at her 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:
 - ! generated on ALS three days from the date the NFTL is generated,
 - ! mailed on the day it is generated,
 - ! sent certified mail.

NOTE: The taxpayer's copy of the NFTL will be mailed with the right to a hearing notice.

- (4) After 1/18/99, TC 582 will indicate that the notice was mailed.
- (5) ALS will retain the certified mail number and date of mailing.
- (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.

3.1.4.1 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) Send Letter 3171(DO) (Exhibit 5.12-3-11), 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. This process has not been automated, therefore, employees who determine that a lien is needed in another location must ensure that the letter is sent. There is no requirement to send this letter certified mail.
- (3) Revenue officers and other employees 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. While there is no 5 business day mailing requirement, a copy should be mailed as soon as possible.
- (4) Liens filed out of district will have the name and telephone number of the contact person for the district where the lien was filed. Enter the requesting employees name and telephone number to the ALS history.
- (5) 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.

- (6) When mail is returned undeliverable check IDRS to make sure that the address is correct.
- | | |
|-----------------------------|--|
| If the address is.... | then.... |
| the last known address, | forward the notice and envelope to the appropriate employee to be associated with the case file. |
| not the last known address, | forward the returned notice and envelope to the appropriate employee to be retained in the case file. Add the new address to master file, if appropriate, then mail a new notice to the correct address and note the new right to a hearing date in the ALS history section. |

3.1.4.2

Manually Prepared Notices

- (1) Manual preparation of L3172 (DO) will be necessary for individual partners in a partnership if they are listed on the NFTL.
- (2) 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.
- (3) Lien units will fax copies of partnership liens to the appropriate employee for L3172 (DO) preparation and mailing. The five (5) business day mailing requirement applies.
- (4) Lien units will mail L3172 (DO) if addresses are provided for partners prior to the NFTL being mailed.
- (5) In the above instances, compute the 30 day period and input the date on the ALS history screen.
- (6) Certified mail numbers and receipts will be obtained from the post office.
- (7) Revenue officers will retain the stamped receipt in the case file.

3.1.4.2

Nominee, Transferee and Alter-Ego Situations

- (1) Persons identified as nominees, transferees or alter-egos are not entitled to a Collection Due Process Notice (Letter 3172(DO)). Attach Letter 3177 (DO) when you mail the lien. There is no requirement to send this notice certified mail. Also, there are new provisions available under IRC 6325(b)(4). See IRM 5.12.2.10.
- (2) The nominee, transferee or alter-ego is entitled to appeal under CAP.
- (3) The **taxpayer** in nominee, transferee or alter-ego lien situations **must** receive the right to a hearing notice if there has not already been a notice for all periods on the lien. The notice will not be generated by ALS. Employees must ensure that the date is calculated and that the notice is sent certified mail.
- (4) Certified mail receipts will be attached to the case file. The certified mail number and date of mailing must be entered in the history section of ALS.

3.1.5

Request for an Appeal

- (1) A taxpayer may appeal any action related to the filing of a NFTL (i.e., underlying liability (under limited 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.