



*Fiscal Year 2017 Statutory Review
of Compliance With Notice of
Federal Tax Lien Filing Due Process
Procedures*

September 18, 2017

Reference Number: 2017-30-070

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Phone Number / 202-622-6500

E-mail Address / TIGTACommunications@tigta.treas.gov

Website / <http://www.treasury.gov/tigta>



To report fraud, waste, or abuse, call our toll-free hotline at:

1-800-366-4484

By Web:

www.treasury.gov/tigta/

Or Write:

Treasury Inspector General for Tax Administration
P.O. Box 589
Ben Franklin Station
Washington, D.C. 20044-0589

Information you provide is confidential and you may remain anonymous.



HIGHLIGHTS

FISCAL YEAR 2017 STATUTORY REVIEW OF COMPLIANCE WITH NOTICE OF FEDERAL TAX LIEN FILING DUE PROCESS PROCEDURES

Highlights

**Final Report issued on
September 18, 2017**

Highlights of Reference Number: 2017-30-070 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

After filing a Form 668(Y)(c), *Notice of Federal Tax Lien* (NFTL), the IRS must notify the affected taxpayers in writing, at their last known address, within five business days of the NFTL filings. Taxpayers' rights to timely appeal the NFTL filings may be jeopardized if the IRS does not comply with this statutory requirement.

WHY TIGTA DID THE AUDIT

TIGTA is required by law to determine annually whether lien notices issued by the IRS comply with the legal requirements set forth in Internal Revenue Code Section 6320(a).

WHAT TIGTA FOUND

Tests of a statistically valid sample of 133 NFTLs determined the IRS timely and correctly mailed the NFTL and appeal rights notices to the taxpayers' last known addresses. However, tests of a judgmental sample of 94 undelivered lien notices identified seven cases for which lien notices were sent to the taxpayers' old addresses even though IRS systems had the new addresses.

Taxpayers have the right to elect a collection due process (CDP) hearing wherein the taxpayer can raise any relevant issue, including the appropriateness of the collection actions. Taxpayers have 30 days to request a CDP hearing with the IRS's Office of Appeals. Tests of a random sample of 25 open NFTL appeal cases identified four cases in which systemic Federal Payment Levy Program levies were issued while the appeal was pending. IRS

management believes the levies are both permissible and appropriate under the statute and regulations.

The IRS will grant an "equivalent hearing" if taxpayers request an equivalent hearing after the 30-day period, but within one year of the date the CDP notice was issued. However, the IRS will not resend a copy of the notice if the original notice was returned as undeliverable due to a change in address that occurred more than two weeks after it was mailed. TIGTA believes the taxpayer has a right to be informed.

Taxpayer representatives should be provided copies of all taxpayer correspondence if authorized. However, the IRS did not provide notice for eight of the 47 sample cases in which the taxpayer had an authorized representative. In addition, the IRS sent a copy of the notice to three representatives who were not authorized to receive them. TIGTA estimates that 39,755 taxpayers may have been adversely affected.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Director, Collection, Small Business/Self-Employed Division, revise procedures to: allow a copy of the lien notice to be resent to those taxpayers whose original CDP lien notices went undelivered to ensure that taxpayers are informed of their appeal rights; clarify that copies of notices and other written communications should only be provided to representatives for whom taxpayers have expressly authorized the IRS to send them; ensure that address research is conducted on the secondary taxpayer if that is to whom the notice was addressed; and add procedures for working undelivered taxpayer representative notices.

In response to the report, IRS management agreed with and plans to take corrective actions for two of our recommendations. Management disagreed with three recommendations, mainly due to limited resources. TIGTA contends that the implementation of these recommendations would be in the best interest of the taxpayer and IRS customer service.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 18, 2017

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures
(Audit # 201730001)

This report presents the results of our review to determine whether liens issued by the Internal Revenue Service (IRS) comply with legal guidelines set forth in Internal Revenue Code Section 6320, Treasury Regulations, and IRS procedures. The Treasury Inspector General for Tax Administration is required by law to determine annually whether lien notices issued by the IRS comply with the legal requirements in Internal Revenue Code Section 6320. This audit is included in our Fiscal Year 2017 Annual Audit Plan and addresses the major management challenge area of Protecting Taxpayer Rights.

Management's complete response to the draft report is included as Appendix IX.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Table of Contents

Background	Page 1
Results of Review	Page 4
Lien Notices Were Usually Mailed Timely to the Taxpayer’s Last Known Address	Page 4
Recommendation 1:	Page 6
Enforcement Actions Were Usually Suspended When Taxpayers Appealed Their Notices of Federal Tax Liens	Page 7
Taxpayer Representatives Were Not Always Correctly Notified	Page 8
Recommendation 2:	Page 11
Undelivered Lien Notices Were Not Always Properly Worked	Page 12
Recommendations 3 through 5:	Page 15
Appendices	
Appendix I – Detailed Objective, Scope, and Methodology	Page 17
Appendix II – Major Contributors to This Report	Page 20
Appendix III – Report Distribution List	Page 21
Appendix IV – Outcome Measures	Page 22
Appendix V – Synopsis of the Internal Revenue Service Collection and Notice of Federal Tax Lien Filing Processes	Page 24
Appendix VI – Internal Revenue Service Computer Systems Used in the Filing of Notices of Federal Tax Liens	Page 26
Appendix VII – Confidence Intervals for Error Rates Reported on Taxpayer Representatives Not Receiving Notification During Fiscal Years 2012 Through 2016	Page 27
Appendix VIII – Statutory Lien Reports Issued During Fiscal Years 2012 Through 2016	Page 28
Appendix IX – Management’s Response to the Draft Report	Page 29



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Abbreviations

ACS	Automated Collection System
ALS	Automated Lien System
CAF	Centralized Authorization File
CDP	Collection Due Process
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
NFTL	Notice of Federal Tax Lien
TIGTA	Treasury Inspector General for Tax Administration



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Background

The Internal Revenue Service (IRS) attempts to collect Federal taxes due from taxpayers by sending letters, making telephone calls, and meeting face-to-face with taxpayers. As a matter of law, a lien automatically arises upon the occurrence of a tax delinquency and encumbers the property of the delinquent taxpayer without the IRS having to take any action; however, the automatic lien is not valid with respect to certain third parties such as secured creditors.¹ To perfect the Government's claim, the IRS has the authority to file a notice of the lien in the appropriate State and local offices of record.² The IRS files a Form 668(Y)(c), *Notice of Federal Tax Lien* (NFTL), in appropriate local government offices to notify interested parties that a lien exists.³

The IRS is required to notify taxpayers of their collection due process (CDP) rights when the first NFTL is filed for each tax period owed.

The Internal Revenue Code (I.R.C.) has long required the IRS to notify taxpayers, in writing, of the filing of an NFTL; however, the IRS Restructuring and Reform Act of 1998⁴ expanded upon this notice requirement, creating I.R.C. Section (§) 6320 to give taxpayers additional rights.⁵ When the first NFTL is filed for a tax period, the notice must be issued within five business days of the filing of the NFTL and inform taxpayers of the right to elect a CDP hearing wherein the taxpayer can raise any relevant issue, including spousal defenses, the appropriateness of the collection actions, and collection alternatives. The lien notice is used for this purpose and advises taxpayers that they have 30 calendar days, after that five-day period, to request a CDP hearing with the IRS's Office of Appeals.⁶ The lien notice indicates the date on which this 30-day period expires. If taxpayers fail to request a CDP hearing within the 30-day period but are able to file a hearing request within one year of the date that the CDP notice is issued, the IRS will grant an "equivalent hearing."⁷ An equivalent CDP hearing is essentially the same as a regular CDP hearing except there is no right to seek judicial review of the Office of Appeals' decision.⁸ By IRS policy, the IRS generally suspends levy action for the tax periods on the NFTL from when the taxpayer requests the CDP hearing until the conclusion of the CDP hearing, including the period covering any request for judicial review.

¹ I.R.C. §§ 6321 and 6323.

² I.R.C. § 6323.

³ See Appendix V for a synopsis of the IRS collection and NFTL filing processes.

⁴ Pub. L. No. 105-206, 112 Stat. 685.

⁵ I.R.C. § 6320.

⁶ Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320*.

⁷ Treas. Reg. § 301.6320-1(i)(2) Q&A-I7.

⁸ Treas. Reg. § 301.6320-1(i)(2) Q&A-I6.



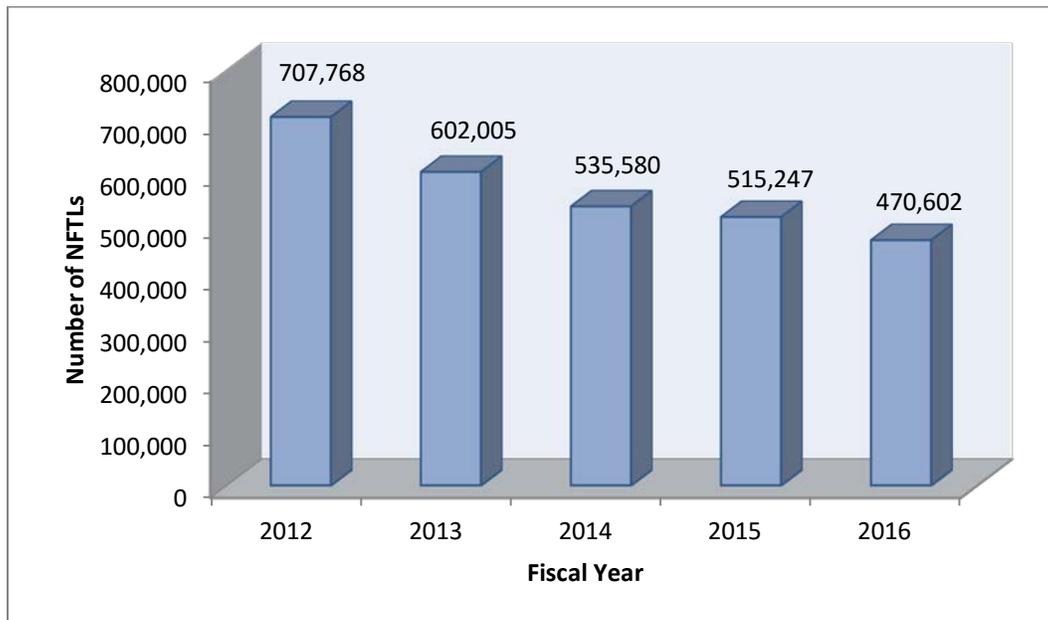
*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

The law also requires that the lien notice explain, in simple terms, the amount of unpaid tax, other administrative appeal rights available to the taxpayer, and provisions of the law and procedures relating to the release of the lien on the property. The lien notice must be given in person, left at the taxpayer's home or business, or sent by certified or registered mail to the taxpayer's last known address.

Depending on employee access and case status, NFTL requests can be generated using one of three IRS systems: 1) the Integrated Collection System (ICS), 2) the Automated Collection System (ACS), or 3) directly input into the Automated Lien System (ALS).⁹

Figure 1 shows that since Fiscal Year 2012, annual NFTL filings have decreased every year, including a 9 percent reduction last year (515,247 to 470,602).

Figure 1: Number of NFTLs Filed for Fiscal Years 2012 Through 2016



Source: IRS Data Book for Fiscal Years 2012 through 2016.

The decreasing number of NFTLs filed correlates with a decrease in the staffing within the Collection Division. The number of revenue officers declined more than 40 percent, from 4,068 at the end of Fiscal Year 2010 to 2,425 in June 2016. ACS had similar declines.

I.R.C. § 6320(c) provides that for purposes of a taxpayer's appeal of an NFTL, certain paragraphs of I.R.C. § 6330 shall apply.¹⁰ Specifically, if a hearing is requested for the NFTL

⁹ See Appendix VI for detailed descriptions of the IRS computer systems used in the filing of the NFTLs.

¹⁰ I.R.C. §§ 6320(c), *Conduct of hearing; review; suspensions*, and 6330(e), *Suspension of collections and statute of limitations*.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

filing, policy is that levy actions generally shall be suspended for the period during which such hearing and appeals therein are pending.¹¹

The Treasury Inspector General for Tax Administration (TIGTA) is required to determine annually whether the IRS complied with the law pertaining to CDP rights when filing NFTLs.¹² This is our nineteenth annual audit to determine whether the IRS complied with the legal requirements of I.R.C. § 6320(a) and its own related internal guidelines for issuing lien notices.¹³ In the previous five years, including this year, we have reported full compliance with the law of timely notifying taxpayers four times and once reported (in Fiscal Year 2013) an error rate of 1 percent. In all five years, we reported that the IRS had not achieved full compliance with guidelines involving power of attorney notifications.

This review was performed at the Small Business/Self-Employed Division's Centralized Lien Processing Operation and the ACS Support function in Fresno, California, and Covington, Kentucky, and with information obtained from the Small Business/Self-Employed Division's Office of Collection Policy in New Carrollton, Maryland, during the period January through June 2017. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹¹ I.R.C. § 6330(e)(1).

¹² I.R.C. § 7803(d)(1)(A)(iii).

¹³ See Appendix VIII for a list of the prior five TIGTA reports.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Results of Review

Lien Notices Were Usually Mailed Timely to the Taxpayer's Last Known Address

Tests of a statistically valid random sample of 133 NFTLs from the 480,672 NFTLs filed between July 1, 2015, and June 30, 2016, showed that the IRS timely and correctly mailed a copy of the NFTL and notice of appeal rights to all taxpayers' last known addresses, as required by I.R.C. § 6320(a). Although tests of the random sample of NFTLs did not identify any violations, tests of a judgmental sample¹⁴ of undelivered lien notices showed that the IRS did not always send lien notices to the taxpayer's last known address.¹⁵

We tested a judgmental sample of 94 undelivered lien notices and identified 20 lien notices (13 addressed to primary taxpayers and seven addressed to secondary taxpayers) for which the address currently on the IRS computer system and the address on the original lien notice did not agree. For seven of the 20 notices, the address on the IRS computer system was updated prior to the cycle the NFTL was prepared in the ALS. Because of the timing of the address update, IRS procedures require that a lien notice be sent to these taxpayers using the updated address. However, lien notices were not sent to any of the seven taxpayers using the updated address. Therefore, there were seven cases in which the IRS did not send the lien notice to the taxpayer's last known address. IRS procedures require that employees send taxpayers another lien notice to a new address if all of the following factors are present:

- The originally mailed notice is returned as undelivered mail.
- Research confirms that the original lien notice was not sent to the last known address.
- The new address was effective prior to the NFTL request.¹⁶

When we brought this observation to management's attention, the IRS agreed to resend a lien notice to the taxpayers using the updated address, as appropriate.¹⁷ However, the seven taxpayers' rights could have been potentially violated because the IRS did not meet its statutory

¹⁴ A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.

¹⁵ The complete description of this judgmental sample and our results can be found in a subsequent section of this report, entitled *Undelivered Lien Notices Were Not Always Properly Worked*.

¹⁶ IRM 5.19.6.17.4, (Oct. 15, 2014).

¹⁷ The IRS resent the lien notice to five of the seven taxpayers. One notice was not resent because the liability has been satisfied and the lien has been released. The other notice was not resent because the taxpayer is currently in bankruptcy and management believes that reissuing the notice could create confusion regarding automatic stay restrictions.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

requirement to timely send each lien notice to the taxpayers' last known addresses when the NFTL was filed.¹⁸

Four of these seven cases involved a spouse living at a different address. Although the IRS mailed each spouse a separate lien notice, the IRS used the primary taxpayer's address for both spouses. As a result, these four lien notices were returned to the IRS as undelivered. When there is a joint liability, each spouse should be sent the same notice in separate envelopes addressed respectively to each spouse at his or her last known address, including spouses who share the same address and spouses who reside at different addresses.¹⁹

Although IRS procedures instruct that joint liability taxpayers may have separate addresses and that lien notices must be sent to each spouse at his or her respective last known address, these procedures did not ensure that lien notices were sent to each spouse at his or her respective last known address.²⁰ The ALS recognizes the joint liability and sends separate notices to each person, but by default the primary taxpayer's address is used to mail the lien notice to the secondary taxpayer. A lien notice is sent to the secondary taxpayer at his or her last known address only if the requestor knows that the secondary taxpayer has a different mailing address and the requestor inputs that information to the ALS, usually by sending a request to the lien unit.

In our Fiscal Year 2016 report, we recommended that the IRS determine if programming changes are viable for the systemic upload and use of the secondary taxpayer's last known address for mailing lien notices for NFTLs with joint liabilities. We also recommended that the IRS revise applicable IRM sections to require employees requesting an NFTL involving joint liability to research the Integrated Data Retrieval System (IDRS)²¹ for the last known address of the secondary spouse. The procedural updates to the IRM sections occurred in Fiscal Year 2017, which is outside the time frame of the sample for this year's review. Therefore, the impact of that corrective action will be evaluated during next year's statutory review. Additionally, the IRS is still actively working with the programmers to evaluate the possibility of the systemic upload that TIGTA recommended. If it is deemed to be feasible, the IRS expects that the changes will not be completed until Calendar Year 2019. Accordingly, we are not making a recommendation this year.

¹⁸ I.R.C. § 6320. For example, in March 2010, the U.S. Tax Court found that an IRS lien notice was invalid because it was not mailed to the individual's last known address. *Roberts v Comm'r*, T.C. Summ. Op. 2010-21. The U.S. Tax Court, in a case filed March 1, 2010, found that the lien notice issued with respect to a taxpayer's Tax Year 2002 tax return was not mailed to the taxpayer's last known address, nor was it received and, therefore, it is invalid. Consequently, the IRS is required, under the provisions of § 6320 and the accompanying regulations, to issue to the taxpayer a substitute lien notice and provide him or her with an opportunity to request a CDP hearing.

¹⁹ Statutory requirement (I.R.C. § 6320) and applicable IRS procedure (Internal Revenue Manual (IRM) 5.12.6.3.5, (Oct. 14, 2013).

²⁰ IRMs 5.12.6.3.5, 5.12.6.3.7, (Oct. 14, 2013) and 5.19.4.6.2, (Oct. 31, 2016).

²¹ The IDRS is an IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

For the remaining 13 of 20 cases in which the address on the IRS computer system and the address on the original lien notice did not agree, the address on the IRS computer system was updated after the NFTL was mailed. Therefore, no additional action was required. However, for five of the 13 taxpayers, a lien notice was sent using the updated address. In November 2016, the ACS Support IRM was updated to include what it terms “courtesy copy” procedures.²² Specifically, the procedures allow ACS Support employees to send a copy of the lien notice to a taxpayer’s new address if the new address was effective within two cycles (weeks) after the original lien notice was prepared. The courtesy copy procedures state that this is not a requirement. However, in light of the fact that taxpayers have a right to request a hearing during an allotted time frame, and the lien notice contains both the information that an NFTL has been filed and instructions on how to request the CDP hearing regarding the NFTL filing, it is in the best interest of taxpayers for the IRS to resend undelivered lien notices when addresses have been updated.

Reissuing lien notices to taxpayers could be done by ACS Support employees because they must already perform research for the taxpayer’s last known address as part of the requirements for working undelivered mail. Because this service benefits taxpayers and because taxpayers have a right to be informed,²³ we believe the IRS should not limit the option to send NFTL “courtesy copies” to only those taxpayers who had an address change within two weeks. Since taxpayers can elect to have an equivalent CDP hearing within one year of the date that the original NFTL was filed, the IRS could resend lien notices that had previously gone undelivered to those taxpayers who have a different address, regardless of when the address was updated.

Recommendation

Recommendation 1: The Director, Collection, Small Business/Self-Employed Division, should expand the courtesy copy procedures in the IRM to allow a copy of the lien notice to be resent to those taxpayers whose original CDP lien notices went undelivered to ensure that taxpayers are informed of their appeal rights.

Management’s Response: IRS management partially agreed with this recommendation. While they agree that it is important that taxpayers receive IRS notices so that they are informed as to their tax situation, they believe that expanding the courtesy copy procedures will provide only minimal improvement to taxpayer service. In light of resource limitations, the IRS will instead include additional information concerning the Equivalent Hearing process on the Collection Due Process webpage.

²² IRM 5.19.6.17.4, (Nov. 4, 2016).

²³ I.R.C. § 7803(a)(3) lists the ten taxpayer rights with the first being the right to be informed.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Office of Audit Comment: Management’s proposed corrective action does not help taxpayers who do not receive a copy of their lien notice. Furthermore, management did not quantify the additional resources it believes will be necessary to advise these taxpayers that the IRS filed a lien on their property. ACS Support employees are already required to perform research for the taxpayer’s last known address when working undelivered mail. Therefore, TIGTA believes that the additional step of sending a courtesy copy to a taxpayer’s newest address when that research has already been performed does not create an excessive burden on the IRS’s resources.

Enforcement Actions Were Usually Suspended When Taxpayers Appealed Their Notices of Federal Tax Liens

I.R.C. § 6320(c) provides for purposes of a taxpayer’s appeal of an NFTL, certain paragraphs of I.R.C. § 6330 shall apply.²⁴ Specifically, if a hearing is requested, the law requires that levy actions which are the subject of the requested hearing “shall be suspended for the period during which such hearing and appeals therein are pending.”²⁵ Tests of a random sample of 25 open NFTL appeal cases as of September 2016 showed the IRS suspended or did not take levy action that involved the same tax period as the NFTL under appeal, except for levies made under the Federal Payment Levy Program.²⁶ We identified four cases in which systemic Federal Payment Levy Program levies were issued on taxpayers for a tax period on which NFTL appeals were timely filed and determinations were still pending. In all four cases, the Federal Payment Levy Program levies were issued after the taxpayer timely requested an NFTL CDP hearing and before an Office of Appeals determination letter was issued.

IRS management informed us that while certain levy actions are suspended by policy for a timely requested NFTL CDP hearing, the policy does not extend to Federal Payment Levy Program levies. Management stated that while levies are prohibited by statute during levy CDP hearings, levies are not prohibited during NFTL CDP hearings as reflected in Treasury Regulation § 301.6320-1, question and answer G-3, which states: “The IRS may levy for tax periods and taxes covered by the CDP Notice under § 6320 and for other taxes and periods if the CDP requirements under § 6330 for those taxes and periods have been satisfied.” Discussions were held with management, and management stated that they believe that Treasury Regulation § 301.6320-1 question and answer G-3 reflects the plain language interpretation of these provisions in conjunction with I.R.C. § 6320(c). Further, management stated that they believe Treasury Decision 8979, which provides that the levy prohibition is not incorporated

²⁴ I.R.C. §§ 6320(c) incorporates I.R.C. § 6330 provisions relating to matters considered at the hearing (6330(c)), proceedings after the hearing (6330(d)), suspension of collections and statute of limitations (6330(e)) and frivolous requests for hearings (6330(g)).

²⁵ I.R.C. § 6330(e)(1).

²⁶ The Federal Payment Levy Program is an automated levy program that the IRS operates with the Bureau of Fiscal Service as a systemic means for the IRS to collect delinquent taxes by levying Federal payments.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

by I.R.C. § 6320(c), is consistent with Treasury Regulation § 301.6320-1 question and answer G-3.²⁷ Therefore, management believes these four cases are not violations per the statute and Treasury Regulation.

Additionally, the four cases we identified in our review had the collection statute suspended as allowed by I.R.C. § 6320(c), despite additionally being issued a Federal Payment Levy Program levy. While no levy payments were collected by the IRS on these cases, this practice exposes these taxpayers to a longer time period for which the government may attempt collection actions. Management stated in our discussions that the suspension of collection activity and the suspension of the collection statute are two separate activities, and that they believe I.R.C. section 6330(e) does not make the suspension of the statute of limitations for collection contingent on whether levy action is prohibited.

Taxpayer Representatives Were Not Always Correctly Notified

Taxpayers have the right to retain a representative of their choice to represent them in matters with the IRS. When completing Form 2848, *Power of Attorney and Declaration of Representative* or Form 8821, *Tax Information Authorization*, to elect a representative, the taxpayer must check a box to indicate if the representative is authorized to receive a copy of any notices or other written communications that will be sent to the taxpayer from the IRS. If the box is not checked, the IRS should not send a copy of any notices to the taxpayer's representative. Taxpayer representative information is contained in the Centralized Authorization File (CAF).²⁸ Using the IDRS, employees can research the CAF to identify if the taxpayer has a representative on file, as well as whether or not that representative is authorized to receive notices.

IRS procedural rules require that any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the IRS must be given to the taxpayer and, unless restricted by the taxpayer, also to the representative. More specifically, when an NFTL is filed, IRS regulations require that a copy of the lien notice be sent to the taxpayer's authorized representative as soon as possible after the lien notice is sent to the taxpayer.²⁹ Accordingly, IRS procedures require the requestor of an NFTL to ensure that he or she notifies the Centralized Lien Operation of all representatives that should be provided with copies of the NFTL.³⁰

²⁷ Treasury Decision 8979 was signed by Robert Wenzel, Deputy Commissioner of the IRS, and Mark A. Weinberger, Assistant Secretary of the Treasury (Tax Policy) in 2002. It is the Department of the Treasury's official interpretation of I.R.C. § 6320.

²⁸ The CAF contains information about the types of authorizations taxpayers have given their representatives for their tax returns.

²⁹ *Conference and Practice Requirements, Statement of Procedural Rules*, 26 C.F.R. § 601.506 (2009).

³⁰ IRM 5.12.6.3.10, (Oct. 14, 2013).



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

However, we identified cases in which copies of the NFTL were not sent to authorized representatives as well as cases in which copies of the NFTL were sent to representatives who were not authorized to receive them.

Taxpayer representatives did not always receive a copy of the NFTL when authorized to receive notification

Tests of a statistically valid sample of 133 NFTLs included 47 cases for which the taxpayers had representatives authorized to receive notifications at the time the NFTLs were requested. For eight (17 percent) of the 47 cases with an authorized representative, ALS records indicate that the IRS did not send copies of the lien notices to the taxpayers' representatives.³¹ In general, this occurred due to employee errors.

We identified three other cases for which the primary taxpayer's representative received two copies of the NFTL: one for the primary taxpayer; and one for a secondary taxpayer, even though the representative were not authorized to represent the secondary taxpayer. IRS management believes these mistakes caused no harm to the secondary taxpayers because the representative was already aware of the NFTL filing from the copy of the notice they received concerning the primary taxpayer. However, these mistakes show that employees requesting the NFTL are not always checking the CAF to determine if the primary and secondary taxpayers have different representatives. When this information is not checked, there is a risk that the secondary taxpayer's personally identifiable information is disclosed to an unauthorized third party. There is also a risk that the IRS will not send a copy of the NFTL to the practitioner who is authorized to receive the secondary taxpayer's notices.

In Fiscal Year 2017, the IRS updated the NFTL filing procedures to address the situation in which individuals who are jointly liable may have different authorized representatives. The procedures were updated to specify that it is the requestor's responsibility to ensure that information about all authorized taxpayer representatives are included with the NFTL request.³² However, these procedural updates occurred after the time frame of the sample for this year's review. Therefore, the impact of the changes will be evaluated during next year's statutory review. Additionally, management informed us that as a result of the recommendation TIGTA made in our Fiscal Year 2016 report, discussions are being held with ACS, ICS, and ALS programmers regarding the possible systemic transfer of authorized taxpayer representative information for secondary taxpayers.

In our last five reports, including this year, TIGTA has identified IRS errors on taxpayer representatives not receiving notification when authorized. While the error rate dropped to 3 percent in our Fiscal Year 2014 report, this year's error rate of 17 percent shows that the

³¹ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the true percentage of taxpayers with representatives whose representative was not notified is between 7.31 percent and 24.30 percent.

³² IRM 5.19.4.6.2, (Oct. 31, 2016).



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

potential for taxpayers being adversely affected still exists for cases requiring taxpayer representative notification.³³ We estimate that 28,913 taxpayers may have been adversely affected because the IRS did not follow procedures to notify the taxpayers' authorized representatives of the taxpayers' rights related to the NFTLs.³⁴

Copies of NFTLs were sent to representatives who were not authorized to receive them

Tests of a statistically valid sample of 133 NFTLs included 18 cases in which taxpayers had representatives who, according to the CAF, were not authorized to receive notices at the time the NFTLs were requested. For three (17 percent) of the 18 cases, ALS records show that the IRS sent copies of the lien notice to the taxpayer's representative despite the CAF not showing they were authorized to receive notices.³⁵ All three of the NFTLs were initiated by revenue officers using the ICS. The ICS and the ACS are usually systemically updated with information from the CAF to reflect whether or not the representative is authorized to receive notices. However, there are instances, such as when a taxpayer provides the Form 2848 or Form 8821 directly to a revenue officer, where this information can be entered manually. IRS management disagrees with our findings that the representatives were not authorized because the revenue officers indicated in ICS that the representatives could receive notices. While the revenue officers documented in ICS histories that the representatives were authorized to receive notices, this contradicts the information found on the CAF. Management advised us that revenue officers work closely with taxpayers and their representatives, and therefore they would know if the taxpayers wanted their representatives to receive copies of notices. As a result, management believes that sending representatives copies of the NFTL in these instances did not violate privacy laws.

IRM procedures for the filing of NFTLs state that employees responsible for making NFTL filing determinations are also responsible for ensuring that the taxpayer's authorized representative receives a copy of the lien notice.³⁶ However, these procedures do not clarify that the employee is also responsible for verifying whether or not the taxpayer has authorized the IRS to send copies of notices to the representative. On the contrary, the IRM directly related to taxpayer representatives states that employees are not prohibited from providing a copy of a

³³ See Appendix VII for the confidence intervals pertaining to the error rates reported for taxpayer representatives not receiving notification when authorized during Fiscal Years 2012 through 2016.

³⁴ The projection is based on eight (6 percent) of 133 randomly sampled cases. The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the range of potential violations is between 14,556 and 50,906.

³⁵ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the true percentage of taxpayer representatives who were not notified is between 4.70 percent and 37.67 percent.

³⁶ IRM 5.12.6.3.10 (Oct. 14, 2013).



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

notice or communication to a representative even if the taxpayer has not authorized the IRS to do so.³⁷

When a taxpayer fills out a Form 2848 or Form 8821 to elect a representative, the taxpayer must check a box to indicate if the representative is authorized to receive a copy of any notices or other written communications that will be sent to the taxpayer from the IRS. The IRM specifically states:

“Taxpayers can ‘check the boxes’, to have copies of notices and communications sent to up to two representatives.”

However, the same IRM also allows IRS employees to provide copies of notices to representatives, even if the taxpayers have not authorized them to do so:

“IRS employees are not prohibited from providing a copy of a notice or communication to a representative if the box is not checked.”³⁸

Therefore, the IRM seems to permit IRS employees to provide correspondence containing sensitive information to third-parties, potentially even when such disclosures are against the wishes of the taxpayers.

When the IRS sends a copy of the NFTL to a representative who is not authorized to receive it, the taxpayer’s rights are violated because the IRS shared the taxpayer’s personally identifiable information to a third party without written permission. The IRS is also exposed to potential liability claims by the taxpayer. We project that 10,842 taxpayers may have potentially been affected because the IRS did not follow procedures to send copies of the NFTLs only to taxpayer’s representatives who are authorized to receive notices.³⁹

Recommendation

Recommendation 2: The Director, Collection, Small Business/Self Employed Division, should revise IRM procedures to clarify that copies of notices and other written communications should only be provided to representatives for whom taxpayers have expressly authorized the IRS to send them.

Management’s Response: IRS management disagreed with this recommendation. Because Form 2848 provides a general grant of authority to the taxpayer’s representative to request and inspect the taxpayer’s confidential tax information pertaining to the representation, they do not agree that copies of notices and other written communications

³⁷ IRM 5.1.23.3.2.3 (Oct. 30, 2014).

³⁸ IRM 5.1.23.3.2.3 (Oct. 30, 2014).

³⁹ The projection is based on three (2 percent) of 133 randomly sampled cases. The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the range of potential violations is between 2,970 and 27,522.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

can only be provided to representatives for whom the taxpayer checked the box authorizing that copies of notices be sent.

Office of Audit Comment: IRS management's position contradicts the information provided to taxpayers in the Form 2848 instructions. The instructions state:

If you want to authorize your representative to receive copies of all notices and communications sent to you by the IRS, you must check the box that is provided under the representative's name and address. Do not check the box if you do not want copies of notices and communications sent to your representative(s).

Therefore, taxpayers should expect that the IRS will not send their representatives copies of notices if they do not check the box. However, IRM procedures state that IRS employees are allowed to provide a copy of a notice to a representative even if the taxpayer does not check the box. The IRS does not advise taxpayers of this possibility, or how taxpayers can ensure that the IRS does not send notices to representatives against their wishes. Furthermore, management's position allows for the inconsistent treatment of taxpayers.

Undelivered Lien Notices Were Not Always Properly Worked

We selected a judgmental sample of 94 undelivered lien notices returned to the Cincinnati and Fresno Campuses in February 2017.⁴⁰ The 94 undelivered lien notices included 84 notices addressed to taxpayers as well as 10 notices addressed to a taxpayer's representative. Our review of the 94 undelivered lien notices showed that IRS employees did not always properly work the undelivered lien notices.

Address research was not always performed as required

IRS procedures require address verification of the undelivered lien notices within 14 calendar days of receipt in the ACS Support function.⁴¹ If the ACS Support function employees determine that a more current address was available when the NFTL was requested, then they must request that the lien notice be reissued. Additionally, ACS Support function employees are required to document the date undelivered lien notices are received in the ACS Support function and the date research is completed.⁴² Documentation should be noted in the ACS action history

⁴⁰ A campus is the data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.

⁴¹ IRM 5.19.6.17.4, (Oct. 15, 2014).

⁴² IRM 5.19.6.17.4, (Oct. 15, 2014).



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

codes (if the taxpayer's account is still open) or in the Accounts Management System narrative history (if the taxpayer's account is closed).⁴³

For the 84 undelivered lien notices addressed to taxpayers in our judgmental sample, we identified 12 cases with incomplete documentation that the address research was performed. In all 12 cases, the undelivered NFTL was addressed to the secondary taxpayer. For 11 of these 12 cases, IRS employees documented on the Accounts Management System that address research was performed; however, the research was performed on the primary taxpayer, not the secondary taxpayer. IDRS records show that there was no research conducted on the secondary taxpayer's address.

When an NFTL is issued to both a primary and secondary taxpayer, only the Social Security Number for the primary taxpayer is listed on the notice, and it is redacted. ACS Support procedures for working undelivered mail instruct employees to use the IDRS or the ALS to locate the full Social Security Number for the taxpayer.⁴⁴ However, the procedures do not specify that the employee must determine if the notice was addressed to the primary or secondary taxpayer and, if the notice is addressed to the secondary taxpayer, the employee will need to determine the Social Security Number of the secondary taxpayer for the address research.

Without timely research of undelivered lien notices, the IRS cannot ensure compliance with the statutory requirement to provide the taxpayer a copy of the NFTL notice at his or her last known address.⁴⁵

Procedures designed to process undelivered lien notices were not always followed

When working undelivered NFTL notices, employees should input a specific IDRS transaction code with an appropriate action code. The transaction code signifies that the lien notice was returned, and the action code indicates the reason, *e.g.*, undelivered, unclaimed, or refused.⁴⁶

For the 84 undelivered lien notices addressed to taxpayers in our judgmental sample, there were seven cases in which the notice was undelivered but did not have the transaction code and action code on the Master File to indicate that the notices were returned as undelivered, as required. Additionally, there were 12 cases in which the notice was mailed to the secondary taxpayer, but the transaction code and action code to signify the undelivered notice was posted to the primary

⁴³ The Account Management System is a computer-based system used to answer and resolve all taxpayer account inquiries. It provides a common interface that allows users of multiple IRS systems to view history and comments from other systems.

⁴⁴ IRM 5.19.6.17.4, (Oct. 15, 2014).

⁴⁵ I.R.C. § 6320.

⁴⁶ IRM 5.19.6.17.4, (Oct. 15, 2014).



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

taxpayer's Master File. When this occurs, the Master File is unclear about whether the undelivered notice was addressed to the primary taxpayer or the secondary taxpayer.

It is important that IRS employees update the information in the Master File account for these taxpayers; otherwise, the information about the delivery status of the lien notice would be unknown to IRS employees who may be contacted by the taxpayer.

In addition to the errors we identified related to the inputting of the undelivered action code, management informed us that while the ALS user guide provides instructions on how to update the status of returned lien notices with one of three action codes (undelivered, unclaimed, or refused), the ACS Support function IRM states that unclaimed and refused notices do not have to be worked. Therefore, any lien notice returned to the ACS Support function as unclaimed or refused will not have a transaction code and action code in the Master File to indicate the returned delivery status of the notice. As a result, this might affect IRS functional employees who use the Master File account to obtain information about the taxpayer, such as Taxpayer Assistance Center employees, who would be unable to answer taxpayer questions about whether the lien notices were delivered.⁴⁷ If one of these three action codes are not posted on the Master File to indicate a returned delivery status, it appears as if the taxpayer received the NFTL.

Procedures are not currently in place to work undelivered notices addressed to taxpayers' representatives

IRS procedural rules require that a copy of the lien notice be sent to the taxpayer's authorized representative as soon as possible after the lien notice is sent to the taxpayer.⁴⁸ However, IRS management informed us that there is no legal requirement to work notices addressed to a taxpayer's representative that are returned as undeliverable. Therefore, the IRS does not determine if undelivered notices were sent to the correct address or mail a new copy of the notice if the first notice was sent to the wrong address. Management also told us that there is no requirement to advise the taxpayer that their representative's notice was returned as undeliverable.

For the past several years, including this year, TIGTA has reported problems with IRS's processing of undelivered lien notices sent to taxpayers. In some cases, the IRS did not mail the lien notice to the taxpayer's last known address because the updated address posted to the main computer system after the NFTL request was input on the ALS, but before the NFTL was filed. Changes to taxpayer representatives' addresses are similarly processed, so it is possible that the IRS might not mail copies of the lien notice to the representative's last known address.

The IRS's policy could potentially burden taxpayers who may rely on their representative for all tax matters. The filing of an NFTL can damage the taxpayer's current and future financial

⁴⁷ A Taxpayer Assistance Center is an IRS office with employees who answer questions, provide assistance, and resolve account-related issues for taxpayers face-to-face.

⁴⁸ *Conference and Practice Requirements, Statement of Procedural Rules*, 26 C.F.R. § 601.506 (2009).



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

standing, so it is important that their representative is provided with copies of NFTLs, so that they can take appropriate actions to address and protect the taxpayer's interests.⁴⁹ For example, taxpayers could miss the deadline to timely file for a CDP hearing.

Recommendations

The Director, Collection, Small Business/Self-Employed Division should:

Recommendation 3: Revise the ACS Support function IRM to clarify that employees processing undeliverable mail must determine if the notice is addressed to the primary or secondary taxpayer, perform address research for the appropriate taxpayer, and document to whom the notice was addressed.

Management's Response: IRS management agreed with the recommendation and will clarify that employees processing undeliverable mail should determine if the undelivered notice was addressed to a secondary taxpayer, conduct address research for the appropriate taxpayer, and document the history accordingly.

Recommendation 4: Revise the ACS Support function IRM to include the use of the unclaimed and refused action codes for returned mail.

Management's Response: Management disagreed with this recommendation, stating that the use of transaction codes showing the delivery status of returned notices was implemented to assist employees conducting research on undelivered mail rather than to meet a legal requirement. They believe that implementing the recommendation would provide limited benefit while increasing the burden on the IRS's limited resources.

Office of Audit Comment: When unclaimed or refused action codes are not entered, it appears on the taxpayer's account as if the lien notice was successfully delivered. Because the codes are already in existence, we believe it would be best to use them in order to have an accurate and complete picture of what is happening on the taxpayer's account.

Recommendation 5: Add procedures to the ACS Support function IRM to work undelivered lien notices addressed to taxpayers' representatives.

Management's Response: Management disagreed with this recommendation because they do not have the resources to expand the procedures to research and reissue courtesy notices returned as undelivered for representatives. Management explained that

⁴⁹ IRS Publication 594 states: "If a Notice of Federal Tax Lien is filed against you, it's often reported by consumer credit reporting agencies. This can have a negative effect on your credit rating and make it difficult for you to receive credit (such as a loan or credit card). Employers, landlords and others may also use this information and not favorably view the fact that a Notice of Federal Tax Lien has been filed against you."



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

their requirement is to send the lien notice to the taxpayer at their last known address and that they send a copy to the taxpayer's representative as a courtesy.

Office of Audit Comment: IRS procedural rules require that “*any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Internal Revenue Service must be given to the taxpayer and, unless restricted by the taxpayer, to the representative....*” Changes to a taxpayer representative’s address are processed in a similar way to changes to a taxpayer’s address. Without procedures in place to identify and respond to notices sent to a representative’s incorrect address, the goal of ensuring that representatives receive important taxpayer notices will not be achieved.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to determine whether lien notices issued by the IRS comply with legal guidelines set forth in I.R.C. § 6320, Treasury Regulations, and IRS procedures. To accomplish this objective, we:

- I. Determined whether lien notices issued by the IRS complied with legal requirements set forth in I.R.C. § 6320(a) and related internal guidelines.
 - A. Selected a statistically valid random sample of 133 NFTLs for review from an ALS extract of all NFTLs filed by the IRS nationwide between July 1, 2015, and June 30, 2016.¹ A contracted statistician assisted with developing the projections based on our findings within this statistically valid random sample.

Population:	480,672
Confidence Level:	90 percent
Expected Rate of Occurrence:	2 percent
Precision Rate:	±2 percent
 - B. Validated the ALS extract by comparing a sample of records to online data. We determined that the data were sufficiently reliable for the purposes of this report.
 - C. Determined whether the sampled lien notices adhered to legal guidelines regarding timely notifications of NFTL filings to the taxpayer, the taxpayer's spouse, business partners, and taxpayer representatives by reviewing data from the ALS, the ICS, the ACS, the IDRS, and the certified mail lists (U.S. Postal Service Form 3877, *Firm Mailing Book for Accountable Mail*).
 - D. Determined if taxpayers' representatives were provided a copy of the NFTL due process notice by reviewing data from the ALS, the IDRS, the ICS, and the ACS.
 1. Reviewed IDRS screens for CAF indicators (Transaction Code 960) for all sample cases.
 2. Reviewed ALS history screens for accounts with CAF indicators to see whether notices were mailed to taxpayers' representatives.
 - E. For the sampled lien notices without the taxpayer's representative/power of attorney notifications on the ALS histories, reviewed the ACS and the ICS for taxpayer

¹ See Appendix VI for detailed descriptions of the IRS computer systems used in the filing of NFTLs.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

- representative indicators and determined whether taxpayer representatives/powers of attorney should have been notified.
- II. Evaluated the procedures for processing lien notices (Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320*) that are returned undelivered.
- A. Selected a judgmental sample² of unprocessed (unopened) mail containing 94 undelivered lien notices returned to the Fresno and Cincinnati Campuses in February 2017 and recorded the taxpayer's name, address, Social Security Number, Serial Lien Identification number³, and date received at the respective campus mailroom.⁴ Mailroom personnel from the Fresno and Cincinnati Campuses provided us with confirmation of the dates the sampled undelivered lien notices were delivered to the ACS Support functions. We used a judgmental sample because we could not determine the population of undelivered lien notices at those two campuses.
 - B. For each sample case, researched the IDRS to determine whether the address on the Master File matched the address on the undelivered lien notice.⁵
 - C. For each sample case, reviewed taxpayer audit trails and the ACS and Accounts Management System histories to determine whether employees performed the required IDRS research for resolution of the undeliverable status within 14 calendar days of receipt of the undelivered lien notice.
 - D. For each sample case of an undelivered lien notice for which appropriate research was completed for resolution of the undeliverable status, verified that a Transaction Code 971⁶ with an Action Code 253 was entered into the IDRS. Action Code 253 means that the lien notice was returned undelivered.

² A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.

³ Serial Lien Identification number is a unique number that the ALS automatically assigns to lien records.

⁴ A campus is the data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.

⁵ The Master File is the IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

⁶ A Transaction Code is a three-digit code used to identify actions being taken on a taxpayer's account on the Master File. Transaction Code 971 performs different actions based on the Action Code entered, which are listed separately.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

- III. Determined whether the IRS complied with legal requirements as they relate to any levy action involving the same tax period as the § 6320 lien notice.
- A. Obtained an extract of open Appeals cases (as of September 2016) for review from an Appeals Centralized Database System⁷ extract of all open NFTL appeals. There were 8,115 Appeals cases for which the appeal pertained to the NFTL.
- B. Selected a statistically valid random sample of 25 Appeals cases for review from the 8,115 open Appeals cases.
- | | |
|------------------------------|------------|
| Population: | 8,115 |
| Confidence Level: | 90 percent |
| Expected Rate of Occurrence: | 5 percent |
| Precision Rate: | ±2 percent |
- C. Determined if the IRS did not take or suspended levy action that involved the same tax period as the NFTL for the 25 open cases. We used specific information (*i.e.*, Taxpayer Identification Number and tax period) from the appealed cases to review appropriate Master File data to identify any levy action for the same tax period as the NFTL.
- D. Validated the Appeals Centralized Database System extract by comparing a sample of its records with Master File data.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the Small Business/Self-Employed Division Collection function's policies, procedures, and practices for timely notifying taxpayers of NFTL filings and timely verifying addresses of undelivered lien notices. We evaluated these controls by reviewing samples of lien notices sent to taxpayers and lien notices returned to the IRS as undelivered.

⁷ Appeals Centralized Database System is used by Appeals Officers, Settlement Officers, managers, and technical analysts to track case receipts, record case time, document case actions, and monitor the progress of the Appeals workload.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Appendix II

Major Contributors to This Report

Mathew Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Carl Aley, Director
George Hartman, Acting Audit Manager
Michele Strong, Acting Audit Manager
Nicole DeBernardi, Lead Auditor
Gwendolyn Gilboy, Senior Auditor
Nathan Cabello, Auditor
Joshua Perry, Auditor



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Appendix III

Report Distribution List

Commissioner
Office of the Commissioner – Attn: Chief of Staff
Deputy Commissioner for Services and Enforcement
Director, Collection, Small Business/Self-Employed Division
Director, Campus Collection, Small Business/Self-Employed Division
Director, Field Collection, Small Business/Self-Employed Division
Director, Headquarters Collection, Small Business/Self-Employed Division
Director, Collection Policy, Small Business/Self-Employed Division
Director, Office of Audit Coordination



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; four taxpayers were not timely provided Letters 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320*, resulting in potential legal violations of taxpayers' rights (see page 4).

Methodology Used to Measure the Reported Benefit:

In a judgmental sample¹ of 94 undelivered lien notices, we determined that the IRS did not send notices to the taxpayer's last known address for seven taxpayers. Research was not properly conducted prior to mailing these lien notices to ensure that they were sent to each taxpayer at his or her last known address. Four of these seven cases involved a spouse living at a different address. Although the IRS mailed each spouse a separate lien notice, they used the primary taxpayer's address for both spouses. As a result, these four lien notices were returned to the IRS as undelivered. Taxpayer rights could be affected because a taxpayer not receiving a notice or receiving a late notice might be unaware of the right to appeal.

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; 28,913 taxpayers whose representatives may not have been provided copies of Letters 3172 (see page 8).

Methodology Used to Measure the Reported Benefit:

From a statistically valid sample of 133 NFTL cases, we identified 47 cases with representatives authorized to receive notifications at the time the liens were filed. From those 47 cases, we identified eight cases for which IRS employees did not provide notice to taxpayer representatives, resulting in potential taxpayer burden. The sample was selected based on a confidence level of 90 percent, a precision rate of ± 2 percent, and an expected rate of occurrence of 2 percent. We projected the error rate ($8 \div 133 = 6.02$ percent) to the total population (provided by the IRS) of 480,672 NFTLs generated by the ALS between July 1, 2015, and June 30, 2016, to arrive at 28,913 taxpayers whose representatives may not have been provided

¹ A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

notification. We are 90 percent confident that the range of potential violations is between 14,556 and 50,906.

Type and Value of Outcome Measure:

- Taxpayer Privacy & Security – Potential; 10,842 taxpayers whose representatives were provided copies of Letters 3172 when not authorized (see page 8).

Methodology Used to Measure the Reported Benefit:

From a statistically valid sample of 133 NFTL cases, we identified 18 cases with representatives who were not authorized to receive notifications at the time the liens were filed. From those 18 cases, we identified three cases for which IRS employees provided notice to taxpayer representatives who were not authorized, resulting in potential violations of taxpayer privacy. The sample was selected based on a confidence level of 90 percent, a precision rate of ± 2 percent, and an expected rate of occurrence of 2 percent. We projected the error rate ($3 \div 133 = 2.26$ percent) to the total population (provided by the IRS) of 480,672 NFTLs generated by the ALS between July 1, 2015, and June 30, 2016, to arrive at 10,842 taxpayers whose representatives may have been provided notification when not authorized. We are 90 percent confident that the range of potential violations is between 2,970 and 27,522.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Appendix V

Synopsis of the Internal Revenue Service Collection and Notice of Federal Tax Lien Filing Processes

The collection of unpaid tax begins with a series of letters (notices) sent to taxpayers advising them of their debt and asking for payment of the delinquent tax. IRS computer systems are programmed to mail these notices when certain criteria are met. If the taxpayer does not respond to these notices, the account is transferred for either personal or telephone contact.

- IRS employees who make personal (face-to-face) contact with taxpayers are called revenue officers and work in various locations. The ICS is used to track collection actions taken on taxpayer accounts.¹
- IRS employees who make only telephone contact with taxpayers work in call sites. The ACS is used in the call sites to track collection actions taken on taxpayer accounts.

When these efforts have been taken and the taxpayer has not paid the tax liability, designated IRS employees are authorized to file an NFTL by sending a Form 668(Y)(c), *Notice of Federal Tax Lien*, to the appropriate local government offices. The NFTLs protect the Federal Government's interest by informing the public of its claim to the taxpayer's assets for the amount of unpaid tax. The Federal tax lien is created by I.R.C. § 6321 when:

- The IRS has made an assessment and given the taxpayer notice of the assessment, stating the amount of the tax liability and demanding payment.
- The taxpayer has neglected or refused to pay the amount after the notice and demand for payment.

The right to file an NFTL is found in I.R.C. § 6323. When employees request the filing of an NFTL using either the ICS or the ACS, the ALS processes the NFTL filing requests. In an expedited situation, employees can manually prepare the NFTL. Even for manually prepared NFTLs, the ALS controls and tracks the NFTLs and initiates subsequent lien notices to notify responsible parties of the NFTL filings and of their appeal rights.² The ALS maintains an electronic database of all open NFTLs and updates the IRS's primary computer records to indicate that an NFTL has been filed.

¹ See Appendix VI for detailed descriptions of the IRS computer systems used in the filing of the NFTLs.

² Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320*.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Most lien notices are mailed to taxpayers by certified or registered mail rather than delivered in person. To maintain a record of the notices, the IRS prepares a certified mail list (U.S. Postal Service Form 3877, *Firm Mailing Book for Accountable Mail*), which identifies each notice that is to be mailed. The lien notices and a copy of the certified mail list are delivered to the U.S. Postal Service. A U.S. Postal Service employee ensures that all notices are accounted for, date-stamps the list, and returns a copy to the IRS. The stamped certified mail list is the only documentation the IRS has that certifies the date on which the notices were mailed. IRS guidelines require that the stamped certified mail list be retained for 10 years after the end of the processing year.



Appendix VI

Internal Revenue Service Computer Systems Used in the Filing of Notices of Federal Tax Liens

Automated Collection System (ACS) – a computerized call site inventory system that maintains balance due accounts and return delinquency investigations. ACS function employees enter all of their case file information (online) on the ACS. The NFTLs requested using the ACS are uploaded to the ALS, which generates the Form 668(Y)(c), *Notice of Federal Tax Lien*, and related lien notices and updates the IRS’s primary computer files to indicate that the NFTLs have been filed.

Automated Lien System (ALS) – a comprehensive database that prints the NFTLs, generates lien notices, stores taxpayer information, and documents all lien activity. Lien activities on both ACS and ICS cases are controlled on the ALS by Centralized Lien Operation functions at the Cincinnati, Ohio, Campus.¹ Employees at the Cincinnati Campus process the NFTLs and respond to taxpayer inquiries using the ALS.

Integrated Collection System (ICS) – an IRS computer system with applications designed around each of the main collection tasks such as opening a case, assigning a case, building a case, performing collection activity, and closing a case. The ICS is designed to provide management information, create and maintain case histories, generate documents, and allow online approval of case actions. NFTL requests made using the ICS are uploaded to the ALS. The ALS generates the NFTL and related lien notices and updates the IRS’s primary computer files to indicate the NFTLs have been filed.

Integrated Data Retrieval System (IDRS) – an online data retrieval and data entry system that processes transactions entered from terminals located in campuses and other IRS locations. It enables employees to perform such tasks as researching account information, requesting tax returns, entering collection information, and generating collection documents. The IDRS serves as a link from campuses and other IRS locations to the Master File for the IRS to maintain accurate records of activity on taxpayers’ accounts.²

¹ A campus is the data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.

² The Master File is the IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Appendix VII

*Confidence Intervals for Error Rates Reported on
Taxpayer Representatives Not Receiving Notification
During Fiscal Years 2012 Through 2016*

***Two-sided 90 percent confidence intervals using the
exact binomial method for the exception rate
for Fiscal Years 2012 through 2016***

Report Fiscal Year	Sample Cases Requiring Representative Notification	Sample Cases Not Receiving Representative Notification	Error Rate	Confidence Interval
2012	22	4	18%	Between 6.48% and 36.90%
2013	47	5	11%	Between 4.28% and 21.10%
2014	38	1	3%	Between 0.14% and 11.90%
2015	36	6	17%	Between 4.51% and 27.07%
2016	37	6	16%	Between 6.11% and 26.32%

Source: Prior year results of TIGTA's tests on taxpayer representatives not receiving notification when authorized.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Appendix VIII

*Statutory Lien Reports Issued During
Fiscal Years 2012 Through 2016*

TIGTA, Ref. No. 2012-30-057, *Problems Persist When Processing Undelivered Lien Notices and Notifying Taxpayers' Representatives* (May 2012).

TIGTA, Ref. No. 2013-30-072, *Fiscal Year 2013 Statutory Review of Compliance With Lien Due Process Procedures* (July 2013).

TIGTA, Ref. No. 2014-30-061, *Fiscal Year 2014 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (Sept. 2014).

TIGTA, Ref. No. 2015-30-055, *Fiscal Year 2015 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (June 2015).

TIGTA, Ref. No. 2016-30-047, *Fiscal Year 2016 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (July 2016).



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Appendix IX

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

AUG 21 2017

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Mary Beth Murphy *Mary Beth Murphy*
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2017 Statutory Review of
Compliance with Notice of Federal Tax Lien Filing Due Process
Procedures (Audit # 201730001)

Thank you for the opportunity to review the above subject draft report. The Notice of Federal Tax Lien (NFTL) process is an important component of our collection strategy as it protects the government's interest in the property of a taxpayer who has unpaid taxes while explaining to the taxpayer their rights.

We appreciate your recognition that we are timely and correctly notifying taxpayers of NFTL filings and their appeal rights. This is the fifth time in six years that TIGTA found no errors with our notifications. We concur with your statement that the timely and proper issuance of NFTL collection due process notices is of utmost importance and we continue to explore ways to enhance our systemic processes to ensure notices are sent, as required, to the last known addresses of the taxpayers and, pursuant to policy, to authorized representatives.

TIGTA makes five recommendations to further enhance our lien notice process. These recommendations focus primarily on improving taxpayer service when notices are returned as undeliverable. While we recognize the potential value of your recommendations, we also must consider our limited resources when deciding whether we can implement them.

TIGTA identified seven instances in which a lien notice was returned because we did not send it to the taxpayer's last known address (i.e., the taxpayer's address of record when the NFTL was requested). Four of these cases involved the notice sent to a spouse on a joint tax liability who lived at a different address than the primary taxpayer. We are pursuing programming changes for the systemic upload and use of the secondary taxpayer's last known address for mailing lien notices relating to joint liabilities. Additionally, we will clarify to employees when processing undeliverable mail that they should determine if the undelivered notice was addressed to a secondary taxpayer and conduct address research for the appropriate taxpayer.



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

2

We agree that it is important that taxpayers receive IRS notices so that they are informed as to their tax situation. Whenever a taxpayer's lien notice is returned to us as undelivered, our current procedures require that a copy of the notice be re-sent to the taxpayer if we determine the taxpayer's address changed within two weeks of the NFTL request. Your recommendations for expanding those procedures beyond two weeks and for following a similar process when a representative's copy of a notice is returned as undeliverable may have value, but we believe that value to be minimal. Therefore, in light of our resource constraints, we will not be implementing this recommendation.

TIGTA also identified situations where a taxpayer's representative was sent a copy of the lien notice without the representative being designated to receive notices on the Form 2848, *Power of Attorney and Designation of Representative*. We do not agree with your determination that providing copies of the notices to the representatives in these instances violated the taxpayer's rights because the Form 2848 grant of authority to the representative is also the taxpayer's consent to disclosure of tax information related to the representation.

TIGTA also recommended that we have Automated Collection System (ACS) Support employees process notices returned as unclaimed and refused and input the action codes to IDRS accordingly. Processing unclaimed and refused mail offers limited operational benefit and would provide only minimal improvement to taxpayer service. Therefore, we will not be implementing this recommendation.

We agree with the outcome measure of taxpayer burden regarding representatives who may not have been provided copies of Letters 3172, *Notice of Federal Tax Lien and Your Rights to a Hearing Under IRC 6320*. However, we do not agree with the outcome measure involving taxpayer privacy and security. As stated above, the Form 2848 provides a general grant of authority to an eligible representative to request and inspect the taxpayer's confidential tax information pertaining to the representation.

We will continue to work to improve our processes with regard to the issuance of collection due process lien notices and protect taxpayer rights. We appreciate your continued support and insight in this regard. Attached is a detailed response outlining our corrective actions to address your recommendations. If you have any questions, please contact me, or a member of your staff may contact Scott Prentky, Director Collection at (954) 991-4326.

Attachment



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

Attachment

RECOMMENDATION 1:

The Director, Collection, Small Business/Self-Employed Division, should expand the courtesy copy procedures in the IRM to allow a copy of the lien notice to be resent to those taxpayers whose original Collection Due Process (CDP) lien notices went undelivered to ensure taxpayers are informed of their appeal rights.

CORRECTIVE ACTION:

It is important that taxpayers receive IRS notices so that they are informed as to their tax situation. As you recognized in your report, our procedures require a copy of a lien notice to be re-sent to taxpayers in certain situations. We do not agree with your recommendation to expand our courtesy copy procedures because we believe that expanding those procedures will provide only minimal improvement to taxpayer service. We will include additional information concerning the Equivalent Hearing process on the Collection Due Process webpage.

IMPLEMENTATION DATE:

February 15, 2018

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 2:

The Director, Collection, Small Business/Self-Employed Division, should revise IRM procedures to clarify that copies of notices and other written communications should only be provided to representatives for whom taxpayers have expressly authorized the IRS to send them.

CORRECTIVE ACTION:

We do not agree that copies of notices and other written communications should only be provided to representatives for whom the taxpayer checked the box requesting that copies of notice be sent on Form 2848. The Form 2848 provides a general grant of authority to the taxpayer's representative to request and inspect the taxpayer's confidential tax information pertaining to the representation.

IMPLEMENTATION DATE:

N/A



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

2

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 3:

The Director, Collection, Small Business/Self-Employed Division, should revise the ACS Support function IRM to clarify that employees processing undeliverable mail must determine if the notice is addressed to the primary or secondary taxpayer, perform address research for the appropriate taxpayer, and document to whom the notice was addressed.

CORRECTIVE ACTION:

We agree. We will clarify that employees processing undeliverable mail should determine if the undelivered notice was addressed to a secondary taxpayer, conduct address research for the appropriate taxpayer, and document the history accordingly.

IMPLEMENTATION DATE:

March 15, 2018

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division (SB/SE)

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 4:

The Director, Collection, Small Business/Self-Employed Division, should revise the ACS Support function IRM to include the use of the unclaimed and refused action codes for returned mail.

CORRECTIVE ACTION:

We disagree. The use of transaction codes to show the delivery status of returned notices is not a legal requirement, but was implemented to assist our employees who conduct research on undelivered mail. Requiring ACS Support to process unclaimed and refused notices will increase the burden on IRS's limited resources unnecessarily, for a process that is not required and would provide limited operational benefit.

IMPLEMENTATION DATE:

N/A



*Fiscal Year 2017 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures*

3

RESPONSIBLE OFFICIAL:
N/A

CORRECTIVE ACTION MONITORING PLAN:
N/A

RECOMMENDATION 5:
The Director, Collection, Small Business/Self-Employed Division, should add procedures to the ACS Support function IRM to work undelivered lien notices addressed to taxpayers' representatives.

CORRECTIVE ACTION:
We disagree. We provide a copy of the lien notice to the taxpayer's representative as a courtesy (our requirement is to send the lien notice to the taxpayer at their last known address). We do not have the resources to expand our procedures to research and reissue courtesy notices returned as undelivered.

IMPLEMENTATION DATE:
N/A

RESPONSIBLE OFFICIAL:
N/A

CORRECTIVE ACTION MONITORING PLAN:
N/A