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# ***TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION***



## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

September 18, 2018

Reference Number: 2018-30-080

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.

**Redaction Legend:**

1 = Tax Return/Return Information

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## HIGHLIGHTS

### FISCAL YEAR 2018 STATUTORY REVIEW OF COMPLIANCE WITH NOTICE OF FEDERAL TAX LIEN FILING DUE PROCESS PROCEDURES

## Highlights

**Final Report issued on  
September 18, 2018**

Highlights of Reference Number: 2018-30-080  
to the Commissioner of Internal Revenue.

#### 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 163 NFTLs determined that the IRS timely and correctly mailed the NFTL and appeal rights notices to the taxpayers' last known address. However, tests of a judgmental sample of 120 undelivered lien notices identified 10 cases for which the address on the original lien notice and the address on the IRS computer system did not agree. In five of these cases, the address on the IRS computer system was updated before the cycle date the NFTL was prepared.

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 45 open NFTL appeal cases identified five cases in which automated

levies for the Federal Payment Levy Program or State Income Tax Levy Program were issued while the appeal was pending. IRS management believes these types of 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 is not required to 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 three of the 47 sample cases in which the taxpayer had an authorized representative. TIGTA estimates that a total of 8,156 taxpayers may have been adversely affected.

#### WHAT TIGTA RECOMMENDED

TIGTA recommended that 1) the Director, Campus Compliance Services, Small Business/Self-Employed Division, revise procedures to require undelivered lien notices be resent to all taxpayers whose original CDP lien notices were undelivered if an updated address is available and sufficient time is available for the taxpayer to request an equivalent CDP hearing, and 2) the Director, Collection, Small Business/Self-Employed Division, revise Internal Revenue Manual procedures to clarify that copies of notices and other written communications should ordinarily be provided to representatives when and for whom taxpayers have checked the box expressly requesting the IRS to send copies of notices to them.

IRS management agreed with one of the two recommendations and stated that it took corrective action. Management disagreed with the other recommendation due to limited resources.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**DEPARTMENT OF THE TREASURY**

**WASHINGTON, D.C. 20220**

September 18, 2018

**MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE**

**FROM:**

Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:**

Final Audit Report – Fiscal Year 2018 Statutory Review of Compliance  
With Notice of Federal Tax Lien Filing Due Process Procedures  
(Audit # 201830001)

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 the Internal Revenue Code and Treasury Regulations. 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 2018 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.

If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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### ***Abbreviations***

ACS	Automated Collection System
ALS	Automated Lien System
CAF	Centralized Authorization File
CDP	Collection Due Process
FY	Fiscal Year
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



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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### **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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

***The IRS is required to notify taxpayers of their Collection Due Process rights when the first Notice of Federal Tax Lien 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 1998<sup>4</sup> expanded upon this notice requirement, creating I.R.C. Section (§) 6320 to give taxpayers additional rights.<sup>5</sup> 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 collection due process (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.<sup>6</sup> 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."<sup>7</sup> 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.<sup>8</sup> By IRS policy, the IRS generally suspends levy action for the tax periods on the NFTL from when

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<sup>1</sup> I.R.C. §§ 6321 and 6323.

<sup>2</sup> I.R.C. § 6323.

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

<sup>4</sup> Pub. L. No. 105-206, 112 Stat. 685.

<sup>5</sup> I.R.C. § 6320.

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

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

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



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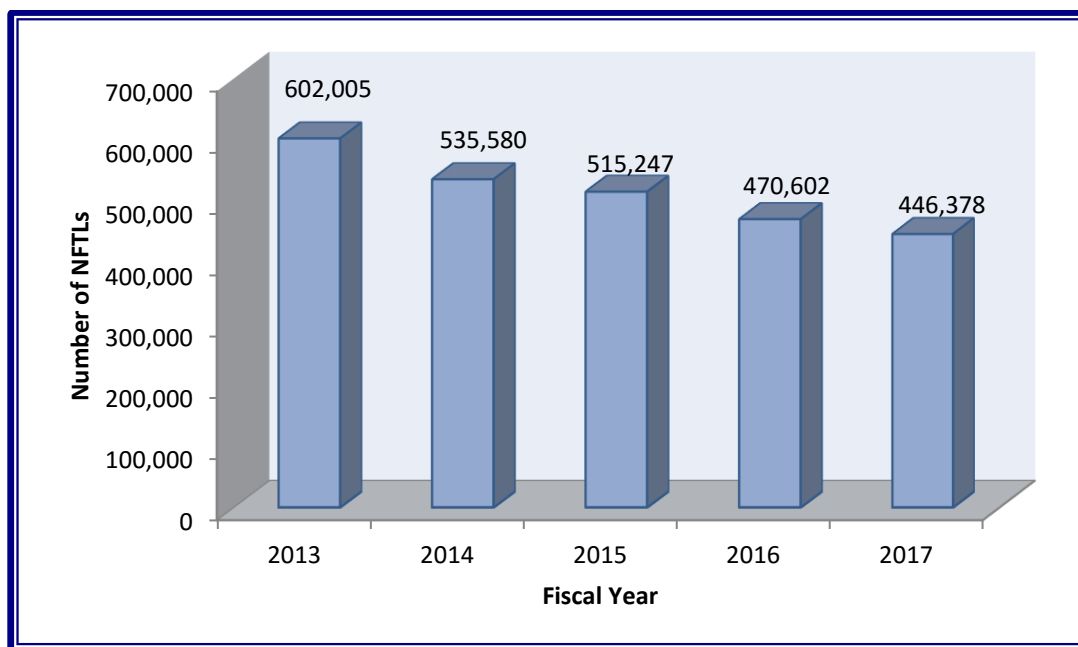
the taxpayer requests the CDP hearing until the conclusion of the CDP hearing, including the period covering any request for judicial review.

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.<sup>9</sup> 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).<sup>10</sup>

Figure 1 shows that since Fiscal Year (FY) 2013, annual NFTL filings have decreased every year, including a 5 percent reduction in FY 2017 (470,602 to 446,378).

***Figure 1: Number of NFTLs Filed for FYs 2013 Through 2017***



*Source: IRS Data Book for FYs 2013 through 2017.*

The decreasing number of NFTLs filed correlates with a decrease in the staffing within the Collection Division. The number of revenue officers declined by 29 percent, from 4,681 at the end of FY 2013 to 3,330 at the end of FY 2017.

<sup>9</sup> I.R.C. § 6320(a)(3)(A), (a)(3)(C), and (a)(3)(D).

<sup>10</sup> See Appendix VI for detailed descriptions of the IRS computer systems used in the filing of the NFTLs.





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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.<sup>11</sup> Specifically, if a hearing is requested for the NFTL filing, the policy is that levy actions generally shall be suspended for the period during which such hearing and appeals therein are pending.<sup>12</sup>

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.<sup>13</sup> This is our twentieth 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.<sup>14</sup> 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 FY 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 December 2017 through June 2018. 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.

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<sup>11</sup> I.R.C. §§ 6320(c), *Conduct of hearing; review; suspensions*, and 6330(e), *Suspension of collections and statute of limitations*.

<sup>12</sup> I.R.C. § 6330(e) and (f).

<sup>13</sup> I.R.C. § 7803(d)(1)(A)(iii).

<sup>14</sup> See Appendix VIII for a list of the prior five TIGTA reports.



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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### ***Results of Review***

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

Tests of a statistically valid random sample of 163 NFTLs from the 443,127 NFTLs filed between July 1, 2016, and June 30, 2017, 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 sample of undelivered lien notices showed that the IRS did not always send lien notices to the taxpayer's last known address.<sup>15</sup>

We tested a judgmental sample of 120 undelivered lien notices and identified 10 lien notices for which the address currently on the IRS computer system and the address on the original lien notice did not agree. For five of the 10 notices, the address on the IRS computer system was updated prior to the cycle date the NFTL was prepared in the ALS. \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\* the NFTL was requested before an address update posted to the IRS database. According to IRS procedures, the lien notices for the five cases in which the IRS computer system was updated before the cycle the NFTL was prepared should have been sent to the updated address. \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\* therefore, there were \*\*\*\*\*1\*\*\*\*\* 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 date the NFTL was requested by the IRS.<sup>16</sup>

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<sup>15</sup> A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population. 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*.

<sup>16</sup> IRM 5.19.6.18.4 (Nov. 4, 2016).



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Taxpayers' rights for these four taxpayers could have been potentially violated because the IRS did not meet its statutory requirement to timely send each lien notice to the taxpayers' last known addresses when the NFTL was filed.<sup>17</sup>

Three of the five cases for which the address on the IRS computer system was updated prior to the cycle the NFTL was prepared 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 three 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.<sup>18</sup>

IRS procedures recognize 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. 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 FY 2016 report, we recommended that the IRS revise applicable Internal Revenue Manual (IRM) sections to require employees requesting an NFTL involving joint liability to research the Integrated Data Retrieval System (IDRS) for the last known address of the secondary spouse.<sup>19</sup> IRS procedures were updated in FYs 2017 and 2018 to ensure that lien notices were sent to each spouse at his or her respective last known address and requiring IDRS research to identify the last known address of any co-obligor included on the NFTL.<sup>20</sup> We also 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. The data processing work requests for this recommendation were submitted in January 2018 with scheduled implementation dates in FY 2019.

For three of the four cases in which the NFTL was requested before an address update posted to the IRS database, the address on the IRS computer system was updated during the same cycle that the NFTL was mailed. Therefore, no additional action was required. \*\*\*\*\*J\*\*\*\*\*

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<sup>17</sup> 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.

<sup>18</sup> Statutory requirement (I.R.C. § 6320) and applicable IRS procedure (IRM 5.12.6.3.5 (Jan. 19, 2018)).

<sup>19</sup> The IDRS is an IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.

<sup>20</sup> IRMs 5.12.6.3.7 (Jan. 19, 2018), 5.12.7.3 (Sept. 21, 2017), and 5.19.4.6.2 (Oct. 31, 2016).



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\*\*\*\*\*1\*\*\*\*\* However, a lien notice was not sent using the updated address to any of the four taxpayers. In November 2016, the ACS Support IRM was updated to include what it terms “courtesy copy” procedures.<sup>21</sup> 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.

In our FY 2017 report, we recommended that the IRS expand the courtesy copy procedures in the IRM to resend the lien notice to those taxpayers whose original CDP lien notices went undelivered to ensure that taxpayers are informed of their appeal rights, particularly their right to an equivalent CDP hearing. IRS management partially agreed with this recommendation, agreeing that it is important that taxpayers receive IRS notices so that they are informed as to their tax situation but maintaining that expanding the courtesy copy procedures would provide only minimal improvement to taxpayer service. The IRS took a corrective action for this recommendation in January 2018 by updating the wording for its CDP webpage to clarify equivalent hearing rights.

Because taxpayers have one year from the date that the original NFTL was filed to elect to have an equivalent CDP hearing, the IRS should resend lien notices to all taxpayers with an updated address regardless of when the update was received. ACS Support employees, who perform research for the taxpayer’s last known address as part of the requirements for working undelivered mail, could take additional steps to input updated address information into the ALS to regenerate the notices. Because this service would support taxpayers’ right to be informed, 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.<sup>22</sup>

In our FY 2017 report, we recommended that the IRS 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. The IRS partially agreed to this recommendation by agreeing to include additional information on the equivalent hearing process on its Collection Due Process webpage. TIGTA responded to the proposed corrective action by noting that providing additional information on the Collection Due Process webpage does not help taxpayers who do not receive a copy of their lien notice. TIGTA also noted that ACS Support employees are already required to perform research for the taxpayer’s last known address when working undelivered mail. Therefore, we continue to believe that the additional step of sending a copy to

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<sup>21</sup> IRM 5.19.6.18.4 (Nov. 4, 2016).

<sup>22</sup> I.R.C. § 7803(a)(3) lists the ten taxpayer rights, with the first being the right to be informed.



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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a taxpayer's newest address when that research has already been performed does not create an excessive burden on the IRS.

### ***Recommendation***

**Recommendation 1:** The Director, Campus Compliance Services, Small Business/Self-Employed Division, should revise IRM procedures to require that undelivered lien notices be resent to all taxpayers whose original CDP lien notices were undelivered if an updated address is available and sufficient time is available for the taxpayer to request an equivalent CDP hearing.

**Management's Response:** IRS management disagreed 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 current courtesy copy procedures would present a significant resource burden on IRS lien processing operations.

**Office of Audit Comment:** IRS management did not quantify the additional resources they believe will be necessary to resend additional notices to taxpayers with an available updated address and sufficient time for the taxpayer to request an equivalent CDP hearing. 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 would not create an excessive burden on the IRS's resources.

### **Enforcement Actions Were Suspended When Taxpayers Appealed Their Notices of Federal Tax Liens, Except for Automated Levies**

I.R.C. § 6320(c) provides that certain paragraphs of I.R.C. § 6330 shall apply for purposes of a taxpayer's appeal of an NFTL.<sup>23</sup> 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."<sup>24</sup> Tests of a random sample of 45 open NFTL appeal cases from the 7,376 open NFTL appeal cases as of September 2017 showed that the IRS suspended or did not take levy action that involved the same tax period as the NFTL under appeal, except for five automated levies made under the Federal Payment Levy Program

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<sup>23</sup> 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)).

<sup>24</sup> I.R.C. § 6330(e)(1).



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and the State Income Tax Levy Program.<sup>25</sup> \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
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\*\*\*\*1\*\*\*\*. In all five cases, the Federal Payment Levy Program and State Income Tax 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, this policy does not extend to levies for the Federal Payment Levy Program and the State Income Tax Levy Program. 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 provides: “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.” IRS management has 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 during our FY 2017 review that they believe Treasury Decision 8979, which provides that the levy prohibition is not incorporated by I.R.C. § 6320(c), is consistent with Treasury Regulation § 301.6320-1, question and answer G-3.<sup>26</sup> Therefore, management believes these five cases are not violations per the statute and Treasury Regulations.

Additionally, the five cases we identified in our review had the collection statute suspended as allowed by I.R.C. § 6320(c) despite having levies issued under the Federal Payment Levy Program or State Income Tax Levy Program. While no levy payments were collected by the IRS on these cases while the collection statute was suspended, this practice exposes these taxpayers to a longer time period for which the Government may attempt collection actions. Management stated in discussions during our FY 2017 review that the suspension of collection activity and the suspension of the collection statute are two separate activities, and they believe that I.R.C. § 6330(e) does not make the suspension of the statute of limitations for collection contingent on whether levy action is prohibited.

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<sup>25</sup> 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. The State Income Tax Levy Program matches Federal tax delinquent accounts against a database of State tax refunds for States participating in the program, with the State tax refunds potentially subject to levy. Currently, only individual State tax refunds are subject to levy.

<sup>26</sup> 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.





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### **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*, to designate a representative, the taxpayer may check a box to indicate that the IRS should ordinarily send the representative(s) copies of notices and other written communications pertaining to the representation. If the taxpayer does not check the box, the IRS will not ordinarily send copies of notices to the listed representative, although the representatives are authorized to request and inspect confidential tax information. Similarly, when completing Form 8821, *Tax Information Authorization*, taxpayers have an opportunity to check a box authorizing the IRS to send copies of notices or other written communications to their third-party designee on an ongoing basis. If the taxpayer does not check the box on Form 8821, the third-party designee is not authorized to receive notices on an ongoing basis. Taxpayer representative information is contained in the Centralized Authorization File (CAF).<sup>27</sup> 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.<sup>28</sup> More specifically, when an NFTL is filed, IRS policy requires 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. 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.<sup>29</sup> However, we identified cases in which copies of the lien notice were not sent to authorized representatives.

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

Tests of a statistically valid sample of 163 NFTLs included 47 cases for which the taxpayers had representatives authorized to receive notifications at the time the NFTLs were requested. For three cases with an authorized representative (1.8 percent), ALS records indicate that the IRS did not send copies of the lien notices to the taxpayers' representatives.<sup>30</sup>

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<sup>27</sup> The CAF contains information about the types of authorizations taxpayers have given their representatives for their tax returns.

<sup>28</sup> 26 C.F.R. § 601.506, *Conference and Practice Requirements, Statement of Procedural Rules* (2009).

<sup>29</sup> IRM 5.12.6.3.10 (Jan. 19, 2018).

<sup>30</sup> The 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 0.5 percent and 4.7 percent.



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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In FY 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 specify that it is the requestor's responsibility to ensure that information about all authorized taxpayer representatives are included with the NFTL request.<sup>31</sup>

IRS management informed us that based on a recommendation made in our FY 2016 report, the possible systemic transfer of authorized taxpayer representative information for secondary taxpayers was discussed with ACS, ICS, and ALS programmers. In May 2017, the IRS informed TIGTA that the ALS cannot exchange data with the IDRS in real time. A design change for the ALS would be required to secure POA information for secondary taxpayers, which is not feasible given current budgetary constraints.

In our last six reports, including this year, TIGTA has identified IRS errors with taxpayer representatives not receiving notification when authorized. This year's error rate of 1.8 percent shows that the potential for taxpayers being adversely affected still exists for cases requiring taxpayer representative notification.<sup>32</sup> We estimate that 8,156 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.<sup>33</sup>

### **IRS procedures for sending copies of lien notices to taxpayer representatives are not consistent**

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.<sup>34</sup> 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 notice or communication to a representative even if the taxpayer has not checked the box requesting that the IRS systemically send copies of notices or other communications to the representative.<sup>35</sup>

When a taxpayer fills out Form 2848 to designate a representative, the taxpayer may check a box to indicate if the representative should ordinarily receive copies of notices or other written communications that will be sent to the taxpayer from the IRS. The IRM specifically states:

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<sup>31</sup> IRM 5.19.4.6.2 (Oct. 31, 2016).

<sup>32</sup> See Appendix VII for the confidence intervals pertaining to the error rates reported for taxpayer representatives not receiving notification when authorized during FYs 2013 through 2017.

<sup>33</sup> The projection is based on three (1.8 percent) of 163 randomly sampled cases. The projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the range of potential violations is between 2,232 and 20,770 taxpayers.

<sup>34</sup> IRM 5.12.6.3.10 (Jan. 19, 2018).

<sup>35</sup> IRM 5.1.23.3.2.3 (Oct. 30, 2014).





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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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*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.<sup>36</sup>*

Therefore, the IRM appears 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.<sup>37</sup>

In our FY 2017 report, we recommended that the IRS 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. IRS management disagreed with our recommendation, stating that 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. In our Office of Audit Comment, we noted that Form 2848 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).*

Based on these instructions, TIGTA believes that taxpayers will expect that the IRS will not send their representatives copies of notices if they do not check the box. However, IRM procedures allow the IRS 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.

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<sup>36</sup> IRM 5.1.23.3.2.3 (Oct. 30, 2014).

<sup>37</sup> See I.R.C. § 7431.



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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**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 ordinarily only be provided to representatives when and for whom taxpayers have checked the box expressly requesting the IRS to send copies of notices to them.

**Management's Response:** IRS management agreed with the recommendation and stated that it had revised IRM procedures to clarify that, ordinarily, the IRS will send a copy of the CDP lien notice to a representative only if the taxpayer checked the box on Form 2848 indicating copies of notices should be systemically sent to the representative.

### **Undelivered Lien Notices Were Not Always Properly Worked**

We selected a judgmental sample of 120 undelivered lien notices returned to the Cincinnati and Fresno Campuses in May 2018.<sup>38</sup> Our review of the 120 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.<sup>39</sup> 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.<sup>40</sup> 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. Documentation should be noted in the ACS action history codes (if the taxpayer's account is still open) or in the Account Management Services narrative history (if the taxpayer's account is closed).<sup>41</sup>

For the 120 returned lien notices addressed to taxpayers in our judgmental sample, there were 56 cases in which the notice was undeliverable as addressed. We identified four cases with incomplete documentation that the address research was performed, \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*1\*\*\*\* 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.<sup>42</sup> On February 20, 2018, the IRS updated procedures to specify that the employee must determine if the notice was addressed to

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<sup>38</sup> 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.

<sup>39</sup> IRM 5.19.6.18.4 (Nov. 4, 2016).

<sup>40</sup> IRM 5.19.6.18.4 (Nov. 4, 2016).

<sup>41</sup> The Account Management Services 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.

<sup>42</sup> IRM 5.19.6.18.4 (Nov. 4, 2016).



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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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.<sup>43</sup>

### **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.<sup>44</sup>

For the 120 undelivered lien notices addressed to taxpayers in our judgmental sample, there were 56 cases in which the notice was undelivered and \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*

\*\*\*\*1\*\*\*\* 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 inputting 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, and who would be unable to answer taxpayer questions about whether the lien notices were delivered.<sup>45</sup> 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.<sup>46</sup> However, IRS management informed us that there is no legal requirement to work notices addressed to a

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<sup>43</sup> I.R.C. § 6320.

<sup>44</sup> IRM 5.19.6.18.4 (Nov. 4, 2016).

<sup>45</sup> 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.

<sup>46</sup> 26 C.F.R. § 601.506, *Conference and Practice Requirements, Statement of Procedural Rules*, (2009).



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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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. During our FY 2017 review, management also told us that there is no requirement to advise the taxpayer that his or her representative's notice was returned as undeliverable.

For the past several years, including this year, TIGTA has reported problems with the 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. In our FY 2017 report, we found that changes to the taxpayer representative's address 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 standing, so it is important that his or her representative be provided with copies of the NFTLs so that the representative can take appropriate actions to address and protect the taxpayer's interests.<sup>47</sup> For example, taxpayers could miss the deadline to timely file for a CDP hearing.

In our FY 2017 report, we recommended that the IRS 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. IRS management agreed with the recommendation and updated IRM 5.19.6.18 in February 2018 to state that address research should be conducted for the appropriate taxpayer and history documentation should reflect such. The IRM section also requires employees processing undeliverable mail to determine if the undelivered notice or letter was addressed to a secondary taxpayer. Because these procedural updates occurred late in the time frame of the sample for this year's review, we will evaluate the impact of the changes during next year's statutory review.

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<sup>47</sup> IRS Publication 594, *The IRS Collection Process*, 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."



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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### **Appendix I**

#### **Detailed Objective, Scope, and Methodology**

Our overall objective was to determine whether liens issued by the IRS comply with legal guidelines set forth in the I.R.C. and Treasury Regulations. 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 163 NFTLs for review from an ALS extract of all the NFTLs filed by the IRS nationwide between July 1, 2016, and June 30, 2017.<sup>1</sup> A contracted statistician assisted with developing the projections based on our findings within this statistically valid random sample.

Population:	443,127
Confidence Level:	90 percent
Expected Rate of Occurrence:	16 percent
Precision Rate:	± 5 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 and the IDRS.
    1. Reviewed IDRS screens for CAF<sup>2</sup> indicators (Transaction Code 960)<sup>3</sup> for all sample cases.
    2. Reviewed ALS history screens for accounts with CAF indicators to see whether notices were mailed to taxpayers' representatives.

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

<sup>2</sup> The CAF contains information about the types of authorizations taxpayers have given their representatives for their tax returns.

<sup>3</sup> A Transaction Code is a three-digit code used to identify actions taken on a taxpayer's account on the Master File.



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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- 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 sample<sup>4</sup> of unprocessed (unopened) mail containing 120 undelivered lien notices returned to the Fresno and Cincinnati Campuses in May 2018 and recorded the taxpayer's name, address, Social Security Number, Serial Lien Identification number,<sup>5</sup> and date received at the respective campus mailroom.<sup>6</sup> 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.<sup>7</sup>
  - 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 971<sup>8</sup> with an Action Code 253 was entered into the IDRS. Action Code 253 means that the lien notice was returned undelivered.
- 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 2017) for review from an Appeals Centralized Database System<sup>9</sup> extract of all open NFTL appeals. There were 7,376 Appeals cases for which the appeal pertained to the NFTL.

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<sup>4</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

<sup>5</sup> A Serial Lien Identification number is a unique number that the ALS automatically assigns to lien records.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> A Transaction Code is a three-digit code used to identify actions 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.

<sup>9</sup> The 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.





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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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- B. Selected a statistically valid random sample of 45 Appeals cases for review from the 7,376 open Appeals cases.
- |                              |             |
|------------------------------|-------------|
| Population:                  | 7,376       |
| Confidence Level:            | 90 percent  |
| Expected Rate of Occurrence: | 2 percent   |
| Precision Rate:              | ± 5 percent |
- C. Determined if the IRS did not take or suspended levy action that involved the same tax period as the NFTL for the 45 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.
- IV. Determined if internal guidelines have been implemented or modified since our last review by discussing procedures and controls with appropriate IRS personnel in the IRS National Headquarters.
- A. Determined if the applicable IRM sections were revised to require employees requesting an NFTL involving joint liability to research the IDRS for the last known address of the secondary spouse, as recommended in the FY 2016 report.<sup>10</sup>

### **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.

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<sup>10</sup> TIGTA, Ref. No. 2016-30-047, *Fiscal Year 2016 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (July 2016).



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**Appendix II**

**Major Contributors to This Report**

Mathew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)  
Glen Rhoades, Director  
Robert Jenness, Audit Manager  
Debra Mason, Lead Auditor  
Steven Myers, Senior Auditor  
Nathan Cabello, Auditor  
Ali Vaezazizi, Auditor





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**Appendix III**

**Report Distribution List**

Deputy Commissioner for Services and Enforcement  
Commissioner, Small Business/Self-Employed Division  
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 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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### **Appendix IV**

#### **Outcome Measure**

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

##### **Type and Value of Outcome Measure:**

- Taxpayer Burden – Potential; 8,156 taxpayers whose representatives may not have been provided copies of Letters 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320* (see page 9).

##### **Methodology Used to Measure the Reported Benefit:**

From a statistically valid sample of 163 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 three 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  $\pm 5$  percent, and an expected rate of occurrence of 16 percent. We projected the error rate (3 of 163 = 1.8 percent) to the total population (provided by the IRS) of 443,127 NFTLs generated by the ALS between July 1, 2016, and June 30, 2017, to arrive at 8,156 taxpayers whose representatives may not have been provided notification. We are 90 percent confident that the range of potential violations is between 2,232 and 20,770 taxpayers.



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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### **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.<sup>1</sup>
- 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.<sup>2</sup> 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.

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

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

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



## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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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.



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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### **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 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.<sup>1</sup> 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, assigning, and 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.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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 2018 Statutory Review of Compliance With  
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**Appendix VII**

***Confidence Intervals for Error Rates Reported on  
Taxpayer Representatives Not Receiving Notification  
During Fiscal Years 2013 Through 2017***

*Two-sided 90 percent confidence intervals using the  
exact binomial method for the exception rate  
for FYs 2013 through 2017*

Report Fiscal Year	Sample Cases Requiring Representative Notification	Sample Cases Not Receiving Representative Notification	Error Rate	Confidence Interval
2013	47	5	11%	Between 4.28% and 21.10%
2014	38	**1**	**1**	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%
2017	47	8	17%	Between 7.31% and 24.30%

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



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**Appendix VIII**

***Statutory Lien Reports Issued During  
Fiscal Years 2013 Through 2017***

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).

TIGTA, Ref. No. 2017-30-070, *Fiscal Year 2017 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (Sept. 2016).



## ***Fiscal Year 2018 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

September 6, 2018

MEMORANDUM FOR MICHAEL E. MCKENNEY

DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Mary Beth Murphy

Commissioner, Small Business Self-Employed Division

SUBJECT:

Draft Audit Report – Fiscal Year 2018 Statutory Review of  
Compliance with Notice of Federal Tax Lien Filing Due Process  
Procedures (Audit # 201830001)

Thank you for the opportunity to review the above subject draft report evaluating whether the IRS is complying with the statutory requirements to notify taxpayers when a notice of federal tax lien (NFTL) is filed. The 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 his or her rights.

We appreciate your recognition that we are timely and correctly notifying taxpayers of NFTL filings and their appeal rights. This is the sixth time in seven years that TIGTA found no errors with our notifications. We agree 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.

In last year's audit, TIGTA recommended IRS re-send the lien notice to those taxpayers whose original CDP lien notices went undelivered if an updated address later becomes available, to ensure that taxpayers are informed of their appeal rights. There is a similar recommendation in this year's report. The notice requirement of Internal Revenue Code (IRC) § 6320 is fulfilled by sending the Letter 3172 to the taxpayer's last known address at the time of the NFTL request. Whenever a taxpayer's lien notice is returned to us as undelivered, our current procedures require that we re-send a copy of the notice to the taxpayer if we determine the taxpayer's address changed before the NFTL was requested. If the address changed within two weeks after the NFTL request, we may re-send the notice as a courtesy, but reissuance is not required as the notice requirement of IRC § 6320 was fulfilled. Expanding those procedures for longer periods of time would present a significant resource burden on our lien processing operation.





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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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Therefore, considering our resource constraints, we will not be implementing this recommendation.

TIGTA also expressed concern that a taxpayer's representative may be sent a copy of the lien notice without the representative being designated to receive notices on the Form 2848, *Power of Attorney and Declaration of Representative*. Form 2848 is a general grant of authority to the taxpayer's representative to request and inspect the taxpayer's confidential tax information pertaining to the representation. Therefore, there is no violation of taxpayer rights if this situation occurs. Nevertheless, we revised IRM 5.12.6.3.10 in January 2018 to clarify that, ordinarily, the IRS will send a copy of the CDP lien notice to a representative only if the taxpayer checked the box on Form 2848 indicating copies of notices should be systemically sent to the representative.

We will continue to work to improve our processes regarding the issuance of collection due process lien notices and protection of 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 Paul Mamo, Director, Collection Operations.

Attachment



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## ***Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures***

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Attachment

### **RECOMMENDATION 1:**

The Director, Campus Compliance Services, Small Business/Self-Employed Division, should revise IRM procedures to require undelivered lien notices be re-sent to all taxpayers whose original CDP lien notices were undelivered if an updated address is available and sufficient time is available for the taxpayer to request an equivalent CDP hearing.

### **CORRECTIVE ACTION:**

It is important that taxpayers receive IRS notices so that they are informed as to their tax situation. The notice requirement of IRC § 6320 is fulfilled by sending the Letter 3172 to the taxpayer's last known address at the time of the NFTL request. Whenever a taxpayer's lien notice is returned to us as undelivered, our current procedures require that we re-send a copy of the notice to the taxpayer if we determine the taxpayer's address changed before the NFTL request. Current procedures also allow for resending the notice as a courtesy if the taxpayer's address changed within two weeks of the NFTL request. Expanding those procedures for longer periods of time would present a significant resource burden on our lien processing operation. Therefore, in light of our resource constraints, we do not agree to implement this recommendation.

### **IMPLEMENTATION DATE:**

N/A

### **RESPONSIBLE OFFICIAL:**

N/A

### **CORRECTIVE ACTION MONITORING PLAN:**

N/A

### **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 ordinarily only be provided to representatives when and for whom taxpayers have checked the box expressly requesting the IRS to send copies of notices to them.

### **CORRECTIVE ACTION:**

We agree with the recommendation and have already implemented it. Collection Policy revised IRM 5.12.6.3.10 in January 2018 to clarify that, ordinarily, the IRS will send a copy of the CDP lien notice to a representative only if the taxpayer checked the box on Form 2848 indicating copies of notices should be systemically sent to the representative.

### **IMPLEMENTATION DATE:**

Implemented



***Fiscal Year 2018 Statutory Review of Compliance With  
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**RESPONSIBLE OFFICIAL:**

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

**CORRECTIVE ACTION MONITORING PLAN:**

N/A