



*Procedures for Withdrawals and
Releases of Notices of Federal Tax Lien
Were Not Always Followed*

August 22, 2012

Reference Number: 2012-30-096

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

PROCEDURES FOR WITHDRAWALS AND RELEASES OF NOTICES OF FEDERAL TAX LIEN WERE NOT ALWAYS FOLLOWED

Highlights

Final Report issued on August 22, 2018

Highlights of Reference Number: 2012-30-096 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

The purpose of the Notice of Federal Tax Lien (NFTL) is to protect the Federal Government's right of priority against certain third parties, typically purchasers or creditors. When certain conditions are met, the IRS is required to release the NFTL to protect the taxpayer's rights. Also, the IRS may withdraw an NFTL in certain circumstances, such as when an NFTL is filed in error. However, releases and withdrawals of NFTLs were not always processed timely or properly. Withdrawal delays can cause unnecessary burden to taxpayers who may be trying to meet their financial obligations, and untimely releases could violate taxpayers' rights.

WHY TIGTA DID THE AUDIT

IRS policy changes and outreach efforts have caused significant increases in the number of withdrawals requested by taxpayers. TIGTA initiated this audit to determine whether the controls and procedures for the release, withdrawal, and refiling of NFTLs are effectively protecting the Federal Government's interest and taxpayers' rights.

WHAT TIGTA FOUND

Refiling the NFTL is sometimes necessary to protect the IRS's priority position against other creditors. TIGTA reviewed a random sample of 30 refiled NFTL cases and determined that all cases were processed accurately and timely.

TIGTA analyzed the impact of changes to the IRS's withdrawal policy and determined the estimated number of withdrawal certificates

worked in the Advisory function increased by 142 percent between Fiscal Year 2010 and Fiscal Year 2011. TIGTA reviewed a statistical sample of 100 NFTL withdrawals and could not find evidence in 15 (15 percent) cases that withdrawals were approved by managers as required. In addition, withdrawal certificates were not issued timely to the recording office in eight (8 percent) cases. Management approval helps reduce the risk of improper withdrawals that can burden taxpayers because of associated delays.

TIGTA also reviewed statistical samples of 100 manual and 185 systemic NFTL releases and determined the releases were not timely in 11 (11 percent) manual and nine (4.86 percent) systemic cases. Untimely NFTL releases can potentially violate taxpayers' rights.

During our review, the IRS took corrective action to prevent some untimely systemic releases. Specifically, the IRS requested reduction of the 45-day programming delay in the Automated Lien System when the Collection Statute Expiration Date on a refiled NFTL expires.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Director, Enterprise Collection Strategy, Small Business/Self-Employed Division: 1) revise procedures to ensure timely approval, processing, and documenting of NFTL withdrawal requests; 2) establish more specific timeliness expectations in the NFTL release procedures; and 3) evaluate whether to modify the 30-day delay in the Automated Lien System when the Collection Statute Expiration Date expires on a non-refiled NFTL.

In their response to the report, IRS officials agreed with all three recommendations. The IRS plans to make changes to the relevant Internal Revenue Manual sections to provide for improved documentation and timely disposition of withdrawals and to elaborate on the manual release process. In addition, the IRS plans to consider the possibility of the programming change within the current structure of the Automated Lien System, the volume of cases affected by such a change, and the potential effects on other lien processes such as refiles.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 22, 2012

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

FROM: Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Procedures for Withdrawals and Releases of
Notices of Federal Tax Lien Were Not Always Followed
(Audit # 201130018)

This report presents the results of our review to determine whether the controls and procedures for the release, withdrawal, and refile of Notices of Federal Tax Lien¹ are effectively protecting the Federal Government's interest and taxpayers' rights. This audit was conducted as part of our Fiscal Year 2011 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

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

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations.

Please contact me at (202) 622-6510 if you have questions or Frank Dunleavy, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations), at (213) 894-4470 (Ext. 128).

¹ See Appendix V for a glossary of terms.



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Abbreviations

ALS	Automated Lien System
CLP	Centralized Lien Processing Operation
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
NFTL	Notice of Federal Tax Lien
SB/SE	Small Business/Self-Employed



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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. A claim,¹ commonly referred to as a Federal Tax Lien, attaches automatically to a taxpayer's assets for the amount of unpaid tax when the taxpayer neglects or refuses to pay. The IRS files a Notice of Federal Tax Lien (NFTL)² in appropriate local government offices to protect the Federal Government's right of priority against certain third parties, typically purchasers or creditors.

The IRS can file an NFTL on the taxpayer's property for one or multiple tax periods that contain an outstanding tax liability. The IRS also has the statutory authority to refile the notice to continue protecting the Federal Government's priority interest, when applicable. In addition, the IRS is required to release the NFTL to protect the taxpayer's rights after the taxpayer meets various conditions. In some cases, the IRS may withdraw the NFTL, such as when it is filed in error.

The filing of an NFTL protects the Federal Government's right of priority against certain third parties, typically purchasers or creditors.

Refiling the NFTL

Generally, the NFTL is valid for a 10-year period because the IRS has only 10 years to collect the tax liability after assessment. However, in some circumstances, such as when the taxpayer files bankruptcy, the 10-year collection period may be extended³ or suspended.⁴ When this occurs, IRS employees are authorized⁵ to request a refile of the NFTL. The primary purpose of refiling the NFTL is to maintain the IRS's priority position established by the original NFTL filing. If the IRS determines not to refile the NFTL, a self-releasing provision⁶ will extinguish the notice 30 calendar days after the original Collection Statute Expiration Date. If the IRS determines that

¹ 26 U.S.C. § 6321.

² IRS Form 668(Y)(c), *Notice of Federal Tax Lien*, (Rev. Feb. 2004), Cat. No. 60025X. See Appendix V for a glossary of terms.

³ An extension is for a predetermined period of time. For example, the taxpayer consents to extend the collection period for six months in conjunction with a payment agreement.

⁴ A suspension is for an indefinite period of time during which the IRS is barred from taking actions to collect the tax liability but resumes when the reason for the suspension is resolved. For example, the collection period may be suspended during a bankruptcy case as a result of the automatic stay, but resumes running when the automatic stay lifts.

⁵ 26 U.S.C. § 6323(g).

⁶ The NFTL includes a provision that specifically states that the notice will serve as a certificate of release if it is not refiled by the deadline.



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refiling is necessary, the Centralized Lien Processing Operation (CLP) will input and process the NFTL refile through the Automated Lien System (ALS).

NFTL withdrawals

The Internal Revenue Code (I.R.C.)⁷ authorizes the IRS to withdraw an NFTL when certain conditions have been met. For example, a withdrawal may be issued when it is in the best interest of the Federal Government and the taxpayer or will facilitate collection of the tax liability. Withdrawal of the NFTL removes the public notice of the lien; it does not extinguish any remaining underlying liability, nor does it prevent the IRS from collecting any unsatisfied tax liabilities. If the IRS issues a notice of withdrawal, from a credit-rating standpoint,⁸ it is as if the NFTL was never filed.

In February 2011, the IRS modified its procedures to make it easier for taxpayers to obtain NFTL withdrawals. This change was part of a broader initiative called *Fresh Start*, and the primary goal was to help individuals and small businesses meet their tax obligations without adding unnecessary burden to taxpayers.

Taxpayers and IRS employees request NFTL withdrawals through the Small Business/Self-Employed (SB/SE) Division's Advisory function or Insolvency function because these two functions have the authority to approve withdrawals.⁹ If approved, the CLP processes and prints the withdrawal certificates (Form 10916(c), *Withdrawal of Filed Notice of Federal Tax Lien*) and sends it to the proper recording office.

NFTL releases

The IRS has legal¹⁰ and internal policy requirements to release the NFTL within 30 calendar days of the date that the tax liability is fully satisfied,¹¹ the liability becomes legally unenforceable,¹² or the Secretary of the Treasury has accepted a bond for the assessed tax. The release of an NFTL is generally systemically generated after all the tax periods on an NFTL are satisfied; however, in some cases, the IRS should request a manual release. The taxpayer may also request a manual release in situations that warrant expedited processing or request an immediate release which can be prepared upon the receipt of certified funds. The CLP prints Form 668(Z), *Certificate of Release of Federal Tax Lien*, and mails it to the proper recording office. In some

⁷ 26 U.S.C. § 6323(j).

⁸ The IRS has no control over how a lien or withdrawal affects a credit rating.

⁹ The Insolvency function has the delegated authority to approve NFTL withdrawals when the taxpayer is assigned to the Insolvency function's inventory. The Advisory function has the delegated authority to approve all other NFTL withdrawal requests.

¹⁰ 26 U.S.C. § 6325(a).

¹¹ The term satisfied includes the payment of the outstanding obligation covered by the lien along with any interest, additions to the tax, assessable penalties, and any additional costs which may have accrued.

¹² The account becomes legally unenforceable when, for example, it is beyond the Collection Statute Expiration Date.



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circumstances, such as an immediate release, revenue officers and Taxpayer Assistance Center employees may issue the release certificate directly to the taxpayer upon receipt of certified funds. The taxpayer can then personally file the certificate with the recording office.

The Government Accountability Office reported¹³ that, despite actions taken to improve its NFTL release process, the IRS was not consistently releasing NFTLs timely, as required by the I.R.C. The Government Accountability Office estimated that in Fiscal Year (FY) 2009, 14 percent of the NFTLs were not released timely due to processing errors and delays.

This review was performed at the IRS Cincinnati Campus in Cincinnati, Ohio, in the SB/SE Division's Campus Compliance Services during the period August 2011 through April 2012. 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.

¹³ Government Accountability Office, GAO-10-176, *GAO's Financial Audit - IRS's Fiscal Years 2009 and 2008 Financial Statements* (Nov. 2009).



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Results of Review

Refiles of the Notice of Federal Tax Lien Were Processed Accurately and Within the Required Time Period

Refiling the NFTL is necessary to protect the IRS's priority position against other creditors when the collection statute is extended or suspended. This priority was initially established when the original NFTL was filed. Refiling the NFTL prevents the self-releasing provision of the NFTL from extinguishing the lien. In order to be valid, the refiled NFTL needs to be processed within the refiling period established by law, which is no later than 30 calendar days immediately after the original Collection Statute Expiration Date. If the IRS determines refiling is necessary, it must refile in every recording office in which a prior NFTL was filed or the refiling will be invalid.

Refiles are normally requested through the CLP by the submission of Form 12636, *Request for Filing or Refiling Notice of Federal Tax Lien*. The refile request must show the updated Collection Statute Expiration Date for each period being refiled to ensure the information is properly input by the CLP into the ALS. Once input, the CLP prints and mails the refiled documents to the appropriate recording office.

We reviewed a random sample of 30 refiled NFTL cases issued between February 1 and August 31, 2011, which showed that the refiling information was accurate and the IRS employee properly submitted the NFTL refile request in all 30 cases. In addition, the CLP timely processed the request to ensure the NFTL refile reached the recording office before the deadline.

Notice of Federal Tax Lien Withdrawals Have Significantly Increased

The IRS may withdraw an NFTL if it determines that any of the following conditions have been met:

- An administrative error has occurred, such as an NFTL filed on a taxpayer during a bankruptcy case.¹⁴
- The taxpayer entered into an installment agreement and the agreement does not provide for the filing of an NFTL.
- Withdrawal will facilitate collection of the tax liability.

¹⁴ Per Internal Revenue Manual 5.12.3, bankruptcy law requires the IRS to withdraw an NFTL if the NFTL was filed when the automatic stay was in effect.



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- Withdrawal is in the best interest of the Federal Government and the taxpayer.

In February 2011, the IRS announced the implementation of an initiative called *Fresh Start*, with the purpose of making changes to its liens process in an effort to help struggling taxpayers get a fresh start with their tax liabilities. The primary goal is to help individuals and small businesses meet their tax obligations without adding unnecessary burden to taxpayers. One of the changes was a modification of the procedures that now makes it easier for taxpayers to obtain NFTL withdrawals. Specifically, the NFTL:

- Can now be withdrawn after full payment of taxes is made if the taxpayer requests it and certain criteria are met. For example, the taxpayer would qualify if all required tax returns have been filed for the past three years and current estimated taxes have been paid.
- Is withdrawn, in most cases, when a taxpayer has established or converts to a Direct Debit Installment Agreement and meets certain criteria.

The *Fresh Start* initiative has been extensively communicated to taxpayers and taxpayer representatives through various public media. For example, a *Fresh Start* initiative page was added to the IRS public website and it was discussed at the 2011 Nationwide Tax Forums. In addition, several interim guidance memorandums and updates to the Internal Revenue Manual (IRM)¹⁵ have effectively communicated the new procedures to IRS employees.

To assess the impact of the IRS's *Fresh Start* initiative communication efforts, we analyzed the IRS's NFTL withdrawal statistics for the last five years for cases worked in the Advisory function.¹⁶ Figure 1 shows that the number of withdrawal receipts, dispositions (withdrawal requests worked and closed), and withdrawal certificates issued have increased significantly since the *Fresh Start* initiative began.

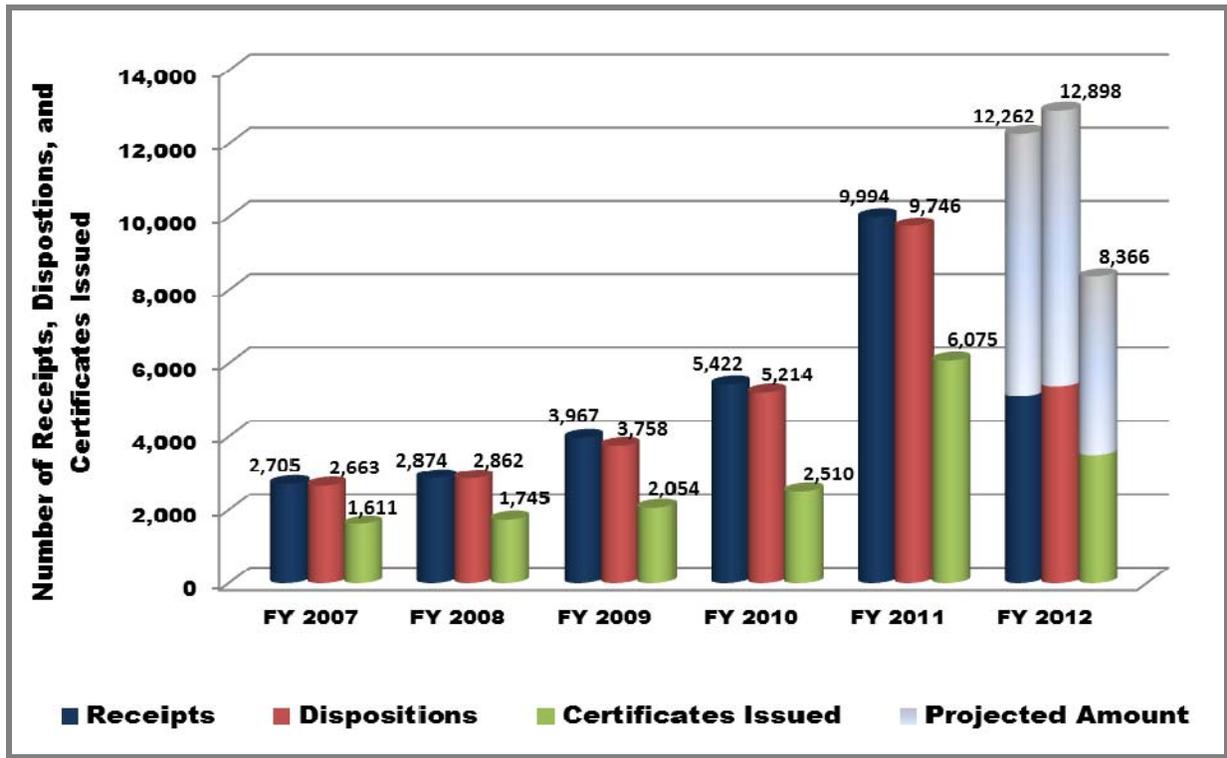
¹⁵ IRM 5.12.3.

¹⁶ Advisory function employees process the majority of NFTL withdrawals under the *Fresh Start* initiative.



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Figure 1: NFTL Withdrawal Inventory Worked by the Advisory Function



Source: NFTL withdrawal statistical data obtained from the Advisory function.

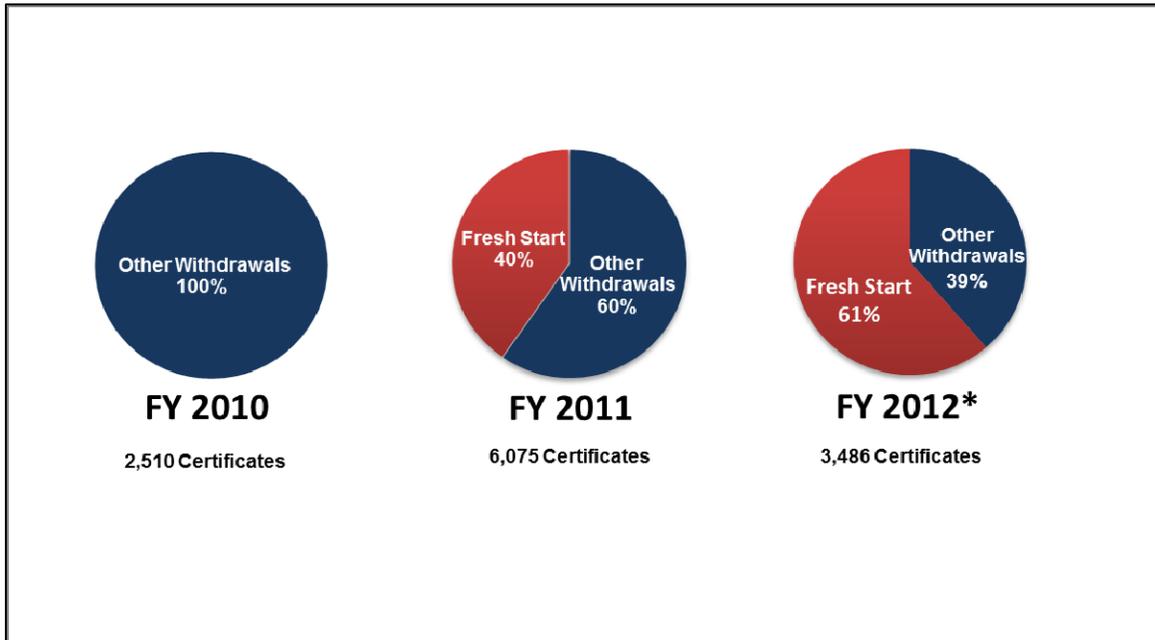
When compared with FY 2010, the FY 2011 NFTL withdrawal inventory receipts increased by 84 percent, dispositions increased by 87 percent, and withdrawal certificates issued increased by 142 percent. In addition, based on the data for the first five months of FY 2012 and assuming the numbers stay consistent for the rest of the year, we estimate the number of FY 2012 withdrawal inventory receipts, dispositions, and withdrawal certificates issued will increase by approximately 23 percent, 32 percent, and 38 percent, respectively, compared with FY 2011.

Additionally, Figure 2 shows that 40 percent of the 6,075 withdrawal certificates issued in FY 2011 were due to the *Fresh Start* initiative. During the first five months of FY 2012, the number of withdrawal certificates issued due to the *Fresh Start* initiative for FY 2012 was 61 percent of total withdrawal certificates issued.



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Figure 2: Fresh Start Initiative Withdrawal Certificates Compared With All Other Withdrawal Certificates Issued by the Advisory Function



Source: NFTL withdrawal data obtained from the Advisory function and the ALS. The breakdown of “Fresh Start” and “Other Withdrawals” was a Treasury Inspector General for Tax Administration analysis based on information obtained from the associated ALS history. *FY 2012 shows data as of February 26, 2012.

Notice of Federal Tax Lien Withdrawals Were Not Always Properly Processed

While the *Fresh Start* initiative has benefited taxpayers and increased the number of withdrawals issued, we determined taxpayer requests for withdrawals are not always processed properly because:

- Evidence of withdrawal approval was not always available.
- Withdrawals were not always timely issued.

Evidence of withdrawal approval was not always available

The delegation to approve NFTL withdrawals is given only to Advisory function or Insolvency function group managers. When an employee makes a determination to withdraw the NFTL, he or she should forward the case file to the appropriate approving official. Generally, Form 13794-W, *Request for Withdrawal or Partial Withdrawal of Notice of Federal Tax Lien*, and either Letter 3044, *Withdrawal Cover Letter*, or Letter 4026, *Withdrawal Cover Letter*, are also prepared and forwarded to the group manager for signature.



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After a withdrawal of the NFTL request is properly approved, an Advisory function or Insolvency function employee who has ALS experience or training may input the request into the ALS. However, the group manager must approve the withdrawal request prior to ALS input. To meet this approval requirement, it is sufficient for the group manager to make an entry in the Automated Insolvency System or the Integrated Collection System case history. Advisory function or Insolvency function employees who do not input the approved request directly to the ALS should send Form 13794-W to the CLP for ALS input. Upon issuance of the NFTL withdrawal certificate, the CLP should return a copy of the certificate to the requestor for inclusion with Letter 3044 or Letter 4026 for issuance to the taxpayer.¹⁷

We reviewed a statistical sample of 100 NFTL withdrawal cases issued between February 1 and August 31, 2011, and determined that in 15 (15 percent) cases either the withdrawal request was not properly approved or the approval was not documented in the case history by the Advisory function or Insolvency function group managers.

We discussed the 15 cases with IRS management and determined that in:

- *****1*****
*****1*****
- *****1*****
*****1*****

IRS management informed us that, in some of these cases, the group managers must have failed to document the case history after approving the withdrawal request. In addition, management believes that because a cover letter is signed by the group manager, and the cover letter is included with the certificate of withdrawal that is sent to the taxpayer, the approval requirement has been met. However, in some of the reviewed cases, we determined the cover letter was not signed until after the NFTL withdrawal certificate was issued to the recording office. Finally, management believes some employees misunderstood the need for approval for *Fresh Start* initiative cases.

Although we agreed with the Advisory function and Insolvency function decisions to issue the withdrawals for the 15 cases, we could not determine if any of these requests received the required managerial approval. We believe it is important that the group manager approve the withdrawal request before it is input into the ALS, as required, and not after a copy of the withdrawal is received from the CLP. There is a higher risk of errors when NFTL withdrawals are processed without required approvals. For example, revenue officer collection actions or taxpayer compliance issues may not yet be satisfactorily resolved prior to withdrawal. Based on our sample results, we estimate there were 910 cases for which the case history did not contain

¹⁷ The procedure for preparing and issuing the cover letters was revised in July 2011. Currently, a digitally signed cover letter and a copy of the withdrawal certificate are sent to the taxpayer through the IRS's Correspondence Production Services function.



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evidence to show the withdrawal request was properly approved by the Advisory function or Insolvency function group managers. We are 95 percent confident that the range of withdrawals without evidence of required approval is between 487 and 1,333 cases.

Withdrawals were not always timely

According to the IRS’s policy, the time period from approval of a withdrawal request until the certificate is filed in the appropriate recording office should be no more than 10 business days.¹⁸ After approval, the Advisory function or Insolvency function may input the withdrawal request into the ALS or forward the request to the CLP for input. Withdrawal requests forwarded to the CLP should be input within five business days of receipt. After withdrawals are input into the ALS, the CLP is responsible for generating and printing the withdrawal certificate and sending it to the recording office.

Our review of a statistical sample of 100 NFTL withdrawal cases issued between February 1 and August 31, 2011, determined that 30 withdrawal cases from our sample were forwarded to the CLP for ALS input. The remaining 70 sample cases were input by either the Advisory function or Insolvency function. Our review showed that, in all 30 (100 percent) cases, the withdrawal request was input within the required five business days from the received date.

However, our review of all 100 cases showed that, in eight (8 percent) of the 100 cases, the certificate of withdrawal was not issued to the recording office within 10 business days after being approved by the Advisory function or Insolvency function.

A combination of factors prevented the timely issuance to the recording office for these cases. Specifically, in:

- 4 cases worked by the Advisory function, an ALS system update and another system issue caused the withdrawal documents to be delayed for two to four weeks.
- *****1*****
- *****1*****
- *****1*****

The IRM does not specifically require the approving manager to document the action taken in the Integrated Collection System or the Automated Insolvency System history immediately upon approval of the NFTL withdrawal request. Additionally, IRS procedures do not specifically require Advisory function and Insolvency function employees to timely input the NFTL withdrawal request into the ALS after managerial approval.

¹⁸ For withdrawals due to administrative errors, the 10-day time period begins when the taxpayer requests the withdrawal.



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Delays in issuing NFTL withdrawals can cause unnecessary burden to taxpayers who may be trying to meet financial obligations, including paying their taxes. Based on our sample results from an estimated population of 6,064 NFTL withdrawals, we estimate there were 485 cases for which certificates of withdrawal were not timely issued to the recording office. We are 95 percent confident that the range of untimely withdrawals is between 164 and 806 cases.

Recommendation

Recommendation 1: The Director, Enterprise Collection Strategy, SB/SE Division, should revise the IRM to require the approving manager to document the action taken in the Integrated Collection System or the Automated Insolvency System history immediately upon approval of the NFTL withdrawal request. The Director should also require timely input of the NFTL withdrawal request into the ALS after managerial approval.

Management's Response: IRS management agreed with this recommendation and plans to make changes to the relevant IRM sections to provide for improved documentation and timely disposition of withdrawals.

Notice of Federal Tax Lien Releases Were Not Always Timely Issued

The majority of NFTL releases are generated systemically with minimal human involvement. However, others need to be prepared manually. For example, manual releases are required when the taxpayer fully pays his or her tax liability for the express purpose of getting the NFTL released or if the liability is discharged through bankruptcy and time is limited to comply with the 30-day statutory requirement. Our review showed that releases were not always issued timely.

We reviewed manual and systemic releases separately because the procedures and circumstances for the two release methods are different. Although the majority of cases with problems were related to manual releases, we also identified some systemic releases that were not timely issued.

The IRS is required¹⁹ to issue a certificate of NFTL release within 30 calendar days of determination that the liability for which the lien was filed is satisfied or becomes legally unenforceable.²⁰ We reviewed a statistical sample of 100 manual and 185 systemic NFTL releases generated between February 1 and August 31, 2011. We determined that 11 (11 percent) of the 100 manual NFTL releases and nine (4.86 percent) of the 185 systemic

¹⁹ 26 U.S.C. § 6325(a).

²⁰ The Insolvency function is not required by I.R.C. § 6325(a) to release the NFTL within 30 calendar days in cases when the underlying tax liability has been discharged through bankruptcy or when there are no assets from which collection can be made. However, it is an IRS internal policy for the Insolvency function to release the NFTL within 30 calendar days of determination that the liability for which the lien was filed is satisfied or becomes legally unenforceable.



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NFTL releases reviewed were not released within the required 30 calendar days. We discussed the results for the 20 cases (11 manual releases and nine systemic releases) with IRS management and determined that for:

- 13 cases, Insolvency function employees did not timely follow internal procedures for initiating an NFTL release. Specifically, seven manual releases were not timely processed, and six systemic releases should have been manually processed to ensure compliance with the 30-day release requirement. Insolvency function procedures require the issuance of a manual release when closing actions will delay the issuance of a systemic release. However, the procedures do not provide detailed guidance. As a result, employees must make a subjective decision as to when a manual release is appropriate. Additionally, the procedures do not clarify that the 30-day release requirement includes the time it takes the CLP to process and mail the NFTL release.
- 5 cases (four manual and one systemic), the NFTLs were not timely released for a variety of reasons. However, employee processing errors contributed to the late releases in some of the cases.
- *****] *****
1. Specifically, the ALS is programmed to delay the issuance of an NFTL release for 45 calendar days after the Collection Statute Expiration Date on a refiled NFTL expires and for 30 calendar days after the Collection Statute Expiration Date expiration for non-refiled NFTLs. These ALS programming delays exceed the 30-day statutory requirement. After we raised this issue to the IRS, management took corrective action for the 45-day programming delay. However, the IRS has not yet taken action to correct the 30-day programming delay and stated that further consideration was needed prior to implementing this corrective action.

When the IRS does not timely release NFTLs, taxpayers' rights are not effectively protected and taxpayers may experience unnecessary hardships. For example, taxpayers may be hindered in selling property, obtaining employment, or obtaining approval for loans.

Based on an estimated population of 22,650 manual NFTL releases and 227,249 systemic NFTL releases, we estimate that 2,492 manual and 11,055 systemic releases issued between February 1 and August 31, 2011, were not timely released as required by I.R.C. Section 6325(a) or IRS internal policy. We are 95 percent confident that the number of NFTLs not released within the required 30 calendar days is between 1,099 and 3,884 for manual releases and between 3,994 and 18,116 for systemic releases.



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Recommendations

The Director, Enterprise Collection Strategy, SB/SE Division, should:

Recommendation 2: Establish more specific IRM procedures to better define when a manual NFTL release should be issued. The procedures should also emphasize the need to timely input manual release requests into the ALS and clarify that the 30-day timeliness requirement also includes processing time by the CLP.

Management's Response: IRS management agreed with this recommendation and plans to make changes to the relevant IRM sections to elaborate on the manual release process.

Recommendation 3: Evaluate whether to change the 30-day programming delay in the ALS when the Collection Statute Expiration Date expires on a non-refiled NFTL to prevent untimely NFTL releases.

Management's Response: IRS management agreed with this recommendation. The possibility of the programming change within the current structure of the ALS will be considered as well as the volume of cases affected by such a change and the potential effects on other lien processes such as refiles.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the controls and procedures for the release, withdrawal, and refiling of NFTLs¹ are effectively protecting the Federal Government's interest and taxpayers' rights. To accomplish this objective, we:

- I. Identified the IRS's procedures and guidelines for the release, withdrawal, and refiling of an NFTL.
 - A. Reviewed applicable IRS procedures and interim guidance.
 - B. Interviewed SB/SE Division personnel from the Advisory function, the CLP, and the Collection Policy function to identify their role and involvement in processing requests for release, withdrawal, and refiling of an NFTL.
 - C. Conducted a field visit to the CLP in the Cincinnati Campus to identify how releases, withdrawals, and refilings are processed by the Lien unit.
- II. Determined whether the SB/SE Division followed statutory requirements for NFTL releases according to I.R.C. Section 6325² and the IRS's established procedures.
 - A. Performed an analysis to determine whether systemic NFTL releases were properly and timely released.
 1. Identified the population of 227,249 systemic NFTL releases for the period February 1 through August 31, 2011, from the ALS.
 2. Selected a statistically valid sample of 185 cases from the population identified in Step II.A.1. for review. We used a statistical sample because we wanted to project the number of cases with errors. The sample selection was based on an expected error rate of 14 percent as determined from the FY 2009 Government Accountability Office Financial Audit Report,³ a ± 5 percent precision, and a 95 percent confidence interval.
 3. Conducted a review using the Integrated Data Retrieval System, the ALS, the Automated Insolvency System, and the Integrated Collection System to determine whether the Form 668(Z), *Certificate of Release of Federal Tax Lien*, was issued

¹ See Appendix V for a glossary of terms.

² 26 U.S.C. § 6325(a).

³ Government Accountability Office, GAO-10-176, *GAO's Financial Audit – IRS's Fiscal Years 2009 and 2008 Financial Statements* (Nov. 2009).



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within 30 calendar days after determining that the taxpayer's outstanding liability, covered by the NFTL, was fully satisfied.

- B. Conducted a case review to determine whether manual NFTL releases were properly and timely released.
 - 1. Identified the population of 22,650 manual NFTL releases for the period February 1 through August 31, 2011, from the ALS.
 - 2. Selected a statistically valid sample of 184 cases from the population identified in Step II.B.1. for review. We used a statistical sample because we wanted to project the number of cases with errors. The sample selection was also based on an expected error rate of 14 percent, as determined from the FY 2009 Government Accountability Office Financial Audit Report, a ± 5 percent precision, and a 95 percent confidence interval. We limited our sample size due to resource constraints and reviewed only the first 100 cases according to the random number generator.
 - 3. Conducted a case review using the case histories obtained from the Integrated Collection System, the Automated Insolvency System, and the Automated Offer in Compromise database, when applicable, and data from the Integrated Data Retrieval System to verify if the Certificate of Release was issued within 30 calendar days after determining that the taxpayer's outstanding liability covered by the NFTL was fully satisfied or legally unenforceable.
- III. Determined whether the SB/SE Division took appropriate and timely actions to work NFTL withdrawal requests.
 - A. Identified the population of 6,064 NFTL withdrawals for the period February 1 through August 31, 2011, from the ALS.
 - B. Selected a statistically valid sample of 362 cases from the population identified in Step III.A. for review. The sample selection was based on an estimated error rate of 50 percent, a ± 5 percent precision, and a 95 percent confidence interval. We limited our sample size due to resource constraints and reviewed only the first 100 cases according to the random number generator.
 - C. Conducted a case review using the case histories obtained from the Integrated Collection System, the Automated Insolvency System, and the Automated Offer in Compromise database, when applicable, and data from the Integrated Data Retrieval System to verify if:
 - 1. The Advisory function or Insolvency function properly approved requests for NFTL withdrawals.



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2. The Certificate of Withdrawal (Form 10916(c), *Withdrawal of Filed Notice of Federal Tax Lien*) was issued timely to either the recording office or the taxpayer after being approved by the Advisory function or Insolvency function.
 3. The Certificate of Withdrawal was issued timely after the request was sent to the CLP when applicable.
- IV. Determined whether NFTL refilings were timely requested and processed accurately by the SB/SE Division.
- A. Identified 2,373 refiled NFTL cases for the period February 1 through August 31, 2011, from the ALS.
 - B. Selected a random sample of 30 refiled NFTL cases from the population identified in Step IV.A. for review. We selected a random sample to ensure every refiled NFTL case had an equal chance of being selected from the identified population.
 - C. Conducted a case review using the case histories obtained from the Integrated Collection System, the Automated Insolvency System, and the Automated Offer in Compromise database, when applicable, and data from the Integrated Data Retrieval System to verify if:
 1. The employee complied with the required refiling period (one-year period ending 30 calendar days after the scheduled Collection Statute Expiration Date).
 2. The SB/SE Division timely processed the request so the refile of the NFTL reached the recording office before the deadline.
- V. Validated the data received from the ALS for NFTL systemic releases, manual releases, withdrawals, and refilings by verifying all the records were issued between February 1 and August 31, 2011. We then validated a random sample of 30 cases for each population by comparing the sample information to that found on the Integrated Data Retrieval System and determined the data were sufficiently reliable for this audit.
- VI. Considered the possibility of fraud and evaluated the risk of fraud as we conducted this review.
- VII. Analyzed the IRS's NFTL withdrawal statistics for the last five years for cases worked in the SB/SE Division's Advisory function.



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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 the following internal controls were relevant to our audit objective: SB/SE Division collection policies, procedures, and practices for refiling, withdrawing, and releasing NFTLs and ALS programming controls. We evaluated these controls by observing CLP employees input data into the ALS, interviewing management, and reviewing samples of NFTL refiles, withdrawals, and releases.



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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Deputy Commissioner, Small Business/Self-Employed Division SE:S
Director, Campus Compliance Services, Small Business/Self-Employed Division SE:S:CCS
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division
SE:S:CLD
Director, Enterprise Collection Strategy, Small Business/Self-Employed Division SE:S:ESC
Director, Field Collection, Small Business/Self-Employed Division SE:S:FC
Director, Advisory and Insolvency, Small Business/Self-Employed Division SE:S:FC:AI
Director, Campus Filing and Payment Compliance, Small Business/Self-Employed Division
SE:S:CCS:FPC
Director, Collection Policy, Small Business/Self-Employed Division SE:S:ESC:CP
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Commissioner, Small Business/Self-Employed Division SE:S



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Appendix IV

Outcome Measures

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

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; 485 taxpayers whose NFTL¹ withdrawals were not issued to the recording office within 10 business days after being approved by the Advisory function or Insolvency function (see page 7).

Methodology Used to Measure the Reported Benefit:

From a statistically valid sample, we reviewed 100 NFTL withdrawals processed in the ALS between February 1 and August 31, 2011, we found eight (8 percent) withdrawals that were not issued to the recording office within 10 business days after being approved by the Advisory function or Insolvency function. The sample was selected based on a 95 percent confidence level, a ± 5 percent precision, and an estimated error rate of 50 percent. We limited our sample size due to resource constraints and reviewed only the first 100 cases according to the random number generator.

We projected the findings to the total population of 6,064 NFTL withdrawals issued between February 1 and August 31, 2011. We estimate that 485 taxpayers were not timely issued NFTL withdrawals after approval and are 95 percent confident that the number of taxpayers whose NFTL withdrawals were not timely is between 164 and 806.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 13,547 taxpayers whose NFTL releases (2,492 manual and 11,055 systemic) were not issued within 30 calendar days of the determination by the IRS that the tax liability for which the lien was filed was satisfied or legally unenforceable, resulting in potential violations of taxpayers' rights (see page 10).

Methodology Used to Measure the Reported Benefit:

From a statistically valid sample, we reviewed 100 manually released and 185 systemically released NFTLs processed in the ALS between February 1 and August 31, 2011, we identified

¹ See Appendix V for a glossary of terms.



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11 (11 percent) manual releases and nine (4.86 percent) systemic releases that were not released within 30 calendar days of the determination by the IRS that the tax liability was fully satisfied or legally unenforceable. The sample for the manual and systemic NFTL releases was selected based on a 95 percent confidence level, a ± 5 percent precision, and an expected error rate of 14 percent. For manual releases, we limited our sample size due to resource constraints and reviewed only the first 100 cases according to the random number generator.

We projected the findings to the total populations of 22,650 for manual NFTL releases and 227,249 for systemic NFTL releases issued between February 1 and August 31, 2011. We estimate that 2,492 taxpayers receiving manual releases and 11,055 taxpayers receiving systemic releases were not issued a timely NFTL release as required by I.R.C. Section 6325(a)² or IRS internal policy. Additionally, we are 95 percent confident that the number of taxpayers with NFTLs not released within the required 30 calendar days is between 1,099 and 3,884 for manual releases and between 3,994 and 18,116 for systemic releases.

² 26 U.S.C. § 6325(a).



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Appendix V

Glossary of Terms

Advisory Function – The IRS Collection function that gives technical guidance to revenue officers about liens, levies, litigation, and more. The Advisory function also serves many external customers by advising taxpayers and their representatives about topics such as the sale of property, lien certificates, and estate taxes.

Automated Insolvency System – The database used to manage all of the bankruptcy cases in the Insolvency function’s inventory.

Automated Lien System – The system that stores Federal tax lien and collection due process document data; utilizes information and provides the tools for users to create, release, refile, and withdraw liens; revokes releases; processes Collection Due Process letters; and prints lien and Collection Due Process letter facsimiles.

Automated Offer in Compromise – The database that allows monitoring, tracking, and controlling of offers in compromise submitted to the IRS.

Automatic Stay – An injunction that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed.

Campus – 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.

Campus Compliance Services – The IRS organization that manages and implements strategies pertaining to Collection and Examination function programs in the Brookhaven, New York; Cincinnati, Ohio; Philadelphia, Pennsylvania; Memphis, Tennessee; and Ogden, Utah, Campuses.

Centralized Lien Processing Operation – The IRS operation that processes requests for actions on the ALS, including the filing of liens and related lien documents and other actions relating to lien processing.

Collection Statute Expiration Date – The time period established by law to collect taxes. It is normally 10 years from the date of the tax assessment.

Correspondence Production Services – The Correspondence Production Services sites provide printing, inserting, sorting, and mailing of IRS notices.

Direct Debit Installment Agreement – The means by which funds are automatically debited from a taxpayer’s bank account for the agreed upon installment amount.



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Fiscal Year – A 12-consecutive-month period ending on the last day of any month, except December. The Federal Government’s fiscal year begins on October 1 and ends on September 30.

Insolvency Functions – The IRS functions that are responsible for administering coordination of taxpayer bankruptcy cases, consisting of Field Insolvency, a Collection function, and the Centralized Insolvency Operation, part of the Campus Compliance Services function. Bankruptcy law is the prevailing authority when a taxpayer files bankruptcy. Bankruptcy laws are separate from tax laws, and coordination is necessary to comply with both.

Installment Agreement – Arrangements by which the IRS allows taxpayers to pay liabilities over time.

Integrated Collection System – An information management system designed to improve revenue collections by providing revenue officers in the field access to the most current taxpayer information using laptop computers for quicker case resolution and improved customer service.

Integrated Data Retrieval System – An IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer’s account records.

Notice of Federal Tax Lien – Document filed in local government offices to protect the Federal Government’s right of priority against other creditors of the taxpayer.

Small Business/Self-Employed Division – The IRS organization that services self-employed taxpayers and small businesses by educating and informing them of their tax obligations, developing educational products and services, and helping them understand and comply with applicable tax laws.

Tax Period – Refers to each tax return filed by the taxpayer for a specific period (year or quarter) during a calendar year for each type of tax.



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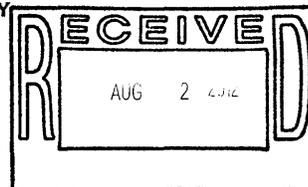
Appendix VI

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 1 2012

MEMORANDUM FOR MICHAEL E. MCKENNEY
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Faris R. Fink *Faris R. Fink*
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Procedures for Withdrawals and
Releases of Notices of Federal Tax Lien Were Not
Always Followed (Audit # 201130018)

Thank you for the opportunity to review your draft report titled: "Procedures for Withdrawals and Releases of Notices of Federal Tax Lien Were Not Always Followed." We agree with your recommendations and findings as stated in the report. We also concur with your Outcome Measures relative to the number of taxpayers that may have been impacted by the late issuance of withdrawals and releases.

Although the measures of timeliness are often, as referenced in your report, self-imposed policies of the IRS and not requirements of the law, we agree that the timely and/or proper processing of Notice of Federal Tax Lien releases, withdrawals, and refiles is of utmost importance to the protection of the government's and taxpayer's interest. Through systemic enhancements and more defined procedures, we continue to take strides to ensure these lien processes are as efficient as possible. To illustrate our improvement, your report references the 2009 GAO report that stated that 14 percent of releases were not issued within 30 days. In the most recent GAO audit of releases conducted earlier this year, that error rate has been lowered to five percent.

Attached is a detailed response outlining our corrective actions to your recommendations. If you have any questions, please contact me, or a member of your staff may contact Scott Reisher, Director, Collection Policy, at (202) 283-7361.

Attachment



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Attachment

RECOMMENDATION 1:

The Director, Collection Policy, SB/SE Division, should revise the Internal Revenue Manual to require the approving manager to document the action taken in the Integrated Collection System or the Automated Insolvency System history immediately upon approval of the NFTL withdrawal request. The Director should also require timely input of the NFTL withdrawal request into the ALS after managerial approval.

CORRECTIVE ACTION:

We agree with the recommendation. Changes to the relevant IRM sections will provide for improved documentation and timely disposition of withdrawals.

IMPLEMENTATION DATE:

December 15, 2012

RESPONSIBLE OFFICIAL(S):

Director, Collection Policy (SB/SE)
Director, Campus Compliance Services (SB/SE)

CORRECTIVE ACTION MONITORING PLAN:

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

RECOMMENDATION 2:

Establish more specific Internal Revenue Manual procedures to better define when a manual NFTL release should be issued. The procedures should also emphasize the need to timely input manual release requests into the ALS and clarify that the 30-day timeliness requirement also includes processing time by the CLP.

CORRECTIVE ACTION:

We agree with the recommendation. Changes to the relevant IRM sections will elaborate on the manual release process.

IMPLEMENTATION DATE:

December 15, 2012

RESPONSIBLE OFFICIAL(S):

Director, Collection Policy (SB/SE)

CORRECTIVE ACTION MONITORING PLAN:

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



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RECOMMENDATION 3:

Evaluate whether to change the 30-day programming delay in the ALS when the Collection Statute Expiration Date expires on a non-refiled NFTL to prevent untimely NFTL releases.

CORRECTIVE ACTION:

We agree with the recommendation. The possibility of the programming change within the current structure of the Automated Lien System will be considered as will the volume of cases impacted by such a change and the potential effects on other lien processes such as refiles.

IMPLEMENTATION DATE:

September 15, 2012

RESPONSIBLE OFFICIAL(S):

Director, Collection Policy (SB/SE)

CORRECTIVE ACTION MONITORING PLAN:

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