



*Fiscal Year 2019 Statutory Review of
Compliance With Notice of Federal Tax
Lien Filing Due Process Procedures*

September 17, 2019

Reference Number: 2019-30-077

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 2019 STATUTORY REVIEW OF COMPLIANCE WITH NOTICE OF FEDERAL TAX LIEN FILING DUE PROCESS PROCEDURES

Highlights

Final Report issued on September 17, 2019

Highlights of Reference Number: 2019-30-077 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 may not be timely advised of their appeal rights 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 116 NFTLs determined 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 17 cases for which the address on the original lien notice and the address on the IRS computer system did not agree. *****1*****

*****1*****

The IRS will grant an "equivalent hearing" if taxpayers request an equivalent hearing after the 30-calendar-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.

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 calendar 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 cases in which automated levies for the Federal Payment 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.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Director, Collection Policy, Small Business/Self-Employed Division, revise Internal Revenue Manual procedures to ensure that employees document on the Master File when notices are returned as undelivered.

The IRS partially agreed with the recommendation, stating that it already has procedures to document on the Master File when notices are returned because of an address issue and that these procedures go beyond current statutory requirements. The IRS believes that expanding these procedures to include notices that the taxpayer did not claim or refused service would provide little, if any, benefit to the Government or the taxpayer. However, all 57 envelopes in TIGTA's sample that did not have an action code added to the Master File for a returned delivery status were stamped as "Return to sender – not deliverable as addressed," meaning that they were not unclaimed or refused. TIGTA maintains that the fact that 57 undelivered notices in our judgmental sample of 120 undelivered notices did not have an action code added to the Master File to indicate a returned delivery status, as required by IRS procedures, shows that the current procedures are not being consistently followed and should be revised. In addition, as we stated in our FY 2017 report, when action codes for unclaimed or refused notices are not entered, the IRS does not have an accurate and complete view of the disposition of the notice.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 17, 2019

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2019 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures
(Audit # 201930007)

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 2019 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 VIII.

Copies of this report are also being sent to the IRS managers affected by the report recommendation. 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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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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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 arises upon the occurrence of a tax delinquency and encumbers the property of the delinquent taxpayer.¹ To perfect the Government's claim, the IRS has the authority to file a notice of the lien in the appropriate State and local offices of record.² The IRS files a Form 668(Y)(c), *Notice of Federal Tax Lien* (NFTL), in appropriate local government offices to notify interested parties that a lien exists.³

The IRS is required to notify taxpayers of their Collection Due Process rights when the first NFTL is filed for each tax period owed.

The Internal Revenue Code (I.R.C.) has long required the IRS to notify taxpayers, in writing, of the filing of an NFTL; however, the IRS Restructuring and Reform Act of 1998 expanded upon this notice requirement, creating I.R.C. Section (§) 6320 to give taxpayers additional rights.⁴ 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.⁵ The lien notice indicates the date on which this 30-calendar-day period expires.

If taxpayers fail to request a CDP hearing within the 30- calendar-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."⁶ 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.⁷ By IRS policy, the IRS generally suspends levy action for the tax periods on the NFTL from when the taxpayer requests the CDP hearing until the conclusion of the CDP hearing, including the period covering any request for judicial review.

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

¹ I.R.C. §§ 6321 and 6323.

² I.R.C. § 6323.

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

⁴ Pub. L. No. 105-206, 112 Stat. 685. I.R.C. § 6320.

⁵ Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320*.

⁶ Treas. Reg. § 301.6320-1(i)(2) Q&A-I7.

⁷ Treas. Reg. § 301.6320-1(i)(2) Q&A-I6.



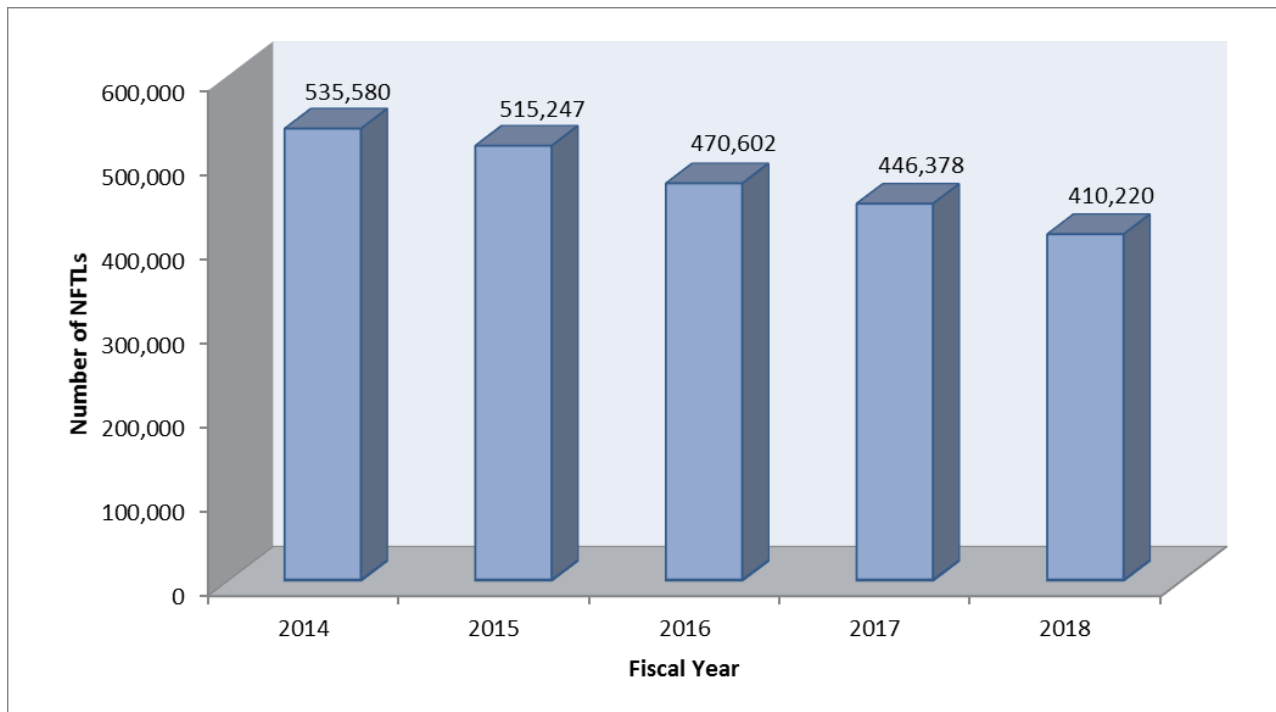
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procedures related to the release of the lien on the property.⁸ The lien notice must be given in person, left at the taxpayer's home or business, or sent by certified or registered mail to the taxpayer's last known address.

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

Figure 1 shows that since Fiscal Year (FY) 2014, annual NFTL filings have decreased every year, including an 8 percent reduction from FY 2017 to FY 2018 (446,378 to 410,220).

Figure 1: Number of NFTLs Filed for FYs 2014 Through 2018



Source: IRS Data Book for FYs 2014 through 2018.

The decreasing number of NFTLs filed parallels the decrease in the staffing within the Collection Division. The number of revenue officers declined by almost 23 percent over the past five fiscal years, from 2,809 at the end of FY 2014 to 2,168 at the end of FY 2018.¹⁰ In addition, during our FY 2018 Statutory Review of Levies, we found that the IRS did not issue any ACS systemic

⁸ I.R.C. § 6320(a)(3)(A), (a)(3)(C), and (a)(3)(D).

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

¹⁰ Revenue officers located in field offices assigned five or more cases, excludes management and overhead staff.



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levies to taxpayers in FY 2017.¹¹ We asked IRS management if the ACS systemic processes for NFTL requests had also been suspended and they reported that although ACS system processes pertaining to NFTLs were not suspended during FY 2018, the IRS had implemented systemic suspensions on both levies and NFTL requests during the Government shutdown that began in December 2018. The IRS resumed systemic NFTL processes during the week of April 1, 2019, and systemic levy processes during the week of March 25, 2019.

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.¹² 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.¹³

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.¹⁴ This is our twenty-first 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.¹⁵ In the previous five years, including this year, we have reported full compliance with the law of timely notifying taxpayers each time. However, 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 2018 through July 2019. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹¹ TIGTA, Ref. No. 2018-30-068, *Fiscal Year 2018 Statutory Review of Compliance With Legal Guidelines When Issuing Levies* (Sept. 2018).

¹² I.R.C. §§ 6320(c), *Conduct of hearing; review; suspensions*, and 6330(e), *Suspension of collections and statute of limitations*.

¹³ I.R.C. § 6330(e) and (f).

¹⁴ I.R.C. § 7803(d)(1)(A)(iii).

¹⁵ See Appendix VII for a list of the prior five TIGTA reports.



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Results of Review

Our review of a statistically valid random sample of NFTLs found that the IRS followed the requirements of I.R.C. § 6320(a). However, our review of a judgmental sample of undelivered lien notices showed that the IRS did not always use the taxpayer's last known address when sending the notices.¹⁶ In addition, as we have reported in previous years, the IRS does not suspend certain automated levy actions for open NFTL appeal cases.

Lien Notices Were Mailed Timely to the Taxpayer's Last Known Address; However, Undelivered Lien Notices Were Not Always Properly Worked

Tests of a statistically valid random sample of 116 NFTLs from the 404,475 NFTLs filed between July 1, 2017, and June 30, 2018, found 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). However, 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. Among the reasons for this were not performing required research and not following processing procedures.

Undelivered lien notices were not always sent to updated addresses

We selected a judgmental sample of 120 undelivered lien notices returned to the Cincinnati and Fresno Campuses in March 2019.¹⁷ We reviewed these undelivered lien notices and identified 17 lien notices for which the address currently on the IRS computer system and the address on the original lien notice did not agree. For *1* of the 17 notices, the NFTL was requested before the address update for the primary taxpayer posted to the IRS database. Therefore, no additional action was required. The IRS later reissued the lien notice to *1* of the 17 taxpayers; therefore, there were *1* cases in which the IRS did not send the lien notice to the taxpayer's last known address.

For *****1*****, the address on the IRS computer system was updated prior to the cycle (week) date the NFTL was prepared in the ALS. According to IRS procedures, a lien notice for a case in which the IRS computer system was updated before the cycle the NFTL was prepared should be sent to the updated address. However, *****1***** was not sent to *****1***** using the

¹⁶ A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.

¹⁷ 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.



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updated 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 IRS requested the NFTL.¹⁸

1 of the 17 cases involved *****1*****
 *****1*****
 *****1*****
 *****1*****
 *****1*****

When there is a joint liability, each spouse should be sent the same notice in separate envelopes addressed respectively to each spouse at his or her last known address, including spouses who share the same address and spouses who reside at different addresses.¹⁹ 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.²⁰ 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.²¹ 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 the NFTLs with joint liabilities. We contacted the IRS about the status of these programming changes and were informed that it is currently working on the programming changes for the systemic upload and use of the secondary taxpayer’s last known address for mailing lien notices for the NFTLs with joint liabilities. The key piece of programming that remains involves the ALS. An estimated date for implementation of the changes has not been set yet.

¹⁸ IRM 5.19.6.18.4 (Nov. 4, 2016).

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

²⁰ TIGTA, Ref. No. 2016-30-047, *Fiscal Year 2016 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures* (July 2016). The IDRS is an IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer’s account records.

²¹ 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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In November 2016, the ACS Support function IRM was updated to include what it terms a “courtesy copy” procedure.²² Specifically, the procedure allows ACS Support function employees to send a copy of the lien notice to a taxpayer’s new address if the new address was effective within two cycles 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.

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 function 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.²³

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 CDP webpage. TIGTA responded to the proposed corrective action by noting that providing additional information on the CDP webpage does not help taxpayers who do not receive a copy of their lien notice. TIGTA also noted that ACS Support function 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 a taxpayer’s newest address when that research has already been performed does not create an excessive burden on the IRS.

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.²⁴ If 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.²⁵ Additionally, employees are required to document the date undelivered lien notices are received in the ACS Support function. Documentation should be noted in the ACS action history codes (if the taxpayer’s account is still open) or in the Account

²² IRM 5.19.6.18.4 (Nov. 4, 2016).

²³ I.R.C. § 7803(a)(3) lists the 10 taxpayer rights, with the first being the right to be informed.

²⁴ IRM 5.19.6.18.4 (Nov. 4, 2016).

²⁵ IRM 5.19.6.18.4 (Nov. 4, 2016).



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Management Services narrative history (if the taxpayer's account is closed).²⁶ For the 120 returned lien notices addressed to taxpayers in our judgmental sample, we identified 42 cases without the required address verification of the undelivered lien notices within 14 calendar days of receipt in the ACS Support function.

ACS Support function procedures for working undelivered mail instruct employees to use the IDRS or the ALS to locate the full Social Security Number for the taxpayer.²⁷ In February 2018, the IRS updated procedures to specify that the employee must determine if the notice was addressed to the primary or secondary taxpayer, and if the notice is addressed to the secondary taxpayer, the employee will need to determine the Social Security Number of the secondary taxpayer for the address research. Without timely research of undelivered lien notices, the IRS cannot ensure compliance with the statutory requirement to provide the taxpayer a copy of the NFTL notice at his or her last known address.²⁸

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. Based on the 42 cases in this year's review without documentation of research, it appears that the IRM update is not working as intended. However, because the update was effective for approximately one-half of the time period of our audit, we will evaluate the effectiveness of these procedures in next year's review.

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 after the lien notice is sent to the taxpayer.²⁹ However, IRS management stated that there is no legal requirement to work notices addressed to a taxpayer's representative that are returned as undeliverable. Therefore, the IRS does not determine if undelivered notices were sent to the correct address or mail a new copy of the notice if the first notice was sent to the wrong address. During our FY 2017 review, management also stated that there is no

²⁶ 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.

²⁷ IRM 5.19.6.18.4 (Nov. 4, 2016).

²⁸ I.R.C. § 6320.

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



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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 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.³⁰ The IRS's policy could potentially affect a taxpayer who gives their representative the responsibility for all their tax matters. It is important that the taxpayer's representative be provided with copies of the NFTLs so that the representative can take appropriate actions to address and protect the taxpayer's interests. For example, taxpayers could miss the deadline to timely file for a CDP hearing.

Procedures designed to process undelivered lien notices were not consistently 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.³¹ For the 120 undelivered lien notices addressed to taxpayers in our judgmental sample, there were 57 cases in which the notice was undelivered but did not have the transaction code and action code on the Master File to indicate that the notices were returned as undelivered, as required.

IRS officials noted that the number of exceptions was significantly higher than in recent years and stated that the biggest factor for the increase was the lingering effects of the Government shutdown. The recovery from the shutdown focused resources heavily on priority work and undelivered mail historically has been a lower priority. When TIGTA's mail samples were selected, the campus operations had not fully recovered from the shutdown. However, 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.

During our FY 2018 review, IRS management stated 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

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

³¹ IRM 5.19.6.18.4 (Nov. 4, 2016).



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taxpayer. If one of these three action codes is not posted on the Master File to indicate a returned delivery status, it appears as if the taxpayer received the NFTL.

Recommendation

Recommendation 1: The Director, Collection Policy, Small Business/Self Employed Division, should revise IRM procedures to ensure that employees document on the Master File when notices are returned as undelivered.

Management's Response: The IRS partially agreed with the recommendation. The IRS stated that it already has procedures to document on the Master File when notices are returned because of an address issue. The IRM instructions for processing these undeliverable notices include researching the accuracy of the address on the notice and updating the delivery status on Master File. These procedures go beyond current statutory requirements. Expanding these procedures to include notices that the taxpayer did not claim or refused service would provide little, if any, benefit to the Government or the taxpayer.

Office of Audit Comment: Although the IRS stated that expanding its procedures to document when notices are returned would provide little benefit to the Government or taxpayer, the fact remains that 57 undelivered notices in our judgmental sample of 120 undelivered notices did not have an action code added to the Master File to indicate a returned delivery status, as required by IRS procedures. All 57 envelopes were stamped as "Return to sender – not deliverable as addressed" (meaning that they were not unclaimed or refused), which indicates that the current procedures are not being consistently followed. In addition, as we stated in an Office of Audit Comment for a similar recommendation in our FY 2017 report, when action codes for unclaimed or refused notices are not entered, it appears on the taxpayer's account as if the lien notice was successfully delivered.³² Because the codes are already in existence, we believe it would be best to use them in order to have an accurate and complete picture of the taxpayer's account.

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.³³ Specifically, if a hearing is requested under I.R.C. § 6330, the

³² TIGTA, Ref. No. 2017-30-070, *Fiscal Year 2017 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures* (Sept. 2017).

³³ I.R.C. § 6320(c) incorporates I.R.C. § 6330 provisions related 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)).



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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.”³⁴ Tests of a random sample of 45 open NFTL appeal cases from the 6,605 open NFTL appeal cases as of September 2018 showed that the IRS suspended or did not take levy action that involved the same tax period as the NFTL under appeal, except for *1* automated levies made under the Federal Payment Levy Program, which were issued on taxpayers for a tax period on which NFTL appeals were timely filed and determinations were still pending.³⁵ In *1* cases, the Federal Payment Levy Program levies were issued after the taxpayer timely requested an NFTL CDP hearing and before an Office of Appeals determination letter was issued.

IRS management previously stated 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. Management also 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 that they believe Treasury Decision 8979, which provides that the levy prohibition is not incorporated by I.R.C. § 6320(c), affirms that the levy prohibition for CDP NFTL hearings is not incorporated by IRC § 6320(c).³⁶ Therefore, IRS management believes these *1* cases are not violations per the statute and Treasury Regulations.

Additionally, the *1* 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. 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.

³⁴ I.R.C. § 6330(e)(1).

³⁵ 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.

³⁶ 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 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. 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).³⁷ 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.³⁸ 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 function of all representatives that should be provided with copies of the NFTL.³⁹ Tests of a statistically valid sample of 116 NFTLs included 21 cases for which the taxpayers had representatives authorized to receive notifications at the time the NFTLs were requested. Although TIGTA identified IRS errors with taxpayer representatives not receiving notification when authorized in our five previous reports, we did not identify any errors this year.⁴⁰

³⁷ The CAF contains information about the types of authorizations taxpayers have given their representatives for their tax returns.

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

³⁹ IRM 5.12.6.3.10 (Jan. 19, 2018).

⁴⁰ See Appendix VI for the notification errors found in our five previous reports.



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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. Section (§) 6320(a) and related internal guidelines.

A. Selected a statistically valid random sample of 116 NFTLs for review from an ALS extract of all the NFTLs filed by the IRS nationwide between July 1, 2017, and June 30, 2018.¹ A contracted statistician assisted with developing the projections based on our findings within this statistically valid random sample.

Population:	404,475
Confidence Level:	90 percent
Expected Rate of Occurrence:	2 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 indicators (Transaction Code 960) for all sample cases.²
2. Reviewed ALS history screens for accounts with CAF indicators to determine whether notices were mailed to taxpayers' representatives.

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

² The CAF contains information about the types of authorizations taxpayers have given their representatives for their tax returns. 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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- 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 of unprocessed (unopened) mail containing 120 undelivered lien notices returned to the Fresno and Cincinnati Campuses in March 2019 and recorded the taxpayer's name, address, Social Security Number, Serial Lien Identification number, and date received at the respective campus mailroom.³ 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.⁴
 - C. For each sample case, reviewed taxpayer audit trails and 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 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 set forth in I.R.C. § 6330(e) as they relate to any levy action involving the same tax period as the § 6320 NFTL.
- A. Obtained an extract of open Appeals cases (as of September 2018) for review from an Appeals Centralized Database System extract of all open NFTL appeals. There were 6,605 Appeals cases for which the appeal pertained to the NFTL.⁵
 - B. Selected a statistically valid random sample of 45 Appeals cases for review from the 6,605 open Appeals cases.

³ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. A Serial Lien Identification number is a unique number that the ALS automatically assigns to lien records. 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.

⁴ 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.

⁵ 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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- | | |
|------------------------------|-------------|
| Population: | 6,605 |
| Confidence Level: | 90 percent |
| Expected Rate of Occurrence: | 2 percent |
| Precision Rate: | ± 5 percent |
- C. Determined if the sampled appeals cases adhered to § 6330(e) by ensuring that the IRS suspended any levy action that involved the same tax period as the NFTL.
- D. Determined what other enforcement actions (if any) the IRS considers when complying with § 6330(e) for NFTL appeals.
- E. Determined the number of equivalent hearings requested and whether any levies were made for these cases.
- F. 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 IRS National Headquarters.
- A. Determined if the applicable IRM sections were revised to clarify that copies of notices and other written communications should ordinarily only be provided to representatives when and for who taxpayers have checked the box expressly requesting the IRS send copies of notices to them, as recommended in TIGTA's FY 2018 Liens report.⁶
- B. 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 TIGTA's FY 2016 report.⁷
- C. Determined if the IRS included additional information about the equivalent hearing process on the CDP public webpage, as stated in the management response to TIGTA's FY 2017 Liens report.⁸
- D. Determined whether IRS management has implemented or is considering a suspension of systemic liens.

⁶ TIGTA, Ref. No. 2018-30-080, *Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (Sept. 2018).

⁷ TIGTA, Ref. No. 2016-30-047, *Fiscal Year 2016 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (July 2016).

⁸ TIGTA, Ref. No. 2017-30-070, *Fiscal Year 2017 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (Sept. 2017).



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- E. Determined the number of NFTLs filed for taxpayers who were in currently not collectible status.
- F. Determined the number of taxpayers with liabilities above thresholds for which liens were not filed.

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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Appendix II

Major Contributors to This Report

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



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Appendix III

Report Distribution List

Deputy Commissioner for Services and Enforcement
Director, Collection, Small Business/Self-Employed Division
Director, Campus Collection, Small Business/Self-Employed Division
Director, Collection Policy, Small Business/Self-Employed Division
Director, Field Collection, Small Business/Self-Employed Division
Director, Headquarters Collection, Small Business/Self-Employed Division
Director, Enterprise Audit Management



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Appendix IV

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

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

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

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

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

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

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

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

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



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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.



Appendix V

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.¹ Employees at the Cincinnati Campus process the NFTLs and respond to taxpayer inquiries using the ALS.

Integrated Collection System (ICS) – an IRS computer system with applications designed around each of the main collection tasks such as opening, 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.²

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

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



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Appendix VI

*Confidence Intervals for Error Rates Reported on
Taxpayer Representatives Not Receiving Notification
During Fiscal Years 2014 Through 2018*

***Two-sided 90 percent confidence intervals using the
exact binomial method for the exception rate
for FYs 2014 through 2018***

Report Fiscal Year	Sample Cases Requiring Representative Notification	Sample Cases Not Receiving Representative Notification	Error Rate	Confidence Interval
2014	38	*1*	3%	Between 0.14% and 11.90%
2015	36	6	17%	Between 4.51% and 27.07%
2016	37	6	16%	Between 6.11% and 26.32%
2017	47	8	17%	Between 7.31% and 24.30%
2018	47	3	1.8%	Between 0.5% and 4.7%

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



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Appendix VII

*Statutory Lien Reports Issued During
Fiscal Years 2014 Through 2018*

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* (Jun. 2015).

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

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

TIGTA, Ref. No. 2018-30-080, *Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (Sept. 2018).



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Appendix VIII

Management's Response to the Draft Report

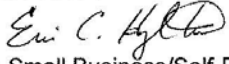


COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

September 4, 2019

MEMORANDUM FOR MICHAEL E. McKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Eric C. Hylton 
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2019 Statutory Review of
Compliance with Notice of Federal Tax Lien Filing Due Process
Procedures (Audit # 201930007)

Thank you for the opportunity to review the above subject draft report, which evaluated whether the IRS is complying with the statutory requirements to notify taxpayers when a notice of federal tax lien (NFTL) is filed. The NFTL 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, and the timely and proper issuance of NFTL collection due process notices that explain to the taxpayer their rights regarding the NFTL filing is of utmost importance.

We are committed to conducting our collection programs in a manner that is consistent with the taxpayer's statutory right to collection due process. Treasury Decision 8979 affirms that levy actions undertaken through the Federal Levy Payment Program are not suspended when the taxpayer timely requests an NFTL collection due process hearing. TIGTA's suggestion that it is our belief that such actions are not suspended does not give proper regard to agency rulemaking and the safeguards afforded to formal rulemaking provided by the Administrative Procedures Act.

However, we appreciate your recognition that we timely and correctly notified taxpayers of NFTL filings and their appeal rights. This is the seventh time in eight years that TIGTA found no errors with our notifications. This year, TIGTA also found we properly sent copies of the notices to authorized taxpayer representatives. Even with this high rate of compliance with our procedures, 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 accordance with a recommendation in last year's audit, we revised Internal Revenue Manual (IRM) 5.12.6.3.10 to clarify that, ordinarily, the IRS will send a copy of the Collection Due Process lien notice to a representative only if the taxpayer checked the



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box on Form 2848, *Power of Attorney and Declaration of Representative*, indicating copies of notices should be systemically sent to the representative.

We agree in part with this year's recommendation that we revise IRM procedures to ensure that employees document on the Master File when notices are returned as undelivered. We already have procedures to document the Master File when notices are returned because of an address issue. The IRM instructions for processing these undeliverable notices include researching the accuracy of the address on the notice and updating the delivery status on Master File. Working undelivered mail is not a priority, particularly when our resources have generally declined over the last decade. Nevertheless, our procedures go beyond the current statutory requirements. Expanding the existing procedures to include notices that are returned because the taxpayer did not claim the notice or refused service would require additional resources that we do not have and provide little, if any, benefit to the Government or the taxpayer.

Attached is a detailed response outlining our response to your recommendation. If you have any questions, please contact me or Paul Mamo, Director, Collection Operations, Small Business/Self-Employed Division.

Attachment



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Attachment

RECOMMENDATION 1:

The Director, Collection Policy, Small Business/Self Employed Division, should revise IRM procedures to ensure that employees document on the Master File when notices are returned as undelivered.

CORRECTIVE ACTION:

We agree in part. We already have procedures to document on the Master File when notices are returned because of an address issue. The IRM instructions for processing these undeliverable notices include researching the accuracy of the address on the notice and updating the delivery status on Master File. Our procedures go beyond the current statutory requirements. Expanding the existing procedures to include notices that are returned because the taxpayer did not claim the notice or refused service would provide little, if any, benefit to the Government or the taxpayer.

IMPLEMENTATION DATE:

Implemented

RESPONSIBLE OFFICIAL:

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

CORRECTIVE ACTION MONITORING PLAN:

Not Applicable