

**ACCOUNTAX SCHOOL OF BUSINESS,
INCORPORATED**

A Profile in Continuing Professional Education

**Representing Clients During the
Collections Process**

A. Extension of time to pay (e.g., Form 1127-A)

If a taxpayer cannot pay the full amount of taxes owed, they should still file the return and pay as much as they can by the April 17 deadline to avoid penalties and interest. Taxpayers should also contact the IRS to ask about payment options. Here are three alternative payment options to consider and a tip on penalty relief under the IRS Fresh Start Initiative.

- **B. Installment agreements**

- If a taxpayer can't pay in full at one time and can't get a loan, they may want to apply for a monthly payment plan. If they owe \$50,000 or less, they can apply using the IRS Online Payment Agreement application. It's quick and easy. If approved, IRS will notify the taxpayer immediately. The taxpayer can arrange to make payments by direct debit. This type of payment plan helps avoid missed payments and may help avoid a tax lien that would damage the credit rating.

- **C. Offer in compromise (e.g., doubt as to liability, collectability or effective tax administration)**

The IRS Offer-in-Compromise program allows you to settle your tax debt for less than the full amount you owe. An OIC may be an option if a taxpayer can't fully pay their taxes through an installment agreement or other payment alternative. The IRS may accept an OIC if the amount offered represents the most IRS can expect to collect within a reasonable time. Taxpayers may use the OIC Pre-Qualifier Tool to see if they are eligible before they apply. The tool will also direct you to other options if an OIC is not right for you. Keep in mind, all taxpayer do not necessary qualify for an Offer and Compromise. This is a time consuming process.

D. Fresh Start. If taxpayers are struggling to pay their taxes, the IRS Fresh Start initiative may help them. Fresh Start makes it easier for individual and small business taxpayers to pay back taxes and avoid tax liens.

The offer in compromise is a means by which to negotiate the principal amount of the tax deficiency where the taxpayer's financial position makes it unlikely that the full amount of tax, penalty, and interest will be collected.

Such offers may include reductions in tax or penalty amounts, or installment payment plans (perhaps for the reduced amounts). The IRS can waive the user fee for an offer in compromise, and allows a delay in the payment schedule, if the taxpayer's income level is modest.

- **Part II Case being reported Currently Not Collectible (e.g., reasons and reactivation)**
- Ordinarily, the statutory time within which the IRS may engage in collection activities is suspended during the period that the OIC is under consideration and is further suspended if the OIC is rejected by the IRS and where the taxpayer appeals the rejection to the IRS Office of Appeals within 30 days from the date of the notice of rejection.

If the IRS accepts the taxpayer's offer, the IRS expects that the taxpayer will have no further delinquencies and will fully comply with the tax laws. If the taxpayer does not abide by all the terms and conditions of the OIC, the IRS may determine that the OIC is in default. For doubt as to collectibility and effective tax administration OICs, the terms and conditions include a requirement that the taxpayer timely file all tax returns and timely pay all taxes for 5 years from the date of acceptance of the OIC.

Part III Collection appeals program (e.g., denial of installment agreements, discharge applications)

If a taxpayer is not satisfied with the result reached at the agent level, the next step is to proceed to the Appeals Division of the IRS. Such a request must be accompanied by a written protest, except in the following cases.

The proposed tax deficiency does not exceed \$10,000 for any of the tax periods involved in the audit. The Deficiency resulted from a correspondence or office type audit (i.e., not as a result of a field audit).

- **A. Collection appeals and due process (e.g., lien and levy)**
- CDP procedures are available to the taxpayer if they received any one of the following notices:
 - A Notice of Federal Tax Lien
 - A Notice of Intent to Levy
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Part IV Collection notice and Notice of Federal Tax Lien

- **CDP** is available if you receive one of the following notices:
 - Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320 • Final Notice - Notice of Intent to Levy and Notice of Your Right to a Hearing • Notice of Jeopardy Levy and Right of Appeal • Notice of Levy on Your State Tax Refund – Notice of Your Right to a Hearing • Post Levy Collection Due Process (CDP) Notice

A.THE FEDERAL TAX LIEN PROCESS

Definition of a Federal Tax Lien

The federal tax lien gives the IRS a legal claim to the taxpayer's property for the amount of the tax debt. The lien can be enforced for the amount of the taxpayer's liability.

B. Filing a Notice of Federal Tax Lien

Filing the Notice of Federal Tax Lien is necessary to establish priority rights against certain other creditors. Usually the government is not the only creditor to whom the taxpayer owes money. Other creditors may also hold liens or secured rights against a taxpayer's assets in the amount of indebtedness. By filing the Notice of Federal Tax Lien, other creditors are publicly noticed that the United States government has a claim against all property, and any rights to property, of the taxpayer.

This includes property owned at the time of the notice of lien is filed and any acquired thereafter. This notice is used by courts to establish priority in many situations, including bankruptcy proceedings or sales of real estate.

C. Releasing a Lien

The IRS issues a *Release of the Notice of Federal Tax Lien* no later than 30 days after the taxpayer satisfies the tax due (including interest and other additions) by paying the debt or the liability becomes unenforceable, or no later than 30 days after the IRS accepts a bond guaranteeing payment of the debt.

Except as noted above, after a notice of lien is filed, the IRS cannot issue a Certificate of Release of Federal Tax Lien until the taxes, penalties, interest and recording fees are paid in full. The taxpayer must pay all fees that a recording office charges to file and release the lien.

D. Self-Releasing Liens

A lien usually releases automatically 10 years after a tax is assessed, if the statutory period for collection has not been extended and the IRS does not extend the effect of the lien by re-filing it. When a lien is self-released, the Notice of Federal Tax Lien itself is the release document.

The lien is self-released if the:

- The date for re-filing has passed and
- IRS has not re-filed the original Notice of Federal Tax Lien.

E. Partial Releases

Many notices of lien are filed showing more than one taxpayer. These are situations where the tax liability is owed by more than one person. Occasionally, one of the persons shown on the notice of lien resolves all or part of their liability, but the other person(s) shown on the notice of lien still owes the liability. In these situations, a *Release of Notice of Federal Tax Lien* annotated “Partial” may be issued.

F. Revocation of Release of Notice of Federal Tax Lien

If the IRS erroneously or improvidently issues a *Release of the Notice of Federal Tax Lien*, issues a release in connection with a collateral agreement in connection with an offer-in-compromise which has been breached, or does not timely re-file the notice of lien thus allowing it to inadvertently self-release, the IRS may revoke the release and prospectively establish its lien priority. A *Revocation of Certificate of Release of Federal Tax Lien* is forwarded for recordation followed by a new *Notice of Federal Tax Lien*.

G. Withdrawal of Notice of Federal Tax Lien

The IRS may withdraw a filed *Notice of Federal Tax Lien* if the:

- Notice was filed prematurely or not according to IRS procedures;
- Taxpayer entered into an installment agreement to pay the debt on the notice of lien and the agreement did not provide for a notice of lien to be filed;
- Withdrawal will expedite collecting the tax; or • Withdrawal would be in the taxpayer's best interest and the best interest of the government.

H. Certificate of Discharge

If the taxpayer is transferring ownership of property subject to a Federal tax lien, the taxpayer may apply for a Certificate of Discharge. Each approved application discharges from the federal tax lien the property specifically described in the certificate. When certain conditions exist, a third party may also request a Certificate of Discharge. See IRS Publication 783: Instructions on How to Apply for a Certificate of Discharge of Property from the Federal Tax Lien.

I. Certificate of Subordination

Creditors may refuse to extend credit to the taxpayer unless their encumbrance will be satisfied before the federal tax lien. Subordination is the process that can make a federal tax lien secondary to another encumbrance with regard to specific property. See IRS Publication 784: *How to Prepare Application for Certificate of Subordination of Federal Tax Lien.* .

- **J. Certificate of Non Attachment**
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- If a third party believes a *Notice of Federal Tax Lien* has been filed against them in error, the third party can request a *Certificate of Nonattachment*. This typically occurs when the name of the third party is similar or identical to the name of the taxpayer shown on the *Notice of Federal Tax Lien*. See IRS Publication 1024: *How to Prepare Application for Certificate of Nonattachment of Federal Tax Lien*.

- **K. Other Lien Documents**
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- The IRS may file other lien documents to address specific situations. See Appendix B for a list of lien documents authorized by the IRS. Documents such as Certificates of Release of Federal Tax Lien and Withdrawal of Filed Notice of Federal
- Tax Lien are normally filed by the IRS. In certain cases, the IRS may provide an original certificate or notice to a taxpayer or financial institution for filing.

Part V Levy and seizure of taxpayer's property

A levy is a legal seizure of your property to satisfy a tax debt. Levies are different from liens. A lien is a claim used as security for the tax debt, while a levy actually takes the property to satisfy the tax debt.

If a taxpayer does not pay their taxes (or make arrangements to settle a debt), the IRS may seize and sell any type of real or personal property that the taxpayer has an interest in.

The IRS can seize and sell property The IRS can levy property held by someone else, wages, retirement accounts, dividends, bank accounts, licenses, rental income, accounts receivables, the cash loan value of your life insurance, or commissions).

A. Collection Appeals Program (CAP) is available for the following actions:

- Before or after the IRS files a Notice of Federal Tax Lien
- Before or after the IRS levies or seizes your property
- Termination, or proposed termination, of an installment agreement
- Rejection of an installment agreement
- Modification, or proposed modification, of an installment agreement

Part VI. Adjustments to the taxpayer's account (e.g., abatements)

- A. The IRS can abate interest if it is caused by IRS errors or delays. The IRS will abate the interest only if there was an unreasonable error or delay in performing a managerial or ministerial act.

Managerial act. The term “managerial act” means an administrative act that occurs during the processing of your case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel. A decision regarding the proper application of federal tax law (or other federal or state law) is not a managerial act. See Regulations section 301.6404-2 for more information.

Ministerial act. The term “ministerial act” means a procedural or mechanical act that does not involve the exercise of judgment or discretion and that occurs during the processing of your case after all prerequisites of the act, such as conferences and review by supervisors, have taken place. A decision regarding the proper application of federal tax law (or other federal or state law) is not a ministerial act. See Regulations section 301.6404-2 for more information

- **Part VII. Requesting audit reconsideration (e.g., documents and forms)**
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- An Audit Reconsideration is a process used by the Internal Revenue Service to help taxpayers when they disagree with the results of an IRS audit on the tax return, or a return created for the taxpayer for the IRS because the taxpayer did not file a tax return as authorized by the Internal Revenue Code 6020(b).

- **Part VIII IRS Collection Summons (e.g., purposes)**

If the IRS has trouble gathering information to determine or collect taxes, they may serve a summons. A summons legally compels the taxpayer or a third party to meet with an officer of the IRS and provide information, documents, and/or testimony.

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If the taxpayer is responsible for a tax liability and the IRS serves a summons, the taxpayer may be required to:

Testify,

Bring books and records to prepare a tax return, and/or

Produce documents to prepare a Collection Information Statement, Form

433-A or Form 433-B

Part IX Collections statute of limitations

- Pursuant to section 6502 of the Code, the IRS generally has 10 years from the date of assessment to collect a timely assessed tax liability. Prior to January 1, 2000, the effective date of section 3461 of RRA 1998, section 6502 permitted the IRS to enter into agreements with the taxpayer to extend the period of limitations on collection at any time prior to the expiration of the period provided in section 6502.