



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.12.2

JULY 12, 2024

EFFECTIVE DATE

(07-12-2024)

PURPOSE

- (1) This transmits revised IRM 5.12.2, *Federal Tax Liens, Notice of Lien Determinations*.

BACKGROUND

- (1) An editorial revision of IRM 5.12.2.

MATERIAL CHANGES

- (1) Editorial updates to references, links, example dates, and terminology throughout. Other formatting changes made to comply with current standards.
- (2) 5.12.2.1. Expanded previous subsection to include internal controls and retitled to Program Scope and Objectives.
- (3) 5.12.2.3.2. (1) Split previous table into two tables for 508 compliance.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.12.2 dated November 9, 2015.

AUDIENCE

SBSE Collection, Taxpayer Service (fka W&I), Centralized Lien Operation, and Appeals

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5.12.2

Notice of Lien Determinations

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5.12.2.1
(07-12-2024)
Program Scope and Objectives

- (1) Federal tax liens exist by operation of law. A Notice of Federal Tax Lien (NFTL) is a document filed with state and local jurisdictional recording offices to alert the public of the lien's existence. The NFTL filing determination is the decision whether to file, defer the filing, or not file an NFTL.
- (2) **Purpose:** This IRM provides guidance for determining if and when a notice of federal tax lien (NFTL) should be filed.
- (3) **Audience:** This IRM is used by IRS personnel authorized to file an NFTL.
- (4) **Policy Owner:** Director, Collection Policy. Small Business/Self-Employed Division (SBSE).
- (5) **Program Owner:** Collection Policy is the program office responsible for overseeing the lien program and the guidance for filing an NFTL.
- (6) **Primary Stakeholders:** SBSE Collection and Taxpayer Service (fka Wage & Investment) employees working balance due cases. Other functions that are affected by, or have input to, the procedures include Chief Counsel, Appeals, and the Taxpayer Advocate Service (TAS).
- (7) **Program Goals:** To protect the interests of the government when a federal tax debt exists by providing policy and procedural guidance to IRS personnel, on topics such as NFTL filing determinations, that is consistent with federal lien law.

5.12.2.1.1
(07-12-2024)
Background

- (1) The Internal Revenue Code (IRC 6321) states: "if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount ... shall be a lien in favor of the United States upon all property and rights to property..." This federal tax lien, which is sometimes called the "statutory lien," is the basis for the government's claim against the taxpayer's property, including current and future rights to property.
- (2) While the federal tax lien protects the government's interest, a Notice of Federal Tax Lien (NFTL) is needed for the federal tax lien to compete with certain classes of creditors (IRC 6323). The NFTL puts third parties on notice of the government's outstanding lien against the taxpayer's property and rights to property. It ensures the federal tax lien is addressed when property attached by the lien is sold or used as collateral. Unless the IRS files its NFTL first, the holder of a security interest, mechanic's lienor, and judgment lien creditor will have priority over the federal tax lien. If the IRS files an NFTL, the tax lien will generally have priority to a taxpayer's after-acquired property.

5.12.2.1.2
(07-12-2024)
Authority

- (1) Authorities relative to federal tax liens are found in the following IRC and Treasury Regulations sections.

26 U.S. Code Section	Code of Federal Regulations	Description
IRC 6321	26 CFR 301.6321-1	Lien for taxes
IRC 6322	no regulation	Period of lien
IRC 6323	26 CFR 301.6323(a)-1	Validity and priority against certain persons

26 U.S. Code Section	Code of Federal Regulations	Description
IRC 6324	26 CFR 301.6324-1	Special liens for estate and gift taxes
IRC 6324A	26 CFR 301.6324A-1	Special lien for estate tax deferred under section 6166
IRC 6324B	no regulation	Special lien for additional estate tax attributable to of farm, etc., valuation
IRC 6326	26 CFR 301.6326-1	Administrative appeal of liens

(2) The following Policy Statements and Delegation Orders regulate NFTL filing.

- IRM 1.2.1.6.2, *Policy Statement 5-2, Collecting Principles*
- IRM 1.2.1.6.13, *Policy Statement 5-47, Notices of lien generally filed only after taxpayer is contacted in person, by telephone or by notice*
- IRM 1.2.2.6.4, *Delegation Order 5-4, Federal Tax Lien Certificates*

5.12.2.1.3
(07-12-2024)
**Roles and
Responsibilities**

- (1) The Director, Collection Policy is responsible for overseeing the policies and procedures regarding NFTLs.
- (2) Collection Policy, Enforcement is responsible for development and delivery of policies pertaining to the lien program.
- (3) Employees authorized to make NFTL filing determinations are responsible for ensuring procedures are properly followed.
- (4) Managers are responsible for ensuring employees are duly delegated to make NFTL filing determinations and that their actions are in accordance with policy and procedures.
- (5) Other roles and responsibilities related to the lien program can be found in IRM 5.12.1.5, *IRS Organizations Working Lien Issues*, and its subsections.

5.12.2.1.4
(07-12-2024)
**Program Management
and Review**

- (1) NFTL activity is reviewed and documented in numerous ways, including those shown on the following table.

Type	Source	Occurrence	Description
Report	IRS.gov	Annual	NFTL program numbers are published yearly in the <i>IRS Data Book: Collections, Activities, Penalties, and Appeals</i> (https://www.irs.gov/uac/enforcement-collections-penalties-criminal-investigation), Table 25
Review	NQRS	On-going	NFTL quality for Field Collection is monitored through reviews conducted using the Embedded Quality Job Aid Field Collection standards identified with Attribute 410, NFTL Determination/ Filing and IRM 5.13.1, <i>Embedded Quality Collection Field Organizations Administrative Guidelines</i>

- (2) For balance due modules assigned to field revenue officers (ROs), the Integrated Collection System (ICS) tracks the status of NFTL filing determinations and notifies the RO when a determination date is due.
- (3) Management ensures compliance with policy and procedures through monthly reports, case reviews, and operational reviews.

5.12.2.1.5
(07-12-2024)

Program Controls

- (1) IRM 1.2.2.6.4, *Delegation Order 5-4, Federal Tax Lien Certificates*, stipulates the IRS positions authorized for lien activities.
- (2) Access to systems used in the NFTL process is controlled following standard access guidelines through the Business Entitlement Access Request System (BEARS, formerly Online 5081). The primary systems used when making NFTL determinations include, but are not limited to:
 - Integrated Collection System (ICS)
 - Account Management System (AMS)
 - Automated Lien System (ALS)

Note: User Guides for the systems should be consulted for specific instructions on their usage.

- (3) Closed records associated with NFTL determinations are retained in accordance with Document 12990, *Records Control Schedules*, the *Internal Revenue Service Records Control Schedule (RCS 28)*, *Tax Administration - Collection*.

5.12.2.1.6
(07-12-2024)

Terms/Definitions/ Acronyms

- (1)) The table below list key terms used in this section.

Term	Definition
Lien	The federal tax lien (aka "statutory lien") that arises when tax is assessed, demand is made, and the liability is not paid.
Notice of Federal Tax Lien	The document filed in the public record to put third parties on notice of the existence of the federal tax lien. One notice of lien can list as many as 15 individual statutory liens.

Caution: The term "lien" is often used generically by external and internal customers when referring to the NFTL. Also, certain systems broadly use "lien" in their functional titles when referring to NFTL actions (e.g., "lien determination"). It is important to be aware of the legal distinctions between the NFTL and statutory federal tax lien. See IRM 5.12.1, *Lien Program Overview*, and IRM 5.17.2, *Federal Tax Liens*.

- (2) The table below lists common acronyms used in the lien program and throughout this IRM.

Acronym	Definition
ALS	Automated Lien System
CLO	Centralized Lien Operation
ICS	Integrated Collection System
NFTL	Notice of Federal Tax Lien
SLID	Serial Lien Identification number

- (3) See IRM Exhibit 5.12.1-2, *Glossary of Common Acronyms in IRM 5.12*, for a listing of other terms and acronyms used in federal tax lien program.

5.12.2.1.7
(07-12-2024)

Related Resources

- (1) The form used to provide notice of the lien is Form 668(Y) (C), *Notice of Federal Tax Lien*. The form, when properly annotated, is also used for NFTL variations, including amended and special condition NFTLs.

Note: Form 668(Y)(c) is a computer-generated form through ALS. Manually prepared templates may show Form 668(Y).

- (2) IRM 5.17.2, *Legal Reference Guide for Revenue Officers, Federal Tax Liens*, provides additional details about lien law such as the types of property subject to the federal tax lien and the priority of the federal tax lien versus other competing encumbrances.
- (3) IRM 5.12.1, *Lien Program Overview*, provides additional information, websites, and job aids related to the lien program.
- (4) Links to tools and references to assist IRS employees with lien processes may be found on the *SBSE Collection* page on IRS Source (<https://irssource.web.irs.gov/SBSE/Pages/Collection.aspx>). Similar information for taxpayers may be found on the *Understanding a Federal Tax Lien* page on IRS.gov (<https://www.irs.gov/businesses/small-businesses-self-employed/understanding-a-federal-tax-lien>).
- (5) This IRM is for procedural use and does not provide detailed instruction on the use of any system. User Guides such as the ICS User Guide should be consulted, as needed.
- (6) Taxpayer rights with regard to IRS processes are stipulated in IRC 7803(a)(3) and on the *Taxpayer Bill of Rights* intranet page (<https://irssource.web.irs.gov/SitePages/TaxpayerBillOfRights.aspx>). Specific rights regarding lien processes are referenced throughout this IRM, as needed.

5.12.2.2
(11-09-2015)

Taxpayer Contact

- (1) The IRS is required to make reasonable efforts to contact the taxpayer before filing an NFTL. The efforts to contact the taxpayer are to advise that an NFTL may be filed if full payment is not made when requested. Issuance of the statutory assessment notice and the balance due notices sent during the collection process constitute reasonable efforts as each of these notices provide 10 or more days for the taxpayer to pay the liability in order to avoid additional penalty and interest charges.

Exception: For modules **manually accelerated** (i.e. not systemically accelerated) directly into inventory thus by-passing some notice streams, issue

Letter 728, *Accounts Outstanding - Payment Request* to allow the taxpayer the opportunity both to pay the liability and be made aware of the revenue officer assignment. The Letter 728 is not needed where a Form 3552, *Prompt Assessment Billing Assembly* has been issued for a jeopardy or prompt assessment.

- (2) While the notices sent in the notice stream are sufficient for filing an NFTL, *generally* when an NFTL has not been previously filed the revenue officer's determination with respect to the filing of the NFTL will be done in conjunction with the initial actual contact or initial attempted contact. Contact (request for full payment) may be made by:
 - a. Field contact (preferably). In situations where attempts at personal contact have been unsuccessful, the case history should be documented accordingly.
 - b. Telephone.
 - c. Mailing a notice or letter to the last known address (when appropriate). See IRM 5.11.1.3.2.1, **Last Known Address**, for "last known address" description.
- (3) Examples of notices and publications that advise taxpayers that an NFTL may be filed include but are not limited to:
 - a. Publication 594 (IRS Collection Process)
 - b. CP 501 (Reminder Notice - Balance Due)
 - c. CP 504 (Balance Due - Urgent Notice)
 - d. CP 523 (Installment Agreement Default Notice)
 - e. Letter 1058 (Final Notice - Notice of Intent to Levy and Notice of Your Right to a Hearing)
 - f. ACS letter LT-39 (Reminder Notice)
 - g. ACS letter LT-11 (Final Notice of Intent to Levy and Your Notice of Your Right to Hearing)
- (4) If full payment is not received during initial contact, explain to the taxpayer that a notice of the lien may be filed. See IRM 5.12.2.6, **NFTL Filing Criteria**, for notice filing criteria. Explain the possible effects of the NFTL filing on normal business operations and their credit rating.

Reminder: When giving a deadline for a taxpayer response, take into consideration providing adequate time for that response. See also IRM 5.12.2.2(1), **Taxpayer Contact**, and IRM 5.1.10.9, **Timely Follow-Ups**.

- (5) If the taxpayer disagrees with the proposed notice filing, advise the taxpayer of their right to appeal under the Collection Appeals Program (CAP). Also explain to the taxpayer their right to request a Collection Due Process (CDP) hearing under IRC 6320 **once the notice has been filed**. See IRM 5.12.6, **Appeals Process Involving Liens**.

5.12.2.3 (10-14-2013) **Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations)**

- (1) The Notice of Federal Tax Lien (NFTL) filing determination is a process of deciding whether to file, defer, or not file an NFTL. If the decision is to file, then follow the filing criteria and thresholds found in IRM 5.12.2.6, *NFTL Filing Criteria*. If the filing thresholds are not met, then the decision may need to be revisited once the thresholds are met.

- (2) IRC 6320 requires the IRS to ensure collection actions, including the decision to file an NFTL, balance the need for efficient collection of the tax with legitimate concerns of the taxpayer that actions be no more intrusive than necessary. To that end, review the factors contained in this IRM section and related subsections to reach the appropriate decision.
- (3) Filing determination considerations are listed below. It is not an all-inclusive list but it, as well as this IRM as a whole, provides guidance for the varying circumstances experienced when working with taxpayers.
 - a. Taxpayer compliance history.
 - b. Taxpayer qualification for a determination exception. See IRM 5.12.2.3.1, *Determination Requirement Exceptions*.
 - c. Protection of the government's interest, including exigent circumstances; where the filing of an NFTL is necessary to protect the those interests. See IRM 5.12.1.2, *Introduction to Liens*, and IRM 5.17.2.3.1, *Purpose and Effect of Filing Notice*.
 - d. Taxpayer qualification for a determination that an NFTL filing will hamper collection. See IRM 5.12.2.4.3(3), *Defer Criteria*.

5.12.2.3.1
(10-14-2013)

**Determination
Requirement Exceptions**

- (1) **An NFTL filing determination is not required** on Guaranteed/Streamlined Installment Agreements or In-Business Trust Fund Express Agreements.
- (2) If a revenue officer finds that an NFTL determination is needed for a Guaranteed/Streamlined Installment Agreement to protect the government's interest (such as in the case of an impending bankruptcy, or other exigent circumstances), follow the instructions in IRM 5.12.2.3.2, *Determination Requirements* and IRM 5.12.2.6, *NFTL Filing Criteria*. Also, an NFTL determination to file may be made on In-Business Trust Fund Agreements if necessary to protect the government's interest, such as:
 - a BMF entity has defaulted on an installment agreement in the current year or prior calendar years, or
 - a BMF entity meets the definition of a **pyramiding** trust fund taxpayer as described in IRM 5.7.8.4, *Pyramiding Taxpayers*.

Reminder: Where an NFTL filing determination is not required, but a decision to file an NFTL has been made, document the justification in the case history including the manager's concurrence.

5.12.2.3.1.1
(11-09-2015)

**Affordable Care Act's
(ACA) Shared
Responsibility Payment
(SRP) Exception**

- (1) **Do not** make an NFTL filing determination on Master File Tax Code (MFT) **SRP/MFT 35** modules or the mirrored **SRP/MFT 65** modules.
Note: MFT 35, tax class 6 is still used on Non-Master File (NMF) for partnership returns Forms 1065.
- (2) While the IRC 6321 statutory lien arises on SRP/MFT 35 and MFT 65 assessments, these assessments are not subject to NFTL filing under IRC 6323. (See IRC 5000A(g)(2)(B).)

5.12.2.3.2
(10-14-2013)

**Determination
Requirements**

- (1) NFTL filing determinations must be made on all balance due cases including reactivated balance due cases within established time frames.

- a. For taxpayers residing in the United States or its territories, follow the guidelines below:

Taxpayers Residing in the United States and its Territories

- a. The NFTL filing determination is due 10 calendar days from the initial attempted contact or initial actual contact date, whichever date is earlier.
- b. The request for NFTL filing or the appropriate non-filing documentation must be prepared within 10 calendar days of initial attempted contact or initial actual contact, with the taxpayer or taxpayer representative.
- c. If the revenue officer fails to make a timely initial or attempted contact, the NFTL determination is due 10 calendar days from the date the initial contact was actually due. The revenue officer will document the ICS history with the reason for making the NFTL filing determination prior to taxpayer contact.

- b. For taxpayers residing outside the U.S. or its territories, follow the guidelines below:

Taxpayers Residing in Foreign Countries

- a. The NFTL filing determination is due 30 calendar days from the initial attempted contact or initial actual contact date, whichever date is earlier.
- b. The request for NFTL filing or the appropriate non-filing documentation must be prepared within 30 calendar days of initial attempted contact or initial actual contact.
- c. The NFTL determination is due 30 calendar days from the date the initial contact was actually due if the revenue officer fails to make a timely initial or attempted contact.

Note: See IRM 5.1.10.3, *Initial Contact*.

Reminder: Group Manager approval is required when deferring an NFTL filing more than 120 days from initial or last taxpayer contact. See IRM 5.12.2.5.3(2)(d), *NFTL Do-Not-File and Defer Determination Approvals*.

- (2) Additional assessments (usually balance due modules) are often made and then assigned to a case on ICS after the initial contact is made or the initial contact due date. On these additional assessments, the documentation for request of NFTL filing, non-filing, or deferral (as appropriate) must be prepared the sooner of:

- within 30 days of assignment to the ICS inventory as an IDRS Bal Due, or
- next calendared touch on the case.

Note: If a pre-assessed module is created on ICS, the NFTL determination is due within thirty days of assessment.

Note: See also IRM 5.12.2.6(2), **NFTL Filing Criteria**.

- (3) **An NFTL filing determination will be made**, if the taxpayer has not:

- made full payment,
- qualified for an exception to the NFTL filing determination requirement (IRM 5.12.2.3.1, **Determination Requirement Exceptions**, and IRM

5.14.5, *Streamlined, Guaranteed and In-Business Trust Fund Express Installment Agreements*), or

- made other security arrangements (such as a bond) to satisfy the liability.

- (4) When making a determination to file an NFTL, consider whether issuance of the L-1058 is also warranted, if it was not sent previously. For Example, issuance of the L-1058 is appropriate when a taxpayer has been given a deadline and was advised of levy action for failure to comply. This action should only occur when an L-1058 was not previously issued for the module(s) in question.

Note: By issuing the L-1058 at the same time the NFTL is being filed, the taxpayer will receive CDP hearing rights for the NFTL and levy concurrently. If the taxpayer chooses to exercise their CDP rights, both the NFTL and levy issues can and should be addressed together in Appeals.

- (5) The taxpayer's filing and payment compliance should always be considered when the non-filing or deferring of a Notice of Federal Tax Lien is being determined.

5.12.2.3.3 (10-14-2013)

Determination Date Extension

- (1) The extension of the determination date for a NFTL filing is not the same as deferring the filing of the NFTL. The NFTL Determination Extension is used only when a determination cannot be made prior to the NFTL filing determination due date. Refer to IRM 5.1.10.3.1, *Initial Contact Time Frames*, for established time frames and IRM 1.4.50.10.2(10), *Maintaining Targeted Inventories*, for instances in which timely initial and follow-up contact time frames may be waived. Although not specifically mentioned in IRM 5.1.10.3.1 or IRM 1.4.50.10.2, other situations may warrant an NFTL filing determination extension. These situations are generally only applicable when the revenue officer has had no contact with the taxpayer. Potential situations may include:

- Inventory is assigned and the revenue officer is placed on a detail assignment.
- Inventory is assigned and the revenue officer is attending training.
- Inventory is reassigned or transferred to the revenue officer.
- The revenue officer is out due to illness or planned leave.

Example: This is an example of when it is appropriate to extend the NFTL filing determination date: A revenue officer receives five new Bal Due cases on Monday 4/11/2022. The NFTL filing determination due date on ICS is 5/22/2022. The revenue officer is assigned a long term detail and is to report on Monday 4/25/2022 and will not return to their POD until Monday 6/13/2022. In this situation the NFTL filing determination date may be extended for a reasonable time frame allowing the RO to make an appropriate determination.

Reminder: Make an appropriate history entry explaining why the initial contact was not timely.

5.12.2.4
(11-09-2015)
**Determination Criteria
for “Do-Not-File” or
Deferring the NFTL
Filing**

- (1) When considering the non-filing or deferring of an NFTL determine if the taxpayer is in filing and payment (Federal Tax Deposits, estimated tax payments, notice accounts, etc.) compliance. You should also consider the following:
 - a. The use of a *collateral agreement* (see IRM 5.6.1, **Collateral Agreements and Security Type Collateral**, for additional information).
 - b. Whether filing the NFTL then using a *subordination of the NFTL* for loan and financing situations is appropriate in lieu of not filing an NFTL (see IRM 5.12.10, **Lien Related Certificates**).
 - c. Whether filing the NFTL then using a *discharge of the property* for removing specific property from the Federal Tax Lien is appropriate in lieu of not filing an NFTL (see IRM 5.12.10, **Lien Related Certificates**).
- (2) The filing of an NFTL may affect a taxpayer’s credit rating, but this alone is not sufficient reason to withhold filing the NFTL.

5.12.2.4.1
(10-14-2013)
**Integrated Collection
System (ICS)
Documentation When
Deferring the Filing of
an NFTL or Choosing
“Do Not File”**

- (1) A decision to not file or defer the filing of an NFTL **must** be supported by a history entry that clearly states why filing an NFTL is not appropriate. An exception to this would be where a typically expected action is taken (e.g. the aggregate unpaid balance of assessments (UBA) is less than \$10,000 or the balance to be reflected on the NFTL is less than \$2500). Here the action taken is documented in the case history but the rationale does not need to be documented. In these circumstances the non-typical action’s rationale would be explained in the case history.
- (2) When the decision to not file or defer the filing of an NFTL is made the revenue officer should ensure that the ICS NFTL filing determination field is properly updated on the case summary screen for each module. Update the NFTL filing determination in ICS by choosing:
 - **NFTL Filing Decision “Do Not File”** when the decision is to **not file** a Notice of Federal Tax Lien, or
 - **NFTL Filing Decision “Defer”** when the decision is to **defer**.

5.12.2.4.2
(11-09-2015)
**Do Not File (DNF)
Criteria**

- (1) Choose **“Do Not File”** when there is no reason to believe NFTL filing will be required in the future (pending full abatement, decedent with no estate, etc.).
- (2) **In general**, NFTLs should not be filed when:
 - a. The taxpayer is a defunct corporation or LLC (where the LLC is liable) whose assets have been previously liquidated.

Note: A determination that the assets have been liquidated is not the same as an inability to find assets. The RO must have *specific information* indicating that a senior creditor has taken possession of all assets or all assets have been liquidated.

Example: *Specific information* also includes: verifying the taxpayer is *unable to locate* (*see IRM 5.16.1.2.1, *Unable to Locate and Unable to Contact*); no assets have been located; and there is no indication that the taxpayer remains in business.
 - b. The taxpayer is deceased **and** there are no known assets in an estate.
- (3) **NFTLs should not be filed** in the following circumstances:

- a. The taxpayer is a corporate entity or LLC (where the LLC is liable) that has gone through a liquidating bankruptcy or receivership regardless of dollar amount. Document the proceeding number in the case history.
- b. When a non-paying officer has been assessed the Trust Fund Recovery Penalty (TFRP) and an adjustment to the TFRP is pending because the assessment has been paid by another officer.
- c. There is an indication that the liability has been satisfied or that credits are available to satisfy the liability.
- d. The taxpayer is in bankruptcy and the NFTL relates to liabilities incurred before the taxpayer filed for bankruptcy. Section 362(a) of the Bankruptcy Code imposes an automatic stay that prohibits all creditors from taking certain collection actions against debtors in bankruptcy. Consult Insolvency or Counsel to determine if an NFTL may be filed after the automatic stay ends.
- e. There is genuine doubt as to the validity of the liability (for example, assessments made against victims of identity theft; see IRM 5.1.28, *Identity Theft for Collection Employees*, and IRM 5.12.11.2.1, *Identity Theft and Liens*. But the revenue officer must document the taxpayer's justification and the method of resolution i.e., payment tracer, amended return, credit transfer etc.)

Exception: There is no requirement to provide the taxpayer justification and method of resolution, if the taxpayer is *unable to locate* (see IRM 5.16.1.2.1, *Unable to Locate and Unable to Contact*) and the RO is able to confirm that there is genuine doubt as to the liability assessed.

- f. SRP (MFT 35) and mirrored SRP (MFT 65) assessments. (See IRC 5000A(g)(2)(B))

Reminder: MFT 35, tax class 6 is still used on NMF for partnership returns Forms 1065.

- (4) The revenue officer will withhold filing the NFTL if the taxpayer has entered into a collateral agreement with the IRS as provided in IRM 5.6.1, **Collateral Agreements and Security Type Collateral**. Revenue officers should document their case files and consult with Advisory to ensure legal sufficiency.
- (5) A taxpayer may submit a faxed request for non-filing of the NFTL if the revenue officer has made contact with the taxpayer by phone or in person. The revenue officer should document the case history with the date of contact and the taxpayer's rationale. The revenue officer should also retain the faxed document in the case file.

5.12.2.4.3 (11-09-2015) Defer Criteria

- (1) Use “**Defer**” when the decision to delay filing will be revisited (e.g., doubt as to liability pending taxpayer documentation or Form 911 submission).

Example: When a taxpayer alleges Return Preparer Fraud, temporarily defer filing any new Notice(s) of Federal Tax Lien for those modules where the assessment may be a result of that fraud. See IRM 25.24.4.3, **Suspension of Collection Action**. It is important to recognize the potential for adverse impact on a taxpayer who is a victim of Return Preparer Fraud.

Example: Taxpayer Advocate Service (TAS) cases may be initiated because of a potential notice of lien filing. TAS will notify the revenue officer when a

Form 911 , **Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)**, has been received and when it has been resolved. The revenue officer may also initiate a request for TAS assistance on behalf of the taxpayer. See IRM 5.12.1.5.2, **Taxpayer Advocate Service**.

- (2) When a revenue officer determines to defer the filing of an NFTL, the action must be supported by an Integrated Collection System (ICS) history entry that clearly states why filing an NFTL is not proper at that time. The entry must also include a follow-up date by which the revenue officer expects the requested information and/or payment or the date the NFTL will be filed.
- (3) A decision may be made to defer the filing of an NFTL when the revenue officer can substantiate with *reasonable certainty* and supported with documentation from the taxpayer, that filing the NFTL will hamper collection. The determination to defer filing the NFTL because it will hamper collection must be part of an agreed resolution between the RO and the taxpayer that deferral will both facilitate collection and be in the best interest of the government and the public. In general a hamper collection determination could apply in the following situations:
 - a. A viable business, which factors account receivables, proposes a reasonable resolution with supporting documentation. See IRM 5.12.10.6.1.1, *Subordination to Factoring Agreements*, for more information on factoring.
 - b. A viable business, which operates on a floor plan, proposes a reasonable resolution with supporting documentation.

Example: Automobile dealerships may use floor-plan financing to acquire their inventory of vehicles.
 - c. A viable business, which would lose its revolving account receivables upon the filing of an NFTL, proposes a reasonable resolution with supporting documentation.
 - d. When a taxpayer is near closing on refinancing a property to secure equity from the home in order to pay his tax liability and the filing of the NFTL will prohibit closing the loan.
 - e. When a taxpayer alleges the assessment may be a result of Payroll Service Provider fraud and the filing of the NFTL may affect the taxpayer's ability to secure funds to full pay or fund an offer in compromise, see IRM 5.1.24.5.2, *Initial Contact with a Client of a Third-Party Payer*.
- (4) Examples when it **is appropriate** to defer the filing of an NFTL:
 - a. During a field visit on 5/01/2022 to a "Not for Profit" taxpayer you are asked not to file an NFTL and consider an in-business installment agreement. It is explained that if an NFTL is filed, state funding, which is the principal funding source for the entity, will be eliminated and the taxpayer will not be able to make installment payments. You agree to defer filing the NFTL and request appropriate documentation from the entity be sent to you by 05/12/2022 and you will consider the IA . On 05/09/2022 you receive the documents and are able to document a reasonable certainty that the NFTL would hamper collection of the liability and determine to defer the NFTL and place the taxpayer in a manually monitored IA. You inform the taxpayer of the IA and the condition that an NFTL will be filed if the taxpayer defaults on the installment agreement.

- b. During a field visit to a taxpayer who is in the business of selling vacation time shares, you determine that the tax liability cannot be paid immediately and that in all likelihood an installment agreement may resolve the unpaid balance. However, in order to obtain the funds to make the installment payments and pay other operating expenses, the taxpayer must sell accounts receivable to a factor on a weekly basis. The factor also requires that the taxpayer gives a security interest in all current and future accounts receivable. Filing an NFTL in this case would end the factoring arrangement. You agree to defer the filing of the NFTL provided the taxpayer **provides a copy of the contract, and remains cooperative and compliant**. You inform the taxpayer that not complying with the provisions will result in your immediate filing of the NFTL.

(5) Examples when it is **not appropriate** to defer the filing of an NFTL:

- a. A taxpayer or representative request for a filing deferral is reasonably determined to be an attempt to delay or avoid collection or ensure a bankruptcy petition filing before an NFTL (e.g. applying for an Installment Agreement (IA) but meeting the criteria found in IRM 5.14.3.3, *Installment Agreement Requests Made to Delay Collection Action*). History notations are required in these instances.
- b. During a field visit, the taxpayer informs you that they are planning to purchase a new car or possibly lease one to replace their current vehicle and the filing of the NFTL will negatively affect their credit. They ask you to not file the NFTL. You ask if the car is essential to generate income to assist in the payment of the liability. The taxpayer informs you that the car is not essential for them to generate income. It would be appropriate to file an NFTL in this case.
- c. During a field visit on 4/1/2022 a taxpayer informs you that he has applied for a loan to pay the liability and other operating expenses of the business and requests that you do not file an NFTL. He explains that the loan agreement has a clause which indicates any additional NFTL filings will cause the proposed agreement to be null and void. You agree to defer filing an NFTL if the taxpayer supplies you with back up documentation for the completed financial statement and loan agreement from his financial institution by 4/15/2022 and become current with all federal tax deposits (FTD). You also inform the taxpayer that if the documents are not received by the 15th, you will file the NFTL. You return to your office on Monday 4/4/2022 and document your case history with the reason why you deferred filing the NFTL and schedule a follow up date of 4/15/2022. On Monday 4/18/2022 you still have not received the documentation from the taxpayer or confirmation of the FTD payments. Since the taxpayer did not meet the specified deadline it is appropriate to file the Notice of Federal Tax Lien at this time without further contact with the taxpayer.
- d. After returning to the office from a field visit the previous day you have determined to file an NFTL because the taxpayer did not make full payment and was not in compliance. The taxpayer calls you and asks that you not file the NFTL because she is selling her home to full pay the liability and avoid enforcement actions. You tell the taxpayer that the NFTL is going to be filed to protect the Government's interest in the home. The taxpayer tells you that the sale will not go through because of the NFTL. You then tell the taxpayer that a Release of NFTL can be issued at the time full payment is made at the sale.

- e. After your initial analysis of a BMF taxpayer you plan to visit in the field tomorrow, you determine that in addition to owing several 941 liabilities exceeding the notice filing threshold, there are several unfiled 941 returns, and FTDs have not been made for the current quarter. During your field visit the taxpayer informs you that they are currently under contract to sell their rights to a patent for a product they developed and the sale will more than pay the liability and the amount they estimate will be owed for the delinquent returns. The taxpayer tells you that part of the agreement for sale is that there can be no liens associated with the patent and asks that you do not file an NFTL prior to the sale in 45 days. You review the contract and confirm the taxpayer's claim that sale of the patent is scheduled in 45 days. You tell the taxpayer that the lien exists because they owe taxes whether a notice of the lien's existence is filed or not but that you will defer the filing of the NFTL if they file all delinquent returns and pay all delinquent FTD within 15 days. This is 30 days prior to the sale. The taxpayer agrees that they can file the returns and make all FTD payments due and owing for the current quarter within the 15 days. On the 18th day you receive all delinquent returns but do not receive any of the promised FTD payments due and owing for the current quarter. A follow-up phone call to the taxpayer finds that they have gone on vacation. You made a timely NFTL filing determination within 10 days of your field call, deferring filing of the NFTL to correspond with the deadline agreed upon by the taxpayer. Since the taxpayer did not fulfill their agreed upon obligation, further deferral of the NFTL filing in this situation would not be appropriate.
- f. During a field visit to the representative's office, she informs you that filing an NFTL will embarrass the taxpayer in their business community. A taxpayer's embarrassment alone is not a reason to defer filing the NFTL. In this case it would be appropriate to file the NFTL, unless the POA can document that the NFTL would hamper the payment of the liability.
- g. During a field visit to an IMF taxpayer you request full payment of the \$200,000 liability. The taxpayer tells you that he is negotiating a sale of his home (primary residence) but there is only \$100,000 of equity so he can't full pay even with the sale. He asks that you not file the NFTL because it will ruin the sale. You ask the taxpayer to supply you with the appropriate documents (these may vary by location) to confirm his statement. He says he cannot. In this situation it would be appropriate to file the NFTL and inform the taxpayer that he may request a *discharge of the specific property* when he is prepared to close the sale.

5.12.2.5
(10-14-2013)
**Approvals Relating to
Determinations**

- (1) The following sections identify when approvals are needed for determination date extensions, and for filing, non-filing, or filing deferral determinations.

5.12.2.5.1
(11-09-2015)
**Determination Date
Extension Approval**

- (1) Group manager approval is required for all RO decisions to extend the normal time frame for making a determination to file an NFTL on all IMF and BMF cases in which the known aggregate assessed or to be assessed balance will be greater than \$10,000. The extension of the NFTL filing determination date is not the same as deferring the filing of the NFTL. See IRM 5.12.2.3.3, **Determination Date Extension**.

5.12.2.5.2
(10-14-2013)

NFTL Filing

Determination Approvals

- (1) A determination to file an NFTL by revenue officers below GS-9 must be approved by the manager prior to the NFTL being filed.
- (2) If authorized by the group manager, GS-9 and above revenue officers may approve the NFTL filing determination for revenue officers below GS-9 and initiate the ICS NFTL request.

5.12.2.5.3
(11-09-2015)

**NFTL “Do-Not-File” and
“Defer” Determination
Approvals**

- (1) **APPROVAL EXCEPTIONS** where managerial approval is **not required**:
 - a. NFTL reflecting a balance of less than \$2,500
 - b. Additional assessment(s) on a case where the same supporting factors apply as on a previously approved Do Not File (DNF) or Defer determination
 - c. Cases that meet the “In general NFTLs should not be filed when:...” criteria outlined in IRM 5.12.2.4.2(2), *Do No File (DNF) Criteria*
 - d. Cases that meet the “NFTLs should not be filed in the following circumstances:...” criteria outlined in IRM 5.12.2.4.2(3), **Do No File (DNF) Criteria**
 - e. Cases that meet the Streamlined Installment Agreement criteria outlined in IRM 5.14.5.2, **Streamlined Installment Agreements**
- (2) **REQUIRED APPROVALS**: Group manager approval on all IMF and BMF cases ➤ **not meeting any above listed exceptions** in paragraph (1), ➤ **but meeting any below listed criteria**:
 - a. Known aggregate assessed or to be assessed balance will be greater than \$10,000
 - b. Additional assessments when the aggregate balance on the case exceeds \$10,000 and none of the exceptions in IRM 5.12.2.5.3(1) above apply
 - c. IMF or BMF cases with 10 or more modules
 - d. NFTL filing is deferred or not filed for more than 120 days from initial or last TP contact

Note: This includes situations where the revenue officer is waiting for either actions by or documentation from a taxpayer.

Note: Territory Manager approval is not required.

- (3) Group manager approval should be noted in the ICS history.
- (4) All determinations to **DEFER** the filing of an NFTL must have a calendared follow-up to revisit the NFTL determination should the taxpayer fail to properly resolve the delinquency. In most cases, the calendared follow-up will correspond with an established deadline.

5.12.2.6
(10-14-2013)

NFTL Filing Criteria

- (1) In general, an NFTL should be filed in the following situations:

Note: For the purposes of this section, “unpaid balance of assessments” (UBA) means the total balance of all unpaid and assessed tax periods for the taxpayer.

If	Then
the aggregate UBA is \$10,000 or more	file an NFTL Note: Determine the need to file an NFTL when there are additional assessments.
an installment agreement (IA) does not meet streamlined, guaranteed, or in-business trust fund express criteria	file an NFTL. * Reminder: For an IA meeting streamlined, guaranteed, or in-business trust fund express criteria see IRM 5.12.2.3.1
an open account with an aggregate UBA of \$10,000 or more is being reported as currently not collectible	file an NFTL.
a case involving both assessed and un-assessed periods will be reported currently not collectible	the NFTL filing may be delayed to include both period types on the NFTL. Note: You may also choose to file an NFTL on the current assessments and wait for the unassessed periods to be assessed, and then file for those periods as well.
there is property not being administered in a Federal bankruptcy or state insolvency proceeding	file an NFTL to protect the government's interest unless doing so is currently stayed by the proceeding
the taxpayer resides outside the U.S. and has known assets	file an NFTL. Contact requirements are waived. Note: Prior to requesting that a taxpayer be placed on the Treasury Enforcement Communications System (TECS), file an NFTL even though the taxpayer resides outside the US and has no known assets in the US. Procedures concerning TECS are discussed in IRM 5.1.8.8, Treasury Enforcement Communications System .

Note: Even though there is no mandatory NFTL filing requirement prior to service of a Notice of Levy, before levying the IRS should consider, for purposes of lien priority, filing an NFTL.

Note: Generally NFTLs will not be filed when the UBA is less than \$10,000, but they may be filed if they will protect the government's interest, such as in the case of an impending bankruptcy or other exigent circumstances.

- (2) Except in rare circumstances, an NFTL should not be filed when the balance to be reflected on the NFTL is less than \$2,500 (remember, an NFTL can accom-

modate 15 statutory liens). If the case facts indicate that immediate filing of an NFTL will prevent loss to the government (e.g., taxpayer is dissipating assets), the NFTL may be filed. Notate the circumstance in the case history.

- (3) Accrued interest and penalties added to tax must be collected during the limitation period for collecting the tax. Therefore, an NFTL may be filed on *accruals only* modules where all assessed liabilities have been full paid while keeping in mind that NFTLs should not be filed when the balance to be reflected on the NFTL is less than \$2,500. The tax liability's collection limitation period does not apply to bad checks, fraud penalty or certain other penalties that may carry a separate collection statute expiration date. See IRM 5.12.7.3(14), *Preparing the NFTL General Instructions*.
- (4) Examples of when it is appropriate to file an NFTL are listed below:
 - a. After your initial analysis of a law firm with three quarters of Form 941 liabilities totaling \$37,000, you determine that all notices requesting payment have been sent. You then make a field visit on Monday 10/16/2023 to the taxpayer at the last known address. The office has a sign saying it is closed for that day so you leave a 2246 (Field Contact Card) with Publication 1 and 594 in a sealed envelope under the door. The calling card instructs the taxpayer to contact you by Thursday 10/19/2023. By close of business on Tuesday 10/24/2023 you have still not received any communication from the taxpayer. In this situation it is appropriate to file the NFTL.
 - b. During a field visit to a self-employed taxpayer you request full payment of the tax liability of \$31,000. As part of your compliance check you also inform the taxpayer that they are not current with their estimated tax payments, and they must make those payments as well. The taxpayer makes payment for a portion of the tax liability (\$1,000) and tells you they will make their \$6,000 in late estimated tax payments in 30 days. The taxpayer provides a financial statement which shows they have equity in assets that will full pay the liability however the income would not support any short term or streamlined installment agreement. In this situation it would be appropriate to file an NFTL. The RO advises the taxpayer that the NFTL will be filed and provides the taxpayer with information regarding lien subordinations and discharges.

5.12.2.6.1
(11-09-2015)
**ACA Shared
Responsibility
Considerations When
filing NFTL**

- (1) Follow the chart below for NFTL filing when the taxpayer's account contains SRP/MFT 35, SRP/MFT 65, or MFT 43 assessments.

If the UBA contains ...	And the UBA is ...	Then ...
SRP/MFT 35 assessment(s) or the SRP mirrored account MFT 65 assessment(s) Reminder: MFT 35, tax class 6 is still used on NMF for partnership returns Forms 1065.	less than \$10,000 when not including the MFT 35 and/or MFT 65 assessment(s) in the UBA calculation	(1) An NFTL may still be filed as long as the provisions in IRM 5.12.2.3 are followed. Reminder: SRP/MFT 35 and MFT 65 assessment(s) CANNOT BE included on the NFTL (2) Notate in the ICS history any decision to file, on the other assessments, in these circumstances. Include in the history the reason(s) for filing the NFTL.
SRP/MFT 35 assessment(s) or the SRP mirrored account MFT 65 assessment(s) Reminder: MFT 35, tax class 6 is still used on NMF for partnership returns Forms 1065.	\$10,000 or more without including the MFT 35 and/or MFT 65 assessment(s) in the UBA calculation	File an NFTL. Reminder: SRP/MFT 35 and MFT 65 assessment(s) CANNOT BE included on an NFTL.
MFT 43 assessment(s)	\$10,000 or more	File an NFTL and include the MFT 43 assessment(s) on the NFTL

5.12.2.7
(10-14-2013)
Approval of NFTL Filing

- (1) Revenue officer group managers will note their review and approval of the NFTL filing in the ICS history for revenue officers below the GS-9 level or they may assign the notice filing responsibility to a revenue officer at the appropriate grade level.
- (2) When a manual NFTL is prepared (using ICS Templates), managers will ensure that the first five numbers of an SSN have been redacted and sign the NFTL for revenue officers below GS-9. The NFTL may also be signed by a revenue officer at the appropriate grade level.
- (3) In all cases document the case file.

5.12.2.7.1
(10-14-2013)
The Manager's Review Process

- (1) Managers of revenue officers below GS-9 are required to:
 - review the taxpayer's information,
 - verify there are no SSNs included on the name or address lines and that any manually prepared NFTL redacts the first five numbers of the SSN,
 - verify the balance due, and
 - affirm that the NFTL filing is appropriate given the taxpayer's circumstances, considering the amount due and the value of the property or rights to property.
- (2) In all cases, revenue officers must document the following information:

- a. A summary of any information the taxpayer provides that may affect the decision to file a NFTL,
- b. If the taxpayer provided information, the employee is to explain their review of the information and findings, and
- c. Verification that the amount is owed, e.g., the balance has been checked on IDRS.