



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.12.6

JANUARY 19, 2018

EFFECTIVE DATE

(01-19-2018)

PURPOSE

- (1) This transmits the revised IRM 5.12.6, *Federal Tax Liens, Appeals Processes Involving Liens*.

MATERIAL CHANGES

- (1) Editorial changes made throughout to update references and terminology; to correct formatting issues; and to revise wording for clarity, eliminate unnecessary or duplicate verbiage, and comply with current writing standards. Material changes are noted below.
- (2) IRM 5.12.6.1. Added subsection on Program Scope and Objectives in compliance with IRM 1.11.2 standards.
- (3) IRM 5.12.6.2. Changed title. Clarified the types of appeal rights covered in this IRM and reiterated guidance from IRM 5.1.9.2 on keeping taxpayers informed.
- (4) IRM 5.12.6.3. Shortened title. Added passport legislation provision to items required in CDP notice, inserted paragraph from 5.12.6.3.6 about contact information on notice, and referenced 5.12.6.3.5 for documents to include with notice.
- (5) IRM 5.12.6.3.5. Changed title to reflect the revised content. Moved certain paragraphs between this and 5.12.6.3.6 to better align information. Added note about the terminology used in relation to the CDP notice. Restructured paragraphs for flow. Clarified role of ALS in CDP notice process. Incorporated information from 5.12.6.3.6 about inserts with Letter 3172. Moved information about entity types to new subsection 5.12.6.3.5.1. Added exception for NFTLs filed against estates for IRC § 6321 assessments.
- (6) IRM 5.12.6.3.6. Changed title. Moved certain paragraphs between this and 5.12.6.3.5 to better align information. Restructured paragraphs to clarify calculations of mailing and response time frames. Removed unnecessary information about process for manually filing NFTLs. Moved information about Letter 3171 to 5.12.6.3.6.2 and paragraph about contact information to 5.12.6.3.
- (7) IRM 5.12.6.3.6.1. New subsection for special address considerations, including sending the CDP notice to co-obligors at other addresses and estate fiduciaries.
- (8) IRM 5.12.6.3.6.2. Renumbered from 5.12.6.3.6.1. Expanded explanation of when ALS issues Letters 3172 for filings on additional assessments.
- (9) IRM 5.12.6.3.6.3. New subsection about issuing Letter 3171 on subsequent NFTL filings. Guidance was previously in 5.12.6.3.6.
- (10) IRM 5.12.6.3.7. Moved information about co-obligors to 5.12.6.3.5.1. Restructured paragraphs for flow and clarity. Moved paragraphs about substitute and duplicate notices to 5.12.6.3.9.
- (11) IRM 5.12.6.3.7.1. Added wording to clarify when CDP notice is needed after a revocation of release.
- (12) IRM 5.12.6.3.8. Added and revised wording to clarify when a CDP notice should be issued in relation to an amended NFTL.
- (13) IRM 5.12.6.3.9. Inserted information from 5.12.6.3.7 about substitute and duplicate notices.

- (14) IRM 5.12.6.3.10. Added reference links. Restructured to combine duplicate information within subsection and former subsection 5.12.6.3.10.2. Clarified when copies of notices should be provided to POAs. Added reminder about co-obligors with separate POAs.
- (15) IRM 5.12.6.3.10.1. Shortened title. Incorporated information from former subsection 5.12.6.3.10.2.
- (16) Deleted former subsection 5.12.6.3.10.2
- (17) IRM 5.12.6.3.11. Updated title, restructured paragraphs, clarified notice issues for successor-in-interest situations, and revised wording to make consistent with current special condition NFTL procedures.
- (18) IRM 5.12.6.3.12. Clarified guidance.
- (19) IRM 5.12.6.3.13. Restructured for flow.
- (20) IRM 5.12.6.3.14. Changed title. Rearranged information and converted withdrawal guidance to table. Replaced details about file preparation with reference to applicable IRM on appeals. Removed paragraph about Fast Track Mediation as obsolete guidance.
- (21) 5.12.6.3.15: Added clarifying language and examples.
- (22) 5.12.6.3.16: Moved Note under (2) to separate paragraph and combined similar paragraphs. Condensed paragraph on combat zone freeze to make more succinct. Inserted instruction on reversing the TC 971 AC 252.
- (23) IRM 5.12.6.3.17. Clarified types of returned mail. Inserted reminder for notices addressed to secondary taxpayers. Restructured paragraphs and converted some information to chart. Added note on handling notices returned annotated with multiple reasons.
- (24) IRM 5.12.6.3.18. Shortened title. Restructured and rearranged paragraphs.
- (25) IRM 5.12.6.3.19. Rephrased information regarding the appeal rights available.
- (26) IRM 5.12.6.4. Moved Note under (1) to separate paragraph. Rearranged paragraphs for clarity.
- (27) IRM 5.12.6.4.1. Removed Bullet on Appeals making NFTL determinations.
- (28) IRM 5.12.6.4.2. Clarified guidance.
- (29) IRM 5.12.6.4.3. Last bullets under former paragraph (3) moved to separate paragraph for emphasis.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.12.6 dated October 14, 2013.

AUDIENCE

SBSE and W&I Collection, Centralized Lien Operation, and Appeals

Kristen Bailey
Director, Collection Policy
Small Business/Self Employed Division

5.12.6

Appeals Processes Involving Liens

Table of Contents

5.12.6.1 Program Scope and Objectives

5.12.6.1.1 Background

5.12.6.1.2 Authority

5.12.6.1.3 Responsibilities

5.12.6.1.4 Program Management and Review

5.12.6.1.5 Program Controls

5.12.6.1.6 Terms/Definitions/Acronyms

5.12.6.1.7 Related Resources

5.12.6.2 Collection Appeal Rights

5.12.6.3 Collection Due Process for NFTL Filing

5.12.6.3.1 Hearing Issues

5.12.6.3.2 Requirement of Investigation

5.12.6.3.3 Judicial Review of Determination

5.12.6.3.4 Suspension of Collection Period of Limitations

5.12.6.3.5 The CDP Notice (Letter 3172)

5.12.6.3.6 CDP Notice Time Frames

5.12.6.3.6.1 Possible Address Considerations

5.12.6.3.6.2 CDP Notice for NFTL on Additional Assessments

5.12.6.3.6.3 CDP Notice and Subsequent NFTL Filing

5.12.6.3.7 Preparation and Delivery of Manual CDP Notices

5.12.6.3.7.1 Issuing a CDP Notice after Revocation of Release

5.12.6.3.8 Amended NFTL and New CDP Notice

5.12.6.3.9 Issuing a Substitute or Duplicate CDP Notice

5.12.6.3.10 Notifying the Authorized Representative/Power of Attorney

5.12.6.3.10.1 ICS Macro to Secure Email POA Information

5.12.6.3.11 Special Condition NFTL Situations

5.12.6.3.12 IRC § 6901 Transferee CDP Notification

5.12.6.3.13 Child Support Obligations

5.12.6.3.14 Processing CDP Hearing Requests

5.12.6.3.15 Documenting CDP Notification

5.12.6.3.16 Invalid CDP Notices and Rescinding the CDP Notice

5.12.6.3.17 Processing CDP Notices Returned by the USPS

5.12.6.3.18 Inputting TC 971 for Notice Status

5.12.6.3.19 NFTL Filing During Levy Appeal

5.12.6.4 Collection Appeals Program

-
- 5.12.6.4.1 Exclusions from CAP
 - 5.12.6.4.2 Request for a CAP Appeal
 - 5.12.6.4.3 Sending the CAP Request to Appeals
 - 5.12.6.4.4 CAP Process

5.12.6.1 (01-19-2018) Program Scope and Objectives

- (1) Notice of Federal Tax Lien (NFTL) filings and requests related to the impact of the filed NFTL, including discharge of property from the federal tax lien and withdrawal of the NFTL, are generally subject to review of the Appeals office.
- (2) **Purpose:** This IRM provides guidance on the appeal rights afforded taxpayers regarding NFTL filings and the lien program.
- (3) **Audience:** This IRM is used by IRS personnel that request NFTLs and/or handle requests related to the federal tax lien.
- (4) **Policy Owner:** Director, Collection Policy. Small Business/Sell-Employed Division (SBSE)
- (5) **Program Owner:** Collection Policy is the program office responsible for overseeing the lien program and maintaining this IRM.
- (6) **Primary Stakeholders:** SBSE Collection and Wage & Investment (W&I) Collection. 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:** Provide policy and procedural guidance to ensure taxpayer appeal rights regarding lien processes are observed.

5.12.6.1.1 (01-19-2018) Background

- (1) In 1996, the Internal Revenue Service (IRS) implemented a Collection Appeals Program (CAP) to provide an administrative appeal option to taxpayers for certain collection actions. Although never specifically being mandated by statute, the CAP program has continued since then and has expanded in scope through policy changes following legislative acts such as the Restructuring and Reform Act of 1998 (RRA 98).
- (2) As part of RRA 98, IRC § 6320 was enacted to give taxpayers a right to a Collection Due Process (CDP) hearing with the Appeals office when an NFTL is filed on their tax liability. Taxpayers were also given the right to go to court on Appeals' determination under CDP, a right not afforded under CAP.
- (3) Taxpayers have the right to appeal the proposed filing of an NFTL under CAP and the right to appeal the actual filing of the NFTL under CDP or CAP.

5.12.6.1.2 (01-19-2018) Authority

- (1) The policies in this IRM are based primarily on the following:
 - IRC § 6320, *Notice and opportunity for hearing upon filing of notice of lien*
 - Treasury Regulation § 301.6320-1, *Notice and opportunity for hearing upon filing of notice of federal tax lien*
 - IRC § 7123, *Appeals dispute resolution procedures*

5.12.6.1.3 (01-19-2018) Responsibilities

- (1) The Director, Collection Policy is responsible for overseeing policy and procedures regarding lien actions and the associated appeal rights.
- (2) Employees that request NFTL filings are responsible for providing accurate information for CDP notices. Employees manually preparing NFTLs are responsible for ensuring CDP notices are properly issued.
- (3) Employees authorized to make determinations regarding specific lien actions are responsible for ensuring CAP rights have been provided appropriately.

5.12.6.1.4
(01-19-2018)
**Program Management
and Review**

- (1) The Treasury Inspector General for Tax Administration (TIGTA) is required by law to conduct an annual audit to determine whether CDP notices issued by the IRS comply with the requirements of IRC § 6320.
- (2) Copies of CDP notices are maintained electronically in the Automated Lien System (ALS). Information on CAP notices is maintained with the respective case files.

5.12.6.1.5
(01-19-2018)
Program Controls

- (1) Counts of the CDP notices issued are reported monthly by ALS and monitored by Collection Policy.
- (2) CDP and Equivalent Hearing (EH) requests are tracked using the CDP Tracking System (CDPTS).

5.12.6.1.6
(01-19-2018)
**Terms/Definitions/
Acronyms**

- (1) The table below lists common acronyms used in this section.

Acronym	Definition
ALS	Automated Lien System
CAP	Collection Appeals Program
CDP	Collection Due Process
NFTL	Notice of Federal Tax Lien
POA	Power of Attorney/Representative

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

5.12.6.1.7
(01-19-2018)
Related Resources

- (1) See IRM 5.1.9, *Collection Appeal Rights*, for detailed information regarding appeal rights.
- (2) The notices issued to inform of appeal rights when NFTLs are filed are summarized in the table below and discussed throughout this IRM.

Notice	Purpose
Letter 3172, <i>Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320</i>	Notifies the taxpayer of CDP rights when an NFTL is filed.
Letter 3171, <i>Notice of Federal Tax Lien Additional Filing</i>	Notifies the taxpayer when another NFTL is filed for the same tax periods for which an L-3172 was previously issued
Letter 3262, <i>Notice of Federal Tax Lien Filing – Power of Attorney</i>	Notifies the authorized representative of an NFTL filing against their client and the CDP rights available

Notice	Purpose
Letter 3271, <i>Notice of Federal Tax Lien Additional Filing – Power of Attorney</i>	Notifies the authorized representative when another NFTL is filed against their client for the same tax periods for which an L-3172 was previously issued
Letter 3886, <i>Notice of Special Condition NFTL Filing - Taxpayer</i>	Notifies the taxpayer when a special condition NFTL is filed
Letter 3177, <i>Notice of Special Condition NFTL Filing – Nominee/Alter Ego</i>	Notifies the third party holding title to the taxpayer's property when a special condition NFTL is filed
Letter 3527, <i>Notice of Federal Tax Lien Filing-Child Support Obligation</i>	Notifies the taxpayer when an NFTL is filed for their child support debt

Note: Letters are revised as needed to reflect legislative and policy changes. Generally, the most current revision should be used; however, for systemically-generated letters or system templates, the prior revision may continue to be used until programming is updated.

- (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 also may be found on the *My SB/SE* website. Similar information for taxpayers may be found on the *Understanding a Federal Tax Lien* page on IRS.gov.

5.12.6.2 (01-19-2018) Collection Appeal Rights

- (1) Taxpayers have two ways to appeal certain collection actions to the IRS Office of Appeals:
 - Collection Due Process (CDP) or Equivalent Hearing
 - Collection Appeals Program (CAP)
- (2) Collection personnel need to explain CAP and CDP appeal rights to taxpayers throughout the collection process and answer questions taxpayers may have regarding their right to appeal. See IRM 5.1.9.2, *Informing Taxpayers of Their Appeal Rights*. The guidance in this IRM pertains to the appeal rights for the NFTL filing and other actions related to the federal tax lien.
- (3) Taxpayers may also contact the Taxpayer Advocate Service (TAS) for assistance. See IRM 5.12.1.5.3, *Taxpayer Advocate Service*, and IRM 13.1.7, *Taxpayer Advocate Service (TAS) Case Criteria*.

5.12.6.3 (01-19-2018) Collection Due Process for NFTL Filing

- (1) Under IRC § 6320, the Internal Revenue Service must notify taxpayers in writing of their right to a CDP hearing with the Office of Appeals the first time a tax period is included on an NFTL. The written notification must be given within five (5) business days of the filing of a Notice of Federal Tax Lien. When the taxpayer timely requests a CDP hearing, the taxpayer has a right to judicial review of the Appeals determination.

Note: For purposes of IRC § 6320 and this IRM, a "tax period" encompasses the IRC § 6321 assessment liens on a tax module. If a tax module contains multiple statutory assessment liens (e.g. TC 290, 300, 240, etc.), a CDP notice must be provided the first time any of them are shown on the NFTL.

- (2) If a taxpayer does not timely request a CDP hearing, an equivalent hearing (EH) may be available. See IRM 5.1.9.3.2.2, *Equivalent Hearing (EH) and Timeliness of EH Requests*.
- (3) The taxpayer cannot obtain judicial review of a decision from an equivalent hearing unless the IRC provision governing the issue raised in the hearing provides for judicial review, i.e., taxpayer raises spousal defense issues under IRC § 6015 or interest abatement issues under IRC § 6404.
- (4) The CDP notice (Letter 3172) must be sent to the taxpayer **within five (5) business days** after the NFTL is filed with the local recording office. The notice must be:
 - given in person;
 - left at the taxpayer's residence or usual place of business; or
 - sent by certified or registered mail to the taxpayer's last known address.
- (5) The notice includes the following items:
 - Amount of unpaid tax
 - Right to request a hearing during a 30-day period that begins after the five-day period described in (4) above
 - Administrative appeals available to the taxpayer with respect to the NFTL and procedures relating to such appeals
 - Provisions of IRC § 6320 that relate to a CDP hearing and the provisions of the IRC relating to release of liens
 - Provisions of IRC § 7345 regarding the potential revocation, denial, or limitation of passports of individuals with seriously delinquent tax debts.
- (6) Each CDP notice also provides contact information for the employee or function that requested the NFTL, even when the NFTL is filed outside the requestor's Area.
- (7) Documents are included with the CDP notice to further explain and facilitate the appeal process (e.g., meeting with the employee's supervisor, Collection Appeals Program, etc.). See IRM 5.12.6.3.5, *The CDP Notice (Letter 3172)*, for details.

5.12.6.3.1
(10-14-2013)
Hearing Issues

- (1) Certain issues and considerations must be undertaken during the hearing process. The taxpayer may raise any non-frivolous issue relating to the unpaid tax.
- (2) See IRM 5.1.9.3.9, *Appeal Process*, for additional information.

5.12.6.3.2
(10-14-2013)
Requirement of Investigation

- (1) If the taxpayer requests a CDP hearing, Appeals must verify that procedures have been met with respect to the filing of the NFTL and providing the CDP notice. See IRM 5.1.9.3.9, *Appeal Process*, for additional information.

- (2) Appeals or the originating function may ask questions to clarify certain issues or request information that involve ministerial, administrative, or procedural matters.
- (3) Care must be taken to refrain from prohibited ex parte communications. Ex parte is a term used in legal proceedings to describe a one-sided point of view received on behalf of or from one side or party only. In this context ex parte communications are communications which take place between Appeals employees and other IRS employees, including ROs, without giving the taxpayers/representatives an opportunity to participate in the communications. See IRM 5.1.9.5, *Communications with Appeals*, and Rev. Proc. 2012-18 for additional information.

5.12.6.3.3 (10-14-2013) **Judicial Review of Determination**

- (1) Under IRC § 6320, the taxpayer has thirty (30) calendar days from the date of the notice of determination by the Appeals Officer to file a petition with the U. S. Tax Court appealing the determination.
- (2) The Office of Appeals retains jurisdiction with respect to any notice of determination issued under IRC § 6320. This includes subsequent hearings requested by the person who requested the original CDP hearing on issues regarding:
 - collection actions taken, or proposed, with respect to the Appeals determination, and
 - changes in circumstances of the taxpayer that affect the Appeals determination (after the person has exhausted all administrative remedies, e.g., CAP).
- (3) See IRM 5.1.9.3.13, *Jurisdiction Retained by Appeals*, for additional information.

5.12.6.3.4 (10-14-2013) **Suspension of Collection Period of Limitations**

- (1) If a hearing is timely requested, the running of the period of limitation is suspended starting on the date the hearing request is received. The suspension will end:
 - when the decision of the Appeals office becomes final, i.e., 30 calendar days after issuance of the determination if it is not appealed to the Tax Court, or
 - if appealed to the Tax Court, when the decision of the Tax Court case becomes final.
- (2) Notwithstanding the above, the period of limitation for collection will not expire before 90 days after a determination becomes final.
- (3) For more information, see IRM 5.1.9.3.6, *Suspension of Collection Statute of Limitations*, and Treasury Regulation §301.6320-1(g).

5.12.6.3.5 (01-19-2018) **The CDP Notice (Letter 3172)**

- (1) Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC § 6320*, is used to notify taxpayers of their CDP rights regarding NFTL filings.

Note: The L-3172 is commonly referred to as the “CDP notice.” At times it is also referred to as the “CDP lien notice” to differentiate it from the notice issued to convey CDP rights for levy actions.

(2) An L-3172 is issued when an NFTL is:

- first filed for the tax period, or
- subsequently filed for the same tax period, but includes an additional assessment (e.g., TC 290, TC 300, TC 240) not shown on the previous NFTL. See IRM 5.12.6.3.6.2, *CDP Notice for NFTL on Additional Assessments*.

(3) An L-3172 is **not** issued for:

- an NFTL filed in another jurisdiction and the taxpayer has already been issued a CDP notice for the tax periods listed on the NFTL,
- new assessments of interest and penalty accruals for the tax periods previously included on a CDP notice,
- refiled NFTLs, or
- a Notice of Federal Estate Tax Lien..

Exception: An L-3172 can be issued for an NFTL on an IRC § 6321 assessment lien against an estate tax account. See IRM 5.5.9, *Administrative and Judicial Actions for Estate Taxes*, for information the various liens for estate and gift tax.

(4) The L-3172 lists the tax periods, types of tax, assessment dates, and unpaid balances of assessment listed on the NFTL. If a subsequent NFTL is requested for the same tax periods **but** includes additional assessments, an L-3172 must be issued; however, the taxpayer is only entitled to a CDP hearing on the subsequent NFTL for the assessments for which a notice was not previously issued. If a hearing is requested, include copies of previous NFTLs and CDP notices in the Appeals case file.

Example: An NFTL was filed against Nancy Smith for tax periods 30-201112, 30-201212, and 30-201312 on July 15, 2016 in Washington County, IA. An L-3172 listing all periods was mailed to the taxpayer. A second NFTL is filed on February 20, 2017 in Marshall County, IA, for tax periods 30-201112, 30-201212, 30-2001312, 30-201412, and 30-201512. An L-3172 listing all the periods, including those where a CDP notice was previously issued, is mailed to the taxpayer. If a hearing is requested based on the second CDP notice, the taxpayer is only entitled to a CDP hearing for 30-201412 and 30-201512, because the other periods were covered in the first notice.

(5) The L-3172 is normally generated through the Automated Lien System (ALS) when the NFTL is filed and is systemically printed and mailed through Correspondence Production Services (CPS). In rare instances, it may be necessary to hand-carry an NFTL to the recording office. Whenever an NFTL is manually prepared and filed, manually prepare and issue the CDP notice as well. See IRM 5.12.6.3.7, *Preparation and Delivery of Manual CDP Notices*.

Note: If an L-3172 is inadvertently issued for an NFTL after an L-3172 was issued for the same tax periods on a previously-filed NFTL, the taxpayer is not entitled to additional CDP rights for the new filing. The taxpayer does have CAP rights for the new filing.

(6) The following publications and forms are enclosed with the L-3172:

- Form 668(Y)(c), *Notice of Federal Tax Lien*
- Publication 594, *The IRS Collection Process*
- Publication 1450, *Instructions on How to Request a Certificate of Release of Federal Tax Lien*
- Publication 1660, *Collection Appeal Rights*
- Form 12153, *Request for a Collection Due Process or Equivalent Hearing*

(7) When an NFTL is requested through ALS and processed by the Centralized Lien Operation (CLO), certain transaction codes are systemically posted to IDRS. A TC 582 indicates that an NFTL was generated for filing and a TC 971 AC 252 indicates the L-3172 was generated. Check ALS to determine when the CDP notice was mailed. As needed, facsimile copies may be generated from ALS by revenue officers and other employees with access to the system.

5.12.6.3.6 (01-19-2018) CDP Notice Time Frames

(1) The IRS is required to notify taxpayers after an NFTL has been filed. The CDP notice must be issued to the taxpayer(s) named on the NFTL at their last known address.

Reminder: There may be special addressing considerations based on the taxpayer's entity type. See IRM 5.12.6.3.6.1, *Possible Address Considerations*, for further details.

Note: For information on notifying the taxpayer's representative of the NFTL filing, see IRM 5.12.6.3.10, *Notifying the Authorized Representative/Power of Attorney*.

(2) CDP notices may be hand-delivered to the taxpayer(s), but the principal means of delivering CDP notices is by mail. The notice must be sent by:

- certified mail, or
- registered mail, if the taxpayer resides outside the United States.

(3) The CDP notice must be hand delivered or mailed within five (5) business days after the NFTL is filed. The NFTL is considered filed on the date it should be received by the recording office. For purposes of systemic notification, the IRS uses an estimated filing date, which is computed by adding three (3) business days to the NFTL mailing date.

Example: An NFTL is mailed to the recording office on September 6, 2017. The CDP notice must be mailed to the taxpayer by September 18, 2017 (i.e., September 1 plus 3 business days plus 5 business days).

(4) The CDP notice must stipulate the response due date for the taxpayer to request an IRC § 6320 CDP hearing. The due date is 30 calendar days after the expiration of the five (5) business days after the date the NFTL is filed (estimated filing date). The response due date is calculated as shown in the chart below.

Calculating Response Deadline

Date NFTL mailed to recording office

+ 3 business days (estimated filing date)

+ 5 business days (required notification time)

+ 30 calendar days (response period)

Response due date for CDP hearing request

Example: An NFTL is mailed to the recording office on September 6, 2017. The CDP notice must be mailed to the taxpayer by September 18 (see example in (3) above). The taxpayer's response due date is October 18, 2017 (i.e., 30 calendar days later).

5.12.6.3.6.1
(01-19-2018)

**Possible Address
Considerations**

- (1) A CDP notice must be separately issued to each taxpayer named on the NFTL at their respective last known address. In most situations, the address shown on the NFTL is where the notice should be sent, but be mindful of circumstances where additional addresses are needed. The entity type can provide clues to identify these situations.
- (2) **Individuals.** When the NFTL is for a jointly-owed liability, each co-obligor (e.g., spouse, ex-spouse) must be sent the notice in a separate envelope addressed to their respective last known address. Be alert for situations, such as divorce or separation, where the co-obligors live at different addresses.
- (3) **Partnership.** The notice must be sent to the partnership's address and separately to any general partners listed on the NFTL at their respective addresses. When mailing addresses are not available for the general partners' residences and the place of employment is not the partnership, attempt to provide the notice during face to face contact with the co-obligors.
- (4) **Limited Liability Company (LLC).** Prior to requesting the NFTL, determine whether the LLC or the single member owner is the liable taxpayer. See IRM 5.1.21, *Collecting from Limited Liability Companies*. Send the notice to the last known address of the liable taxpayer. If there are questions as to whom should be identified on the NFTL, contact Advisory or Area Counsel.

Reminder: The NFTL should not show both the name of the LLC and single member owner.

- (5) **Consolidated Group.** A consolidated group is an affiliated group of corporations connected through stock ownership in a parent-subsidary relationship as defined in IRC § 1504. The affiliated group may elect to file a consolidated income tax return. In such situations the common parent and all the subsidiaries must be listed on the NFTL and also on the CDP notice; however, the notice should not be mailed to the subsidiaries. The common parent is the only entity with the right to participate in a CDP hearing on behalf of subsidiary members of the consolidated group. If there are questions as to whom should be listed on the NFTL, contact Advisory or Area Counsel.

- (6) **Estates.** The notice must be mailed to the fiduciary. If no fiduciary is appointed, the notice should be mailed to the decedent's last known address. The fiduciary for the decedent has the authority to exercise CDP rights on the behalf of decedent. See IRM 5.5.3.7, *Styling and Mailing of Notices*.
- (7) By default, ALS uses the address on the NFTL for any **co-obligors** included on the NFTL. When a situation is identified where the CDP notice must be sent to a different address, secure email the information to CLO with the NFTL request or, if requesting the NFTL through the Integrated Collection System (ICS), as soon as the SLID is assigned.

5.12.6.3.6.2 (01-19-2018) **CDP Notice for NFTL on Additional Assessments**

- (1) IRC § 6320 provides a due process hearing right when an assessment is included on an NFTL for the first time. One module may, over time, have more than one assessment (e.g., an additional audit assessment or certain penalty assessments). A CDP notice must be issued for any NFTL filed on an additional assessment that was not included on a previous NFTL.

Note: Tax assessments include the associated failure to file and pay penalties and interest. A CDP notice is not required when a second NFTL is filed showing new assessments of interest and penalty accruals associated with the tax assessment included on a previous CDP notice.

- (2) When an NFTL is created on ALS, it will identify whether the assessment was included on a prior NFTL. If the new NFTL contains assessments that were not on a previous NFTL, ALS generates an L-3172.
- (3) Check ALS to determine if an NFTL has been filed for the same type of tax and tax period prior to preparing the NFTL.

5.12.6.3.6.3 (01-19-2018) **CDP Notice and Subsequent NFTL Filing**

- (1) When a subsequent NFTL is filed for the same assessments for which the taxpayer previously was issued a right to a hearing, a Letter 3171, *Notice of Federal Tax Lien Additional Filing*, is issued.

Example: An NFTL was filed against Joseph Blackburg for tax periods 30-201212 and 30-201312, in Richmond, VA, on November 11, 2016. Additional property was located in 2017 and an NFTL was filed against Mr. Blackburg for the same assessments (30-201212 and 30-201312) in Montgomery, AL. Mr. Blackburg was issued an L-3171 for the second filing.

- (2) When an NFTL is created on ALS, it will identify whether the assessments were included on a prior NFTL.
 - If the new NFTL contains assessments that were not on a previous NFTL, ALS generates an L-3172.
 - If the new NFTL duplicates a previous NFTL (i.e., all tax periods and assessments the same), ALS generates a Letter 3171.
 - If the new NFTL does not exactly duplicate a previous NFTL (i.e., different tax periods and/or assessments), ALS generates a new L-3172 even though a CDP notice(s) may have been previously issued.

Reminder: The inadvertent issuance of an L-3172 does not afford the taxpayer any additional CDP rights.

5.12.6.3.7
(01-19-2018)

**Preparation and Delivery
of Manual CDP Notices**

- (1) Normally, the CDP notice is systemically generated and issued when the NFTL is processed through ALS. In certain situations though, such as when the NFTL is hand-carried for filing, the CDP notice must be manually prepared and issued.
- (2) The L-3172 (and other lien notices) can be manually generated by using the ICS template.
- (3) The notice must be sent separately to the taxpayer and any co-obligor listed on the NFTL at their last known address. If the address on the NFTL is different from the address where the co-obligor is located, create a second notice using the correct address of the co-obligor. See IRM 5.12.6.3.6.1, *Possible Address Considerations*.
- (4) Insert the tax period data as shown on the NFTL. Calculate the taxpayer's response due date for an appeal as 30 calendar days from the issuance of the notice and insert that date into the letter.
- (5) When ALS is not used to generate the CDP notice, it is the responsibility of the employee making the NFTL filing determination to ensure that the notice is issued within five (5) business days of the NFTL filing, as required by IRC § 6320.
 - a. Issue the CDP notice by giving it to the taxpayer in person, sending it by certified or registered mail, or delivering it to the taxpayer's last known address.
 - b. If sent by certified mail, attach a certified mail label (United States Postal Service Form 3800, *Certified Mail Receipt*).
 - c. Provide the taxpayer with appropriate publications and forms. See IRM 5.12.6.3.6, *CDP Notice Time Frames*.
- (6) Document the case history of the issuance of, or the attempt to deliver, the notice. Include the certified mail number and the date mailed, if applicable.
- (7) Request input of a TC 971 with appropriate action code to indicate issuance of the CDP notice. See IRM 5.12.6.3.18(5), *Inputting TC 971 for Notice Status*.
- (8) Retain the date stamped, receipted copy of the certified mail label in your case file.

Note: The receipted copy must be retained for 10 years after the end of the processing year.

5.12.6.3.7.1
(01-19-2018)

**Issuing a CDP Notice
after Revocation of
Release**

- (1) When a lien is erroneously released, the IRS may revoke the release and file a new NFTL. See IRM 5.12.3.14, *Revocation of Lien Release*, for more details.
- (2) Taxpayers are entitled to CDP rights when an NFTL is first filed on a tax period. If the taxpayer was not previously issued a CDP notice for the tax periods on the new NFTL, a CDP notice must be issued.

Note: Generally, CDP notices have been issued for every original NFTL filing since January 19, 1999, the effective date of IRC § 6320.

- (3) When there is an erroneous release that is revoked and a new NFTL is filed, **and** the taxpayer was issued CDP appeal rights with the original NFTL filing, the taxpayer is not entitled to additional CDP rights. Letter 3171, *Notice of*

Federal Tax Lien Additional Filing, should be issued when the new NFTL is filed. The taxpayer can request an appeal through CAP or possibly an EH. Additional guidance on CAP and EH is found in IRM 5.1.9, *Collection Appeal Rights*.

5.12.6.3.8
(01-19-2018)

Amended NFTL and New CDP Notice

- (1) IRC § 6320 requires that taxpayers be provided one appeal opportunity per tax period, per assessment when an NFTL is filed. If there is an error on the NFTL, the taxpayer's appeal rights may be adversely affected.
- (2) To amend an NFTL, complete and forward Form 13809, *Request for Amendment to a Recorded Notice of Federal Tax Lien*, to CLO for input to ALS . See IRM 5.12.7.9, *NFTL Corrections*.
- (3) When the tax period or type of tax is amended, a new CDP notice is required with a new 30-day response due date for the amended item.

Example: The tax period on the NFTL shows 2015 but the correct tax period is 2016. The taxpayer is entitled to a hearing for the corrected tax period. A new L-3172 must be issued.

- (4) A new CDP notice is not required when the taxpayer's name, TIN, assessment date, or dollar amount is amended. In these situations, an L-3171 should be issued for the amended NFTL.

Example: The taxpayer's name, Jane Smyth, is misspelled as Jane Smith. Amending the NFTL to correct the spelling of the taxpayer's name does not create new CDP rights. An L-3171 should be issued.

- (5) ALS generates the appropriate CDP notice based on the corrections made to the NFTL. The notice is systemically printed and mailed from the Correspondence Production Services (CPS).
- (6) If an NFTL is amended manually, the CDP notice must be manually prepared and issued by the originating employee. Follow standard procedures for sending the CDP Notice to the taxpayer's last known address or delivering it in person not more than five (5) business days after filing the amended NFTL.

5.12.6.3.9
(01-19-2018)

Issuing a Substitute or Duplicate CDP Notice

- (1) When it is determined that a CDP notice may not have reached the taxpayer or is returned by United States Postal Service (USPS) as undeliverable, or when a new address for the taxpayer is located after the CDP notice is issued, another notice may be needed.
- (2) Follow the instructions in the table below to determine when a substitute or a duplicate notice is appropriate.

If...	Then...
a new address has posted to Master File and was effective prior to the NFTL being requested or manually prepared (i.e., the CDP notice was <u>not</u> sent to the last known address)	a “ substitute ” L-3172 must be issued to the new address.

If...	Then...
a new address has been found but not updated on Master File because, for example, the taxpayer has not provided documentation to authorize a change (i.e., the CDP notice was sent to the address of record)	a “ duplicate ” L-3172 may be issued to the alternate address, but it is not required .
a new address posted to Master File within two cycles after the NFTL was requested or manually prepared	a “ courtesy copy ” of the L-3172 may be sent to the new address, but it is not required. See IRM 5.12.6.3.17(4),

Note: For a limited liability company, if the CDP notice was not sent to the last known address of the liable taxpayer, follow the procedures noted above to issue a substitute notice to the liable taxpayer’s address. See IRM 5.12.7.5.3, *Limited Liability Company (LLC)*.

- (3) A substitute notice takes the place and effect of the original notice. A duplicate notice or courtesy copy does not take the place of the original notice, but supplements it. When a situation supports a duplicate notice or courtesy copy, issuance is suggested, but not required.
- (4) If a substitute notice is appropriate, the taxpayer is entitled to an extension to request a CDP hearing. A substitute notice can be generated through ALS by sending a request to CLO to reissue the notice. See IRM 5.12.6.3.17(3), *Processing CDP Notices Returned by the USPS*. Alternatively, the substitute notice can be manually issued.
 - a. Prepare a new L-3172 using the ICS template.
 - b. Calculate the taxpayer’s response due date as 30 calendar days from the issuance of the substitute notice.
 - c. Print or type “substitute” across the top of the notice.
 - d. Send the notice to the last known address via certified or registered mail, deliver it to the taxpayer in person, or leave it at the taxpayer’s residence or place of business.
- (5) If the notice was mailed to the last known address at the time the NFTL was requested and it is determined a duplicate notice should be sent, the taxpayer is not entitled to an extension of time to request a CDP hearing; however, an equivalent hearing may be appropriate. See IRM 5.1.9.3.2.2, *Equivalent Hearing (EH) and Timeliness of EH Requests*, for additional guidance. Duplicate CDP notices must be manually prepared and issued.
 - a. Print or type “duplicate” across the top of a copy of the originally mailed L-3172.
 - b. Mail the duplicate to the alternate address via regular mail

Reminder: A duplicate CDP notice is not the same as a duplicate NFTL. A duplicate NFTL is defined as an exact match to an NFTL currently found on ALS. ALS will not generate an L-3172 for a duplicate NFTL.

5.12.6.3.10
(01-19-2018)
Notifying the Authorized Representative/Power of Attorney

- (1) When an NFTL is filed against a taxpayer who has an authorized representative/power of attorney (POA) for any of the tax periods on the NFTL, the POA must be notified of the NFTL filing. (26 CFR 601.506) See IRM 5.1.23.3.2.3, *Written Communication to a Taxpayer Representative*, for further guidance.

Note: Ordinarily, the IRS only provides a copy of the CDP lien notice to a POA if the taxpayer checked the box on Form 2848 or Form 8821 indicating notices can be issued to the POA. However, unless the taxpayer expressly states otherwise on the form, the IRS is not prohibited from providing a copy of the notice to the POA. See IRM 5.1.23.3.2.3(3), *Written Communication to a Taxpayer Representative*.

- (2) One of two letters should be used to notify the POA, depending on whether the NFTL is a new or additional filing.

- The first time an NFTL is filed on a tax period, Letter 3262, *Notice of Federal Tax Lien Filing - Power of Attorney*, is issued to the POA with copies of the NFTL and the L-3172 that was sent to the taxpayer.
- For a subsequent NFTL filed on the same tax period, Letter 3271, *Notice of Federal Tax Lien Additional Filing - Power of Attorney*, is issued to the POA with copies of the NFTL and the L-3171 that was sent to the taxpayer.

Note: The issuance of the POA notification does not entitle the taxpayer to additional appeal rights nor additional time to exercise appeal rights.

- (3) Employees responsible for making NFTL filing determinations are also responsible for ensuring that the taxpayer's POA is notified of the filing.

Reminder: Co-obligors listed on the NFTL may have separate POAs. The POA for each co-obligor should be notified.

- (4) The Automated Collection System (ACS) and ICS interact with the Centralized Authorization File (CAF) to identify POAs authorized to receive notices. ACS and ICS systemically send POA information to ALS when an NFTL request includes one of the tax periods covered by the authorization. The POA notice is then systemically generated by ALS and printed and mailed at CPS.

- (5) There are situations where the POA information is not systemically downloaded to ALS or additional action is needed to generate the notices, including, but not limited to, the following situations.

- The NFTL request is rejected. When this happens, the POA information is not loaded to ALS and a notice to the POA is not generated. The POA information must be resubmitted to ALS.
- A POA is identified but their information had not yet posted to the Centralized Authorization File (CAF) when the NFTL is requested. The POA information must be manually input to ALS.
- The secondary taxpayer on a joint liability has a different POA than the primary taxpayer. The POA information must be manually input to ALS.
- The NFTL is manually requested outside of ACS or ICS. The POA information should be included with the NFTL request.

- (6) When POA information has to be manually input to ALS, secure email the POA's name and address to CLO with the taxpayer's TIN and the NFTL SLID. If using Form 12636 to request the NFTL, include the POA information on the form. Alternatively, manually prepare the POA's notice and mail it (via regular mail) or personally deliver it to the POA.
- (7) There is no legal requirement to notify the taxpayer's POA within five business days of the NFTL filing; however, notification should be done as soon as possible.
 - By policy, manually-issued notices should be mailed to the POA the same day as the taxpayer's notice, if possible, but no later than five (5) business days after the taxpayer's notice is mailed, unless extenuating circumstances exist.
 - The POA notice generally should be sent via regular mail. Certified or registered mail is not required.

5.12.6.3.10.1
(01-19-2018)
**ICS Macro to Secure
Email POA Information**

- (1) Field revenue officers should request NFTLs through ICS for the bal due cases assigned to them. Revenue officers should ensure that ICS is updated with POA information not found on the CAF system so that information is transmitted to ALS with the NFTL request.
- (2) When POA notification is needed and the POA information is not on the ICS CAF, forward the POA information to CLO for input to ALS. The information should be forwarded when the NFTL is requested or as soon as possible thereafter.
- (3) Use the available ICS macro to secure email POA information to CLO. This macro should be used **ONLY** when ICS CAF data is not available.
 - a. From the ICS Templates Listing, select:
"Miscellaneous/Publications," then
"Request to send 3172 to Power of Attorney."
 - b. Enter the taxpayer's name and TIN, if not already populated.
 - c. Enter the POA name and address. If a joint liability, indicate for which taxpayer the POA is authorized.
 - d. When the email is generated with the appropriate CLO email address, review the text of the email message to ensure the information entered through the macro process. Also ensure the message shows the tax periods on the NFTL request, the SLID of the NFTL, if known, and the date of the NFTL request.
 - e. Send the email. Repeat the process for each POA.
- (4) Document the ICS case history with the POA information and the date it was provided to CLO.

5.12.6.3.11
(01-19-2018)
**Special Condition NFTL
Situations**

- (1) Per policy, a regular NFTL should be filed in the taxpayer's name for the assessments shown on the special condition NFTL before, or at the same time, the special condition NFTL is filed (IRM 5.12.7.6.5.1, *Taxpayer NFTL Filing When Special Condition NFTL Filed*). When the regular NFTL is filed, the taxpayer is notified of their CDP rights under IRC § 6320 by the issuance of L-3172.
- (2) The third party identified on a special condition NFTL and/or the taxpayer may appeal the filing under the Collection Appeals Program (CAP) process.

However, only the taxpayer against whom the assessment is made and against whom the statutory lien has arisen is entitled to a CDP hearing under IRC § 6320. (See Q-A1 in Treasury Regulation 301.6320-1(a)(2).)

- a. A nominee, alter ego, or transferee named on a special condition NFTL is not entitled to CDP rights for the filing. (See Q-B5 in Treasury Regulation 301.6320-1(b)(2).)
- b. A successor-in-interest named on a special condition NFTL may be entitled to CDP rights for the filing. If the IRS has made a determination that the taxpayer has ceased to exist and the taxpayer has not been given CDP rights for the assessments listed on the special condition NFTL, then the successor-in-interest listed on the NFTL is entitled to CDP rights. In these circumstances, the successor-in-interest is primarily liable for the tax and steps into the shoes of the taxpayer. If these circumstances are not present, the successor-in-interest is not entitled to CDP rights for the special condition NFTL filing.

Caution: Consult with Area Counsel if there are any questions as to whether CDP rights should be provided.

- (3) Prior to filing the special condition NFTL, research ALS or other available systems to confirm that a regular NFTL was filed against the taxpayer, and a CDP notice issued, for the assessments involved in the special condition situation. If a regular NFTL has not been filed, take the necessary actions to file the NFTL and provide the taxpayer L-3172.
- (4) When the special condition NFTL is filed, manually prepare the appropriate notification letter and issue it, with a copy of the special condition NFTL and Publication 1660, to the impacted party as described in the chart below. Certified mailing is not required. (See Q-A7 in Treasury Regulation 301.6320-1(a)(2).)

Issue to...	Notice
Taxpayer (CDP rights previously provided)	Letter 3886, <i>Notice to Taxpayer of Nominee/Alter Ego Federal Tax Lien Filing</i>
Nominee, alter ego, or transferee	Letter 3177, <i>Letter Notifying of Federal Tax Lien Filing - Nominee and Alter-Ego</i>
Successor-in-interest (CDP rights previously provided to taxpayer)	Letter 3177, <i>Letter Notifying of Federal Tax Lien Filing - Nominee and Alter-Ego</i>
Successor-in-interest (CDP rights <u>not</u> previously provided to taxpayer (see (2)(b) above))	Letter 3172, <i>Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320</i> (certified mail required)

Reminder: ALS does not generate the L-3177 or L-3886. The employee requesting the special condition NFTL must prepare and issue these.

- (5) Refer to IRM 5.12.7.6, *Special Condition NFTLs*, and related subsections for additional instructions about the special condition NFTL process.
- (6) Document the mailing of the notices in the case file history.

5.12.6.3.12
(01-19-2018)
**IRC § 6901 Transferee
CDP Notification**

- (1) If an assessment is made against a Transferee pursuant to IRC § 6901, the Transferee becomes a taxpayer entitled to CDP rights. When an NFTL is filed on the assessment, the Transferee must be issued Letter 3172 providing notice of their due process rights under IRC § 6320.
- (2) Before preparing an NFTL in transferee situations, review and follow procedures in IRM 5.12.7.6.3, *Transferee NFTLs*. Also follow any guidance provided by Counsel.
- (3) Routine NFTL filing guidelines should be followed for the transferee. When the NFTL is printed through ALS, the L-3172 will be systemically generated and issued by certified mail within the five (5) business day time frame established by IRC § 6320.
- (4) The transferor taxpayer is not provided a copy of the NFTL filed against the transferee nor is the transferor provided additional appeal rights for the filing.

5.12.6.3.13
(01-19-2018)
**Child Support
Obligations**

- (1) There is no jurisdiction based on IRC § 6305 to restrain or review the assessment and collection of child support obligation balance dues. The Code states that the assessment and collection are not subject to review by the Secretary in any proceeding.
- (2) The taxpayer is not entitled to Collection Due Process rights under IRC § 6320 or CAP rights for an NFTL filed for this type of liability. .
- (3) When filing an NFTL for a child support obligation, take note of the following:
 - Do not include child support obligations on NFTLs with tax liabilities that are subject to appeal rights.
 - Do not issue L-3172 giving a right to a CDP hearing.
 - Issue Letter 3527, *Notice of Federal Tax Lien Filing - Child Support Obligations*, with a copy of the NFTL.
- (4) Letter 3527 is not generated by ALS. Employees requesting the NFTL must prepare L-3527 and ensure that the notice is sent to the taxpayer within five (5) business days of filing. There is no certified mail requirement for this letter.

5.12.6.3.14
(01-19-2018)
**Processing CDP Hearing
Requests**

- (1) For comprehensive guidance on handling taxpayers' requests for CDP hearings, read IRM 5.1.9, *Collection Appeal Rights*.
- (2) Taxpayers may mail, hand-deliver, or fax requests for CDP hearings to the employee that requested the NFTL. Requests for appeals based on ACS NFTL filings should be directed to the ACS Support Unit at the ACS site identified in the L-3172.

Note: CDP hearing requests can be received via fax if contact has been made with the taxpayer by phone or in person. The taxpayer history must be documented with the date of contact and the case file documented that the taxpayer wishes to send the request by fax.

- (3) Employees may attempt to resolve issues with the taxpayer, however, this does not extend the 30-day appeal period. When trying to resolve issues with the taxpayer before the taxpayer has filed a request for a hearing with Appeals, it is essential to inform the taxpayer that the discussions do not extend the 30-day period in which a hearing may be requested.

Reminder: IRM 5.1.9.3.3, *Processing CDP and EH Requests*, allows 45 days to attempt to resolve the issue and an additional 45 days with GM concurrence.

- (4) If the taxpayer requested a hearing, the request must be forwarded to Appeals unless the taxpayer submits a written withdrawal of the CDP hearing request. Form 12156, *Withdrawal of Request for Collection Due Process or Equivalent Hearing*, should be used. The table below shows other situations that may be encountered and how to address them.

If...	Then...	Reference
a signed withdrawal is not secured	request must be forwarded to Appeals	IRM 5.1.9.3.3, <i>Processing CDP and EH Requests</i>
the case is fully resolved, but the taxpayer did not submit a written withdrawal	the request must be forwarded to Appeals.	IRM 5.1.9.3.3.1, <i>Processing Withdrawal of Request for CDP Hearing</i>
the withdrawal is received after the hearing request was sent to Appeals	notify Appeals and forward the withdrawal, Form 12256 for closure actions.	IRM 5.1.9.3.3.1, <i>Processing Withdrawal of Request for CDP Hearing</i>
the resolution is reached after the request was sent to Appeals	explain to the taxpayer the option to withdraw the request for a CDP hearing	IRM 5.1.9.3.4, <i>Controlling and Monitoring Cases While in Appeals</i>
the resolution reached is to withdraw the NFTL for an ongoing CDP hearing case	notify Appeals of the proposed action	IRM 5.1.9.5.2.1, <i>Opportunity to Participate</i>

Caution: Be aware of ex parte communication rules when interacting with Appeals. IRM 5.1.9.5.2, *Prohibited Communications*.

- (5) Forward requests for CDP hearings related to fuel excise tax liens immediately to the Appeals employee assigned the case.
- (6) Consult IRM 5.1.9.3.3.2, *Sending Hearing Request to Appeals*, for what information to include in case files going to Appeals.

Note: Narrative statements to Appeals must be limited to a neutral list of documents and neutral statements regarding actions taken and documented in the case history. The manager must ensure this requirement is met and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. Refer to IRM 5.1.9.5, *Communications with Appeals*, and Rev. Proc. 2012-08, 2012-1 C.B. 455, *Ex Parte Communications between Appeals Officers and Other Internal Revenue Service Employees*.

- (7) Forward envelopes received with Form 12153, *Request for Collection Due Process or Equivalent Hearing*. The envelope or a faxed Form 12153 is important when determining the actual date of mailing and may be the deciding factor as to whether the taxpayer is entitled to a collection due process or equivalent hearing.
- (8) If the taxpayer is an in-business trust fund taxpayer (IBTF) that is not current with employment tax deposits, determine if it qualifies for the Rapid Response Appeals Process (RRAP) and process accordingly. Refer to IRM 5.1.9.3.3.2.1, *Rapid Response Appeals Process (RRAP)*.

5.12.6.3.15
(01-19-2018)
**Documenting CDP
Notification**

- (1) The IRS is required by law to notify each co-obligor listed on the NFTL (e.g., spouses of a joint liability, partners of a partnership liability) of their collection due process appeal rights.
- (2) The IRS by policy is required to provide the taxpayer's authorized representative with a copy of the notice issued to the taxpayer.
- (3) Most CDP notification is done systemically through the interactions of ICS, ALS, and CPS. Revenue officers should document case histories of actions taken to ensure CDP notification outside the systemic process.

Example: [ICS history] Sent POA and ex-spouse address information to CLO for input to ALS - SLID 123456789.

Example: [ICS history] Mailed Letters 3172 with copy of manually filed NFTL to both taxpayers at their current addresses. Sent Letter 3262 with copy of L-3172 to POA.

- (4) During the case review process, group managers should note whether revenue officers are documenting, where appropriate, that CDP notification has taken place.
- (5) If the taxpayer requests a CDP hearing in response to the NFTL filing, the revenue officer requesting the NFTL filing must process the request even if the case has been closed.

5.12.6.3.16
(01-19-2018)
**Invalid CDP Notices and
Rescinding the CDP
Notice**

- (1) If a CDP notice is invalid, a substitute notice must be issued. For situations warranting the issuance of a substitute CDP notice because the CDP notice was invalid, refer to IRM 5.1.9.3.2.4, *Invalid CDP Notices and Rescinding a Valid CDP Notice*.
- (2) A valid CDP lien notice may be rescinded only if all the following conditions are present:
 - The taxpayer has not requested a CDP hearing.
 - Within the time period allowed for requesting a CDP hearing the IRS agrees either to withdraw the NFTL or release the federal tax lien.
 - The rescission is accomplished before the expiration of the time period for requesting a hearing.

Note: The withdrawal or release document does not need to be filed within the time period for requesting a hearing.

- (3) Once the time period for requesting a CDP hearing has expired, the CDP notice may not be rescinded because the taxpayer was afforded an opportunity for a hearing.
- (4) If an NFTL is ineffective or withdrawn, the CDP notice is still valid unless the CDP notice is rescinded before the time period for requesting a hearing expires and the taxpayer has not requested a hearing. This includes the following situations:
 - A recording office does not receive the NFTL (regardless whether the “lost” NFTL is filed again).
 - An NFTL is filed in violation of the bankruptcy automatic stay and the NFTL is withdrawn. See IRM 5.12.9.6.6, *Rescission of CDP Rights for Withdrawals*.
 - An NFTL is withdrawn because the taxpayer is in a combat zone, outside the United States away from his or her permanent duty station participating in a contingency operation, or hospitalized for an injury received while serving in the combat zone or contingency operation. See IRM 5.1.9.3.2.4, *Invalid CDP Notices and Rescinding a Valid CDP Notice*.

Note: Per IRC § 7508, the 30-day period for requesting a CDP hearing is suspended for the time spent in a combat zone or contingency operation away from the taxpayer’s permanent duty station, plus any related hospitalization, plus 180 days. If the taxpayer has requested a hearing, the IRS cannot rescind the CDP notice but the IRS shall delay the CDP hearing in accordance with IRC § 7508.
- (5) When a CDP lien notice is rescinded, the TC 971 AC 252 that posted to the tax period(s) on the NFTL must be reversed through input of a TC 972 AC 252. If an NFTL is filed in the future for the same tax period(s), a new CDP lien notice must be issued.

5.12.6.3.17 (01-19-2018) Processing CDP Notices Returned by the USPS

- (1) Notices may be returned by the United States Postal Service (USPS) as:
 - undeliverable (i.e., cannot be delivered as addressed),
 - unclaimed (i.e., addressee does not claim certified/registered mail from USPS), or
 - refused (i.e., addressee refuses to sign to accept notice).
- (2) Returned notices are mailed to the employee who requested the NFTL at their post of duty address listed in ALS or to the office designated by the function for address verification.
- (3) Within fourteen (14) calendar days from the date an **undeliverable** notice is received by the requesting employee (or the person designated the responsibility of processing returned mail), the following actions must be taken:
 - a. Research IDRS to determine if a more current address is available.

Reminder: If the notice was addressed to a secondary taxpayer named on the NFTL, be sure to research that taxpayer’s address information and take the ensuing actions accordingly,
 - b. Research ALS Notadd, if authorized access, to see other addresses where the notice was mailed.

- c. Follow the actions detailed in the table based on whether the address was correct at the time the NFTL was requested.

If at the time the NFTL was requested...	Then..
the address was correct	Document the ICS history that the notice was returned even though it was mailed to the last known address.
the address was incorrect	<p>i) Reissue the notice to the correct address manually or by sending a secure email to CLO to update ALS Notadd. The request must reference the:</p> <ul style="list-style-type: none"> • NFTL serial number (SLID); • certified mail number associated with the notice; and • current address for the taxpayer and co-obligor, if applicable. <p>ii) Document the ICS history with the current address and the date a substitute notice was reissued or requested.</p>

- d. Request input of Transaction Code (TC) 971 action code (AC) 253 to the tax periods on the NFTL following the procedures in IRM 5.12.6.3.18, *Inputting TC 971 for Notice Status*.

Note: If ALS Notadd is used to regenerate the notice, ALS will systemically upload the TC 971 AC 253.

- e. Retain the original notice and envelope in the case file.

- (4) If the address on the returned notice was the address of record at the time the NFTL was requested or manually prepared, but the address was updated on IDRS within two cycles after that time, a courtesy copy of the notice may be sent to the taxpayer's current address, but it is not required.
- (5) If a reissued CDP notice is returned, no additional research is needed because the reissued notice was mailed to the last known address based on prior research. Document the history that the reissued notice was returned and retain the notice and envelope in the case file.
- (6) Within fourteen (14) calendar days from the date an *unclaimed* or *refused* notice is received by the requesting employee (or the person designated the responsibility of processing returned mail), request input of TC 971 AC 254 or 255 to the tax periods on the NFTL following the procedures in IRM 5.12.6.3.18. Document the ICS history and retain the return notice and envelope in the case file. No other actions are needed.

Note: Notices returned by USPS and marked with multiple reasons (e.g., stamped undeliverable and unclaimed/refused) should be treated as undeliverable and worked based on the procedures in (3) above.

5.12.6.3.18
(01-19-2018)
**Inputting TC 971 for
Notice Status**

- (1) Transaction code (TC) 971 with an action code (AC) should be input to IDRS to show the mail status of a CDP notice. The codes are applicable only to L-3172.
 - a. AC 252 - Notice mailed
 - b. AC 253 - Notice returned as undeliverable
 - c. AC 254 - Notice returned unclaimed
 - d. AC 255 - Notice returned as refused
- (2) The employee requesting the NFTL is responsible for ensuring the input of TC 971 AC 252 for the CDP notice.
 - ALS systemically generates the CDP notice and posts the TC 971 AC 252 indicator on IDRS when the NFTL is printed and filed through normal CLO processing. The TC 971 AC 252 generally posts on IDRS 10 days after the NFTL is printed in CLO. If the TC 971 AC 252 does not post, contact the Field Office Resource Team (FORT) to ensure that, either systemically or manually, the TC 971 AC 252 posts.
 - Employees must request input of TC 971 AC 252 within 10 business days after manually preparing and issuing a CDP notice. The date used for the TC should be the date the CDP notice is mailed .
- (3) When a CDP notice is returned by the USPS, the employee or function processing the returned notice is responsible for requesting the input of TC 971 AC 253-255 to IDRS for **each** tax period listed on the NFTL. See IRM 5.12.6.3.17, *Processing CDP Notices Returned by the USPS*.
 - ALS systemically posts the TC 971 AC 253-255 indicator on IDRS when the status of the notice is updated using ALS Notadd. To update the delivery results through ALS, send a request to CLO providing the NFTL serial number, the certified mail number of the notice, and the notice delivery results, i.e., undelivered, unclaimed, or refused.
 - For manually prepared notices, the TC 971 AC 253-255 indicator can be input following standard IDRS input procedures. The date used for the TC should be the mail room or USPS date stamp, whichever is earlier.
- (4) TC 971 Action codes 253-255 may be input without TC 971 AC 252 (mailed) being present on the module. However if you find that the TC 971 AC 252 was not uploaded, research the situation and request input of the code with the appropriate date.
- (5) If the notice of a co-obligor is returned, input the TC 971 with the appropriate action code and also input the cross-reference TIN on the primary account.

Example: An NFTL was filed against John and Mary Black. John's notice was returned by USPS as undelivered on 7/15/2017. Mary received a separate notice and USPS returned it as refused on 08/04/2017. The account would appear as follows:

<u>TC</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>CYCLE</u>	<u>DLN</u>	<u>Variable Data</u>
971	07152017	.00	20172808	xxxxx-xxx-xxxxx-x	ACT CD 253
971	08042017	.00	20173108	xxxxx-xxx-xxxxx-x	ACT CD 255 X-REF xxx-xx-xxxx

5.12.6.3.19
(01-19-2018)
**NFTL Filing During Levy
Appeal**

- (1) There is no prohibition to filing an NFTL when a levy CDP appeal has been requested. An NFTL can be filed if it is deemed appropriate.
- (2) Prior to filing the NFTL, the Collection group manager (GM) should contact, preferably by secure email, the Appeals Team Manager (ATM) of the hearing officer assigned the case and inform them that an NFTL will be filed. Refer to IRM 5.1.9.5(5), *Communication with Appeals*.
- (3) Ascertain if Appeals has new information that would affect the decision to file the NFTL.

Caution: Be aware of ex parte communication rules when interacting with Appeals. IRM 5.1.9.5.2, *Prohibited Communications*.

- (4) Follow standard NFTL filing procedures of attempting to notify the taxpayer of the NFTL filing and their appeal rights. See IRM 5.12.2.2, *Taxpayer Contact*.
 - a. If this is the first NFTL to be filed for the tax periods involved, the taxpayer is entitled to CAP rights regarding the new filing and CDP rights when the NFTL is filed.
 - b. If the taxpayer previously received CDP rights due to prior NFTLs for the tax periods involved, the taxpayer has only CAP rights regarding the new filing.

5.12.6.4
(01-19-2018)
**Collection Appeals
Program**

- (1) The Collection Appeals Program (CAP) was implemented to provide taxpayers or third parties with an opportunity to have collection actions reviewed by an impartial party outside the Collection function. See IRM 5.1.9.4, *Collection Appeals Program (CAP)*, for additional details. Taxpayers should be advised of their CAP rights throughout the collection process. See IRM 5.1.9.2, *Informing Taxpayers of Their Appeal Rights*.
- (2) Collection actions appealable under CAP are NFTL filings, levies, seizures, and installment agreement (denials, modifications or terminations). In addition, CAP can be used to appeal other lien actions including the denial of a request for a withdrawal of NFTL, discharge, subordination, or nonattachment. Refer to IRM 5.12.9, *Withdrawal of Notice of Federal Tax Lien*, and IRM 5.12.10, *Lien Related Certificates* for further information.
- (3) CAP is available before or after the NFTL filing. Taxpayers can dispute the proposed or actual filing of the NFTL. CAP is also available to taxpayers and third parties named as nominees, alter egos, transferees, or successors-in-interest, to dispute the filing of a special condition NFTL. See IRM 5.12.6.3.11, *Special Condition NFTL Situations*, and IRM 5.12.7.6.6, *Appeal Rights for Special Condition NFTLs*, for details.
- (4) A determination to deny an application for withdrawal, discharge, subordination, or nonattachment may be communicated to the applicant in writing or verbally. Denials communicated verbally should be followed up with written notification. In either instance, an explanation of the right to appeal must be provided to the applicant. Pub 1660, *Collection Appeal Rights*, may be used for this purpose.
- (5) If a CAP appeal is requested for the denial of a lien certificate request, inform the taxpayer that your decision must be discussed with your immediate supervisor before beginning the Collection Appeals process.

- (6) Document information about CAP in the case history.

5.12.6.4.1
(01-19-2018)
Exclusions from CAP

- (1) Several collection issues have separate appeal procedures in place. When a taxpayer (or third party) requests an appeal under CAP in error, advise the taxpayer of the correct appeal procedures. Refer to IRM 5.1.9.4.1, *Exclusions from CAP*.
- (2) CAP cannot be used to appeal the following:
 - Collection's decision not to release a lien
 - Actions under the control of a court
 - Issues not within the scope of Internal Revenue laws
 - IRC § 6326 administrative appeal

5.12.6.4.2
(01-19-2018)
Request for a CAP Appeal

- (1) If the taxpayer (or third party) requests a CAP appeal of an NFTL filing or denial of a lien certificate request, the taxpayer must first discuss the case with the Collection manager.
- (2) The Collection manager or designee must reply to the request for a CAP Appeal conference in a timely manner not to exceed two (2) workdays.
- (3) If agreement is not reached at the manager conference, advise the taxpayer that they can have the issue addressed by the Office of Appeals by filing a request in writing. Advise the taxpayer to use Form 9423, *Collection Appeal Request*.
 - a. If the taxpayer intends to submit a Form 9423, the taxpayer needs to let the manager or RO know within two (2) business days after the conference with the manager or collection action may resume (except for appeals related to Installment Agreements).
 - b. If the taxpayer mails the Form 9423, it must be postmarked within three (3) business days of the conference with the Collection manager to avoid collection action.
- (4) Refer to IRM 5.1.9.4.2, *Request for a CAP Appeal*, for further guidance.

5.12.6.4.3
(01-19-2018)
Sending the CAP Request to Appeals

- (1) See IRM 5.1.9.4.3, *Sending CAP Request to Appeals*, for additional guidance on processing CAP requests.
- (2) Send the CAP appeal with applicable information via secure email or fax to the appropriate Appeals Office following the *Case Routing guide* on the Appeals web page. Forward the request to Appeals within two (2) business days of receipt of the Form 9423 after the Collection Manager conference.
- (3) Sending a copy of the entire case file is not necessary and can be burdensome. On a case by case basis, Appeals and Collection will determine what parts of the file are required to adequately address the appeal.
- (4) The Appeals file should include, at a minimum, the following information:
 - Form 9423 and any taxpayer correspondence that accompanied the CAP request
 - Copies of the relevant lien documents
 - Form 433A or Form 433B, if available

- Any other relevant documents, e.g., copies of deeds, mortgages, counsel opinions, appropriate financial documentation, taxpayer correspondence
- (5) In the fax transmittal or email, include your name, email address, telephone number, fax number, as well as the taxpayer's name and telephone number, and, if applicable, the POA's name and telephone number. Also, indicate the date of the group manager's conference and the group manager's email address..
- Any narrative statement included on the fax transmittal or email must be limited to neutral, factual statements regarding actions taken and documented in the case history without any discussion of the strengths and weaknesses of the taxpayer's appeal. The manager must ensure this requirement is met and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. Refer to IRM 5.1.9.5, *Communications with Appeals*.

Caution: Communications between Appeals and most other IRS employees are strictly limited to administrative, ministerial, and procedural matters. The merits, strengths, and weaknesses of the case cannot be discussed.

5.12.6.4.4
(10-14-2013)
CAP Process

- (1) The Appeals organization tries to resolve CAP cases within five (5) business days of the receipt of the case by the Settlement Officer (SO). More complex CAP cases are normally resolved within fifteen (15) business days.
- (2) If a taxpayer presents new information to Appeals that the revenue officer has not considered, Appeals may ask the revenue officer to review and comment on the information, in accordance with the ex parte requirements. See IRM 5.1.9.4.4, *CAP Process*.
- (3) When the filing of the NFTL is the subject of the appeal, further NFTL action is generally withheld unless appropriate to protect the government's interests. The group manager must concur with the planned action during the appeal. Prior to taking further NFTL action, check with Appeals to determine if they have any new information from the taxpayer that may affect the decision. Refer to IRM 5.1.9.5, *Communications with Appeals*.
- (4) Appeals will inform both the taxpayer and Collection of their decision as soon as possible within the five (5) business day requirement. Decisions by Appeals are binding on the taxpayer and Collection.
- (5) If there is concern or disagreement with respect to a decision reached by Appeals refer to IRM 5.1.9.5.4, *Disagreement with Appeals Decisions*.