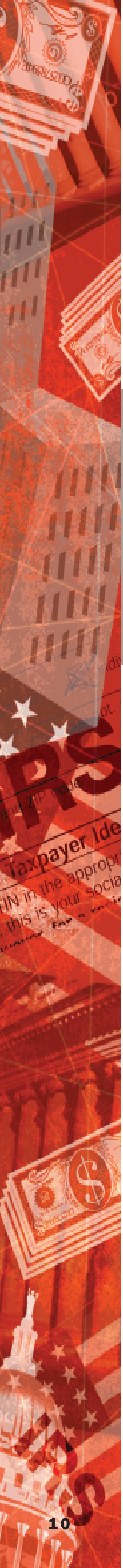
By Anthony P. Curatola, Editor



New Policy for IRS Filing of Liens

The IRS continues its makeover as a "kinder and gentler" tax collector with a new information release that contains five changes to help taxpayers with unpaid federal tax liabilities either avoid a tax lien or reduce the impact of having a federal tax lien filed against them.

Failure to pay your federal income taxes within 10 days of receiving a Notice and Demand for Payment from the IRS can result in the filing of a Notice of Federal Tax Lien in the public records. The lien attaches to all of your property and rights to property. More importantly, the filing of a lien becomes a public record that harms your credit rating and impairs your ability to conduct business.

Over the past few years, the IRS has modified its stance on the issuing and removal of liens from a taxpayer to ease the stigma associated with it. In 2008, the IRS issued IR-2008-141 (December 16, 2008) announcing an expedited process that will make it easier for financially distressed homeowners to avoid having a federal tax lien block refinancing of mortgages or the sale of a home. In 2009, the IRS issued IR-2009-2 (January 6, 2009) announcing a number of new steps to help financially distressed taxpayers maximize their refunds and speed payments while providing additional help to people struggling to meet their tax obligations. In 2010, the IRS hosted a special nationwide open house to help taxpayers—especially veterans and people with disabilities—resolve tax problems and respond to IRS notices. So what does the IRS offer in this area for 2011?

IR-2011-20

On February 24, 2011, the IRS issued its latest information release that provides additional assistance to taxpayers facing unpaid federal tax liabilities. According to IRS Commissioner Doug Shulman, "The IRS is making fundamental changes to our lien system and other collection tools that will help taxpayers and give them a fresh start…These steps are good for people facing tough times, and they reflect a responsible approach for the tax system."

IR-2011-20 announces five changes intended to lessen the negative impact that liens have on taxpayers. If current trends in the failure of taxpayers to pay their federal tax liability remain constant, these changes in IR-2011-20 can reduce the number of liens being issued. The changes in IR-2011-20:

1. Increase the dollar threshold for issuing a lien;
2. Make it easier for taxpayers to obtain lien withdrawals after paying the tax liability;
3. Allow for liens to be withdrawn in most cases where a taxpayer enters into a Direct Debit Installment Agreement;
4. Create a streamlined Installment Agreement for more struggling small business owners; and
5. Expand a streamlined Offer in Compromise program to cover more taxpayers.

Dollar Threshold. The IRS plans to increase the dollar threshold amount that currently is used for filing a lien against a delinquent taxpayer. The current criteria for when the IRS is required to file a lien are found in IRS Manual 5.12.2.4.1, and the criteria for when it may file a lien—but isn't required to—are found in IRS Manual 5.12.2.4.2. As given in these sections, the IRS will file a lien when the unpaid assessment for the taxpayer is more than $5,000, and it may file a lien below that amount to promote speedy payment. Although the announcement doesn't give an exact new dollar amount, the IRS has indicated that the threshold will be significantly higher and will be in keeping with inflationary changes since the number was last revised. Thus, the number of liens being filed for delinquent tax payments should decrease.

Lien Withdrawal. According to the announcement, the IRS plans to modify the procedures followed for a taxpayer to obtain a lien withdrawal. Liens will be withdrawn once full payment of taxes is made and if the taxpayer requests it. Hence, a taxpayer should be aware that a lien isn't automatically removed upon payment. IRC §6325(a) presently requires the issuance of a release of federal tax lien within 30 days of the date on which (1) the liability is satisfied, (2) the liability becomes legally unenforceable, or (3) a bond is accepted. To speed up the withdrawal process further, the IRS plans to streamline its internal procedures to allow collection personnel the authority to withdraw the liens.

Direct Debit Installment Agreements. When a taxpayer's assessment is $25,000 or less, the IRS will allow the lien to be withdrawn if a taxpayer:

1. Enters into a Direct Debit Installment Agreement (DDIA);
2. Converts from a regular Installment Agreement to a DDIA; or
3. Requests the withdrawal because he or she has entered into a DDIA already.

These liens are said to be withdrawn after a probationary period is satisfied whereby the taxpayer has demonstrated that direct debit payments are being honored. The length of the probationary period isn't addressed in the announcement.

Installment Agreements and Small Businesses. The IRS plans to increase the qualifying dollar limit for Installment Agreements, thus making them available to more small businesses. Specifically, the dollar limit for unpaid assessment balances will be increased from $10,000 to $25,000. Better yet, small businesses with assessment balances greater than $25,000 will have the opportunity to pay down the balance to $25,000 and then qualify to participate. This streamlined Installment Agreement will be available to small businesses that file either as an individual or as a business. Finally, the small business will have 24 months to pay off the liability.

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Offer in Compromise. As with small businesses, the IRS plans to expand a new streamlined Offer in Compromise program that will cover a significantly larger group of taxpayers. The new streamlined program will be available for taxpayers with annual incomes up to $100,000 and tax liabilities of less than $50,000 (was $25,000). But not all taxpayers may qualify under this program. The IRS has indicated that it generally won't accept an Offer in Compromise if it believes that the taxpayer has the ability to pay the liability in a lump sum or through a payment arrangement. Thus, the IRS will look at the taxpayer's income and assets to determine if the taxpayer has the ability to pay. If the taxpayer is financially sound—based on the IRS's assessment—an Offer in Compromise won't be an option.

Mellower but Still Dutiful

The IRS continues to advance its persona as being a more amiable collector of federal income taxes. In these times of financial stress for many taxpayers, this is certainly a relief for many. But remember that these programs aren't tax forgiveness programs; they are tax payment arrangements for overdue income taxes that reduce the public stigma for a taxpayer who is associated with a tax lien. Taxpayers should be aware that the IRS is still the collector and, as such, is responsible for collecting the taxes owed by all. **SF**

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