

The American Society of Tax Problem Solvers

"Effectively Utilizing a Lien Defense to Prevent a Levy"

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ASTPS February 2022

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Other Lien Discussion Issues:

- The importance of NFTL “Serial Numbers”
- NFTL “Tax Liability Stacking”
- CAP Appeal or CDP/EH Lien

Federal Tax Lien Procedures-IRC 6320

In general.—

The Secretary shall notify in writing the person described in IRC §6321 of the filing of a notice of lien under IRC §6323. The notice required under paragraph (1) shall be given in person; left at the dwelling or usual place of business of such person; or sent by certified or registered mail to such person's last known address, not more than 5 business days after the day of the filing of the notice of lien.

The notice required under paragraph (1) shall include in simple and nontechnical terms:

- (1) the amount of unpaid tax;
- (2) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2);
- (3) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals;
- (4) the provisions of this title and procedures relating to the release of liens on property; and
- (5) the provisions of IRC §7345 relating to the certification of seriously delinquent tax debts and the denial, revocation, or limitation of passports of individuals with such debts pursuant to section 32101 of the FAST Act.

Right to Fair Hearing-IRC 6320

In general, if the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.

A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or IRC §6330. A taxpayer may waive the requirement of this paragraph.

To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under IRC §6330.

Internal Revenue Manual (IRM) Excerpt

IRM §5.19.4.6.2-5, “Special NFTL Filing Considerations”

IRC §6320 gives taxpayers the right to request a hearing after the filing of a Notice of Federal Tax Lien. The taxpayer must request a CDP hearing no later than 30 days after the expiration of five business days after the date the NFTL is filed. The date the NFTL is filed is the date the NFTL is received by the recording office.

Because the Service does not ordinarily obtain this date from the recording office, the Service uses an estimated filing date on the Letter 3172 to provide the taxpayer with a "must file" date (the date by which the IRC 6320 hearing request must be submitted). The estimated filing date is calculated by adding 3 business days to the NFTL mailing date. In other words, the Service assumes that the recording office will receive the NFTL 3 business days after it is mailed. The "**must file**" date on the letter is then determined by **adding 5 business days** plus *30 calendar days* to the estimated filing date. Letter 3172 is used to notify the taxpayer of their appeal rights and deadline for response. This letter **MUST** be issued to all taxpayers identified on the NFTL **and** to their authorized representatives.

IRM 5.11.1.4.10:

Due Process for Lien Filing

1. Generally, within five business days after a Notice of Federal Tax Lien (NFTL) is filed, Letter 3172(DO), Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320, is sent to taxpayers to inform taxpayers concerning the issuance of the NFTL and allow the taxpayer an opportunity to request a CDP hearing relayed to the NFTL. See IRM 5.12.6, *Federal Tax Liens, Appeals Processes Involving Liens*.

2. If the notice requirements in *IRM 5.11.1.3.2* have been satisfied, Letter 3172(DO) does not create a new waiting period before a notice of levy can be issued. **However, once the taxpayer appeals the lien filing, generally as a matter of policy, no notices of levy will be issued during the administrative or judicial appeal.** See IRM 5.1.9.3.5, *Levy Action during the Period of the CDP or EH*, for a description of when property can be levied during the appeal of an NFTL filing.

Example:

On April 5, 2019, a Notice of Federal Tax Lien is filed, and Letter 3172(DO) is sent to the taxpayer on April 7. The taxpayer appeals the NFTL on April 29. **Until April 29**, as long as the notice requirements in IRM 5.11.1.3.2 have been satisfied, a notice of levy can be issued to collect the amount that is owed, including the periods that are included in Letter 3172(DO).

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January 31, 2022

Internal Revenue Service

ATTN: **Ms. LaTosha L. Blackmon, RO**

SB/SE Collection

1100 Commerce Street

Dallas, Texas 75242

RE: **Smith A. Wesson**

SS#: **XXX-XX-7777**

Ms. Blackmon:

Enclosed is **Form 12153, Request for an Collection Due Process (CDP) Hearing**, regarding the above referenced taxpayer for the tax years and/or tax periods indicated regarding a “**Letter 3172**” dated **December 6, 2021**. This response is within the required response period with respect to requesting a timely **CDP Hearing**. Also noted below are referenced responses to the Form 12153 as follows:

STATEMENT I

1.)	Taxable Period(s):	<u>Form/Type Tax</u>	<u>Year(s) ended</u>
		1040	12/31/2009
		1040	12/31/2010
		1040	12/31/2018
		1040	12/31/2019
		1040	12/31/2020
		1040	12/31/2021

2.) **Statement Regarding Disagreement with Proposed Levy or Lien Action:**

- (a) The execution of the “**Notice of Federal Tax Lien**” (NFTL) has limited the taxpayer’s ability to borrow and/or secure outside funding/loans which would enable the taxpayer to achieve and maintain total tax compliance.
- (b) Therefore we request that the NFTL will be released or withdrawn to facilitate the taxpayer’s ability regarding compliance.
- (c) The taxpayers are contending that the balance due pertaining to some of the tax years are inaccurate and the taxpayers are requesting the opportunity to provide substantiation via an “**Amended Return**” or via an “**Offer-in-Compromise**” based upon doubt as to liability, which would a directly affect the validity of the underlying NFTLs noted above.

- (d) Additionally, if the NFTLs are subsequently deemed to be accurate & valid, the taxpayers are requesting the establishment of an “***Installment Agreement***” or a “***Partial Payment Installment Agreement***” (PPIA) granted under **IRC §6159**, to also eventually facilitate the release or withdrawal of the NFTL.
- (e) Finally, the taxpayers **are** requesting that this hearing be conducted as a **face-to-face hearing** regarding this tax matter.

POINT OF PROCEDURE:

Pursuant to IRM 5.11.1.4.10:

“If the notice requirements in “**IRM 5.11.1.3.2**” have been satisfied, “**Letter 3172 (DO)**” does not create a new waiting period before the notice of levy can be issued. However, **once the taxpayer appeals the lien filing**, generally as a matter of policy, **no notices of levy will be issued during the administrative or judicial appeal**.

Should you need any additional information and/or need clarification of any items noted in this response, please do not hesitate to contact me at the telephone and/or facsimile numbers noted above. A valid ***Power of Attorney (Form 2848)*** has been executed and properly filed with the appropriate Service Center (or Campus) regarding this matter.

Thank you in advance for your immediate attention to this correspondence.

Respectfully submitted,

Bonnie E. Parker, EA, CPA, CTRS