Lien on Me: Virtual Debtors Prisons, The Practical Effects of Tax Liens and Proposals for Reform

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Introduction

Imagine having an unenforceable debt that shows up on your credit report forever, for example a tax lien that was filed with respect to a tax liability on a tax year for which the statute of limitations for collecting the tax liability has now expired. Imagine next that a professional licensing organization (such as the state bar for a lawyer or a self-regulating organization (SRO) for a security broker/dealer) requires about you demonstrate “financial responsibility” or that a prospective employer looks at your credit report and that negative items, including tax liens, could prevent you from obtaining the license or employment.

A second scenario, especially easy to imagine during the current economic downturn, this “Great Recession” as many are calling it, is that you lose your job and you are now seeking new employment, after a great interview, your new prospective employer requests a credit report as part of its routine background check requests, and discovers that you have a paid tax lien that resulted from the job loss (you owed money on your taxes because there is no withholding on unemployment insurance payments). You were unable to pay the liability at the time that you filed your tax return, because you depleted your savings paying recent medical bills that accumulated as a result of the loss of your employer provided health insurance. Through whatever means, maybe a loan from a family member or friend, or work at a temporary job, you scrimped and saved to

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pay off the tax liability, thinking this would end your troubles. However, even this paid tax lien, if a Notice of Federal Tax Lien was filed, will appear on your credit report, for seven years from the date the lien was released. Because of this negative mark the employer may reject your application in favor of an applicant with better credit. The irony of this is that there is little evidence that employees with good credit are better employees. Worse still, this imagined you might even know people who were in similar positions, but managed to avoid having the Notice of Federal Tax Lien filed in the first place, or been able to have it removed from their credit report, making them appear better to someone viewing a credit report, despite being in the same real economic position.

These scenarios are real and occur far too frequently. The current law and the manner in which it is applied, perhaps unintentionally, may result in lower tax compliance because of the degree to which credit impairment may reduce a taxpayers earning ability or affect a small business. The possibility that such differences could exist, creating severe disadvantages between similarly situated taxpayers is troubling from a systemic standpoint as well.

In recent years, the National Taxpayer Advocate, Nina Olson, has highlighted a number of problems with the Service’s current systemic approach to tax liens, making this one of the focal points of her 2009 Annual Report to Congress. These are important issues because in 2009, the Internal Revenue Service issued almost one million NFTLs. As a


2 NATIONAL TAXPAYER ADVOCATE, 2009 ANNUAL REPORT TO CONGRESS v. 2 at 8, The IRS’s Use of Notices of Federal Tax Lien, supra note 1, at 8 The actual number was 965,618, which was up 85 percent from 2005. Id. (citing Internal Revenue Service, IRS Data Book, Table 16, FY2005 (522,887 NFTLs filed in FY 2005) and Internal Revenue Service, Collection Activity Report, No. 5000-C23, Collection Workload Indicators Reports (Oct. 13, 2009)).
result, the number of affected taxpayers is quite large. In addition, as economic conditions have worsened, more taxpayers are likely to have experienced some kind of setback, many more may have fallen behind on their taxes.

This Article explores three specific problems relating to NFTLs: first, the manner in which tax liabilities are selected for the filing of a NFTL; second, when taxpayers have the opportunity to obtain withdrawal of a NFTL following payment of the tax liability; and third, how unpaid, unenforceable tax liens are reported on the taxpayer’s credit report. This Article concludes that in none of these areas do the current law or procedures result in optimal results for the tax collection system, as they result in many taxpayers who are less likely to be able to become and remain tax compliant following whatever situation led to the initial noncompliance. The current state of the law and Internal Revenue Service policy is likely to result in reduced benefit to both individual taxpayers and the tax collection system as a whole.

This Article explores means to change the treatment of tax liens that have become unenforceable or that have been paid to avoid situations that are likely to create situations that, in the long-term, will create a situation that will make it more likely that a taxpayer will be more likely to remain tax noncompliant because of the tax lien. This Article begins in Part I by describing how tax liens arise and are released or withdrawn. Part II describes the history of protections afforded to taxpayers against tax liens that are erroneous or impose an undue hardship on a taxpayer. Part III discusses the effect of a Notice of Federal Tax Lien (“NFTL”) on an individual’s credit report. Part IV advocates two statutory changes. First, it advocates changes to the manner in which NFTLs are issued. Specifically, NFTL issuance procedures must include a requirement of heightened review prior to issuance of a NFTL to ensure that NFTLs are issued equitably to taxpayers based on facts indicating that the filing of a NFTL will increase the likelihood and amount of tax that will be collected from the taxpayers. In addition, the statutes relating to NFTLs should be changed to ensure that following payment of an unpaid tax liability on which a NFTL has been issued and upon request a withdrawal be entered. Second, changes to the Fair Credit Report Act are needed to require the removal of unpaid tax liens from a taxpayer’s credit report when the tax
lien becomes unenforceable in the same time and manner as other unenforceable liens. This part discusses the systemic benefits and potential challenges to this proposed resolution. As this Article demonstrates, these changes will improve taxpayer equity, reduce unnecessary hardship on individuals who suffer temporary financial setbacks, and create a greater potential for future tax compliance, without reducing the potential for current tax collection.

I. Federal Tax Liens

   A. Creation of the Tax Lien and the Filing of a Notice of Federal Tax Lien

   A federal tax lien arises automatically, by operation of law, when a taxpayer who owes federal taxes fails or refuses to pay the tax after notice and demand. Federal tax liens that are arise under Internal Revenue Code section 6321 remain in effect from the time the tax is assessed until the tax is paid or until the tax liability becomes unenforceable, for example because the statute of limitations for collecting the tax liability has expired. The amount of the lien is the amount of the unpaid tax, including any interest, additional amount, addition to tax, assessable penalty on the tax and any costs that may accrue. Because the lien arises without notice and simply by operation of law and not as a matter of record, the federal tax lien is often referred to as a “secret lien.” To make its lien effective against all creditors and subsequent purchasers, the government must file a NFTL.

   The automatic lien that arises under federal income tax code section 6321 does not protect the government against subsequent secured

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3 I.R.C. § 6321 (West 2010).
4 I.R.C. §6322 (West 2010). Federal tax liens on income tax liabilities usually extend for ten years from the time that the tax return is filed. I.R.C. § 6323 (West 2010).
5 I.R.C. § 6321.
creditors, mechanic’s lienors, or good faith, purchasers for value of the taxpayer’s property, because it does not give public notice of the lien.\(^7\) To protect the government against the taxpayer’s unsecured creditors, future secured creditors, and purchasers of the taxpayer’s property, the lien must be made public, which is done when the Service files a NFTL.\(^8\)

Where a NFTL must be filed depends on the type and situs of the property.\(^9\) Internal Revenue Code section 6323(j) and regulations thereunder are designed to provide notice to the creditors, purchasers, and other lien holders that the government has an interest in the taxpayer’s property.\(^10\) NFTLs must be filed under the rules created in the Internal Revenue Code and regulations, rather than any other federal law that establishes a national filing system.\(^11\) As a result of these rules, NFTL filing occurs locally, at the time the tax lien arises, or as will be discussed below, when the Internal Revenue Service or some part of it through its procedures determines the tax liability is at risk of becoming uncollectible.

Following the hearings in 1997 and 1998, in section 3421 of the Internal Revenue Service Restructuring and Reform Act of 1998,\(^12\) Congress sought to create more safeguards when before NFTLs were filed by low level Internal Revenue Service Employees:

(a) IN GENERAL. The Commissioner of Internal Revenue Shall develop and implement procedures under which

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\(^7\) I.R.C. § 6323(a).
\(^8\) I.R.C. § 6323(a).
\(^9\) I.R.C. § 6323(f). A NFTL relating to real property must be filed in the office, whether a state, county, or other governmental subdivision office, designated by the state in which the property is located for filing such liens. I.R.C. § 6323(f)(1)(A)(i). A NFTL relating to personal property, tangible or intangible, must be filed in the office, whether a state, county, or other political subdivision office, designated by the laws of the state, in which the property subject to the lien is located. I.R.C. § 6323(f)(1)(A)(ii). A second office for filing is not created if state law simply conforms to or reenacts Federal law creating a national filing system. I.R.C. § 6323(f)(1)(A)(ii). In cases where the state has not designated a single office that meets the requirements set forth in Internal Revenue Code section 6323(f)(1)(A), the NFTL is filed with the Clerk of the United States district court. I.R.C. § 6323(f)(1)(B). NFTLs relating to property located in the District of Columbia, are filed with the Recorder of Deeds in the District of Columbus. I.R.C. § 6323(f)(1)(C).
\(^10\) I.R.C. § 6323(f); 301.6323-1.
\(^11\) I.R.C. § 6323(f)(5).
(1) a determination by an employee to file a notice of lien of levy with respect to, or to levy or seize, any property or right to property would, where appropriate, be required to be reviewed by a supervisor of the employee before the action was taken, and
(2) appropriate disciplinary action would be taken against the employee or supervisor where the procedures under paragraph (1) were not followed.

(b) REVIEW PROCESS. The review process under subsection (a)(1) may include a certification that the employee has –
(1) reviewed the taxpayer’s information,
(2) verified that a balance is due, and
(3) affirmed that the action proposed to be taken is appropriate given the taxpayer’s circumstances, considering the amount due and the value of the property or right to property.13

Although Section 3421 of the required some managerial oversight of the issuance of NFTLs, the National Taxpayer Advocate concludes that the Service “now imposes more rigorous managerial approval requirements when an employee determines not to file an NFTL.”14 She recommends a change to the IRS procedures to comport with the intent of the 1998 changes to the law.15 This will be discussed further in Part IV.

For purposes of this Article, the more interesting question is not how a NFTL is filed, but rather when, under what circumstances, and by which part of the Service a NFTL is filed. These are increasingly important questions because between fiscal years 1999 and 2009, the number of NFTLs filed increased 475 percent.16 During that same time, in

13 Id.
14 One-Size-Fits-All Lien Filing Policies, supra, note 1, at 25.
15 Id.
real, inflation adjusted dollars, collection revenue fell seven percent.\textsuperscript{17} Without knowing more, one would assume that a NFTL would be filed in cases where the Service determined it was likely to result in collection of some or all of the tax owed. Moreover, one would assume that there was some degree of human intervention in the process. However, that is not always the case.

According to a recent study of NFTLs conducted by the National Taxpayer Advocate, almost 67 percent of all NFTLs are generated by the Internal Revenue Service’s Automated Collection System.\textsuperscript{18} As a result, the imposition of many NFTLs did not involve significant Internal Revenue Service employee involvement or review of taxpayer circumstances and assets.\textsuperscript{19} That means that in most cases, NFTLs are not filed as a result of a determination that the filing is necessary because the taxpayer has property in which the government must protect its interest.\textsuperscript{20} For example, its current procedures cause the Service to automatically file a NFTL when a tax liability greater than $5,000 exists and the taxpayer is placed in “currently not collectible” status because paying the tax liability would create an economic hardship that would leave the taxpayer unable to meet their basic needs.\textsuperscript{21} In fact, approximately 13 percent of the taxpayers in the sample the National Taxpayer Advocate Service studied had been placed in “currently not collectible” because of economic hardship status prior to the filing of the NFTL.\textsuperscript{22} However, determining whether a taxpayer has any assets such as a motor vehicle, business property, or real estate would be relatively simple for the Service through easy to use subscription services that the Internal Revenue Service already purchases.\textsuperscript{23} This alone suggests that the use of NFTLs is not necessarily being used to strategically protect the government’s interest in collecting tax liabilities. As will be more fully developed, the use of NFTLs in this manner may also actually hamper the effective collection of tax liabilities.

\textsuperscript{17} \textit{One-Size-Fits-All Lien Filing Policies}, supra note 1, at 25.
\textsuperscript{18} \textit{The IRS’s Use of Notices of Federal Tax Lien}, supra note 1, at 11.
\textsuperscript{19} \textit{Id}.
\textsuperscript{20} \textit{Id.} at 4 (citing ACS, \textit{Customer Service Activity Reports} (CSAR), FY2009 BOD report).
\textsuperscript{21} \textit{Id}.
\textsuperscript{22} \textit{Id.} at 12.
\textsuperscript{23} \textit{Id}. at 25.
from some taxpayers because it may prevent them from returning to a position where they are able to return to a financial position that will allow them to repay their debts through greater earnings and better employment.

Moreover, it appears that NFTLs lead to the collection of relatively few tax dollars. Indeed, the National Taxpayer Advocate Service’s recent study of the use of NFTLs, found that far more collection revenues was collected from refund offsets and levies. The study selected a sample of taxpayers whose liens were filed in 2002 and studied the payments made on their accounts. Among the findings in the study were that the two largest sources of payment for unpaid tax liabilities were refund offsets and levies. Refund offsets accounted for 42 percent of all payments. Levies accounted for another 34 percent of the payments the Internal Revenue Service collected on unpaid tax liabilities. NFTLs ranked third, accounting for only 19 percent of the money collected on unpaid tax liabilities, or a little less than $1 in $5.

The harsh consequences that may flow from a NFTL are even starker when the process by which most NFTLs are filed is considered. Moreover, NFTLs are not always issued thoughtfully. The majority of NFTLs are issued the Internal Revenue Service’s Automated Collection System. Many of these are generated without significant employee involvement and little review of the taxpayer’s assets. A far better policy would be to require that NFTLs not be issued unless record shows that is possible the taxpayer has or may obtain assets that could be used to satisfy the tax liability.

Indeed, the National Taxpayer Advocate has highlighted for criticism the automatic filing of NFTL on when taxpayers collection status is placed in “currently not collectible due to economic hardship” where there is an unpaid liability of more than $5,000, because on their record it

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24 Id at 5, 10.
25 Id.
26 The IRS’s Use of Notices of Federal Tax Lien, supra note 1.
27 Id. at 10.
28 Id.
29 Id.
30 Id. at 10-11.
31 Id. at 11.
32 Id.
is likely to make obtaining better employment and housing difficult or impossible.\textsuperscript{33} In its responses, the Internal Revenue Service reported that 13 percent of the Taxpayer Advocate’s sample was made up of this group.\textsuperscript{34} The sources from which repayment came were slightly different than for the overall sample, here 60 percent came from refund offsets, 20 percent from NFTLs, and 16 percent from levies.\textsuperscript{35} This supports a conclusion that a NFTL may be even more harmful, as there are less likely to be assets that can be levied, making the ability to work or move to obtain work critical to future earnings and compliance. The National Taxpayer Advocate recommended that the Internal Revenue Service conduct further research to determine whether NFTLs cause unnecessary hardship to taxpayers in these circumstances\textsuperscript{36}

This is not to say that NFTLs should not be used, rather that liens could be more effectively targeted, so that a higher percentage of the NFTLs filed would generate revenue. While twenty percent of collection revenues come from liens, sixty percent of collection revenues, or $3 in $5 collect were the result of refund offsets, amounts due in the form of refunds from other taxes or subsequent years that are withheld and used to repay the tax liability.\textsuperscript{37} A more targeted approach to filing NFTLs would result in greater efficiencies for the government and would result in less unnecessary hardship for taxpayers with no assets and no ability to pay.

\textbf{B. Release and Withdrawal of Tax Liens}

When a NFTL is improperly filed, the tax liability is paid, or the tax lien becomes unenforceable, there must be a mechanism by which the NFTL is lifted, permitting the taxpayer to remove the defect in his or her title to property and also to improve his or her credit report. Two mechanisms exist for removing a NFTL, a release of lien and a withdrawal lien.

\textsuperscript{33}The IRS’s Use of Notices of Federal Tax Lien, supra note 1, at 12-13
\textsuperscript{34}Id. at 12.
\textsuperscript{35}Id.
\textsuperscript{36}Id.
\textsuperscript{37}Id.
Both the release of lien and the withdrawal of lien cause the NFTL to cease to have effect. The reasons for which the Internal Revenue Service will file a release of lien differ from the reasons for which it will file a withdrawal of lien. Both are statutory mechanisms. The reasons for their creation are discussed in Part II, below. However, the effect on the taxpayer of each device is very different, as demonstrated in Part III, below. Because of the very different consequences of each device, a taxpayer against whom an a NFTL is filed should prefer the withdrawal of the NFTL over the release of the NFTL in every case when the tax liability is paid or the lien becomes unenforceable. Part IV will discuss the reasons that in most cases withdrawal of the lien also will be in the best interests of government to withdraw the lien.

A certificate of release of a NFTL must be filed not more than 30 days after the tax liability is paid or the liability becomes unenforceable.\textsuperscript{38} However, the Internal Revenue Service is not required to withdraw the NFTL following repayment of the tax liability.\textsuperscript{39}

When a NFTL is withdrawn it is “as if the withdrawn notice had not been filed.”\textsuperscript{40} This is a far superior result.

The Internal Revenue Code sets out four reasons for which withdrawal of a tax lien is permitted.\textsuperscript{41} Before a tax lien can be withdrawn, there must be a determination that:

(A) The filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) The taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

(C) The withdrawal of such notice will facilitate the collection of the tax liability, or

\textsuperscript{38} I.R.C. § 6325(a)(1) (West 2010).
\textsuperscript{39} I.R.C. § 6323(j) (West 2010).
\textsuperscript{40} Id.
\textsuperscript{41} I.R.C. § 6323(j)(1).
(D) With the consent of the taxpayer or the National Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.42

The Service has recently reversed its position regarding whether it may withdraw a lien after it has released a NFTL.43 In a Technical Assistance written to the National Taxpayer Advocate’s office, the office of Chief Counsel at the Internal Revenue Service (“Service”) recently concluded that it was not legally prohibited from withdrawing a NFTL following a taxpayer request to do so to eliminate the adverse impact on the taxpayer’s credit history, reversing its prior position.44

As discussed in Part III, the consequences of a release of a lien are very different from the consequences of the withdrawal of a lien are very different in terms of the effect on a taxpayer’s credit report. Before reaching that discussion, the next part will discuss the protections that have been enacted over the years to protect taxpayers from errors and undue hardship that may be caused by NFTLs and the potential that their collection has to wreak havoc on a taxpayer’s life.

II. Protections Against Erroneous Tax Liens and Undue Hardship to Taxpayers

Liens, along with their sometime counterpart, levies, are powerful collection tools. In fact, the NFTLs available to the Service are more powerful than the collection tools available to other creditors, as there is no need for the Service to go to a court and obtain a judgment. The NFTL is also a more powerful collection tool than many other countries give to

42 Id.
44 Id.
their tax collection agencies. Because of the power that these collection tools have, a number of protections for taxpayers exist. Over the years the number of protections and their strength has been enhanced to provide taxpayers with greater protection when collection devices are misused, erroneously applied, or result in hardship to a taxpayer. Among the statutory protections for taxpayers are (1) the requirement that a lien be released when the tax liability is paid, (2) the requirement that a lien be released when the tax liability becomes unenforceable, (3) the possibility of obtaining the withdrawal of lien under certain circumstances, and (4) the opportunity for a collection due process hearing, at which collection alternatives, and in some cases the validity of the underlying liability, will be considered, following the filing of a NFTL.

The current protections are inadequate to prevent undue hardship to all taxpayers. Moreover, they must be balanced against the government’s legitimate interest in collecting the taxes that are owed. Under current legal rules, the balance tips heavily in the government’s favor, even when a filing an NFTL provides little likely benefit to the government compared to great potential harm to the taxpayer. Although statutory safeguards such as collection due process, required lien releases, and the possibility of the withdrawal a lien exist, these safeguards can be difficult for less sophisticated taxpayers to use, have strict time limits, and require that the taxpayer have a certain amount of

45 One-Size-Fits-All Lien Filing Policies, supra, note 1, 35 (2009) (“In a recent collection training video, the IRS Collection function director recognizes that ‘no other country appears to have a tool similar to the Notice of Federal Tax Lien. In other countries, tax administration agencies have to initiate some type of lengthy litigation in order to document the debt.’” (Citing David Alito, Director Collection, SB/SE, Training Video, Focusing on the Basics, http://sbse.web.irs.gov/cl2/sl/ivt/csk/Collection/0358/default/htm as discussing Australian, Canada, New Zealand, and Great Britain)).


48 I.R.C. § 6323(j)(1).

49 I.R.C. § 6320 (West 2010).


51 I.R.C. § 6323(a) (West 2010).

52 I.R.C. § 6235 (West 2010).
knowledge of the tax system. In addition, the protections available to taxpayers provide *ex post* rather than *ex ante* solutions to the harms caused by the filing of a NFTL.

In 1992, in two separate bills, Congress approved measures to give the Service greater discretion with respect to the release of liens.\(^{53}\) President Clinton vetoed both bills for reasons unrelated to the lien provisions. Similar legislation was introduced in 1995.\(^{54}\) The provision permitting withdrawal of a NFTL was not passed until 1996.\(^{55}\)

A. Release of Liens

As a conceptual matter, most people are not troubled by the idea that a NFTL may be filed when a taxpayer fails to pay taxes owed, especially after notice and demand.\(^{56}\) As most people would expect, the lien must be released following repayment of the tax liability or the tax liability becomes uncollectible. The Internal Revenue Service is required to file a release of lien within 30 days after the tax liability is satisfied or the tax liability becomes unenforceable.\(^{57}\)

Similarly, there is likely a common expectation that if a NFTL is filed erroneously, such a lien must be released. This expectation is confirmed by Internal Revenue Code section 6326. If a person’s property is the subject of an NFTL and the person believes that the NFTL was erroneously filed, he or she may appeal the filing.\(^{58}\) If it is determined that the NFTL was erroneously filed, the lien must be released and the Internal Revenue Service must “expeditiously (and, to the extent practicable, within 14 days after such determination) issue a certificate release of such lien and shall include in such certificate a statement that such filing was erroneous.”

\(^{53}\)GENERAL ACCOUNTING OFFICE, INFORMATION ON TAX LIENS IMPOSED BY IRS 4, GAO/GGA-95-87R (1995).

\(^{54}\)GENERAL ACCOUNTING OFFICE, INFORMATION ON TAX LIENS IMPOSED BY IRS 4, GAO/GGA-95-87R (1995).


\(^{56}\) I.R.C. §§ 6321, 6322 (West 2010).

\(^{57}\) I.R.C. § 6325(a)(1) (West 2010).

\(^{58}\) I.R.C. § 6326(a) (West 2010).
The requirement that the Internal Revenue Service release the lien within 30 days after satisfaction of the liability, the liability becoming unenforceable, or discovery that the lien was erroneously filed provides some protection to the taxpayer or person against whose property a lien has been filed. However, as will be discussed below, because relatively few dollars are collected as a result of liens and the manner in which credit reporting agencies treat NFTLs, greater protections are needed to ensure that NFTLs are not filed too frequently, the effect of an NFTL showing up on a credit report will not be life-alteringly disastrous in the long-term, or both. The release of lien requirement does not adequate protect taxpayers against unnecessary hardship. This will be discussed further in Part III.

B. Withdrawal of Lien

In 1996, the Taxpayer Bill of Rights created new safeguards for taxpayers, including the possibility of the withdrawal of a lien. The effect of a withdrawal of lien is to make it as though no NFTL was ever filed; for taxpayers this is a far better result than that of the taxpayers who pay the tax liability followed by a simple NFTL release. Moreover, it is the same result as is achieved by a taxpayer who simply paid the tax liability without having had the IRS file a NFTL.

Upon written request by the taxpayer with respect to whom a notice of lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice.

Unfortunately for a taxpayer who pays a tax liability after the filing of a NFTL, withdrawal of a NFTL is not available in all circumstances. The statute permits withdrawal only when the lien was filed prematurely,

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59 I.R.C. § 6325(a)(1).
60 This is frequently referred to as TBOR2.
not in accordance with the Service’s administrative procedure, the
taxpayer has entered an installment agreement and the contract does not
preclude withdrawal of the NFTL, a withdrawal of the NFTL will
facilitate collection of the tax liability, or the taxpayer or National
Taxpayer Advocate consent to the withdrawal after release and it would be
in the best interest of the taxpayer and the United States. The National
Taxpayer Advocate has argued that after payment of a tax liability that
was the subject of a lien it will almost always be in the government’s best
interests to withdraw the lien failure to withdraw the lien may cause the
taxpayer to face higher interest rates, be denied credit, or refused
employment. The National Taxpayer Advocate has argued that
withdrawal of the lien post-payment may facilitate greater tax compliance
because the continued existence of the lien may continue to cause
economic hardship for the taxpayer, whereas withdrawal of the NFTL,
making it as though it had never been filed, will immediately improve the
taxpayer’s credit position and possibly their earning potential as well.

C. Collection Due Process

Because a NFTL can be incredibly harmful to a taxpayer’s credit
and disruptive to a taxpayer’s life, the filing of a NFTL is one of the things
that triggers a taxpayer’s right to a collection due process hearing.
Following the widely publicized hearings in 1997 and 1998 that led to the
Internal Revenue Service Restructuring and Reform Act of 1998,
collection due process (CDP) hearings were created as additional rights
available to taxpayers.

63 I.R.C. § 6323(j).
64 One-Size-Fits-All Lien Filing Policies, supra, note 1, at 29.
65 Id.
66 I.R.C. § 6320(a).
67 Pub. L. 105-206, § 3401(a), 112 Stat 758 (1998). For discussion of these hearing see
generally Camp, Tax Administration as Inquisitorial Process and the Partial Paradigm
Shift in the IRS Restructuring and Reform Act of 1998, 56 FL A. L. REV. 1 (2004);
Danshera Cords, Collection Due Process, How Much Process is Due? 29 VT. L.REV. 54
(2004).
The Service is required to notify the taxpayer of the filing of the NFTL within five days of its filing.68 Pursuant to the Code, within 5 days after the filing of the first NFTL relating to a tax and tax period, the Service must provide the taxpayer with a notice informing the taxpayer of the taxpayer’s right to request a hearing within 30 days of the date that is 5 days after the filing of the NFTL.69

At the hearing the taxpayer may raise any relevant issues.70 In most cases, relevant issues include spousal defenses, challenges to the appropriateness of the collection action, and collection alternatives such as an offer-in-compromise or an installment agreement.71 In a few cases, when the taxpayer has not received the statutory notice of deficiency or otherwise had an opportunity to challenge the underlying liability, the underlying liability also properly may be raised during the CDP hearing.72 CDP hearings are conducted by previously uninvolved, impartial Appeals officers.73 Following the CDP hearing, the Appeals officer issues a notice of determination.74 A taxpayer who is not satisfied with determination may appeal the determination to the United States Tax Court.75

According to the National Taxpayer Advocate’s Annual Reports to Congress, in most years since the hearings became available in January 1999, and their appeals began entering the courts, CDP issues have been the most litigated tax issue.76 In the two years post-2001 that they were

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68 I.R.C. §§ 6331; 6320(a)(3) (West 2010).
69 I.R.C. § 6320(a)(3).
70 I.R.C. § 6320(c); 6330(c)(2) (West 2010).
71 I.R.C. § 6330(c)(2)(A).
72 I.R.C. § 6330(c)(2)(B).
73 I.R.C. § 6330(b)(3).
74 I.R.C. § 6330(c)(3).
75 I.R.C. § 6330(d)(1). Review of the Appeals’ determination is for abuse of discretion, unless the underlying liability was at issue. Id. Further, appeal may be made to the United States Circuit Court of Appeals. Id.
76 NATIONAL TAXPAYER ADVOCATE, 2009 ANNUAL REPORT TO CONGRESS 404 (reporting that collection due process was the most litigated issue in 2009); NATIONAL TAXPAYER ADVOCATE, 2008 ANNUAL REPORT TO CONGRESS, 455 (reporting that appeals from collection due process hearings were the second most litigated issue in 2008); NATIONAL TAXPAYER ADVOCATE, 2007 ANNUAL REPORT TO CONGRESS 558 (reporting that appeals from collection due process hearings were the most litigated issue in 2007); NATIONAL TAXPAYER ADVOCATE, 2006 ANNUAL REPORT TO CONGRESS 553 (reporting that appeals
not the most litigated issue, they were the second most litigated issue. Thus, CDP hearings have become very costly for the Internal Revenue Service and for the United States Tax Court.

However, as Professor Bryan Camp explains in his thoughtful critique of the CDP rights, taxpayer successes in CDP cases have been very limited. Professor Camp finds that “Of the over sixteen million collection decisions made since 2000, courts have reviewed at most 3,000 and have reversed only sixteen.”™ While Camp’s analysis may not compare apples to apples in all cases and overlooks cases where CDP resolved the matter at the Internal Revenue Service long before judicial review was needed, as well as cases where there is a partial victory because there is a remand and the case is resolved without the need for reversal, Camp’s main point is sound. Camp’s larger point that CDP has enormous costs and does not resolve all system problems associated with NFTLs,™ is a fair point that cannot be underestimated.

™ At this point in the analysis, Camp and I go our separate ways in how to resolve the problem. Professor Camp has been a strong advocate of the “Inquisitorial Process” as he has referred to it. See, e.g., Camp, supra note 67. I remain an advocate of an “adversarial process” of which he views CDP a part, although a “collaborative process” to the extent it could be developed would likely be systemically better for getting taxpayers who have fallen out of compliance back into the compliance and returned to the tax system. However, to some extent either an adversarial or inquisitorial system will remain essential as no one is going to ever be happy to pay taxes and questions regarding the amount of liability and the assets from which certain liabilities can be collected are
However, NFTLs that are not promptly released once the tax liability is paid or the tax liability becomes unenforceable or that continue to appear on a taxpayers credit report may create situations that create hardships for the taxpayer and unintentionally set up a situation where the taxpayer is more likely to become or remain noncompliant. This may actually be contrary to the governments interest in efficient, effective tax collection. Establishing procedures that ensure that there are assets to be protected, ensuring that the NFTL does impair credit and employment for longer than necessary, and considering these factors in light of the information needed by creditors and employers will better balance the needs of the government, taxpayers, and the users of credit report information, as discussed in the next two parts.

III. NFTLs and the Ubiquitous Credit Report

Even when paid, tax liabilities for which a NFTL was filed may continue to haunt a taxpayer for many years, through the effect on the taxpayer’s credit report. Neither the Internal Revenue Service, nor the Credit Reporting Agencies (“CRAs”) have any affirmative obligation to immediately remove the black mark created by a satisfied tax lien once a tax debt is satisfied. Notwithstanding the requirement that the Internal Revenue Service file a release of the lien within in 30 days of the date on which the lien is paid or becomes unenforceable, a paid tax lien may, and therefore does, remain on an individual’s credit report for seven years from the date of payment. As discussed above, it is possible for some taxpayers to have a NFTL withdrawn following payment of the tax liability. Because this treatment is given only to those taxpayers who ask for it, and then establish to the satisfaction of the National Taxpayer Advocate Service that it is in the best interest of the government, it can create disparities between otherwise similarly situated taxpayers. The

inevitable as there will remain a certain number of citizens who will remain reluctant or even unwilling to pay their fair share of the amount necessary to finance common weal.

81 See supra notes 60-65 and accompanying text.
advantage of having the NFTL withdrawn is that it is then immediately removed from the taxpayer’s credit report.

Increasingly, credit reports are used to inform many decisions. Credit reports are not only used to inform traditional credit decisions, that is they are not only used to assist lenders when they decide whether to grant credit for a home purchase, a car purchase, or when a hopeful customer applies for a credit card. Credit reports are also used to determine whether a person will be hired, issued a professional license or bond, given insurance, given a good rate on insurance, or allowed to rent an apartment. These uses also have their critics, as evidenced by a recent New York Times article, which pointed out the lack of evidence supporting the use of credit reports in hiring decisions, notwithstanding the loss of $30 billion a year to retailers employee theft or $55 million a year to employers from workplace violence.82

Because of the increasing importance of credit reports to consumers and creditors alike, credit reports, their use, and their contents have been subject to federal regulation through the Fair Credit Reporting Act (“FCRA”) since 1970.83 In enacting the FCRA, Congress noted that “The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system”84 and “There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.”85

The FRCA provides certain protections to individuals and limitations on the time that negative information can be reported in most instances. In most cases, negative information must be removed from an individual’s credit report after 7 years.86 Among the information that can

82 Andrew Martin, As A Hiring Filter, Credit Checks Draw Questions, N.Y. TIMES A1 (4/10/10 ).
86 See e.g., information provided by Fair Isaac Corporation, which computes the FICO score, the most widely used credit score, available at http://myfico.custhelp.com/cgi-
only be reported for seven years are paid NFTLs. Some information remains on a credit report longer, for instance, a bankruptcy filing remains on the credit report of the person who filed the petition in bankruptcy for ten years. However, an unpaid NFTL may remain indefinitely, as the FCRA addresses removal of only paid tax liens.

One aspect of a credit report that is decidedly negative and will almost certainly create problems for an individual is a Federal notice of tax lien. Upon the filing of a NFTL, an individual’s credit score declines by approximately 100 points. The effect on the taxpayer’s credit score decreases over time. The fact that unpaid tax liens remain on a taxpayer’s credit report indefinitely puts the taxpayer in a kind of “virtual debtor’s prison,” as some suffering from this treatment have described it. One reason that statutes of limitations exist is to allow a matter, such as a debt, to go into repose. Moreover, the older a debt become, the less likely it is to be collectible.
Thus, when a NFTL is filed, often without any human intervention or any consideration of whether it will increase the likelihood of collection or whether the taxpayer has any available assets, it affects the taxpayer’s credit report. On one hand, many will respond, fair enough, the taxpayer has not paid his or her fair share of taxes, while almost everyone else has. Moreover, as a practical matter, many taxpayers who have one unpaid tax liability are likely to have more than one and may not be noncompliant in only a single instance. A recent study confirms this intuition to a great degree.\(^93\) On the other hand, this filing may create a hardship for the taxpayer that will make it impossible for the taxpayer to become tax compliant or repay the liability.

If the old NFTL were withdrawn, rather than released, when it ceased to be enforceable, it would not have the same effect on the taxpayer’s credit. Instead it would be treated as if it had not been filed.\(^94\) Even if it were only withdrawn on request, the taxpayer would have the ability to put him or herself in a position to right his or her life, move forward and potentially become a more productive person, one who would become a taxpayer, and a compliant one at that.

In addition, the local filing of a NFTL may mean that the lien is picked up by CRAs, but because of the duration of a NFTL the taxpayer may forget about the NFTL once the tax liability is paid or the lien becomes unenforceable. As a result, when the taxpayer goes to apply for a mortgage to buy a house, to change jobs, or apply for certain professional licenses, the continued presence of the tax lien on the credit report may be a surprise. The long term effects on a taxpayer are not widely understood and the implications may have lasting implications on the taxpayer’s ability to become and stay compliant with future tax obligations.

However, the idea that bad things happen to good people and a second chance may be warranted are embodied in some of the collection alternatives that are available, such as the offer-in-compromise, which permits the Internal Revenue Service to settle a tax liability for less than amount owed for a variety of reasons, including doubt as to

\(^93\) Subsequent Compliance Behavior of Delinquent Taxpayers, supra note 1, at 21-22.
\(^94\) I.R.C. § 6323(j)(2) (West 2010).
This premise also carries through into the availability of the withdrawal of a NFTLs when the taxpayer and the Internal Revenue Service enter into an installment agreement; the withdrawal will facilitate collection of the tax liability; or the taxpayer or the National Taxpayer Advocate consent to the withdrawal and “the withdrawal of [the NFTL] would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States.” In these instances, because the NFTL is withdrawn, the NFTL is removed from the taxpayer’s credit report because following the withdrawal it is “as if the withdrawn notice had not been filed.”

As noted, the National Taxpayer Advocate’s recent study of the Internal Revenue Service’s use of NFTLs suggests that the means by which the NFTLs are issued is not well targeted and they are not collecting as much additional revenue as might be expected by the 475 percent growth in rate of issuance of NFTLs between 1999 and 2009. Yet, during that same period, revenues generated by the collection function declined seven percent.

While some may argue that making the removal of the NFTL from a taxpayer’s credit report by allowing withdrawal upon request simply after payment allows taxpayers to hide black marks from creditors and from professional licensing agencies, NFTLs are not filed in all instances where there is an unpaid tax liability. Thus, there is already the possibility that taxpayers in the same position, i.e., that have unpaid tax liabilities that are past due, fail to report that to creditors or professional licensing agencies just because there is no NFTL in place. Horizontal equity suggests that each of these taxpayers should be treated the same. That one

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95 I.R.C. § 7122(d) (West 2010); Treas. Reg. § 301.7122-1(c)(2). Other reasons for which an offer-in-compromise may be granted is for doubt as to liability or to promote effective tax administration. Treas. Reg. § 301.7122-1(c)(1), (3).
100 The IRS’s Use of Notices of Federal Tax Lien, supra note 1, at 3. FY 1999 is the year following passage of the Internal Revenue Service Restructuring and Reform Act, a period during which collection action fell off precipitously.
101 Id. at 4.
had the good fortune to escape a NFTL and the other did not should not put the less fortunate taxpayer in an even worse position for the years or decades to come.

Notwithstanding the normal case, it is not hard to imagine an extraordinary case where an individual has significant assets but has fallen on hard times, loss of employment, perhaps loss of a spouse, and now faces a hardship. This is the case that requires human intervention, where filing the NFTL may be appropriate. Use of an automated system may not be able to fully address the nuances of these situations. Unfortunately, the less automated an approach, the more resource intensive and costly it is.\(^\text{102}\)

More thoughtful issuance of NFTLs, targeted to situations where the NFTL will likely result in increased collection and reduce unnecessary harm or hardship to taxpayer credit would be generally beneficial. It would reduce the need for intervention on the part of Low Income Taxpayer Clinics (“LITCs”) and consumer credit advocates.

In discussing their approach to NFTLs, CRAs have reported their treatment of NFTLs as follows.\(^\text{103}\)

In September 2009 we participated in conference calls with senior representatives of the three major credit reporting agencies. All the representatives confirmed that when a NFTL is withdrawn, the original reference in the credit history to the federal tax lien is removed “as if it didn’t happen.” One representative stated that the reason the withdrawal is treated differently from the release is that a withdrawal indicates that the lien was “filed in error,” and is essentially the IRS’s statement that a lien did not exist.

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\(^\text{102}\) See generally, Camp, supra note 78; Camp, supra note 67.

whereas a release reflects only that a lien has been satisfied.\footnote{CC Program Manager Technical Assistance 2009-158 n.2, released March 30, 2010, available at 2010 TNT 60-17; see also http://myfico.custhelp.com/cgi-bin/myfico.cfg/php/enduser/std_adp.php?p_faqid=14.}

This footnote discussing the CRA’s approach to the treatment of release and withdrawal of NFTL’s suggests that CRAs do not understand and oversimplify the reason NFTLs are released or withdrawn. Because the CRAs’ information has such power and influence in so many other aspects of everyday life, the information that they are providing to their consumers and that they are provided from the Internal Revenue Service must be easier to understand.

The Chief Counsel Program Manager Technical Advice, which was written to the National Taxpayer Advocate’s Office, in response to the Taxpayer Advocate’s inquiry regarding “whether a notice of federal tax lien . . . can be withdrawn pursuant to I.R.C. section 6323(j) after the lien has been released pursuant to I.R.C. section 63235(a).” The Chief Counsel’s Office, Procedure and Administration Branch concluded that “the IRS is not legally prohibited from filing a withdrawal” and “[w]hether or not to file a withdrawal under section 6323(j)(1)(D) is within the IRS’s discretion.”\footnote{CC Program Manager Technical Assistance 2009-158, released March 30, 2010, available at 2010 TNT 60-17.} This was a change in the Chief Counsel’s position.\footnote{Id.} Previously, Chief Counsel concluded that “[i]f a release had been issued there was no NFTL to withdraw.”\footnote{Id.} The prior position dated back to 2006 and had been written in to the Internal Revenue Manual in September 2006.\footnote{Id. Prior to 2004, the Internal Revenue Manual had no mention of releases or withdrawals.}

Under current law, Internal Revenue Code section 6103 guarantees that unless a NFTL is issued, the fact of an unpaid federal tax liability is not going to become a matter of public record or placed on a taxpayer’s credit report. As a result, otherwise similarly situated taxpayers have very different results, simply as a matter of whether they stayed on top of the
liability so that no NFTL was filed. When an NFTL is filed some taxpayers may be able to get the NFTL withdrawn while others may not, as that is within the discretion of the Internal Revenue Service, as discussed above. Whether the NFTL is simply released or is withdrawn may in part depend on whether the taxpayer was fortunate enough to be advised by a credit counselor or LITC or simply muddled through alone. Such distinctions or happenstance should not result in lasting or irreparable consequences to similarly situated taxpayers.

Whether a negative mark is immediately removed or remains on a taxpayer’s credit report for seven years or forever should not be a matter of whether the taxpayer is lucky or has the good fortune to get good legal advice. All taxpayers should receive the same treatment. In addition, changes to the Fair Credit Reporting Act are needed to treat unenforceable tax liens like other uncollectible liabilities, to ensure that they do not remain a permanent blot on a taxpayer’s credit report. These changes are needed to ensure that there is an adequate balance between the government’s need to collect the taxes that are owed and to ensure that everyone pays what they are owed, while at the same time preventing tax liens from causing undue hardship, perpetually preventing taxpayers from obtaining professional licensure, obtaining certain employment, renting or purchasing property, or obtaining credit, which may cause small businesses to fail.

IV. Recommendations for the Future

Two changes to the Internal Revenue Code and one change to the FCRA are needed. First, the Service must be required to consider whether the filing of a NFTL will increase the likelihood of collection, and determine whether the NFTL is truly in the government’s best interest prior to filing, such as in cases where the taxpayer has assets that the NFTL will create a priority interest in for the government. Second, the Service should be required to withdraw a NFTL when the underlying tax is paid, but at a minimum must be required to withdraw a NFTL upon the taxpayer’s request. Finally, the FCRA must be changed to require removal of unpaid tax liens from a taxpayer’s credit report, such liens cannot continue to remain on credit reports indefinitely because of the
harm that they cause contrary to the government’s interest in effective, efficient tax collection.

A. Changes to the Internal Revenue Code

While at first blush it may seem fair to “punish” someone who failed to pay his or her taxes when they were due, because everyone else was required to, and for the vast majority part did, the punishment should at least “fit the crime.” First, it should be remembered that criminal nonpayment of tax is specifically defined in the Internal Revenue Code, and if it is not charged as a crime, then true punishment really is inappropriate. Second, the Internal Revenue Code already has specific penalties in the form of the imposition of interest and additions to tax on unpaid tax liabilities. If additional penalties are to be extracted from taxpayers for their failure to timely pay their tax liabilities, it should be done intentionally, not unintentionally. In some cases the results of NFTLs are unintentional, especially those imposed systematically and without human intervention.

It is imperative that every opportunity exist to get previously noncompliant taxpayers who have paid their tax liabilities into a situation where they can become and remain tax compliant; collection alternatives such as offers-in-compromise and installment agreements always require that the taxpayer become, and remain, compliant with their tax obligations. If the tax lien remains on the credit report, it may jeopardize future employment, as well as a taxpayer’s potential for mobility to find better employment because both new and better employment and housing may be difficult to find. Such challenges will make tax compliance more difficult. It will also make the individual and his or her family worse off. That is not in the best interest of the tax system or the taxpayer.

Because the Internal Revenue Service has changed its position on the permissibility of withdrawing NFTLs within its discretion, 111

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109 See e.g., I.R.C. § 6672 (West 2010).
110 I.R.C. §§ 6621, 6651 (West 2010).
withdrawal upon payment should be made mandatory by statute. This is particularly necessarily because of the increasing importance of credit reports in a multiple aspect of daily financial life.

As the legislative history to Internal Revenue Code section 6323(j) indicates that Congress intended that withdrawal be permitted in the discretion of the Internal Revenue Service if one of the four criteria in section 6323(j) is found,\textsuperscript{112} and since the enactment of 6323(j) in 1996, the Internal Revenue Service has adopted varying views on whether it has the discretion to withdraw a NFTL after it has issued a lien,\textsuperscript{113} the current law is inadequate to protect taxpayers.

In addition, because the Internal Revenue Service’s interpretation of its discretion relating to withdrawal of a NFTL following release has moved from one extreme to the other over time, a taxpayer may not be certain whether the current interpretation will hold, if the taxpayer is planning for the future and has not yet satisfied an unpaid liability. More certainty would be desirable.

A more moderate approach would be to require withdrawal only when requested by a taxpayer. However, approach would not create equity between all taxpayers regardless of whether a NFTL was filed or the taxpayers had sufficient sophistication and knowledge to request withdrawal. In addition, the harm created by the continued report of a NFTL is great.

Moreover, this will put taxpayers who pay their tax liability on their own on an equal footing with taxpayers who enter installment agreements and taxpayers who are required to have the NFTL withdrawn or subrogated so that they are able to obtain financing, making such an action in the best interest of collection. Internal Revenue Code sections 6325, providing for release of lien, and 6323(j) providing for withdrawal of lien in limited circumstances, result in different treatment of the lien. Whether withdrawal is granted following payment is discretionary, and the Internal Revenue Service’s position regarding granting requests for post-payment withdrawal has changed dramatically over time. These different consequences exacerbates the disconnect that taxpayers may experience

between their desire to clean up their financial life, get into compliance with their tax obligations, and the hole that having a tax lien on their record puts them in. To laypersons, and even those who are not experts in tax deficiencies or consumer credit, the difference between the terms “release” and “withdrawal” when used in conjunction with a tax lien may seem to be without distinction. This may be very problematic for less sophisticated taxpayers who do not know the tax system well, do not have means to access a consumer representative, or do not happen upon an LITC or consumer credit advocate who is able to help them.

To further the goals of sound tax policy the results to similarly situated taxpayers should be the same. Thus, taxpayers against whom a NFTL was filed should be entitled to have a withdrawal filed and CRAs notified of the withdrawal. In its response to the National Taxpayer Advocate’s 2009 Report to Congress, the Internal Revenue Service noted that

The IRS does not report tax debts or the filing of NFTLs to credit reporting agencies. Those agencies receive notification of public lien filing through third party vendors and report that information on consumer credit reports. IRS decisions regarding the filing, release, and withdrawal of liens must be based on the need to protect the priority of the government and to secure payment.

These statements are both true. Together and in conjunction with the effect of a NFTL on a taxpayer’s credit, they may suggest that withdrawal will make the government better off, because the taxpayer will be in a better position to pay future liabilities.

B. Changes to the Fair Credit Reporting Act

There is no sound reason to continue to allow unenforceable tax liens to appear on credit reports longer than other unenforceable debts. Doing so simply results in an additional, unintended penalty. Judgments and other debts must be removed seven years after the statute of
Bankruptcies are only permitted to appear on a credit report for ten years. At most, unpaid tax liens should be permitted to remain on a credit report for ten years. However, because of there is a greater likelihood that a taxpayer will be able to accumulate more assets, get a better job, and otherwise have better opportunities to become a more compliant taxpayer the sooner that a tax lien does not appear on the taxpayer’s credit report, the FCRA should be amended to require removal of unpaid tax liens seven years after the NFTL becomes unenforceable. In most cases, this will still have created a black mark for up to 17 years, given the 10 year statute of limitations, if there was no tolling of the statute of limitations, for example because the taxpayer requested a redetermination of the deficiency in the United States Tax Court or a CDP hearing. As a result, the FRCA must be changed to require removal of unpaid tax lien 7 years after the lien become unenforceable such specificity is required to change the current treatment by the CRAs of leaving unpaid tax liens on credit reports indefinitely and perhaps exacerbating the problems of tax noncompliance of the taxpayer with a single NFTL.

Conclusion

Requiring the Internal Revenue Service to consider whether a NFTL will in fact increase the likelihood that the filing will increase amount of likelihood that assessed taxes are collected will prevent unnecessary economic hardship, and may increase future tax compliance by currently noncompliant taxpayers. In addition, a legislative requirement that request the Internal Revenue Service file a withdrawal a NFTL when the underlying tax liability is paid, or upon taxpayer request, would put all taxpayers on closer to equal footing. An additional requirement in the FCRA that unpaid tax liens be removed at some point following the date on which the lien becomes unenforceable would allow a one-time noncompliant taxpayer to reclaim and repair his or her credit, without removing the power of NFTLs or taking useful information from

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115 Id.

116 I.R.C. § 6330(d) (West 2010).
creditors. Moreover, because unenforceable judgments and other unenforceable debts remain on a credit report for seven years, such a change would not make it easy for repeat offenders to use this change as a way to “slip through the cracks” or otherwise use a “loophole” to avoid paying their share of taxes.

In tandem these changes will improve the opportunities available to some taxpayers who have gotten behind because of an irregular circumstance to get back in control. They will also allow taxpayers to return to tax compliance, a status that helps the government, and benefits all taxpayers. These changes will allow all taxpayers to have the opportunity to restore themselves to a position where obtaining housing, insurance, and professional licensing, bonding will be easier. The availability of NFTL withdrawal will reduce the likelihood that taxpayers who have once fallen out of tax compliance will be forced into noncompliance again solely by the circumstance that there is the presence of an NFTL on their credit history. A follow up review should be conducted to determine if whether the results of this approach are in fact alleviating hardship, but not permitting previously noncompliant taxpayers to avoid other obligations by eliminating this black mark from their credit report.