

INSTRUCTIONS

How to Apply for Certificate of Discharge From Federal Tax Lien

Before applying for a certificate of discharge:

1. Contact the Advisory Office for the location where the lien was filed, if you have questions. Use [Publication 4235, Collection Advisory Group Addresses](#), to determine which Advisory Office to contact.
2. You will need to know how much you owe to pay the lien(s) in full. Call 1-800-913-6050 for a lien payoff, visit the nearest Taxpayer Assistance Center, contact your caseworker, or contact Advisory to obtain this information.
3. You will need to complete the application form attached to this publication and mail it to:

IRS, Attn: Advisory Group Manager
(Address to the Advisory Office assigned to the location where the lien was filed using [Publication 4235](#).)

How Long Is The Application Process?

Please submit your application at least 30 days before the sale date or other transaction date when the Discharge certificate is needed. This will allow sufficient time for review and a determination.

Page 1 Entity and Contacts Information

Section 1 Taxpayer Information

1. Enter here the name and address of the individual(s) or business as it appears on the Notice of Federal Tax Lien (NFTL)
2. Enter the social security number or employer identification number as it appears on the NFTL(s)
3. Enter any secondary (spouse) social security number associated with the tax debt listed on the NFTL(s) if applicable
4. Provide a daytime phone number.

Section 2 Applicant Information

1. Check the box on the first line of Section 2 if you are both the taxpayer and the applicant.
2. Enter your current name, address, and daytime phone number.

Section 3 Purchase/Transferee/New Owner

1. Check the box on the first line of Section 3 if you are both the applicant and the new owner of the property
2. Enter the name of the individual(s) or business receiving the property
3. Enter the relationship of the party receiving the property to the party named on the NFTL (example: no relation, parent, wife, business partner, etc)

Section 4 Attorney/Tax Representative

1. Check the box on the first line of Section 4 if you are attaching a Form 8821 or Power of Attorney Form 2848 with your application. The form documents your permission for the IRS to speak with your representative.
2. Enter the name, address, and phone number of the personal representative who is representing you in this action. IRS will contact them if additional information is required to process your application.

Section 5 Settlement/Escrow Company

Enter the company name, contact name, and phone number for the escrow/title company that will be used at settlement.

Page 2 Liability, Sale, Basis, Property, and Appraisal Information

Section 6 Liability Information

- a If you are the taxpayer and are requesting the discharge of property from the tax lien, provide the amount of your tax liability
- b If you are not the taxpayer, provide the total amount shown on the federal tax liens you believe encumber the property in question.

Section 7 Sale and Proceeds Information

- a Provide the proposed property sale amount
- b Provide the amount of proceeds the IRS can expect for application to the tax liability.

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Section 8 Basis for Discharge

Discharge of property from the federal tax lien may be granted under several Internal Revenue Code (IRC) provisions. After reviewing the information below select a discharge type. If the IRS does not agree with your selection after their review, you will be notified. Based on the information you provided IRS may determine that a different type or no discharge should be issued. An explanation of their decision will be provided. The discharge provisions are IRC:

1. **6325(b)(1)** – a discharge may be issued under this provision if the taxpayer’s remaining property encumbered by the federal tax lien is equal to at least twice the amount of the IRS’s liability secured by the lien and any encumbrance entered into before the IRS filed the lien. If there are mortgages, state and/or local taxes, mechanics liens, etc., the amount of these debts would be added to the amount of the tax liability and multiplied by 2.

Tax liability	\$15,500.43
Other Debts +	<u>23,333.22</u>
	38,833.65
X	<u>2</u>
	\$77,677.30

The property remaining subject to the lien must be \$77,677.30.

2. **6325(b)(2)(A)** – a discharge may be issued under this provision when the tax liability is partially satisfied but the amount paid is not less than the value of the U.S. interest in the property being discharged. For example, the IRS has a lien totaling \$203,000 and ...

- Property selling for: \$215,000
- Encumbrances ahead of IRS lien: \$135,000
- Proposed settlement costs: \$ 15,000
- IRS’s interest: \$ 65,000

After the IRS receives and applies the \$65,000 in partial satisfaction of the tax liability, there remains an outstanding tax debt of \$138,000.

In the case of entirety property, the United States is generally paid one-half of the proceeds in

partial satisfaction of the liability secured by the tax lien.

3. **6325(b)(2)(B)** - a discharge is issued under this provision when it is determined that the government’s interest in the property has no value. The debts recorded prior to the lien are greater than the fair market value of the property or is more than the sale value of the property. Submit a copy of the proposed escrow agreement as part of the application.
4. **6325(b)(3)** – a discharge is issued under this provision if an agreement is reached with the IRS allowing the property to be sold. Part of the agreement must be that the sale proceeds be held in a fund subject to the claims of the United States in the same manner and priority the claims had prior to the property being discharged. For example, there are two mortgages senior to the IRS tax lien totaling \$32,000 and \$5,000. The government’s interest in the property is \$40,000 and there are liens on the property recorded after the IRS lien of \$3,000, \$12,000 and \$2,990. The proceeds from the sale would be dispensed by paying the debts in the following sequence.
 - a. \$32,000
 - b. \$5,000
 - c. \$40,000
 - d. \$3,000
 - e. 12,000
 - f. \$2,990
5. **6325(b)(4)** – a discharge would be issued under this provision if you are a third party who claims to own the property. A deposit or an acceptable bond equal to the government’s interest in the property must be made. **In the case of entirety property**, a deposit or an acceptable bond totaling one-half the government’s interest in the property must be made. If you are the property owner (but not the taxpayer, i.e., you are not responsible for the tax liability) and you make a deposit or post an acceptable bond to obtain a discharge

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under this section, you have 120 days to file an action in federal district court, under section 7426(a)(4), challenging the IRS's determination of the government's lien interest. **This is the exclusive remedy available to the third party for the return of the deposit or accepted bond or a portion.**

Section 9 Description of Property

1. Enter detailed description of the property to be discharged from the federal tax lien.
 - For personal property include serial or vehicle numbers, as appropriate.
 - Example: 3 bedroom house; 2002 Cessna twin engine airplane, serial number AT919000000000X00; etc)
 - Provide the address if real estate or location address if personal property.
2. Check the *Real Estate* box if you have attached a copy of the title or deed to the property.
3. Check the *Application Basis 6325(b)(1)* box if that is the basis for your request and you have attached copies of the titles or deeds for property remaining subject to the lien.

Section 10 Appraisal and Valuations

1. Check the *Required Appraisal* box to indicate whether you have attached the required appraisal by a disinterested third party. This is typically a professional appraisal providing neighborhood analysis; description of the site; description of the improvements; cost approach; comparable sales; definition of market value; certification; contingent & limiting conditions; interior and exterior photos of the property; exterior photos of comparable sales used; comparable sales location map; sketch of subject property showing room layout; flood map and qualifications of the appraiser.
2. Check the appropriate box under the category *Plus One of the Following Additional Valuations* to indicate which other type of property value verification is attached with your application.
Note: For applications under IRC 6325(b)(1), valuation information described above must also

be provided for property remaining subject to lien.

Page 3 Documentation, Waiver, and Certification

Section 11 Federal Tax Liens

1. Check the "yes" box if you have attached copies of the liens with your application
2. If the "no" box is checked, list, if known, the System Lien Identification Number (SLID) found in the top right hand box of the lien document

Section 12 Sales Contract

3. Check the box indicating whether the proposed sales contract is attached
4. If the "no" box is checked, describe how the taxpayer named on the lien will be divested of their interest in the property or why they have no interest in the property

Section 13 Title Report

1. Check the box indicating whether the title report is attached
2. If the "no" box is checked, use the space provided to any encumbrances (liens or claims) against the property and whether those encumbrances are senior or junior to the United State's lien interest. Include name and address of holder; description of encumbrance, e.g., mortgage, state lien, etc.; date of agreement; original loan amount and interest rate; amount due at time of application; and family relationship, if applicable
3. Attach a separate sheet with the information in item # 2 above if there is not enough space provided on the form

Section 14 Closing Statement

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1. Check the box indicating whether the proposed closing statement is attached. This statement is often referred to as a HUD-1.
2. If the “no” box is checked, use the space provided to itemize all proposed costs, commissions, and expenses of any transfer or sale associated with property
3. Attach a separate sheet with the information in item # 2 above if there is not enough space provided on the form

Section 15 Additional Information

1. Check the box indicating whether you are attaching other documents relevant to the discharge application. This could include affidavits or court documents.
2. Check the “no” box if you do not have any additional documentation.

Section 16 Escrow Agreement

1. Check the box indicating whether you are attaching a draft escrow agreement. This is only applicable if you are applying under 6325(b)(3).
2. An escrow agreement must specify type of account, name and depository for account, conditions under which payment will be made, cost of escrow, and the name and address of any party identified as part of escrow agreement.

Section 17 Waiver

This section applies only if you are:

- The property owner, but
- Not liable for the tax debt (i.e. not named on the lien), and
- Applying under 6325(b)(2)(A) or 6325(b)(2)(B).

The Waiver is required for the two 6325(b)(2) sub-sections because they do not provide for return of any deposit nor court challenge under 7426(a)(4). By checking the “Waive” box you are agreeing to waive any return of funds deposited in consideration of a discharge and waiving your right to challenge the IRS decision under 7426(a)(4).

If you check the “no” box, your application will automatically be considered under 6325(b)(4) which provides for return of deposited funds and a court challenge under 7426(b)(4).

Section 18 Certification

You must sign your application under penalties of perjury attesting to having examined the application, accompanying schedules or documents, exhibits, affidavits, and statements and declaring to the best of your knowledge and belief that it is true, correct and complete.

When Do I Make a Payment?

- **6325(b)(1)** No payment is required
- **6325(b)(2)(A)** Payment is required but do not send a payment with the application. The Advisory Group Manager will notify you after determining the amount due and when to send payment.
- **6325(b)(2)(B)** No payment is required

NOTE: If a *mortgage foreclosure* is the anticipated, the application is made under section 6325(b)(2)(A) or 6325(b)(2)(B). A determination will be made that either an amount is required for discharge or that the United State’s interest is valueless.

In the case of foreclosure you will receive, within 30 days of the date of the application, a conditional commitment letter for a certificate of discharge. Also see, Publication 487, How to Prepare Application Requesting the United States to Release Its Right to Redeem Property by a Federal Tax Lien.

Also, under these provisions if the sale is of the principal residence, the *taxpayer* may be eligible for a relocation expense allowance because of an inability to pay. The relocation expense allowance is subject to limitations. To apply for the allowance complete and submit [Form 12451, Request for Relocation](#)

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[Expense Allowance](#), with the application for discharge.

- **6325(b)(3)** Payment is required but do not send with the application. First, the escrow agreement must specify account type, account name and depository, conditions under which payment will be made, cost of escrow, name and address of any party identified as part of the escrow agreement. The escrow account will be funded before payment of any claim or lien through money paid by the applicant or from the sale proceeds.

Second, the Advisory Group Manager approves the escrow agent selected by the applicant; any reasonable expenses submitted as incurred in connection with the sale of the property; the claim amounts and priorities, and the timing distribution of the fund.

Third, the agreement is finalized and contains signatures of all parties involved including Advisory Group Manager prior to the discharge being issued.

- **6325(b)(4)** Bond or deposit is required but do not send one with the application. First the Advisory Group manager reviews and approves that the bond company is from the approved list and the amount of bond or deposit needed for the discharge.

Who Makes the Decision to Issue a Certificate of Discharge?

In all cases Advisory will review and verify the information provided, determine whether a certificate of discharge should be issued, and contact you with any questions. The Advisory Group Manager has the responsibility to review and approve the determination and let you know the outcome.

When Will You Receive the Certificate of Discharge?

A certificate of discharge will be issued:

6325(b)(1) when it is determined the remaining property meets the criteria of the provision.

6325(b)(2)(A) after IRS receives payment of the agreed upon amount in partial satisfaction of the tax liability.

6325(b)(2)(B) when it is determined that the government's interest in the property is valueless.

NOTE: Under provisions 6325(b)(2)(A) and 6325(b)(2)(B) at the conclusion of a mortgage foreclosure the certificate will be issued in accordance with the terms of the conditional commitment letter.

6325(b)(3) when the amount of the government's interest in the property is paid.

6325(b)(4) when the amount equal to the government's interest in the property is received.

What is an Acceptable Form of Payment?

Make payments in cash or by certified, cashier's, or treasurer's check. It must be drawn on any bank or trust company incorporated under the laws of the United States, or of any state, or possession of the United States. Payment can also be made by the United States postal, bank, express or telegraph money order. **If you pay by personal check, issuance of the certificate of discharge will be delayed until the bank honors the check.**

What Do You Do If Your Application Is Denied?

If your application is denied, you have appeal rights. [Form 9423, Collection Appeal Request](#) and [Publication 1660, Collection Appeal Rights](#), will be issued, with an explanation of why your application was denied.