

Internal Revenue Service  
Appeals Office

[Redacted]

Date: [Redacted] 2012

FAYTHE [Redacted]

Department of the Treasury

Person to Contact: [Redacted]  
Employee ID Number: [Redacted]  
Tel: [Redacted]  
Fax: [Redacted]  
Contact Hours: 7:00 - 3:30

Refer Reply to: [Redacted]  
Tax Type/Form Number:  
Civil Penalty / IRC 6702(a)  
In Re:  
Collection Due Process Appeal  
Tax Court  
Tax Period(s) Ended:  
12/2007

**SUPPLEMENTAL NOTICE OF DETERMINATION  
CONCERNING COLLECTION ACTION(S) UNDER SECTION 6320 and/or 6330**

Dear Ms. Pierson:

The determination summarized below and described in detail in the attachment supplements the Notice of Determination dated [Redacted], 2011. This supplement is being issued pursuant to the order of the Tax Court dated [Redacted], 2012 remanding the case to this appeals office. A copy of this supplement is also being sent to [Redacted] Attorney, IRS, Area Counsel, [Redacted].

If you have any questions, please contact the person whose name and telephone number are shown above.

**Summary of Determination**

The Notice of Federal Tax Lien (NFTL) is not sustained and will therefore be withdrawn. Civil Penalty assessment of \$5,000 will be abated, as the required approval for assessment was not obtained. Lien fee of \$92.00 will also be abated.

Sincerely,  
[Redacted Signature]  
[Redacted Name]  
Appeals Team Manager

cc: [Redacted] Area Counsel

<b>Attachment to Supplemental Notice of Determination</b>		
<b>Type of Tax</b>	<b>Tax Period</b>	<b>CDP Notice Date</b>
Civil Penalty/ IRC 6702(a)	12/31/2007	██████/2010

**Summary and Recommendation**

The Notice of Federal Tax Lien (NFTL) is not sustained and will be withdrawn. Civil Penalty assessment of \$5,000 will be abated, as the required approval for assessment was not obtained. Lien fee of \$92<sup>00</sup> will be abated.

**Brief Background**

You are appealing the filed NFTL and Your Right to a Hearing under provisions of Internal Revenue Code (IRC) §6320 for the period shown above.

The liability arose from a Civil Penalty assessment under the authority of IRC 6702(a), for a frivolous tax return filing. In addition to the Civil Penalty assessment you owe a lien fee and interest.

Your case was remanded to Appeals in a Tax Court Order dated ████████, 2012. A phone hearing was originally scheduled for ████████, 2012; Appeals then received correspondence in which you requested that the phone conference be postponed and that your issues instead be addressed in writing.

**Verification of Legal and Procedural Requirements**

One of the legal requirements necessary to pursue a Civil Penalty assessment under IRC §6702(a) is to secure written approval from the immediate supervisor of the individual making the penalty determination or such higher level official as the Secretary may designate (IRC §6751(b)(1)). Appeals has obtained the file information pertaining to the penalty assessment and determined that the necessary written managerial approval was not secured. The applicable legal requirements of IRC §6751(b)(1) were not followed by the Internal Revenue Service and as a result the Civil Penalty assessment will be abated.

**Issues Raised by the Taxpayer**

On the Form 12153 Request for a Collection Due Process or Equivalent Hearing, you indicated that the NFTL should be withdrawn and that you were challenging the assessment of the liability. As explained above, the Civil Penalty assessment was not done in accordance with the applicable legal requirements and will therefore be abated. In addition, Appeals has determined that the NFTL was therefore not filed in accordance with Internal Revenue Service administrative procedures and will be withdrawn as authorized under IRC §6323(j)(A).

**Balancing of need for efficient collection with taxpayer concern that the collection action be no more intrusive than necessary.**

IRC §6330 (c)(3) requires the Appeals Officer to consider whether any collection action balances the need for efficient collection of the unpaid taxes with the legitimate concern that such actions be no more intrusive than necessary. In order for a federal tax lien to have priority against competing interests, the Service must file a NFTL pursuant to IRC §6323. This filing protects the Government's right of priority against certain third parties. It is the judgment of Appeals that the NFTL should be withdrawn and the underlying Civil Penalty assessment should be abated as that assessment was not done in accordance with the legal requirements of IRC §6751(b)(1).