

# Instructions on how to apply for a **Certificate of Discharge of Property From Federal Tax Lien**

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**There is no standard form available for an application for a Certificate of Discharge of Property from a Federal tax lien. Prepare your request in the form of a typed letter and submit it with all accompanying documents to:**

IRS, Attn: Technical Services Group Manager

(Address to the IRS office that filed the lien. Use **Publication 4235, Technical Services Group Addresses**, to determine where to mail your request).

## Information Required on Application

### Give date of the application.

**Give the name and address of the person applying under section 6325(b)** of the Internal Revenue Code, for a certificate of discharge. See the “*Additional Information*” section of this publication for applicable Internal Revenue Code sections.

Give the name and address of the taxpayer, and describe the property as follows:

1. Give a detailed description, including the location of the property for which you are requesting the certificate of discharge. **If real property is involved**, submit a legible copy of the title or deed to the property, and the complete address (street, city, state and ZIP code). If the certificate is requested under **section 6325(b)(1)**, also give a description of all the taxpayer’s remaining property subject to the lien.
2. Show how and when the taxpayer has been or will be divested of all rights, title and interest in and to the property for which a certificate of discharge is requested.
3. **Attach a copy of each notice of Federal tax lien**, or furnish the following information as it appears on each filed Notice of Federal Tax Lien:
  - a. The location of the Internal Revenue Office that filed the lien
  - b. The name and address of the taxpayer against whom the notice was filed
  - c. The serial number shown on the lien
  - d. The taxpayer social security number or employer identification number shown on the lien
  - e. The date and place the notice was filed
4. Instead of the above, you may substitute a preliminary title report listing the required information.
5. List or attach a copy of the liens, mortgages, or other encumbrances against the property, which you believe have priority over the Federal tax lien. For each encumbrance show:
  - a. The name and address of the lien holder
  - b. A description of the encumbrance
  - c. The date of the agreement to the encumbrance
  - d. The date and place of the recording (if any)
  - e. The original principal amount and the interest rate
  - f. The amount due as of the date of the application, if known (*show costs and accrued interest separately*)
  - g. Your family relationship, if any, to the taxpayer and to the holders of any other encumbrances against the property
6. Instead of a through f above, you may substitute a preliminary title report listing the required information.
7. Itemize all proposed or actual costs, commissions and expenses of any transfer or sale associated with the property, or submit an estimated closing statement, also known as a preliminary Form HUD-1.
8. Furnish information to establish the value of the property. If the certificate is requested under **section 6325(b)(1)**, furnish an estimate of the fair market value of the property that will remain subject to the lien. In addition,
  - a. **If private sale** – Submit written appraisals by two impartial persons qualified to appraise the property, with a brief statement of each appraiser’s qualification.
  - b. **If public sale (auction) already held** – Give the date and place the sale was held, and the amount for which the property was sold.
  - c. **If public sale (auction) to be held** – Give the proposed date and place of the sale, and include a statement that the United States will be paid in the proper priority from the proceeds of the sale.



9. Give any other information that might, in your opinion, have bearing upon the application, such as pending judicial actions.
10. The Technical Services Group Manager may request that you furnish additional information.
11. If you are submitting the application under the provisions of **section 6325(b)(3)**, dealing with the substitution of proceeds of sale, attach a copy of the proposed agreement containing the following:
  - a. The name and address of the proposed escrow agent
  - b. The caption, type of account, name and address of depository for the account
  - c. The condition under which the escrowed funds are to be held
  - d. The conditions under which payment will be made from escrow, including the limitation for negotiated settlement of claims against the fund
  - e. The estimated costs of the escrow
  - f. The name and address of any other party you and the Technical Services Group Manager determine to be a party to the escrow agreement
  - g. Your signature, and those of the escrow agent, the Technical Services Group Manager and any other party to the escrow agreement
  - h. Any other specific information the Technical Services Group Manager requests.
12. As discussed below under “Additional Information,” making an application and deposit (or providing a bond) under section 6325(b)(4) provides a judicial remedy not available for an application and payment made under section 6325(b)(2). Therefore, unless the right to make a deposit under section 6325(b)(4) is waived in writing, an application made by a third party claiming ownership of the property will be treated as one made under section 6325(b)(4), and any payment made will be treated like a deposit under section 6325(b)(4).

**If you are an owner of the property (other than the taxpayer) and you wish to submit an application under section 6325(b)(2), you must waive the rights that would be available if the application were made under section 6325(b)(4).** Add the following language to the application immediately prior to the declaration described in paragraph 15, below: “I understand that an application and payment made under section 6325(b)(2) does not provide the judicial remedy available under section 7426(a)(4). In making such an applica-

tion/payment, I waive the option to have the payment treated as a deposit under section 6325(b)(4) and the right to request a return of funds and to bring an action under section 7426(a)(4).”

13. Give the address and telephone number where you may be reached.
14. Give the name, address and telephone number of your attorney or other representative, if any.
15. If you have made an application under section 6324(b)(4) and disagree with the Service’s determination of the value of the government’s interest, provide us with specific reasons why you disagree with it’s determination.
16. **Make the following declaration over your signature and title:** “Under penalties of perjury, I declare that I have examined this application, including any accompanying schedules, exhibits, affidavits, and statements, and to the best of my knowledge and belief it is true, correct, and complete.”

### Additional Information

Please follow the instructions in this publication when applying for a Certificate of Discharge of Property from Federal Tax Lien.

The Technical Services Group Manager has the authority to issue a certificate of discharge of a lien that is filed on any part of a taxpayer’s property subject to the lien. The following sections and provisions of the Internal Revenue Code apply:

**Section 6325(b)(1)** – A specific property may be discharged if the taxpayer’s property remaining subject to the lien has a Fair Market Value (*FMV*) which is double the sum of: a) the amount of the liability secured by such liens, and b) all other liens which have priority over the federal tax liens. ( $FMV=(a+b) \times 2$ )

**Section 6325(b)(2)(A)** – A specific property may be discharged if there is paid, in partial satisfaction of the liability secured by the lien, an amount determined to be **not less than the value of the interest** of the United States in the property to be discharged. In the case of entireties property sold by the taxpayer or taxpayer’s spouse, the United States must be paid one-half of the proceeds in partial satisfaction of the liability secured by the tax lien.

**NOTE:** Because making an application and deposit (or providing a bond) under section 6325(b)(4) provides a judicial remedy not available for an application and payment made under section 6325(b)(2), owners (other than the taxpayer) wishing to apply for a certificate of discharge under this provision must waive, in writing, their rights to make a deposit allowed under Section 6325(b)(4) and to file suit for return of the deposit or accepted bond

allowed under section 7426(a)(4). Unless the waiver has been provided in writing, the Service will treat an application made by an owner of the property (other than the taxpayer) as an application made under section 6325(b)(4), with all funds treated as a deposit.

Other than the judicial review available under the deposit/bond procedures under sections 6325(b)(4) and 7426(a)(4), there is no remedy available to the third party for the return of payment (or portion thereof). An administrative request for refund and a refund suit in district court is not available.

**Section 6325(b)(2)(B)** – A specific property may be discharged if it is determined that the interest of the United States in the property to be discharged **has no value**.

**Section 6325(b)(3)** – A specific property may be discharged if the property subject to the lien is sold, and, under an agreement with the Internal Revenue Service, the proceeds from the sale are to be held as a fund subject to the liens and claims of the United States in the same manner and with the same priority as the liens and claims on the discharged property.

**Section 6325(b)(4)** – A discharge may be issued to third parties if a deposit is made or an acceptable bond is furnished in an amount equal to the value of the government's interest in the property. In the case of former entireties property, a deposit of one-half the value of the property or a bond equal to one-half of the value of the property will be determined to be the government's interest. An owner of property (other than the taxpayer) who makes a deposit or furnishes a bond and obtains a discharge under section 6325(b)(4) has, under section 7426(a)(4), 120 days after the discharge to file an action in federal district court challenging the Service'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 thereof. An administrative request for refund and a refund suit in district court is not available. See section 7426(a)(4).**

1. No payment is required for the issuance of a certificate under **section 6325(b)(1) or 6325(b)(2)(B)** of the Internal Revenue Code. Payment is required for certificates issued under **section 6325(b)(2)(A)**. Do not send the payment with your application. The Technical Services Group Manager will notify you after determining the amount due.
2. The Technical Services Group Manager will have your application investigated to determine whether to issue the certificate and will let you know the outcome.
3. A certificate of discharge under **section**

**6325(b)(2)(A)** will be issued upon receipt of the amount determined to be the interest of the United States in the property under the Federal tax lien. In the case of entireties property sold by the taxpayer or taxpayer's spouse, the Service's interest will be one-half the value of the property. Make payments in cash, or by certified, cashier's, or treasurer's check. Checks 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 United States postal, bank, express or telegraph money order. ***(If you pay by uncertified personal check, issuance of the certificate of discharge will be delayed until the bank honors the check.)***

4. If application is made under **sections 6325(b)(2)(A) or 6325(b)(2)(B)** and is for the sale of a principal residence, the taxpayer may be eligible for a relocation expense allowance based on an inability to pay, and subject to limitations. This allowance will be taken from sale proceeds and will not reduce the tax liability. To apply for the allowance, complete and submit **Form 12451, Request for Relocation Expense Allowance**, with the application for discharge.
5. If application is made under provisions of **section 6325(b)(2)(A), or 6325(b)(2)(B)** because a mortgage foreclosure is contemplated, there will be a determination of the amount required for discharge or a determination that the Federal tax lien interest in the property is valueless.

Within 30 days from the date of the application, you will receive a written conditional commitment for a certificate of discharge. When the foreclosure proceeding has been concluded, a certificate of discharge will be issued in accordance with the terms of the commitment letter. Also, see **Publication 487, How to Prepare Application Requesting the United States to Release Its Right to Redeem Property Secured by a Federal Tax Lien**.

6. If application is made under the provisions of **section 6325(b)(3)**, the Technical Services Group Manager has the authority to approve the escrow agent you select. Any reasonable expenses incurred in connection with the sale of the property, the holding of the fund, or the distribution of the fund shall be paid by you or from the proceeds of the sale before satisfaction of any claims or liens. Submit a copy of the proposed escrow agreement as part of the application.
7. A certificate of discharge under **section 6325(b)(4)** will be issued when an amount equal to the United States' interest in the property is received. In the case of former entireties property, our interest will be one-half the value of the property. Payment of the interest of the

United States in the property may be made in the form of cash, other certified funds, or the posting of a bond acceptable to the Secretary.

8. Submit **Form 12180**, *Third Party Authorization*. Completing this document gives us the authority to contact individuals or companies, if necessary, when determining if the discharge is appropriate.
9. Provide the name, address and telephone

number of your attorney or representative as well as the closing attorney or Settlement Company.

10. If your application is denied, you have appeal rights. **Form 9423**, *Collection Appeal Request*, and **Publication 1660**, *Collection Appeal Rights*, will be issued, along with an explanation of why your application was denied.