

**The Internal Revenue Service Has
Significantly Improved Compliance With
Legal and Internal Guidelines When
Seizing Taxpayers' Property**

August 2000

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1 = Tax Return/Return Information



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

August 9, 2000

MEMORANDUM FOR COMMISSIONER ROSSOTTI

A handwritten signature in cursive script that reads "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - The Internal Revenue Service Has
Significantly Improved Compliance With Legal and Internal
Guidelines When Seizing Taxpayers' Property

This report presents the results of our review to determine whether seizures conducted by the Internal Revenue Service (IRS) adhered to legal guidelines set forth in 26 U.S.C. §§ 6330 through 6344 (1986) and complied with the IRS' own internal guidelines. Additionally, we reviewed the IRS' efforts to comply with § 3443 of the IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, which requires the IRS to implement a new process for disposing of seized property.

In summary, we found that all actions taken by the IRS were in accordance with legal and internal guidelines for all cases reviewed. Additionally, the IRS advised us that the new specialist position for disposing of seized property was in place on July 22, 2000. We did identify one weakness in the IRS' procedures that can allow wrongful seizures to occur. Accordingly, we recommended that the IRS revise its procedures to require a reverification of the ownership of property prior to seizure. National Collection management agreed to the recommendation in this report and is implementing corrective actions. Management's comments have been incorporated into the report where appropriate, and the full text of their comments is included as an appendix.

Copies of this report are also being sent to the IRS managers who are affected by the report recommendation. Please contact me at (202) 622-6510 if you have questions, or your staff may call Maurice S. Moody, Associate Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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Executive Summary

The Internal Revenue Service's (IRS) efforts to collect unpaid taxes generally begin with letters to the taxpayer, followed by telephone calls and personal contacts by an IRS employee to discuss the taxpayer's ability to pay the taxes or to consider alternatives such as installment payment agreements or offers in compromise. If the taxpayer does not pay his or her taxes through these efforts, the IRS has the authority to take the taxpayer's funds or property for the payment of taxes. Taking property is commonly referred to as a "seizure."

The IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, 112 Stat. 685, placed particular emphasis on taxpayer rights and contained several new provisions for conducting seizures. The provisions in 26 U.S.C. §§ 6330 through 6344 (1986) are very specific about how the seizure and sale of taxpayers' property should be conducted. In addition, RRA 98 § 3443 requires the IRS to implement a new system for disposing of seized property by July 22, 2000.

The RRA 98 added 26 U.S.C. § 7803(d)(1)(A)(iv) (1986), which requires the Treasury Inspector General for Tax Administration (TIGTA) to annually evaluate the IRS' compliance with procedures in 26 U.S.C. (1986) for seizure of property to collect unpaid taxes. The first TIGTA report¹ on seizures was issued in September 1999. In that audit, we reviewed all seizures conducted between July 22, 1998, and January 22, 1999. We reported that the IRS did not follow legal provisions or its own internal guidelines in 36 percent of the cases reviewed.

The objective of our Fiscal Year 2000 audit was to determine whether seizures conducted by the IRS adhere to legal guidelines set forth by 26 U.S.C. §§ 6330 through 6344 (1986) and comply with the IRS' own internal guidelines. Our review included all seizures identified from IRS records as conducted during the period May 1 through September 30, 1999. We also reviewed the IRS' efforts to comply with RRA 98 § 3443 which requires the IRS to design a process to remove revenue officers from participating in the sale of seized property and to consider using outside sources such as auctioneers or other Federal agencies for this purpose. This audit was not intended to determine whether the decision to seize was appropriate in the 35 seizure cases we reviewed, and our analysis did not determine whether this was the appropriate number of seizures for the period.

¹ *The Internal Revenue Service Needs to Improve Compliance with Legal and Internal Guidelines When Taking Taxpayers' Property for Unpaid Taxes* (Reference Number 199910072, dated September 1999).

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Results

The IRS has significantly improved compliance with legal and internal guidelines when making seizures of taxpayers' property. Additionally, the IRS has developed a plan and begun the process to establish a new specialist position that removes revenue officers from participating in the disposal of seized property.

The Internal Revenue Service Is Complying With Legal and Internal Guidelines When Conducting Seizures

We reviewed all 35 seizures identified from IRS records as conducted during the period May 1 through September 30, 1999. We determined that actions taken by the IRS were in accordance with the seizure provisions and its own guidelines in all cases reviewed, which is a significant improvement when compared to the results from our prior review.

We attribute the improvement to the following:

- Increased managerial involvement in the review and approval process.
- Issuance of an updated seizure handbook to all Collection employees, which combines various sections of the IRS' internal seizure guidelines with the new provisions of the RRA 98 and contains a pre-seizure checklist and approval document.
- Mandatory RRA 98 training provided to revenue officers during 1999, which contained a training module specifically addressing seizure and sale procedures.

While we did not identify any legal or procedural issues in the 35 seizures, we identified one weakness in the IRS' procedures that can allow wrongful seizures to occur. Specifically, prior to seizure, a revenue officer must verify property ownership as part of the initial investigation into the status of the property. Because an extended period of time could pass before the seizure action is taken, the property ownership could change. The Internal Revenue Manual (IRM) does not specify a time frame in which the property ownership must be verified before seizure action is taken. Seizing property owned by third party taxpayers could, if not released immediately, expose the IRS to liability under 26 U.S.C. § 7426 (1986).²

² The 26 U.S.C. § 7426(a) (1986) allows any third party taxpayer who claims an interest in or lien on property which is wrongfully seized to bring a civil action against the United States in a district court of the United States.

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The Internal Revenue Service Is Developing a Specialist Position to Implement a Uniform Asset Disposal Mechanism

We reviewed the IRS' efforts to implement a new process that will remove revenue officers from participating in the disposal of seized property. This new process, referred to as the Uniform Asset Disposal Mechanism (UADM), will consist of a specialist position known as the Property Appraisal and Liquidation Specialist (PALS). The PALS will serve as a technical authority in appraising property proposed for seizure and will be responsible for planning, marketing, and coordinating the sale of property. The IRS submitted the PALS position description for approval in March 2000 and expects to have the position in place by July 22, 2000.

The IRS considered contracting with outside sources (i.e., outsourcing) the sale of all seized property and conferred with the Criminal Investigation Division and other Federal agencies that routinely sell acquired property. The IRS determined that instead of contracting this service out, it would give the PALS the authority to outsource the sale of seized property after considering the best interests of the government and the taxpayer.

Summary of Recommendation

We recommend that the IRS revise current internal guidelines to ensure that ownership of the property is timely verified prior to seizure.

Management's Response: National Collection management stated that the Seizure and Sale Handbook is being revised to require that re-verification of taxpayer ownership of property be made within 30 days prior to beginning the process for securing seizure approval. Collection management also stated that the UADM was in place July 22, 2000, the new PALS personnel have been selected and trained, as of July 21, 2000, and a memorandum was issued to Collection field personnel that revenue officers cannot participate in seizure sales after July 22, 2000.

Management's complete response to the draft report is included as Appendix VI.

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Objectives and Scope

Our objectives were to determine whether IRS seizures were in compliance with legal and internal guidelines and to review the IRS' efforts to implement a new process for disposing of seized property.

We reviewed IRS records and identified 35 seizures conducted by the IRS during a 5-month period beginning May 1, 1999.

The objective of this audit was to determine whether seizures conducted by the Internal Revenue Service (IRS) adhere to legal guidelines set forth in the 26 U.S.C. §§ 6330 through 6344 (1986) and comply with the IRS' own internal guidelines. Additionally, we reviewed the IRS' efforts to comply with § 3443 of the IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, 112 Stat. 685. This requires the IRS to implement a new process for disposing of seized property by July 22, 2000. The provision requires that the IRS design a process to remove revenue officers from participating in the sale of seized property and to consider using outside sources such as auctioneers or other Federal agencies for this purpose.

To accomplish our first objective, we reviewed IRS records and identified 35 seizures from 34 taxpayers in 16 of the 35 IRS offices¹ for the period May 1 through September 30, 1999. See Appendix IV for a listing of the 16 offices. We reviewed files maintained by the IRS offices for these seizures, which included notes of the employees who conducted the seizures and other related documents to support actions taken on the cases.

To review efforts to implement a process for the disposal of seized property (the Uniform Asset Disposal Mechanism or UADM), we attended a multi-agency conference held by an IRS study group to discuss alternatives for outsourcing the sale of all seized property. We also obtained the plans and other documentation of progress in implementing the new process from the Collection office.

This audit was conducted between October 1999 and April 2000 in accordance with *Government Auditing Standards*. The audit was not intended to determine

¹ These offices include 33 districts, Puerto Rico, and the International office.

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whether the decision to seize was appropriate in the 35 seizures we reviewed, and our analysis did not determine whether this was the appropriate number of seizures for the period. Additionally, we could not determine whether the IRS will timely implement the UADM by July 22, 2000.

Details of our audit objectives, scope, and methodology are presented in Appendix I. Major contributors to this report are shown in Appendix II.

Background

The RRA 98 places particular emphasis on taxpayer rights, including seizures.

On July 22, 1998, the President signed the RRA 98 into law. The RRA 98 added 26 U.S.C. § 7803(d)(1)(A)(iv) (1986), which requires the Treasury Inspector General for Tax Administration (TIGTA) to annually evaluate the IRS' compliance with the seizure provisions in 26 U.S.C. §§ 6330 through 6344 (1986). These provisions placed particular emphasis on taxpayer rights and included protections, such as specifying approval levels for seizing business assets and the exemption of personal residences from seizure if the tax liability is \$5,000 or less. See Appendix V for a synopsis of these procedures.

Since the enactment of the RRA 98, the number of seizures has significantly decreased. The following table shows the approximate number of seizures, per IRS records, in the past 3 Fiscal Years (FY).

SEIZURES BY FISCAL YEAR

Fiscal Year	Approximate Number of Seizures
1997	10,000
1998	2,300
1999	160

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Taking a taxpayer's property for unpaid taxes is commonly referred to as a "seizure."

The IRS has the authority to seize taxpayers' property for failure to pay taxes.

The collection of unpaid taxes by the IRS generally begins with letters to the taxpayer, followed by telephone calls and personal contacts by an IRS employee. The employees who make personal contact are referred to as revenue officers. They consider the taxpayer's ability to pay the tax and also discuss alternatives, such as installment payment agreements or offers in compromise. If these actions have been taken and the taxpayer has not fully paid the tax due, the revenue officer has the authority to take the taxpayer's funds or property for the payment of tax. Taking a taxpayer's property for unpaid taxes is commonly referred to as a "seizure." Revenue officers are also responsible for evaluating, marketing, and selling seized property.

Legal and internal guidelines

Provisions in 26 U.S.C. § 6331 (1986) generally authorize the IRS to seize all property or rights to property if a taxpayer neglects or refuses to pay taxes within 10 days after a notice and demand for payment has been made. An additional notice is to be provided to the taxpayer no less than 30 days before the day of the seizure, warning of possible seizure action if taxes are not paid.

The IRS' internal guidelines were contained in various parts of the Internal Revenue Manual (IRM) until recently, when they were combined into one Seizure and Sale Handbook. On April 13, 1999, these guidelines were issued to Collection Division employees. The guidelines include provisions of the RRA 98.

The handbook contains a pre-seizure checklist and approval document. The checklist includes actions required prior to seizure, such as consideration of alternatives, notification of intent to levy, verification of the taxpayer's liability, and determination of equity. The pre-seizure checklist and approval documents must be submitted to management for approval before seizure of taxpayer property.

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IRS internal guidelines require supervisors and the Collection Division Chief to approve seizures.

Review and approval of seizures

The RRA 98 § 3421 requires prior review and approval from a supervisor of the employee who plans to conduct the seizure. The IRM requires the immediate supervisor to:

- Conduct a review of the case to ensure that the seizure action is warranted.
- Consider such factors as the taxpayer's ability to pay, the amount of equity in property, and the taxpayer's efforts to resolve the tax liability.
- Ensure that necessary actions prior to seizure have been taken.

The RRA 98 requires District Director approval for certain seizures.

The IRM also requires the Collection Division Chief, who is the third level of management above revenue officers, to approve all seizures. Additionally, RRA 98 provisions require the District Director's (or Assistant District Director's) approval for certain seizures, such as properties used in an individual taxpayer's trade or business. The District Director is the head of the IRS district office.

Post seizure reviews

The Collection Special Procedures function (SPf) is a multi-functional support group in each district whose responsibilities include advisory opinions and seizure case reviews. The SPf is responsible for receiving and controlling related seizure documents.

The SPf conducts reviews after the seizure and furnishes advisory information to management.

The SPf conducts reviews after the seizure to ensure conformity with legal and procedural guidelines. SPf reviewers also use reports to provide observations to managers, furnish advisory information, or request additional information from the originating revenue officer.

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In the first TIGTA audit, we reported that various legal and internal guidelines were not followed.

Prior TIGTA audit report

TIGTA issued the first seizure report² on compliance with RRA 98 provisions in September 1999. In that audit, we reviewed all seizures conducted between July 22, 1998, and January 22, 1999. Legal or internal guidelines were not followed in 33 of the 92 (36 percent) taxpayer cases reviewed. In 7 of the 33 cases, both legal and internal guidelines were not followed.

We reported that the IRS did not follow all legal seizure provisions in 19 of the 92 (21 percent) taxpayer cases. For example, some of the legal provisions that were not followed include the inappropriate approval to seize property and insufficient investigation of the property prior to seizure.

We also reported that the IRS did not follow some of its own internal seizure guidelines in 21 of the 92 (23 percent) cases reviewed. For example, taxpayers were not personally warned of pending seizure action.

We recommended that the IRS complete the comprehensive seizure checklists that include pertinent legal provisions and internal guidelines to help employees ensure that taxpayer rights are protected during and after the seizure. IRS management agreed to complete the checklists.

Results

We determined that the IRS significantly improved compliance with legal and internal seizure guidelines.

The IRS has significantly improved compliance with legal and internal guidelines when seizing taxpayers' property. Additionally, the IRS has developed a plan and begun the process to establish a specialist position

² *The Internal Revenue Service Needs to Improve Compliance with Legal and Internal Guidelines When Taking Taxpayers' Property for Unpaid Taxes* (Reference Number 199910072, dated September 1999).

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that removes revenue officers from participating in the disposal of seized property.

The Internal Revenue Service Is Complying With Legal and Internal Guidelines When Conducting Seizures

We reviewed all 35 seizures identified from IRS records as conducted during the period May 1 through September 30, 1999. We determined that actions taken were in accordance with 26 U.S.C. §§ 6330 through 6344 (1986) and the IRM for all cases reviewed. These results showed significant improvement in the manner in which the IRS conducted seizures and disposed of properties, when compared to the results from our prior review.

Improvement is attributed to increased managerial involvement, an updated handbook, and additional RRA 98 training.

We believe the decreased volume of seizures has allowed collection managers greater opportunity to evaluate actions prior to seizure. We attribute the improvements we identified to increased managerial involvement in the approval process, the issuance of an updated seizure handbook, and additional mandatory RRA 98 training provided to revenue officers during FY 1999.

- **All cases were properly approved before seizure.**

Our review of the 35 seizures showed that revenue officers submitted the case to the immediate supervisor for approval. Generally, the cases were forwarded to the next level of management (i.e., Branch Chief) for review and approval and then to the Division Chief for approval. Seven of the 35 cases we reviewed indicated further approval by the District Director or Assistant District Director. In 23 of the 35 case files (66 percent), advisors in the SPf provided revenue officers with guidance and feedback after the seizure to ensure that legal and internal seizure guidelines were followed.

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- **An updated seizure handbook was issued.**

The IRS' seizure guidelines were not consolidated in one part of the IRM until recently, when they were combined into the Seizure and Sale Handbook. On April 13, 1999, these guidelines were issued to Collection Division employees. The guidelines include provisions of the RRA 98.

All 23 seizure case files submitted for managerial approval after May 1, 1999,³ contained a pre-seizure checklist and approval document. We determined that 7 of the 12 seizures conducted before May 1, 1999, contained a pre-seizure checklist even though it was not yet required. Also, to assist employees, several of the district offices developed and began using a pre-seizure checklist prior to receipt of the new Seizure and Sale Handbook.

- **RRA 98 training was provided to revenue officers during FY 1999.**

In FY 1999, Collection employees were required to attend 24 hours of RRA 98 training that contained a module specifically addressing seizure and sale procedures.

We identified one weakness in the IRS' procedures that can allow wrongful seizures to occur.

Although all 35 seizures were conducted in accordance with procedures, we identified one weakness in the IRS' procedures that can allow wrongful seizures to occur. For example, prior to seizure, a revenue officer must verify property ownership as part of the initial investigation into the status of the property. Because an extended period of time could pass before seizure action is taken, the property ownership could change. If not released immediately, the IRS could be liable under 26 U.S.C. § 7426 (1986). Under this provision, any third party taxpayer that has an interest in or lien on property that is wrongfully seized can file a civil suit

³ The Seizure and Sale Handbook (IRM 5.10) was issued on April 13, 1999. We allowed another two weeks for distribution and used May 1, 1999, as the date the pre-seizure checklist should have been available and in use in each office.

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Current IRM guidelines do not ensure timely investigation into the status of the property prior to seizure.

against the United States in a district court of the United States.

The 26 U.S.C. § 6331 (1986) and the IRM require a thorough investigation of the status of the property before seizure, including verification of ownership and encumbrances. However, neither the legal provisions nor the IRM specify a time frame in which the investigation must be completed before seizure action is taken. Correcting this procedural weakness will further prevent the IRS from making wrongful seizures.

Recommendation

We recommend that the Assistant Commissioner (Collection):

1. Revise the IRM to require a re-verification of the ownership of property prior to seizure action when a specified time has elapsed since the previous investigation.

Management's Response: National Collection management stated that the Seizure and Sale Handbook is being revised to require that re-verification of taxpayer ownership of property be made within 30 days prior to beginning the process for securing seizure approval.

The Internal Revenue Service Is Developing a Specialist Position to Implement a Uniform Asset Disposal Mechanism

The IRS is required to remove revenue officers from the process of selling property by July 22, 2000.

The RRA 98 § 3443 requires the IRS to implement a UADM by July 22, 2000. The law also specified that the UADM should be designed to remove revenue officers from the process of selling seized property and should consider the use of outsourcing for the sale of property.

To comply with this requirement, the IRS organized a study group to discuss various issues related to

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To implement the UADM, the IRS proposed the creation of a new specialist position to both manage and dispose of seized property.

implementing the UADM. The study group considered outsourcing the sale of all seized property and conferred with the Criminal Investigation Division and other Federal agencies, such as the Department of Justice, the United States Marshals Service, and the General Services Administration, that routinely sell acquired property. The IRS determined that while these organizations have asset disposal mechanisms, they are designed primarily to dispose of forfeited property.⁴ Different rules apply to property sold under forfeiture and property seized and sold by Collection for non-payment of tax under 26 U.S.C. § 6335, which makes outsourcing less feasible.

To implement the UADM, the study group proposed the creation of a new specialist position that will be responsible for both managing and disposing of property after it is seized by revenue officers. The new position, Property Appraisal and Liquidation Specialist (PALS), will serve as a technical authority in appraising property proposed for seizure and will be responsible for planning, marketing, and coordinating the sale of the property. The PALS will also have the authority to outsource the disposal of seized property after considering the best interests of the government and the taxpayer. The study group submitted the PALS position description for the approval of the Assistant Commissioner (Collection) and the National Classification Center Chief in March 2000. The IRS developed an action plan to facilitate the implementation of the PALS position and is in the process of establishing related procedures for governing the responsibilities of the PALS.

Management's Response: We provided our draft report to the IRS for review and comment on June 19, 2000. National Collection management responded stating that the UADM was in place July 22, 2000, the new PALS personnel have been selected and trained, as of

⁴ Forfeited property is property that is lost by the owners due to penalties, fines, or crime.

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July 21, 2000, and a memorandum was issued to Collection field personnel that revenue officers cannot participate in seizure sales after July 22, 2000.

Conclusion

We reviewed all 35 seizures identified from IRS records as conducted during the period May 1 through September 30, 1999, and determined that the actions taken were in accordance with legal and internal guidelines. These results showed significant improvement in the manner in which seizures were conducted, when compared to the results from our prior review. We attribute the improvement to increased managerial involvement in the approval process, the issuance of an updated seizure handbook, and additional mandatory RRA 98 training provided to revenue officers during FY 1999. To further reduce the risk wrongful seizures, the IRS should revise current internal guidelines to require a reverification of the ownership of property prior to seizure action when a specified time has elapsed since the previous investigation.

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Appendix I

Detailed Objectives, Scope, and Methodology

The objective of this audit was to determine whether seizures conducted by the Internal Revenue Service (IRS) adhere to legal guidelines set forth in 26 U.S.C. §§ 6330 through 6344 (1986) and comply with the IRS' own seizure procedures. Additionally, we reviewed the IRS' efforts to comply with § 3443 of the IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, which requires the IRS to design a process to remove revenue officers from participating in the sale of seized property and to consider using outside sources such as auctioneers or other Federal agencies for this purpose. We performed the following work:

- I. Determined if seizures conducted by the IRS adhere to legal provisions set forth in 26 U.S.C. §§ 6330 through 6344 (1986) and the IRS' own seizure guidelines.
 - A. Identified current seizure guidelines through discussions with appropriate National Office Collection Division employees. This included how procedure changes such as the new Seizure and Sale Handbook and the use of alternatives to seizures, including the Suit to Enforce Lien,¹ were communicated to districts.
 - B. Identified tools used by the IRS to measure compliance with laws and procedures related to seizures.
 - C. Obtained from the IRS district offices a listing of all seizures conducted nationwide between May 1 and September 30, 1999. We validated the accuracy of this list by comparing it with Collection Division reports and logs.
 - D. Secured all related documentation for the 35 seizures for 34 taxpayers in 16 IRS offices from the listing obtained in Sub-objective I, Step C.
 - E. Reviewed the cases to determine if the seizures were conducted in compliance with the legal provisions contained in 26 U.S.C. §§ 6330 through 6334 (1986) and internal guidelines.

¹ Under 26 U.S.C. § 7403, the IRS may request that the Attorney General file a civil suit in a United States district court for enforcement of a federal tax lien.

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- F. Referred, when necessary, potential legal and procedural violations to the Collection National Office for investigation.

- II. Reviewed the IRS' efforts to implement a uniform mechanism for disposing of seized property as required by RRA 98 § 3443, by July 22, 2000.
 - A. Attended the IRS Conference on Development and Implementation of RRA 98 § 3443, Uniform Asset Disposal Mechanism (UADM), on October 5 - 7, 1999, and reviewed the proposal for the new mechanism.

 - B. Obtained documentation of the IRS' plans to implement the UADM by July 22, 2000.

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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Deputy Commissioner Operations C:DO
Chief Operations Officer OP
Assistant Commissioner (Collection) OP:CO
Office of Management Controls M:CFO:A:M
Office of the Chief Counsel CC
Director, Office of Program Evaluation and Risk Analysis M:O
National Taxpayer Advocate C:TA
Director, Legislative Affairs CL:LA
Audit Liaison:
 Assistant Commissioner (Collection) OP:CO

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Appendix IV

Listing of District Offices Where Seizures Were Conducted

<u>Region</u>	<u>District</u>
Northeast	Michigan New England Pennsylvania Upstate New York
Southeast	Gulf Coast Virginia-West Virginia
Midstates	Houston, Texas Illinois Midwest North Central North Texas South Texas
Western	Los Angeles, California Pacific-Northwest Southern California
International	Puerto Rico

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Appendix V

**Synopsis of 26 U.S.C. (1986) Sections Containing Legal Requirements
for Conducting Seizures**

26 U.S.C. § 6330 (1986) requires the Internal Revenue Service (IRS) to provide the taxpayer a written notice 30 days before levying (seizing) his/her property or right to property. The notice must be in non-technical terms and include: (1) the amount of unpaid tax, (2) the taxpayer's right to a hearing within the 30 days, and (3) what action the IRS is taking and the taxpayer's rights with respect to that action. A statement about the Internal Revenue Code provisions, the law and procedures regarding seizure, sale, and release or redemption of property, appeal rights and procedures, and alternative actions must be included. The notice must be given to the taxpayer in person, left at his/her home or place of business, or sent by certified or registered mail.

26 U.S.C. § 6331 (1986) generally authorizes the IRS to seize all property or rights to property if a taxpayer neglects or refuses to pay taxes within 10 days after a notice and demand for payment has been made. An additional notice is to be provided to the taxpayer no less than 30 days before the day of the seizure, warning of possible seizure action if taxes are not paid. This section also prohibits levy: (1) during a pending suit for the refund of any payment of a divisible tax, (2) before a thorough investigation of the status of any property subject to levy, or (3) while either an offer in compromise or an installment agreement is being evaluated and 30 days thereafter, including appeals.

26 U.S.C. § 6332 (1986) requires anyone in possession of property subject to levy to surrender such property when a levy is conducted. It contains sanctions against anyone who does not surrender such property upon demand.

26 U.S.C. § 6333 (1986) requires anyone with control of books or records containing evidence or statements relating to property subject to levy to exhibit such books or records upon demand to the IRS.

26 U.S.C. § 6334 (1986) lists property exempt from levy. Exempt from levy are \$6,360 in fuel, provisions, furniture, and personal effects and \$3,180 in books and tools necessary for business purposes. Also exempt from levy is generally any real property of the taxpayer that is used as a residence by either the taxpayer or any other individual, if the amount owed is \$5,000 or less. Seizure of the taxpayer's principal residence is generally allowed only with approval of a United States district court judge or magistrate. Property used in the taxpayer's business is exempt, except with written approval of the District Director or Assistant District Director, and may be approved for seizure only if other assets are not sufficient to pay the liability and expenses of the seizure.

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26 U.S.C. § 6335 (1986) contains procedures for the sale of seized property. Notice of sale must be given to the taxpayer. The property must be advertised in the county newspaper and/or posted at the nearest post office and posted in at least two other public places. The notices shall specify the property to be sold and the time, place, manner, and conditions of sale. The property must be sold not less than 10 days or more than 40 days from the time of giving public notice. Finally, this section expressly prohibits selling seized property for less than the minimum bid.

26 U.S.C. § 6336 (1986) contains procedures for the accelerated disposition of seized property that is liable to perish or become greatly reduced in price or value if kept for sale (such as fresh food products) or any property that requires prohibitive expenses to maintain during the normal sale time period. The property may either be sold as soon as practicable, returned to the taxpayer in exchange for payment of a bond, or returned to the taxpayer for payment of the appraised value.

26 U.S.C. § 6337 (1986) allows the owner of seized property to redeem the property prior to the sale by paying the amount due plus the expenses of the seizure. It also allows the owner to redeem real property within 180 days of the sale by paying the successful bidder the purchase price plus 20 percent per annum interest.

26 U.S.C. § 6338 (1986) requires the IRS to give purchasers of seized property a certificate of sale upon full payment of the purchase price. This includes issuing a deed to real property after expiration of the 180-day period required by 26 U.S.C. § 6337 (1986). The deed is exchanged for the certificate of sale issued upon full payment.

26 U.S.C. § 6339 (1986) gives the legal effect of the certificate of sale for personal property and the transfer deed for real property.

26 U.S.C. § 6340 (1986) requires each IRS district office to keep a record of all sales of seized property. This record includes the tax for which such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed or certificate of sale of personal property. The taxpayer will be furnished: (1) the information above except the purchasers' names, (2) the amount from such sale applied to the taxpayer's liability, and (3) the remaining balance of such liability.

26 U.S.C. § 6341 (1986) states, "The Secretary shall determine the expenses to be allowed in all cases of levy and sale."

26 U.S.C. § 6342 (1986) provides for the application of proceeds of levy. Proceeds are first applied to the expenses of the levy and sale proceedings. Any remainder is applied to the taxpayer's liability. Any amount remaining after paying the liability will be credited or refunded to the taxpayer.

26 U.S.C. § 6343 (1986) outlines various conditions under which a levy may be released and property returned to the taxpayer. These conditions include full payment of the

The Internal Revenue Service Has Significantly Improved Compliance With Legal and Internal Guidelines When Seizing Taxpayers' Property

liability, determination of a wrongful levy, financial hardship, etc. This section also provides, with the consent of the taxpayer or the National Taxpayer Advocate, the return of seized property when it would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States. Finally, when a taxpayer's account is deemed uncollectible, any outstanding seizure must be released.

26 U.S.C. § 6344 (1986) contains cross-references for 26 U.S.C. §§ 6330 through 6344 (1986).

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Legal and Internal Guidelines When Seizing Taxpayers' Property

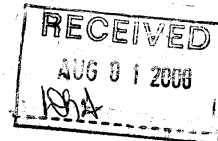
Appendix VI

Management's Response to the Draft Report



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224



August 1, 2000

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

for Charles O. Rossotti *Bob Wenzel*
Commissioner of Internal Revenue

SUBJECT:

Draft Audit Report – The Internal Revenue Service Has
Significantly Improved Compliance With Legal and Internal
Guidelines When Seizing Taxpayers' Property

We appreciate the opportunity to respond to your draft report and are pleased that you have noted significant improvement in this very sensitive area. We will reinforce the completed mandatory Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) training, noted in the report with a new course for revenue officers specifically focused on the seizure area. We expect that all appropriate employees will receive this training before the end of FY 2001. Collection front-line employees and all levels of approving officials are keenly aware of the need to protect taxpayer rights in the seizure decision process.

The Uniform Asset Disposal Mechanism required by RRA 98 section 3443 was in place July 22, 2000. The new Property Appraisal and Liquidation Specialists have been selected and trained. The training was completed July 21, 2000. We have reiterated by memorandum to Collection field personnel that revenue officers cannot participate in seizure sales after July 22, 2000.

We will implement the one recommendation in the report. We agree that allowing a considerable period of time to pass between an initial determination of taxpayer ownership of property and the seizure of that property can create problems.

RECOMMENDATION - Revise the Internal Revenue Manual (IRM) to require a reverification of the ownership of property prior to seizure action when a specified time has elapsed since the previous investigation.

ASSESSMENT OF CAUSE – Your audit determined that in 1

1

The Internal Revenue Service Has Significantly Improved Compliance With Legal and Internal Guidelines When Seizing Taxpayers' Property

2

CORRECTIVE ACTION – IRM 5.10, Seizure and Sale Handbook, is being revised to require that reverification of taxpayer ownership of the property be made within 30 days prior to beginning the process for securing seizure approval.

IMPLEMENTATION DATE

Proposed: August 1, 2000

RESPONSIBLE OFFICIAL

Assistant Commissioner (Collection)

CORRECTIVE ACTION MONITORING PLAN – Verify that the revised handbook has been printed as scheduled, and that it contains the requested change regarding reverification of taxpayer ownership of property.

If you have any questions, please call Harry T. Manaka, Acting Assistant Commissioner (Collection), at (202) 622-5100.