



*Fiscal Year 2006 Review of Compliance With
Legal Guidelines When Conducting Seizures
of Taxpayers' Property*

August 9, 2006

Reference Number: 2006-30-113

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

3(d) = Identifying Information - Other Identifying Information of an Individual or Individuals

Phone Number | 202-927-7037

Email Address | Bonnie.Heald@tigta.treas.gov

Web Site | <http://www.tigta.gov>



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 9, 2006

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

Michael R. Phillips

FROM:

Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – Fiscal Year 2006 Review of Compliance With
Legal Guidelines When Conducting Seizures of Taxpayers' Property
(Audit # 200530025)

This report presents the results of our review of the Internal Revenue Service's (IRS) compliance with legal guidelines when conducting seizures. The overall objective of this review was to determine whether seizures conducted by the IRS complied with legal provisions set forth in Internal Revenue Code (I.R.C.) Sections (§§) 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' own internal procedures. This audit focused on determining whether the IRS conducted seizures in compliance with these legal and internal procedures. It was not intended to determine whether the decision to seize was appropriate or to identify the cause of any violations.

Synopsis

To ensure taxpayers' rights are protected, the IRS Restructuring and Reform Act of 1998¹ amended the seizure provisions in I.R.C. §§ 6330 through 6344. The Treasury Inspector General for Tax Administration is required under I.R.C. § 7803(d)(1)(A)(iv) (Supp. IV 1998) to evaluate annually the IRS' compliance with these legal seizure provisions to ensure taxpayers' rights were not violated while seizures were being conducted. We have evaluated the IRS' compliance with the seizure provisions since Fiscal Year 1999.

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

We reviewed a random sample of 50 of 515 seizures conducted between July 1, 2004, and June 30, 2005, and determined the IRS did not always comply with all legal and internal guidelines when conducting seizures. In 13 (26 percent) of the 50 seizures, we identified 15 instances in which the IRS did not fully comply with the I.R.C. While we did not identify any instances in which the taxpayers were adversely affected, not following legal and internal guidelines could result in abuses of taxpayers' rights. The 15 instances included:

- Five in which expenses and proceeds resulting from seizures were not properly applied to the taxpayers' accounts. While each taxpayer received full credit for the proceeds of the seizure, those proceeds were not properly applied to the accounts in the manner specified by the Code. (I.R.C. § 6342(a)).
- Six in which all the required forms relating to the sales of the seized property were not provided to the taxpayers. (I.R.C. § 6340(c)).
- Four in which the balance-due letters required to be sent to the taxpayers after the sales proceeds were applied to liabilities were not provided to the taxpayers or the balances due reported were not correct. (I.R.C. § 6340(c)).

In addition, we identified three areas in which internal guidelines for conducting seizures can be improved to help prevent possible abuses of taxpayers' rights. First, IRS procedures state that, when property belonging to the taxpayer is in the custody of a third party, Part 4 of the Levy (Form 668-B) should be given to the third party in possession of the property. However, Internal Revenue Manual procedures do not provide specific guidelines on limiting the amount of taxpayer information, namely the taxpayer's Social Security Number (SSN), provided to third parties when property in their possession is seized. We identified three seizures in which the property being seized was in the custody of a third party and the Form 668-B and the Notice of Seizure (Form 2433) provided to the third party contained the taxpayer's SSN.

Second, while the IRS has guidelines on sending the taxpayer the minimum bid calculated by a Property Appraisal and Liquidation Specialist (PALS),² there is no specific provision that the revenue officer who conducts the seizure should not provide the taxpayer with the minimum bid estimates the revenue officer prepared as part of the seizure approval process. We identified two instances in which the revenue officer sent a separate minimum bid to the taxpayer. Giving both minimum bids may cause taxpayer confusion, especially if there are differences in the bids.

Third, IRS internal guidelines state which seizure documents must be provided to the taxpayer, but they do not state when this information is to be sent to the taxpayer. The guidelines do not require the PALS to provide the Notice of Encumbrances Against or Interests in Property

² The PALS is responsible for managing and disposing of property after it is seized by revenue officers. The PALS serves as the technical authority in appraising property proposed for seizure and is responsible for planning, marketing, and coordinating the sale of the property.



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

Offered for Sale (Form 2434-B) at the time of the minimum bid so the taxpayer has an opportunity to review it before the sale. Prior claims and encumbrances are an integral part of the minimum bid calculation and other sale-related actions. The minimum bid worksheet lists prior claims as a reduction to the property's value to arrive at a minimum bid for which the property may be sold. In our review, for 17 seizures that went to sale, the taxpayer was provided a Form 2434-B as required. Of the 17 taxpayers, 3 were sent the Form 2434-B with the minimum bid before the sale; the remaining 14 were sent the Form 2434-B after the sale was completed. By receiving the Form 2434-B earlier in the seizure process, the taxpayer could advise the PALS of any missing claims or encumbrances not identified by the IRS before the sale.

Recommendations

We recommended the Director, Collection, Small Business/Self-Employed (SB/SE) Division, reemphasize the use of the Seized Property Sale Report (Form 2436) for all seizure expenses and proceeds accounting including sales, releases, and redemptions.³ The Director, Collection, SB/SE Division, should develop procedures to redact SSN information on Form 668-A(c)(DO) (Notice of Levy), Form 668-B, and Form 2433 so only the last four digits of the taxpayer's SSN are on these documents when they are given to third parties who have possession of the property being seized. The Director, Collection, SB/SE Division, should modify procedures to include an instruction that revenue officers should not send taxpayers the draft minimum bids they prepared to support the seizure approval process. The Director, Collection, SB/SE Division, should also reemphasize the procedures to require the PALS to send the Form 2434-B to the taxpayer at the same time as the minimum bid before the sale because encumbrances are an integral part of the minimum bid calculation.

Response

IRS management agreed with our recommendations. They advised that they will issue a memorandum to remind employees of the correct procedures for posting seizure-related expenses and proceeds to the taxpayer's account. They will develop procedures to redact SSN information from Forms 668-A and 668-B, if the information is not needed by the third party to identify the asset. They will update the Internal Revenue Manual to provide instructions that the draft minimum bid should not be provided to the taxpayer. They will also issue a memorandum

³ Seized property can be released to the taxpayer under a number of circumstances, including (1) the Federal Government receives its interest in the property, (2) future collection potential is enhanced by the release, or (3) release will facilitate the collection of the liability. Any person whose property has been seized can redeem the property prior to a sale if the person pays the full amount of taxes, penalties, and interest due and any expenses of the seizure and preparation for sale.



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

to the PALSs advising that, at the time of delivery of the minimum bid, Form 2434-B may be issued to resolve any encumbrance issues prior to sale. Management's complete response to the draft report is included as Appendix VIII.

Copies of this report are also being sent to IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Daniel R. Devlin, Assistant Inspector General for Audit (Small Business and Corporate Programs), at 202-622-8500.



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Table of Contents

Background.....Page 1

Results of Review.....Page 3

 The Internal Revenue Service Did Not Always Comply With
 Legal Provisions and Internal Procedures When Conducting SeizuresPage 3

Recommendation 1:Page 6

 Internal Guidelines for Conducting Seizures and Sales Can Be
 Improved to Help Prevent Possible Abuses of Taxpayers' RightsPage 6

Recommendation 2:Page 8

Recommendations 3 and 4:.....Page 9

Appendices

 Appendix I – Detailed Objective, Scope, and MethodologyPage 10

 Appendix II – Major Contributors to This ReportPage 11

 Appendix III – Report Distribution ListPage 12

 Appendix IV – Outcome MeasuresPage 13

 Appendix V – Synopsis of Selected Legal Provisions for
 Conducting SeizuresPage 14

 Appendix VI – Prior Reports on Compliance With Seizure Procedures.....Page 17

 Appendix VII – Forms Required to Be Provided to the Taxpayer for
 Sale of Seized Property and Number of Instances Not Provided.....Page 18

 Appendix VIII – Management's Response to the Draft Report.....Page 19



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

Background

The collection of unpaid tax by the Internal Revenue Service (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 discuss alternatives, such as installment payment agreements or offers in compromise.¹ 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 tax is commonly referred to as a "seizure."

To ensure taxpayer rights are protected, the IRS Restructuring and Reform Act of 1998 (RRA 98)² amended the seizure provisions in Internal Revenue Code (I.R.C.) Sections (§§) 6330 through 6344 (1994 & Supp. IV 1998). These provisions and the IRS' internal procedures are very specific regarding how a seizure should be performed. See Appendix V for a synopsis of the applicable legal provisions.

The Treasury Inspector General for Tax Administration is required under I.R.C. § 7803(d)(1)(A)(iv) (Supp. IV 1998) to evaluate annually the IRS' compliance with these legal seizure provisions. We have evaluated the IRS' compliance with the seizure provisions since Fiscal Year (FY) 1999. See Appendix VI for a list of all prior audit reports issued on the IRS' compliance with seizure procedures.

Following enactment of the RRA 98, the number of seizures by the IRS decreased from 10,090 in FY 1997 to 74 in FY 2000. Although the number of seizures has steadily increased since FY 2000, the number of seizures in FY 2005 was still only 5 percent of the number reported in FY 1997. It is unlikely the use of seizures will ever return to pre-1998 levels. Figure 1 illustrates the number of seizures made over the past 6 fiscal years.

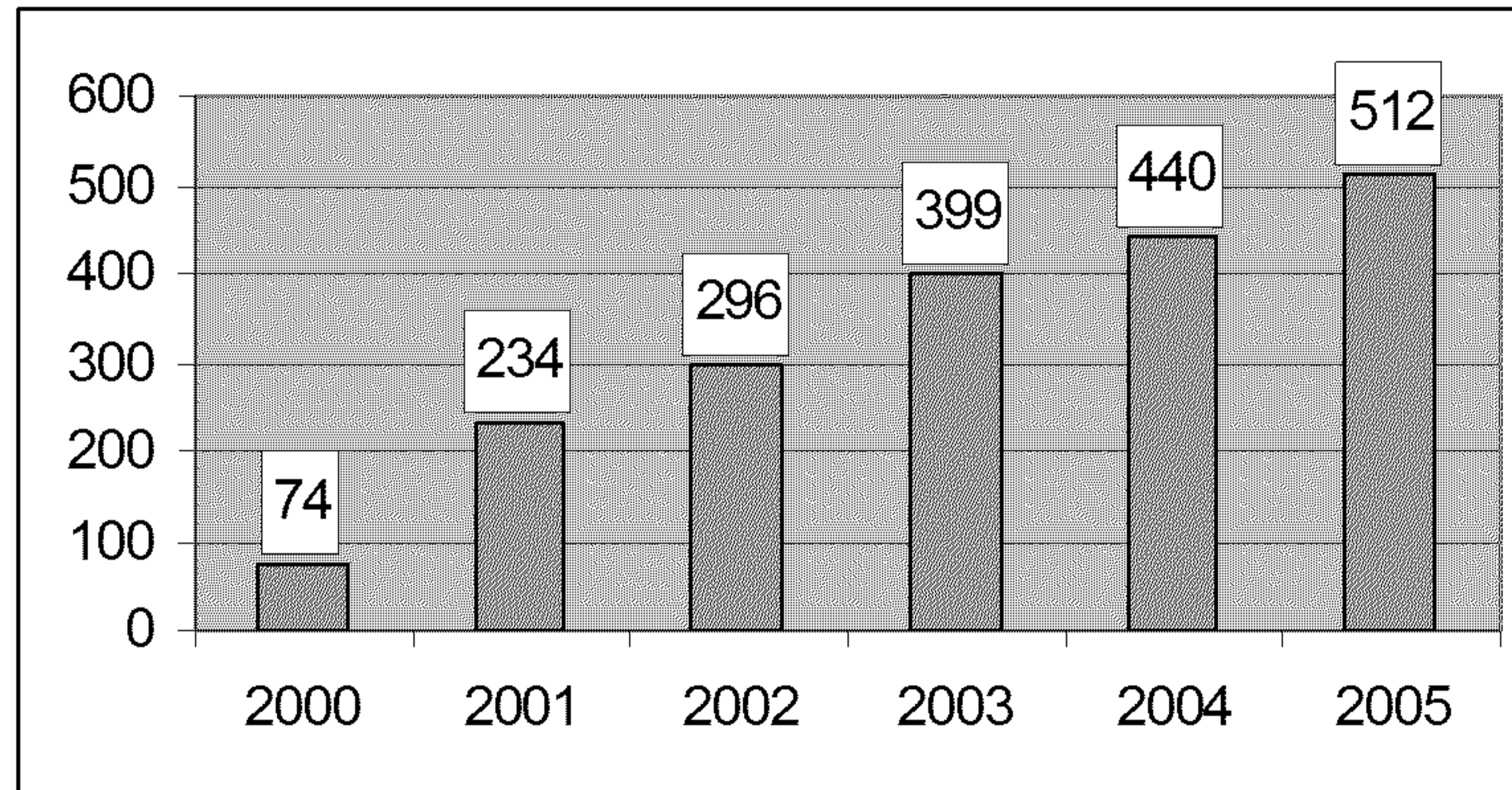
¹ An offer in compromise is a proposal by a taxpayer to settle an unpaid account(s) for less than the full amount of the balance due.

² Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

Figure 1: IRS Seizures by Fiscal Year



Source: IRS 2005 Databook for FYs 2000–2005.

This review was performed at the Small Business/Self-Employed (SB/SE) Division Headquarters in New Carrollton, Maryland, during the period August 2005 through March 2006. This audit focused on determining whether the IRS conducted seizures in compliance with legal and internal procedures. It was not intended to determine whether the decision to seize was appropriate or to identify the cause of any violations. The audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Results of Review

The Internal Revenue Service Did Not Always Comply With Legal Provisions and Internal Procedures When Conducting Seizures

We reviewed a random sample of 50 of 515 seizures conducted between July 1, 2004, and June 30, 2005. In 13 (26 percent) of the 50 seizures, we identified 15 instances in which the IRS did not comply with all I.R.C. seizure requirements. While we did not identify any instances in which the taxpayers were adversely affected, not following the legal and internal guidelines could result in abuses of taxpayers' rights.

The 15 instances included:

- Five in which expenses and proceeds resulting from seizures were not properly applied to the taxpayers' accounts. While each taxpayer received full credit for the proceeds of the seizure, those proceeds were not properly applied to the accounts in the manner specified by the I.R.C.. (I.R.C. § 6342(a)).
- Six in which all the required forms relating to the sales of the seized property were not provided to the taxpayers. (I.R.C. § 6340(c)).
- Four in which the balance-due letters required to be sent to taxpayers after the sales proceeds were applied to liabilities were not provided to the taxpayers or the balances due reported were not correct. (I.R.C. § 6340(c)).

A description of each follows.

Expenses and proceeds resulting from seizures were not properly applied to the taxpayers' accounts

I.R.C. § 6342(a) states any money realized by proceedings under this subchapter (whether by seizure or by sale of seized property) shall be applied first against the expenses of the proceedings, then against any unpaid tax imposed by any internal revenue law against the property seized and sold (for example, an excise tax), and finally against the liability in respect to which the levy was made or the sale was conducted (the accounts appearing on the Levy (Form 668-B)).

The Internal Revenue Manual (IRM) requires the same order for applying the proceeds. It also states that, because the I.R.C. requires funds realized under seizure and sale proceedings to be applied first to the expenses of the levy and sale, the proceeds should be credited to the



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

taxpayer's account using a Transaction Code (TC)³ 694, Designated Payment of Fees and Collection Costs. If the seizure results in a sale, the proceeds should be recorded on the Seized Property Sale Report (Form 2436), which should be transmitted to the Accounting Control/Services Operation⁴ for application of the proceeds to the taxpayer's account. Funds obtained from a release or redemption⁵ of seized property will be credited to the taxpayer's account using a general posting document.

We identified three cases with a violation in which expenses of seizure and sale were not charged to the taxpayers. In two cases, the property was released prior to sale. The proceeds from the release of these seizures were credited to the taxpayers' accounts, but the expenses incurred for the seizures were not charged. ^{3(d)}

We identified two other cases with a violation in which the expenses of seizure and sale were entered correctly using a TC 360, Fees and Collection Costs; however, the proceeds were not posted using a TC 694 for the amount applicable to the expense. The proceeds for both were entered using a TC 670, which is used to record tax liability payments. The Post-Seizure Review Checksheets (Form 13361) were notated that the expenses were charged to the taxpayers' accounts; however, there is nothing on the Checksheet that requires a review by the Technical Support function to determine whether the proceeds were posted to the taxpayers' accounts or whether the expenses and proceeds were posted as required. Both seizures were released prior to sale.

All required forms relating to the seizure and sale of property were not provided to the taxpayer

I.R.C. § 6340(a) requires the IRS to keep a record of all sales of property. The record shall set forth the tax for which any such sale was made, the dates of the seizure and sale, the name of the party assessed, and all proceedings in making the sale. I.R.C. § 6340(c) also requires that the taxpayer be furnished the record of sale under subsection (a).

³ TCs are used to identify transactions being processed to the IRS computer systems and to maintain a history of actions posted to a taxpayer's account.

⁴ The Accounting Control/Services Operation is located at the Ogden Submission Processing Center in Ogden, Utah, and is responsible for establishing a record of all transactions for returns and documents that are processed through the IRS.

⁵ Seized property can be released to the taxpayer under a number of circumstances, including (1) the Federal Government receives its interest in the property, (2) future collection potential is enhanced by the release, or (3) release will facilitate the collection of the liability. Any person whose property has been seized can redeem the property prior to a sale if the person pays the full amount of taxes, penalties, and interest due and any expenses of the seizure and preparation for sale.



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

The IRM requires the IRS Area Offices⁶ to maintain a permanent record of all sales conducted under I.R.C. § 6335. The IRM lists 11 Forms that are to be retained in the permanent record, including the Certificate of Sale of Seized Property (Form 2435), the Public Sale Bid Tabulation (Form 4425), and the Notice of Encumbrances Against or Interests in Property Offered for Sale (Form 2434-B).

Of the 50 seizures we reviewed, 28 resulted in a sale of the seized property. There was no indication in 6 of the 28 seizure files that the taxpayers had been provided, as of the time of our review, all of the required Forms relating to the sale of the seized property. See Appendix VII for a list of the Forms that were not provided to the taxpayers.

The IRM states the Technical Support function is responsible for maintaining the permanent record of the seizure file and providing the taxpayer with copies of the permanent record. The IRM also requires the Technical Support function to post review the seizure file upon receipt of the Form 2436 to ensure conformity with IRM statutes, regulations, and procedural guidelines. The IRS developed Form 13361 to assist in the post-review. The IRM requires the Form 13361 (or comparable form) to be completed during the post-review, to ensure all required actions were taken, and to be maintained as part of the seizure file in the Technical Support function. Page 1 of the Form 13361 contains line entries to document when the required Forms were mailed to the taxpayer.

A Form 13361 was in the case file for all six seizures; however there were no entries to show the respective Forms had been mailed to the taxpayers.

Taxpayers were not always provided a balance-due letter after the application of sales proceeds or the correct balance was not provided

I.R.C. § 6340(c) states the taxpayer with respect to whose liability the sale was conducted shall be furnished the amount from such sale that was applied to the taxpayer's liability and the remaining balance of such liability. The IRM requires the Technical Support function to provide the Form 2436 and include a letter explaining the Form (which shows how the proceeds were applied) and identifying the balance of each account after the application of proceeds from the sale of seized property.

As previously stated, 28 of the 50 seizures we reviewed resulted in a sale of the seized property. Eight of those were recent sales, and the balance-due letter had not been sent at the time of our review. The balance-due letter is required to be sent after the proceeds from the sale have been applied to the taxpayer's account. In the remaining 20 cases, we identified 3 in which the taxpayers were provided an incorrect balance.

⁶ A geographic organizational level of the IRS SB/SE Division.



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

The IRS updated Letter 3074, which provides a taxpayer with the balance due after the sale, in August 2005. The updated Letter was included in the September 2005 *Technical Digest*, and the IRM was then updated with the new Letter in December 2005.

Recommendation

Recommendation 1: The Director, Collection, should reemphasize the use of the Form 2436 for all seizure expenses and proceeds accounting including sales, releases, and redemptions. The Form contains the required entries for expenses and proceeds as well as a summary section for expenses incurred.

Management's Response: SB/SE Division management agreed with the recommendation and advised that they will issue a memorandum to remind employees of the correct procedures for posting seizure-related expenses and proceeds to the taxpayer's account.

Internal Guidelines for Conducting Seizures and Sales Can Be Improved to Help Prevent Possible Abuses of Taxpayers' Rights

We identified three areas in which internal guidelines for conducting seizures can be improved to help prevent possible abuses of taxpayers' rights. First, IRS procedures state that, when property belonging to the taxpayer is in the custody of a third party, seizure documents should be given to the third party. However, IRM procedures do not provide specific guidelines on limiting the amount of taxpayer information provided to the third parties, namely the taxpayer's Social Security Number (SSN). Second, while the IRS has guidelines on sending the taxpayer the minimum bid calculated by the Property Appraisal and Liquidation Specialist (PALS),⁷ there is no specific provision that the revenue officer should not provide the taxpayer with the minimum bid estimate the revenue officer prepared as part of the seizure approval process. Finally, internal guidelines state which seizure documents must be provided to the taxpayer; however the guidelines do not in all cases state when the documents should be provided to the taxpayer. The guidelines do not require the PALS to provide the Form 2434-B at the time of the minimum bid to give the taxpayer an opportunity to review it before the sale, although the Form is an integral part of the minimum bid calculation and other sale-related actions.

⁷ The PALS is responsible for managing and disposing of property after it is seized by the revenue officers. The PALS serves as the technical authority in appraising property proposed for seizure and is responsible for planning, marketing, and coordinating the sale of the property.



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

Seizure documents containing taxpayers' SSNs were given to third parties that had custody of the taxpayers' property at the time of seizure

The IRM states that, when property belonging to the taxpayer is in the custody of a third party, Part 4 of Form 668-B should be given to the third party in possession of the property. Form 668-A(c)(DO) (Notice of Levy) must also be used because the property is in the possession of a third party. Examples of this include automobiles on a private parking lot, securities in the hand of a stockbroker, or a safe deposit box at a bank. The IRM also states that, for personal property, Part 2 of the Notice of Seizure (Form 2433) is for the person in possession of the taxpayer's property if the property is seized from someone other than the taxpayer.

Identity theft is a major concern, as noted in the 2005 Taxpayer Advocate Annual Report to Congress that lists identity theft as ninth out of the top 21 most serious problems encountered by taxpayers. This concern of making taxpayers' SSNs available to third parties has been addressed by the IRS in areas such as lien filing procedures. The lien filing procedures have been amended so that, after January 8, 2006, only the last four digits will appear on the notice of Federal tax lien.

We identified three seizures in which the property being seized was in the custody of a third party. In all three cases, the Forms 668-B and 2433 containing the taxpayer's SSN were given to the third party.

Revenue officer minimum bid calculations were sent to taxpayers

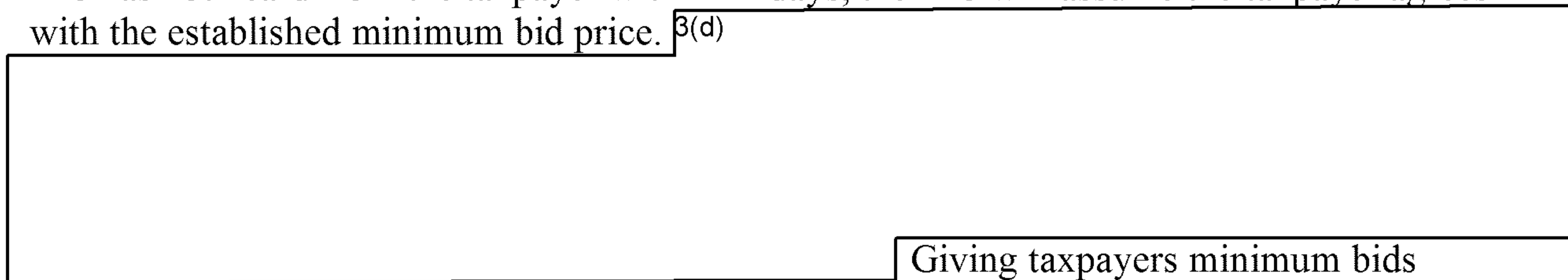
The I.R.C. states that no levy may be made on any property if the amount of the expenses that the Secretary of the Treasury estimates (at the time of levy) would be incurred by the Secretary of the Treasury with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy. The I.R.C. also states that, before the sale of property seized by levy, the Secretary of the Treasury shall determine a minimum price below which such property shall not be sold (taking into account the expense of making the levy and conducting the sale). The I.R.C. requires that all proceedings in making the sale be provided to the taxpayer.

The IRM prohibits seizures that will result in no equity. It requires that there be sufficient net proceeds from the sale to provide funds to apply to the taxpayer's unpaid tax liabilities. To determine if there will be net proceeds available to apply to the liability, the revenue officer must complete an equity determination and prepare a draft minimum bid prior to recommending the case for seizure. In addition, the PALS is responsible for establishing the exact minimum bid that will be used if a sale becomes necessary. These two amounts could differ. The IRM requires that, after approval of the minimum bid is secured from the manager, the PALS deliver the minimum bid form to the taxpayer to advise the taxpayer of the minimum bid price and the basis for computation. The taxpayer/owner has 10 days to respond to the minimum bid, and the delivery should normally be prior to giving the public notice of sale to permit ample time to finalize the minimum bid price before the sale date.



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

We identified two instances in which the revenue officer sent a minimum bid to the taxpayer. In both instances, the taxpayer was sent a minimum bid with the cover letter advising what recourse the taxpayer had if he or she disagreed with the minimum bid. The cover letter states that, if the IRS has not heard from the taxpayer within 10 days, the IRS will assume the taxpayer agrees with the established minimum bid price. ^{3(d)}



Giving taxpayers minimum bids prepared by both the revenue officer and the PALS may cause taxpayer confusion.

Form 2434-B was usually sent to taxpayers after the sales had occurred

The IRM requires the IRS Area Offices to maintain a permanent record of all sales conducted under I.R.C. § 6335. The IRM lists 11 Forms that are to be retained in the permanent record, including the Form 2434-B. The IRM also requires a copy of these Forms to be sent to the taxpayer, unless previously provided. A cover letter should list all of the appropriate documents and indicate which Forms were previously provided.

The minimum bid worksheet lists prior claims as a reduction to the property's value to arrive at a minimum bid for which the property may be sold. The Form 2434-B is usually sent to the taxpayer after the sale has been held. In our review, there were 17 seizures conducted in which the taxpayer was provided a Form 2434-B as required. Of the 17 taxpayers, 3 were sent the Form 2434-B with the minimum bid before the sales; the remaining 14 were sent the Form 2434-B after the sales were completed. By receiving the Form 2434-B earlier in the seizure process, the taxpayer could advise the PALS of any missing claims or encumbrances not identified by the IRS before the sale, resulting in a more realistic minimum bid.

Recommendations

The Director, Collection, SB/SE Division, should:

Recommendation 2: Develop procedures to redact SSN information on Form 668-A(c)(DO), Form 668-B, and Form 2433 so only the last four digits of the taxpayer's SSN are on these documents when they are given to third parties in possession of the property being seized.

Management's Response: SB/SE Division management agreed with the recommendation and advised that the Collection Policy function will develop procedures to redact SSN information from Forms 668-A and 668-B, if the information is not needed by the third party to identify the asset.



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Recommendation 3: Modify procedures to include an instruction that revenue officers should not send the taxpayer the draft minimum bid used to support the seizure approval process. Furnishing the taxpayer with a minimum bid is the responsibility of the PALS.

Management's Response: SB/SE Division management agreed with the recommendation and advised that the IRM will be updated to provide instructions that the draft minimum bid should not be provided to the taxpayer.

Recommendation 4: Reemphasize the procedures to require the PALS to send the Form 2434-B to the taxpayer at the same time as the minimum bid document before the sale because encumbrances are an integral part of the minimum bid calculation. This would allow the taxpayer 10 days to respond to its accuracy prior to the IRS giving the public notice of sale, as is the procedure for the minimum bid.

Management's Response: SB/SE Division management agreed with the recommendation and advised that the Collection Policy function will issue a memorandum to the PALSs advising that, at the time of delivery of the minimum bid, Form 2434-B may be issued to resolve any encumbrance-related issues prior to sale.



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether seizures conducted by the Internal Revenue Service (IRS) complied with legal provisions set forth in Internal Revenue Code Sections 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' own internal procedures.¹

To accomplish our objective, we:

- I. Obtained documentation of national guidelines provided to employees; identified IRS systems, policies, and practices for ensuring compliance with legal provisions and internal procedures related to seizures; and determined how these tools were used.
- II. Reviewed a random sample of 50 of the 515 seizures conducted by the IRS from July 1, 2004, through June 30, 2005. The seizures were reviewed to determine compliance with legal provisions and internal procedures and whether the proceeds and applicable expenses of the seizures and sales were properly recorded to taxpayers' accounts on the IRS' main computer system. A random sample was used to ensure each of the 515 seizures had an equal chance of being selected.

¹ This audit focused on determining whether the IRS conducted seizures in compliance with these legal and internal procedures. It was not intended to determine whether the decision to seize was appropriate or to identify the cause of any violations.



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Appendix II

Major Contributors to This Report

Daniel R. Devlin, Assistant Inspector General for Audit (Small Business and Corporate Programs)

Parker F. Pearson, Director

Amy L. Coleman, Audit Manager

Janis Zuika, Lead Auditor

Denise Gladson, Auditor

Chanda Stratton, Auditor



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Deputy Commissioner, Small Business/Self-Employed Division SE:S
Director, Collection, Small Business/Self-Employed Division SE:S:C
Director, Collection Policy, Small Business/Self-Employed Division SE:S:C:CP
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Commissioner, Small Business/Self-Employed Division SE:S



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 13 taxpayers for whom the Internal Revenue Service did not comply with legal provisions and internal procedures when conducting seizures (see page 3). While we did not identify any instances in which the taxpayers were adversely affected, not following legal and internal guidelines could result in abuses of taxpayers' rights.
- Taxpayer Rights and Entitlements – Potential; 16 taxpayers for whom internal guidelines for conducting seizures could be improved to help prevent possible abuses of taxpayers' rights (see page 6). (Four of these 16 are also included in the 13 taxpayers above; and 3 of these 16 taxpayers had 2 instances each for whom internal guidelines could be improved.) While we did not identify any instances in which the taxpayers were adversely affected, not following legal and internal guidelines could result in abuses of taxpayers' rights.

Methodology Used to Measure the Reported Benefit:

We selected a random sample of 50 seizures from a population of 515 seizures conducted from July 1, 2004, through June 30, 2005. A random sample was used to ensure each of the 515 seizures had an equal chance of being selected.



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Appendix V

***Synopsis of Selected Legal Provisions for Conducting
Seizures***

Internal Revenue Code (I.R.C.) Section (§) 6330 (Supp. IV 1998) requires the Internal Revenue Service (IRS) to issue the taxpayer a notice of his or her right to a hearing prior to seizure action. The notice must be (1) given in person, (2) left at the taxpayer's home or business, or (3) mailed certified-return receipt requested, no fewer than 30 days before the day of the seizure. The notice must explain in simple terms (1) the amount owed, (2) the right to request a hearing during the 30-day period, and (3) the proposed action by the IRS and the taxpayer's rights with respect to such action.

The statute of limitations for collection is suspended from the time a taxpayer requests a hearing and while such hearings and appeals are pending, except when the underlying tax liability is not at issue in the appeal and the court determines the IRS has shown good cause not to suspend the seizure. No limitation period may expire before 90 days after a final determination. These procedures do not apply if the collection of tax is at risk.

I.R.C. § 6331 (1994 & Supp. IV 1998) authorizes the IRS to seize a taxpayer's property for unpaid tax after sending the taxpayer a 30-day notice of intent to levy.¹ This section also prohibits seizure (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 seizure, or (3) while either an offer in compromise² or an installment agreement is being evaluated and, if necessary, 30 additional days for the taxpayer to appeal the rejection of the offer in compromise or installment agreement.

I.R.C. § 6332 (1994 & Supp. IV 1998) requires a third party in possession of property subject to seizure to surrender such property when a levy notice is received. It contains sanctions against third parties that do not surrender such property when a levy notice is received.

I.R.C. § 6333 (1994 & Supp. IV 1998) requires a third party with control of books or records containing evidence or statements relating to property subject to seizure to exhibit such books or records to the IRS when a levy notice is received.

¹ A levy is a means to take property by legal authority to satisfy a tax debt. The IRS uses a levy as a tool to collect on balance-due accounts that are not being voluntarily paid.

² An offer in compromise is a proposal by a taxpayer to settle an unpaid account(s) for less than the full amount of the balance due.



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

I.R.C. § 6334 (1994 & Supp. IV 1998) enumerates property exempt from seizure. The exemption amounts are adjusted each year and included \$7,040 for the period July 1 through December 31, 2004, and \$7,200 for the period January 1 through June 30, 2005, for fuel, provisions, furniture, and personal effects and \$3,520 for the period July 1 through December 31, 2004, and \$3,600 for the period January 1 through June 30, 2005, for books and tools necessary for business purposes. Also, any primary residence, not just the taxpayer's, is exempt from seizure when the amount owed is \$5,000 or less. Seizure of the taxpayer's principal residence is allowed only with the approval of a United States District Court judge or magistrate. Property used in an individual taxpayer's business is exempt except with written approval of the Area Office³ Director, and the seizure may be approved only if other assets are not sufficient to pay the liability.

I.R.C. § 6335 (1994 & Supp. IV 1998) contains procedures for the sale of seized property. Notice must be given to the taxpayer; the property must be advertised in the county newspaper or posted at the nearest United States Post Office; and such notices shall specify the time, place, manner, and conditions of sale. It requires the property be sold no fewer 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.

I.R.C. § 6336 (Supp. IV 1998) contains procedures for the accelerated disposition of perishable property. This is property 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 quickly or returned to the taxpayer in exchange for payment of a bond.

I.R.C. § 6337 (1994 & Supp. IV 1998) allows the taxpayer to redeem seized property prior to sale by paying the amount due plus the expenses of the seizure. It also allows a taxpayer to redeem real property within 180 days of the sale by paying the successful bidder the purchase price plus 20 percent per annum interest.

I.R.C. § 6338 (1994 & Supp. IV 1998) 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 I.R.C. § 6337. The deed is exchanged for the certificate of sale issued at the time of the sale.

I.R.C. § 6339 (1994 & Supp. IV 1998) provides the legal effect of the certificate of sale for personal property and the transfer deed for real property.

I.R.C. § 6340 (1994 & Supp. IV 1998) requires each Area Office to keep a record of all sales of seized property. This record must include the tax for which such sale was made, the dates of seizure and sale, the name of the party assessed, 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

³ A geographic organizational level of the IRS Small Business/Self-Employed Division.



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

purchasers' names, (2) the amount of such sale applied to the taxpayer's liability, and (3) the remaining balance of such liability.

I.R.C. § 6341 (1994 & Supp. IV 1998) allows expenses for all seizure and sale cases.

I.R.C. § 6342 (1994 & Supp. IV 1998) enumerates how the proceeds of a seizure and sale are to be applied to a taxpayer's account. Proceeds are applied first to the expenses of the seizure and sale proceedings. Then, any remainder is applied to the taxpayer's liability.

I.R.C. § 6343 (1994 & Supp. IV 1998) outlines various conditions under which a seizure may be released and property returned to the taxpayer. These conditions include full payment of the liability, determination of a wrongful seizure, financial hardship, etc. This section allows a consent agreement between the United States and either the taxpayer or the National Taxpayer Advocate when the return of seized property would be in the taxpayer's best interest.

I.R.C. § 6344 (1994 & Supp. IV 1998) contains cross-references for I.R.C. §§ 6330 through 6344.

Public Law Number 105-206 (IRS Restructuring and Reform Act of 1998)⁴ § 3443 required the IRS to implement a uniform asset disposal mechanism by July 22, 2000, for sales of seized property under I.R.C. § 6335. This mechanism was designed to remove revenue officers from participating in the sales of seized assets.

⁴ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Appendix VI

***Prior Reports on Compliance With Seizure
Procedures***

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).

The Internal Revenue Service Has Significantly Improved Compliance With Legal and Internal Guidelines When Seizing Taxpayers' Property (Reference Number 2000-10-114, dated August 2000).

Letter Report: The Internal Revenue Service Complied With Legal and Internal Guidelines When Seizing Property for Payment of Tax (Reference Number 2001-10-061, dated May 2001).

The Internal Revenue Service Has Taken Significant Actions, But Increased Oversight Is Needed to Fully Implement the Uniform Asset Disposal Mechanism (Reference Number 2002-10-005, dated November 2001).

The Internal Revenue Service Continues to Comply With the Law When Seizing Taxpayers' Property (Reference Number 2002-40-155, dated August 2002).

Fiscal Year 2003 Statutory Audit of Compliance With Seizure Procedures (Reference Number 2003-40-115, dated May 2003).

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property (Reference Number 2004-30-149, dated August 2004).

Fiscal Year 2005 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Reference Number 2005-30-091, dated June 2005).



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

Appendix VII

***Forms Required to Be Provided to the Taxpayer for
Sale of Seized Property and Number of Instances Not
Provided***

Notice of Encumbrances Against or Interests in Property Offered for Sale (Form 2434-B)	3 cases
Public Sale Bid Tabulation (Form 4425)	2 cases

1

--



**Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property**

Appendix VIII

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

RECEIVED
JUL 24 2006

July 21, 2006

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kevin M. Brown *Kevin M. Brown*
Commissioner Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2006 Review of
Compliance with Legal Guidelines When Conducting
Seizures of Taxpayers' Property (Audit # 200530025)

We have reviewed your report on the seizure and sale program and agree with the results. Each case in your review contained over eighty items, and we believe the overall error rate of less than one percent reflects the importance we place on ensuring compliance with the legal seizure provisions. In addition, although this year's audit identified sixteen legal violations on the fifty cases reviewed, we appreciate your acknowledgement that the violations were administrative in nature and did not adversely impact taxpayers.

The majority of the administrative errors were found in the post-seizure process. As a result of your audits in prior years, we have taken several steps to reduce these types of errors. As indicated in your report, we replaced the previous Internal Revenue Manual (IRM) exhibit with a standard letter that provides the remaining balance due information to the taxpayer.

We also requested and received Counsel approval to change the procedures for providing the taxpayer with copies of the permanent record. Since these changes reduce the number of required taxpayer documents from eleven to three, we believe the frequency of errors will also be reduced.

The recommendations and corrective actions are included below.

RECOMMENDATION 1:

The Director, Collection, SB/SE Division, should reemphasize the use of the Form 2436 for all seizure expenses and proceeds accounting including sales, releases, and redemptions. The form contains the required entries for expenses and proceeds as well as a summary section for expenses incurred.

CORRECTIVE ACTION:

Collection Policy will issue a memorandum to remind employees of the correct procedures for posting seizure-related expenses and proceeds to the taxpayer's



Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

account. Form 2436, Seized Property Sale Report, is only used on sale cases. Form 3244, Payment Posting Voucher, is used for releases and redemptions.

IMPLEMENTATION DATE:

September 15, 2006

RESPONSIBLE OFFICIAL:

Director, Collection Policy

CORRECTIVE ACTION MONITORING PLAN:

Program Manager, Field Payment Compliance, will advise the Director, Collection Policy, of any delays in implementation of the corrective action.

RECOMMENDATION 2:

The Director, Collection, SB/SE Division, should develop procedures to redact SSN information on Form 668-A(c)(DO), Form 668-B, and Form 2433 so only the last four digits of the taxpayer's SSN are on these documents when they are given to third parties in possession of the property being seized.

CORRECTIVE ACTION:

Collection Policy will develop procedures to address redacting SSN information from Forms 668-A, Levy, and 668-B, Notice of Levy, if the information is not needed by the third party to identify the asset. Form 2433, Notice of Seizure does not include the taxpayer's SSN.

IMPLEMENTATION DATE:

March 15, 2007

RESPONSIBLE OFFICIAL:

Director, Collection Policy

CORRECTIVE ACTION MONITORING PLAN:

Program Manager, Field Payment Compliance, will advise the Director, Collection Policy, of any delays in implementation of the corrective action.

RECOMMENDATION 3:

The Director, Collection, SB/SE Division, should modify procedures to include an instruction that revenue officers should not send the taxpayer the draft minimum bid used to support the seizure approval process. Furnishing the taxpayer with a minimum bid is the responsibility of the PALS.

CORRECTIVE ACTION:

IRM 5.10.2 will be updated to provide instructions that the draft minimum bid should not be provided to the taxpayer.



***Fiscal Year 2006 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property***

IMPLEMENTATION DATE:

March 15, 2007

RESPONSIBLE OFFICIAL:

Director, Collection Policy

CORRECTIVE ACTION MONITORING PLAN:

Program Manager, Field Payment Compliance, will advise the Director, Collection Policy, of any delays in implementation of the corrective action.

RECOMMENDATION 4:

The Director, Collection, SB/SE Division, should reemphasize the procedures to require the PALS to send the Form 2434-B to the taxpayer at the same time as the minimum bid document before the sale because encumbrances are an integral part of the minimum bid calculation. This would allow the taxpayer 10 days to respond to its accuracy prior to the IRS giving the public notice of sale, as is the procedure for the minimum bid.

CORRECTIVE ACTION:

Collection Policy will issue a memorandum to the PALS advising that, at the time of delivery of the minimum bid, Form 2434-B, Notice of Encumbrances Against or Interests in Property Offered for Sale, may be issued to resolve any encumbrance-related issues prior to the sale.

IMPLEMENTATION DATE:

September 15, 2006

RESPONSIBLE OFFICIAL:

Director, Collection Policy

CORRECTIVE ACTION MONITORING PLAN:

Program Manager, Field Payment Compliance, will advise the Director, Collection Policy of any delays in implementation of the corrective action.

If you have any questions, please contact me at (202) 622-0600 or Brady R. Bennett, Director, Collection, Small Business/Self-Employed Division at (202) 283-7660.