



*Fiscal Year 2008 Review of Compliance With
Legal Guidelines When Conducting Seizures
of Taxpayers' Property*

June 6, 2008

Reference Number: 2008-30-126

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Redaction Legend:

1 = Tax Return/Return Information

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

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TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 6, 2008

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 2008 Review of Compliance With
Legal Guidelines When Conducting Seizures of Taxpayers' Property
(Audit # 200830002)

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 seizures¹ 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 was not intended to determine whether the decision to seize was appropriate or to identify the cause of any violation.

Impact on the Taxpayer

To ensure that taxpayers' rights are protected, the IRS Restructuring and Reform Act of 1998² amended the seizure provisions in I.R.C. §§ 6330 through 6344. The IRS did not always comply with these statutory requirements. Although we did not identify any instances in which taxpayers were adversely affected, noncompliance with I.R.C. requirements could result in abuses of taxpayers' rights.

¹ Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure.

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.).



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Synopsis

The Treasury Inspector General for Tax Administration is required under I.R.C. § 7803(d)(1)(A)(iv) (Supp. IV 1998) to annually evaluate the IRS' compliance with the legal seizure provisions to ensure that taxpayers' rights were not violated while seizures were being conducted. We have evaluated the IRS' compliance with the seizure provisions since Fiscal Year 1999.

We reviewed a random sample of 50 of the 683 seizures conducted from July 1, 2006, through June 30, 2007, to determine whether the IRS is complying with numerous legal and internal guidelines when conducting seizures. The IRS followed the guidelines in the majority of seizures. However, in 19 seizures, we identified 25 instances in which the IRS did not comply with a particular I.R.C. requirement. Because numerous statutory violations can occur on each case, the 25 instances that we identified in our 50 cases represent an error rate of only about 1 percent. While we did not identify any instances in which the taxpayers were adversely affected, failure to follow legal and internal guidelines could result in abuses of taxpayers' rights.

Our results included:

- Ten instances in which expenses and proceeds resulting from the seizures were not properly applied to the taxpayers' accounts. (I.R.C. § 6342(a))
- Five instances in which the sales of seized properties were not properly advertised. (I.R.C. § 6335(b))
- Five instances in which the correct amounts of the liabilities for which the seizures were made were not provided on the notices of seizure sent to the taxpayers. (I.R.C. § 6335(a))
- (b)(3)(d) [REDACTED] (I.R.C. § 6334(e)(2))
- (b)(3)(d) [REDACTED] (I.R.C. § 6340(c))
- (b)(3)(d) [REDACTED] (I.R.C. § 6340(c))



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Recommendation

We recommended that the Director, Collection Policy, Small Business/Self-Employed Division, require use of the Seized Property Sale Report (Form 2436) for all seizure expenses and proceeds accounting including sales, releases, and redemptions.¹

Response

IRS management agreed with our recommendation. A new form will be created for posting seizure expenses for releases and redemptions. In the interim, the Director, Collection Policy, Small Business/Self-Employed Division, will ensure compliance with accounting guidelines for seizure expenses and proceeds through field program reviews. Management's complete response to the draft report is included as Appendix VII.

Copies of this report are also being sent to IRS managers affected by the report recommendation. Please contact me at (202) 622-6510 if you have questions or Margaret E. Begg, Acting Assistant Inspector General for Audit (Small Business and Corporate Programs), at (202) 622-8510.

¹ 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.



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Abbreviations

I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service



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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 contacts are referred to as revenue officers. They consider the taxpayer's ability to pay the tax and discuss alternatives, such as an installment agreement or an offer 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 that taxpayer rights are protected, the IRS Restructuring and Reform Act of 1998² 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 annually evaluate the IRS' compliance with these legal seizure provisions. We have done this since Fiscal Year 1999. See Appendix VI for a list of all prior audit reports issued on the IRS' compliance with seizure procedures.

Following passage of the IRS Restructuring and Reform Act of 1998, the number of seizures by the IRS decreased from 10,090 in Fiscal Year 1997 to 74 in Fiscal Year 2000. Although the number of seizures has steadily increased since Fiscal Year 2000, the number in Fiscal Year 2007 was still less than 7 percent of the number reported in Fiscal Year 1997. It is unlikely that the use of seizures will ever return to the pre-1998 levels. Figure 1 illustrates the number of seizures made over the past 11 fiscal years.

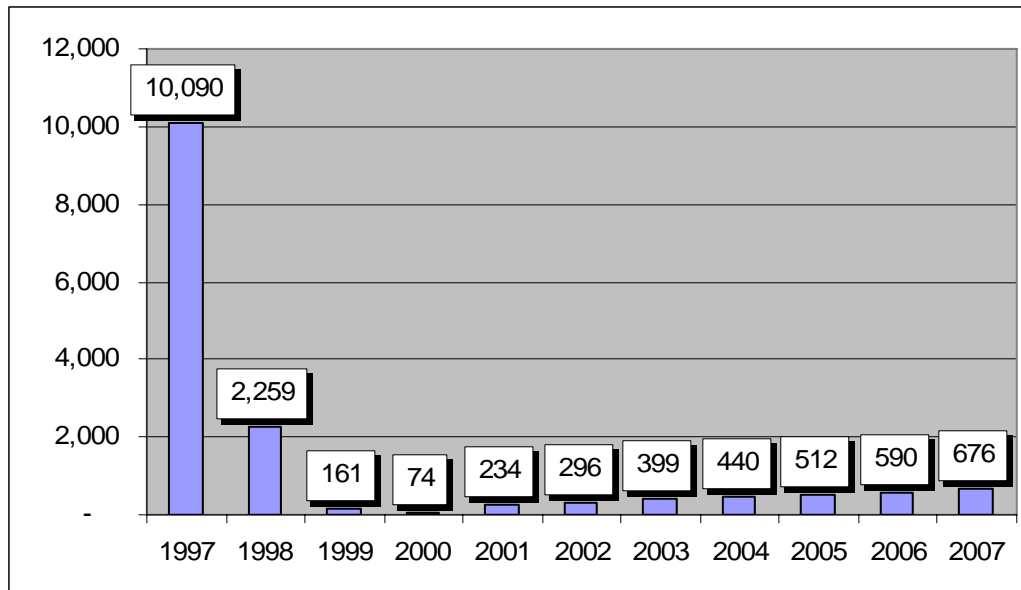
¹ An offer in compromise is a proposal by a taxpayer to settle an unpaid account(s) for less than the full amount of the balance due.

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.).



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Figure 1: IRS Seizures by Fiscal Year



Source: *IRS Data Books*.³

This review was performed at the Small Business/Self-Employed Division Headquarters in New Carrollton, Maryland, during the period August 2007 through February 2008. The 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 violation. We did not assess internal controls because doing so was not applicable within the context of our audit objective. Otherwise, we conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

³ The IRS Data Book is a report that describes activities conducted by the IRS during the fiscal year.



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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 the 683 seizures conducted from July 1, 2006, through June 30, 2007, to determine whether the IRS is complying with numerous legal and internal guidelines when conducting each seizure. The IRS followed the guidelines in the majority of seizures. However, in 19 seizures, we identified 25 instances in which the IRS did not comply with a particular I.R.C. requirement. Because numerous statutory violations can occur on each case, the 25 instances that we identified in our 50 cases represent an error rate of only about 1 percent. While we did not identify any instances in which the taxpayers were adversely affected, failure to follow the legal and internal guidelines could result in abuses of taxpayers' rights.

The 25 instances included:

- Ten instances in which expenses and proceeds resulting from the seizures were not properly applied to the taxpayers' accounts. (I.R.C. § 6342(a))
- Five instances in which the sales of seized properties were not properly advertised. (I.R.C. § 6335(b))
- Five instances in which the correct amounts of the liabilities for which the seizures were made were not provided on the notices of seizure sent to the taxpayers. (I.R.C. § 6335(a))
- 1.3(d) [REDACTED] (I.R.C. § 6334(e)(2))
- 1.3(d) [REDACTED] (I.R.C. § 6340(c))
- 1.3(d) [REDACTED] (I.R.C. § 6340(c))



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Expenses and proceeds resulting from the sales of seized properties were not always properly applied to taxpayers' accounts

I.R.C. § 6342(a) and the Internal Revenue Manual require any money realized by seizure or by sale of seized property to be applied in the following order:

- First, against the expenses of the proceedings.
- Second, against any unpaid tax imposed by any internal revenue law against the property seized and sold (for example, an excise tax).
- Finally, against the liability with respect to which the levy⁴ was made or the sale was conducted (the accounts appearing on the Levy (Form 668-B)).

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 Internal Revenue Manual requires that the proceeds be credited to the taxpayer's account using a Transaction Code⁵ 694, Designated Payment of Fees and Collection Costs, for the amount of the expenses. Seizure expenses and proceeds are posted to taxpayer accounts in two ways. If the seizure results in a sale, the proceeds should be recorded on the Seized Property Sale Report (Form 2436). Funds obtained from a release or redemption⁶ of seized property will be credited to the taxpayer's account using a general posting document.

We identified five cases for which the correct amounts of seizure and sale expenses were not charged to the taxpayers' accounts. In ^{1,3(d)} of these cases, none of the expenses of seizure were charged, and ^{1,3(d)}

^{1,3(d)}

⁴ To levy 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.

⁵ Transaction codes are used to identify transactions being processed to IRS computer systems and to maintain a history of actions posted to a taxpayer's account.

⁶ 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.



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We identified ^{1,3(d)} [REDACTED]

In last year's report,⁷ we recommended requiring use of Form 2436 when accounting for all seizure expenses and proceeds including sales, releases, and redemptions. The Form contains the required entries for expenses and proceeds and a summary section for expenses incurred. Instead of requiring use of Form 2436, IRS management responded that they had issued a memorandum (dated September 15, 2006) that reinforced correct procedures for applying expenses and sale proceeds resulting from seizures and sales. However, all of the cases that we identified with this same issue were closed after the memorandum was issued. Because the memorandum did not appear to completely correct the problem, we are making the same recommendation again this year.

Sales of seized properties were not always properly advertised

I.R.C. § 6335(b) requires the IRS, as soon as practicable after the seizure of property, to publish a notification in a newspaper distributed within the county where the seizure was made. The notice must specify the property to be sold and the time, place, manner, and conditions of the sale thereof. I.R.C. § 6335(d) requires that the sale occur between 10 calendar days and 40 calendar days after giving public notice. If the seizure involves perishable goods, I.R.C. § 6336 (2) allows the Secretary of the Treasury to make a public sale of the property as soon as practicable, in accordance with such regulations as may be prescribed by the Secretary of the Treasury.

The Internal Revenue Manual requires that the notice of sale contain the legal description of the property; the date, time, and place of sale; the payment terms; information on grouping of property; and a statement that the date of sale must be set at least 10 calendar days but not more than 40 calendar days from the date notice is to be published in the newspaper. If the sale is for perishable goods, the Internal Revenue Manual requires that the notice of sale be posted in two public places in the county in which the property is to be sold.

We identified 3 cases in which the payment terms were not correctly stated in the newspaper notice^{1,3(d)} [REDACTED]

⁷ Fiscal Year 2007 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Reference Number 2007-30-109, dated July 3, 2007).



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Taxpayers were not always provided notices of seizure with accurate liability balances

I.R.C. § 6335(a) requires the IRS, as soon as practicable after the seizure of property, to provide the owner of the property with a notice in writing that specifies the liability for which the seizure was made and an accounting of the property seized.

The Internal Revenue Manual provides guidance on completing the Notice of Seizure (Form 2433). While it does address accounting for the property seized, it does not specifically address specifying the liability for which the seizure was made. Instead, it states that the Form 2433 should have the taxpayer's total outstanding liability, which is not necessarily the amount for which the seizure was made. We identified five cases in which the Forms 2433 provided to the taxpayers did not show the correct liabilities for which the seizures were made.

During the review, the IRS notified us that it is taking corrective action and making an Internal Revenue Manual revision to the instructions for Form 2433. The revised instructions will read as follows:

The Form 2433 liability should equal the taxpayer's total amount due for the tax modules⁸ listed on Form 668-B, Notice of Levy. This amount should include all accruals and match the Total Amount Due on Form 668-B. If there is a difference in amount, it should be documented in the Integrated Collection System⁹ history.

Seizures were not always properly approved

IRS Restructuring and Reform Act of 1998 § 3421 requires that the seizure of a taxpayer's property, where appropriate, be reviewed and approved by a supervisor of the employee who plans to conduct the seizure before the action is taken. This Section allows the IRS to determine the approval process for seizures.

I.R.C. § 6334(e)(2) states that tangible personal property or real property (other than real property that is rented) used in the trade or business of an individual taxpayer is exempt from levy unless the district director or assistant district director personally approves (in writing) the levy of such property, or the Secretary of the Treasury finds that the collection of tax is in jeopardy.

⁸ Tax module refers to each tax return filed by the taxpayer for a specific period (year and quarter) during a calendar year for each type of tax.

⁹ The Integrated Collection System is an automated system used to control and monitor delinquent cases assigned to revenue officers in the field offices.



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The Internal Revenue Manual requires approval by the Area Office Director¹⁰—unless collection of the tax is in jeopardy—of all tangible personal property or real property used in the trade or business of an individual taxpayer and real property rented as a principal residence.

We identified ^{1,3(d)} [REDACTED]

Required information relating to the seizures and sales of properties was not always provided to the taxpayers

I.R.C. § 6340(a) requires that the IRS keep a record of all sales of property. The record should include the tax for which any such sale was made, the dates of the seizure and sale, the name of the party assessed, all proceedings in making the sale, the amount of expenses, the names of the purchasers, and the date of the deed or certificate of sale of personal property. I.R.C. § 6340(c) requires that the taxpayer be furnished the record of sale under subsection (a) (other than the names of the purchasers).

The Internal Revenue Manual lists the Record of Seizure and Sale (Record 21) as one of three documents to be retained in the permanent record and provided to the taxpayer. One of the items recorded on the Record 21 is deed information for real property that has been seized and sold.

We identified ^{1,3(d)} [REDACTED]

^{1,3(d)} [REDACTED] Therefore, the Records 21 did not provide all of the required information per the statute.

Taxpayers were not always provided with the correct balances on the balance-due letters after application of the sales proceeds

When a sale is conducted, I.R.C. § 6340(c) requires that the taxpayer be furnished a letter showing the amount of funds applied to the taxpayer's liability and the remaining balance of the liability. The Internal Revenue Manual requires that the Technical Support function send the taxpayer a copy of Form 2436 and include a letter that explains the Form (which shows how the proceeds were applied) and identifies the tax periods that have a balance due after the sales proceeds have been applied, the respective liability of each tax period, and the total balance due.

We identified ^{1,3(d)} [REDACTED]

¹⁰ A geographic organizational level used by IRS business units and offices to help their specific types of taxpayers understand and comply with tax laws and issues.



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Recommendation

Recommendation 1: The Director, Collection Policy, Small Business/Self-Employed Division, should require use of Form 2436 for all seizure expenses and proceeds accounting including sales, releases, and redemptions. The Form contains the required entries for expenses and proceeds and a summary section for expenses incurred.

Management's Response: IRS management agreed with the recommendation and advised a new form will be created for posting seizure expenses for releases and redemptions. In the interim, the Director, Collection Policy, Small Business/Self-Employed Division, will ensure compliance with accounting guidelines for seizure expenses and proceeds through field program reviews.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether seizures¹ conducted by the IRS complied with legal provisions set forth in I.R.C. §§ 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' own internal procedures.² We did not assess internal controls because doing so was not applicable within the context of our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

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. Selected and reviewed a random sample of 50 of the 683 seizures conducted by the IRS from July 1, 2006, through June 30, 2007. We reviewed the sample of seizures to determine whether the IRS complied with legal provisions and internal procedures and whether the proceeds and applicable expenses of the seizures and sales were properly recorded to the taxpayers' accounts on the IRS' main computer system. We used a random sample to ensure that each of the 683 seizures had an equal chance of being selected.

¹ Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure.

² This audit was not intended to determine whether the decision to seize was appropriate or to identify the cause of any violation.



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Appendix II

Major Contributors to This Report

Margaret E. Begg, Acting Assistant Inspector General for Audit (Small Business and Corporate Programs)
Carl Aley, Director
Amy L. Coleman, Audit Manager
Janis Zuika, Lead Auditor
Cristina Johnson, Senior Auditor



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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



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Appendix IV

Outcome Measure

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

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 19 taxpayers for whom the IRS did not comply with legal provisions and internal procedures when conducting seizures¹ (see page 3).

Methodology Used to Measure the Reported Benefit:

We selected and reviewed a random sample of 50 of the 683 seizures conducted from July 1, 2006, through June 30, 2007. While we did not identify any instances in which the taxpayers were adversely affected, failure to adhere to legal and internal guidelines could result in abuses of taxpayers' rights.

¹ Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure.



Appendix V

Synopsis of Selected Legal Provisions for Conducting Seizures

I.R.C. § 6330 (Supp. IV 1998) requires that the IRS issue the taxpayer a notice of his or her right to a hearing prior to seizure¹ action. The notice must be 1) given in person, 2) left at the taxpayer's home or business, or 3) mailed as certified-return receipt requested no fewer than 30 calendar 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 that the IRS has shown good cause not to suspend the seizure. No limitation period may expire before 90 calendar 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-calendar-day notice of intent to levy.² 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 compromise³ or an installment agreement is being evaluated and, if necessary, for 30 additional calendar days during which the taxpayer may appeal the rejection of the offer in compromise or installment agreement.

I.R.C. § 6332 (1994 & Supp. IV 1998) requires that a third party in possession of property subject to seizure 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 Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure.

² 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.

³ 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.



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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 Office⁴ 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 Postal Service office; and such notices shall specify the time, place, manner, and conditions of sale. This Section requires that the property be sold no fewer than 10 calendar days or more than 40 calendar 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 calendar 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-calendar-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

⁴ A geographic organizational level used by IRS business units and offices to help their specific types of taxpayers understand and comply with tax laws and issues.



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personal property. The taxpayer will be furnished 1) the information above except the 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. Any remainder is then 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 Advocate⁵ 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)⁶ § 3443 required that the IRS 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 officers⁷ from participating in the sales of seized assets.

⁵ The Taxpayer Advocate Service is an independent organization within the IRS whose employees assist taxpayers seeking help in resolving tax problems that have not been resolved through normal channels or who are experiencing significant hardships.

⁶ 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.).

⁷ The employees who make personal contacts with taxpayers are referred to as revenue officers.



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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 (Reference Number 2006-30-113, dated August 9, 2006).

Fiscal Year 2007 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Reference Number 2007-30-109, dated July 3, 2007).



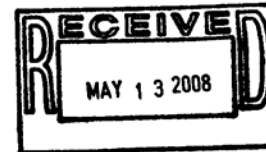
*Fiscal Year 2008 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property*

Appendix VII

Management's Response to the Draft Report



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



May 13, 2008

MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kathy K. Petronchak *Kathy K. Petronchak*
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – “Fiscal Year 2008 Review of Compliance
With Legal Guidelines When Conducting Seizures of
Taxpayers' Property” (Audit #200830002)

We have reviewed the draft report cited above and agree with your recommendation in regards to use of the Seized Property Sale Report. To determine whether the IRS is complying with the numerous legal and internal guidelines, you reviewed 50 of the 683 seizures conducted from July 1, 2006 through June 30, 2007. Although you identified 25 instances where the IRS did not fully comply with a legal requirement, the overall error rate was less than one percent which, we believe, indicates an effective seizure program.

We appreciate your acknowledgement that there were no instances in which a taxpayer was adversely affected by our actions, and we concur with your statement that failure to adhere to legal and internal guidelines could result in abuses of taxpayers' rights.

We believe that implementation of the corrective action to address issues identified in this audit along with our scheduled nationwide program review of the seizure and sale process will improve our seizure program and demonstrate the importance we place on ensuring compliance with statutory requirements.

Attached is a detailed response outlining our planned corrective actions.

If you have any questions, please contact me at (202) 622-0600 or Fred Schindler, Director, Collection Policy, Small Business/Self-Employed Division, at (202) 283-7650.

Attachment



*Fiscal Year 2008 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property*

Attachment

RECOMMENDATION 1:

The Director, Collection Policy, Small Business/Self-Employed Division, should require the use of 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(S):

A new form will be created for posting seizure expenses for releases and redemptions. The Form 2436 will continue to be used to post seizure expenses upon completion of a sale.

In the interim, the Director, Collection Policy, Small Business/Self-Employed, will ensure compliance with accounting guidelines for seizure expenses and proceeds through field program reviews.

IMPLEMENTATION DATE:

July 15, 2009

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION(S) MONITORING PLAN:

The Director, Collection Policy, Small Business/Self-Employed Division, will advise the SB/SE Commissioner of any delays in implementing this corrective action.