

**Legal and Internal Guidelines Were Not
Always Followed When Conducting Seizures
of Taxpayers' Property**

August 2004

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

August 25, 2004

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

David R. Deulin

FROM: (for) Gordon C. Milbourn III
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Legal and Internal Guidelines Were Not
Always Followed When Conducting Seizures of Taxpayers'
Property (Audit # 200330025)

This report presents the results of our mandatory review of the Internal Revenue Services' (IRS) seizures of taxpayer's property. The overall objective of this review was to determine whether seizures conducted by the IRS complied with legal provisions set forth in the Internal Revenue Code (I.R.C.) Sections 6330 through 6344 (1994 & Supp. IV 1998)¹ and with the IRS' own internal procedures. This audit focused on determining if the IRS conducted seizures in compliance with these legal and internal procedures. It was not intended to determine if the decision to seize was appropriate.

In summary, we found the IRS did not always comply with legal provisions and internal procedures when conducting seizures. Our review of a random sample of 50 of 380 seizures conducted between July 1, 2002, and June 30, 2003, identified 38 instances in 22 of the seizures in which the IRS did not fully comply with the I.R.C. While we did not identify any instances where the taxpayers were adversely affected, not following legal and internal guidelines could result in abuses of taxpayers' rights.

In addition, we found that internal guidelines for conducting seizures can be improved to help prevent I.R.C. violations. While the IRS has established procedures to follow in obtaining approval prior to conducting a seizure, the Internal Revenue Manual (IRM) does not provide specific time periods for how soon a seizure should be conducted after

¹ I.R.C., as amended by the Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933; the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21; the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2002); and the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.

the request for approval is made or after approval is given. However, the IRM does state that delays in the approval process should be avoided so the seizure action is taken while it is appropriate and while the case information is still current. We identified 2 seizures where 7 months elapsed between the time the seizures were approved and the time they were conducted, and there had been significant changes in the facts and circumstances of the cases between the 2 dates. Given the change in circumstances, the seizure actions may not have been appropriate and approval of the seizure actions may not have been granted had it been sought closer to the time of the actual seizure.

We recommended the Director, Payment Compliance, Small Business/Self-Employed Division, reemphasize the requirement that an intent to levy² needs to be issued for each period on the levy before a seizure is conducted, revise the IRM section on seizures and sales to include a statement that Integrated Data Retrieval System³ notices are not considered notices of a right to a hearing, and reemphasize that position to the field. The Director should ensure the Notice of Seizure is provided to the taxpayer at the time of seizure and reemphasize that the case file should be documented to show how the taxpayer received the notice. Also, the Director should ensure Technical Support functions use and follow the Post-Seizure Review Checklist when conducting the post reviews of the seizure files and document the dates various actions were completed, specifically when the required sales documents and application of sales proceeds and balance due letters were mailed to the taxpayers. The Director should ensure the Post-Seizure Review Checklists are maintained in the seizure files. Further, the Director should review the procedures established for posting of seizure and sales expenses and proceeds and coordinate with the Accounting Control/Services Operation⁴ to ensure the procedures are properly followed. The Director should also review the cases in our universe that we did not review to determine if all required forms and the application of proceeds letters were provided to the taxpayers. In cases where all the required forms and letters were not issued, the Director should take the appropriate action to issue them. Finally, the Director should consider revising the IRM to require the revenue officers to reevaluate the appropriateness of the seizure action and require a new approval of the seizure in those cases where a certain period of time has elapsed since the seizure was originally approved.

Management's Response: IRS management agreed with most of our recommendations. They advised that a memorandum has been issued containing the appropriate guidance on the requirements for issuing the intent of levy notices, providing the Notice of Seizures to taxpayers, and providing the taxpayer the required sales documents and application of sales proceeds and balance due letters. In addition, the IRM is being revised regarding guidelines for issuing the intent of levy

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 IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.

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

notices and requiring the revenue officers to review the account once a writ⁵ is received to ensure the seizure action is still appropriate and allowable. An Interim Guidance memorandum was also issued that established the Post-Seizure Review Checklist as the only acceptable post-seizure review form that can be used by Technical Services. To ensure the checklists are updated and maintained in the seizure files, a review of the Post-Seizure Review Checklists will be included in the Operational Review for Technical Services. In addition, a teleconference will be held between the four national Revenue Accounting Control System (RACS)⁶ Coordinators and the analyst responsible for the RACS to review the current procedures for posting seizure and sales expenses and proceeds and to emphasize the importance of accurate accounting. Technical Services will also conduct a review of all seizures conducted in Fiscal Year 2003 where sales were held to determine if all applicable documents from the permanent record have been provided to the taxpayer. They will update the Post-Seizure Review Checklists and will send all required documents to the taxpayer on any case where the documents were not previously provided.

However, IRS management disagreed with our recommendation that the IRM be revised to require new approval of the seizure in those cases where a certain period of time has elapsed since the seizure was originally approved. They determined no new approval would be required because of the extremely short time periods allowed for taking the seizure action after a writ has been secured.

Office of Audit Comments: The two cases we identified in the report did involve obtaining a writ to conduct the seizure and we agree there is a short time period allowed for conducting the seizure after a writ has been obtained. However, our recommendation was more general in nature and included any case (not just where a writ is involved) where a certain period of time has elapsed since the seizure was originally approved. While we still believe a revision to the IRM requiring a new approval of the seizure in these cases could help prevent possible I.R.C violations and ensure the seizure action is appropriate if the circumstances change, we do not intend to elevate our disagreement concerning this recommendation to the Department of the Treasury for resolution. Management's complete response to the draft report is included as Appendix VIII.

⁵ Before entering a private area, a revenue officer must secure either a written consent from the occupant or a court order permitting entry. The court order is called a Writ of Entry and is granted by either a district court judge or magistrate.

⁶ The RACS is a fully automated system used to provide accounting and management control for all revenue accounting transactions.

Copies of this report are also being sent to IRS officials who are affected by the report recommendations. Please contact me at (202) 622-6510 if you have any questions or Philip Shropshire, Acting Assistant Inspector General for Audit (Small Business and Corporate Programs), at (215) 516-2341.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

Table of Contents

Background	Page 1
The Internal Revenue Service Did Not Always Comply With Legal Provisions and Internal Procedures When Conducting Seizures	Page 2
<u>Recommendations 1 through 3:</u>	Page 10
<u>Recommendations 4 and 5:</u>	Page 11
Internal Guidelines for Conducting Seizures Can Be Improved to Help Prevent Internal Revenue Code Violations	Page 12
<u>Recommendation 6:</u>	Page 12
Appendix I – Detailed Objective, Scope, and Methodology	Page 14
Appendix II – Major Contributors to This Report	Page 15
Appendix III – Report Distribution List	Page 16
Appendix IV – Outcome Measures	Page 17
Appendix V – Synopsis of Selected Legal Provisions for Conducting Seizures	Page 18
Appendix VI – Listing of Prior Reports on Compliance With Seizure Procedures	Page 21
Appendix VII – List of Forms Required to Be Provided to the Taxpayer for Sales of Seized Property and Number of Instances Not Provided	Page 22
Appendix VIII – Management's Response to the Draft Report	Page 23

Legal and Internal Guidelines Were Not Always Followed 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 taxpayers' rights are protected, the IRS Restructuring and Reform Act of 1998 (RRA 98)² amended the seizure provisions in the Internal Revenue Code (I.R.C.) Sections (§§) 6330 through 6344 (1994 & Supp. IV 1998).³ 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 (TIGTA) 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 to ensure taxpayers' rights were not violated while conducting seizure actions. The TIGTA has 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.

¹ An offer in compromise is a proposal by a taxpayer to settle unpaid accounts for less than the full amount of the balance due.

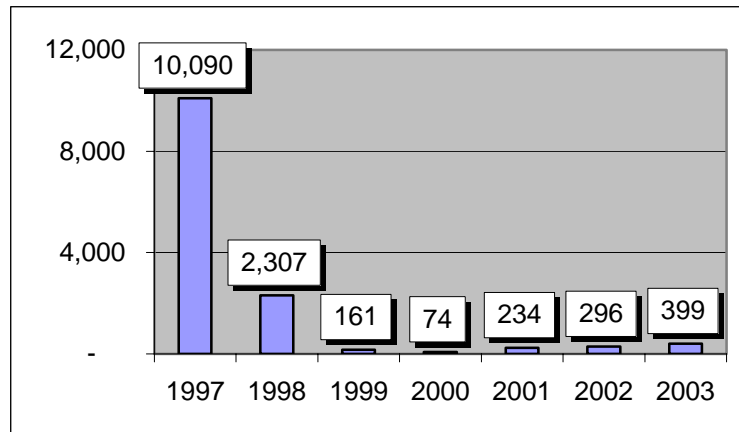
² Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

³ I.R.C., as amended by the Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933; the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21; the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2002); and the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

Since the enactment of the RRA 98, the number of seizures by the IRS has significantly decreased. Figure 1 illustrates the number of seizures for the past 7 fiscal years:

Figure 1: IRS Seizures by Fiscal Year



Source: IRS Oversight Board Annual Report 2001 for FYs 1997–1999 and the IRS 2003 Databook for FYs 2000–2003.

We conducted this audit in the IRS' Small Business/Self-Employed (SB/SE) Division Headquarters in New Carrollton, Maryland, during the period August 2003 through April 2004. This audit focused on determining whether the IRS conducted seizures in compliance with legal provisions and internal procedures. It was not intended to determine if the decision to seize was appropriate. 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.

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

Our review of a random sample of 50 of 380 seizures conducted between July 1, 2002, and June 30, 2003, determined the IRS did not comply with all legal and internal guidelines when conducting seizures. In 22 of the 50 seizures reviewed, we identified 38 instances in which the IRS did not fully comply with the I.R.C. While we did not identify any instances where the taxpayers were adversely affected, not following the legal and internal guidelines could result in abuses of taxpayers' rights.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

The 38 instances include:

- Three where taxpayers were not always notified of the IRS' intent to levy⁴ for every period on the Levy (Form 668-B). (I.R.C. § 6330(a)(Supp. IV 1998))
- Two where taxpayers were not always provided the Notice of Seizure (Form 2433). (I.R.C. § 6335(a)(1994 & Supp. IV 1998))
- One where the sale of seized property was improperly conducted within 10 days of advertisement. (I.R.C. § 6335(b)(1994 & Supp. IV 1998))
- Fifteen where all required forms relating to the sale of seized property were not provided to the taxpayers. (I.R.C. § 6340(c)(1994 & Supp. IV 1998))
- Six where the application of sales proceeds and balance due letters were not provided to the taxpayers. (I.R.C. § 6340(c)(1994 & Supp. IV 1998))
- Eleven where the seizure and sale expenses were not properly charged or sales proceeds were not properly applied to the taxpayers' accounts. (I.R.C. § 6341 and § 6342(a)(1994 & Supp. IV 1998))

A description of each follows.

Taxpayers were not always notified of the IRS' intent to levy for every period on the levy

I.R.C. § 6330(a) requires that a levy may not be made on any property or right to property of any person, unless the IRS has notified that person in writing of their right to a hearing before the levy is made. The notice shall be required for the taxable periods to which the unpaid tax relates. I.R.C. § 6331(d) also requires that a levy made with

⁴ 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.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

respect to any unpaid tax can only be made after the IRS has notified the taxpayer in writing of the intention to make the levy no less than 30 days before the day of the levy.

The Internal Revenue Manual (IRM) requires that before a seizure can be conducted, a Notice of Intent to Levy and Notice of Your Right to a Hearing (Letter 1058) must have been provided to the taxpayer at least 30 days before the seizure and for each tax period that will be identified on the Form 668-B. The IRM provides that none of the Integrated Data Retrieval System (IDRS)⁵ notices are notices of a right to a hearing. However, this provision is not in the IRM section that deals with seizures and sales.

We identified three seizures where there was no indication in the case files that the taxpayers were provided a Letter 1058 for every period on the Form 668-B. In two of the three seizures, the taxpayers were sent an IDRS balance due fourth notice, and it appears the revenue officers believed that this IDRS notice satisfied the I.R.C. requirement. However, as stated above, IDRS notices are not considered to be notices of a right to a hearing. We could not determine why a Letter 1058 was not issued in the third seizure.

Taxpayers were not always provided the Notice of Seizure

I.R.C. § 6335(a) requires the IRS to give a notice in writing to the owner of the property or leave it at his or her usual place of abode or business as soon as practicable after seizure of property. If the owner cannot be readily located, the notice may be mailed to his or her last known address. The notice shall specify the balance due amount demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

The IRM requires the owner of the property be given the Form 2433 at the earliest possible time after the seizure. The Form 2433 can be delivered personally, left at the usual

⁵ IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

place of abode or business, or sent by certified mail, if the owner cannot be readily located or has no dwelling or place of business in the territory where the seizure was conducted. The IRM contains a caution that delivery to the taxpayer's attorney alone does not constitute proper service since attempted personal delivery to the owner is required under the I.R.C. The IRM requires the revenue officer to document how the taxpayer received the Form 2433.

We identified two seizures where there was no indication in the case files that the taxpayers were provided a copy of the Form 2433.

Sale of seized property was improperly conducted within 10 days of advertisement

I.R.C. § 6335(b) requires the IRS to, as soon as practical after the seizure of property, give notice of sale to the owner and take action to publish the sale in a newspaper that is published or generally circulated within the county where the seizure is made. I.R.C. § 6335(d) provides that the time of sale of the seized property shall not be less than 10 days nor more than 40 days from the time of giving public notice.

The IRM also requires that the date of sale must be set at least 10 days but not more than 40 days from the date the notice is to be published in the newspaper.

We identified 1 seizure in which the sale of seized property was conducted less than 10 days from the date advertised in the newspaper. In this case, the notice of sale was originally published in an October edition of the newspaper, with the sale scheduled for more than 10 days later. However, the notice did not include a description of the property to be sold, apparently due to an error by the newspaper. A new complete advertisement was run in a later October edition of the newspaper and the sale was conducted on the originally planned October sale date, which was less than 10 days after the second publishing date. This was noted during a post seizure review by the Technical Support function,⁶ which

⁶ The Technical Support function supports collection casework by providing technical services that require functional expertise to resolve collection issues (e.g., seizure and sale procedures, Federal tax lien issues, etc.).

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

concluded the sale, did not conform to the statutory requirement.

All required forms relating to the sale of the seized property were not provided to the taxpayers

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 for which the tax was assessed, and all proceedings in making the sale. I.R.C. § 6340(c) also requires the taxpayer be furnished the record of the sale.

The IRM requires the IRS' Area Offices to maintain a permanent record of all sales conducted under I.R.C. § 6335. The IRM provides a list of the forms that are to be retained in the permanent record and requires copies of the forms be sent to the taxpayer, unless previously provided.

Our review of 50 seizures included 18 that resulted in a sale of the seized property. There was no indication in 15 of the 18 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 seized property. See Appendix VII for a listing of the forms that were not provided to the taxpayers.

The IRM states that the Technical Support functions in the Area Offices are 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 functions to post review the seizure file upon receipt of the Seized Property Sale Report (Form 2436). The IRS has developed a Post-Seizure Review Checklist (Form 13361) to assist in the post review. The IRM requires the Form 13361 (or comparable form) be completed during the post-seizure review to ensure that all required actions were taken and requires the Form 13361 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 taxpayers.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

A Form 13361 was in the case file for 12 of the 15 seizures in which the taxpayers were not provided all the required forms. However, none of the Forms 13361 contained entries regarding dates all the required forms were mailed to the taxpayers. We were not provided page 1 of the Forms 13361 for the other 3 seizures.

Application of sales proceeds and balance due letters were not always provided to the taxpayers

I.R.C. § 6340(c) requires that the taxpayer, with respect to whose liability the sale was conducted, be furnished with the amount from the sale that was applied to the taxpayer's liability and the remaining balance of the liability.

The IRM requires the Technical Support function to provide the taxpayer a Form 2436 and include a letter explaining the form (which shows how the sales proceeds were applied). The letter should also identify the balance of each account after the application of the proceeds from the sale of seized property.

As previously stated, our review of 50 seizures included 18 that resulted in a sale of the seized property. There was no indication in 6 of the 18 seizure files that the taxpayers were notified how the sale proceeds were applied and/or their correct balance due after the sale. In three of the six seizures, the taxpayers were not provided either the Form 2436 or a letter advising them of their balance due after the application of the proceeds. In another two seizures, the taxpayers were sent the Form 2436, but were not advised of their balance due. In the remaining seizure, the taxpayer was sent both the Form 2436 and balance due letter; however, the balance due in the letter was incorrect.

The Form 13361 used by the Technical Support function for conducting a post review of the seizure files contains a field to record the date the application of proceeds letter was sent to the taxpayer. A Form 13361 was in the case file for three of the six seizures where the taxpayers were not notified of how the sales proceeds were applied and/or their balance due after the sale. However, the information as to when the application of proceeds letters were sent was not recorded. We were not provided the Forms 13361 for the other three seizures.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

Seizure and sale expenses were not properly charged or sales proceeds were not properly applied to the taxpayers' accounts

I.R.C. § 6341 states that the IRS shall determine the expenses to be allowed in all cases of levy and sale. The IRM requires that all expenses of seizure and sale that are not paid directly by the taxpayer be charged to the taxpayer's account with a Transaction Code (TC)⁷ 360, Fees and Collection Costs. The IRM states that it is essential that all expenses of sale be debited against the taxpayer's account so that the expenses are satisfied from the proceeds of the sale.

If the seizure results in a sale, the expenses incurred during the seizure should be recorded on the Form 2436 and it should be transmitted to the Accounting Control/Services Operation⁸ for input of the expenses to the taxpayer's account. If expenses are incurred during a seizure that does not result in a sale, they are to be debited to the taxpayers' accounts using a general posting document.

Seizure expenses were incurred in 25 of the 50 seizures reviewed. In 3 of the 25 seizures, expenses totaling \$2,829.20 were not charged to the taxpayers' accounts. Two of the three seizures resulted in a sale and the expenses were properly included on the Form 2436 as a TC 360. However, the expenses were never posted to the taxpayers' accounts. The third seizure resulted in a release of the property back to the taxpayer, and we could not determine if a posting document was properly prepared.

I.R.C. § 6342(a) requires that 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

⁷ Transaction codes 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.

⁸ The Accounting Control/Services Operation is located at the Ogden Submission Processing Center and is responsible for establishing a record of all transactions for returns and documents that are processed through the IRS.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' 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 Form 668-B).

The IRM requires the same order for applying the proceeds. It also states that since the I.R.C. requires that funds realized under levy and sale proceedings be applied first to the expenses of levy and sale, the proceeds should be credited to the taxpayer's account using a TC 694, Designated Payment of Fees and Collection Costs. If the seizure results in a sale, the proceeds should be recorded on the Form 2436, and it should be transmitted to the Accounting Control/Services Operations for applying the proceeds to the taxpayer's account. Funds obtained from a release or redemption⁹ of seized property will be credited to the taxpayer's account using a general posting document.

In 4 of the 50 seizures reviewed, the proceeds realized from the seizures were not applied first to the seizure expenses. In all four of the seizures, the expenses had correctly been charged to the taxpayers' accounts with a TC 360. Two of the four seizures resulted in sales and while the Form 2436 was correctly prepared showing that the sales proceeds should be applied to the expenses with a TC 694, none of the proceeds were applied to the expenses. The other two seizures resulted in the release of the property back to the taxpayers with none of the proceeds for the release being applied to the expenses, and we could not determine if a posting document was properly prepared.

We also identified four seizures (including two of the above seizures), where the proceeds were applied to liabilities for accounts not on the Form 668-B before being applied to satisfy all the liabilities on the Form 668-B. The proceeds received in all four of the seizures resulted from a release of

⁹ 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 taxpayer pays the full amount of taxes, penalties, and interest due and any expenses of the seizure and preparation for sale.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

the seizure back to the taxpayer, rather than a sale of the seized property.

The order of how proceeds are to be applied is not affected by how the seizure is closed – either by sale or release. Both the I.R.C. and the IRM state the order for how the proceeds are applied pertain to any money realized under levy and sale proceedings, whether by seizure or by sale of seized property.

Recommendations

The Director, Payment Compliance, SB/SE Division, should:

1. Reemphasize the requirement that a Letter 1058 needs to be issued for each period on the Form 668-B before a seizure is conducted, revise the IRM section on seizures and sales to include the statement that IDRS notices are not considered notices of a right to a hearing, and reemphasize that position to the field.

Management's response: SB/SE Division management advised they have issued a memorandum containing the appropriate guidance and the IRM is being revised.

2. Ensure Form 2433 is provided to the taxpayer at the time of seizure and reemphasize to revenue officers that they are to document the case file as to how the taxpayer received the Form 2433.

Management's response: SB/SE Division management advised they have issued a memorandum containing the appropriate guidance.

3. Ensure Technical Support functions use and follow the Post-Seizure Review Checklist when conducting the post reviews of the seizure files and document the dates various actions were completed, specifically when the required sales documents and application of sales proceeds and balance due letters were mailed to the taxpayers. Also, the Director should ensure the Post-Seizure Review Checklists are maintained in the seizure files.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

Management's response: SB/SE Division management advised they have issued a memorandum containing the appropriate guidance. They also have issued an Interim Guidance memorandum that established the Post-Seizure Review Checklist as the only acceptable post-seizure review form that can be used by Technical Services. To ensure that the checklists are updated and maintained in the seizure files, a review of the Post-Seizure Review Checklists will be included in the Operation Review for Technical Services.

4. Review the procedures established for posting of seizure and sales expenses and proceeds and coordinate with the Accounting Control/Services Operation to ensure the procedures are being properly followed.

Management's response: SB/SE Division management advised that there will be a teleconference between the four national Revenue Accounting Control System¹⁰ (RACS) Coordinators and the analyst responsible for the RACS program to review the current procedures and emphasize the importance of accurate accounting on seizure and sale cases.

5. Review the seizures in our universe of cases that we did not review to determine if all required forms relating to a sale of seized property and the application of proceeds letters were sent to the taxpayers. In cases where the required forms and letters were not issued, the Director should take the appropriate action to issue them.

Management's response: SB/SE Division management advised that Technical Services will conduct a review of all seizures conducted in Fiscal Year 2003 where sales were held to determine if all applicable documents from the permanent record have been provided to the taxpayer. They will update the Post-Seizure Review Checklists and will send all required documents to the taxpayer on any case where the documents were not previously provided.

¹⁰ The RACS is a fully automated system used to provide accounting and management control for all revenue accounting transactions.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

Internal Guidelines for Conducting Seizures Can Be Improved to Help Prevent Internal Revenue Code Violations

The RRA 98 requires the IRS to develop and implement procedures under which a determination by an employee to seize any property would, where appropriate, be required to be reviewed by a supervisor before the action is taken. The review process may include a certification that the employee has reviewed the taxpayer's information and affirmed that the action proposed to be taken is appropriate given the taxpayer's circumstances, considering the amount due and the value of the property.

While the IRS has established procedures to follow in obtaining approval prior to conducting a seizure, the IRM does not provide a specific time period for how soon a seizure should be conducted after the request for approval is made or after the approval is given. However, the IRM does state that delays in the approval process should be avoided so that the seizure action is taken while it is appropriate and while the case information is still current.

We identified 2 seizures where 7 months elapsed between the time the seizures were approved and the time they were conducted. In both cases, there was a significant change in the facts and circumstances of the case between the two dates. In 1 case, the taxpayer's liability decreased from about \$11,000 to about \$1,800. In the second case, the taxpayer began to make federal tax deposits for future periods and timely filed and paid a number of returns.

Given the change in the facts and circumstances of these cases, the seizure actions may not have been appropriate and based on the current facts, approval for the seizure actions may not have been granted had it been sought closer to the time of the actual seizure.

Recommendation

The Director, Payment Compliance, SB/SE Division, should:

6. Consider revising the IRM to require revenue officers to reevaluate the appropriateness of the seizure action and require a new approval of the seizure in those cases where a certain period of time has elapsed since the seizure was originally approved.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

Management's response: SB/SE Division management advised that the IRM is being revised to require the revenue officer to review the account once a writ¹¹ is received to ensure seizure action is still appropriate and allowable. However, they disagreed with the recommendation that the IRM be revised to require new approval of the seizure in those cases where a certain period of time has elapsed since the seizure was originally approved. They determined no new approval would be required because of the extremely short time periods allowed for taking the seizure action after a writ has been secured.

Office of Audit Comment: The two cases we identified in the report did involve obtaining a writ to conduct the seizure and we agree there is a short time period allowed for conducting the seizure after a writ has been obtained. However, our recommendation was more general in nature and included any case (not just where a writ is involved) where a certain period of time has elapsed since the seizure was originally approved.

¹¹ Before entering a private area, a revenue officer must secure either a written consent from the occupant or a court order permitting entry. The court order is called a Writ of Entry and is granted by either a district court judge or magistrate.

Legal and Internal Guidelines Were Not Always Followed 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 the Internal Revenue Code (I.R.C.) Sections 6330 through 6344 (1994 & Supp. IV 1998)¹ and with the IRS' own internal procedures.²

To accomplish our objective, we:

- I. Interviewed the Small Business/Self-Employed Division Seizure Program Analyst and obtained documentation of national guidance 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 seizures from the 380 seizures conducted by the IRS from July 1, 2002, through June 30, 2003. 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 380 seizures in our sample period had an equal chance of being selected.

¹ I.R.C., *as amended* by the Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933; the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21; the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2002); and the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.

² This audit focused on determining if the IRS conducted seizures in compliance with legal and internal procedures. It was not intended to determine if the decision to seize was appropriate.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

Appendix II

Major Contributors to This Report

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Legal and Internal Guidelines Were Not Always Followed 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
Acting Director, Compliance, Small Business/Self-Employed Division SE:S:C
Director, Payment Compliance, Small Business/Self-Employed Division SE:S:C:CP:PC
Chief Counsel CC
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Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Management Controls OS:CFO:AR:M
Audit Liaison: Commissioner, Small Business/Self-Employed Division SE:S

Legal and Internal Guidelines Were Not Always Followed 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 the Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 22 taxpayers where the Internal Revenue Service did not comply with legal provisions and internal procedures when conducting seizures (see page 2). While we did not identify any instances where the taxpayers were adversely affected, not following legal and internal guidelines could result in abuses of taxpayers' rights.
- Taxpayer Rights and Entitlements – Potential; 2 taxpayers where internal guidelines for conducting seizures can be improved to help prevent Internal Revenue Code violations (see page 12). (One of these two is also included in the 22 above.) While we did not identify any instances where 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 380 seizures conducted from July 1, 2002, through June 30, 2003. A random sample was used to ensure each of the 380 seizures in our sample period had an equal chance of being selected.

Synopsis of Selected Legal Provisions for Conducting Seizures

Internal Revenue Code (I.R.C.) Section (§) 6330 (Supp. IV 1998)¹ 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, not less 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 where 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.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, 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 I.R.C., *as amended* by the Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933; the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21; the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2002); and the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.

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 unpaid accounts for less than the full amount of the balance due.

Legal and Internal Guidelines Were Not Always Followed 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 include \$6,250 in fuel, provisions, furniture, and personal effects and \$3,125 in books and tools necessary for business purposes for the Calendar Year 2002. 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 (U.S.) District Court judge or magistrate. Property used in an individual taxpayer's business is exempt except with written approval of the Area Director, and the seizure may only be approved 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 post office; and such notices shall specify the time, place, manner, and conditions of sale. It requires the property 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.

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 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.

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

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 U.S. 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 1998⁴) § 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., 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.).

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

Appendix VI

Listing of 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

Appendix VII

List of Forms Required to Be Provided to the Taxpayer for Sales of Seized Property and Number of Instances Not Provided

Form 4425 (Public Sale Bid Tabulation)	15 cases
Form 2435 (Certificate of Sale of Seized Property)	15 cases
Form 2434-B (Notice of Encumbrances)	11 cases
Form 2436 (Seized Property Sale Report)	2 cases
Form 2434 (Notice of Public Auction Sale)	1 case
Form 4585 (Minimum Bid)	1 case

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

Appendix VIII

Management's Response to the Draft Report



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

RECEIVED
AUG 19 2004

AUG 16 2004

MEMORANDUM FOR ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

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

SUBJECT: Draft Audit Report – Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property (Audit #200330025)

I reviewed your report and generally agree with the results of your audit of our seizure and sale program. Results of your four previous mandatory audits of the seizure and sale process were extremely positive. We were pleased to note that during previous audits, no legal violations were identified and only one recommendation was made to improve our seizure and sale program. Although you identified legal violations on 22 of the cases reviewed during this year's audit, we appreciate your acknowledgement that the violations were administrative in nature and that taxpayers were not adversely impacted by these errors. Nonetheless, we are committed to ensuring that all actions we take on seizure and sale cases conform to the established legal and procedural guidelines.

Conducting a seizure is one of the most technically complex and the most stringent course of enforcement action a revenue officer can pursue on a case, as evidenced by the 16 different seizure-related sections of the Internal Revenue Code you cited in your report. We continue to update and clarify procedures in the Internal Revenue Manual (IRM) to protect taxpayers' rights while still ensuring the seizure and sale process remains an effective enforcement tool for cases where taxpayers have not voluntarily resolved their tax obligations.

Because the majority of the errors were found in the post-seizure process, we have taken action to immediately initiate a comprehensive review of current procedures to identify ways to improve seizure case quality. We are also taking actions to correct the errors identified in the audited cases, and have issued additional guidance to prevent these errors in the future. We issued a memorandum to our employees emphasizing the importance of strictly adhering to the procedures in the IRM and advising them to use the existing seizure and sale checklists to ensure they are complying with all legal and technical procedures. To further ensure full compliance with procedures outlined in the IRM, we will immediately initiate a review of all cases where sales were conducted

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

2

to verify that copies of all applicable documents were mailed to taxpayers and will take corrective actions to address any omissions.

Your report discussed two cases where you stated the facts of the case had changed significantly between the time the seizure was approved and when it was conducted. You indicated that, given the change in circumstances, the seizure may not have been appropriate and approval may not have been granted had it been sought closer to the time of the actual seizure.

Although the facts of the cases did change after approval was secured, based upon our comprehensive review of both seizures, we are pleased to confirm that the seizure actions on both cases involving unpaid employment taxes were warranted when the action was taken. In each of these cases, the revenue officer attempted to take the seizure action immediately after the seizure was approved by the appropriate management officials. However, the taxpayers did not sign the consent necessary for the revenue officers to conduct the seizure, and the revenue officers properly initiated action to secure the writ of entry necessary to proceed. In each case, the revenue officer advised the taxpayer that, if all required actions were not completed by the time the writ was received, the seizure action would proceed. In each case the taxpayer took some, but not all, of the required actions during the intervening period, and the seizure was properly conducted once the writ was secured.

Our comments on your specific recommendations follow:

RECOMMENDATION 1:

The Director, Payment Compliance, Small Business/Self-Employed Division, should re-emphasize the requirement that a Letter 1058 needs to be issued for each period on the Form 668-B before a seizure is conducted, revise the IRM section on seizures and sales to include the statement that Integrated Data Retrieval System (IDRS) notices are not considered notices of a right to a hearing, and re-emphasize that position to the field.

CORRECTIVE ACTION:

A memorandum containing the appropriate guidance was issued on July 26, 2004. The IRM text in 5.10.1.5(1) has been changed and the revision is expected to be published by December 31, 2004.

IMPLEMENTATION DATE:

January 15, 2005

RESPONSIBLE OFFICIAL:

Director, Payment Compliance, Small Business/Self-Employed Division

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

3

CORRECTIVE ACTION MONITORING PLAN:

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

RECOMMENDATION 2:

The Director, Payment Compliance, Small Business/Self-Employed Division, should ensure Form 2433 is provided to the taxpayer at the time of seizure and reemphasize to the revenue officers that they are to document the case file as to how the taxpayer received the Form 2433.

CORRECTIVE ACTION:

A memorandum containing the appropriate guidance was issued on July 26, 2004.

IMPLEMENTATION DATE:

Completed

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 3:

The Director, Payment Compliance, Small Business/Self-Employed Division should ensure Technical Support functions use and follow the Post-Seizure Review Checklist when conducting the post reviews of the seizure files and document the dates various actions were completed, specifically when the required sales documents and application of sales proceeds and balance due letters were mailed to the taxpayers. Also, the Director should ensure the Post-Seizure Review Checklists are maintained in the seizure files.

CORRECTIVE ACTION:

A memorandum containing the appropriate guidance was issued on July 26, 2004. We also issued an Interim Guidance memorandum that established Form 13361 as the only acceptable post-seizure review form that can be used by Technical Services. To ensure that the checklists are updated and maintained in the seizure files, a review of the Post Seizure Review Checklists will be included in the Operational Review for Technical Services.

IMPLEMENTATION DATE:

Completed

RESPONSIBLE OFFICIAL:

N/A

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

4

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 4:

The Director, Payment Compliance, SB/SE Division, should review the procedures established for posting of seizure and sales expenses and sale proceeds and coordinate with the Accounting Control/Services Operation to ensure the procedures are being properly followed.

CORRECTIVE ACTION:

A teleconference between the four national Revenue Accounting Control System (RACS) Coordinators and the analyst in Headquarters responsible for the RACS program is scheduled for August 2004. The purpose of the conference call is to review the current procedures and emphasize the importance of accurate accounting on seizure and sale cases.

IMPLEMENTATION DATE:

September 15, 2004

RESPONSIBLE OFFICIAL:

Director, Payment Compliance, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

Program Manager, Technical and Insolvency, will advise the Director, Payment Compliance of any delays in implementation of the corrective action.

RECOMMENDATION 5:

The Director, Payment Compliance, Small Business/Self-Employed Division should review the seizures in our universe of cases that we did not review to determine if all required forms relating to a sale of seized property and the application of proceeds letters were provided to the taxpayers. In cases where the required forms and letters were not issued, the Director should take the appropriate action to issue them.

CORRECTIVE ACTION:

Technical Services will conduct a review of all seizures conducted in fiscal year 2003 where sales were held to determine if all applicable documents from the permanent record have been provided to the taxpayer. They will update Form 13361 and will send all required documents to the taxpayer on any case where the documents were not previously provided.

IMPLEMENTATION DATE:

November 15, 2004

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property

5

RESPONSIBLE OFFICIAL:

Director, Payment Compliance, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

Program Manager, Technical and Insolvency, will advise the Director, Payment Compliance of any delays in implementation of the corrective action.

RECOMMENDATION 6:

The Director, Payment Compliance, Small Business/Self-Employed Division, should consider revising the IRM to require revenue officers to re-evaluate the appropriateness of the seizure action and require a new approval of the seizure in those cases where a certain period of time has elapsed since the seizure was originally approved.

CORRECTIVE ACTION:

The IRM text in 5.10.3.4(7) has been changed to require the revenue officer to review the account once the writ is received to ensure seizure action is still appropriate and allowable; however, it was determined that no new approval would be required because of the extremely short timeframes allowed for taking the seizure action after a writ has been secured. The revision is expected to be published by December 31, 2004.

IMPLEMENTATION DATE:

January 15, 2005

RESPONSIBLE OFFICIAL:

Director, Payment Compliance, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

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

If you have any questions, please contact me at (202) 622-0600, or Robert L. Hunt Acting Deputy Director, Compliance Policy, Small Business/Self-Employed Division at (202) 283-2200.