



**The Internal Revenue Service Continues to Comply
With the Law When Seizing Taxpayers' Property**

August 2002

Reference Number: 2002-40-155

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DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

August 21, 2002

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

Pamela J. Gardiner

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - The Internal Revenue Service Continues to
Comply With the Law When Seizing Taxpayers' Property
(Audit # 200240001)

This report presents the results of our review to determine if seizures performed by the Internal Revenue Service (IRS) adhered to the legal provisions set forth in the Internal Revenue Code (I.R.C.) §§ 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' internal guidelines.

Summary

To ensure taxpayer rights are protected, the IRS Restructuring and Reform Act of 1998 (RRA 98)¹ amended the seizure provisions in the I.R.C. These provisions and the IRS' internal guidelines are very specific regarding how a seizure should be performed. 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.

The IRS adhered to legal provisions in all seizures reviewed.

Accordingly, we are not making any formal recommendations in this report.

¹ 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.).

Management's Response: IRS management agreed with the facts as presented in this report. They stated that they recognized their efforts were successful due to the commitment and support of the staff involved in the seizure and sale program. IRS management further stated that their review process played a significant role in ensuring that all necessary steps were taken to protect taxpayer rights. IRS management's comments have been incorporated into this report where appropriate, and the full text of their response is included in Appendix V.

Copies of this report are also being sent to the appropriate IRS managers. Please contact me at (202) 622-6510 if you have questions or Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

**The Internal Revenue Service Continues to Comply With the Law
When Seizing Taxpayers' Property**

Table of Contents

Background	Page 1
The Internal Revenue Service Is Complying With the Law When Performing Seizures	Page 3
Appendix I – Detailed Objective, Scope, and Methodology	Page 6
Appendix II – Major Contributors to This Report.....	Page 7
Appendix III – Report Distribution List	Page 8
Appendix IV – Synopsis of Selected Legal Guidelines for Conducting Seizures	Page 9
Appendix V – Management’s Response to the Draft Report	Page 12

The Internal Revenue Service Continues to Comply With the Law When Seizing 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 also discuss alternatives, such as installment payment agreements or offers in compromise.¹ If these actions have been taken and the taxpayer has not fully paid the tax due, the revenue officer has the authority to take the taxpayer's funds or property for the payment of tax. Taking a taxpayer's property for unpaid tax is commonly referred to as a "seizure."

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

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. The TIGTA has evaluated the IRS' compliance with the seizure provisions since Fiscal Year (FY) 1999. In the TIGTA's FY 1999 review,³ the IRS did not follow all legal and internal guidelines in 36 percent of the taxpayer seizures reviewed.

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.).

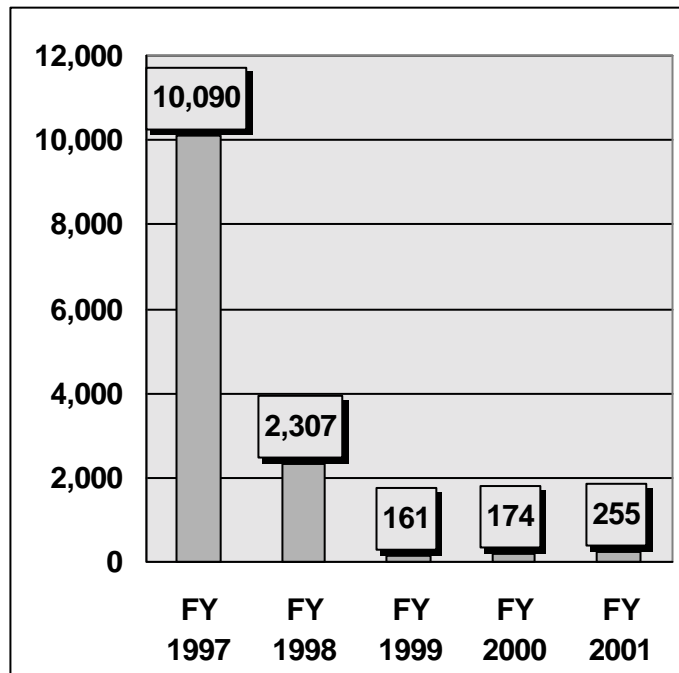
³ *The Internal Revenue Service Needs to Improve Compliance with Legal and Internal Guidelines When Taking Taxpayers' Property for Unpaid Taxes* (Reference Number 1999-10-072, dated September 1999).

The Internal Revenue Service Continues to Comply With the Law When Seizing Taxpayers' Property

In the TIGTA's FY 2000⁴ and FY 2001⁵ reviews, actions taken by the IRS were in accordance with the legal and internal guidelines in all taxpayer seizures reviewed.

Since the enactment of the RRA 98, the number of seizures by the IRS has significantly decreased. The following table illustrates the number of seizures for the past 5 fiscal years.

IRS Seizures by Fiscal Year



Source: IRS Oversight Board Annual Report 2001.

We conducted this audit in the IRS' Small Business/ Self-Employed Division (SB/SE) Headquarters and the Oakland, Philadelphia, and Seattle Area Offices between October 2001 and April 2002. The audit was conducted in accordance with *Government Auditing Standards*. The audit was not intended to determine if the decision to seize was appropriate or if the number of seizures was appropriate for

⁴ *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).

⁵ *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 Continues to Comply With the Law When Seizing Taxpayers' Property

The Internal Revenue Service Is Complying With the Law When Performing Seizures

this time period. 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 IRS continues to comply with the law when seizing taxpayers' property for payment of delinquent taxes. All 73 seizures reviewed were performed in accordance with the law.

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The IRS' continuing compliance with legal provisions is attributed to the consistent legal provisions and internal seizure procedures, as well as to the technical expertise and assistance provided by various IRS offices and the IRS' continued emphasis on training.

Consistent legal and procedural guidance

Legal provisions and internal seizure procedures remained relatively unchanged during FY 2001. This allowed IRS employees to become more familiar with the legal provisions and internal guidelines for seizing taxpayers' property.

Technical expertise and assistance

IRS management indicated the involvement of the Office of Chief Counsel (Counsel), the SB/SE Office of Technical Support-Advisory Groups (TS), and the SB/SE Property Appraisal and Liquidation Specialists (PALS) has had a positive impact on the seizure process. One or more of these offices provided technical assistance to IRS revenue officers in 70 of the 73 seizures reviewed.

- Counsel acts as a legal advisor and expert consultant, as needed, throughout the collection process.
- TS provides feedback and technical assistance to SB/SE collection personnel regarding highly specialized, technical, and complex aspects of the collection process.
- PALS serves as the technical authority in appraising property proposed for seizure and is responsible for

The Internal Revenue Service Continues to Comply With the Law When Seizing Taxpayers' Property

planning, marketing, and coordinating the sale of the property after a revenue officer has completed a seizure.

Prior to the enactment of the RRA 98, IRS revenue officers were solely responsible for the seizing and selling of taxpayers' property for the payment of delinquent taxes. The RRA 98 required the IRS to implement a uniform asset disposal mechanism (UADM) for sales of seized property. In July 2000, the IRS established the UADM, transferring responsibility for the sale of seized property to the PALS.

In FY 2001, the TIGTA conducted a separate review of the implementation of the UADM. The TIGTA was unable to determine if some revenue officer actions were violations of the law because the law does not specifically define where revenue officer involvement in the process must end.⁶ During this current review, no revenue officer involvement in sale activities was identified.

Emphasis on seizure training

IRS management encouraged employee participation in the *Seizure Readiness Guide* training course. Over 250 employees participated in the training between October 2000 and March 2001. At the time of this review, this training course continued to be funded for FY 2002.

IRS management has also encouraged employees to use the Internal Revenue Manual seizure checklist when conducting seizures. Required checklist items were addressed in all of the seizures and a checklist was used in most of the seizures. In addition, the IRS is in the process of implementing new Integrated Collection System⁷ screens and two additional checklists to assist employees in the seizure process.

⁶*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).

⁷ The Integrated Collection System is an IRS computer system with applications designed around each of the main collection tasks, such as opening a case, assigning a case, building a case, performing collection activity, and closing a case.

The Internal Revenue Service Continues to Comply With the Law When Seizing Taxpayers' Property

Management's Response: IRS management agreed with the facts presented in this report. They stated that they recognized their efforts were successful due to the commitment and support of the staff involved in the seizure and sale program. IRS management further stated that their review process played a significant role in ensuring that all necessary steps were taken to protect taxpayer rights.

**The Internal Revenue Service Continues to Comply With the Law
When Seizing 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 guidelines set forth in the Internal Revenue Code §§ 6330 through 6334 (1994 & Supp. IV 1998) and with the IRS' own internal guidelines.¹

To accomplish our objective, we:

- I. Interviewed the Small Business/Self-Employed (SB/SE) Division Seizure Program Analyst and 15 SB/SE Compliance managers.
- II. Obtained and reviewed seizure procedures, guidance documents, and seizure-related training materials and tools provided to SB/SE staff.
- III. Selected a random sample of 94 seizures from the 135 seizures conducted by the IRS between February and July 2001. Using the Stop-Or-Go sampling technique, we determined the sample size by using the following:

Confidence level: 95 percent.
Error rate: 3.333 percent.
Precision level: 2 percent.

Due to no errors being found, Stop-Or-Go sampling allowed us to stop our review after 73 seizures but still provided us with a reasonable probability that the remaining seizures in the sample would be error-free.

- IV. Reviewed the cases for compliance with the law and internal guidelines. We reviewed the seizure forms completed by the IRS and the input documents used to designate application of the seizure proceeds. We did not determine if the proceeds of the seizures and sales were properly input to taxpayers' accounts on the IRS' main computer system.

¹ This audit focused on determining if the IRS conducted seizures in compliance with legal and internal guidelines. It was not intended to determine if the decision to seize was appropriate or if taxpayer accounts were properly updated.

**The Internal Revenue Service Continues to Comply With the Law
When Seizing Taxpayers' Property**

Appendix II

Major Contributors to This Report

Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs)

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**The Internal Revenue Service Continues to Comply With the Law
When Seizing Taxpayers' Property**

Appendix III

Report Distribution List

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National Taxpayer Advocate TA

Director, Legislative Affairs CL:LA

Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O

Office of Management Controls N:CFO:F:M

Audit Liaison:

 Director, Compliance, Small Business/Self-Employed Division S:C

**The Internal Revenue Service Continues to Comply With the Law
When Seizing Taxpayers' Property**

Appendix IV

Synopsis of Selected Legal Guidelines for Conducting Seizures

Internal Revenue Code (I.R.C.) § 6330 (Supp. IV 1998) requires the Internal Revenue Service (IRS) to issue the taxpayer a notice of his or her right to a hearing prior to seizure action. The notice must be (1) given in person, (2) left at the taxpayer's home or business, or (3) mailed certified-return receipt requested, 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.¹ This section also prohibits seizure: (1) during a pending suit for the refund of any payment of a divisible tax, (2) before a thorough investigation of the status of any property subject to seizure, or (3) while either an offer in compromise² or an installment agreement is being evaluated and, if necessary, 30 additional days for the taxpayer to appeal the rejection of the offer in compromise or installment agreement.

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

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

I.R.C. § 6334 (1994 & Supp. IV 1998) enumerates property exempt from seizure. The exemption amounts are adjusted each year and include \$6,560 in fuel, provisions, furniture, and personal effects and \$3,280 in books and tools necessary for business purposes for the year 2001. Also, any primary residence, not just the taxpayer's, is exempt from seizure when the amount

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

² An offer in compromise is a proposal by a taxpayer to settle unpaid accounts for less than the full amount of the balance due.

The Internal Revenue Service Continues to Comply With the Law When Seizing Taxpayers' Property

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 the taxpayer's business is exempt except with written approval of the Area Director,³ 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 frame. 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 office⁴ 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.

³ Effective October 1, 2000, the IRS reorganized its geographical and management structures. The position of Area Director replaced the District Director in the Small Business/Self-Employed (SB/SE) Division.

⁴ The area office replaced the district office in the SB/SE Division during the IRS reorganization.

The Internal Revenue Service Continues to Comply With the Law When Seizing 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 1998) § 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.

The Internal Revenue Service Continues to Comply With the Law
When Seizing Taxpayers' Property

Appendix V

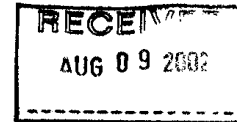
Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

AUG 6 2002



MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Joseph G. Kehoe *J. G. Kehoe*
Commissioner, Small Business/Self-Employed

SUBJECT:

JG Draft Audit Report – The Internal Revenue Service Continues to
Comply With the Law When Seizing Taxpayers' Property
(Audit # 200240001)

I agree with your report and appreciate your acknowledgement that the IRS continues to comply with all legal and technical guidelines when seizing property for payment of tax. Your report attributed our success to consistent legal provisions and internal seizure procedures, the technical expertise and assistance provided by various IRS offices, and our continued emphasis on training.

Our success is also the result of the commitment and cooperation of the staff involved in the seizure and sale program. Additionally, our review process played a significant role by ensuring we take all the necessary steps to protect taxpayer rights.

If you have any questions, please contact me at (202) 622-0600, or Joseph R. Brimacombe, Deputy Director, Compliance Policy at (202) 283-2200.