



**Fiscal Year 2003 Statutory Audit of Compliance With
Seizure Procedures**

May 2003

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 12, 2003

MEMORANDUM FOR ACTING COMMISSIONER, SMALL BUSINESS/
SELF-EMPLOYED DIVISION

Gordon C. Milbourn

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

SUBJECT: Final Audit Report - Fiscal Year 2003 Statutory Audit of
Compliance With Seizure Procedures (Audit # 200240068)

This report presents the results of our review to determine whether seizures conducted by the Internal Revenue Service (IRS) complied with legal provisions set forth in the Internal Revenue Code sections (I.R.C. §§) 6330 through 6344 (1994 & Supp. IV 1998)¹ and with the IRS' own internal procedures.

To ensure taxpayer rights are protected, I.R.C. §§ 6330 through 6344 and IRS' internal procedures 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 the law.

In summary, we found that the IRS continued to comply with legal provisions and internal procedures in the 102 seizure cases reviewed.

We do not believe that the IRS' actions taken in either case resulted in a legal violation of the taxpayer's rights. Accordingly, we are making no formal recommendations in this report.

Management's Response: The Acting Commissioner, Small Business/Self-Employed Division, appreciated our acknowledgement that the IRS continues to comply with legal provisions and internal procedures when seizing property for the payment of taxes. The Acting Commissioner also stated that although no recommendations were made in this report, the IRS is taking action to correct the payment processing delays noted during

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.

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

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.

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Fiscal Year 2003 Statutory Audit of Compliance With Seizure Procedures

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 sections (I.R.C. §§) 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 IV 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. The TIGTA has evaluated the IRS' compliance with the seizure provisions since Fiscal Year (FY) 1999. See Appendix V 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.

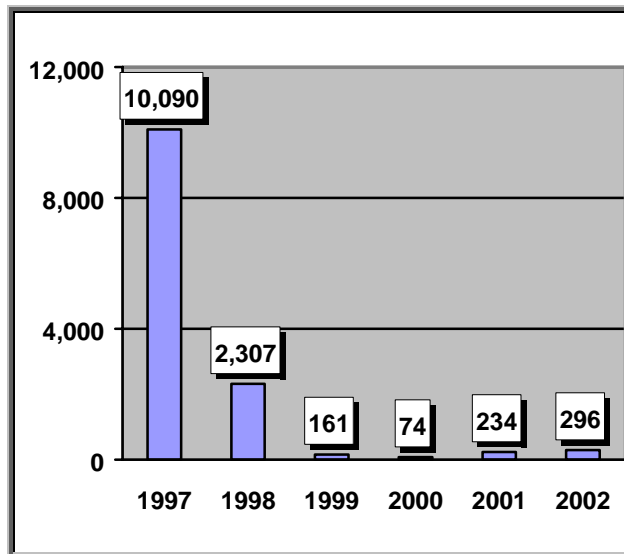
² IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

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.

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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 6 fiscal years:

IRS Seizures by Fiscal Year



Source: IRS Oversight Board Annual Report 2001 for FYs 1997–1999 and data supplied by the IRS for FYs 2000–2002.

We conducted this audit in the IRS' Small Business/Self-Employed (SB/SE) Division Headquarters in Washington, D.C., between August 2002 and February 2003.⁴ 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 IRS continues to comply with legal provisions and internal procedures, which restate or amplify the legal provisions, when seizing taxpayers' property for payment of delinquent taxes. In all 102 seizure cases reviewed, the IRS employees involved in the seizure and sale process

The Internal Revenue Service Is Complying With Legal Provisions and Internal Procedures When Performing Seizures

⁴ This audit focused on determining if 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.

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complied with the requirements of the I.R.C. §§ 6330 through 6344 and generally followed internal procedures.

Revenue officers, Property Appraisal and Liquidations Specialists (PALS), and Technical Support – Advisory groups were responsible for ensuring compliance with the following legal provisions and internal procedures.

Revenue officers:

- Selected property with sufficient equity to apply to the taxpayers' liabilities.
- Confirmed and properly documented liabilities.
- Researched and considered alternative methods of collection.
- Obtained proper approvals for seizure actions.
- Conducted the seizures in a manner that protected taxpayers' rights by ensuring that collection due process notifications were made, and that taxpayers were informed of their collection appeal rights.

The PALS serve as the technical authority in appraising property proposed for seizure. The PALS appropriately planned, marketed, and coordinated the sales of the properties after the revenue officers completed the seizures. The PALS also appropriately provided a detailed accounting of sales proceeds and expenses that allowed proper application to the taxpayers' accounts.

The Technical Support – Advisory groups provide feedback and technical assistance to SB/SE Division Collection function personnel regarding highly specialized, technical, and complex aspects of the collection process. The groups reviewed all required documentation and records from the seizure and sales process to ensure technical accuracy and maintained them in a permanent record.

Employees followed internal procedures

Internal procedures for seizing property remained relatively unchanged during FY 2002, and employees generally followed all internal procedures. 1

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1

102 cases reviewed.

The IRS' internal procedures and the pre-seizure checklist require that revenue officers complete research of public records no more than 30 days before requesting managerial approval to seize a taxpayer's property. When public records are timely researched, all current recorded encumbrances and interests in the property to be seized should be identified and could be used to determine whether there would be sufficient equity in the seized property to apply to the taxpayer's account.

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we do not believe that the IRS' noncompliance resulted in a violation of the taxpayers' rights. Therefore, we are making no recommendations at this time.

The IRS has properly accounted for seizure proceeds and expenses

Seizure proceeds were received and expenses incurred in 79 of the 102 seizure cases reviewed. The IRS properly applied proceeds and expenses to taxpayers' accounts as required by I.R.C. § 6342 in 67 (85 percent) of these 79 seizure cases. The remaining 12 cases are still in process, and the proceeds had not yet been applied to the taxpayers' accounts as of the conclusion of our audit testing. However, we were able to verify that the IRS has accounted for these proceeds and expenses.

The IRS stated that delays in the application process were due to confusion from the centralization of assigning seizure numbers and the realignment of work at the IRS campuses.⁵ Because the IRS applies payments to

⁵ The campuses are the data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the computing centers for analysis and posting to taxpayer accounts.

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taxpayers' accounts based on the dates the payments are received, neither of these conditions should adversely affect the taxpayers involved. Therefore, we are making no recommendations at this time.

Management's Response: The Acting Commissioner, SB/SE Division, appreciated acknowledgement that the IRS continues to comply with legal provisions and internal procedures when seizing property for the payment of taxes. The Acting Commissioner also stated that although no recommendations were made in this report, the IRS is taking action to correct the payment processing delays noted during our review.

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 statistical sample of 102 seizures from the 218 seizures conducted by the IRS between October 2001 and June 2002 for compliance with legal provisions and internal procedures, and determined if the proceeds of the seizures and sales were properly input to taxpayers' accounts on the IRS' main computer system.

We determined the sample size by using the following:

| | |
|----------------------|---------------|
| Population: | 218 seizures. |
| Confidence level: | 95 percent. |
| Expected error rate: | 2 percent. |
| Precision level: | 2 percent. |

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.

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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.

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

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.

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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,⁴ 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 office⁵ 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.

⁴ 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.

⁵ The area office replaced the district office in the SB/SE Division during the IRS reorganization.

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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.

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 1999-10-072, 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).

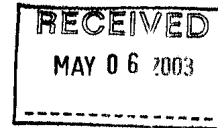
The Internal Revenue Service Continues to Comply With the Law When Seizing Taxpayers' Property (Reference Number 2002-40-155, dated August 2002).

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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



MAY 2 2003

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Dale F. Hart *Dale F. Hart*
Acting Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2003 Statutory Audit of
Compliance with Seizure Procedures (Audit # 200240068)

I reviewed your draft report and appreciate your acknowledgement that the IRS continues to comply with legal provisions and internal procedures when seizing property for payment of tax. We also appreciate your recognition of the positive actions taken by all of our employees involved in the seizure process.

Although no recommendations were made in the report, we would like to advise you of the actions we are taking to correct the payment processing delays that occurred on the accounts noted in your report. Employees from our Revenue Accounting Control System (RACS) are working with our field employees to identify cases in which the payments need to be corrected so that we can move the proceeds to the correct RACS unit and apply them to the taxpayers' accounts. They are also developing a chart that will show our field employees the specific RACS unit to which they should submit the proceeds, based on where the seizure originated.

If you have any questions, please call me at (202) 622-0600, or Joseph R. Brimacombe, Deputy Director, Compliance Policy, Small Business/Self-Employed Division at (202) 283-2200.