Treasury Inspector General for Tax Administration
Office of Audit

LIEN DETERMINATIONS WERE UNTIMELY OR NOT MADE APPROPRIATELY FOR OVER $1.4 BILLION IN DELINQUENT TAXES

Issued on March 12, 2010

Highlights

Highlights of Report Number: 2010-30-023 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

The Internal Revenue Service (IRS) protects its claims against taxpayers who owe delinquent taxes by filing Federal Tax Liens (liens), which establishes the IRS' priority among secured creditors for the taxpayers' equity. However, lien determinations were not appropriately made or were made late for more than $1.4 billion in delinquent taxes. Failure to protect the Government's interest on taxes that are owed creates an unfair burden on taxpayers who properly pay their taxes in full and on time.

WHY TIGTA DID THE AUDIT

This audit was initiated as a followup review to a prior TIGTA report that determined the IRS was not always filing liens in accordance with established procedures, managers were not using IRS systems to monitor lien determinations, and liens were not being filed against a substantial number of delinquent accounts closed as excess inventory. This audit was included in our Fiscal Year 2009 Annual Audit Plan under the major management challenge of Tax Compliance Initiatives.

WHAT TIGTA FOUND

In general, liens should be filed on all balance due modules exceeding a certain dollar threshold. Revenue officers are required to document a decision on whether a lien should be filed (called a lien determination) and include an explanation when liens are not filed.

From 2 Collection Field function offices, TIGTA judgmentally sampled 124 open modules with balances exceeding the dollar threshold that had been assigned for more than 90 days. Our sample included 44 initial modules and 80 subsequent modules (the taxpayer already had a balance due from a prior period). For 36 percent of the initial modules, lien determinations were either not made or not made timely. Further analysis indicated a lien determination had not been made on 210 modules, representing a balance due of $6.4 million at these 2 offices. Because taxpayer contact is made first on the initial module, there are different criteria for subsequent modules. For subsequent modules involving employment taxes, interim guidance requires revenue officers to make a lien determination within 30 days after the module is assigned. The IRS did not have timeliness criteria for nonemployment tax subsequent modules. TIGTA found 33 (61 percent) of 54 sampled employment tax modules for which a lien determination had not been made within 30 days of assignment. Similarly, TIGTA determined that 15 (58 percent) of 26 sampled nonemployment tax modules did not have a lien determination within 30 days.

Revenue officers should file a lien or notate a reason for not filing when closing a module that exceeds the dollar threshold as currently not collectible. TIGTA sampled modules closed as currently not collectible where a lien would generally be required. Our analysis determined that 37 percent of the modules did not have a valid reason recorded for not filing a lien and estimated that $72 million in delinquent taxes were closed as currently not collectible without notating a valid reason.

In 1999, the IRS authorized closing cases as excess inventory (shelved) and since January 2002, it shelved 163,553 cases with a balance due amount that exceeded the dollar threshold and did not have liens filed. The total amount for these unprotected cases is more than $2.3 billion and the number of shelved cases has increased from less than $200 million in Calendar Year 2005 to approximately $1.2 billion in Calendar Year 2008. The amount rose by more than 300 percent between Calendar Years 2007 and 2008.

A June 2006 IRS study concluded that there was no discernable risk associated with not filing liens on cases meeting the criteria for excess inventory so these shelved cases were closed without liens. However, the study also showed that after 1 year, cases with a balance between certain dollar thresholds that had a lien filed had a balance due that was on average 28 percent lower than if no lien was filed. TIGTA's analysis showed that between Calendar Years 2002 and 2008, the IRS shelved, without filing liens, modules representing approximately $1.4 billion in delinquent taxes for modules within the threshold criteria.

WHAT TIGTA RECOMMENDED

TIGTA made several recommendations to improve the controls and guidance for making lien determinations. In their response to the report, IRS officials agreed with all of our recommendations.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full IRS response, go to:

http://www.treas.gov/tigta/auditreports/2010reports/201030023fr.pdf.

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