



*Fiscal Year 2007 Review of Compliance With
Legal Guidelines When Conducting Seizures
of Taxpayers' Property*

July 3, 2007

Reference Number: 2007-30-109

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

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TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 3, 2007

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

FROM: (for) Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2007 Review of Compliance With
Legal Guidelines When Conducting Seizures of Taxpayers' Property
(Audit # 200630034)

This report presents the results of our review of the Internal Revenue Service's (IRS) compliance with legal guidelines when conducting seizures. The overall objective of this review was to determine whether seizures conducted by the IRS complied with legal provisions set forth in Internal Revenue Code (I.R.C.) Sections (§§) 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' own internal procedures. It was not intended to determine whether the decision to seize was appropriate or to identify the cause of any violations.

Impact on the Taxpayer

To ensure taxpayers' rights are protected, the IRS Restructuring and Reform Act of 1998¹ amended the seizure provisions in I.R.C. §§ 6330 through 6344. The IRS did not always comply with these statutory requirements. Although we did not identify instances in which taxpayers were adversely affected, not fully complying with I.R.C. requirements could result in abuses of taxpayers' rights.

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).



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Synopsis

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

We reviewed a random sample of 50 of 508 seizures conducted between July 1, 2005, and June 30, 2006, to determine whether the IRS is complying with numerous legal and internal guidelines when conducting seizures. The IRS followed the guidelines in the majority of instances; however, in 15 seizures, we identified 17 instances in which the IRS did not fully comply with a particular I.R.C. requirement. While we did not identify any instances in which the taxpayers were adversely affected, not following legal and internal guidelines could result in abuses of taxpayers' rights. The 17 instances included:

- Seven seizures in which expenses and proceeds resulting from the seizures were not properly applied to the taxpayers' accounts. (I.R.C. § 6342(a)).
- Six seizures in which sales proceeds were applied to taxpayers' liabilities, but the required balance-due letters sent to the taxpayers did not show the correct new balance. (I.R.C. § 6340(c)).
- Four seizures in which the name of the purchaser of the seized property was disclosed to the taxpayer. (I.R.C. § 6340(c)).

In addition, we identified an area in which internal controls for sales of seized property can be improved to help prevent possible abuses of taxpayers' rights. Internal Revenue Manual procedures require the Property Appraisal and Liquidation Specialist² to conduct sales of seized property and be assisted by at least one other IRS employee, who may not be in the revenue officer series job classification. However, Internal Revenue Manual procedures do not provide specific guidelines for documenting the assisting employee in the seizure case file or on any of the sales documents, and there is no review procedure in place to determine compliance with this procedure. We identified seven cases for which there was no documentation in the case file that an IRS employee assisted the Property Appraisal and Liquidation Specialist with the sale.

² The Property Appraisal and Liquidation Specialists are responsible for managing and disposing of property after it is seized by the revenue officers. They serve as the technical authority in appraising property proposed for seizure and are responsible for planning, marketing, and coordinating the sale of the property.



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Recommendations

We recommended the Director, Collection, Small Business/Self-Employed Division, require the use of the Seized Property Sale Report (Form 2436) for all seizure expenses and proceeds accounting including sales, releases, and redemptions³ and revise the Record of Seizure and Sale (Record 21)⁴ so the name of the purchaser of the seized property does not appear on the taxpayer's copy of the form. The Director, Collection, Small Business/Self-Employed Division, should revise the Internal Revenue Manual to include specific procedures for documenting in the history sheets or in the case file the IRS employee who assisted the Property Appraisal and Liquidation Specialist in the sale of seized property.

Response

IRS management agreed with our recommendations. The Director, Collection, Small Business/Self-Employed Division, issued a memorandum on September 15, 2006, that reinforces correct procedures for applying expenses and sale proceeds resulting from seizures and sales. While the IRS memorandum did not require the use of Form 2436 for releases and redemptions, it did reemphasize procedures for applying expenses and proceeds. We will reevaluate this issue during the next annual seizure review. The Record 21 will also be revised so the name of the purchaser of seized property does not appear on the taxpayer's copy of the form. Finally, while IRS management did not believe it necessary to revise the Internal Revenue Manual to improve internal controls over the sale of seized property, they plan to revise the Form 2436 to include a box to record the name of the employee assisting in the sale of seized property. We agree with the IRS' decision to revise the Form 2436. This revision will improve internal controls over the sale of seized property. Management's complete response to the draft report is included as Appendix VII.

Copies of this report are also being sent to IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Daniel R. Devlin, Assistant Inspector General for Audit (Small Business and Corporate Programs), at (202) 622-5894.

³ Seized property can be released to the taxpayer under a number of circumstances, including (1) the Federal Government receives its interest in the property, (2) future collection potential is enhanced by the release, or (3) release will facilitate the collection of the liability. Any person whose property has been seized can redeem the property prior to a sale if the person pays the full amount of taxes, penalties, and interest due and any expenses of the seizure and preparation for sale.

⁴ Record 21 is a three-part form that documents various aspects of the seizure and sale process. It includes information such as the assessments under which the seizure was made, description of the property seized, information regarding the advertisement of the sale, the proceeds and expenses of the seizure and sale, and the date on which the certificate of sale was issued and to whom.



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Abbreviations

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



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Background

The collection of unpaid tax by the Internal Revenue Service (IRS) generally begins with letters to the taxpayer followed by telephone calls and personal contacts by an IRS employee. The employees who make personal contacts are referred to as revenue officers. They consider the taxpayer's ability to pay the tax and discuss alternatives, such as 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 1998² amended the seizure provisions in Internal Revenue Code (I.R.C.) Sections (§§) 6330 through 6344 (1994 & Supp. IV 1998). These provisions and the IRS' internal procedures are very specific regarding how a seizure should be performed. See Appendix V for a synopsis of the applicable legal provisions.

The Treasury Inspector General for Tax Administration is required under I.R.C. § 7803(d)(1)(A)(iv) (Supp. IV 1998) to annually evaluate the IRS' compliance with these legal seizure provisions. We have evaluated its compliance with the seizure provisions since Fiscal Year 1999. See Appendix VI for a list of all prior audit reports issued on the IRS' compliance with seizure procedures.

Following enactment of the IRS Restructuring and Reform Act of 1998, the number of seizures by the IRS decreased from 10,090 in Fiscal Year 1997 to 74 in Fiscal Year 2000. Although the number of seizures has steadily increased since Fiscal Year 2000, the number of seizures in Fiscal Year 2006 was still less than 6 percent of the number reported in Fiscal Year 1997. It is unlikely the use of seizures will ever return to pre-1998 levels. Figure 1 illustrates the number of seizures made over the past 10 fiscal years.

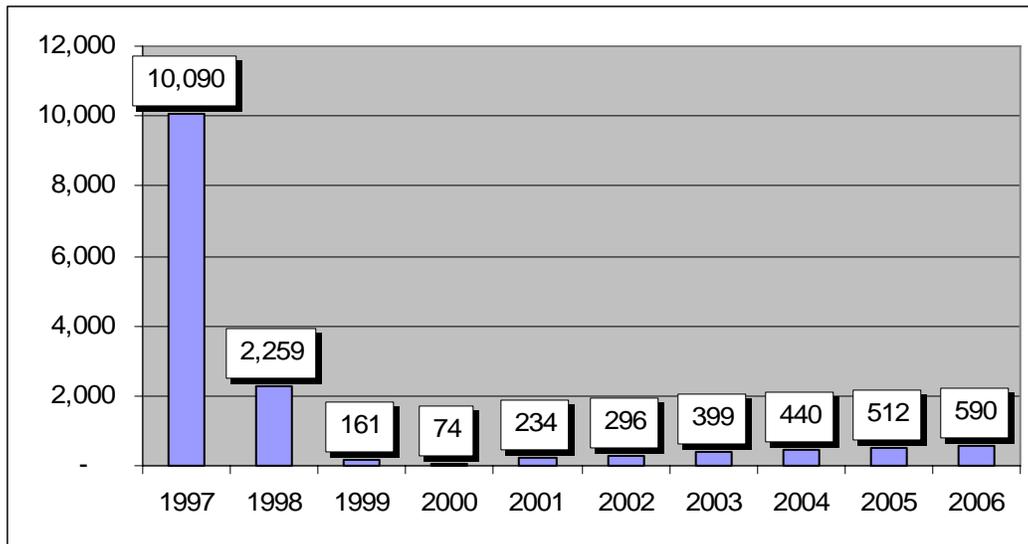
¹ An offer in compromise is a proposal by a taxpayer to settle an unpaid account(s) for less than the full amount of the balance due.

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



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Figure 1: IRS Seizures by Fiscal Year



Source: IRS Data Books.

This review was performed at the Small Business/Self-Employed Division Headquarters in New Carrollton, Maryland, during the period August 2006 through February 2007. This audit focused on determining whether the IRS conducted seizures in compliance with legal and internal procedures. It was not intended to determine whether the decision to seize was appropriate or to identify the cause of any violations. 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.



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Results of Review

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

We reviewed a random sample of 50 of 508 seizures conducted between July 1, 2005, and June 30, 2006, to determine whether the IRS is complying with numerous legal and internal guidelines when conducting each seizure. The IRS followed the guidelines in the vast majority of instances; however, in 15 seizures, we identified 17 instances in which the IRS did not comply with a particular I.R.C. requirement. While we did not identify any instances in which the taxpayers were adversely affected, not following the legal and internal guidelines could result in abuses of taxpayers' rights.

The 17 instances included:

- Seven seizures in which expenses and proceeds resulting from the seizures were not properly applied to the taxpayers' accounts. (I.R.C. § 6342(a)).
- Six seizures in which sales proceeds were applied to taxpayers' liabilities but the required balance-due letters sent to the taxpayers did not show the correct new balance. (I.R.C. § 6340(c)).
- Four seizures in which the name of the purchaser of the seized property was disclosed to the taxpayer. (I.R.C. § 6340(c)).

Expenses and proceeds resulting from seizures were not properly applied to the taxpayers' accounts

I.R.C. § 6342(a) states any money realized 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 seized and sold (for example, an excise tax), and finally against the liability in respect to which the levy³ was made or the sale was conducted (the accounts appearing on the Levy (Form 668-B)).

The Internal Revenue Manual requires the same order for applying the proceeds. It also states that, because the I.R.C. requires funds realized under seizure and sale proceedings to be applied first to the expenses of the levy and sale, the proceeds should be credited to the taxpayer's

³ To levy means to take property by legal authority to satisfy a tax debt. The IRS uses a levy as a tool to collect on balance-due accounts that are not being voluntarily paid.



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account using a Transaction Code⁴ 694, Designated Payment of Fees and Collection Costs, for the amount of the expense. Seizure expenses and proceeds are posted to taxpayer accounts in two ways. If the seizure results in a sale, the proceeds should be recorded on the Seized Property Sale Report (Form 2436). Funds obtained from a release or redemption⁵ of seized property will be credited to the taxpayer's account using a general posting document.

We identified two cases for which expenses of the seizures and sales were not charged to the taxpayers account.¹

[Redacted]

We identified four other cases for which the proceeds from the seizures were not posted to the taxpayers' accounts using a Transaction Code 694 for the amounts applicable to the expenses. The entire proceeds were entered using a Transaction Code 670, Subsequent Payment, which is used to record tax liability payments. The expenses of the seizures and sales were entered correctly using a Transaction Code 360, Fees and Collection Costs, in all four cases.¹

¹ [Redacted] Three of the four seizures were either released or redeemed prior to sale and as such did not require the use of Forms 2436.

¹ [Redacted]

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

When a sale is conducted, I.R.C. § 6340(c) states the taxpayer shall be furnished a letter showing the amount of funds that was applied to the taxpayer's liability and the remaining balance of such liability. The Internal Revenue Manual requires the Technical Support function to send a copy of the Form 2436 and include a letter that explains the Form (which shows how the proceeds were applied) and identifies the balance of each account after the application of proceeds from the sale of seized property.

Of the 50 seizures we reviewed, 34 resulted in a sale of the seized property. Twelve of those were recent sales, and the balance-due letters had not been sent at the time of our review. The balance-due letter is required to be sent after the proceeds from the sale have been applied to the

⁴ 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.

⁵ Seized property can be released to the taxpayer under a number of circumstances, including (1) the Federal Government receives its interest in the property, (2) future collection potential is enhanced by the release, or (3) release will facilitate the collection of the liability. Any person whose property has been seized can redeem the property prior to a sale if the person pays the full amount of taxes, penalties, and interest due and any expenses of the seizure and preparation for sale.



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taxpayer's account. In the remaining 22 cases, we identified 6 cases in which the taxpayers were provided an incorrect balance.

The name of the purchaser of the seized property was disclosed to the taxpayer

When a sale has been conducted, I.R.C. § 6340(c) requires that the taxpayer be furnished a record of the sale and that the record provided to the taxpayer not include the purchaser's name. The purchaser's name is not provided to help protect his or her identity and privacy. The Internal Revenue Manual requires the Technical Support function to provide the taxpayer several documents, including the Record of Seizure and Sale (Record 21),⁶ as a record of the sale. We identified four cases in which the purchaser's name was included on the Record 21 that was sent to the taxpayer.

Recommendations

The Director, Collection, Small Business/Self-Employed Division, should:

Recommendation 1: Require the use of Form 2436 for all seizure expenses and proceeds accounting including sales, releases, and redemptions. The Form contains the required entries for expenses and proceeds as well as a summary section for expenses incurred.

Management's Response: IRS management agreed with the recommendation and advised they issued a memorandum on September 15, 2006, that reinforces correct procedures for applying expenses and sale proceeds resulting from seizures and sales.

Office of Audit Comment: While the September 15, 2006, memorandum did not require the use of Form 2436 for releases and redemptions, it did reemphasize procedures for applying expenses and proceeds. We will reevaluate this issue during the next annual seizure review.

Recommendation 2: Revise the Record 21 so the name of the purchaser of the seized property does not appear on the taxpayer's copy of the form.

Management's Response: IRS management agreed with the recommendation and advised that they will revise the Record 21 so the name of the purchaser of seized property does not appear on the taxpayer's copy of the form.

⁶ Record 21 is a three-part form that documents various aspects of the seizure and sale process. It includes information such as the assessments under which the seizure was made, description of the property seized, information regarding the advertisement of the sale, the proceeds and expenses of the seizure and sale, and the date on which the certificate of sale was issued and to whom.



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Internal Guidelines for Conducting Seizures and Sales Can Be Improved

We identified an area in which internal controls for sales of seized property can be improved to help prevent possible abuses of taxpayers' rights. Internal Revenue Manual procedures require the Property Appraisal and Liquidation Specialist⁷ to conduct sales of seized property assisted by at least one other IRS employee, who may not be in the revenue officer series job classification. However, Internal Revenue Manual procedures do not provide specific guidelines for documenting the IRS employee who assisted in the sale in the seizure case file or on any of the sales documents, and there is no review procedure in place to determine compliance with this procedure. We identified seven cases for which there was no documentation in the case file that an IRS employee assisted the Property Appraisal and Liquidation Specialist with the sale. The requirement of having two employees participate in the sale is an effective control to make sure required sales procedures are followed.

Recommendation

Recommendation 3: The Director, Collection, Small Business/Self-Employed Division, should revise the Internal Revenue Manual to include specific procedures for documenting in the history sheets or in the case file the IRS employee who assisted the Property Appraisal and Liquidation Specialist in the sale of seized property.

Management's Response: While IRS management did not believe it necessary to revise the Internal Revenue Manual to improve internal controls over the sale of seized property, they plan to revise the Form 2436 to include a box to record the name of the employee assisting in the sale of seized property.

Office of Audit Comment: We agree with the IRS' decision to revise the Form 2436. This revision will improve internal controls over the sale of seized property.

⁷ The Property Appraisal and Liquidation Specialists are responsible for managing and disposing of property after it is seized by the revenue officers. They serve as the technical authority in appraising property proposed for seizure and are responsible for planning, marketing, and coordinating the sale of the property.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether seizures conducted by the IRS complied with legal provisions set forth in I.R.C. §§ 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' own internal procedures.¹ To accomplish our objective, we:

- I. Obtained documentation of national guidelines provided to employees; identified IRS systems, policies, and practices for ensuring compliance with legal provisions and internal procedures related to seizures; and determined how these tools were used.
- II. Reviewed a random sample of 50 of the 508 seizures conducted by the IRS from July 1, 2005, through June 30, 2006. 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 508 seizures had an equal chance of being selected.

¹ This audit focused on determining whether the IRS conducted seizures in compliance with these legal and internal procedures. It was not intended to determine whether the decision to seize was appropriate or to identify the cause of any violations.



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Appendix II

Major Contributors to This Report

Daniel R. Devlin, Assistant Inspector General for Audit (Small Business and Corporate Programs)
Parker F. Pearson, Director
Amy L. Coleman, Audit Manager
Janis Zuika, Lead Auditor
Timothy Chriest, Senior Auditor



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Appendix III

Report Distribution List

Acting Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Deputy Commissioner, Small Business/Self-Employed Division SE:S
Director, Collection, Small Business/Self-Employed Division SE:S:C
Director, Collection Policy, Small Business/Self-Employed Division SE:S:C:CP
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Commissioner, Small Business/Self-Employed Division SE:S



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Appendix IV

Outcome 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 Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 15 taxpayers for whom the IRS did not comply with legal provisions and internal procedures when conducting seizures (see page 3).
- Taxpayer Rights and Entitlements – Potential; 7 taxpayers (2 of these 7 are also included in the 15 taxpayers above) for whom internal control guidelines for conducting seizure sales could be improved to help prevent possible abuses of taxpayers' rights (see page 6).

Methodology Used to Measure the Reported Benefit:

We selected a random sample of 50 seizures from a population of 508 seizures conducted from July 1, 2005, through June 30, 2006. A random sample was used to ensure each of the 508 seizures had an equal chance of being selected. While we did not identify any instances in which the taxpayers were adversely affected, not following legal and internal guidelines or not having internal controls could result in abuses of taxpayers' rights.



Appendix V

Synopsis of Selected Legal Provisions for Conducting Seizures

I.R.C. § 6330 (Supp. IV 1998) requires the 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, no fewer 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 when 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 included \$7,040 for the period July 1 through

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 an unpaid account(s) for less than the full amount of the balance due.



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December 31, 2004, and \$7,200 for the period January 1 through June 30, 2005, for fuel, provisions, furniture, and personal effects; and \$3,520 for the period July 1 through December 31, 2004, and \$3,600 for the period January 1 through June 30, 2005, for books and tools necessary for business purposes. Also, any primary residence, not just the taxpayer's, is exempt from seizure when the amount owed is \$5,000 or less. Seizure of the taxpayer's principal residence is allowed only with the approval of a United States District Court judge or magistrate. Property used in an individual taxpayer's business is exempt except with written approval of the Area Office³ Director, and the seizure may be approved only if other assets are not sufficient to pay the liability.

I.R.C. § 6335 (1994 & Supp. IV 1998) contains procedures for the sale of seized property. Notice must be given to the taxpayer; the property must be advertised in the county newspaper or posted at the nearest United States Postal Service office; and such notices shall specify the time, place, manner, and conditions of sale. It requires the property be sold no fewer 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

³ A geographic organizational level used by IRS business units and offices to help their specific types of taxpayers understand and comply with tax laws and issues.



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purchasers' names, (2) the amount of such sale applied to the taxpayer's liability, and (3) the remaining balance of such liability.

I.R.C. § 6341 (1994 & Supp. IV 1998) allows expenses for all seizure and sale cases.

I.R.C. § 6342 (1994 & Supp. IV 1998) enumerates how the proceeds of a seizure and sale are to be applied to a taxpayer's account. Proceeds are applied first to the expenses of the seizure and sale proceedings. 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 United States and either the taxpayer or the National Taxpayer Advocate⁴ 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)⁵ § 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 The Taxpayer Advocate Service acts as an advocate for taxpayers within IRS operations. The National Taxpayer Advocate and Local Taxpayer Advocates have the authority to issue a Taxpayer Assistance Order after determining that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being applied.

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



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Appendix VI

*Prior Reports on Compliance With Seizure
Procedures*

The Internal Revenue Service Needs to Improve Compliance with Legal and Internal Guidelines When Taking Taxpayers' Property for Unpaid Taxes (Reference Number 199910072, dated September 1999).

The Internal Revenue Service Has Significantly Improved Compliance With Legal and Internal Guidelines When Seizing Taxpayers' Property (Reference Number 2000-10-114, dated August 2000).

Letter Report: The Internal Revenue Service Complied With Legal and Internal Guidelines When Seizing Property for Payment of Tax (Reference Number 2001-10-061, dated May 2001).

The Internal Revenue Service Has Taken Significant Actions, But Increased Oversight Is Needed to Fully Implement the Uniform Asset Disposal Mechanism (Reference Number 2002-10-005, dated November 2001).

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

Fiscal Year 2003 Statutory Audit of Compliance With Seizure Procedures (Reference Number 2003-40-115, dated May 2003).

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property (Reference Number 2004-30-149, dated August 2004).

Fiscal Year 2005 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Reference Number 2005-30-091, dated June 2005).

Fiscal Year 2006 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Reference Number 2006-30-113, dated August 9, 2006).



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Appendix VII

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

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June 4, 2007

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

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

SUBJECT: Draft Audit Report – "Fiscal Year 2007 Review of Compliance
With Legal Guidelines When Conducting Seizures of Taxpayers'
Property" (Audit #200630034)

We have reviewed your report and agree with the recommendations. In order to determine if the IRS is complying with the numerous legal and internal guidelines, each case in your review covered over eighty separate items. Although you identified seventeen instances where the IRS did not fully comply with a legal requirement, we believe the overall error rate of less than one percent indicates an effective seizure program. In addition, we appreciate your acknowledgement that there were no instances in which the taxpayer was adversely impacted.

Of the seventeen errors identified, all were found in the post-seizure process. Based on last year's audit results, we have implemented changes to the seizure process that will reduce errors. We also believe the planned corrective actions to address issues identified in this audit demonstrate the importance we place on ensuring compliance with the legal requirements. By revising two critical seizure forms, reinforcing correct processing procedures, and increasing the level of review, we are confident we will reduce the overall error rate.

Attached is a detailed response outlining our corrective actions.

If you have any questions, please contact me or call David P. Alito, Director, Collection, Small Business/Self-Employed Division, at (202) 283-4943.

Attachment



*Fiscal Year 2007 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property*

Attachment

RECOMMENDATION 1:

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

CORRECTIVE ACTIONS:

We agree with this recommendation. The Director, Collection Policy, Small Business/Self-Employed Division, issued a memorandum to field personnel on September 15, 2006. This memorandum reinforces the correct procedures for applying expenses and sale proceeds resulting from seizure and sale.

IMPLEMENTATION DATE:

Completed

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION(S) MONITORING PLAN:

N/A

RECOMMENDATION 2:

The Director, Collection, Small Business/Self-Employed Division, should revise the Record 21 so that the name of the purchaser of seized property does not appear on the taxpayer's copy of the form.

CORRECTIVE ACTIONS:

We agree with this recommendation. We will revise Record 21 so that the name of the purchaser of seized property does not appear on the taxpayer's copy of the form.

IMPLEMENTATION DATE:

January 15, 2008

RESPONSIBLE OFFICIAL:

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

CORRECTIVE ACTION(S) MONITORING PLAN:

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

RECOMMENDATION 3:

The Director, Collection, Small Business/Self-Employed Division should revise the Internal Revenue Manual to include specific procedures for documenting in the



*Fiscal Year 2007 Review of Compliance With Legal Guidelines
When Conducting Seizures of Taxpayers' Property*

history sheets or in the case file the Service employee who assisted the Property Appraisal and Liquidation Specialist in the sale of seized property.

CORRECTIVE ACTIONS:

We agree with the underlying premise to improve our internal controls, but believe revising Form 2436 to include a box to identify the name of the employee assisting in the sale of seized property will more effectively achieve the desired results.

IMPLEMENTATION DATE:

January 15, 2008

RESPONSIBLE OFFICIAL:

Director, Collection Policy

CORRECTIVE ACTION(S) MONITORING PLAN:

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