Fiscal Year 2009 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

May 19, 2009

Reference Number: 2009-30-077

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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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

May 19, 2009

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION

FROM: Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2009 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Audit # 200930002)

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[1] 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. 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 that taxpayers' rights were not violated while seizures were being conducted. We have evaluated the IRS' compliance with the seizure provisions since Fiscal Year 1999. This audit 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 that taxpayers' rights are protected, the IRS Restructuring and Reform Act of 1998[2] 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 any instances in which taxpayers were adversely affected, noncompliance with I.R.C. requirements could result in abuses of taxpayers' rights.

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[1] Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure.
[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.).

Synopsis

We reviewed a random sample of 50 of the 610 seizures conducted from July 1, 2007, through June 30, 2008, 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 seizures. However, in 23 seizures, we identified 26 instances in which the IRS did not comply with a particular I.R.C. requirement. Because numerous statutory violations can occur on each case, the 26 instances that we identified in our 50 cases represent an error rate of only about 1.5 percent. While we did not identify any instances in which the taxpayers were adversely affected, failure to follow legal and internal guidelines could result in abuses of taxpayers' rights. Our results included:

- Eleven instances in which the correct amount of the liability for which the seizure was made was not provided on the notice of seizure given to the taxpayer. (I.R.C. § 6335(a))
- Seven instances in which expenses and proceeds resulting from the seizure were not properly applied to the taxpayer's account. (I.R.C. § 6342(a))
- Three instances in which required information relating to the sale of the seized property was not provided to the taxpayer. (I.R.C. § 6340(c))
- 1
- 1
- 1
- 1

[3] 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 paid voluntarily.

Recommendations

We recommended that the Director, Collection, Small Business/Self-Employed Division, include an instruction on the Notice of Seizure (Form 2433)[4] in the "Amount" field that the total should be the same as on the Form 668-B. The Director, Collection, should also include a requirement on the Post-Seizure Review Checksheet (Form 13361)[5] that the reviewer verify that the proceeds have been posted and that the Transaction Code[6] 694, Designated Payment of Fees and Collection Costs, was used to post the amount applicable to the seizure expenses incurred.

Response

IRS management agreed with our recommendations. The Form 2433 will be revised to include an instruction in the "Amount" field that the total should be the same as the amount on the Form 668-B. Also, the Form 13361 will be revised to include a requirement for the reviewer to verify that the proceeds are correctly posted and Transaction Code 694 is used to post the amount applicable to the seizure expenses incurred. Management's complete response to the draft report is included as Appendix VII.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Margaret E. Begg, Assistant Inspector General for Audit (Compliance and Enforcement Operations), at (202) 622-8510.

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[4] Form 2433 is the taxpayer's receipt for the seized property. The document specifies the sum demanded – for personal property, a listing of the property seized; for real property, a description of the property seized.
[5] The Internal Revenue Manual requires that the Form 13361 (or comparable form) be completed during the post-review to ensure that all required actions were taken.
[6] 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.

Table of Contents

Abbreviations

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

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 an installment agreement or an offer 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."

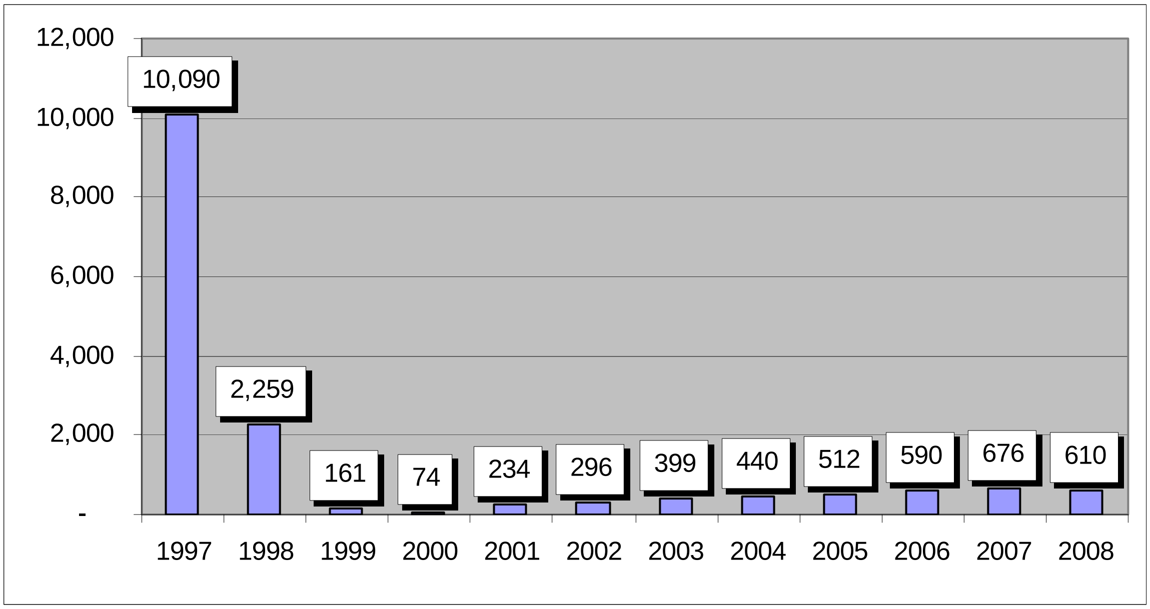
To ensure that taxpayer rights are protected, the IRS Restructuring and Reform Act of 1998[2] amended the seizure provisions in Internal Revenue Code (I.R.C.) Sections (§§) 6330 through 6344 (1994 & Supp. IV 1998). These provisions and the IRS' internal procedures are very specific regarding how a seizure 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 the IRS' 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 passage 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 in Fiscal Year 2008 was still 6 percent of the number reported in Fiscal Year 1997. It is unlikely that the use of seizures will ever return to the pre-1998 levels. Figure 1 illustrates the number of seizures made over the past 12 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.).

Figure 1: IRS Seizures by Fiscal Year



Source: IRS Data Books.[3]

This review was performed at the Small Business/Self-Employed Division Headquarters in New Carrollton, Maryland, during the period August 2008 through February 2009. The 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. We did not assess internal controls because doing so was not applicable within the context of our audit objective. Otherwise, we conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

[3] The IRS Data Book is a report that describes activities conducted by the IRS during the fiscal year.

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 the 610 seizures conducted from July 1, 2007, through June 30, 2008, to determine whether the IRS is complying with numerous legal and internal guidelines when conducting each seizure. The IRS followed the guidelines in the majority of seizures. However, in 23 seizures, we identified 26 instances in which the IRS did not comply with a particular I.R.C. requirement. Because there can be numerous statutory violations on each case, the 26 instances that we identified in our 50 cases represent an error rate of only about 1.5 percent. 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 26 instances included:

- Eleven instances in which the correct amount of the liability for which the seizure was made was not provided on the notice of seizure given to the taxpayer. (I.R.C. § 6335(a))
- Seven instances in which expenses and proceeds resulting from the seizure were not properly applied to the taxpayer's account. (I.R.C. § 6342(a))
- Three instances in which required information relating to the sale of the seized property was not provided to the taxpayer. (I.R.C. § 6340(c))
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[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 paid voluntarily.

Taxpayers were not always provided notices of seizure with accurate liability balances or a correct accounting of the property seized

I.R.C. § 6335(a) requires the IRS, as soon as practicable after the seizure of property, to provide the owner of the property with a notice in writing that specifies the liability for which the seizure was made and an accounting of the property seized.

The Internal Revenue Manual provides guidance on completing the Notice of Seizure (Form 2433).[5] It requires that the Form 2433 liability equal the taxpayer's total amount due for the tax modules[6] listed on Form 668-B. This amount should include all accruals and match the Total Amount Due on Form 668-B. If there is a difference in amount, it should be documented in the Integrated Collection System[7] history. The items of property seized should be described and identified with reasonable certainty in an inventory listed on the Form 2433 or in an attachment to the Form 2433. We identified 11 cases in which the Forms 2433 provided to the taxpayers did not show the correct liabilities for which the seizures were made, and 1

1

Expenses and proceeds resulting from the sales of seized properties were not always properly applied to taxpayers' accounts

I.R.C. § 6342(a) and the Internal Revenue Manual require any money realized by seizure or by sale of seized property to be applied in the following order:

- First, against the expenses of the proceedings.
- Second, against any unpaid tax imposed by any Internal Revenue law against the property seized and sold (for example, an excise tax).
- Finally, against the liability with respect to which the levy was made or the sale was conducted (the accounts appearing on the Form 668-B).

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 Internal Revenue Manual requires the proceeds to be credited to the taxpayer's account using a Transaction Code[8] 694, Designated Payment of Fees and Collection Costs, for the amount of the expenses. We identified three cases for which the proceeds from the seizures were not posted to the taxpayers' accounts using a Transaction Code

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[5] The Form 2433 is the taxpayer's receipt for the seized property. The document specifies the sum demanded – for personal property, a listing of the property seized; for real property, a description of the property seized.
[6] Tax module refers to each tax return filed by the taxpayer for a specific period (year and quarter) during a calendar year for each type of tax.
[7] The Integrated Collection System is an automated system used to control and monitor delinquent cases assigned to revenue officers in the field offices.
[8] 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.

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 Internal Revenue Manual requires the Technical Support function to post review the seizure file. The IRS developed the Post-Seizure Review Checksheet (Form 13361)[9] to assist in the post-review process. However, there is nothing on the Form that requires the reviewer to verify that the proceeds have been posted and that the Transaction Code 694 was used to post the amount applicable to the seizure expenses incurred.

We also identified three seizures for which the proceeds were applied to a liability on the taxpayer's account that was not on the Form 668-B before the liabilities on the Form 668-B were satisfied, and [redacted]

Information relating to the seizures and sales of properties was not always provided to the taxpayers as required

I.R.C. § 6340(a) requires the IRS to keep a record of all sales of property. The record should include the tax for which any such sale was made, the dates of the seizure and sale, the name of the party assessed, all proceedings in making the sale, the amount of expenses, the names of the purchasers, and the date of the deed or certificate of sale of personal property. I.R.C. § 6340(c) requires that the taxpayer be furnished the record of sale under subsection (a) (other than the names of the purchasers).

The Internal Revenue Manual lists the Record of Seizure and Sale (Record 21)[10] as one of three documents to be retained in the permanent record and to be provided to the taxpayer. We identified [redacted]

Sales of seized properties were not always properly advertised

I.R.C. § 6335(b) requires the IRS, as soon as practicable after the seizure of property, to publish a notification in a newspaper distributed within the county where the seizure was made. The notice must specify the property to be sold and the time, place, manner, and conditions of the sale thereof. I.R.C. § 6335(d) requires the sale to occur between 10 calendar days and 40 calendar days after giving public notice.

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[9] The Internal Revenue Manual requires that the Form 13361 (or comparable form) be completed during the post review to ensure all required actions were taken.

[10] 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.

The Internal Revenue Manual requires that the notice of sale contain the legal description of the property; the date, time, and place of sale; the payment terms; information on grouping of property; and a statement that the date of sale must be set at least 10 calendar days but not more than 40 calendar days from the date notice is to be published in the newspaper. 1

1

The IRS did not provide the intent to levy notice for every period on Form 668-B

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 his or her right to a hearing before the levy is made. The notice is required for all the taxable periods to which the unpaid tax relates. I.R.C. § 6331(d) also requires that a levy can be made only after the IRS has notified the taxpayer, in writing, of the intention to make the levy no less than 30 calendar days before the day of the levy.

The Internal Revenue Manual requires that 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 calendar days before the seizure for each tax period listed on the Form 668-B. 1

Recommendations

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

Recommendation 1: Include an instruction on the Form 2433 in the "Amount" field that the total should be the same as on the Form 668-B.[11]

> ***Management's Response:*** IRS management agreed with the recommendation and advised that Form 2433 will be revised to include an instruction in the "Amount" field that the total should be the same as the amount on the Form 668-B.

Recommendation 2: Include a requirement on the Form 13361 that the reviewer verify that the proceeds have been posted and that the Transaction Code 694, Designated Payment of Fees and Collection Costs, was used to post the amount applicable to the seizure expenses incurred.

> ***Management's Response:*** IRS management agreed with the recommendation and advised that Form 13361 will be revised to include a requirement for the reviewer to verify proceeds are correctly posted and Transaction Code 694 is used to post the amount applicable to the seizure expense incurred.

[11] During the review, the Treasury Inspector General for Tax Administration was informed that the recommended change to the Form 2433 had been made and would be published shortly.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether seizures[1] 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.[2] We did not assess internal controls because doing so was not applicable within the context of our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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. Selected and reviewed a random sample of 50 of the 610 seizures conducted by the IRS from July 1, 2007, through June 30, 2008. We reviewed the sample of seizures to determine whether the IRS complied with legal provisions and internal procedures and whether the proceeds and applicable expenses of the seizures and sales were properly recorded to the taxpayers' accounts on the IRS' main computer system. We used a random sample to ensure that each of the 610 seizures had an equal chance of being selected.

[1] Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure.
[2] This audit was not intended to determine whether the decision to seize was appropriate or to identify the cause of any violations.

Appendix II

Major Contributors to This Report

Margaret E. Begg, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Carl Aley, Director
Amy L. Coleman, Audit Manager
Janis Zuika, Lead Auditor
Julian O'Neal, Senior Auditor

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
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

Appendix IV

Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Actual; 23 taxpayers for whom the IRS did not comply with legal provisions and internal procedures when conducting seizures[1] (see page 3).

Methodology Used to Measure the Reported Benefit:

We selected and reviewed a random sample of 50 of the 610 seizures conducted from July 1, 2007, through June 30, 2008. While we did not identify any instances in which the taxpayers were adversely affected, not adhering to legal and internal guidelines could result in abuses of taxpayers' rights.

[1] Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure.

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[1] action. The notice must be 1) given in person, 2) left at the taxpayer's home or business, or 3) mailed as certified-return receipt requested no fewer than 30 calendar 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-calendar-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 that the IRS has shown good cause not to suspend the seizure. No limitation period may expire before 90 calendar 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-calendar-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 compromise[3] or an installment agreement is being evaluated and, if necessary, for 30 additional calendar days during which the taxpayer may 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.

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[1] Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure.
[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 an unpaid account(s) for less than the full amount of the balance due.

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 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 Office[4] 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. This Section requires that the property be sold no fewer than 10 calendar days or more than 40 calendar 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 calendar 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-calendar-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

[4] 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.

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.

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. Any remainder is then 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 Advocate[5] 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)[6] **§ 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[7] from participating in the sales of seized assets.

[5] The Taxpayer Advocate Service is an independent organization within the IRS whose employees assist taxpayers seeking help in resolving tax problems that have not been resolved through normal channels or who are experiencing significant hardships.
[6] 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.).
[7] The employees who make personal contacts with taxpayers are referred to as revenue officers.

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 27, 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 9, 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 11, 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 26, 2001).

The Internal Revenue Service Continues to Comply With the Law When Seizing Taxpayers' Property (Reference Number 2002-40-155, dated August 21, 2002).

Fiscal Year 2003 Statutory Audit of Compliance With Seizure Procedures (Reference Number 2003-40-115, dated May 12, 2003).

Legal and Internal Guidelines Were Not Always Followed When Conducting Seizures of Taxpayers' Property (Reference Number 2004-30-149, dated August 25, 2004).

Fiscal Year 2005 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Reference Number 2005-30-091, dated June 3, 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).

Fiscal Year 2007 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Reference Number 2007-30-109, dated July 3, 2007).

Fiscal Year 2008 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Reference Number 2008-30-126, dated June 6, 2008).

Appendix VII

Management's Response to the Draft Report

RECEIVED
APR 28 2009

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

COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

April 28, 2009

MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Christopher Wagner
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2009 Review of Compliance with Legal Guidelines when Conducting Seizures of Taxpayers' Property (Audit No. 200930002)

Thank you for the opportunity to review the draft report titled "Fiscal Year 2009 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property". In order to determine if the IRS is complying with the numerous legal and internal guidelines, you reviewed 50 of the 610 seizures conducted from July 1, 2007, through June 30, 2008, and identified 26 instances where the IRS did not fully comply with a legal requirement. The overall error rate of about one and one half percent indicates an effective seizure program. We appreciate your acknowledgement that there were no instances in which the taxpayer was adversely affected.

We agree with the findings and recommendations contained in the report. The planned corrective actions to address issues identified in this audit and our annual program review of the seizure and sale process demonstrate the importance we place on ensuring compliance with legal requirements.

Attached is a detailed response outlining our planned corrective actions.

If you have any questions, please call me at (202) 622-0600 or David Alito, Director, Collection, Small Business/Self-Employed Division, at (202) 283-7660.

Attachment

Attachment

RECOMMENDATION 1:
The Director, Collection, Small Business/Self-Employed Division, should include an instruction on the Form 2433 in the "Amount" field that the total should be the same as on the Form 668-B.

CORRECTIVE ACTION:
We will revise Form 2433, Notice of Seizure, to include an instruction in the "Amount" field that the total should be the same as the amount on the Form 668-B, Levy.

IMPLEMENTATION DATE:
October 15, 2009

RESPONSIBLE OFFICIAL:
Director, Collection Policy, SB/SE

CORRECTIVE ACTION MONITORING PLAN:
The Director, Collection Policy, SB/SE will advise the Director, Collection, SB/SE of any delays in implementing this corrective action.

RECOMMENDATION 2:
The Director, Collection, Small Business/Self-Employed Division, should include a requirement on the Form 13361 that the reviewer verify that the proceeds have been posted and that the Transaction Code 694, Designated Payment of Fees and Collection Costs, was used to post the amount applicable to the seizure expenses incurred.

CORRECTIVE ACTION:
We will revise Form 13361, Post-Seizure Review Checklist, to include a requirement for the reviewer in Advisory to verify proceeds are correctly posted and Transaction Code 694, Designated Payment of Fees and Collection Costs, is used to post the amount applicable to the seizure expenses incurred.

IMPLEMENTATION DATE:
December 15, 2009

RESPONSIBLE OFFICIAL:
Director, Collection Policy, SB/SE

CORRECTIVE ACTION MONITORING PLAN:
The Director, Collection Policy, SB/SE will advise the Director, Collection, SB/SE of any delays in implementing this corrective action.