



Treasury Inspector General for Tax Administration Office of Audit

FISCAL YEAR 2009 REVIEW OF COMPLIANCE WITH LEGAL GUIDELINES WHEN CONDUCTING SEIZURES OF TAXPAYERS' PROPERTY

Issued on May 19, 2009

Highlights

Highlights of Report Number: 2009-30-077 to the Internal Revenue Service Commissioner for Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

To ensure that taxpayers' rights are protected, the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 amended the seizure provisions in Internal Revenue Code Sections 6330 through 6344 (1994 & Supp. IV 1998). The IRS did not always comply with these statutory requirements. Although TIGTA did not identify instances in which taxpayers were adversely affected, noncompliance with Internal Revenue Code requirements could result in abuses of taxpayers' rights.

WHY TIGTA DID THE AUDIT

TIGTA is required under Internal Revenue Code Section 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.

WHAT TIGTA FOUND

The collection of unpaid tax by the 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. 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."

Our review of a random sample of 50 of the 610 seizures conducted from July 1, 2007, through June 30, 2008, determined that the IRS complied with the numerous legal and internal guidelines when conducting the majority of seizures. However, in 23 seizures, there

were 26 instances in which the IRS did not comply with a particular Internal Revenue Code requirement. Because there can be numerous statutory violations on each case, the 26 instances TIGTA identified in our 50 cases represent an error rate of only about 1.5 percent. While TIGTA 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.

After the seizure of property, the IRS is required to provide the taxpayer a Notice of Seizure (Form 2433) that specifies the liability for which the seizure was made and an accounting of the property seized. The liability should be the total amount due for the taxes and tax periods listed on the Levy (Form 668-B). In 11 cases, the Notice of Seizure (Form 2433) provided to the taxpayer did not show the correct liability.

Money realized from the seizure of property is required to be applied first to expenses of the seizure and sale, second against any unpaid tax imposed by IRS law against the property seized, and finally against the liability for which the seizure was made. TIGTA identified seven instances in which expenses and proceeds were not properly applied to the taxpayer's account. There is currently no procedure on the Post-Seizure Review Checklist (Form 13361) to verify that expenses and proceeds are being applied as required.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Director, Collection, Small Business/Self-Employed Division, include an instruction on the Form 2433 in the "Amount" field that the total should be the same as on the Form 668-B and include a requirement on the Form 13361 that the reviewer verify that the proceeds have been posted as required.

In their response to the report, IRS management agreed with the recommendations. IRS management plans to revise the Form 2433 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 IRS plans to revise the Form 13361 to include a requirement for the reviewer to verify that the proceeds are correctly posted.

READ THE FULL REPORT

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

<http://www.treas.gov/tigta/auditreports/2009reports/200930077fr.pdf>

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