



*Fiscal Year 2016 Review of Compliance  
With Legal Guidelines When Conducting  
Seizures of Taxpayers' Property*

**August 31, 2016**

**Reference Number: 2016-30-074**

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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## HIGHLIGHTS

### FISCAL YEAR 2016 REVIEW OF COMPLIANCE WITH LEGAL GUIDELINES WHEN CONDUCTING SEIZURES OF TAXPAYERS' PROPERTY

## Highlights

Final Report issued on August 31, 2016

Highlights of Reference Number: 2016-30-074 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

### IMPACT ON TAXPAYERS

Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure. To ensure that taxpayers' rights are protected, the IRS Restructuring and Reform Act of 1998 amended the seizure provisions in Internal Revenue Code (I.R.C.) Sections (§§) 6330 through 6344.

These provisions govern many aspects of the seizure process, from notification of the taxpayer through sale or redemption of the property.

### WHY TIGTA DID THE AUDIT

I.R.C. § 7803(d)(1)(A)(iv) requires TIGTA to annually evaluate the IRS's compliance with legal seizure provisions to ensure that taxpayers' rights were not violated while seizures were being conducted. 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 and with the IRS's own internal procedures.

### WHAT TIGTA FOUND

TIGTA reviewed a random sample of 50 of the 428 seizures conducted from July 1, 2014, through June 30, 2015, to determine whether the IRS complied with up to 59 legal and internal guidelines related to each seizure. The IRS followed most of the procedures in the seizures we reviewed. For example, for all reviewed cases, the IRS obtained the required approvals prior to the seizure, did not seize any exempt items, and only authorized IRS staff participated in the seizure and sale of the seized property.

However, TIGTA identified 18 instances in which the IRS did not comply with a particular I.R.C. section or the related Internal Revenue Manual requirement. For example:

- The sale of seized property was not always properly advertised.
- The amount of the liability for which seizure was made was not always correct on the notice of seizure provided to the taxpayers.
- The expenses or proceeds from seizures were not always properly applied to taxpayers' accounts.

### WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS update the advertisement publishing instructions in Letter 5746 to include that the check or money order should be payable to the United States Treasury.

In response to the report, IRS officials agreed with the recommendation and are currently updating Letter 5746 to include a statement that the check or money order should be payable to the United States Treasury.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

August 31, 2016

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

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Fiscal Year 2016 Review of Compliance With  
Legal Guidelines When Conducting Seizures of Taxpayers' Property  
(Audit #201630002)

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 (I.R.C.) Sections (§§) 6330 through 6344 and with the IRS's own internal procedures. The Treasury Inspector General for Tax Administration is required under I.R.C. § 7803(d)(1)(A)(iv) to annually evaluate the IRS's compliance with the legal seizure provisions to ensure that taxpayers' rights were not violated while seizures were being conducted. We have evaluated the IRS's compliance with the seizure provisions since Fiscal Year 1999. This audit is included in our Fiscal Year 2016 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

Management's complete response to the draft report is included as Appendix VIII.

If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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## *Abbreviations*

CDP	Collection Due Process
FY	Fiscal Year
ICS	Integrated Collection System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
RRA 98	IRS Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration



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## *Background*

The collection of unpaid tax by the Internal Revenue Service (IRS) generally begins with collection notices, after which the case will generally be assigned to either the IRS's Automated Collection System or to a revenue officer.<sup>1</sup> The IRS considers the taxpayer's ability to pay the tax and discusses alternative payment options, such as an installment agreement or an offer in compromise. If these actions have been taken and the taxpayer is able to pay some or all of the tax but has not taken steps to address the liability and if the taxpayer had the opportunity to exercise available appeal rights, the IRS has the authority to levy the taxpayer's funds or seize property for the payment of tax.<sup>2</sup> 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 (RRA 98) amended the seizure provisions in Internal Revenue Code (I.R.C.) Sections (§§) 6330 through 6344.<sup>3</sup> These provisions and the IRS's internal procedures are very specific regarding how a seizure should be performed and govern many aspects of the seizure process, from notification of the taxpayer through sale or redemption of the property.

The Treasury Inspector General for Tax Administration (TIGTA) is required under I.R.C. § 7803(d)(1)(A)(iv) to annually evaluate the IRS's compliance with these legal seizure provisions. We have evaluated the IRS's compliance with the seizure provisions since Fiscal Year (FY) 1999.

As a result of RRA 98, the number of seizures conducted by the IRS diminished from 10,090 in FY 1997 to 74 in FY 2000. The number of seizures has increased since FY 2000; however, total seizures in FY 2015 were approximately 4 percent of those reported for FY 1997. The following graph illustrates the number of seizures made over the past five fiscal years.

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<sup>1</sup> See Appendix VII for a glossary of terms.

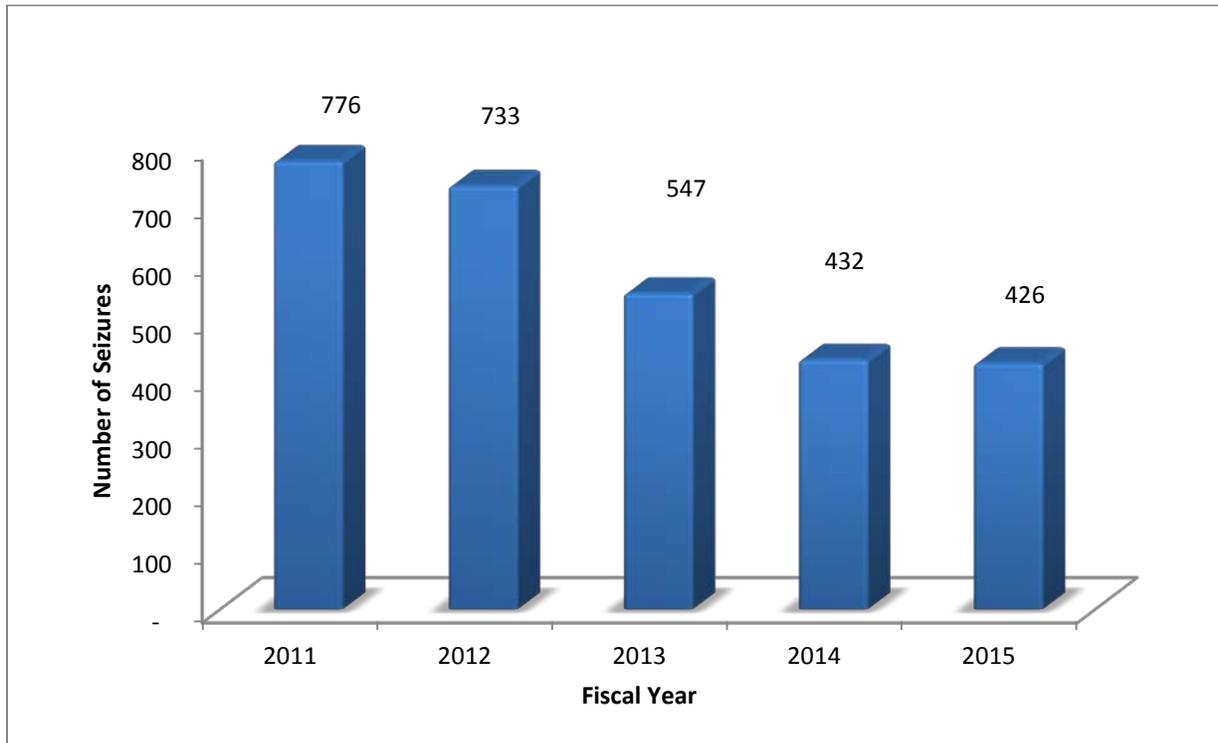
<sup>2</sup> Taxpayers have a statutory right to a Collection Due Process (CDP) hearing on the first issuance of a Notice of Intent to Levy on a delinquent account, pursuant to Internal Revenue Code (I.R.C.) Section (§) 6330, as well as upon the first Notice of Filing of a Tax Lien, pursuant to I.R.C. § 6320. Taxpayers additionally have certain administrative rights such as an appeal through the IRS's Collection Appeals Program.

<sup>3</sup> 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: Seizures by Fiscal Year**



*Source: IRS Data Books.*

This review was performed during the period January 2016 through July 2016 with information obtained from the Small Business/Self-Employed Division Headquarters in Washington, D.C. 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.



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*Results of Review*

**Legal Provisions and Internal Procedures Were Not Always Followed  
When Conducting Seizures**

We reviewed a random sample of 50 seizures from the 428 seizures<sup>4</sup> that the IRS conducted from July 1, 2014, through June 30, 2015, with up to 59 legal and internal guidelines related to each seizure.<sup>5</sup> The IRS followed most of the procedures in the seizures we reviewed. For example, for all of the cases we reviewed the IRS:

- Obtained required approvals prior to the seizure.
- Did not seize items that were exempt from seizure.
- Allowed only authorized staff to participate in the seizure and sale of the seized property.

However, we found 18 instances, involving 13 seizures, in which the IRS did not comply with a particular I.R.C. section or the related Internal Revenue Manual (IRM) requirement.<sup>6</sup> The violations were generally due to Collection employees not correctly completing all required actions and management not identifying the missing actions in their reviews. Failure to adhere to legal and internal guidelines could result in the abuse of taxpayers' rights or inequitable treatment of taxpayers. Specifically, we found:

- Eight instances in which the sale of the seized property was not properly advertised.<sup>7</sup>
- Three instances in which the amount of the liability for which the seizure was made was not correct on the notice of seizure provided to the taxpayer.<sup>8</sup>
- \*\*\*\*\*1\*\*\*\*\*<sup>9</sup>

<sup>4</sup> The number of seizures is based on IRS data which may include duplicate taxpayers.

<sup>5</sup> The guidelines applicable for each seizure vary due to timing differences between the date of seizure and date of our review. For example, at the time of our review, the sale for the seized property may not have been advertised, the sale may have been advertised but had not yet occurred, the property may have been redeemed or released prior to sale, or the property may have been sold.

<sup>6</sup> \*\*\*\*\*1\*\*\*\*\*

<sup>7</sup> I.R.C. § 6335(b); IRM 5.10.4.14(1) (Aug. 4, 2014).

<sup>8</sup> I.R.C. § 6335(a); IRM 5.10.3.10(1) (Aug. 4, 2014).

<sup>9</sup> \*\*\*\*\*1\*\*\*\*\*



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- \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*.<sup>10</sup>
- Three instances in which expenses or proceeds from seizures were not always properly applied to taxpayers' accounts.<sup>11</sup>

**Sales of seized properties were not always properly advertised**

I.R.C. § 6335(b) requires that the IRS, as soon as practicable after the seizure of property, give notice to the owner and publish a notification in a newspaper distributed within the county where the seizure was made. If there is no newspaper published or generally circulated in the county, the IRS must post a notice at the post office nearest the place where the seizure is made and in not less than two other public places. The notice must specify the property to be sold and the time, place, manner, and conditions of the sale thereof.

The IRM requires that the notice of sale contain: a description of the property; the date, time, and place of sale; and the payment terms.<sup>12</sup> To satisfy this requirement, the IRM also states that the property description and time, place, manner, and conditions of sale in the newspaper advertisement must match the notice (Form 2434, *Notice of Public Auction Sale*,<sup>13</sup> or Form 2434-A, *Notice of Sealed Bid Sale*)<sup>14</sup> provided to the taxpayer.<sup>15</sup> The IRM requires all payments must be by either:

- Cash.
- A certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, territory, or possession of the United States.
- A United States postal, bank, or express or telegraph money order.

Also, all checks and money orders should be made payable to the United States Treasury.<sup>16</sup>

We identified eight seizures for which the notice of sale and newspaper advertisement did not contain the same information. Specifically, newspaper advertisements for the seizures did not correctly match the payment terms in the notice of sale that was provided to the taxpayer per I.R.C. § 6335(b). In our FY 2015 seizure report, we recommended that the IRS update IRM Exhibit 5.10.4-6, *Template to Provide Publisher to Meet Statutory Requirements of Advertising*

<sup>10</sup> \*\*\*\*\*1\*\*\*\*\*.

<sup>11</sup> I.R.C. § 6341 and § 6342(a); IRM 5.10.6.2.1(1) (Apr. 19, 2013).

<sup>12</sup> IRM 5.10.4.12(4) (Aug. 4, 2014).

<sup>13</sup> Form 2434 contains a description of the property to be sold; the date, time, and place of sale; and payment terms.

<sup>14</sup> Form 2434-A contains a description of the property to be sold, the date and time bids will open, the place of sale, methods of submitting bids, and payment terms.

<sup>15</sup> IRM 5.10.4.14(1) (Aug. 4, 2014).

<sup>16</sup> IRM 5.10.4.7.3(6) and (7) (May 20, 2016).



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*Reference: 5.10.4.14(3)*, to clarify that the seizure details need to be changed to match the details on the form that was issued to the taxpayer.<sup>17</sup>

The IRM was updated on May 20, 2016, to remove Exhibit 5.10.4-6 and noted that the template was replaced with Letter 5746, *Instructions to the Publisher*, which can be found electronically and provides advertisement publishing instructions.<sup>18</sup> The IRM was updated again on June 14, 2016, to update the Form 2434 and Form 2434-A templates, which had not been revised since October 2003. However, the Letter 5746 we were provided does not include that the check or money order should be payable to the United States Treasury as specified in the Forms 2434 and 2434-A “Form of Payment” requirements (see below for a sample of the instructions contained in Forms 2434 and 2434-A).

*Form of Payment: All payments must be by cash, a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, or express money order. Make check or money order payable to the United States Treasury.*

Letter 5746 needs to be updated to advise potential bidders of the requirement that the check or money order should be payable to the United States Treasury. TIGTA has reported violations of I.R.C. § 6335(b) for the past six consecutive fiscal years.

### **Recommendation**

**Recommendation 1:** The Director, Collection, Small Business/Self-Employed Division, should update the advertisement publishing instructions in Letter 5746 to include that the check or money order should be payable to the United States Treasury.

**Management's Response:** IRS management agreed with this recommendation. They are currently updating Letter 5746 to include a statement that the check or money order should be payable to the United States Treasury.

### **The amount of the liability for which the seizure was made was not correct on the notice of seizure provided to the taxpayer**

I.R.C. § 6335(a) requires that the IRS, as soon as practicable after the seizure of property, 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 IRM<sup>19</sup> provides guidance on

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<sup>17</sup> TIGTA, Ref. No. 2015-30-048, *Fiscal Year 2015 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* p. 8 (June 2015).

<sup>18</sup> IRM 5.10.4 (May 20, 2016).

<sup>19</sup> IRM 5.10.3.10(1) (Aug. 4, 2014).



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completing Form 2433, *Notice of Seizure*.<sup>20</sup> It requires that the liability shown on Form 2433 agree with the taxpayer's total amount due for the tax modules, which includes all accruals, and matches the total amount due on Form 668-B, *Levy*.<sup>21</sup> Any difference in the total amount due on the forms should be documented in the Integrated Collection System (ICS) history.

We identified three seizures for which the Form 2433 provided to the taxpayer did not agree with the total amount due on Form 668-B and there was no documentation of the differences in the ICS histories. Therefore, the taxpayers were provided with incorrect liabilities for which the seizures were made. The discrepancy between the two forms occurred because the forms were printed on different days. The Forms 2433 were initially printed using the total amount due from the original Forms 668-B. At a later date, final Forms 668-B were printed that reflected updated accruals of penalty and interest and no longer matched the amounts on the Forms 2433. Therefore, unless the revenue officer prints an updated Form 2433 on the same date as the final Form 668-B, the taxpayer may receive forms with different total amounts due. In January 2015, the IRS reprogrammed the ICS to auto-populate the Form 2433 balance due with the total amount from the previously prepared Form 668-B. The errors we identified occurred before the update was made; therefore, we are not making any recommendations for this issue.

\*\*\*\*\*1\*\*\*\*\*

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 with:

- The record of sale (other than the names of the purchasers).
- The amount from such sale applied to the taxpayer's liability.
- The remaining balance of such liability.

The IRM lists three documents to be retained in the permanent record and to be provided to the taxpayer.<sup>22</sup> The documents are: Record 21, *Record of Seizure and Sale*;<sup>23</sup> Form 2434-B, *Notice*

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<sup>20</sup> Form 2433 is the taxpayer's receipt for the seized property. The document specifies the sum demanded – for personal property, a list of the property seized; and for real property, a description of the property seized.

<sup>21</sup> Form 668-B provides the taxpayer with the type of tax, tax period, unpaid balance of assessment, statutory additions, and total tax balance for which he or she is to be levied.

<sup>22</sup> IRM 5.10.6.12(2) (Apr. 19, 2013).

<sup>23</sup> 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, a 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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*of Encumbrances Against or Interests in Property Offered for Sale;*<sup>24</sup> and Letter 3074, *Letter Providing Permanent Record and Final Balance to Taxpayer.*<sup>25</sup> The permanent record documents should generally be provided to the taxpayer within 30 days of certification of the Record 21.<sup>26</sup> \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*. These errors do not appear to be systemic in nature; therefore, we are not making any recommendations for this issue.

\*\*\*\*\*1\*\*\*\*\*

I.R.C. § 6331(j) requires that no levy may be made on any property or right to property which is to be sold under section I.R.C. § 6335 until a thorough investigation of the status of the property has been completed. The elements of investigation should include the determination that the equity in the property is sufficient to yield net proceeds from the sale to apply to the liability. The IRM requires a record check to verify the taxpayer's interest in the property and to identify any encumbrances against the property. Prior to August 4, 2014, the IRM required that a records check for seized property be updated no more than 30 days prior to submitting the seizure to the group manager for approval.<sup>27</sup> The IRM was updated on August 4, 2014, changing the requirement to conduct the records check to no more than 90 days prior to submission for the group manager's approval.<sup>28</sup>

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\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*. However, these errors do not appear to be systemic in nature; therefore, we are not making any recommendation for this issue.

**Expenses or proceeds from seizures were not always properly applied to taxpayers' accounts**

I.R.C. § 6341 requires the IRS to determine the expenses to be allowed in all cases of levy and sale. I.R.C. § 6342(a) and the IRM require that any money realized by seizure or by sale of seized property be applied in the following order against:

<sup>24</sup> Form 2434-B provides a list of all encumbrances against or interests in the seized property.  
<sup>25</sup> Letter 3074 provides the taxpayer with information on how proceeds of the seizure were applied to the tax liability and also provides the taxpayer with the remaining balance due.  
<sup>26</sup> IRM 5.10.6.12(3) (Apr. 19, 2013).  
<sup>27</sup> IRM 5.10.1.3.3(12) (July 3, 2009).  
<sup>28</sup> IRM 5.10.1.3.3(12) (Aug. 4, 2014).



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- 1) Expenses of the seizure and sale.
- 2) Unpaid Federal taxes due on the specific property sold.
- 3) The liability to which the levy was made or the sale was conducted (liability shown on Form 668-B).<sup>29</sup>

The IRM<sup>30</sup> requires that if the sale was not completed but proceeds were received (for release or redemption) and there were unpaid expenses, the proceeds must be offset by the expenses on the same Form 2436R, *Seized Property Release/Redemption Report*.<sup>31</sup>

We identified three instances in which a taxpayer's property was seized and later released prior to sale or sold, and the expenses or proceeds were not properly applied. \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*

The errors do not appear to be systemic in nature; therefore, we are not making any recommendation for this issue.

**Management Action:** After we notified IRS officials of the errors, they adjusted the expenses accordingly and correctly applied the proceeds to the respective taxpayers' accounts.

### **No Collection Activity Occurred During Taxpayer's Appeals Collection Due Process Hearing**

Prior to seizing a taxpayer's property, the taxpayer will generally receive a Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing*. If a taxpayer does not pay overdue taxes, make other arrangements to satisfy the tax debt, or request a hearing within 30 days of the date of the notice, the IRS may seize the taxpayer's property.<sup>32</sup> During a CDP hearing, the 10-year period for collecting taxes is suspended and the IRS generally is prohibited from seizing (levying) the taxpayer's property, if seizing the property is the subject of the hearing.

Appeals' mission is to resolve tax controversies on a basis that is fair and impartial to the Government and the taxpayer. In CDP hearing cases, the Appeals officer is responsible for making a determination based on the facts and the law known to Appeals during the time of the hearing.<sup>33</sup> After Appeals has made its determination and if the taxpayer does not agree, the taxpayer can request judicial review of the determination by petitioning the United States Tax Court within the time period provided for in the Appeals' determination letter. All collection

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<sup>29</sup> IRM 5.10.6.2(2) (Apr. 19, 2013).

<sup>30</sup> IRM 5.10.6.2.1(1) (Apr. 19, 2013).

<sup>31</sup> Form 2436R is the report given to the taxpayer that shows the application of seizure proceeds against tax liabilities. The form shows specific tax modules and the related expenses of seizure and the payments applied.

<sup>32</sup> IRM 5.1.9.3.1(3) (Jun. 24, 2014).

<sup>33</sup> IRM 8.22.4.2.1(1) (Nov. 5, 2013).



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actions are suspended from the date of the taxpayer's request until a Notice of Determination is issued or the Tax Court's decision is final.

We reviewed a random sample of 30 seizure cases from July 1, 2014, through June 30, 2015, that had a CDP hearing during FY 2013 through FY 2015. We reviewed the ICS case histories and the IRS's Integrated Data Retrieval System to determine if there was any collection action during the CDP hearing time frame. For our sample of 30 seizure cases, we did not identify any collection activity between the taxpayer's CDP hearing request date and the date the appeal was closed on the Integrated Data Retrieval System.



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## **Appendix I**

### *Detailed Objective, Scope, and Methodology*

The overall objective of this review was to determine whether seizures<sup>1</sup> conducted by the IRS complied with legal provisions set forth in I.R.C. §§ 6330 through 6344 and with the IRS's own internal procedures. 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 428 seizures conducted by the IRS from July 1, 2014, through June 30, 2015. 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's main computer system. We used a random sample to ensure that each of the 428 seizures had an equal chance of being selected.

#### **Internal controls methodology**

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: the Small Business/Self-Employed Division Collection function's policies, procedures, and practices for conducting seizures of taxpayers' property under the provisions of I.R.C. §§ 6330 through 6344. We evaluated these controls by reviewing appropriate internal procedures and guidelines.

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<sup>1</sup> See Appendix VII for a glossary of terms.



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**Appendix II**

*Major Contributors to This Report*

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Janis Zuika, Senior Auditor  
Jessica Aguilar, Auditor



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**Appendix III**

*Report Distribution List*

Commissioner  
Office of the Commissioner – Attn: Chief of Staff  
Deputy Commissioner for Services and Enforcement  
Deputy Commissioner, Small Business/Self-Employed Division  
Director, Collection, Small Business/Self-Employed Division  
Director, Field Collection, Small Business/Self-Employed Division  
Director, Headquarters Collection, Small Business/Self-Employed Division  
Director, Office of Audit Coordination



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## **Appendix IV**

### *Outcome Measure*

This appendix presents detailed information on the measurable impact that our review 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 – Potential; 13 taxpayers for whom the IRS did not comply with a particular I.R.C. section or the related IRM requirement when conducting seizures (see page 3).

#### **Methodology Used to Measure the Reported Benefit:**

We selected and reviewed a random sample of 50 of the 428 seizures conducted by the IRS from July 1, 2014, through June 30, 2015. We identified 18 instances, involving 13 seizures, for which the IRS did not comply with a particular I.R.C. section or the related IRM requirement.<sup>1</sup> Failure to adhere to legal and internal guidelines could result in the abuse of taxpayers' rights.

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<sup>1</sup> 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 V**

### *Synopsis of Selected Legal Provisions for Conducting Seizures*

**I.R.C. § 6330** requires the IRS to issue the taxpayer a notice of his or her right to a hearing prior to any seizure 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 first levy. 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** 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. 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 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** requires that a third party in possession of property subject to seizure surrender such property when a levy notice is received. It contains sanctions against third parties who do not surrender such property when a levy notice is received.

**I.R.C. § 6333** requires that a third party with control of books or records containing evidence or statements relating to property subject to seizure exhibit such books or records to the IRS when a levy notice is received.

**I.R.C. § 6334** enumerates property exempt from seizure. The exemption amounts are adjusted each year and include \$8,940 in fuel, provisions, furniture, and personal effects and \$4,470 in books and tools necessary for business purposes for the calendar year 2014. For Calendar Year 2015, the amounts are \$9,080 for fuel, provisions, *etc.*, and \$4,540 for books and tools of a trade. 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 the



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individual taxpayer's business is exempt except with written approval of the Area Director, and the seizure may only be approved if other assets are not sufficient to pay the liability.

**I.R.C. § 6335** 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 no 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** 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** 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** requires that the IRS 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** provides the legal effect of the certificate of sale for personal property and the transfer deed for real property.

**I.R.C. § 6340** requires that each Area Office 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 previous listed information except for 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** allows expenses for all seizure and sale cases.

**I.R.C. § 6342** 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** 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



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United States 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** contains cross-references for I.R.C. §§ 6330 through 6344.

**Public Law Number 105-206 (IRS Restructuring and Reform Act of 1998)<sup>1</sup> § 3421** requires the IRS to employ a supervisory review of seizures before action is taken.

**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.

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<sup>1</sup> 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*

TIGTA, Ref. No. 2015-30-048, *Fiscal Year 2015 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (June 2015).

TIGTA, Ref. No. 2014-30-053, *Fiscal Year 2014 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (Aug. 2014).

TIGTA, Ref. No. 2013-30-061, *Fiscal Year 2013 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (June 2013).

TIGTA, Ref. No. 2012-30-072, *Fiscal Year 2012 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (June 2012).

TIGTA, Ref. No. 2011-30-049, *Fiscal Year 2011 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (May 2011).



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**Appendix VII**

*Glossary of Terms*

<b>Term</b>	<b>Definition</b>
<b>Area Office</b>	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.
<b>Fiscal Year</b>	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
<b>Installment Agreement</b>	The IRS allows taxpayers who are unable to pay their tax debt immediately to make monthly payments through an installment agreement.
<b>Integrated Collection System</b>	An information management system designed to improve revenue collections by providing revenue officers access to the most current taxpayer information, while in the field, using laptop computers for quicker case resolution and improved customer service.
<b>Integrated Data Retrieval System</b>	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
<b>Internal Revenue Service Data Book</b>	Provides information on activities conducted by the IRS such as taxes collected, enforcement, taxpayer assistance, budget, workforce, and other selected activities.
<b>Levy</b>	A method used by the IRS to collect outstanding taxes from sources such as bank accounts and wages or a legal seizure of property to satisfy a tax debt.
<b>Offer in Compromise</b>	An agreement between a taxpayer and the Government that settles a tax liability for payment of less than the full amount owed.



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<b>Term</b>	<b>Definition</b>
<b>Revenue Officer</b>	Employees in the Field Collection function who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by the IRS campuses (formerly known as service centers) or the Automated Collection System.
<b>Seizure</b>	The taking of a taxpayer's property to satisfy his or her outstanding tax liability.
<b>Tax Period</b>	Refers to each tax return filed by the taxpayer for a specific period (year or quarter) during a calendar year for each type of tax.
<b>Taxpayer Advocate Service</b>	An independent organization within the IRS that helps taxpayers resolve problems with the IRS and recommends changes to prevent problems.



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**Appendix VIII**

*Management's Response to the Draft Report*



COMMISSIONER  
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

AUG 22 2016

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Karen Schiller   
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2016 Review of Compliance  
With Legal Guidelines When Conducting Seizures of Taxpayers'  
Property (Audit #201630002)

Thank you for the opportunity to review the subject draft report. This year, TIGTA reviewed a random sample of 50 of the 428 seizures the IRS conducted from July 1, 2014 through June 30, 2015, verifying that we complied with up to 59 legal and internal guidelines related to each seizure. We appreciate your acknowledgement that the IRS followed most of the procedures in the seizures you reviewed. In 100% of those cases TIGTA found that IRS employees obtained the required approvals prior to the seizure, did not seize any exempt items, completed proper equity determinations and risk analyses, and complied with procedural requirements pertaining to notices of federal tax lien.

TIGTA additionally reviewed a random sample of 30 seizure cases from the same time period that had a Collection Due Process (CDP) hearing during fiscal year (FY) 2013 through FY 2015. TIGTA did not identify any instances of collection action being taken during the CDP hearing timeframe, which indicates the IRS properly observed due process rights in 100% of the cases reviewed.

TIGTA did find 18 instances in which the IRS did not comply with a particular Internal Revenue Code (IRC) section and/or the related Internal Revenue Manual requirement. Given that there are up to 59 legal or internal requirements our employees must follow every time they conduct a seizure, it is important to note that our employees complied with requirements in 2,932 of 2,950 opportunities (59 requirements for each of 50 seizures), or 99.4%, a remarkably high accuracy rate. We are proud of this record of success.

TIGTA recommended that the letter IRS uses to provide publishing instructions to advertisers with regard to seized property sales be updated to include required payment terms. We agree to implement this recommendation.



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We are always seeking ways to continue to improve our seizure and sale program. We appreciate your insights in that regard. Attached is a detailed response outlining your recommendation and our corrective action. If you have any questions, please contact me, or a member of your staff may contact, Scott Prentky, Director Collection at (954) 991-4326.

Attachment



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Attachment

**RECOMMENDATION 1:**

The Director, Collection, Small Business/Self-Employed Division should update the advertisement publishing instructions in Letter 5746 to include that the check or money order should be payable to the United States Treasury.

**CORRECTIVE ACTION:**

We agree with this recommendation. Letter 5746 is currently being updated to include a statement that the check or money order should be payable to the United States Treasury.

**IMPLEMENTATION DATE:**

February 15, 2017

**RESPONSIBLE OFFICIAL(S):**

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

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management system of controls.