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**TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION**



***Fiscal Year 2017 Review of Compliance  
With Legal Guidelines When Conducting  
Seizures of Taxpayers' Property***

August 24, 2017

Reference Number: 2017-30-063

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 2017 REVIEW OF COMPLIANCE WITH LEGAL GUIDELINES WHEN CONDUCTING SEIZURES OF TAXPAYERS' PROPERTY

## Highlights

### Final Report issued on August 24, 2017

Highlights of Reference Number: 2017-30-063 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 451 seizures conducted from July 1, 2015, through June 30, 2016, to determine whether the IRS complied with up to 60 legal and internal guidelines related to each seizure.

TIGTA identified 16 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 required records of sale documents were inaccurate.

Additionally, TIGTA reviewed all 11 real property seizure redemptions from July 1, 2015, through June 30, 2016, and identified seven instances in which the IRS did not properly inform the taxpayer or comply with a particular I.R.C. section or the related Internal Revenue Manual requirement. In these instances, interest rates were incorrectly and inconsistently calculated. TIGTA also determined that:

- Proper instructions on the redemption process were not available for taxpayers and purchasers.
- IRS employees did not use a required deposit account for redemption payments.

### WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS update procedures to provide directions on interest calculations on seizure redemptions; update forms and publications with correct interest information; provide taxpayers and purchasers with complete instructions on the redemption process; and instruct employees to deposit redemption checks into the required deposit account.

In response to the report, IRS officials agreed with the recommendations and plan to provide guidance to clarify what dates should be used to calculate the redemption amount; update forms and publications with a clarifying statement about the interest information; clarify the language in forms with regard to the redemption process; and provide instruction to advisors involved in redemptions with regard to the requirement to use the Deposit Fund Account when the purchaser cannot be located or is taking actions to prevent redemption.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**DEPARTMENT OF THE TREASURY**  
**WASHINGTON, D.C. 20220**

August 24, 2017

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

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

**SUBJECT:** Final Audit Report – Fiscal Year 2017 Review of Compliance  
With Legal Guidelines When Conducting Seizures of Taxpayers'  
Property (Audit # 201730002)

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 Internal Revenue Code Sections 6330 through 6344 and with the IRS's own internal procedures. The Treasury Inspector General for Tax Administration is required under Internal Revenue Code Section 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. The audit is included in our Fiscal Year 2017 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

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

Copies of this report are also being sent to the IRS managers affected by the report recommendations. 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
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
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 usually be assigned either to the IRS's Automated Collection System or to a revenue officer. 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>1</sup> Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure.<sup>2</sup>

To ensure that taxpayer 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.<sup>3</sup> These provisions and the IRS's internal procedures are very specific regarding how a seizure should be conducted 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 the IRS Restructuring and Reform Act of 1998, 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 2016 were approximately 4 percent of those reported for FY 1997. Figure 1 illustrates the number of seizures conducted over the past five fiscal years.

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<sup>1</sup> Taxpayers have a statutory right to a Collection Due Process hearing on the first issuance of a Notice of Intent to Levy on a delinquent account, pursuant to Internal Revenue Code Section 6330, as well as upon the first Notice of Filing of a Tax Lien, pursuant to Section 6320. Taxpayers additionally have certain administrative rights, such as an appeal through the IRS's Collection Appeal Program. See Internal Revenue Manual 5.1.9.3 and 5.1.9.4.

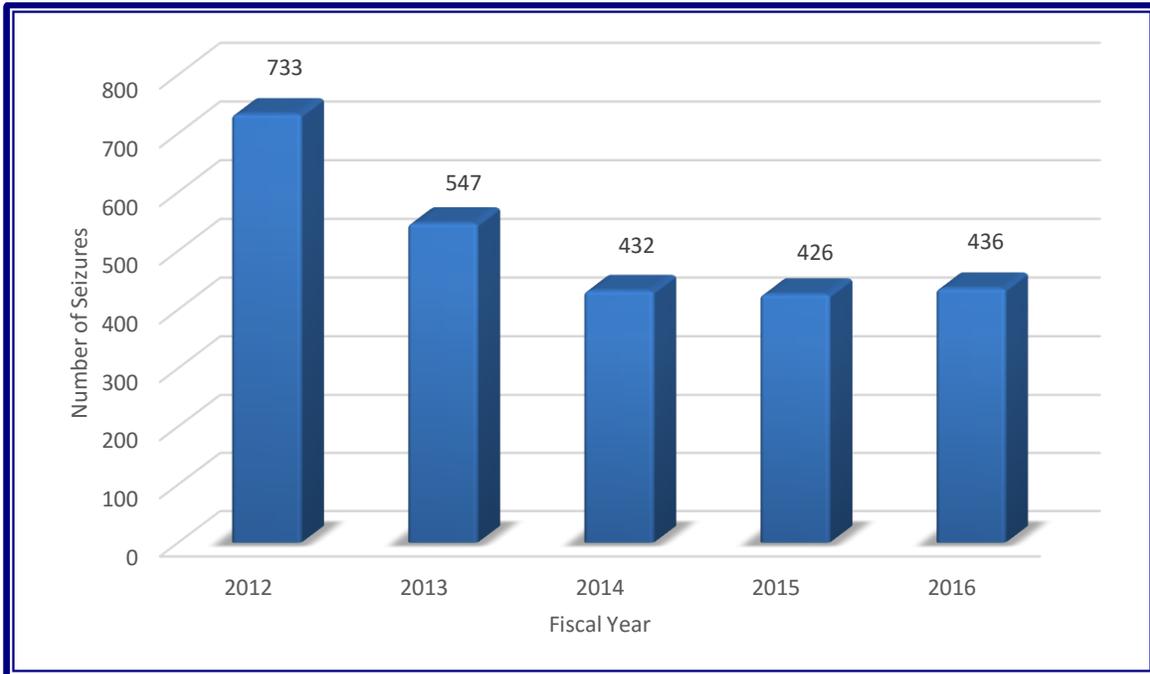
<sup>2</sup> See Appendix VII for a glossary of terms.

<sup>3</sup> Pub. L. No. 105-206, 112 Stat. 685.



## ***Fiscal Year 2017 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property***

***Figure 1: IRS Seizures by Fiscal Year***



*Source: IRS Data Books.*

This review was performed during the period October 2016 through June 2017 with information obtained from the Small Business/Self-Employed Division Headquarters in Lanham, Maryland. 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 451 seizures<sup>4</sup> that the IRS conducted from July 1, 2015, through June 30, 2016. There were potentially 60 legal and internal guidelines related to each seizure.<sup>5</sup> The IRS followed most of the procedures for 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.
- Properly applied seizure proceeds to taxpayers' accounts.

However, we found 16 instances \*\*\*\*\*1\*\*\*\*\* 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:

- Ten instances in which the sale of the seized property was not properly advertised.<sup>7</sup>
- Three instances in which the taxpayers were sent inaccurate record of sale documents.<sup>8</sup>
- \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*1\*\*\*\*.

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<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 the timing 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 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\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*.

<sup>7</sup> I.R.C. § 6335(b); IRM 5.10.4.9(1) (June 14, 2016).

<sup>8</sup> I.R.C. § 6340; IRM 5.10.6.12(2) (Apr. 19, 2013).



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- \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*.<sup>9</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: the description of the property; the date, time, and place of sale; and the payment terms.<sup>10</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>11</sup> or Form 2434-A, *Notice of Sealed Bid Sale*<sup>12</sup>) provided to the taxpayer.<sup>13</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 money order.<sup>14</sup>

We identified 10 seizures for which the newspaper advertisements 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 2016 seizure report, we noted that the IRM was updated on June 14, 2016, making the Form 2434 and Form 2434-A template payment terms consistent with Letter 5746, *Instructions to Publisher*. \*\*\*\*\*1\*\*\*\*\* so we are not making any new recommendations for this issue.

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<sup>9</sup> I.R.C. § 6335(a); IRM 5.10.3.12 (May 23, 2016).

<sup>10</sup> IRM 5.10.4.7 (May 20, 2016).

<sup>11</sup> Form 2434 contains a description of the property to be sold; the date, time, and place of sale; and payment terms.

<sup>12</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>13</sup> IRM 5.10.4.9(1) (June 14, 2016).

<sup>14</sup> IRM 5.10.4.7.3(6) (May 20, 2016).



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

I.R.C. § 6340(a) requires the IRS to keep a record of all sales of property. The record should include the delinquent 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>15</sup> The documents are: Record 21, *Record of Seizure and Sale*;<sup>16</sup> Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale*;<sup>17</sup> and Letter 3074, *Transmittal Letter Providing Balance Remaining on the Account After Application of Proceeds*.<sup>18</sup> However, for three seizures, the Records 21 sent to the taxpayers included incorrect financial information.

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

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

<sup>15</sup> IRM 5.10.6.12(2) (Apr. 19, 2013).

<sup>16</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, 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.

<sup>17</sup> Form 2434-B provides a list of all encumbrances against or interests in the seized property.

<sup>18</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>19</sup> IRM 5.10.3.12 (May 23, 2016).



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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>

We identified \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*. The error we identified does not appear to be systemic; therefore, we are not making any recommendations for this issue.

***Redemptions of Seized Property Were Inconsistent and Did Not Always Comply With the Law***

A taxpayer may redeem both seized real and personal property at any time before its sale by paying the taxes due and any expense incurred in connection with the seizure and contemplated sale. Real property, unlike personal property, may be redeemed within 180 days from the date of sale by the taxpayer, his/her heirs, executors, administrators, any person having an interest in or a lien on the property, or any person on their behalf.

For seizures that occurred during the period July 1, 2015, through June 30, 2016, taxpayers exercised their rights to redeem property after the sale on 11 occasions involving eight different seizures. We reviewed all 11 redemptions and determined:

- Interest rates were incorrectly and inconsistently calculated.
- Proper instructions were not available to taxpayers and purchasers.
- Employees did not use the Deposit Fund Account.

***Interest rates were incorrectly and inconsistently calculated***

I.R.C. § 6337(b)(2) states that a taxpayer can redeem their seized real property by directly paying the purchaser the purchase price plus 20 percent per annum. The I.R.C. also states that if the purchaser cannot be found in the county, the taxpayer can pay the IRS directly. In 1982, I.R.C. § 6622 revised the interest compounding method by requiring the 20 percent per annum interest to be compounded daily.

However, IRS forms and a publication providing information on the seizure process state that the interest on real property redemptions should be calculated at 20 percent per annum, not at

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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; 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.



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20 percent per annum compounded daily as required. The specific forms and publication with this information are:

- Form 2434, *Notice of Public Auction Sale*.
- Form 2434-A, *Notice of Sealed Bid Sale*.
- Form 2435, *Certificate of Sale of Seized Property*.
- Publication 594, *The IRS Collection Process*.

There is no information provided by the IRS to the taxpayer or purchaser that states interest should be compounded daily. The incomplete information in the IRS forms and publication could cause the purchaser to receive less than they are legally entitled, and could cause the taxpayer to lose out on the redemption since they are tendering the wrong amount if they follow the IRS's direction.

When calculating interest on redemption payments, the IRS uses Table 45 of Revenue Procedure 95-17 to calculate the daily compounded interest. However, Table 45 is not provided or readily available to the taxpayer or purchaser.

For 10 of the 11 redemptions that we reviewed, the taxpayer or their representative contacted the IRS to request the redemption payment amount. For seven of these 10 redemptions, the IRS provided incorrect interest payment information as follows.

- Four redemptions – The IRS employees calculated the interest charge using the incorrect number of days. The IRM does not provide clear instructions on what date to use when taxpayers redeem property after the sale date by providing the IRS with the check to forward to the purchaser. This omission led to inconsistent treatment of taxpayers because the number of days for which the interest was accrued depended on whether the employee used the date the payment was received by the IRS or the date that the IRS anticipated the purchaser would ultimately receive the funds.
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\*\*\*\*\*<sup>22</sup> \*\*\*\*\* 1 \*\*\*\*\*  
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<sup>22</sup> IRM 5.10.6.8(4) (Apr. 19, 2013).



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Without clear instructions in the IRM, the IRS might miscalculate the interest due as part of the redemption payment and provide the taxpayer with an incorrect redemption payment amount. Also, if the redemption amount provided by the IRS is less than what is required, it could cause the taxpayer to not have the funds to redeem the property by the deadline and lose the right to redemption.

**Proper instructions on the redemption process were not available for taxpayers and purchasers**

In June 2014, the IRS adopted the Taxpayer Bill of Rights, which includes 10 fundamental rights to provide the Nation’s taxpayers a better understanding of their rights when dealing with the agency. In December 2015, Congress codified these same rights in I.R.C. § 7803(a)(3), which requires the IRS Commissioner to ensure that IRS employees are familiar with and act in accordance with these 10 fundamental rights, including the right to be informed.

At the beginning of the seizure process, the IRS provides the taxpayer with Publication 594, *The IRS Collection Process*. This document includes that the taxpayer has 180 days from the sale date to redeem the property; however, the document does not include any information on the process for redeeming the property. Additionally, the IRS provides the purchaser with Form 2435, *Certificate of Sale of Seized Property*, when they purchase the property. This document includes the I.R.C. § 6337(b) requirements verbatim; however, it does not provide needed details on the redemption process or what the purchaser is supposed to do with the certificate of sale after they receive the redemption payment.

I.R.C. § 6338(b) provides that whenever real property is not redeemed within the 180 days, the purchaser will be issued a deed upon surrender of the certificate of sale; however, the requirement to surrender the certificate of sale is not provided in any documentation provided to the taxpayer or purchaser. Therefore, if the purchaser does not transfer the certificate of sale to the taxpayer when the redemption payment is received, the purchaser could still claim the deed to the property. Additionally, the taxpayer and purchaser are not provided with any instructions to contact the IRS upon redemption or on what information to provide the IRS about the redemption. This information is required to complete the Record 21, which includes a section to record redemption information and is maintained as part of the permanent record of the seizure.

To comply with the I.R.C. requirement to inform the taxpayer, the IRS should provide clear instructions of the redemption process to the taxpayer and the purchaser when seized property is sold. By not providing detailed instructions on the redemption process, the taxpayer and purchaser might not know that the purchaser needs to provide the certificate of sale to the



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taxpayer when the property is redeemed and they might not contact the IRS when the redemption is completed to provide the redemption details for the permanent record of the seizure. The IRS should ensure that the taxpayer and purchaser have clear instructions on the redemption process.

**Employees did not use the Deposit Fund Account**

The IRM requires that if the purchaser cannot be found in the county in which the property to be redeemed is situated or if the purchaser is evading contact with the redeeming party in order to prevent redemption, the payment may be made to the IRS office where the property is situated.<sup>23</sup> The IRM continues, stating that if the IRS receives a redemption payment and it is timely and for the correct amount, it should be identified and submitted to the Submission Processing function for deposit in the Deposit Fund Account. Expeditious action must be taken to locate the purchaser and make appropriate payment to him or her.<sup>24</sup> The Deposit Fund Account allows the IRS to ensure that the redemption funds are properly controlled, avoids additional interest to accrue on the redemption payment, and avoids a charge to mail the payment overnight.

For six of the 11 redemptions that we reviewed, the IRS handled the redemption transaction and did not use the Deposit Fund Account. For these six redemptions, the IRS instructed the taxpayer to mail the IRS a check for the redemption amount in the name of the purchaser. Since these checks were made payable to the purchaser, not the IRS, the IRS did not have the authority to deposit the checks. \*\*\*\*\*1\*\*\*\*\*  
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However, for \*\*\*\*\*1\*\*\*\*\*.  
According to the IRM, when the purchaser is in a different county, the IRS should request that the checks for the redemption payments be made payable to the IRS so the funds can be deposited to the Deposit Fund Account. After the IRS received the checks, \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*25 \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*.

The IRS maintains that the Deposit Fund Account is only used when the taxpayer remits payments to the IRS if the purchaser is not in the same county and cannot be located. However, if the funds had been deposited when required: the payments would have been properly controlled; the redemption payments would have only accrued interest to the date the funds were deposited into the account; and the IRS would not have incurred an overnight mail fee. IRS

<sup>23</sup> IRM 5.10.6.8(7) (April 19, 2013).

<sup>24</sup> IRM 5.10.6.8(8) (April 19, 2013).

<sup>25</sup> \*\*\*\*\*1\*\*\*\*\*.



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Advisory personnel should be reminded of the requirement to deposit redemption checks into the Deposit Fund Account, and managers should verify that the account is being used as required.

### ***Recommendations***

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

**Recommendation 1:** Update the IRM to provide clear direction on what date to use in calculating interest charges on seizure redemptions.

**Management's Response:** The IRS agreed with this recommendation. IRS management will provide guidance to clarify that the dates used to calculate the redemption amount should be the date(s) the purchaser made payment(s) to the IRS and the date the redeeming party made payment to the purchaser or the IRS (if the purchaser cannot be located or is taking actions to prevent redemption).

**Recommendation 2:** Update Form 2434, Form 2434-A, Form 2435, and Publication 594 to provide that redemption interest should be compounded daily and ensure that Table 45 of Revenue Procedure 95-17 is readily available to the taxpayer and the purchaser to determine the correct interest amount.

**Management's Response:** The IRS agreed with this recommendation and will add a clarifying statement on Forms 2434, 2434-A, and 2435, to document the interest should be charged at a rate of 20 percent, compounded daily. The IRS will also submit a request for this information to be added to the next revision of Publication 594 and will make Table 45 of Revenue Procedure 95-17 readily available to taxpayers and purchasers involved in redemptions of real property by adding it to the IRS.gov webpage that discusses redemptions.

**Recommendation 3:** Ensure that the taxpayer and the purchaser receive complete instructions about the redemption process.

**Management's Response:** The IRS agreed with this recommendation and will clarify the language in Forms 2434, 2434-A, 2434-B, 2435 and 2222, *Sealed Bid for Purchase of Seized Property*, with regard to redemption process. The IRS will advise the purchaser to give the certificate of sale to the redeeming party upon redemption and the redeeming party to notify the IRS that the property has been redeemed.

**Recommendation 4:** Instruct Advisory personnel to deposit redemption checks into the Deposit Fund Account when required by the IRM and ensure that managers verify employees' compliance.

**Management's Response:** The IRS agreed with this recommendation. The IRS will provide instruction to advisors involved in redemptions with regard to the requirement to use the Deposit Fund Account when the purchaser cannot be located or is taking actions to prevent redemption, by creating a toolkit for Advisory Group



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Managers to deliver in a group meeting setting. The toolkit will instruct advisors on the appropriate usage of the Deposit Fund Account in redemptions. Specialty Collection, Offers, Liens, and Advisory Territory Managers will include verification in their FY 2018 group level operational reviews of the use of the Deposit Fund Account when required by the IRM.

### **No Collection Activity Occurred During Taxpayers' Appeals Collection Due Process Hearings**

Prior to seizing a taxpayer's property, the taxpayer will generally receive a final notice – *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>26</sup> The law requires that if the taxpayer files a timely request for a Collection Due Process (CDP) hearing, levy actions on the assessments that are the subject of the CDP notice must generally be suspended during the appeal period and while any court proceedings are pending.<sup>27</sup> Additionally, the law provides that during the pendency of the CDP hearing, the running of the collection statute of limitations is suspended.

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>28</sup> After Appeals has made its determination and if the taxpayer does not agree, the taxpayer can petition the United States Tax Court and appeal the CDP determination. Generally, all collection 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, 2015, through June 30, 2016, that had a CDP hearing during FY 2014 through FY 2016. The Integrated Collection System case histories and the IRS's Integrated Data Retrieval System were reviewed 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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<sup>26</sup> IRM 5.1.9.3.1(1) and (3) (June 24, 2014).

<sup>27</sup> I.R.C. § 6330(e).

<sup>28</sup> IRM 8.22.4.2.1(1) (Nov. 5, 2013).



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***Fiscal Year 2017 Review of Compliance  
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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 and with the IRS's own internal procedures.<sup>1</sup> 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 451 seizures conducted by the IRS from July 1, 2015, through June 30, 2016. 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 451 seizures had an equal chance of being selected.
- III. Selected and reviewed a random sample of 30 seizure cases from July 1, 2015, through June 30, 2016, that had a CDP hearing during FY 2014 through FY 2016. We reviewed the sample of CDP hearing cases to determine whether the IRS complied with CDP procedures prior to seizure. We used a random sample to ensure that each of the CDP hearing cases had an equal chance of being selected.
- IV. Reviewed all 11 after-the-sale redemptions of real properties seized by the IRS from July 1, 2015, through June 30, 2016. We reviewed the redemptions to identify inconsistencies by the IRS in the redemption process.

***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 and the interest compounding requirement of I.R.C. § 6622. 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***

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)

Carl L. Aley, Director

Beverly K. Tamanaha, Audit Manager

Eugenia Smoak, Lead Auditor

Jessica Davis, Auditor



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**Appendix III**

***Report Distribution List***

Commissioner  
Office of the Commissioner – Attn: Chief of Staff  
Deputy Commissioner, 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. These benefits will be incorporated into our Semiannual Report to Congress.

***Type and Value of Outcome Measure:***

- Taxpayer Rights and Entitlements – Potential; 14 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 451 seizures conducted by the IRS from July 1, 2015, through June 30, 2016. We identified 16 instances, \*\*\*\*\*1\*\*\*\*\*, 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.

***Type and Value of Outcome Measure:***

- Taxpayer Rights and Entitlements – Potential; seven taxpayers for whom the IRS did not comply with a particular I.R.C. section or the related IRM requirement for real property seizure redemptions (see page 6).

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

We selected and reviewed all 11 seizures that involved after-the-sale real property redemptions for seizures that occurred between July 1, 2015, through June 30, 2016. We identified seven redemptions for which the IRS did not comply with a particular I.R.C. section or the related IRM requirement. Failure to adhere to legal guidelines could result in the abuse of taxpayers' rights.

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685.



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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 \$9,080 in fuel, provisions, furniture, and personal effects and \$4,540 in books and tools necessary for business purposes for Calendar Year 2015. For Calendar Year 2016, the amounts are \$9,120 for fuel, provisions, *etc.*, and \$4,560 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.

**I.R.C. § 6622** requires when computing the amount of any interest required to be paid under Title 26 or §§ 1961(c)(1) or 2411 of Title 28, United States Code, that the interest amount will be compounded daily.

**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.



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**Appendix VI**

***Prior Reports on Compliance  
With Seizure Procedures***

TIGTA, Ref. No. 2016-30-074, *Fiscal Year 2016 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (Aug. 2016).

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).



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**Appendix VII**

***Glossary of Terms***

<b>Term</b>	<b>Definition</b>
<b>Advisory</b>	Provides technical guidance to revenue officers and other personnel about Collection issues including liens and levies.
<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.



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<b>Term</b>	<b>Definition</b>
<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.
<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 07 2017

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Mary Beth Murphy   
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2017 Review of Compliance  
With Legal Guidelines When Conducting Seizures of Taxpayers'  
Property (Audit # 201730002)

Thank you for the opportunity to review the subject draft report. This year, TIGTA reviewed a random sample of 50 of the 451 seizures the IRS conducted from July 1, 2015 through June 30, 2016, reviewing our compliance with up to 60 legal and internal guidelines related to each seizure. We appreciate your acknowledgment that the IRS generally followed these 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, allowed only authorized staff to participate in the seizure and sale of the seized property, and properly applied seizure proceeds to taxpayers' accounts.

TIGTA did identify some instances in which the IRS did not comply with a particular Code section and/or the related Internal Revenue Manual (IRM) requirement. These instances made up a small number (34) of the approximate 3,000 requirements for these cases (60 requirements for each of the 50 seizures). TIGTA additionally reviewed a random sample of seizure cases from the same time period that had a Collection Due Process (CDP) hearing during fiscal year (FY) 2014 through FY 2016. TIGTA did not identify any instances of collection action being taken during the CDP hearing timeframe.

Last year TIGTA recommended that we update the advertisement publishing instructions in Letter 5746 to include that the check or money order should be payable to the United States Treasury. We have completed that corrective action. In this year's audit, TIGTA made recommendations related to the redemption process. We agree with these recommendations. We are always seeking ways to further strengthen our seizure and sale program. We appreciate TIGTA's insights in that regard. Attached is a detailed response outlining our corrective actions to address your recommendations.

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 Policy, Small Business/Self-Employed Division, should update the IRM to provide clear direction on what date to use in calculating interest charges on seizure redemptions.

**CORRECTIVE ACTION:**

We will provide guidance to clarify that the dates used to calculate the redemption amount should be the date(s) the purchaser made payment(s) to the IRS and the date the redeeming party made payment to the purchaser or the IRS (if the purchaser cannot be located or is taking actions to prevent redemption).

**IMPLEMENTATION DATE:**

May 15, 2018

**RESPONSIBLE OFFICIAL:**

Director, Small Business/Self-Employed Division (SB/SE) Collection Policy

**CORRECTIVE ACTION MONITORING PLAN:**

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

**RECOMMENDATION 2:** The Director, Collection Policy, Small Business/Self-Employed Division should update Form 2434, Form 2434-A, Form 2435, and Publication 594 to provide that the redemption interest should be compounded daily and ensure that Table 45 of Revenue Procedure 95-17 is readily available to the taxpayer and the purchaser to determine the correct interest amount.

**CORRECTIVE ACTION:**

We agree to add a clarifying statement on Forms 2434, *Notice of Public Auction Sale*, 2434-A, *Notice of Sealed Bid Sale*, and 2435, *Certificate of Sale of Seized Property*, to say that interest should be charged at a rate of 20%, compounded daily. We will also submit a request for this information to be added to the next revision of publication 594, *The IRS Collection Process*. We will make Table 45 of Revenue Procedure 95-17 readily available to taxpayers and purchasers involved in redemptions of real property by adding it to the IRS.gov webpage that discusses redemptions:  
<https://www.irs.gov/businesses/small-businesses-self-employed/redeeming-your-real-estate>

**IMPLEMENTATION DATE:**

May 15, 2018

**RESPONSIBLE OFFICIAL:**

Director, Small Business/Self-Employed Division (SB/SE) Collection Policy



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**CORRECTIVE ACTION MONITORING PLAN:**

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

**RECOMMENDATION 3:**

The Director, Collection Operations, Small Business/Self-Employed Division, should ensure that the taxpayer and the purchaser receive complete instructions about the redemption process.

**CORRECTIVE ACTION:**

We will clarify the language in Forms 2434, 2434-A, 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale*, 2435 and 2222, *Sealed Bid for Purchase of Seized Property*, with regard to redemption process by advising the purchaser to give the certificate of sale to the redeeming party upon redemption and the redeeming party to notify the IRS that the property has been redeemed.

**IMPLEMENTATION DATE:**

May 15, 2018

**RESPONSIBLE OFFICIAL:**

Director, Small Business/Self-Employed Division (SB/SE) Collection Policy

**CORRECTIVE ACTION MONITORING PLAN:**

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

**RECOMMENDATION 4:**

The Director, Collection Operations, Small Business/Self-Employed Division, should instruct Advisory personnel to deposit redemption checks into the Deposit Fund Account when required by the IRM and ensure that managers verify employees' compliance.

**CORRECTIVE ACTION:**

We will provide instruction to advisors involved in redemptions with regard to the requirement to use the Deposit Fund Account when the purchaser cannot be located or is taking actions to prevent redemption, by creating a toolkit for Advisory Group Managers to deliver in a group meeting setting. The toolkit will instruct advisors on the appropriate usage of the Deposit Fund Account in redemptions. Specialty Collection, Offers, Liens, and Advisory (SOLA) Territory Managers will include verification in their FY2018 group level operational reviews of the use of the Deposit Fund Account when required by the IRM.



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**IMPLEMENTATION DATE:**

August 15, 2018

**RESPONSIBLE OFFICIAL(S):**

Director, Small Business/Self-Employed Division (SB/SE) Collection Policy  
Director, Specialty Collection, Offers, Liens, and Advisory

**CORRECTIVE ACTION MONITORING PLAN:**

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