

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## **Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property**

September 9, 2020

Reference Number: 2020-30-058

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**Redaction Legend:**

1 = Tax Return/Return Information

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# HIGHLIGHTS: Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property



Final Audit Report issued on September 9, 2020  
Reference Number 2020-30-058

## Why TIGTA Did This Audit

Internal Revenue Code (I.R.C.) Section (§) 7803(d)(1)(A)(iv) requires TIGTA to annually evaluate the IRS's compliance with legal seizure provisions. The overall objective of this review was to determine whether seizures of property 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.

## 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 I.R.C. §§ 6330 through 6344. These provisions govern many aspects of the seizure process, from notification of the taxpayer through sale or redemption of the property.

## What TIGTA Found

For this audit, TIGTA reviewed more cases than in any previous review, 205 (60 percent) of the 342 seizures the IRS conducted from July 1, 2018, through June 30, 2019. TIGTA identified instances in which the IRS did not comply with a particular I.R.C. section or internal procedure and identified IRS procedures that are problematic and result in potentially unfair outcomes.

I.R.C. § 6343 requires the IRS to release any levy that is causing an economic hardship. Yet, at times, the IRS seizes property, including personal residences, when the taxpayer appears to be already suffering an economic hardship. Additionally, internal guidelines applicable to installment agreements require Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*, when a balance due exceeds \$50,000. Installment agreement requests will be recommended for rejection when the taxpayer has equity in property that can fully pay or make a substantial payment towards the liability.

The decision of whether to seize property takes into consideration a number of different factors, including whether the taxpayer is deemed a "will pay," "won't pay," or "can't pay" taxpayer. The IRS states that it will not seize the property of "can't pay" or "will pay" taxpayers and will be more likely to seize the property of "won't pay" taxpayers, including taxpayers who have equity in assets but who cannot or will not borrow against the equity. For 18 cases in which taxpayer property was ultimately seized, taxpayers or their representatives discussed with the revenue officer whether an installment agreement was feasible; however, in each case, the revenue officer would not consider the request because the taxpayer had equity in assets. For 11 cases, there were facts present indicating the taxpayers may have been experiencing economic hardship; however, the taxpayers were deemed "won't pay" taxpayers due to the existence of equity in assets, some of which involved residences.

## What TIGTA Recommended

TIGTA recommended that the IRS: 1) emphasize procedures that require completion of pre-seizure checklist items and analysis prior to seizure, 2) document discussions about the identification of encumbrances, 3) ensure that the proceeds from cases identified in this report are applied to taxpayer accounts immediately, 4) emphasize procedures to ensure that the Notice of Sale is issued timely from the date of the Notice of Seizure, and 5) do not seize personal residences of taxpayers who appear to be suffering an economic hardship and allow more discretion for employees to avoid seizures for taxpayers who might benefit from an installment agreement. The IRS agreed with Recommendations 1, 3, and 4 but disagreed with Recommendations 2 and 5.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**U.S. DEPARTMENT OF THE TREASURY**

**WASHINGTON, D.C. 20220**

September 9, 2020

**MEMORANDUM FOR:** COMMISSIONER OF INTERNAL REVENUE

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

**SUBJECT:** Final Audit Report – Fiscal Year 2020 Review of Compliance  
With Legal Guidelines When Conducting Seizures of Taxpayers'  
Property (Audit # 201930024)

This report presents the results of our review to determine whether seizures were conducted in accordance with Internal Revenue Code Sections 6330 through 6344 and Internal Revenue Service procedures. This review is part of our Fiscal Year 2020 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights*.

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

Copies of this report are also being sent to the Internal Revenue Service 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).



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

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## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

### 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, Field Collection, or Collection Queue.<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. The IRS's Property Appraisal and Liquidation Specialists sell seized property by public auction or by public sale under sealed bids.

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 govern many aspects of the seizure process, from notification of the taxpayer through sale or redemption of the property. For example, a taxpayer's principal residence cannot be seized without a court order.<sup>4</sup> Additionally, seizures are not permitted if estimated expenses related to the sale exceed the fair market value of the property at the time of the seizure.<sup>5</sup>

**A taxpayer's principal residence cannot be seized without a court order.**

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 the legal seizure in I.R.C. §§ 6330 through 6344.<sup>6</sup>

Figure 1 shows the number of seizures conducted by the IRS from Fiscal Year (FY) 2012 to FY 2019. With the exception of a small increase in FY 2016, the number of seizures the IRS conducted continued to diminish from 733 in FY 2012 to 228 in FY 2019. During this period, the number of seizures decreased by 69 percent.

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

<sup>2</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 I.R.C. § 6330, as well as upon the first Notice of a Federal 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 (Feb. 7, 2014).

<sup>3</sup> Pub. L. No. 105-206, 112 Stat.687.

<sup>4</sup> I.R.C. § 6334(e)(1)(A).

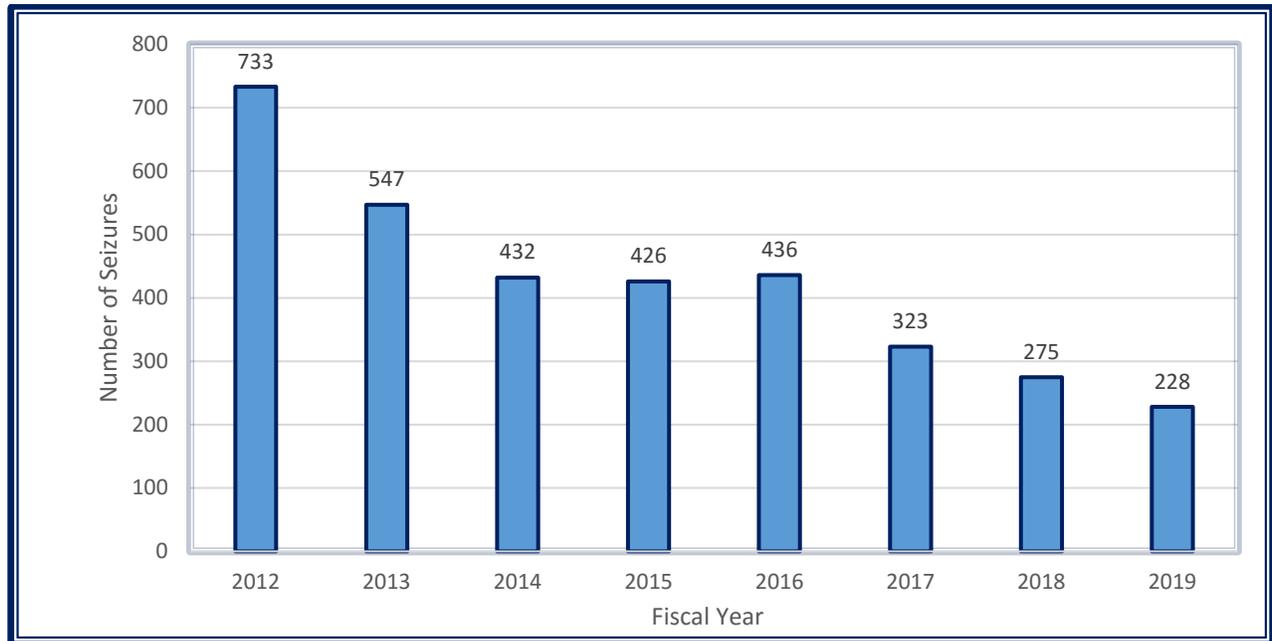
<sup>5</sup> I.R.C. § 6331(f).

<sup>6</sup> See Appendix IV for the list of the five prior TIGTA reports on compliance with seizure procedures.



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

Figure 1: IRS Seizures by Fiscal Year



Source: IRS Data Books 2012 through 2018 and Collection Activity Report 2019.

## Results of Review

### Most of the Seizures Conducted Involved Real Property and Varied Geographically

During the period July 1, 2018, through June 30, 2019, the IRS conducted 342 seizures against taxpayers with unpaid liabilities.<sup>7</sup> The 342 seizures correspond to the number of distinct properties that were seized; however, as we subsequently describe, the IRS Collection Areas account for the number of seizures differently, some Areas counting each property separately and other Areas counting multiple properties of the same taxpayer as a single seizure. Accordingly, the IRS Collection Areas' count of seizures was 243 for this same period. We analyzed the population of distinct property seizures to identify any common characteristics or trends. Figure 2 shows that many seizures involved real property, and the majority of them were classified as "other" real property, which is real property other than a taxpayer's primary or personal residences.

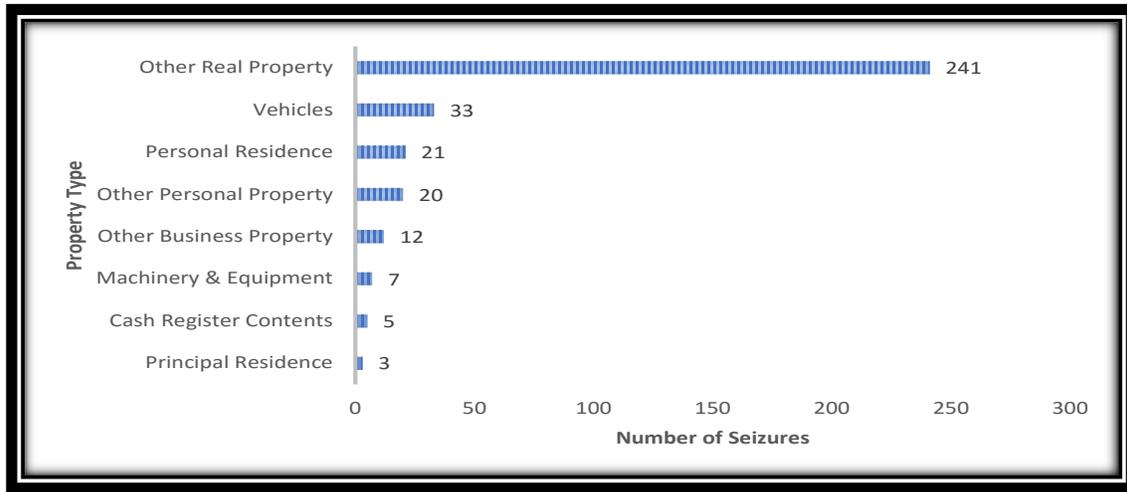
**Many seizures involved real property, and the majority of them were classified as "other" real property, which is real property other than a taxpayer's primary or personal residences.**

<sup>7</sup> This number differs from numbers in Figure 1 because the IRS reports by fiscal year. We analyzed a 12-month period that spanned across parts of two fiscal years.



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

**Figure 2: Seizures by Property Type From July 1, 2018, Through June 30, 2019**



Source: TIGTA analysis of IRS seizure logs.<sup>8</sup>

After “other” real property, the next most common seizures involved vehicles, personal residences, and other personal property. Figure 3 shows the number of seizures conducted by each of the Small Business/Self-Employed Division’s six Collection Area Offices.<sup>9</sup>

**Figure 3: Seizures by IRS Area Office From July 1, 2018, Through June 30, 2019**

Collection Area	Number of Seizures	Percentage of Total
Central	30	12%
Gulf States	71	29%
North Atlantic	35	15%
Northwest	55	23%
South Atlantic	32	13%
Southwest	20	8%
<b>Nation</b>	<b>243</b>	<b>100%</b>

Source: TIGTA analysis of IRS seizure logs.<sup>10</sup>

<sup>8</sup> Internal Revenue Manual Exhibit 5.10.2-1 (Aug. 18, 2017) defines principal residence as the primary dwelling of the taxpayer and the taxpayer’s spouse, former spouse, and minor children. A personal residence is defined as the primary residence of someone other than the taxpayer and the taxpayer’s spouse, former spouse, and minor children.

<sup>9</sup> In October 2017, the Midwest and Western Areas disbanded. The States in the Midwest Area became part of the Gulf States Area, Central Area, and newly established Northwest Area. The States in the Western Area became part of the Southwest Area and the newly established Northwest Area.

<sup>10</sup> The number of distinct property seizures reported on the seizure logs is 342; however, the number of seizures as reported by IRS Collection Area Offices is 243. The variance is due to the fact that Area Offices record multiple property seizures differently, as either one entry for all property or one entry for each piece of property included in the seizure. We used the 243 seizures to determine the number of seizures by Area Office.



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The Gulf States Area Office had the largest number of seizures, with 71 (29 percent), followed by the Northwest Area Office, with 55 (23 percent) seizures. With 20 (8 percent) seizures, the Southwest Area Office conducted the fewest number.

### Seizure Procedures and Internal Controls Were Not Always Followed

To determine the IRS's compliance with seizure procedures and guidelines, we reviewed a judgmental sample of 205 of the 342 seizures that the IRS conducted from July 1, 2018, through June 30, 2019.<sup>11</sup> The judgmental sample of 205 seizures consisted of four principal residences, 64 personal or other residences, 29 business properties, 61 parcels of land, 32 vehicles and other personal property, 12 seizures that included cash, liquor licenses, and Treasury Checks, and three involving machinery and equipment. We noted differences between property descriptions reported in the seizure log and in the seizure case files that we reviewed. Specifically, the seizure log reported \*\*1\*\* principal residence seizures. However, we determined that the IRS erroneously coded \*\*\*\*\*1\*\*\*\*\* principal residence seizures on the seizure log. Accordingly, the IRS seized five principal residence (not three) during the 12-month period ending June 30, 2019.

The balance due amounts for taxpayers at the time of the seizure for the tax modules included on the seizure ranged from more than \$16,000,000 to approximately \$6,000, with an average balance due of \$621,889. Our review of the 205 seizures identified the following instances in which the IRS did not comply with a particular I.R.C. or Internal Revenue Manual (IRM) requirement:

- 14 cases - the revenue officers did not perform a proper Master File research prior to seizure.
- Five cases - the revenue officers did not timely document or provide notices to taxpayers or third parties.
- \*\*\*\*\*1\*\*\*\*\*
- \*\*\*\*\*1\*\*\*\*\*
- \*\*\*\*\*1\*\*\*\*\*
- \*\*\*\*\*1\*\*\*\*\*
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- \*\*\*\*\*1\*\*\*\*\*

### **Revenue officers did not always perform a proper Master File research prior to seizure**

I.R.C. § 6331(k) requires that no levy may be made on any property or right to property of any person with respect to any unpaid tax during the period that an offer in compromise by such person under § 7122 or installment agreement under § 6159 of such unpaid tax is pending. In

<sup>11</sup> TIGTA reviewed more cases than in any previous review, 205 of the 342 seizures (approximately 60 percent of cases). A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



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addition, IRM 5.10.1.3 provides that prior to conducting a seizure, the revenue officer must review the list of prohibited seizures as listed on Form 13719, *Pre-Seizure Checklist and Approval Request*, to ensure that the case does not meet any of these conditions. Prior to submission for approval, Form 13719 should be documented to reflect that the revenue officer reviewed the list of prohibited seizures and that no prohibition against seizure exists. Accordingly, the revenue officer is required to ensure that there is no offer in compromise pending, under Appeal, or rejected within the last 30 days. \*\*\*\*\*1\*\*\*\*\*

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I.R.C. § 6331(j)(2)(D) requires that no seizure be made on any property or right to property which is to be sold under I.R.C. § 6335 until, per IRC 6331(j)(2)(A), a thorough investigation of the status of the property has been completed, including verification of the taxpayer's liability. An investigation of the status of any property shall include a verification of the taxpayer's liability. IRM 5.10.3.3(2) requires the revenue officer to check the Integrated Data Retrieval System prior to conducting the seizure to confirm that there have been no changes to the status of the taxpayer's account, such as bankruptcy filings, adjustments, or credits that would cause the seizure action to no longer be allowable or warranted. For another three cases, there was insufficient documented evidence that the research was performed in a reasonable time frame to capture changes that could have occurred days prior to seizure. For example, \*\*\*\*\*1\*\*\*\*\*

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In all three cases, we do not believe these are reasonable time frames as taxpayers' financial conditions can immediately change.

### **Revenue officers did not always timely document or provide notices to taxpayers and third parties**

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

I.R.C. § 6340(c) requires that the taxpayer be furnished the record of sale under subsection (a) (other than the names of the purchasers).

When property is sold to the highest bidder or declared purchased for the United States, the IRS is required to prepare Record 21, *Record of Seizure and Sale*, and provide the document to the taxpayer. IRM 5.10.6.12 includes Record 21 as one of three documents that must be retained in the permanent record and provided to the taxpayer after the 180-day redemption period for real property. However, three cases that we reviewed lacked evidence that this document was sent to the taxpayer after the 180-day period. For example, \*\*\*\*\*1\*\*\*\*\*

\*\*\*\*\*1\*\*\*\*\*  
\*\*\*1\*\*\* was not provided all of the information from the seizure and sale that is required under



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the statute. IRS officials stated that it allowed assigned staff more time to resolve these cases, which delayed the records sent to taxpayers.

**Management Action:** \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
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In addition, I.R.C. § 6338(a) provides that the certificate of sale be given to a purchaser for property sold upon payment in full of the purchase price. \*\*\*\*\*1\*\*\*\*\*  
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Lastly, I.R.C. § 6343 calls for the return of property to the taxpayer when various conditions are met that cause a seizure to be released. These conditions include full payment of the liability, determination of a wrongful seizure, and a levy that creates an economic hardship based on the taxpayer's financial condition. \*\*\*\*\*1\*\*\*\*\*  
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### Seizures would not have occurred if accurate encumbrance analyses had occurred

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 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. IRM 5.10.1.5.3.3 requires a records check to verify the taxpayer's interest in the property and to identify any encumbrances against the property no more than 90 calendar days prior to submission for the group manager's approval. Besides determining the fair market value of assets, the revenue officer is required to conduct a records search to verify ownership and identify all recorded encumbrances against the property. In addition, after a seizure and before a sale, a current records check must be completed and Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale*, must be updated if the most recent records check is 90 calendar days or more prior to the sale date.

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\*\*\*\*\*1\*\*\*\*\* We included recommendations in our FY 2018 report to ensure that there is documentation of the revenue officer's actions with respect to property valuation and to identify encumbrances.<sup>12</sup> The IRS partially agreed with the recommendations, indicating that there is already IRM guidance for these discussions; however, the IRS proposed to issue memorandums

<sup>12</sup> TIGTA, Ref. No. 2018-30-067, *Fiscal Year 2018 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* pp. 7-8 (Sept. 2018).





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4. Intervening liens in the order of their priority when there are several outstanding liens.
5. To the taxpayer, unless another person establishes a superior claim to any surplus proceeds.

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**Management Action:** \*\*\*\*\*1\*\*\*\*\*  
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### Property Appraisal and Liquidation Specialists did not adequately document the method used to assign values to the inventory of seized assets

Pursuant to IRM 5.10.3.13.(1), the revenue officer will prepare Form 2433, *Notice of Seizure*, as soon as possible for all cases in which property has been seized. The items seized should be described and identified with reasonable certainty in an inventory listed on the form or in an attachment to it. The actual inventory values must be included on the Supplemental Form 2433.

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 \*\*\*\*\*1\*\*\*\*\* Because we only identified \*\*\*\*\*1\*\*\*\*\* of this procedure not being followed, we are not making a recommendation at this time.

### Revenue officers did not document a calculation of the taxpayer's ability to pay the tax liability prior to conducting the seizure

IRMs 5.15.1.2 and 5.15.1.3(1) state that the analysis of a taxpayer's financial condition provides a basis to make one or more of the following decisions:

- Initiate enforcement action if assets are available to pay the liability and the taxpayer is unwilling to voluntarily convert assets to cash.

<sup>16</sup> A major IRS information management system designed to improve revenue collections by providing electronic case processing to Small Business/Self-Employed Division revenue officers, their managers, and support staff. Property Appraisal and Liquidation Specialists are Small Business/Self-Employed Division personnel responsible for conducting and coordinating all auction sale activities.



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- Analyze the income and expenses to determine the amount of disposable income (gross income less all allowable expenses) available to apply to the tax liability.

IRS guidance states that the Collection function will use Integrated Collection System history functionality to record case actions and decisions, and it is extremely important that Integrated Collection System history entries be clear, accurate, concise, complete, and timely. These entries should be made in chronological order and recorded the day the action occurs or as soon as practical thereafter. Guidance also states that items such as a resolution plan, action expected of taxpayers, target dates established, taxpayer compliance, enforcement actions, financial analysis, *etc.*, should be included as part of the Integrated Collection System history. \*\*\*1\*\*\*

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\*\*\*\*\*1\*\*\*\*\* Because we only identified a \*\*\*\*\*1\*\*\*\*\* of this procedure not being followed, we are not making a recommendation at this time.

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

**Recommendation 1:** Through training or guidance, emphasize procedures that require revenue officers to (a) complete pre-seizure checklist items, specifically the determination whether a taxpayer has an offer in compromise or installment agreement pending, and (b) check the Integrated Data Retrieval System prior to conducting a seizure to confirm that there have been no changes to the status of the taxpayer's account.

**Management's Response:** IRS management agreed with the recommendation and will develop and coordinate distribution of an executive communication emphasizing the IRM procedures outlined on the pre-seizure checklist, including prohibited seizures and the IRM requirement to check the Integrated Data Retrieval System prior to conducting the seizure to ensure that there have been no changes to the account that would prohibit seizure.

**Recommendation 2:** Ensure that revenue officers include detailed documentation of their discussions with the Property Appraisal and Liquidation Specialists function about the identification of encumbrances.

**Management's Response:** IRS management disagreed with the recommendation. In its response, the IRS stated that the requirement to discuss encumbrance information with the Property Appraisal and Liquidation Specialists function prior to seizure is already part of the pre-seizure checklist (Line 17) and process, and the errors tied to this recommendation took place prior to the issuance of an e-mail communication reinforcing the guidance relating to this topic; therefore, further action to address this issue is not warranted.

**Office of Audit Comment:** The e-mail communication referenced by IRS management in their response does not address our recommendation. Our concern pertains to the absence of detailed documentation of revenue officer discussions with the Property Appraisal and Liquidation Specialists function about the identification of encumbrances. Requiring detailed documentation of these discussion would ensure that revenue officers hold discussions with the



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Property Appraisal and Liquidation Specialists about the identification of encumbrances prior to seizure.

**Recommendation 3:** Take appropriate action to ensure that the proceeds from cases identified in this report are applied to the taxpayers' accounts immediately.

**Management's Response:** IRS management agreed with the recommendation \*\*\*1\*\*\*  
\*\*\*\*\*1\*\*\*\*\*

**Recommendation 4:** Through training or guidance, remind employees of their responsibilities as included in IRM 5.10.4.8 to ensure that a Notice of Sale is issued within 90 days (for personal property) or 180 days (for real property) from the date of a Notice of Seizure.

**Management's Response:** IRS management agreed with the recommendation and will develop and coordinate distribution of an executive communication emphasizing the IRM procedures outlined on the issuance of the Notice of Sale within 90 days (for personal property) or 180 days (for real property) from the date of the Notice of Seizure.

### Collection Procedures Sometimes Result in Property Seizures From Taxpayers Experiencing Economic Hardships and Other Taxpayers Who Had Requested Installment Agreements

The law guarantees taxpayers the right to an installment agreement when certain criteria have been met including (i) the balance due does not exceed \$10,000 and (ii) taxpayers are otherwise in filing and payment compliance.<sup>17</sup> Through its administrative procedures, the IRS established processes for taxpayers to obtain so-called streamlined installment agreements for any balance due not exceeding \$50,000, subject to certain limitations.<sup>18</sup> For example, the procedures limit the types of taxpayers who qualify for the \$50,000 agreement to individual taxpayers and out-of-business sole proprietors. Businesses only qualify for installment agreements up to \$25,000.<sup>19</sup>

The procedures applicable to installment agreements require a Form 433-A, *Collection Information Statement for Wage Earners and Self Employed Individuals*, to be completed and the revenue officer must review for equity in assets for requests above these amounts, and state that installment agreement requests will be recommended for rejection when the taxpayer has equity in property that can fully pay the liability or make a substantial payment towards the liability.<sup>20</sup>

The decision of whether to seize property takes into consideration a number of different factors, including whether the taxpayer is deemed a "will pay," "won't pay," or "can't pay" taxpayer.<sup>21</sup> The IRS will not seize the property of "can't pay" taxpayers or "will pay" taxpayers and will be more likely to seize the property of "won't pay" taxpayers, including taxpayers who have equity in assets but who cannot or will not borrow against the equity. Taxpayers who want to enter into an installment agreement are deemed "won't pay" taxpayers if they have equity in assets.

<sup>17</sup> I.R.C. § 6159(c).

<sup>18</sup> IRM Exhibit 5.14.1-5 (July 16, 2018).

<sup>19</sup> IRM Exhibit 5.14.1-5 (July 16, 2018).

<sup>20</sup> IRM 5.14.1.4 (Sept. 19, 2014).

<sup>21</sup> IRM 5.10.1.4 (May 20, 2016).



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Taxpayers who would otherwise qualify for “Currently Not Collectible” status as a “can’t pay” taxpayer will be considered a “won’t pay” taxpayer if they have equity in assets. The criteria for these taxpayers can lead to problematic outcomes, such as when a taxpayer wants to resolve the liability with an installment agreement but is deemed a “won’t pay” taxpayer because of the existence of equity in an asset (such as undeveloped property or a residence)—even when the taxpayer has represented that he or she attempted to secure a loan on the equity and was denied.

For 18 cases in which taxpayer property was ultimately seized, taxpayers or their representatives discussed with the revenue officer whether an installment agreement was feasible; however, in each case, the revenue officer would not consider the request because the taxpayer had equity in assets.

In 11 cases, there were facts present indicating that the taxpayers may have been experiencing economic hardship, but they were deemed “won’t pay” taxpayers due to the existence of equity in assets. Three of them had their personal residence seized.

In addition, we reviewed the revenue officers’ case notes, which document the revenue officers’ observations and findings. In 11 cases, we found that the revenue officers’ case notes were consistent with our conclusion that the taxpayers were either already unable to meet basic living expenses or that the seizure would cause them to be unable to meet basic living expenses. For example, observations from the revenue officers in these cases included notations similar to the following:

- \*\*\*\*\*1\*\*\*\*\*
- \*\*\*\*\*1\*\*\*\*\*
- *Collection Information Statements that showed no ability to pay.*
- *Allowable living expenses that exceeded verified income.*

Despite these and other similar observations, revenue officers working these cases seized the taxpayers’ property. As a result, we believe that levying these taxpayers likely created or exacerbated existing economic hardships.

As we wrote in last year’s report, the law requires that the IRS must release a levy if it is causing an economic hardship, *i.e.*, if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses.<sup>22</sup> A levy can be the garnishment of wages, in which case the employer remits wages to the IRS; it can be the attachment of a bank account, in which case the bank remits the account contents to the IRS; or it can be the seizure of an asset, such as land or personal property, in which case the IRS follows a process whereby it seizes the property and sells it to pay off or contribute to the tax debt. Because of the law’s prohibition on levies that cause an economic hardship, we again asked the IRS why its procedures allow for the seizure of property from taxpayers who appear to be already experiencing an economic hardship.

<sup>22</sup> I.R.C. § 6343(a)(1)(D).



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

These revenue officers were acting in a manner that is consistent with IRS guidance. However, the guidance led to seizures in the cases of 18 taxpayers who had expressed a willingness to pay through installment agreements, and 11 appeared to be experiencing an economic hardship, which is contrary at least to the spirit of I.R.C. § 6343.

With so many delinquent balance due accounts and so few property seizures, it is difficult to reconcile IRS seizures of personal residences and other property of taxpayers who appear to be experiencing economic hardships (who are "can't pay" taxpayers) and other taxpayers who want to enter into installment agreements (who are "will pay" taxpayers). The IRS should not constrain revenue officers from options other than seizure in these cases when taxpayers own some equity in assets.

**Recommendation 5:** The Director, Collection, Small Business/Self-Employed Division, should issue IRM guidance consistent with the following: (i) revenue officers should avoid principal residence seizures from taxpayers who appear to be experiencing economic hardships and (ii) revenue officers should have more discretion to avoid seizures for cases in which taxpayers are already experiencing economic hardships and have *de minimis* equity in other property and for cases in which taxpayers with some equity in assets are seeking installment agreements above the streamlined procedure amount and (based on compliance history and other factors) may be able and willing to make a good faith effort to comply with the terms of an installment agreement to avoid seizure of assets.

**Management's Response:** IRS management disagreed with the recommendation. In their response, the IRS stated that the IRM already provides employees with the necessary guidance and discretion to appropriately handle unusual situations and situations in which taxpayers are experiencing an economic hardship. In order to effectively administer the tax code, IRS management said that the IRS must have an ability to address valuable assets with equity through seizure (including a principal residence when appropriate) when a taxpayer has an unresolved tax liability. A tax system based on voluntary assessment would not be viable without enforcement programs to ensure compliance.

The IRS stated that economic hardship considerations are already included as part of the seizure determination process. Before initiating a seizure of property, revenue officers must first explore alternative methods of resolution. Those alternatives include voluntary payment, voluntarily selling or borrowing against an asset, and considering an installment payment arrangement. Existing guidance and IRS policy for installment agreements are sufficient to address the consideration of equity in assets in the context of an installment agreement. They provide revenue officers sufficient discretion and flexibility [where special circumstances or economic hardship exists to consider an installment agreement to resolve the case]. That guidance also provides, "It is not appropriate to ask a taxpayer to liquidate or borrow against an asset if doing so will create an economic hardship for the taxpayer" (IRM 5.14.1.4(5)). Installment agreements are not appropriate in every case.

The IRS asserts that a financial analysis indicating the taxpayer has no ability to make a monthly payment on their tax liability is not necessarily an indicator of economic hardship or that collection from other assets would result in a hardship; it means that the taxpayer's monthly income is at or below the standard amounts used in the IRS's financial analysis calculation. IRS management stated that they reviewed the cases in the



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

sample and determined that the seizure actions did not create an economic hardship in any of them.

**Office of Audit Comment:** IRS procedures for seizures divide taxpayers into three categories: "will pay" taxpayers, "can't pay" taxpayers, and "won't pay" taxpayers. The IRS will not seize property on "will pay" or "can't pay" taxpayers but is inclined to seize the property of "won't pay" taxpayers. IRS procedures turn these standards upside down when there is the presence of equity in assets in two situations: where taxpayers appear to be experiencing an economic hardship but possess some equity in assets and where taxpayers are seeking an installment agreement above the streamlined threshold of \$50,000 but possess some equity in assets. In these situations, the IRS labels taxpayers who can't pay as "won't pay" simply because they have some equity in an asset (such as a personal residence), and the IRS labels taxpayers who want an installment agreement, *i.e.*, they want to pay, as "won't pay" taxpayers because of equity in assets.

Again this year, we observed taxpayers who appear to be experiencing an economic hardship who had their homes taken from them because there was some equity in the personal residence. The IRS will not agree that there is an economic hardship unless the taxpayer is able to complete a personal financial statement (Form 433-A) and the IRS agrees with all of the information on the form. The IRS will not allow revenue officers to infer economic hardship for themselves from circumstances they observe, *e.g.*, in which the taxpayer is out of work, unable to afford medicine, or living in depressed economic circumstances. This year we also observed numerous taxpayers who wanted an installment agreement but were declined that opportunity because IRS procedures advise that installment agreements with balances due above certain thresholds should be rejected where there is equity in assets.

The IRS and TIGTA discussed a potential change to the IRM that would help prevent taxpayers who are experiencing an economic hardship from losing their homes. IRS officials indicated that they were inclined to adopt this change. However, in its official response, the IRS refused to make this simple change to protect taxpayers from losing their homes.

### The IRS Did Not Seize Assets During the Collection Due Process Period

I.R.C. § 6330 authorizes the IRS to seize a taxpayer's property for unpaid tax only after sending the taxpayer a Letter 1058 (which provides taxpayers the opportunity to exercise their Collection Due Process (CDP) rights of appeal) and the expiration of CDP rights.<sup>23</sup> In Fiscal Year 2020, we did not find evidence that the IRS seized taxpayers' property in violation of I.R.C. § 6330. If a taxpayer does not pay overdue taxes, make other arrangements to satisfy the tax debt, or request a hearing within 30 calendar days of the date of the notice, the IRS may seize the taxpayer's property.<sup>24</sup> The law requires that, if the taxpayer files a timely request for a CDP hearing, collection actions on the assessments that are the subject of the CDP notice must

<sup>23</sup> IRS Letter 1058 – *Final Notice Reply Within 30 Days*.

<sup>24</sup> IRM 5.1.9.3.1(1) and (3) (June 24, 2014).



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

generally be suspended during the appeal period and while any court proceedings are pending.<sup>25</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>26</sup> After Appeals has made its determination, and if the taxpayer disagrees, the taxpayer can petition the U.S. 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.

If the taxpayer did not timely request a CDP hearing with Appeals, the taxpayer may be entitled to an "equivalent hearing" with Appeals, but only if specifically requested. An equivalent hearing is equivalent to a CDP hearing in all ways except that there is no statute suspension and no retained jurisdiction, and the taxpayer does not have the right to seek judicial review of Appeals' decision at the conclusion of the hearing.<sup>27</sup>

We evaluated the IRS's compliance with CDP and equivalent hearing procedures prior to the seizure by reviewing a random sample of 57 seizure cases conducted from July 1, 2018, through June 30, 2019, that had an Appeals CDP hearing request or an equivalent hearing.<sup>28</sup> We reviewed the 57 CDP and equivalent hearing tax modules for taxpayers with a seizure, and we did not identify any collection activity for the tax modules affected by the taxpayer's CDP between the equivalent hearing request date and the date the appeal was closed.

### The IRS Appropriately Conducted Seizures During the People First Initiative

In response to the economic impacts of the COVID-19 virus on taxpayers, the IRS initiated the People First Initiative. This initiative provides relief to taxpayers by suspending most collection activities during the period of April 1, 2020, through July 15, 2020, unless:

- There is a risk of permanent loss to the Government due to the expiration of a statute or other exigent circumstance, or
- The taxpayer has agreed to an action.<sup>29</sup>

Suspended collection actions include seizures, and revenue officers were advised on March 30, 2020, absent exigent circumstances and executive approval, not to schedule or take seizure action during this suspension period. The IRS conducted three seizures during this suspension period; however, in all three cases, the seizure was appropriate to protect the Government's interest in collection of significant delinquent amounts due.<sup>30</sup>

<sup>25</sup> I.R.C. § 6330(e).

<sup>26</sup> IRM 8.22.4.2.1(1) (Nov. 5, 2013).

<sup>27</sup> IRM 5.19.8.4.3 (Nov. 1, 2007).

<sup>28</sup> The sample was selected from a population of 283 Appeals CDP hearing requests or equivalent hearing cases.

<sup>29</sup> Small Business/Self-Employed Division Memorandum for all Collection Executives, *Temporary Relief for Taxpayers – Suspension of Certain Collection Activities During the COVID-19 Pandemic*, Issued March 30, 2020.

<sup>30</sup> Seizures conducted on April 3, April 17, and May 1, 2020.



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

# Appendix I

## Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine whether seizures were conducted in accordance with the I.R.C. and IRS procedures. To accomplish the objective, we:

- Identified current IRS procedures and guidelines used by Small Business/Self-Employed Division employees during the audit period for achieving compliance with I.R.C. §§ 6330 through 6344.<sup>1</sup> Also, we followed up on prior TIGTA report recommendations for achieving compliance with seizure requirements.
- Evaluated the IRS's compliance with the seizure procedures of I.R.C. §§ 6330 through 6344 and its internal procedures through reviewing a judgmental sample<sup>2</sup> of 205 of the 342 seizures conducted from July 1, 2018, through June 30, 2019.
- Evaluated the IRS's compliance with CDP and equivalent hearing procedures prior to the seizure by reviewing a random sample of 57 seizure cases conducted from July 1, 2018, through June 30, 2019, that had a previous Appeals CDP hearing request or an equivalent hearing (I.R.C. § 6330). We identified the entire population using TIGTA's Data Center Warehouse and reviewed the sampled cases using the IRS's Integrated Data Retrieval System and Appeals Centralized Database System information to determine if the seizure occurred during the open CDP.

### Performance of This Review

This review was performed with information obtained from the offices of the Small Business/Self-Employed Division Headquarters located in Lanham, Maryland, and at Small Business/Self-Employed Division Field Collection offices in Little Rock, Arkansas, and Knoxville, Tennessee, during the period September 2019 through June 2020. 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.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Christina Dreyer, Director; Tim Greiner, Audit Manager; Jamelle Pruden, Lead Auditor; and Victor Taylor, Senior Auditor.

### Validity and Reliability of Data From Computer-Based Systems

During this review, we relied on Appeals data located on the Data Center Warehouse. Before relying on this data, we ensured that the file contained the specific data elements we requested. We tested a randomly selected sample for the Appeals database and verified relevant data fields

<sup>1</sup> See Appendix III for additional details on I.R.C. requirements related to IRS seizures.

<sup>2</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



## **Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property**

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recorded against the IRS Master File using the Integrated Data Retrieval System. We determined that the data were sufficiently reliable for purposes of this audit.

### **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 that 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 and completed a review of seizure case files.



## Appendix II

### Outcome Measures

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

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

- Taxpayer Rights and Entitlements – Potential; 19 taxpayers for whom the IRS did not comply with a particular I.R.C. section, IRM requirement, or did not exhibit due diligence to ensure that the seizure was appropriate when conducting seizures (see Recommendations 1, 2, and 4).

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

We reviewed a judgmental sample of 205 seizures from the 342 seizures that the IRS conducted from July 1, 2018, through June 30, 2019. We identified 19 seizures for which the IRS did not comply with a particular I.R.C. section, IRM requirement, or did not exhibit due diligence to ensure that the seizure was appropriate.

**Management's Response:** In their response, IRS management acknowledged that 19 cases cited reflected failure to follow IRM procedures but did not agree that the any of these cases were violations of the I.R.C.

**Office of Audit Comment:** \*\*1\*\* of the 19 cases involved encumbrance reviews and were in violation of I.R.C. § 6331, pertaining to seized assets to be sold pursuant to I.R.C. § 6335. Specifically, these \*1\* seizures would not have occurred if a thorough investigation of the property's status (to include a proper and accurate encumbrance analysis) had occurred. As a result, the seized assets were released \*\*\*\*1\*\*\*\* of these cases and returned to the taxpayer.

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

- Taxpayer Rights and Entitlements – Potential; \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\* (see Recommendation 3).

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

We reviewed a judgmental sample of 205 seizures from the 342 seizures that the IRS conducted from July 1, 2018, through June 30, 2019. \*\*\*\*\*1\*\*\*\*\*



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

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

### Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 11 taxpayers experiencing possible economic hardship due to seizures of their property (see Recommendation 5).

### Methodology Used to Measure the Reported Benefit:

We reviewed a judgmental sample of 205 seizures from the 342 seizures that the IRS conducted from July 1, 2018, through June 30, 2019. In 11 cases, there were facts present indicating the taxpayers may have been experiencing economic hardship but were deemed “won’t pay” taxpayers due to the existence of equity in assets; three of them had their personal residences seized. As we wrote in last year’s report, the law requires that the IRS must release a levy if it is causing an economic hardship, *i.e.*, taxpayers are having difficulties meeting basic living expenses.<sup>1</sup> A levy can be the garnishment of wages, in which case the employer remits wages to the IRS; it can be the attachment of a bank account, in which case the bank remits the account contents to the IRS; or it can be the seizure of an asset, such as land or personal property, in which case the IRS follows a process whereby it seizes the property and sells it to pay off or contribute to the tax debt.

**Management’s Response:** In their response, IRS management did not agree that the seizure action taken in these 11 cases caused the taxpayer an economic hardship.

**Office of Audit Comment:** IRS procedures for seizures divide taxpayers into three categories: “will pay” taxpayers, “can’t pay” taxpayers, and “won’t pay” taxpayers. The IRS will not seize property on “will pay” or “can’t pay” taxpayers but are inclined to seize the property of “won’t pay” taxpayers. IRS procedures turn these standards upside down when there is the presence of equity in assets in two situations: where taxpayers appear to be experiencing an economic hardship but possess some equity in assets and where taxpayers are seeking an installment agreement above the streamlined threshold of \$50,000 but possess some equity in assets. In these situations, the IRS labels taxpayers who can’t pay as “won’t pay” simply because they have some equity in an asset (such as a personal residence), and the IRS labels taxpayers who want an installment agreement, *i.e.*, they want to pay, as “won’t pay” taxpayers because of equity in assets.

Again this year, we observed taxpayers who appear to be experiencing an economic hardship who had their homes taken from them because there was some equity in the personal residence. The IRS will not agree that there is an economic hardship unless the taxpayer is able to complete a personal financial statement (Form 433-A) and the IRS agrees with all of the information on the form. The IRS will not allow revenue officers to infer economic hardship for themselves from circumstances they observe, *e.g.*, in which the taxpayer is out of work, unable to afford medicine, or living in dilapidated circumstances. This year we also observed numerous taxpayers who wanted an installment agreement but were declined that opportunity because IRS procedures advise that installment agreements with balance dues above certain thresholds should be rejected where there is equity in assets.

<sup>1</sup> I.R.C. § 6343(a)(1)(D).



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

### Appendix III

#### 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 in jeopardy.

**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 \$9,200 in fuel, provisions, furniture, and personal effects and \$4,600 in books and tools necessary for business purposes for Calendar Year 2017. For Calendar Year 2018, the amounts are \$9,380 for fuel, provisions, *etc.*, and \$4,690 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 other than real property that is rented. Seizure of the taxpayer's principal residence is allowed only with the approval of a U.S. District Court judge or magistrate. Property used in the 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 U.S. 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.



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

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**I.R.C. § 6336** contains procedures for seized property that is likely to perish.

**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, levy is creating an economic hardship due to the financial condition of the taxpayer, *etc.* This section allows a consent agreement between the 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) § 3421** requires the IRS to employ a supervisory review of seizures before action is taken.<sup>1</sup>

**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.



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

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### Appendix IV

#### Prior Reports on Compliance With Seizure Procedures

TIGTA, Ref. No. 2019-30-075, *Fiscal Year 2019 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (Sept. 2019).

TIGTA, Ref. No. 2018-30-067, *Fiscal Year 2018 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (Sept. 2018).

TIGTA, Ref. No. 2017-30-063, *Fiscal Year 2017 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (Aug. 2017).

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).



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

# Appendix V

## Management's Response to the Draft Report



COMMISSIONER  
SMALL BUSINESS/Self-EMPLOYED DIVISION

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

August 26, 2020

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Eric C. Hylton **Eric C. Hylton** Digitally signed by Eric C. Hylton  
Date: 2020.08.26 09:47:36 -04'00'  
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2020 Review of Compliance  
With Legal Guidelines When Conducting Seizures of Taxpayers'  
Property (Audit #201930024)

Thank you for the opportunity to review the above subject draft report, relating to TIGTA's annual review of seizures of property to satisfy outstanding taxpayer liabilities. In response to last year's recommendations, we developed the case work processes needed to identify and document cases and appropriately share information when a notice of non-judicial foreclosure is received in Civil Enforcement Advice and Support Operations (CEASO) for cases assigned to Field Collection personnel. We also provided guidance to revenue officers and property appraisal and liquidation specialists on the appropriate practice of accepting keys to a property prior to seizure, including what is required to properly secure the keys when they are accepted.

The IRS Collection process has always been focused on helping taxpayers resolve their outstanding tax matters in a fair and equitable manner. Taxpayer rights are protected by explaining outstanding balances, educating taxpayers on ways to prevent future liabilities, and exploring methods to resolve their cases. An important part of IRS Collection activities is to also ensure a fair and just tax system and this sometimes requires enforcement actions being taken in appropriate circumstances.

The most serious of these enforcement actions is the seizure and sale of a taxpayer's assets. Ensuring all laws are carefully followed and taxpayer rights are judiciously protected throughout this process is something that IRS Collection gives the highest priority. Before taking a seizure action we usually have made several attempts to work with the taxpayer and/or their representative to resolve the liability voluntarily. Seizure cases typically involve situations where the taxpayer will not cooperate to reach an appropriate resolution to their tax problem despite our repeated attempts to do so.

When considering a seizure action, employees are required to consider the impact it will have on the taxpayer. We do not take seizure action when doing so will create a



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

hardship on the taxpayer, and we do not close a case as currently not collectible when a taxpayer owns valuable property with equity. Every seizure determination requires multiple levels of review and approval, and in cases involving the proposed seizure of a taxpayer's principal residence, court approval is required before the action is taken.

In this year's audit report your team expressed concerns that revenue officers do not have discretion to avoid principal residence seizures of taxpayers who appear to be experiencing economic hardships, or to offer taxpayers an installment payment agreement if the taxpayer has equity in property. We disagree. Installment agreements (IA) are not appropriate in every situation. For example, the Internal Revenue Manual provides exceptions in those situations, such as, prior IA defaults, the taxpayer has equity in an asset, if a financial analysis indicates the taxpayer has the ability to pay a higher amount or taxpayer does not provide required financial documentation. Most of the cases in your sample involved one or more of these exceptions. In addition, a number of them involved egregious taxpayer behavior.

Internal Revenue Code (IRC) Section 6343 requires the IRS to release a seizure if we determine that the seizure is creating an economic hardship. We reviewed the cases in the sample and confirmed that none of them created an economic hardship. The report cites two specific examples of seizures the auditors believed likely created or exacerbated existing economic hardships. A more complete look at the facts of those cases shows that seizure was the next appropriate action to advance the cases to resolution. We also want to emphasize that in certain situations, taxpayers do not oppose seizure of property because they recognize the liquidation of the asset to pay the tax liability is in their best interests:

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We agree with the outcome measure involving posting sale proceeds to a single taxpayer account. We disagree with the remaining two taxpayer rights and entitlements outcome measures:

- the 19 cases cited reflected a failure to follow IRM procedures but were not violations of the IRC; and



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

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- in the 11 cases cited, the seizure action did not cause the taxpayer an economic hardship.

We have robust procedures and controls around the seizure process with significant documentation requirements that include multiple levels of review. Even so, we are always seeking ways to further strengthen our seizure and sale program and we appreciate your perspective and recommendations. We will reemphasize or strengthen our existing guidance with respect to various required pre- and post-seizure actions. Attached is a detailed response outlining our corrective actions to address your recommendations. If you have any questions, please contact me or Paul Mamo, Director, Collection Operations, Small Business/Self-Employed Division.

Attachment



## Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

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Attachment

### **RECOMMENDATION 1:**

The Director, Collection Policy, Small Business/Self-Employed Division, should, through training or guidance, emphasize procedures that require revenue officers to (a) complete pre-seizure checklist items, specifically the determination whether a taxpayer has an offer in compromise or installment agreement pending, and (b) check the Integrated Data Retrieval System (IDRS) prior to conducting a seizure to confirm that there have been no changes to the status of the taxpayer's account.

### **CORRECTIVE ACTION:**

Collection Policy will develop and coordinate distribution of an executive communication emphasizing the IRM procedures outlined on the pre-seizure checklist, including prohibited seizures and the IRM requirement to check IDRS prior to conducting the seizure to ensure there have been no changes to the account that would prohibit seizure.

### **IMPLEMENTATION DATE:**

February 15, 2021

### **RESPONSIBLE OFFICIAL:**

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.

### **RECOMMENDATION 2:**

The Director, Collection Policy, Small Business/Self-Employed Division, should ensure that revenue officers include detailed documentation of their discussions with the Property Appraisal and Liquidation Specialists (PALS) function about the identification of encumbrances.

### **CORRECTIVE ACTION:**

The requirement to discuss encumbrance information with the PALS prior to seizure is already part of the pre-seizure checklist (Line 17) and process, and the errors tied to this recommendation took place prior to the issuance of an email communication reinforcing the guidance relating to this topic; therefore, further action to address this issue is not warranted.

More specifically, the Director of Field Collection sent an email to all Field Collection employees on November 15, 2018, highlighting the IRM requirements regarding Fair Market Value (FMV) and estimated expenses, as well as the requirement to confirm these amounts with PALS prior to seizure, consistent with the IRS-agreed corrective



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action from TIGTA's FY 2018 review. In two of the cases linked to this recommendation, the revenue officer's investigation occurred prior to the issuance of this guidance; in one case, the seizure occurred on August 15, 2018, and in the other, the Form 13719, *Pre-Seizure Checklist and Approval Request*, was approved on November 7, 2018.

**IMPLEMENTATION DATE:**

N/A

**RESPONSIBLE OFFICIAL:**

N/A

**CORRECTIVE ACTION MONITORING PLAN:**

N/A

**RECOMMENDATION 3:**

The Director, Collection Policy, Small Business/Self-Employed Division, should take appropriate action to ensure that the proceeds from cases identified in this report are applied to the taxpayers' accounts immediately.

**CORRECTIVE ACTION:**

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

**IMPLEMENTATION DATE:**

November 15, 2020

**RESPONSIBLE OFFICIAL:**

Director, CEASO, Small Business/Self-Employed Division

**CORRECTIVE ACTION MONITORING PLAN:**

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

**RECOMMENDATION 4:**

The Director, Collection Policy, Small Business/Self-Employed Division, should, through training or guidance, remind employees of their responsibilities as included in IRM 5.10.4.8 to ensure that a Notice of Sale is issued within 90 days (for personal property) or 180 days (for real property) from the date of a Notice of Seizure.



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**CORRECTIVE ACTION:**

Collection Policy will develop and coordinate distribution of an executive communication emphasizing the IRM procedures outlined on the issuance of the Notice of Sale within 90 days (for personal property) or 180 days (for real property) from the date of the Notice of Seizure.

**IMPLEMENTATION DATE:**

February 15, 2021

**RESPONSIBLE OFFICIAL:**

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.

**RECOMMENDATION 5:**

The Director, Collection, Small Business/Self-Employed Division, should issue IRM guidance consistent with the following: (i) revenue officers should avoid principal residence seizures from taxpayers who appear to be experiencing economic hardships and (ii) revenue officers should have more discretion to avoid seizures for cases in which taxpayers are already experiencing economic hardships and have *de minimis* equity in other property and for cases in which taxpayers with some equity in assets are seeking installment agreements above the streamlined procedure amount and (based on compliance history and other factors) may be able and willing to make a good faith effort to comply with the terms of an installment agreement to avoid seizure of assets.

**CORRECTIVE ACTION:**

The Internal Revenue Manual already provides employees with the necessary guidance and discretion to appropriately handle unusual situations and situations in which taxpayers are experiencing an economic hardship. In order to effectively administer the tax code, the Service must have an ability to address valuable assets with equity through seizure (including a principal residence when appropriate) when a taxpayer has an unresolved tax liability. A tax system based on voluntary assessment would not be viable without enforcement programs to ensure compliance.

Economic hardship considerations are already included as part of the seizure determination process. In doing so, we strike a balance between our responsibility to compel non-compliant taxpayers to pay their taxes and the interests of taxpayers who may be in a hardship situation. This ensures fairness to all taxpayers, the great majority of whom pay their taxes in full and on time.



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Before initiating a seizure of property, revenue officers must first explore alternative methods of resolution. Those alternatives include voluntary payment, voluntarily selling or borrowing against an asset, and considering an installment payment arrangement. Existing guidance and IRS policy for installment agreements are sufficient to address the consideration of equity in assets in the context of an installment agreement. They provide revenue officers sufficient discretion and flexibility [where special circumstances or economic hardship exists to consider an installment agreement to resolve the case. That guidance also provides, "It is not appropriate to ask a taxpayer to liquidate or borrow against an asset if doing so will create an economic hardship for the taxpayer" (IRM 5.14.1.4(5)). Installment agreements are not appropriate in every case.

A financial analysis indicating the taxpayer has no ability to make a monthly payment on their tax liability is not necessarily an indicator of economic hardship, or that collection from other assets would result in a hardship; it simply means that the taxpayer's monthly income is at or below the standard amounts used in our financial analysis calculation. An economic hardship occurs when the taxpayer is unable to meet reasonable living expenses. We reviewed the cases in the sample, and we determined that the seizure actions did not create an economic hardship in any of them.

**IMPLEMENTATION DATE:**

N/A

**RESPONSIBLE OFFICIAL:**

N/A

**CORRECTIVE ACTION MONITORING PLAN:**

N/A



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## Appendix VI

### Glossary of Terms

Term	Definition
Appeals Centralized Database System	Used by Appeals Officers, Settlement Officers, managers, and technical analysts to track case receipts, record case time, document case actions, and monitor the progress of the Appeals workload.
Area Office	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.
Data Center Warehouse	Provides data and data access services and a centralized storage, security, and administration of files. Also develops uniform and user-friendly interfaces for users to access data.
Fiscal Year	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.
Installment Agreement	The IRS allows taxpayers who are unable to pay their tax debt immediately to make monthly payments through an installment agreement.
Integrated Collection System	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.
Integrated Data Retrieval System	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
Internal Revenue Service Data Book	Provides information on activities conducted by the IRS, such as taxes collected, enforcement, taxpayer assistance, budget, workforce, and other selected activities.
Levy	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.
Master File	The IRS database that maintains transactions or records of individual and business tax accounts.
Offer in Compromise	An agreement between a taxpayer and the Government that settles a tax liability for payment of less than the full amount owed.
Queue	A function of the Integrated Data Retrieval System, the Collection Queue is a holding area where the IRS places cases awaiting assignment to Collection function personnel.
Revenue Officer	Employees in the Field Collection who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by IRS campuses (formerly known as service centers) or the Automated Collection System.



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Seizure	The taking of a taxpayer's property to satisfy his or her outstanding tax liability.
Tax Module	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.



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### Appendix VII

#### 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