

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2023 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

September 11, 2023

Report Number: 2023-30-059

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.

HIGHLIGHTS: Fiscal Year 2023 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

Final Audit Report issued on September 11, 2023

Report Number 2023-30-059

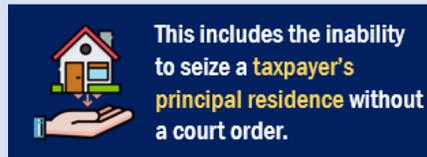
Why TIGTA Did This Audit

This audit was initiated because Internal Revenue Code (I.R.C.) § 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 were conducted in accordance with I.R.C. and IRS procedures.

Impact on Tax Administration

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.

The IRS Restructuring and Reform Act of 1998 amended the seizure provisions of several I.R.C. sections.



This includes the inability to seize a taxpayer's principal residence without a court order.

What TIGTA Found

TIGTA reviewed 69 of 88 taxpayer cases in which the IRS conducted seizures between July 1, 2021, through June 30, 2022, and found that Field Collection employees generally adhered to procedures that help ensure compliance with I.R.C. §§ 6330 through 6344. However, TIGTA identified five instances in which Field Collection employees did not comply with a particular internal control or procedure. For example, revenue officers did not [REDACTED] or information was not input properly or timely during the seizure process.

Additionally, for three of 69 taxpayer cases with seizures, TIGTA identified 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. Revenue officers in these cases were acting in a manner that is consistent with IRS guidance. However, under this guidance, taxpayers who would otherwise qualify for "Currently Not Collectible" status as a "can't pay" taxpayer are instead considered a "won't pay" taxpayer if they have equity in assets. TIGTA has previously recommended that the IRS issue guidance that would give revenue officers more discretion to avoid seizures for cases with taxpayers already experiencing economic hardships and who have limited equity in other property.

Additionally, I.R.C. § 6330 authorizes the IRS to seize a taxpayer's property for unpaid tax only after sending the taxpayer a Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing*, (which provides taxpayers the opportunity to exercise their Collection Due Process rights of appeal) and the expiration of Collection Due Process rights. TIGTA did not find evidence in this year's review that the IRS seized taxpayers' property in violation of I.R.C. § 6330.

What TIGTA Recommended

TIGTA recommended that the IRS: 1) remind revenue officers to determine whether or not a property is in use by a trade or business, prior to seizing the property, in order to determine what approval levels are required for the seizure, and 2) remind revenue officers and property appraisal and liquidation specialists of the importance of properly coding and routing taxpayer payments and applying payments to the proper tax years. IRS management agreed with both recommendations.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

September 11, 2023

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2023 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Audit # 202330002)

This report presents the results of our review to determine whether seizures were conducted in accordance with the Internal Revenue Code and Internal Revenue Service procedures. This review is part of our Fiscal Year 2023 Annual Audit Plan and addresses the major management and performance challenge of *Increasing Domestic and International Tax Compliance and Enforcement*.

Management's complete response to the draft report is included as Appendix III. 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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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.¹ 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 the taxpayer is able to pay some or all the tax but has not taken steps as mentioned previously to address the liability and has had the opportunity to exercise available appeal rights, the IRS then has the authority to levy the taxpayer's funds or seize property for the payment of tax.² Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure. The IRS's property appraisal and liquidation specialists (PALS) sell seized property by public auction or by public sale under sealed bids.

The IRS Restructuring and Reform Act of 1998 amended the seizure provisions of several I.R.C. sections.



This includes the inability to seize a taxpayer's principal residence without a court order.

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, 6331, 6334, 6335, 6340, 6343, and 6344.³ 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, and the IRS cannot levy or seize a taxpayer's property if the levy causes an economic

hardship.⁴ 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.⁵

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 provisions in I.R.C. §§ 6330 through 6344. Figure 1 shows the number of seizures conducted by the IRS from Fiscal Year (FY) 2015 to FY 2022.

¹ See Appendix IV for a glossary of terms.

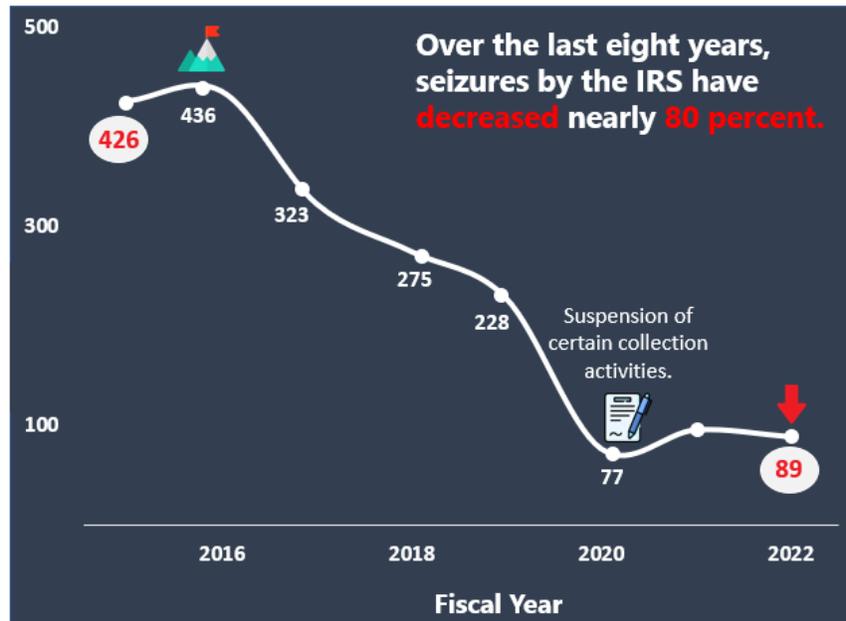
² Taxpayers have a statutory right to a Collection Due Process hearing on the first issuance of a Notice of Intent to Levy on a delinquent account, pursuant to Internal Revenue Code (I.R.C.) Section (§) 6330 as well as upon the first issuance of a Notice of Federal Tax Lien, pursuant to I.R.C. § 6320. Taxpayers additionally have certain administrative rights, such as an appeal through the IRS's Collection Appeal Program. Internal Revenue Manual (IRM) 5.1.9.3 and 5.1.9.4 (Feb. 7, 2014).

³ Pub. L. No. 105-206, 112 Stat. 687.

⁴ I.R.C. § 6334(e)(1)(A) and I.R.C. § 6343(a)(1)(D).

⁵ I.R.C. § 6331(f).

Figure 1: IRS Seizures by Fiscal Year



Source: IRS Data Books 2015 through 2021 and Collection Activity Report 2022.

The number of seizures the IRS conducted generally diminished from 426 in FY 2015 to 89 in FY 2022. During this eight-year period, the number of seizures decreased by 79 percent. The 25 percent increase in seizures from FY 2020 to FY 2021 was likely due to the expiration of the memorandum from the Director, Headquarters Collection, Small Business/Self-Employed (SB/SE) Division, titled *Temporary Relief for Taxpayers – Suspension of Certain Collection Activities During the COVID-19 Pandemic*, which suspended certain collection activities, including seizures, during FY 2020 as indicated in our previous report.⁶ However, there was a subsequent 7 percent decrease from FY 2021 to FY 2022. IRS management stated that this decrease in seizures was likely due, in part, to a decrease in the number of higher graded revenue officers, who generally work the cases resulting in seizures. The number of higher graded revenue officers working cases decreased 17 percent from 801 at the end of FY 2021 to 665 at the end of FY 2022 due to attrition and assigned training duties for more than 800 newly hired revenue officers between June 2020 and February 2022.

General seizure procedures

I.R.C. § 6331(d) has long required the IRS to provide timely notice to taxpayers no less than 30 days before the day of a levy. As part of the IRS Restructuring and Reform Act of 1998,⁷ Congress enacted I.R.C. § 6330, which requires the IRS before the first levy on a delinquent tax module to notify taxpayers of their right to a Collection Due Process (CDP) hearing before the Independent Office of Appeals in which the taxpayer may raise any relevant issue, including appropriate spousal defenses, challenges to the appropriateness of the levy, and offers of any collection alternatives.⁸ A revenue officer can satisfy this requirement with the issuance of

⁶ TIGTA, Report No. 2022-30-038, *Fiscal Year 2021 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (June 2022).

⁷ Pub. L. No. 105-206, 112 Stat. 685 (codified in various sections of 26 United States Code).

⁸ I.R.C. § 6330(c)(2).

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When Conducting Seizures of Taxpayers' Property**

Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing*, which informs the taxpayer of their CDP rights to appeal and the expiration of CDP rights.

Taxpayers have 30 days to elect the CDP hearing in writing, during which time collection is suspended, and collection remains suspended throughout the CDP hearing as well as any judicial review from the determination the Independent Office of Appeals.⁹ The collection statute of limitations is also suspended while collection action is suspended. 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.¹⁰

When revenue officers determine that seizure is the next appropriate action, they will prepare the seizure approval package. The approval package must contain the following information:

- Form 13719, *Pre-Seizure Checklist and Approval Request*.
- Form 668-B, *Levy*.
- Copies of the Notice of Federal Tax Liens.
- Preliminary Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale* (not applicable if only cash is to be seized).
- For real property seizures, include Form 2433, *Notice of Seizure*, and deed(s).¹¹

All collection seizures require a minimum approval level of the group manager; however, real property used for an individual taxpayer's business must have Area Director approval.¹² The group manager will review the case file for accuracy and once approved, the manager forwards the approved file to Advisory.¹³ Advisory reviews Form 13719 for legal sufficiency and once Advisory is satisfied that all items on Form 13719 are procedurally accurate, it forwards the seizure file back to the group manager, unless a higher level of approval is required.¹⁴

After the seizure takes place, the revenue officer must send all seizure documents back to Advisory within five workdays.¹⁵ Advisory then conducts a post-seizure review. This review of post-seizure items will include the following:

- Proper approval secured.
- Integrated Data Retrieval System research prior to seizure.
- Consent/Writ secured when required.
- Form 668-B delivery to taxpayer meets legal sufficiency.
- Form 2433 delivery to taxpayer/owner meets legal sufficiency.
- Publication 1660, *Collection Appeal Rights*, provided with Form 2433.
- Not a prohibited seizure.

⁹ I.R.C. § 6330(e).

¹⁰ IRM 5.1.9.3.1(1) and (3) (Oct. 24, 2018).

¹¹ IRM 5.10.2.2(8) (Aug. 24, 2022).

¹² IRM 5.10.2.1.5 (Aug. 10, 2018).

¹³ IRM 5.10.2.2(9) (Aug. 24, 2022).

¹⁴ IRM 5.10.2.2(10) (Aug. 24, 2022).

¹⁵ IRM 5.10.3.24(3) (May 23, 2016).

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- Notice of Federal Tax Lien filed on all tax modules.
- Letter 1058 sent for all modules on Form 668-B.
- Form 13360, *Seizure and Sale Checklist*.¹⁶

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

1. Expenses of the seizure and sale.
2. Unpaid Federal taxes due on the specific property sold.
3. The liability for which the levy was made or the sale was conducted (liability shown on Form 668-B).
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.¹⁷

Results of Review

Most of the Seizures Conducted Involved Real Property

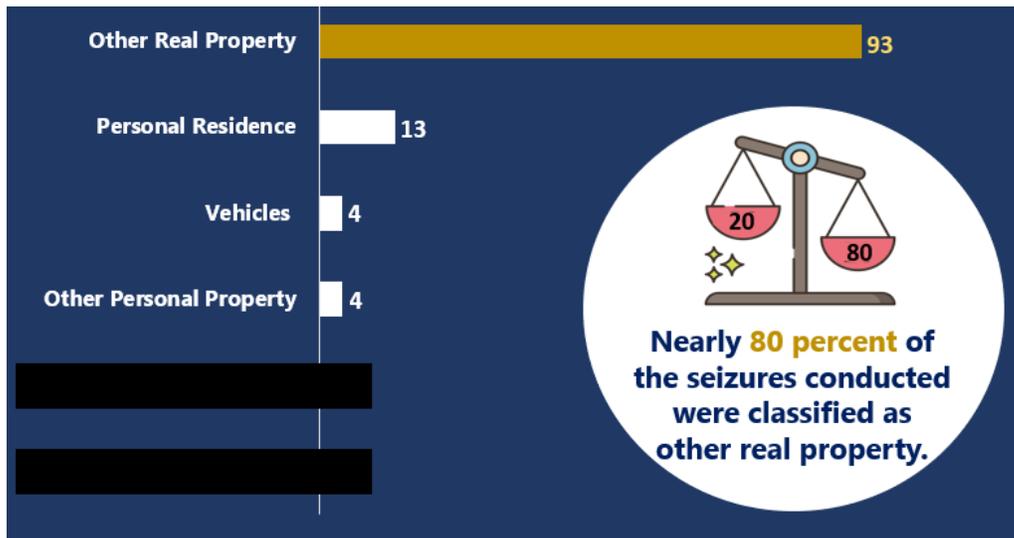
This review covers seizures conducted from July 1, 2021, through June 30, 2022, which included 117 seizures against 88 taxpayers with unpaid liabilities.¹⁸ The 117 seizures correspond to the number of distinct properties that were seized. Figure 2 summarizes seizures by type of property.

¹⁶ IRM 5.10.3.24(6) (May 23, 2016).

¹⁷ IRM 5.10.6.2 (Nov. 15, 2019).

¹⁸ This number differs from numbers in Figure 1 because the IRS reports by fiscal year in the IRS Data Book. The IRS fiscal year ends September 30. We analyzed a 12-month period ending June 30, 2022, which spanned across parts of two fiscal years.

Figure 2: Seizure by Property Type From
July 1, 2021, Through June 30, 2022



Source: TIGTA analysis of IRS seizure logs.¹⁹

Most seizures involved real property, and the majority of them were classified as “other” real property, which is real property other than a taxpayer’s principal or personal residence. After “other” real property, the next most common seizures involved personal residences. There were no principal residence seizures conducted during this review.²⁰ Figure 3 shows the number of seizures conducted by each of the SB/SE Division’s six Collection Area Offices over the last four TIGTA reviews and this year’s review.

¹⁹ IRM Exhibit 5.10.2-1 (Aug. 24, 2022) defines a 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. There were no principal residence seizures in the seizure logs during our audit time frame.

²⁰ Treas. Reg. § 301.6334(a)(13)(ii) defines personal residence by reference to I.R.C. § 121 (exclusion of gain from sale or exchange of a principal residence), and the regulations of that section define personal residence as the residence owned and used by the taxpayer more than any other property owned by the taxpayer, taking into consideration other facts and circumstances such as place of employment; principal abode of family members; mailing address; and address used for driver’s licenses, tax returns, and voter registration. Treas. Reg. § 1.121-1(b)(2).

Figure 3: Seizures by IRS Collection Area Offices From July 1, 2021, Through June 30, 2022, and Prior Periods²¹

Collection Area Office	July 1, 2018 - June 30, 2019	July 1, 2019 - June 30, 2020	July 1, 2020 - June 30, 2021	July 1, 2021 - June 30, 2022	Percentage July 1, 2021 - June 30, 2022
Central	30	17	11	21	18%
Gulf States	71	26	17	35	30%
North Atlantic	35	7	9	4	3%
Northwest	55	51	12	25	21%
South Atlantic	32	34	27	18	15%
Southwest	20	10	21	14	12%
Nation	243	145	97	117	100%

Source: TIGTA analysis of IRS seizure logs and prior TIGTA reports on compliance with seizure procedures.²²

During this year's audit period (July 1, 2021, through June 30, 2022), the Gulf States Area Office had the largest number of seizures with 35 (30 percent), followed by the Northwest Area Office, with 25 (21 percent) seizures. The North Atlantic Area Office conducted the fewest number with four (3 percent) seizures. The trend in number of seizures by Collection Area Office over the last five years appears to fluctuate with generally an overall downward trend across all areas.

Seizure Procedures Were Generally Followed

To determine the IRS's compliance with seizure procedures and guidelines, we reviewed a judgmental sample of 69 of the 88 taxpayer cases in which the IRS conducted seizures between July 1, 2021, through June 30, 2022.²³ These 69 taxpayer cases included 93 of the 117 seizures that were conducted, which consisted of 75 other real properties, 11 personal residences, three vehicles, [REDACTED]

[REDACTED] The total balance due amounts by taxpayer at the time of the seizure ranged from approximately \$11,210 to almost \$21 million, with an average balance due of about \$1.3 million.

Generally, the IRS followed seizure procedures in the 69 taxpayer cases reviewed. However, we identified five taxpayer cases in which Field Collection employees did not comply with a particular IRM control or procedure. Our review noted the following issues:

- [REDACTED]
- Three cases in which information was not input properly or timely during the seizure process.

²¹ The audit period runs from July 1 through June 30 of each year and comprises parts of two fiscal years.

²² Percentages do not add up to 100 percent due to rounding.

²³ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

*****1*****

[Redacted]

- [Redacted]

[Redacted] we will not be

making a recommendation in this audit.

- [Redacted]

[Redacted]

The IRM requires proper approvals and Advisory reviews to ensure that seizures are done correctly, taxpayer rights are protected, and taxpayers are not burdened. When revenue officers do not obtain the proper approvals or advisory reviews, there is a risk that any errors in judgment or in working the case will not be caught.

Information was not always input properly or timely during the seizure process

In three taxpayer cases reviewed, information was not always properly or timely input during the seizure process as follows:

- [Redacted]

²⁴ IRM 5.10.2.2(10) (Aug. 24, 2022).

²⁵ IRM 5.10.2.5 (Apr. 11, 2013).

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[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED] we will not be making a recommendation in this audit.

[REDACTED]

[REDACTED]

The IRM requires that information be input properly and timely to ensure that taxpayers receive their rights, and their payments are posted correctly to their accounts. If information or payments are not input properly or timely, there is a risk that taxpayers may be burdened due to their accounts showing incorrect or outdated information.

²⁶ IRM 5.10.6.3 (Feb. 27, 2017).

²⁷ Accounting Control/Services uses the Revenue Accounting and Control System database to receive reports that have been verified for accuracy by Advisory.

²⁸ IRM 5.10.6.5(8) (Sept. 16, 2020).

The Director, Collection Policy, SB/SE Division, should:

Recommendation 1: Remind revenue officers to determine whether or not a property is in use by a trade or business, prior to seizing the property, in order to determine what approval levels are required for the seizure.

Management's Response: The IRS agreed with this recommendation and will send a reminder to revenue officers by February 15, 2024.

Recommendation 2: Remind revenue officers and PALS of the importance of properly coding and routing taxpayer payments and applying payments to the proper tax years.

Management's Response: The IRS agreed with this recommendation and will send a reminder to revenue officers by February 15, 2024.

Collection Procedures Sometimes Resulted in Seizures From Taxpayers Potentially Experiencing Economic Hardship

In three of 69 taxpayer cases reviewed, 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. In previous reports, we have raised concerns about the IRS's view that having some equity in some assets makes a taxpayer a "won't pay"

instead of "can't pay" taxpayer under IRS procedures, even when the taxpayer cannot effectively borrow against the equity. We reviewed the revenue officers' case notes, which document their observations and findings. In all three cases, 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. As a result, we believe that levying these taxpayers may have created or exacerbated existing economic hardships.

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.²⁹ The IRS will not seize the property of "can't pay" taxpayers or "will pay" taxpayers, but will be more likely to seize the property of "won't pay" taxpayers, such as a taxpayer who has the ability to pay the tax debt but refuses to do so. However, taxpayers are considered "won't pay" if they cannot resolve their liability but have equity in assets and are unwilling or unable to borrow against or liquidate these assets.

As we discussed in the FY 2020 Seizures 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



²⁹ IRM 5.10.1.4 (Oct. 26, 2022).

an individual taxpayer to be unable to pay their reasonable basic living expenses.³⁰ 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.³¹

Because of the law's prohibition on levies that cause an economic hardship, we recommended in our FY 2020 audit that the IRS issue guidance that would give revenue officers more discretion to avoid seizures for cases with taxpayers already experiencing economic hardships and have de minimis equity in other property. However, management disagreed and 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.

These revenue officers were acting in a manner that is consistent with IRS guidance. However, the guidance led to seizures in the cases of three taxpayers whose cases had facts present indicating that the taxpayers may have been experiencing an economic hardship, which is contrary to the spirit of I.R.C. § 6343. Under this guidance, taxpayers who would otherwise qualify for "Currently Not Collectible" status as a "can't pay" taxpayer would instead be considered a "won't pay" taxpayer if they have equity in assets. These criteria 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 they attempted to secure a loan on the equity and were denied. Because we have already made a previous recommendation on this issue, we will not be making another recommendation.

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

We evaluated the IRS's compliance with CDP and equivalent hearing procedures prior to the seizure by reviewing a judgmental sample of 69 seizure cases conducted from July 1, 2021, through June 30, 2022, to determine which had an Appeals CDP hearing request or an equivalent hearing. We did not identify any collection activity for the tax modules affected by the taxpayer's CDP request between the CDP request date and the date the appeal was closed.

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 CDP rights of appeal) and the expiration of CDP rights. We did not find evidence in this year's review 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.³² 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 generally be suspended during the appeal period and while any court proceedings are pending.³³ Additionally, the law provides

³⁰ TIGTA, Report No. 2020-30-058, *Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (Sept. 2020) and I.R.C. § 6343(a)(1)(D).

³¹ IRM 5.17.3 (Dec. 26, 2019).

³² IRM 5.1.9.3.1(1) and (3) (Oct. 24, 2018).

³³ I.R.C. § 6330(e).

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.³⁴ 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.³⁵

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.³⁶

³⁴ IRM 8.22.4.2.1(1) (May 12, 2022).

³⁵ IRS Letter 3193 – *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330 of the Internal Revenue Code*.

³⁶ IRM 5.19.8.4.3 (Nov. 1, 2007).

Appendix I

Detailed Objective, Scope, and Methodology

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

- Reviewed current IRS procedures and guidelines used by SB/SE Division employees during the audit period for achieving compliance with I.R.C. §§ 6330 through 6344 as well as the status of outstanding recommendations from prior TIGTA audit reports.
- Evaluated the IRS's compliance with the seizure procedures of I.R.C. §§ 6330 through 6344 and its internal procedures by reviewing a judgmental sample of 93 of the 117 seizures conducted from July 1, 2021, through June 30, 2022.¹ We chose a judgmental sample because we did not plan to project our results to the population.
 - Determined that the 117 seizures belonged to 88 unique taxpayers. We then identified all taxpayers with a low-income indicator or a "Currently Not Collectible" hardship indicator, which resulted in 25 of 88 taxpayers, and we reviewed all of these cases. For the remaining 63 of 88 taxpayers, we reviewed 44 additional taxpayer cases, including all personal residence seizures, and then surveyed the remaining 19 taxpayer cases. For the surveyed cases, we did a word search to determine whether there was any potential indication of hardship.
- Evaluated the IRS's compliance with CDP and equivalent hearing procedures prior to the seizure by reviewing a judgmental sample of 93 of the 117 seizures conducted from July 1, 2021, through June 30, 2022, for a previous Appeals CDP hearing request or an equivalent hearing (I.R.C. § 6330).

Performance of This Review

This review was performed with information obtained from the offices of the Small Business/Self-Employed Division Headquarters in Lanham, Maryland during the period September 2022 through June 2023. 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); Phyllis Heald London, Director; Autumn Macik, Audit Manager; Doris Cervantes, Lead Auditor; Marcus Sloan, Lead Auditor; and My-Nga Diep, Auditor.

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

¹ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

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for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: SB/SE Division Collection function's policies, procedures, and practices for conducting seizures of taxpayers' property under the provisions of I.R.C. §§ 6330 through 6344. We evaluated these controls by reviewing appropriate internal procedures and guidelines and completing a review of seizure case files.

Appendix II

Outcome Measure

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

Type and Value of Outcome Measure:

- Taxpayer Burden – Five taxpayers [REDACTED] for whom the IRS did not comply with a particular IRM section or failed to identify information which was input improperly (see Recommendations 1 and 2).

Methodology Used to Measure the Reported Benefit:

We reviewed a judgmental sample of 93 seizures from the 117 that the IRS conducted from July 1, 2021, through June 30, 2022.¹ We identified five exceptions involving five taxpayers in which the IRS did not comply with a particular IRM section or failed to identify information which was input improperly and, as a result, taxpayers were burdened.

For [REDACTED] taxpayers for whom the IRS did not comply with a particular IRM section or failed to identify information which was input improperly, the IRS corrected the issues we identified during our audit period.

¹ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

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 24, 2023

MEMORANDUM FOR HEATHER M. HILL

DEPUTY INSPECTOR GENERAL FOR AUDIT

Amalia C.

FROM:

Lia Colbert

Colbert

Commissioner, Small Business/Self-Employed Division

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SUBJECT:

Draft Audit Report – Fiscal Year 2023 Review of Compliance
With Legal Guidelines When Conducting Seizures of Taxpayers'
Property (Audit # 202330002)

Thank you for the opportunity to review the subject draft audit report. Our seizure program is a vital enforcement tool that requires our employees to exercise sound judgment and extreme accuracy in execution. Your acknowledgement that our employees generally followed our seizure procedures and guidelines confirms their dedication to effectively administering the tax laws while protecting taxpayer rights.

For this year's report, TIGTA reviewed 69 of the 88 seizures the IRS conducted from July 1, 2021, through June 30, 2022. Generally, you found that our employees met all legal and statutory requirements prior to seizing taxpayer property. As your report notes, the majority of seizures were against real property which were not the taxpayer's principal or personal residence.

We take very seriously and fully recognize the importance of protecting taxpayers' rights and considering economic hardship situations prior to taking enforcement action. TIGTA's findings identified three cases with "facts present indicating that the taxpayers may have been experiencing economic hardship." TIGTA concluded that the taxpayers were "either unable to meet basic living expenses or that the seizure would cause them to be unable to meet basic living expenses." However, TIGTA's assessment appears subjective as there was no demonstration of how the seizures actually caused an economic hardship or caused the taxpayers to be unable to meet basic living expenses based on national standards.

Internal Revenue Code section 6343(a)(1)(D) requires the IRS to release a levy (seizure) if the Secretary (IRS) has determined that the levy is creating an economic hardship due to the financial condition of the taxpayer. Throughout the pre-seizure process, revenue officers are required to document:

- the taxpayer's current financial condition

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- the taxpayer's financial condition in light of the seizure
- how the seizure will impact the taxpayer (and the community)
- whether the taxpayer indicated that a hardship would result from the seizure
- other potential factors that might indicate the seizure would create an economic hardship.

When economic hardship is present, collection alternatives are considered. We may report the account currently not collectible (CNC). Prior to this action, income and assets are reviewed and our procedures state that "an account should not be reported as CNC if the taxpayer has income or equity in assets, and enforced collection of the income or assets would not cause hardship." Similar guidance is followed when considering the approval of an installment agreement (IA) as a collection alternative. Both CNC and IA approvals require that equity in assets should be investigated and pursued as long as the enforced collection (seizure) of the assets would not cause the taxpayers an economic hardship.

TIGTA's assertion that these taxpayers whose assets were seized would have otherwise qualified for CNC status or an IA is not consistent with IRS policy and guidance. TIGTA supported their conclusion with a hypothetical situation that did not occur in any of the sample cases reviewed in this audit.

Attached are our comments and proposed actions to your recommendations. If you have any questions, please contact me, or Frederick W. Schindler, Director, Collection, Small Business/Self-Employed Division.

Attachment

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When Conducting Seizures of Taxpayers' Property**

Attachment

Recommendations

The Commissioner, Small Business/Self-Employed Division, should:

RECOMMENDATION 1:

Remind revenue officers to determine whether or not a property is in use by a trade or business, prior to seizing the property, in order to determine what approval levels are required for the seizure.

CORRECTIVE ACTION:

We will remind revenue officers to determine whether or not a property is in use by a trade or business of an individual taxpayer, prior to seizing the property, in order to determine what approval levels are required for the seizure.

IMPLEMENTATION DATE:

February 15, 2024

RESPONSIBLE OFFICIAL:

Director, Field Collection, 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:

Remind revenue officers and PALS of the importance of properly coding and routing taxpayer payments and applying payments to the proper tax years.

CORRECTIVE ACTION:

We will remind revenue officers and PALS of the importance of properly coding and routing taxpayer payments and applying payments to the proper tax years.

IMPLEMENTATION DATE:

February 15, 2024

RESPONSIBLE OFFICIAL:

Director, Civil Enforcement Advice & Support Operations, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

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

Glossary of Terms

Term	Definition
Advisory	Advisory gives technical guidance to revenue officers and other Collection personnel about liens, levies, litigation, and more. It reviews proposed suits, seizures, summons enforcement, special condition Notice of Federal Tax Liens, and other technical items for Collection.
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.
Automated Collection System	A telephone contact system through which telephone assistants collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.
Collection Due Process Hearing	A CDP hearing is an opportunity to discuss alternatives to enforced collection and permits the taxpayer to dispute the amount owed if the taxpayer has not had a prior opportunity to do so.
Collection Queue	An automated holding file for unassigned inventory of delinquent cases for which revenue officers are unable to be immediately assigned for contact due to limited resources.
Field Collection	An IRS function within the SB/SE Division that helps taxpayers understand and comply with all applicable tax laws and applies the tax laws with integrity and fairness. It is also responsible for protecting the revenue and the interests of the Government through direct collection and enforcement activity with taxpayers or their representatives.
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.
Independent Office of Appeals	The role of the IRS Independent Office of Appeals (Appeals) is to make an independent review of a tax dispute and to consider the positions taken by both the taxpayer and the IRS. Appeals strives to resolve tax disputes in a fair way and remain impartial to both parties.
Installment Agreement	Arrangements by which the IRS allows taxpayers to pay liabilities over time.
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 Manual	Primary source of instructions to employees relating to the administration and operation of the IRS. The Manual contains the directions employees need to carry out their operational responsibilities.
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 the IRS uses 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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Term	Definition
Notice of Federal Tax Lien	A notice filed with the appropriate local government office protecting the Federal Government's interest in the taxpayer's assets by providing public notice of the amount of unpaid tax.
Notice of Determination	This letter advises the taxpayer of the Appeals determination on their case and grants them the right to petition the Tax Court for judicial review of the determination if they disagree with the Appeals determination.
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.
Property Appraisal and Liquidation Specialist	IRS employees who specialize in the appraisal, marketing, and sale of both real and personal property.
Revenue Officer	An employee in the Collection function who provides customer service by explaining taxpayer rights and responsibilities, collects delinquent accounts, secures delinquent returns, counsels taxpayers on their tax filing and payment obligations, conducts tax investigations, files Notices of Federal Tax Lien, releases Federal tax liens, and performs seizures and sales of delinquent taxpayer assets.
Seizure	The taking of a taxpayer's property to satisfy their outstanding tax liability.
Small Business/ Self-Employed Division	The IRS organization that services self-employed taxpayers and small businesses by educating and informing them of their tax obligations, developing educational products and services, and helping them understand and comply with applicable tax laws.
Tax Module	Part of a taxpayer's account that reflects tax data for one tax class and one tax period.

Abbreviations

CDP	Collection Due Process
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
PALS	Property Appraisal and Liquidation Specialists
SB/SE	Small Business/Self-Employed
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,
contact our hotline on the web at www.tigta.gov or via e-mail at
oi.govreports@tigta.treas.gov.**

**To make suggestions to improve IRS policies, processes, or systems
affecting taxpayers, contact us at www.tigta.gov/form/suggestions.**

Information you provide is confidential, and you may remain anonymous.