



*Fiscal Year 2018 Review of Compliance With
Legal Guidelines When Conducting Seizures
of Taxpayers' Property*

September 12, 2018

Reference Number: 2018-30-067

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HIGHLIGHTS

FISCAL YEAR 2018 REVIEW OF COMPLIANCE WITH LEGAL GUIDELINES WHEN CONDUCTING SEIZURES OF TAXPAYERS' PROPERTY

Highlights

**Final Report issued on
September 12, 2018**

Highlights of Reference Number: 2018-30-067
to the Commissioner of Internal Revenue.

IMPACT ON TAXPAYERS

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

WHY TIGTA DID THE AUDIT

I.R.C. § 7803(d)(1)(A)(iv) requires TIGTA to annually evaluate the IRS's compliance with legal seizure provisions. The overall objective of this review was to determine whether seizures conducted by the IRS complied with legal provisions set forth in I.R.C. §§ 6330 through 6344, Treasury Regulations, and with the IRS's own internal procedures.

WHAT TIGTA FOUND

TIGTA reviewed a judgmental sample of 51 of the 359 seizures conducted from July 1, 2016, through June 30, 2017, to determine whether the IRS complied with legal and internal guidelines related to each seizure. TIGTA identified three seizures in which IRS Collection employees did not exhibit due diligence to ensure that the seizure was appropriate.

The IRS uses its employees from the Property Appraisal and Liquidation Specialist (PALS) program to sell seized property; however, in September 2017, the IRS established a pilot program through the General Services Administration (GSA) to outsource the sale of

seized property through the Internet. TIGTA determined that using the GSA resulted in higher sale-related expenses. Sale-related expenses are paid from the sale proceeds; therefore, unexpected expenses can be detrimental to taxpayers. In the four seizures reviewed in which the GSA conducted the sale, the total expenses combined were 221 percent over the estimation. Additionally, the approach for determining when to use the more costly online sales process through the GSA has vague selection criteria and lacks a cost/benefit analysis.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS ensure that revenue officers include detailed documentation of their discussions with PALS about the fair market value, estimation of expenses, and identification of encumbrances; update Form 13719, *Pre-Seizure Checklist and Approval Request*, to require details of the discussion of a potential seizure's value, expenses, and encumbrances; and develop selection criteria for determining which assets to outsource to the GSA that take into consideration the interests of the U.S. Government and the taxpayer when using the GSA.

In response to the report, IRS officials partially agreed with two recommendations, agreed with one recommendation, and plan to take corrective action on all three recommendations. The IRS contends guidance is in place for revenue officers to document their discussions with the PALS and will reemphasize these procedures. TIGTA believes the guidance is not always followed and requiring detailed documentation would help ensure that the discussion occurs.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 12, 2018

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2018 Review of Compliance With
Legal Guidelines When Conducting Seizures of Taxpayers' Property
(Audit #201830002)

This report presents the results of our review to determine whether seizures were conducted in accordance with the Internal Revenue Code (I.R.C.), Treasury Regulations, and Internal Revenue Service (IRS) procedures. The Treasury Inspector General for Tax Administration is required under I.R.C. Section 7803(d)(1)(A)(iv) to annually evaluate the IRS's compliance with the legal seizure provisions to ensure that taxpayers' rights were not violated while seizures were being conducted. We have evaluated the IRS's compliance with the seizure provisions since Fiscal Year 1999. The audit is included in our Fiscal Year 2018 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

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

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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Abbreviations

CDP	Collection Due Process
FY	Fiscal Year
GSA	General Services Administration
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
PALS	Property Appraisal Liquidation Specialist
TIGTA	Treasury Inspector General for Tax Administration



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Background

The collection of unpaid tax by the Internal Revenue Service (IRS) generally begins with collection notices, after which the case will usually be assigned either to the IRS's Automated Collection System, Field Collection, or the 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 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.² Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure. The IRS's Property Appraisal Liquidation Specialists (PALS) can 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 6344.³ These provisions and the IRS's internal procedures are very specific regarding how a seizure should be conducted and govern many aspects of the seizure process, from notification of the taxpayer through sale or redemption of the property. For example, a seizure of a taxpayer's principal residence cannot be seized without a court order.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 these legal seizure provisions. We have evaluated the IRS's compliance with the seizure provisions since Fiscal Year (FY) 1999.

As a result of the IRS Restructuring and Reform Act of 1998, the number of seizures conducted by the IRS diminished from 10,090 in FY 1997 to 74 in FY 2000. The number of seizures has increased since FY 2000; however, total seizures in FY 2017 were approximately 3 percent of those reported for FY 1997, and the number has decreased over the past five years. Figure 1 illustrates the number of seizures conducted over the past five fiscal years.

¹ See Appendix VII 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 Section 6330, as well as upon the first Notice of Filing of a Tax Lien, pursuant to Section 6320. Taxpayers additionally have certain administrative rights, such as an appeal through the IRS's Collection Appeal Program. See Internal Revenue Manual (IRM) 5.1.9.3 and 5.1.9.4.

³ Pub. L. No. 105-206, 112 Stat. 685.

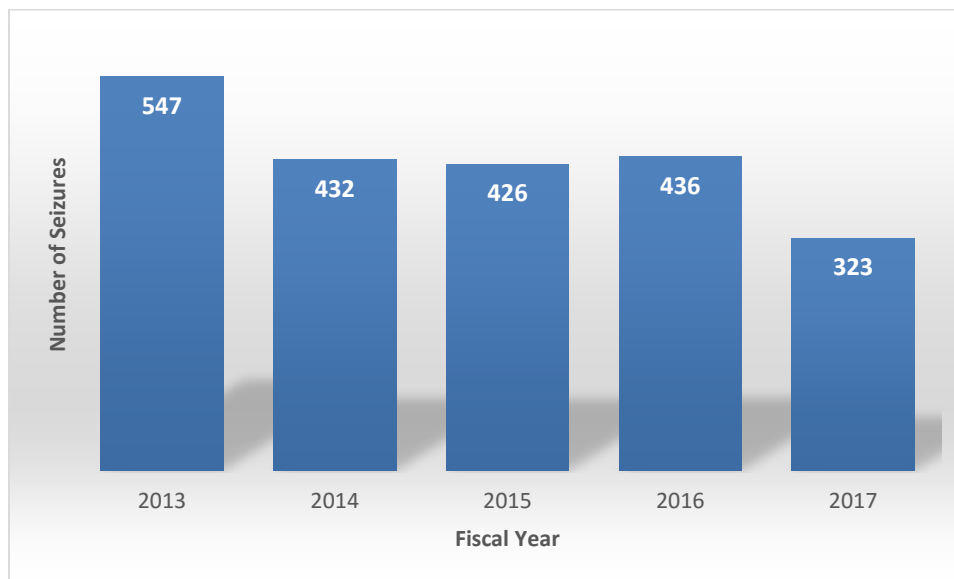
⁴ I.R.C. § 6334(e)(1)(A).

⁵ I.R.C. § 6331(f).



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Figure 1: IRS Seizures by Fiscal Year



Source: IRS Data Books.

This review was performed during the period January through June 2018 with information obtained from the Small Business/Self-Employed Division Headquarters in Lanham, Maryland, and Tacoma and Vancouver, Washington. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



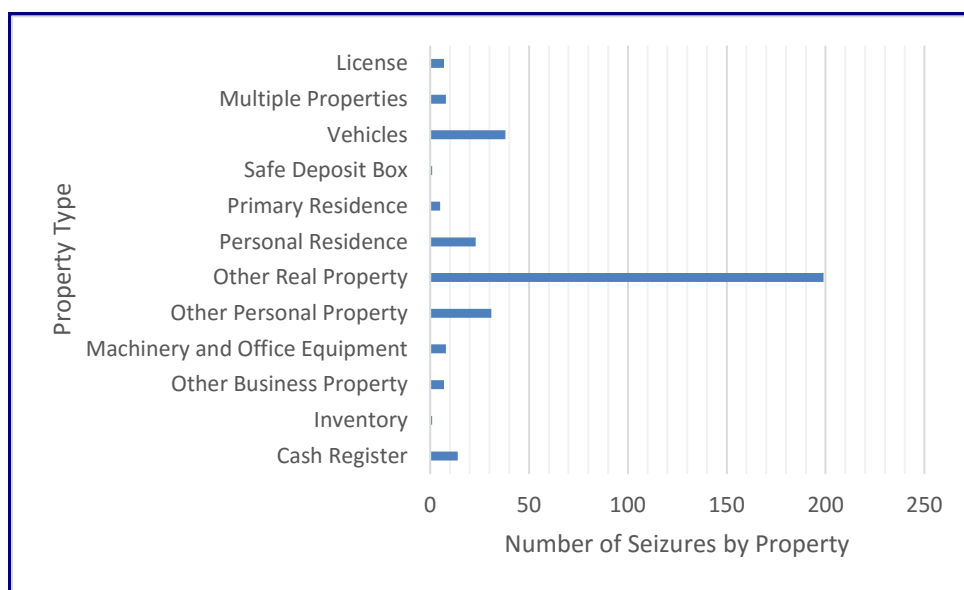
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Results of Review

Many of the Seizures Conducted Involved Real Property and Varied Geographically

During the period July 1, 2016, through June 30, 2017, the IRS conducted 359 seizures against taxpayers with unpaid liabilities.⁶ We reviewed the population of seizures to identify any common characteristics or trends. Figure 2 shows that some 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.

**Figure 2: Seizures by Property Type From
July 1, 2016, Through June 30, 2017**



Source: TIGTA analysis of IRS Seizure Logs.

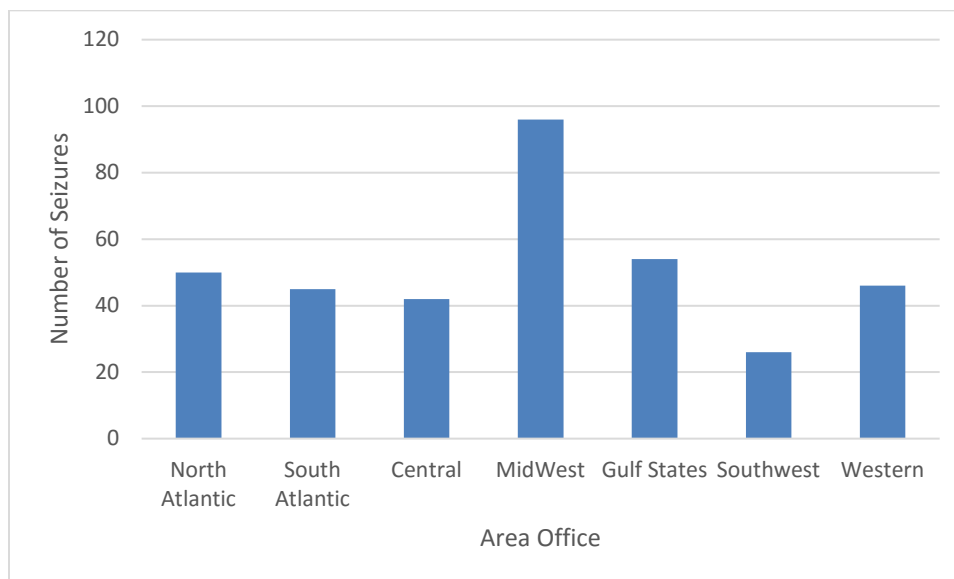
After “other” property, the next most common seizures involved vehicles, personal property, and personal residences. Figure 3 shows that seizures were conducted by every Area Office, with the Midwest Area Office conducting the most.

⁶ 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.



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**Figure 3: Seizures by IRS Area Office From
July 1, 2016, Through June 30, 2017**



Source: IRS Seizure Logs.⁷

The Midwest Area Office had the largest number of seizures with 96 (27 percent) followed by the Gulf States Area Office with 54 (15 percent) of the seizures. With 26 (7 percent) seizures, the Southwest Area Office conducted the fewest number.

We reviewed a judgmental sample of 51 seizures from the 359 seizures that the IRS conducted from July 1, 2016, through June 30, 2017.⁸ For the sampled seizure cases, we captured the balance due for the seizure tax modules and considered the asset value and expenses of the seizure.⁹ The balance due on the taxpayer's tax modules for which the asset was seized ranged from less than \$32,700 to more than \$1.8 million.¹⁰ The average balance due for the 51 seizures was \$519,175. In addition, expenses charged to the taxpayer for the seizure and sale of the assets in our sample ranged from the low hundreds of dollars to in excess of \$10,000. Expenses are for

⁷ The number of entries on the seizure logs is 420; however, the actual number of seizures is 359 since 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 359 seizures to determine the number of seizures by Area Office.

⁸ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. The total number of seizures is based on IRS data, which may include duplicate taxpayers.

⁹ We could not determine the balance due on the population of seizures because not all of a taxpayer's tax modules are always included on the seizure and the balance due at the time of the seizure would not be the same as the current balance due on the IRS computer system. Therefore, we obtained the balance due from the seizure case files for our sample cases.

¹⁰ The balance due is only for the tax modules covered by the seizure we reviewed and the taxpayer could have had multiple seizures or may have other tax modules in litigation; therefore, this amount may not be the taxpayer's total liability.



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items such as title searches, advertising, towing, and storage. The largest expenses in our sample were for privately owned storage facilities, while the General Services Administration (GSA) fee to use their online auction was the next largest expense.

Investigations of Seized Assets Were Not Always Adequately Completed Prior to Conducting Seizures

We reviewed the sample of 51 seizures to determine if the actions taken by the IRS were appropriate based on the guidelines. For these cases, we found that the IRS:

- Applied seizure expenses and proceeds appropriately to taxpayers' accounts.
- Thoroughly considered alternative collection options.
- Did not seize items that were exempt from seizure.

However, we identified three seizures in which IRS Collection employees did not comply with a particular I.R.C. or did not exhibit due diligence to ensure that the seizure was appropriate. Failure to adhere to the law could result in the abuse of taxpayers' rights or inequitable treatment of taxpayers.

I.R.C. § 6331(j) provides that there should be no levy before investigation of the status of the property. The investigation includes:

- Verification of the taxpayer's liability.
- Uneconomical levy analysis (*i.e.*, seizure expenses do not exceed the fair market value).
- Determination that the equity in the property is sufficient to yield net proceeds from the sale to apply to the liability.
- Thorough consideration of alternative collection methods.

The Internal Revenue Manual (IRM) includes that before revenue officers make the determination to seize a taxpayer's assets, they should conduct a complete investigation to ensure that there will be proceeds of the sale to apply to the taxpayer's liability. This investigation requires revenue officers to determine the fair market value of assets, conduct a complete public records search to verify ownership in the assets, and consult with the PALS.¹¹ The revenue officer's investigation should be documented on Form 13719, *Pre-Seizure Checklist and Approval Request*, to ensure that the seizure requirements are followed.

Unlike a title search, a public records search does not always identify all encumbrances. However, the IRM does not require the revenue officer or the PALS to conduct a title search on

¹¹ IRM 5.10.1.4.3.3 and IRM 5.10.1.4.3.2 (May 20, 2016).



I.R.C. § 6331(f) provides that no levy may be made on any property if at the time of the levy the amount of the estimated expenses of levy and sale of such property exceeds the fair market value of such property. The IRM also requires the revenue officer to contact the PALS to discuss valuation methods or to request that the PALS appraise the property if the property consists of assets for which an accurate fair market value is not readily determined.¹²

[illegible]

The seizure of taxpayers' assets is a potentially stressful experience for taxpayers who are already having trouble with their tax obligations. Because the PALS are the IRS experts in selling seized assets, they have specialized knowledge in the valuation of the assets to take to auction; therefore, revenue officers should ensure that they collaborate with the PALS to obtain

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feedback on asset valuation, estimation of expenses, and identification of potential encumbrances. It is important that the IRS ensure that the decision to seize property makes sense to both the IRS and the taxpayers. Title searches and the documentation of asset valuation discussions between the revenue officer and PALS could help ensure that the IRS does not seize assets with no sale value and cause unnecessary taxpayer burden.

Recommendations

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

Recommendation 1: Ensure that revenue officers include detailed documentation of their discussions with the PALS about the fair market value, estimation of expenses, and identification of encumbrances.

Management's Response: The IRS partially agreed with this recommendation. IRM 5.10.1 (updated 8/21/2018) describes the role of revenue officers in sales and outsourcing. IRM 5.10.1.5.3.2 has guidance on determining fair market value and expenses of sale and includes instructions to revenue officers to discuss fair market value and expenses with the PALS prior to seizure and to document that discussion. In addition, IRMs 5.10.1.5.3.1(1) and 5.10.1.5.3.4 provide guidance on documentation, coordination, and the determination of equity and the estimation of expenses of seizure and sale. IRM 5.10.1.5.3.3 also includes the requirement to conduct a complete public records search to verify ownership and identify all recorded encumbrances.

Nevertheless, to reemphasize these procedures, the Director, IRS Field Collection Operations, Small Business/Self-Employed Division, will issue a memorandum to Field Collection reminding employees:

- Of the procedures in IRMs 5.10.1.5.3.2 and 5.10.1.5.3.4 regarding determining fair market value and expenses of sale.
- Of the procedures in IRM 5.10.1.5.3.3 to conduct a complete public records search to verify ownership and identify all recorded encumbrances and to document all encumbrances and interests of record on Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale*.
- That discussions should be held with the PALS prior to seizure.
- That discussions with the PALS should be documented sufficiently in the case history.

Office of Audit Comment: Although the IRM requires the revenue officer to discuss expenses and the fair market value with the PALS and document the discussion in the case history, it does not require the revenue officer to discuss identification of encumbrances with the PALS. Our review showed that detailed documentation of the



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discussion is not always included in the case file. We agree reemphasizing the guidance will remind revenue officers of the requirement to have and document the discussion for fair market value and expenses, but the revenue officer should also discuss their identification of encumbrances to obtain the PALS feedback based on their experience.

Recommendation 2: Update the Form 13719 to require that the revenue officer include either the detail of their discussion with the PALS on the form or the date where the detail of the discussion can be located in the case history. The detail of the discussion on the form or in the case history should include the fair market value, expenses, and identification of encumbrances.

Management's Response: The IRS partially agreed with this recommendation. Item number 17 on Form 13719 already requires the revenue officer to provide the date the PALS was contacted to discuss the fair market value and expenses of sale. IRMs 5.10.1.5.3.2 and 5.10.1.5.3.4 provide guidance on documentation, coordination, determining equity, and estimating seizure and sale expenses.

Additionally, IRM 5.10.1.5.3.1(1) states "The revenue officer will determine and document in the case history (Form 13719 is sufficient) the estimated minimum net sale proceeds. The estimate should be prepared after considering input from the PALS regarding both the fair market value and the estimated expenses of seizure and sale. If the reduced forced sale value less senior encumbrances and estimated expenses is positive, then there are estimated net sale proceeds to apply to the liability."

Nevertheless, to reemphasize these procedures, the Director, IRS Field Collection Operations, Small Business/Self-Employed Division, will issue a memorandum to Field Collection reminding employees of the procedures in IRM 5.10.1.5.3.1 for determining and documenting the Integrated Collection System case history and Form 13719 regarding the discussion with the PALS about fair market value and expenses.

Office of Audit Comment: Although Form 13719, item number 17, requires the revenue officer to include the date the PALS was contacted to discuss fair market value and expenses of sale, the IRM and the form do not include the requirement for the revenue officer to discuss identification of encumbrances with the PALS. In addition, the date on the Form 13719 does not ensure that the details of the discussion are documented. We agree reemphasizing the guidance will remind revenue officers of the requirement to have and document the discussion for fair market value and expenses, but the revenue officer should also discuss their identification of encumbrances to obtain the PALS feedback based on their experience.



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**The Internal Revenue Service Lacks Clear Guidance on When to Use
the Higher Cost General Services Administration Sales Process**

The IRS is currently conducting a pilot project to determine the feasibility of using the GSA to conduct online auctions for the sale of some personal property seizures. Collection Policy staff advised us that the GSA pilot project plan included metrics, selection criteria, and a cost/benefit analysis and that they were in the process of updating the metrics. After reviewing the project plan, we identified metrics that provided targets for full-time equivalent employees, quality, time to sale, and travel costs; however, the plan did not include selection criteria or a cost/benefit analysis.

When we requested documentation of the selection criteria from Collection Policy staff, we received an e-mail response stating that the criteria to determine whether to use the GSA for the sale was that the assets must have:

- No senior encumbrances.
- Sufficient equity.
- Low expenses.

Even though in the beginning of the pilot it might have been difficult to prepare detailed selection criteria, as the pilot continues the selection criteria should evolve based on the results of the pilot test cases. IRS management contends that the selection criteria provide sufficient detail. They believe the criteria during the pilot should allow for flexibility and judgement by the IRS on a case-by-case basis as to what assets will be the best fit for a GSA sale.

In addition, Collection Policy staff provided us with the GSA fee schedule, which includes a flat fee of \$275 for the sale of seized vehicles; however, for other personal property, there is a sliding fee scale. The scale starts at a fee of \$250 (or the sale amount if less than \$250) for sales up to \$1,000. For sales from \$1,000.01 - \$5,000, the fee is 25 percent of the proceeds, and at the top end of the scale, for sales of more than \$250,000.01, the fee is 6 percent of the proceeds.

IRS officials advised us that due to the low fee for vehicles, the IRS plans to use the GSA to sell all vehicles and will determine on a case-by-case basis if the GSA will be used for other sales. We believe that the selection criteria for using the GSA is not specific enough to ensure that the GSA is the most efficient sales agent. For sales with expected high proceeds, the GSA's costs, which are passed along to the taxpayer, could be higher than estimated at the time of the seizure. IRS management advised us that the GSA sales have on average sold for 140 percent over the minimum bid; assets sold by PALS on average sold for 68 percent over the minimum bid.¹³

¹³ The percentages are based on seizure sales for FY 2018 through June 30, 2018. There were 16 GSA sales with a range over the minimum bid of 11 percent to 681 percent and 26 PALS sales with a range of 0 percent to 227 percent.



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However, it is difficult to determine if assets sold by GSA are yielding more than if the PALS would have sold them, since every asset seized and sold is unique.

The first GSA seizure sale for the pilot was on November 7, 2017; as of May 8, 2018, there had been 10 completed GSA sales. Four of the sales outsourced to the GSA were during the scope of our audit (July 1, 2016, through June 30, 2017). We reviewed the four cases in which the GSA conducted the sales for the seizures during our audit, and the total expenses were significantly higher than sales conducted by the PALS unit. Specifically, the total expenses of all four GSA sales were \$11,025 (221 percent) more than the estimated expenses prior to the seizure or estimated in the minimum bid, and the expenses averaged 24 percent of the sale prices. The following provides the details for two of the GSA sales we reviewed.

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The taxpayer is notified at least 10 days prior to the sale of the planned minimum bid price and the estimated amount of the expenses. Based on this notification, the taxpayer can ascertain the amount of proceeds projected from the sale that the taxpayer can potentially expect to be applied to the liability. The taxpayer has the right to appeal the values used to determine the minimum bid amount proposed prior to the auction date. Because the GSA sale expenses added significantly to the expenses in the previous cases, the taxpayers did not receive an accurate estimate of the expenses prior to the sale, which may have affected the taxpayer's agreement with the values used to determine minimum bid amount.

The IRS contends that the online auction will reach a larger audience of bidders while reducing travel costs incurred by the PALS. Additionally, during the pilot that started September 2017, the IRS needs to test different types of assets and locations to determine which assets will be the best fit for using the GSA. However, the PALS determines the minimum bid, taking into



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account the estimated expenses of the sale, before the sale of the seized property. In the previous instances, the seizures occurred prior to the start of the pilot; therefore, the expense of using the GSA to conduct the sale was not accounted for when considering the seizures.

Due to the vague selection criteria during the pilot and lack of a cost/benefit analysis, the IRS may not choose the best method to sell seized property, *i.e.*, the method that yields the highest net proceeds. Because sale-related expenses are paid from sale proceeds, unexpected expenses can result in taxpayers and the IRS not getting the greatest amount possible to apply to the taxpayer's liability. Online auctions could be beneficial in some types of sales to attract additional bidders resulting in potentially larger proceeds; however, there needs to be more specific selection criteria and the cost/benefit of using the GSA needs to be considered for each case to ensure that it is the best tool to use.

Recommendation

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

Recommendation 3: Develop detailed selection criteria for determining which assets to outsource to the GSA for online sales, which should take into consideration the interests of the Government and the taxpayer as to whether the GSA should be used.

Management's Response: The IRS agreed with this recommendation. The IRS will update the project plan with detailed selection criteria for determining which assets should be outsourced to GSA for online sales, taking into consideration the interests of the U.S. Government and the taxpayer as to whether GSA should be utilized.

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

Prior to seizing a taxpayer's property, the taxpayer will generally receive a final notice – *Notice of Intent to Levy and Notice of Your Right to a Hearing*. If a taxpayer does not pay overdue taxes, make other arrangements to satisfy the tax debt, or request a hearing within 30 days of the date of the notice, the IRS may seize the taxpayer's property.¹⁴ The law requires that if the taxpayer files a timely request for a Collection Due Process (CDP) hearing, levy actions on the assessments that are the subject of the CDP notice must generally be suspended during the appeal period and while any court proceedings are pending.¹⁵ Additionally, the law provides that during the pendency of the CDP hearing, the running of the collection statute of limitations is suspended.

¹⁴ IRM 5.1.9.3.1(1) and (3) (June 24, 2014).

¹⁵ I.R.C. § 6330(e).



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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.¹⁶ After Appeals has made its determination and if the taxpayer does not agree, 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, no retained jurisdiction, and the taxpayer does not have the right to seek judicial review of Appeals' decision at the conclusion of the hearing.¹⁷

We reviewed a random sample of 30 seizure cases from July 1, 2016, through June 30, 2017, that had a CDP or equivalent hearing during FY 2015 through FY 2017. The Integrated Collection System case histories and the IRS's Integrated Data Retrieval System were reviewed to determine if there was any collection action during the CDP hearing time frame. From our sample of 30 seizure cases, we did not identify any collection activity between the taxpayer's timely CDP or equivalent hearing request date and the date the appeal was closed on the Integrated Data Retrieval System.

¹⁶ IRM 8.22.4.2.1(1) (Nov. 5, 2013).

¹⁷ IRM 5.19.8.4.3 (Nov. 1, 2007).



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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., Treasury Regulations, and IRS procedures. To accomplish the objective, we:

- I. Identified Treasury Regulations affecting the seizure program and current IRS procedures and guidelines used by Small Business/Self-Employed Division employees during the seizure process to determine compliance with applicable laws and regulations. We also followed up on prior TIGTA report recommendations for achieving compliance with seizure requirements.
- II. Evaluated the IRS's compliance with the seizure procedures of I.R.C. §§ 6330-6344 and its internal procedures through selecting and reviewing a judgmental sample of 51 of the 359 case files for seizures conducted from July 1, 2016, through June 30, 2017.¹
- III. Selected and reviewed a random sample of 30 seizure cases from July 1, 2016, through June 30, 2017, that had a CDP hearing request or an equivalent hearing during FY 2015 through FY 2017. We reviewed the sample of CDP hearing requests or equivalent hearing cases to determine whether the IRS complied with CDP procedures prior to seizure. We used a random sample to ensure that each of the CDP hearing requests or equivalent hearing cases had an equal chance of being selected.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: the Small Business/Self-Employed Division Collection function's policies, procedures, and practices for conducting seizures of taxpayers' property under the provisions of I.R.C. §§ 6330 through 6344 and the interest compounding requirement of I.R.C. § 6622. We evaluated these controls by reviewing appropriate internal procedures and guidelines.

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



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Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Carl L. Aley, Director
Beverly K. Tamanaha, Audit Manager
Meaghan Tocco, Lead Auditor
Eugenia Smoak, Senior Auditor



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Appendix III

Report Distribution List

Deputy Commissioner, Services and Enforcement
Commissioner, Small Business/Self-Employed Division
Director, Collection, Small Business/Self-Employed Division
Director, Field Collection, Small Business/Self-Employed Division
Director, Headquarters Collection, Small Business/Self-Employed Division
Director, Office of Audit Coordination



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Appendix IV

Outcome 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; three taxpayers for whom the IRS did not comply with a particular I.R.C. section or did not exhibit due diligence to ensure that the seizure was appropriate when conducting seizures (see page 5).

Methodology Used to Measure the Reported Benefit:

We reviewed a judgmental sample of 51 of the 359 seizures conducted by the IRS from July 1, 2016, through June 30, 2017. We identified three seizures for which the IRS did not comply with a particular I.R.C. section, or did not exhibit due diligence to ensure that the seizure was appropriate. Failure to adhere to legal seizure provisions could result in the abuse of taxpayers' rights.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; four taxpayers for whom the IRS did not adequately estimate expenses prior to the seizure (see page 9).

Methodology Used to Measure the Reported Benefit:

We selected and reviewed all four seizures conducted July 1, 2016, through June 30, 2017, and sold by the GSA. In all four seizures the IRS did not adequately estimate expenses prior to the seizure. Unexpected expenses can result in taxpayers and the Government not getting the greatest amount possible to apply to the taxpayer's liability.



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Appendix V

Synopsis of Selected Legal Provisions for Conducting Seizures

I.R.C. § 6330 requires the IRS to issue the taxpayer a notice of his or her right to a hearing prior to any seizure action. The notice must be 1) given in person, 2) left at the taxpayer's home or business, or 3) mailed as certified–return receipt requested no fewer than 30 calendar days before the day of the first levy. The notice must explain in simple terms 1) the amount owed, 2) the right to request a hearing during the 30-calendar-day period, and 3) the proposed action by the IRS and the taxpayer's rights with respect to such action.

The statute of limitations for collection is suspended from the time a taxpayer requests a hearing and while such hearings and appeals are pending, except when the underlying tax liability is not at issue in the appeal and the court determines that the IRS has shown good cause not to suspend the seizure. No limitation period may expire before 90 calendar days after a final determination. These procedures do not apply if the collection of tax is at risk.

I.R.C. § 6331 authorizes the IRS to seize a taxpayer's property for unpaid tax after sending the taxpayer a 30-calendar-day notice of intent to levy. This section also prohibits seizure 1) during a pending suit for the refund of any payment of a divisible tax, 2) before a thorough investigation of the status of any property subject to seizure, or 3) while either an offer in compromise or an installment agreement is being evaluated and, if necessary, for 30 additional calendar days during which the taxpayer may appeal the rejection of the offer in compromise or installment agreement.

I.R.C. § 6332 requires that a third party in possession of property subject to seizure surrender such property when a levy notice is received. It contains sanctions against third parties who do not surrender such property when a levy notice is received.

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

I.R.C. § 6334 enumerates property exempt from seizure. The exemption amounts are adjusted each year and include \$9,080 in fuel, provisions, furniture, and personal effects and \$4,540 in books and tools necessary for business purposes for Calendar Year 2015. For Calendar Year 2016, the amounts are \$9,120 for fuel, provisions, *etc.*, and \$4,560 for books and tools of a trade. Also, any primary residence, not just the taxpayer's, is exempt from seizure when the amount owed is \$5,000 or less. Seizure of the taxpayer's principal residence is allowed only with the approval of a U.S. District Court judge or magistrate. Property used in the individual



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taxpayer's business is exempt except with written approval of the Area Director, and the seizure may be approved only 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.

I.R.C. § 6336 contains procedures for the accelerated disposition of perishable property. This is property such as fresh food products or any property that requires prohibitive expenses to maintain during the normal sale time period. The property may either be sold quickly or returned to the taxpayer in exchange for payment of a bond.

I.R.C. § 6337 allows the taxpayer to redeem seized property prior to sale by paying the amount due plus the expenses of the seizure. It also allows a taxpayer to redeem real property within 180 calendar days of the sale by paying the successful bidder the purchase price plus 20 percent per annum interest.

I.R.C. § 6338 requires that the IRS give purchasers of seized property a certificate of sale upon full payment of the purchase price. This includes issuing a deed to real property after expiration of the 180-calendar-day period required by I.R.C. § 6337. The deed is exchanged for the certificate of sale issued at the time of the sale.

I.R.C. § 6339 provides the legal effect of the certificate of sale for personal property and the transfer deed for real property.

I.R.C. § 6340 requires that each Area Office keep a record of all sales of seized property. This record must include the tax for which such sale was made, the dates of seizure and sale, the name of the party assessed, all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed or certificate of sale of personal property. The taxpayer will be furnished: 1) the previous listed information except for the purchasers' names, 2) the amount of such sale applied to the taxpayer's liability, and 3) the remaining balance of such liability.

I.R.C. § 6341 allows expenses for all seizure and sale cases.

I.R.C. § 6342 enumerates how the proceeds of a seizure and sale are to be applied to a taxpayer's account. Proceeds are applied first to the expenses of the seizure and sale proceedings. Any remainder is then applied to the taxpayer's liability.

I.R.C. § 6343 outlines various conditions under which a seizure may be released and property returned to the taxpayer. These conditions include full payment of the liability, determination of a wrongful seizure, financial hardship, *etc.* This section allows a consent agreement between the



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United States and either the taxpayer or the National Taxpayer Advocate when the return of seized property would be in the taxpayer's best interest.

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

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

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

Public Law Number 105-206 (IRS Restructuring and Reform Act of 1998) § 3443 required the IRS to implement a uniform asset disposal mechanism by July 22, 2000, for sales of seized property under I.R.C. § 6335. The mechanism should be designed to remove any participation in such sales by revenue officers of the Internal Revenue Service and should consider the use of outsourcing.

¹ Pub. L. No. 105-206, 112 Stat. 685.



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Appendix VI

*Prior Reports on Compliance
With Seizure Procedures*

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).

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

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



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Appendix VII

Glossary of Terms

Term	Definition
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.
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.
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.
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	An automated holding file for unassigned inventory of delinquent cases for which the Collection function does not have enough resources to immediately assign for contact.
Revenue Officer	Employees in the Field Collection function who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by the IRS campuses (formerly known as service centers) or the Automated Collection System.



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Term	Definition
Seizure	The taking of a taxpayer's property to satisfy his or her outstanding tax liability.
Taxpayer Advocate Service	An independent organization within the IRS that helps taxpayers resolve problems with the IRS and recommends changes to prevent problems.



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Appendix VIII

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

August 27, 2018

MEMORANDUM FOR MICHAEL E. McKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Mary Beth Murphy *Sue Lisa Beard Hermann*
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2018 Review of Compliance
With Legal Guidelines When Conducting Seizures of Taxpayers'
Property (Audit #201830002)

Thank you for the opportunity to review the above subject draft report. This year, your team reviewed a judgmental sample of 51 of the 359 seizures the IRS conducted from July 1, 2016 through June 30, 2017. We appreciate your acknowledgment that the IRS applied seizure expenses and sale proceeds appropriately to taxpayers' accounts, thoroughly considered alternative collection options before taking seizure action, and did not seize items that were exempt from seizure.

You additionally reviewed a random sample of seizure cases from the same time that had a Collection Due Process (CDP) hearing during fiscal year (FY) 2015 through FY 2017. TIGTA did not identify any instances of collection action being taken during the CDP hearing timeframe. Last year you made four recommendations relating to the redemption process. We have completed the recommended updates to the related forms and Internal Revenue Manual (IRM).

In this year's audit, your team identified *****1*****

*****1*****

*****1*****. Revenue officers (ROs) are trained to conduct title searches and value property, and the IRM directs them to discuss fair market value (FMV) and anticipated expenses of seizure and sale with the property appraisal and liquidation specialist (PALS) prior to the seizure. In cases involving clouded titles or complex lien issues, ROs may secure a title report prior to seizure. The ROs must document FMV and expense estimates in their case history.

We are currently engaged in a pilot to determine the viability of outsourcing to the General Services Administration (GSA) sales of certain seized personal property. The data is still being gathered, but preliminary results suggest that in some cases (where for example, the asset is a higher value item or has a niche market) the net sale



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proceeds realized can be greater than those realized in a traditional IRS auction. In other cases, assets are best sold via an IRS auction. This is especially true when it requires an on-site presence to conduct the sale. Your report notes that sale expenses appear to be higher in sales outsourced to GSA. We believe that overall costs associated with these sales may in fact be lower in some cases, as expenses for IRS employees' travel and salaries are significantly lower in a GSA auction.

We agree that if we determine to continue outsourcing sales upon the conclusion of the pilot, it will be important to identify the best assets to sell in this manner. Your report states that the IRS plans to use the GSA to sell all vehicles. This is inaccurate, as the sale method is determined on a case by case basis. The GSA fee structure for vehicle sales is favorable, but PALS employees and their management will continue to determine the best means of sale in each case to yield the greatest net proceeds for application to the tax liability.

We are always seeking ways to further strengthen our seizure and sale program. 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.

Attachment



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Attachment

RECOMMENDATION 1:

The Director, Collection Policy, Small Business/Self-Employed Division, should ensure revenue officers include detailed documentation of their discussions with PALS about the fair market value, estimation of expenses, and identification of encumbrances.

CORRECTIVE ACTION:

We partially agree with this recommendation. IRM 5.10.1 (updated 8/21/2018) describes the role of ROs in sales and outsourcing. IRM 5.10.1.5.3.2 has guidance on determining FMV and expenses of sale, and includes instructions to ROs to discuss FMV and expenses with the PALS prior to seizure and to document that discussion. In addition, IRMs 5.10.1.5.3.1(1) and 5.10.1.5.3.4 provide guidance on documentation, coordination, and the determination of equity and the estimation of expenses of seizure and sale. IRM 5.10.1.5.3.3 also includes the requirement to conduct a complete public records search to verify ownership and identify all recorded encumbrances.

Nevertheless, to re-emphasize these procedures, the Director, IRS Field Collection Operations, Small Business/Self-Employed Division, will issue a memorandum to Field Collection reminding employees:

- of the procedures in IRMs 5.10.1.5.3.2 and 5.10.1.5.3.4 regarding determining FMV and expenses of sale;
- of the procedures in IRM 5.10.1.5.3.3 to conduct a complete public records search to verify ownership and identify all recorded encumbrances and to document all encumbrances and interests of record on Form 2434-B *Notice of Encumbrances Against or Interests in Property Offered for Sale*;
- that the discussion should be held with PALS prior to seizure;
- that the discussion with PALS should be documented sufficiently in the case history.

IMPLEMENTATION DATE:

12/15/2018

RESPONSIBLE OFFICIAL:

Director, Field Collection Operations, SB/SE

CORRECTIVE ACTION MONITORING PLAN:

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

RECOMMENDATION 2:

The Director, Collection Policy, Small Business/Self-Employed Division, should update the Form 13719 to require the revenue officer include either the detail of their discussion with the PALS on the form or the date where the detail of the discussion can be located



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in the case history. The detail of the discussion on the form or in the case history should include the fair market value, expenses, and identification of encumbrances.

CORRECTIVE ACTION:

We partially agree with this recommendation. Item # 17 on Form 13719 already requires the revenue officer to provide the date the PALS was contacted to discuss the FMV and expenses of sale. IRMs 5.10.1.5.3.2 and 5.10.1.5.3.4 provide guidance on documentation, coordination, determining equity, and estimating seizure and sale expenses.

Additionally, IRM 5.10.1.5.3.1(1) states "The revenue officer will determine and document in the case history (Form 13719 is sufficient) the estimated minimum net sale proceeds. The estimate should be prepared after considering input from the PALS regarding both the FMV and the estimated expenses of seizure and sale. If the reduced forced sale value less senior encumbrances and estimated expenses is positive, then there are estimated net sale proceeds to apply to the liability."

Nevertheless, to re-emphasize these procedures, the Director, IRS Field Collection Operations, Small Business/Self-Employed Division, will issue a memorandum to Field Collection reminding employees of the procedures in IRM 5.10.1.5.3.1 for determining and documenting the ICS case history and Form 13719 regarding the discussion with PALS about FMV and expenses.

IMPLEMENTATION DATE:

12/15/2018

RESPONSIBLE OFFICIAL:

Director, Field Collection Operations, SB/SE

CORRECTIVE ACTION MONITORING PLAN:

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

RECOMMENDATION 3:

Develop detailed selection criteria for determining which assets to outsource to the GSA for online sales, which should take into consideration the interests of the Government and the taxpayer as to whether the GSA should be used.

CORRECTIVE ACTION:

We agree with this recommendation. We will update the project plan with detailed selection criteria for determining which assets should be outsourced to GSA for online



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sales, taking into consideration the interests of the U.S. Government and the taxpayer as to whether GSA should be utilized.

IMPLEMENTATION DATE:

July 15, 2019

RESPONSIBLE OFFICIAL:

Director, Collection Policy, SB/SE

CORRECTIVE ACTION MONITORING PLAN:

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