Fiscal Year 2021 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

September 9, 2021

Report Number: 2021-30-055

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HIGHLIGHTS: Fiscal Year 2021 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property

Final Audit Report issued on September 9, 2021 **Report Number 2021-30-055**

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 of property conducted by the IRS complied with legal provisions set forth in I.R.C. §§ 6330 through 6344 and with the IRS's own internal procedures.

Impact on Taxpayers

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

What TIGTA Found

For this audit, TIGTA reviewed 90 of the 145 seizures the IRS conducted from July 1, 2019, through June 30, 2020. The IRS generally adhered to procedures that help ensure compliance with I.R.C. §§ 6330 through 6344. However, TIGTA identified some instances in which the IRS did not comply with a particular I.R.C. section or internal procedure and identified ways to strengthen internal procedures.

Before the IRS can seize an asset, management must approve the seizure and an advisor will conduct a review for legal sufficiency. For five cases, there were questions raised about the ownership and/or legal description of the property after the seizure took place in which all five seizures were subsequently released.

The Internal Revenue Manual (IRM) requires the revenue officer to attempt a field call or telephone call to advise the taxpayer that seizure is the next planned action for the case. [redacted]

The IRS also issued new guidance that covers judicial approval for principle residence seizures, which should include a statement regarding economic hardship. The statement will contain a discussion of whether the action proposed would result in an inability to secure future housing or otherwise lead to an economic hardship.

What TIGTA Recommended

TIGTA recommended that the Director, Collection Policy, Small Business/Self-Employed Division: 1) review Form 2433, *Notice of Seizure*, for real property seizures during the pre-seizure review process, and 2) emphasize in a message to all revenue officers the existing Internal Revenue Manual requirement to conduct a field call or telephone call notifying the taxpayer of the next action planned such as a seizure. The IRS agreed with both recommendations.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 9, 2021

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Michael E. McKenney

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2021 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Audit # 202130002)

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 2021 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights.*

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

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

Table of Contents

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 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 and liquidation specialists (PALS) sell seized property by public auction or by public sale under sealed bids.

A taxpayer's principal residence cannot be seized 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.) §§ 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.[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.[6]

Figure 1 shows the number of seizures conducted by the IRS from Fiscal Year (FY) 2013 to FY 2020. With the exception of a small increase in FY 2016, the number of seizures the IRS conducted continued to diminish from 547 in FY 2013 to 77 in FY 2020. During this period, the number of seizures decreased by 86 percent.

[1] See Appendix VI 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 I.R.C. § 6330, as well as upon the first issuance of a Notice of Federal Tax Lien, pursuant to § 6320. Taxpayers additionally have certain administrative rights, such as an appeal through the IRS's Collection Appeal Program. See Internal Revenue Manual 5.1.9.3 and 5.1.9.4 (Feb. 7, 2014).

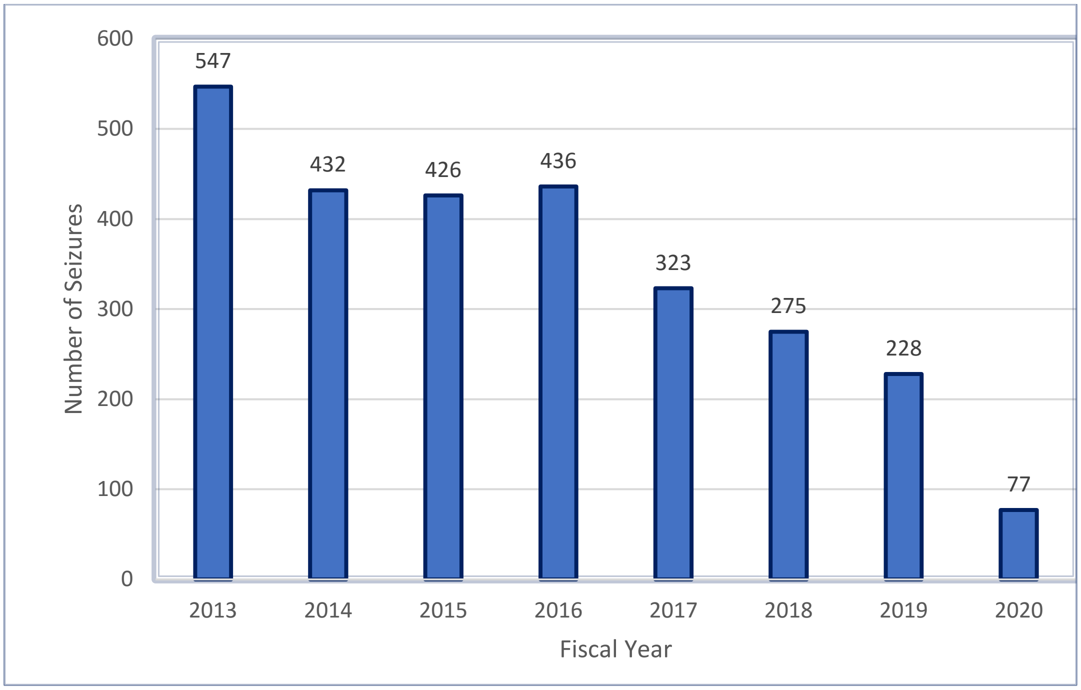
[3] Pub. L. No. 105-206, 112 Stat. 687.

[4] I.R.C. § 6334(e)(1)(A).

[5] I.R.C. § 6331(f).

[6] See Appendix IV for the list of the five prior TIGTA reports on compliance with seizure procedures.

Figure 1: IRS Seizures by Fiscal Year



Source: IRS Data Books 2014 through 2019 and Collection Activity Report 2020.

Specifically, the drop from 228 for FY 2019 to 77 for FY 2020 appears to have been impacted by the COVID-19 pandemic as discussed later in the report.

Results of Review

Most of the Seizures Conducted Involved Real Property

During the period of July 1, 2019, through June 30 2020, the IRS conducted 117 seizures against 109 taxpayers with unpaid liabilities.[7] The 117 seizures correspond to the number of distinct properties that were seized; however, as we describe subsequently, IRS Collection Areas account for the number of seizures differently, some Areas count each property separately, and other Areas count multiple properties of the same taxpayer as a single seizure. Accordingly, IRS Collection Areas' count of seizures was 145 for this same period. Figure 2 shows that many seizures involved real property, and the majority of them were classified as "other" real property, which is real property other than a taxpayer's primary or personal residence.

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

[7] 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.

Figure 2: Seizure by Property Type From July 1, 2019, Through June 30, 2020

[redacted]

Source: TIGTA analysis of IRS seizure logs.[8]

After "other" real property, the next most common seizures involved vehicles and personal residences. Figure 3 shows the number of seizures conducted by each of the Small Business/Self-Employed (SB/SE) Division's six Collection Area Offices.

Figure 3: Seizures by IRS Area Office
From July 1, 2019, Through June 30, 2020

Collection Area	Number of Seizures	Percentage of Total
Central	17	12%
Gulf States	26	18%
North Atlantic	7	5%
Northwest	51	35%
South Atlantic	34	23%
Southwest	10	7%
Nation	145	100%

Source: TIGTA analysis of IRS seizure logs.[9]

The Northwest Area Office had the largest number of seizures with 51 (35 percent), followed by the South Atlantic Area Office, with 34 (23 percent) seizures. Whereas, the North Atlantic Area Office conducted the fewest number, seven (5 percent) seizures.

[8] Internal Revenue Manual Exhibit 5.10.2-1 (Aug. 18, 2017) 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.

[9] The number of distinct property seizures reported on the seizure logs is 117; however, the number of seizures as reported by IRS Collection Area Offices is 145. The variance is due to the fact that Area Offices record multiple property seizures differently, as either one entry for all property or one entry for each piece of property included in the seizure. We used the 145 seizures to determine the number of seizures by Area Office.

Seizure Procedures Were Generally Followed

For this year's review, we found the IRS generally adhered to procedures that help ensure compliance with the seizure provisions of I.R.C. §§ 6330 through 6344. To determine the IRS's compliance with seizure procedures and guidelines, we reviewed a judgmental sample of 90 of the 145 seizures that the IRS conducted from July 1, 2019, through June 30, 2020.[10] The judgmental sample of 90 seizures consisted of three principal residences, 61 other real properties, nine vehicles, six personal residences, three other personal properties, three other business properties, and five seizures that consisted of [redacted]

The balance due amounts for taxpayers at the time of the seizure for the tax modules included on the seizure ranged from approximately $13,000 to more than $3.5 million, with an average balance due of $699,168. Our review of the 90 seizures identified eight seizures involving eight taxpayers in which the IRS did not comply with a particular I.R.C. or Internal Revenue Manual (IRM) requirement:[11]

- Five cases – in which the SB/SE Division Advisory function or the PALS questioned the legal description or owner after the seizure.
- [redacted]
- [redacted]

The pre-seizure approval process should include increased review of legal descriptions or ownership

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).[12]

All collection seizures require a minimum approval level of the group manager. 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. Once Advisory is

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

[11] Instance count is by seizure and not by each asset seized. For example, if three assets were seized during one seizure, then we counted that as one instance.

[12] IRM 5.10.2.2(8) (July 12, 2019).

[13] IRM 5.10.2.2(9) (July 12, 2019).

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 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.
- Notice of Federal Tax Lien filed on all tax modules.
- Letter 1058, *Notice of Intent to Levy and Notice of Your Rights to a Hearing*, sent for all tax modules on Form 668-B.
- Form 13360, *Seizure and Sale Checklist*.[16]

For five seizures cases, there were questions raised about the ownership and/or the legal description of the property after the seizure took place. We found the following:

[redacted]

- [redacted]

All five seizures were subsequently released. When we asked the IRS about these cases, it agreed that [redacted]. According to IRS management, the other [redacted] cases were primarily based on issues with local government documents. [redacted]. The issues found in the other [redacted] cases could have been potentially identified if a review of the Form 2433 was completed during the pre-seizure review by Advisory rather than during the post-seizure review. Considering that real property was seized in all five exception cases, the IRS should consider adding the review of Form 2433 to the pre-seizure review performed by Advisory for real

[14] IRM 5.10.2.2(10) (July 12, 2019).

[15] IRM 5.10.3.23(3) (May 23, 2016).

[16] IRM 5.10.3.23(6) (May 23, 2016).

property seizures. When we raised this issue with the IRS, IRS management agreed to the added review.

[redacted]

I.R.C. § 6330(a) requires that no levy may be made on any property or right to property of any person unless the owner of such property has been notified, in writing, of their rights to a hearing under this section before such levy is made. A revenue officer can satisfy this requirement with the issuance of Letter 1058. Letter 1058 informs the taxpayer of their Collection Due Process rights to appeal and the expiration of Collection Due Process rights. 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.[17] We did not find any evidence within our sample of 90 seizures that the IRS seized taxpayer's property in violation of I.R.C. § 6330.

However, IRM 5.10.1.6.1 adds an additional requirement on the revenue officer. It states that the revenue officer must attempt to contact the taxpayer by either a telephone call or a field call prior to seizure. During this contact, the revenue officer should:

- Advise the taxpayer that seizure is the next planned action.
- Give the taxpayer an opportunity to resolve the tax liability voluntarily, and provide and explain Publication 1, *Your Rights as a Taxpayer*, and Publication 594, *The IRS Collection Process*.
- Advise the taxpayer about the Taxpayer Advocate and provide Form 911, *Request for Taxpayer Advocate Service Assistance*.
- Provide the taxpayer with the name and location of the immediate supervisor if the taxpayer requests a managerial review.
- Document Form 9297, *Summary of Taxpayer Contact*, with specific actions and deadlines communicated to the taxpayer.

[redacted]

[redacted]

I.R.C. § 6331(j) requires that no levy may be made on any property or right to property which is to be sold under I.R.C. § 6335 until a thorough investigation of the status of the property has been completed. The elements of investigation should include the determination that the equity in the property is sufficient to yield net proceeds from the sale to apply to the liability. IRM 5.10.1.5.3.3 requires a records check to verify the taxpayer's interest in the property and to identify any encumbrances against the property no more than 90 calendar days prior to submission for the group manager's approval. Besides determining the fair market value of assets, the revenue officer is required to conduct a records search to verify ownership and identify all recorded encumbrances against the property. In addition, after a seizure and before

[17] IRM 5.1.9.3.1(1) and (3) (June 24, 2014).

a sale, a current records check must be completed and Form 2434-B must be updated if the most recent records check is 90 calendar days or more prior to the sale date.

[redacted]. Specifically, IRS management stated,

> *We do not agree* [redacted] *IRC 6331(f) prohibits levy 'if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred . . . exceeds the fair market value of such property" and IRC 6331(j) prohibits levy prior to an investigation of the status of the property.* [redacted]

I.R.C. § 6331(j)(1) states that no levy may be made on any property or right to property which is to be sold under I.R.C. § 6335 until a thorough investigation of the status of such property has been completed. We do not believe [redacted].

We included recommendations in our FY 2018 report to ensure that there is documentation of the revenue officer's actions with respect to property valuation and to identify encumbrances.[18] The IRS partially agreed with the recommendations, indicating that there is already IRM guidance for these discussions; however, the IRS proposed to issue memorandums to remind employees of their responsibilities as included in the IRM. The proposed corrective actions were completed in December 2018. [redacted] we are not making a recommendation at this time.

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

Recommendation 1: Require Advisory to review Form 2433 for real property seizures during the pre-seizure review process.

> **Management's Response:** IRS management agreed with this recommendation and will update their procedures to require Advisory review of the Form 2433, *Notice of Seizure*, for real property seizures during the pre-seizure review process.

[18] TIGTA, Report No. 2018-30-067, *Fiscal Year 2018 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* pp. 7-8 (Sept. 2018).

Recommendation 2: Emphasize in a message to all revenue officers the existing IRM requirement to conduct a field call or a telephone call notifying the taxpayer of the next action planned such as a seizure.

> **Management's Response:** IRS management agreed with this recommendation and will issue an e-mail message to all Field Collection revenue officers emphasizing the existing IRM requirement to conduct a field visit or telephone call notifying the taxpayer that seizure is the next planned action.

New Guidance Has Been Issued for Principal Residence Seizures

A principal residence is a home that is used by the taxpayer, the taxpayer's spouse or former spouse, or the taxpayer's minor children as a primary home. A principal residence seizure is the only type of seizure that requires judicial approval. This type of seizure may be the most disruptive action a revenue officer can take because it deprives a taxpayer of their home. As with any levy or seizure action, the revenue officer must evaluate whether the action will cause an economic hardship. If the action will cause an economic hardship, then it should not be taken. A levy is causing an economic hardship if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay their reasonable basic living expenses.[19]

In our FY 2020 audit, we reported that 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.[20] The IRS will not seize assets from a "will pay" or "can't pay" taxpayer. The issue identified in that report was that seizures were happening on taxpayers who would otherwise qualify as a "can't pay" but were deemed a "won't pay" due to equity in assets. The report found that revenue officers' 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.

On July 12, 2019, the IRS added a note to the IRM that covers judicial approval for principal residence seizures. This note indicates that Form 4477-B, *Civil Suit Narrative Report*, should include a statement regarding economic hardship. The history statement will contain a discussion of whether the action proposed would result in an inability to secure future housing or otherwise lead to an economic hardship.[21]

From July 1, 2019, through June 30, 2020, the IRS conducted three principal residence seizures. We reviewed all three seizures. We did not take exception to any of the seizures based on current policy and procedures. In [redacted] We agree with this new requirement and its intention to reduce hardship issues for principal residence seizures.

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[19] Treas. Reg. § 301.6343-1.

[20] IRM 5.10.1.4 (May 20, 2016). TIGTA, Report No. 2020-30-058, *Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (Sept. 2020).

[21] IRM 5.10.2.3 (July 12, 2019).

The COVID-19 Pandemic Delayed Some Seizure Actions

On March 13, 2020, the President declared a national state of emergency due to the COVID-19 pandemic. On March 30, 2020, the Director, SB/SE Division, issued a memorandum titled "Temporary Relief for Taxpayers – Suspension of Certain Collection Activities." This memorandum suspended a number of collection activities until after July 15, 2020, with an exception for cases meeting exigent circumstances, which required approval of the Director, Collection, SB/SE Division. One of the activities suspended was the scheduling or taking of any seizure action. On July 16, 2020, collection enforcement processes resumed; however, fieldwork was still limited. Field employees were permitted to conduct essential face-to-face public contact/field activities on a voluntary basis only when necessary and appropriate, and with Territory manager concurrence. The guidance on limited fieldwork was extended and reinforced through memorandums issued on August 25, 2020, and October 1, 2020.

During our review, we found 48 instances out of the 90 cases in our sample in which COVID-19 restrictions affected or delayed seizure actions. Thirty-one of the 48 instances dealt with the selling of the seized asset. Due to the unique nature of the pandemic, the delays appeared appropriate. Also, as noted in the FY 2020 seizures report, there were three seizures that occurred during the suspension period, which met the exigent circumstance criteria and the revenue officers appropriately secured approval from the Director, Collection, SB/SE Division.[22]

[22] TIGTA, Report No. 2020-30-058, *Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property,* pg. 14 (Sept. 2020).

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:

- Identified 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.[1]
- Evaluated the IRS's compliance with the seizure procedures of I.R.C. §§ 6330 through 6344 and its internal procedures through reviewing a judgmental sample[2] of 90 of the 145 seizures conducted from July 1, 2019, through June 30, 2020.

Performance of This Review

This review was performed with information obtained from the offices of the SB/SE Division Headquarters located in Lanham, Maryland, during the period September 2020 through June 2021. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Christina Dreyer, Director; Lee Hoyt, Audit Manager; and Jesse Fenton, Lead 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 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 completed a review of seizure case files.

[1] See Appendix III for additional details on I.R.C. requirements related to IRS seizures.

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

Appendix II

Outcome Measure

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

Type and Value of Outcome Measure:

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

Methodology Used to Measure the Reported Benefit:

We reviewed a judgmental sample[1] of 90 seizures from the 145 that the IRS conducted from July 1, 2019, through June 30, 2020. We identified eight seizures involving eight taxpayers in which the IRS did not comply with a particular I.R.C. or IRM requirement 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.

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

Appendix III

Synopsis of Selected Legal Provisions for Conducting Seizures

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

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

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

I.R.C. § 6332 requires that a third party in possession of property subject to seizure surrender such property when a levy notice is received. It contains sanctions against third parties that 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 $9,540 in fuel, provisions, furniture, and personal effects and $4,770 in books and tools necessary for business purposes for Calendar Year 2019. For Calendar Year 2020, the amounts are $9,690 for fuel, provisions, *etc.*, and $4,850 for books and tools of a trade. Also, any real property used as a residence, not just by the taxpayer, is exempt from seizure when the amount owed is $5,000 or less other than real property that is rented. Seizure of the taxpayer's principal residence is allowed only with the approval of a U.S. District Court judge or magistrate. Property used in the individual taxpayer's business is exempt except with written approval of the Area Director, and the seizure may only be approved if other assets are not sufficient to pay the liability.

I.R.C. § 6335 contains procedures for the sale of seized property. Notice must be given to the taxpayer; the property must be advertised in the county newspaper or posted at the nearest U.S. Postal Service office; and such notices shall specify the time, place, manner, and conditions of sale. This section requires that the property be sold no fewer than 10 calendar days or no more than 40 calendar days from the time of giving public notice. Finally, this section expressly prohibits selling seized property for less than the minimum bid.

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

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

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

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

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

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

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

I.R.C. § 6343 outlines various conditions under which a seizure may be released and property returned to the taxpayer. These conditions include full payment of the liability, determination of a wrongful seizure, levy is creating an economic hardship due to the financial condition of the taxpayer, *etc*. This section allows a consent agreement between the United States and either the taxpayer or the National Taxpayer Advocate when the return of seized property would be in the taxpayer's best interest.

I.R.C. § 6344 contains cross-references to other I.R.C. sections that may be relevant.

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

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

[1] Pub. L. No. 105-206, 112 Stat. 685.

Public Law Number 105-206 (IRS Restructuring and Reform Act of 1998) § 3443 required the IRS to implement a uniform asset disposal mechanism by July 22, 2000, for sales of seized property under I.R.C. § 6335. This mechanism was designed to remove revenue officers from participating in the sales of seized assets.

Appendix IV

Prior Reports on Compliance With Seizure Procedures

TIGTA, Report No. 2020-30-058, *Fiscal Year 2020 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (Sept. 2020).

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

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

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

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

Appendix V

Management's Response to the Draft Report

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

COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

August 10, 2021

MEMORANDUM FOR MICHAEL E. McKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Darren John Guillot Digitally signed by Darren J. Guillot Date: 2021.08.10 14:01:40 -04'00'
Commissioner, Small Business/Self-Employed, Collection

SUBJECT: Draft Audit Report – Fiscal Year 2021 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Audit #202130002)

Thank you for the opportunity to review and comment on the subject draft audit report. Our seizure program is an important enforcement tool requiring extreme accuracy and care in execution. IRS employees are expected to exercise sound judgment when determining whether seizure is appropriate and to execute our seizure procedures accurately. Your acknowledgement that our employees generally followed our seizure procedures and guidelines confirms sound use of this tool. We also appreciate your agreement in this year's report with our insertion of new Internal Revenue Manual instructions requiring employees to include a statement on economic hardship in the Form 4477-B, *Civil Suit Narrative Report,* when preparing a recommendation for seizure of a principal residence.

For this year's report, TIGTA reviewed 90 of the 145 seizures the IRS conducted from July 1, 2019 through June 30, 2020. Overall, you found that our employees met all legal and statutory requirements prior to seizing taxpayer property in more than 91% of the cases you reviewed. However, you identified five cases in which discrepancies in ownership/legal description identified post-seizure caused the IRS to subsequently release the seized assets. We do not agree that the discrepancies in three of the five cases you identified were an IRS error, because the revenue officer who seized the asset properly relied on documents recorded with the local government. However, we acknowledge that these discrepancies, which the IRS identified post-seizure, may have been identified pre-seizure if our Advisory employees had conducted their additional review of our real property seizure cases pre-seizure rather than post-seizure as currently permitted. We will update our procedures to require Advisory review of the

Form 2433, *Notice of Seizure*, for real property seizures during the pre-seizure review. We also will remind our revenue officers of the existing requirement to conduct a field visit or telephone call to advise the taxpayer that seizure is the next planned action.

The IRS is committed to fairly and effectively collecting taxes owed through all means allowed by the Internal Revenue Code. We will continue to strive to improve our seizure process and value your insights and recommendations. If you have any questions, please contact me or Frederick W. Schindler, Director, Collection.

Attachment

Attachment

RECOMMENDATION 1:
The Director, Collection Policy, Small Business/Self-Employed Division should require Advisory to review Form 2433 for real property seizures during the pre-seizure review process.

CORRECTIVE ACTION:
We will update our procedures to require Advisory review of the Form 2433, *Notice of Seizure*, for real property seizures during the pre-seizure review process.

IMPLEMENTATION DATE:
November 15, 2022

RESPONSIBLE OFFICIAL:
Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:
IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 2:
The Director, Collection Policy, Small Business/Self-Employed Division should emphasize in a message to all revenue officers the existing IRM requirement to conduct a field call or a telephone call notifying the taxpayer of the next action planned such as a seizure.

CORRECTIVE ACTION:
We will issue an e-mail message to all Field Collection revenue officers emphasizing the existing IRM requirement to conduct a field visit or telephone call notifying the taxpayer that seizure is the next planned action.

IMPLEMENTATION DATE:
November 15, 2021

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.

OUTCOME MEASURE:
Taxpayer Rights and Entitlements – Potential; 8 taxpayers for whom the IRS did not comply with a particular I.R.C. or IRM section or did not exhibit due diligence to ensure that the seizure was appropriate when conducting seizures. (see Recommendations 1 and 2)

IRS Response:
As TIGTA acknowledged in its report, we released the seized asset in all 5 cases where questions were raised about the ownership and/or the legal description of the property after the seizure took place. Additionally, although the failure to notify the taxpayer that seizure is the next planned action is not a statutory violation, our procedures require our revenue officers to take this action. We will issue an e-mail message to all Field Collection revenue officers emphasizing the existing IRM requirement to conduct a field visit or telephone call notifying the taxpayer that seizure is the next planned action.

Appendix VI

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.
Automated Collection System	A telephone contact system through which telephone assistors collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.
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.
Installment Agreement	The IRS allows taxpayers who are unable to pay their tax debt immediately to make monthly payments through an installment agreement.
Integrated Data Retrieval System	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
Internal Revenue Service Data Book	Provides information on activities conducted by the IRS, such as taxes collected, enforcement, taxpayer assistance, budget, workforce, and other selected activities.
Levy	A method used by the IRS to collect outstanding taxes from sources such as bank accounts and wages or a legal seizure of property to satisfy a tax debt.
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 Field Collection who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by IRS campuses (formerly known as service centers) or the Automated Collection System.
Seizure	The taking of a taxpayer's property to satisfy his or her outstanding tax liability.
Tax Module	Refers to each tax return filed by the taxpayer for a specific period (year or quarter) during a calendar year for each type of tax.

Appendix VII

Abbreviations

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,
call our toll-free hotline at:

(800) 366-4484

By Web:

www.treasury.gov/tigta/

Or Write:

Treasury Inspector General for Tax Administration

P.O. Box 589

Ben Franklin Station

Washington, D.C. 20044-0589

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