



*Fiscal Year 2019 Review of Compliance  
With Legal Guidelines When Conducting  
Seizures of Taxpayers' Property*

**September 20, 2019**

**Reference Number: 2019-30-075**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

**Redaction Legend:**

1 = Tax Return/Return Information

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Phone Number / 202-622-6500

E-mail Address / [TIGTACommunications@tigta.treas.gov](mailto:TIGTACommunications@tigta.treas.gov)

Website / <http://www.treasury.gov/tigta>



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## HIGHLIGHTS

### FISCAL YEAR 2019 REVIEW OF COMPLIANCE WITH LEGAL GUIDELINES WHEN CONDUCTING SEIZURES OF TAXPAYERS' PROPERTY

## Highlights

Final Report issued on  
September 20, 2019

Highlights of Reference Number: 2019-30-075  
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 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

Internal Revenue Code Section 7803(d)(1)(A)(iv) requires TIGTA to annually evaluate the IRS's compliance with legal seizure provisions. The overall objective of this review was to determine whether seizures conducted by the IRS complied with legal provisions set forth in Internal Revenue Code Sections 6330 through 6344 and with the IRS's own internal procedures.

### WHAT TIGTA FOUND

The number of seizures conducted by the IRS diminished from 10,090 in Fiscal Year 1997 to 74 in Fiscal Year 2000. The number of seizures has increased since Fiscal Year 2000; however, total seizures in Fiscal Year 2017 were approximately 3 percent of those reported for Fiscal Year 1997. Additionally, seizures have decreased by 58 percent from 776 in Fiscal Year 2011 to 323 in Fiscal Year 2017.

TIGTA reviewed a judgmental sample of 52 of the 260 seizures conducted from July 1, 2017, through June 30, 2018, to determine whether

the IRS complied with legal and internal guidelines related to each seizure.

TIGTA identified instances in which the IRS did not comply with a particular Internal Revenue Code section, an internal procedure, or there was no guidance present, resulting in violations of taxpayers' rights and taxpayer burden. Errors identified were related to Collection Due Process rights, nonjudicial sale notices, and property valuations.

Pursuant to Internal Revenue Code Section 6343(a)(1)(D), the IRS must release a levy if it is causing an economic hardship, *i.e.*, taxpayers who are having difficulties meeting basic living expenses. TIGTA reviewed all 56 seizures from the population of 260 in which taxpayers had a low-income indicator on their account and identified six cases in which the taxpayers appeared to be experiencing an economic hardship. The IRS does have procedures that require revenue officers to consider economic hardship before a levy. However, we could not identify any specific procedure which addresses a situation in which the taxpayer is already experiencing an economic hardship, but possesses property where there may be some available equity.

### WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS: (1) require the Advisory function to determine if there is an active collection case when nonjudicial foreclosure notices are received and, if there is, to properly notify the assigned Collection function; (2) to update the Internal Revenue Manual to provide guidance to revenue officers and property appraisal and liquidation specialists on receiving and properly securing property keys prior to seizure; and (3) to develop a procedure which addresses the situation in which a taxpayer is already experiencing an economic hardship, but possesses property (real or personal property) in which there may be some available equity.

In response to the report, IRS officials agreed with two recommendations and disagreed with one recommendation. The IRS plans to take corrective action on the two recommendations.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 20, 2019

**MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE**

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

**SUBJECT:** Final Audit Report – Fiscal Year 2019 Review of Compliance With  
Legal Guidelines When Conducting Seizures of Taxpayers' Property  
(Audit # 201930001)

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 (IRS) procedures. The Treasury Inspector General for Tax Administration is required under Internal Revenue Code Section 7803(d)(1)(A)(iv) to annually evaluate the IRS's compliance with the legal seizure provisions to ensure that taxpayers' rights were not violated while seizures were being conducted. We have evaluated the IRS's compliance with the seizure provisions since Fiscal Year 1999. The audit is included in our Fiscal Year 2019 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.

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
ICS	Integrated Collection System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
OIC	Offer in Compromise
PALS	Property Appraisal and 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 Collection Queue.<sup>1</sup> The IRS considers the taxpayer's ability to pay the tax and discusses alternative payment options, such as an installment agreement or an offer in compromise (OIC). If these actions have been taken and the taxpayer is able to pay some or all of the tax but has not taken steps to address the liability and if the taxpayer had the opportunity to exercise available appeal rights, the IRS has the authority to levy the taxpayer's funds or seize property for the payment of tax.<sup>2</sup> Taking a taxpayer's property for unpaid tax is commonly referred to as a seizure. The IRS's property appraisal and liquidation specialists (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.<sup>3</sup> These provisions and the IRS's internal procedures govern many aspects of the seizure process, from notification of the taxpayer through sale or redemption of the property. For example, a taxpayer's principal residence cannot be seized without a court order.<sup>4</sup> Additionally, seizures are not permitted if estimated expenses related to the sale exceed the fair market value of the property at the time of the seizure.<sup>5</sup>

The Treasury Inspector General for Tax Administration (TIGTA) is required under I.R.C. § 7803(d)(1)(A)(iv) to annually evaluate the IRS's compliance with the legal seizure in I.R.C. §§ 6330 through 6344.

The number of seizures the IRS conducted diminished from 10,090 in Fiscal Year (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. Figure 1 illustrates that the number of seizures has also significantly decreased since FY 2011.

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

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

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

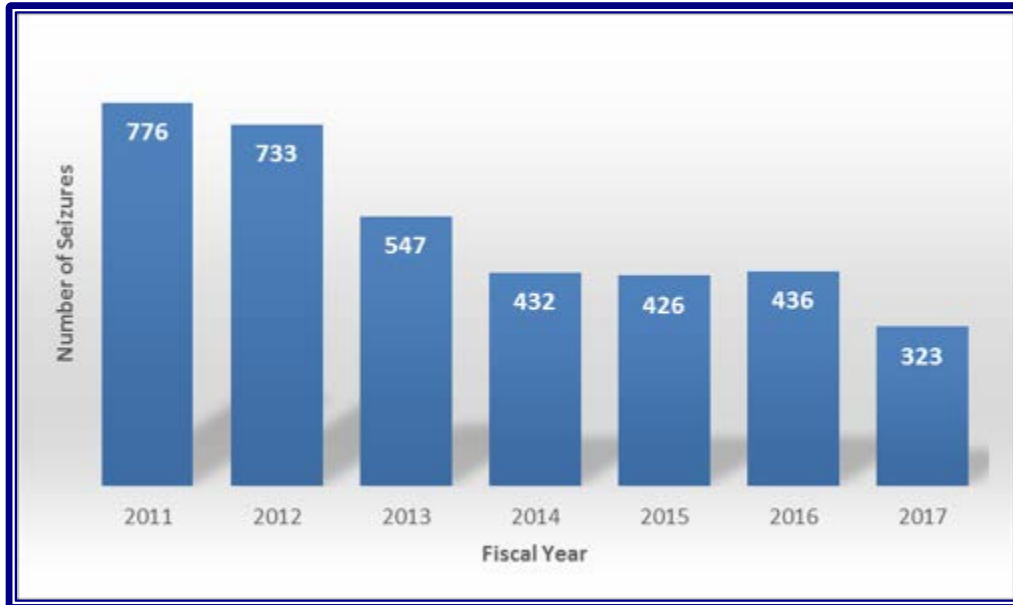
<sup>4</sup> I.R.C. § 6334(e)(1)(A).

<sup>5</sup> I.R.C. § 6331(f).



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



*Source: IRS Data Books 2011 through 2017.*

Seizures have decreased by 58 percent from 776 in FY 2011 to 323 in FY 2017.

The review was performed with information obtained from the offices of the Small Business/Self-Employed Division Headquarters located in Lanham, Maryland and at Small Business/Self-Employed Division Field Examination offices in Glendale, Arizona; Phoenix, Arizona; and St. Paul, Minnesota, during the period October 2018 through July 2019. 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.





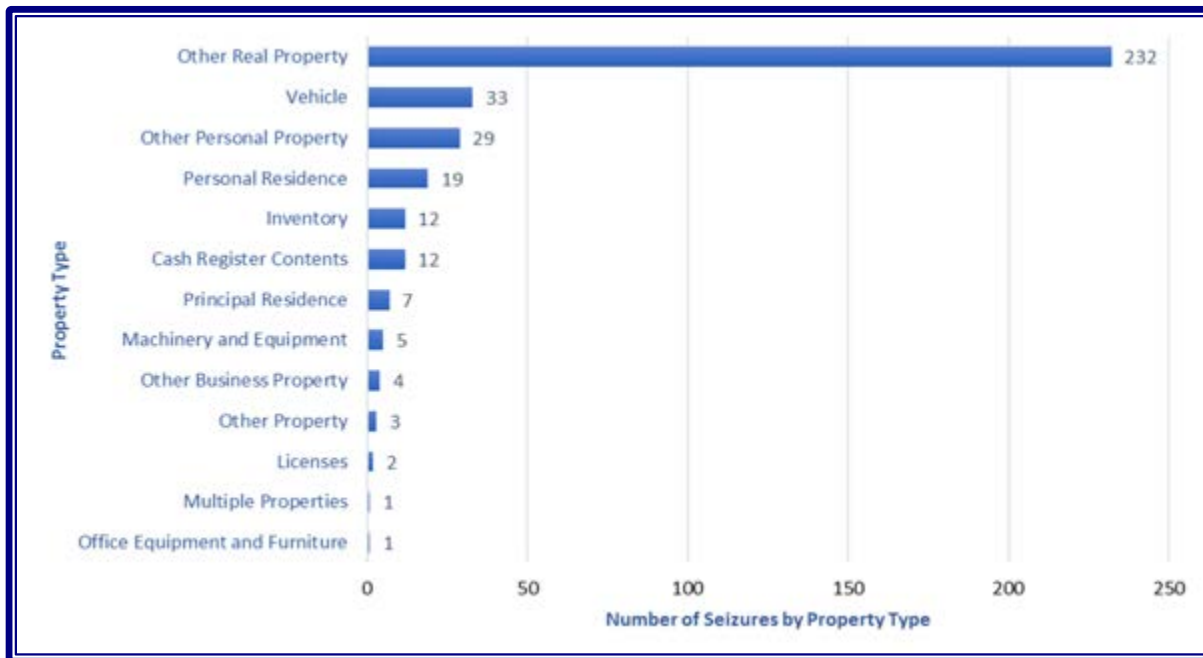
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*Results of Review*

**Many of the Seizures Conducted Involved Real Property and Varied Geographically**

During the period July 1, 2017, through June 30, 2018, the IRS conducted 260 seizures against taxpayers with unpaid liabilities.<sup>6</sup> 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, 2017, Through June 30, 2018**



Source: TIGTA analysis of IRS seizure logs.<sup>7</sup>

<sup>6</sup> This number differs from numbers in Figure 1 because the IRS reports by fiscal year. We analyzed a 12-month period that spanned across parts of two fiscal years.

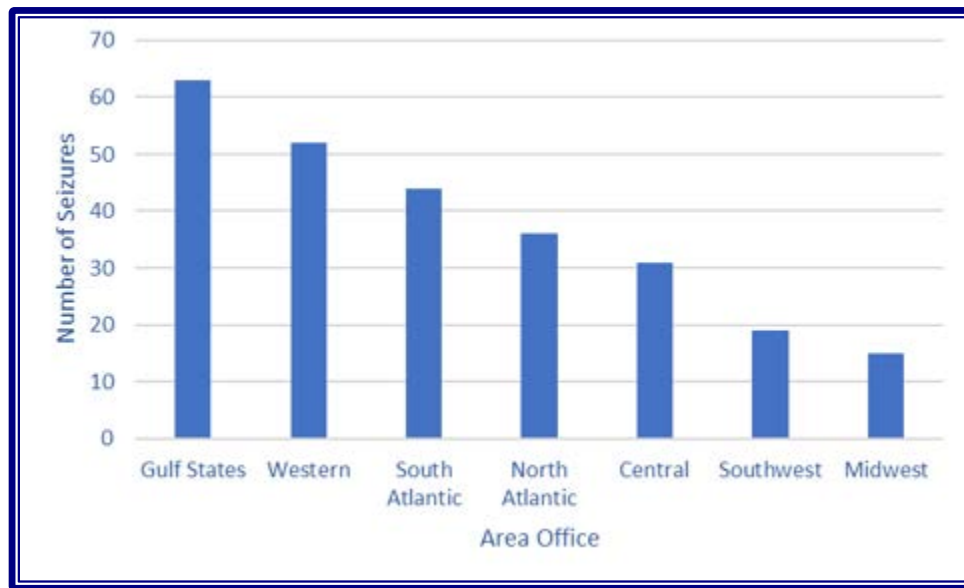
<sup>7</sup> Internal Revenue Manual 5.10.2 (Oct. 12, 2016), defines principal residence as the primary dwelling of the taxpayer, the taxpayer’s spouse, former spouse and/or the taxpayer’s minor children. A personal residence is defined as the primary residence of someone other than the taxpayer, taxpayer’s spouse, former spouse and/or minor children.



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After “other” real property, the next most common seizures involved vehicles, other personal property, and personal residences. Figure 3 shows the number of seizures conducted by each Area Office.

**Figure 3: Seizures by IRS Area Office From July 1, 2017, Through June 30, 2018**



Source: IRS seizure logs.<sup>8</sup>

The Gulf States Area Office had the largest number of seizures with 63 (24 percent) followed by the Western Area Office with 52 (20 percent) of the seizures. With 15 (6 percent) seizures, the Midwest Area Office conducted the fewest number.

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

To determine the IRS’s compliance with seizure procedures and guidelines, we reviewed a judgmental sample of 52 seizures from the 260 seizures that the IRS conducted from July 1, 2017, through June 30, 2018.<sup>9</sup> The judgmental sample of 52 seizures consisted of: five principal residences, 19 personal residences, 20 other real property, five other personal property, and seven business-related assets.<sup>10</sup> Income reported by the sampled taxpayers based on the most recently filed tax return ranged from more than \$3,000,000 to a loss of more than \$15,000, with an average income reported of \$91,142. The average balance due for taxpayers at

<sup>8</sup> The number of entries on the seizure logs is 360; however, the actual number of seizures is 260 because 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 260 seizures to determine the number of seizures by Area Office.

<sup>9</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

<sup>10</sup> The total of 56 property types is because four of the 52 sampled seizures had multiple seized assets.



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the time of the seizure for the tax modules included on the seizure ranged from more than \$3,000,000 to approximately \$14,000, with an average balance due of \$398,207.

Our review of the 52 seizures identified seven instances on six seizures in which the IRS did not comply with a particular I.R.C. or an Internal Revenue Manual (IRM) requirement, or there was no guidance on the specific issue. Specifically, we found:

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Seizures would not have occurred with accurate property valuation and encumbrance analyses

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. The IRM requires a record 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.12 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

11 A notice of nonjudicial sale informs the IRS of a foreclosure sale when the IRS is a secured creditor. \*\*\*\*\* 1 \*\*\*\*\*

12 IRM 5.10.1.5.3.3(3) (Aug. 29, 2017).





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to remind employees of their responsibilities as included in the IRM. The proposed corrective actions were completed in December 2018, which is after these seizures occurred; therefore, we are not making a recommendation at this time.

**Revenue officers and property appraisal and liquidation specialists are not always notified of nonjudicial sales**

The IRM provides that property is discharged from a tax lien when the holder of a superior encumbrance forecloses nonjudicially under I.R.C. § 7425(b)(2) and properly notices the IRS.<sup>14</sup> Publication 786, *Instructions for Preparing a Notice of Nonjudicial Sale of Property and Application for Consent to Sale*, provides a step-by-step guide for lienholders to properly notify the IRS of nonjudicial foreclosure sales. In addition, Publication 786 clearly describes the reason for a nonjudicial sale notice is to notify the IRS of the sale in order for property to be sold free and clear of any liens in which the IRS is a secured creditor.

The IRM notes that nonjudicial foreclosure sale notices are generally directed to the IRS Collection Advisory function, and that the revenue officer working the case is to be provided a copy of the foreclosure notice so that the revenue officer can decide what further action should be taken. If the case is not assigned, has been reported currently not collectible, or is assigned to the Automated Collection System, the history should be noted accordingly. The IRM includes that to meet the requirements of I.R.C. § 7425(c)(1) a notice of nonjudicial sale must be given:

- In writing.
- By registered or certified mail or by personal service.
- To the Advisory function group manager (or other delegated office) for the Field Collection area where the sale is to be held.
- Not less than 25 calendar days prior to the sale.<sup>15</sup>

Our review of the 52 sample cases identified \*\*\*\*\*1\*\*\*\*\*

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<sup>14</sup> IRM 5.12.4.3 (June 3, 2016).

<sup>15</sup> IRM 5.12.4.4 (June 3, 2016).



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The IRS stated that it receives about 50,000 nonjudicial foreclosure notices every year. Currently, when the IRS receives the nonjudicial notices, employees count and file them without taking any additional action. The Advisory function does not generally cross-reference every notice received to determine if there is an active collection case, even though IRM procedures require the Advisory function to send a copy of the notice to the assigned Collection function employee. In addition, there are no case controls or indicators used to track nonjudicial notices received by the IRS. The IRS further stated there is no provision that allows for a purchaser to be paid interest on the held funds in this type of situation.

Lienholders are complying with I.R.C. § 7425 nonjudicial foreclosure notices; however, the IRS is not properly notifying the relevant Collection function personnel to ensure that improper seizure actions are not taken so that IRS resources are used efficiently and taxpayers are not burdened. If promptly informed of nonjudicial foreclosures, IRS management could allocate their limited resources on other assets that do not have a nonjudicial foreclosure notice.

**There are no internal controls to prevent revenue officers from receiving keys to property prior to seizure**

\*\*1\*\* of the 52 seizures reviewed as part of our judgmental sample, \*\*\*\*\*1\*\*\*\*\*  
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\*\*\*\*\*1\*\*\*\*\*

We reviewed the IRM and asked the IRS if there are any guidelines or procedures on accepting and securing keys for a seized property. The IRS stated there are no procedures on accepting keys to a property that has not been seized. In a later discussion, IRS management stated that\*1\* \*\*\*\*\*1\*\*\*\*\* but there are no internal controls in place to guide or prevent revenue officers from accepting keys to property prior to seizure. However, if the IRS accepts keys to property that has not been seized, the Government may be held liable for damage to the property because the IRS could be considered the custodian of the property. Also, without any guidance for securing property keys, there is a risk of losing or misplacing them, leading to delays and potentially burdening the taxpayer.



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**The PALS did not request that the revenue officer release seized property when a taxpayer filed for bankruptcy**

The IRM includes that the PALS should check the ICS within two work days of the sale date and check the Court Electronic Records system if there is an indication the taxpayer may have filed bankruptcy.<sup>16</sup> \*\*1\*\* of the 52 seizures we reviewed as part of our judgmental sample, \*\*1\*\*

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are not making a recommendation at this time.

**Recommendations**

**Recommendation 1:** The Director, Field Collection, should require the Advisory function to determine if there is an active collection case when nonjudicial foreclosure notices are received and, if there is, to properly notify the assigned Collection function employee by providing a copy of the foreclosure notice, as required by the IRM.

**Management's Response:** The IRS agreed with this recommendation. The IRS will develop the case work processes needed and use those to identify and document cases and appropriately share information when a notice of nonjudicial foreclosure is received in Civil Enforcement Advice and Support Operations for cases assigned to Field Collection personnel.

**Recommendation 2:** The Director, Collection Policy, Small Business/Self-Employed Division, should update the IRM to provide guidance to revenue officers and the PALS employees on the appropriate practice of accepting keys prior to seizure, including what is required to properly secure the keys when they are accepted.

**Management's Response:** The IRS agreed with this recommendation. The IRS will update the IRM to provide guidance to revenue officers and the PALS on the appropriate practice of accepting keys prior to seizure, including what is required to properly secure the keys when they are accepted.

<sup>16</sup> IRM 5.10.5.2 (Aug. 29, 2017).





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## **Seizures of Taxpayers' Property Who are Experiencing Economic Hardship**

Pursuant to I.R.C. § 6343(a)(1)(D), the IRS must release a levy if it is causing an economic hardship, *i.e.*, taxpayers who are having difficulties meeting basic living expenses. A levy can include: the garnishment of wages, in which case the employer remits wages to the IRS; it can be the attachment of a bank account, in which case the bank remits the account contents to the IRS; or it can be the seizure of an asset, such as land or personal property, in which case the IRS follows a process whereby it seizes the property and sells it to pay off or contribute to the tax debt.

When deciding whether to seize property, IRS seizure procedures take into consideration numerous factors including whether the taxpayer falls into one of these three categories: “will pay,” “can’t pay,” or “won’t pay.”<sup>17</sup> The IRS is more likely to seize assets of a “won’t pay” taxpayer, such as a taxpayer who has the ability to pay the tax debt but refuses to do so. However, the IRS will not seize property from taxpayers who are deemed either “will pay” or “can’t pay.” The “will pay” and “can’t pay” categories include taxpayers who are otherwise in filing and payment compliance and have proposed a collection alternative such as an installment agreement or offer in compromise, as well as those taxpayers who “have no ability to make payments and have no distrainable assets.” If a taxpayer has “distrainable assets” (*i.e.*, assets capable of being seized) and the taxpayer cannot or will not utilize the equity in those assets, IRS procedures permit seizure of assets.

This year we reviewed the seizures of all 56 taxpayers who had a low-income indicator on their tax accounts.<sup>18</sup> In six of those 56 cases, the IRS seized property of taxpayers who appeared to be experiencing an economic hardship.<sup>19</sup> The property in question was typically real property on which the taxpayer was unable or unwilling to borrow or sell to pay off or contribute to payment of the tax debt.

Because of the law’s prohibition on levies that cause an economic hardship, we asked the IRS why its procedures allow the seizure of property from taxpayers who appear to be already experiencing an economic hardship. The IRS offered various rationales including that I.R.C. § 6343(a)(1)(D) does not apply to the seizure of property and applies only to “monthly income.” We could not identify support for this rationale. The seizure of real property may impact a taxpayer’s financial well-being in the same way as the seizure of financial assets if the taxpayer needed to access the equity in the real property to meet basic living expenses. Another explanation provided by the IRS is that revenue officers give due consideration to the seizure of

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<sup>17</sup> IRM 5.10.1.4 (May 20, 2016).

<sup>18</sup>A low-income indicator is added to a taxpayer’s account based on the return they file. The low-income indicator waives the installment agreement fee to reduce the burden on low-income taxpayers that are attempting to satisfy a tax liability.

<sup>19</sup> These taxpayers were typically unemployed, living on Social Security benefits, or working for very low wages.





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assets such as land and whether such seizure exacerbates an economic hardship. IRS management also stated that seizing the taxpayer's property can decrease the taxpayer's monthly expenses (homeowners association dues, property taxes, utilities, *etc.*) associated with the asset, while allocating the equity in the asset that was seized and sold to the taxpayer's liability.<sup>20</sup>

The IRS does have procedures that require revenue officers to consider economic hardship before a levy.<sup>21</sup> However, we could not identify any specific procedure which addresses a situation in which the taxpayer is already experiencing an economic hardship but possesses property (real or personal property) where there may be some available equity. Although revenue officers made statements in cases we reviewed that the taxpayer did not indicate the seizure would cause an economic hardship, there is a possibility that some taxpayers in these types of situations could ease their economic hardship by accessing the equity in the property. The IRS procedures could better address how revenue officers should proceed in this type of situation.

## **Recommendation**

**Recommendation 3:** The Director, Collection Policy, Small Business/Self-Employed Division, should develop a procedure which addresses the situation in which the taxpayer is already experiencing an economic hardship, but possesses property (real or personal property) where there may be some equity the taxpayer may need to access for basic living expenses.

**Management's Response:** The IRS disagreed with this recommendation. The IRS provided that as part of the seizure determination and approval process, revenue officers and their managers are required to consider economic hardship. Numerous factors are involved in the determination, including an analysis of financial information provided by the taxpayer.

When a taxpayer has equity in property, the revenue officer works with the taxpayer to utilize that equity to pay their tax debts. However, if the taxpayer does not voluntarily use that equity to pay the taxes, the IRS has a duty to explore alternatives including seizing the property. A tax system based on voluntary assessment would not be viable without enforcement programs to ensure compliance. By including economic hardship considerations as part of the seizure determination process, the IRS strikes a balance between the responsibility to compel noncompliant taxpayers to pay their taxes and the interests of taxpayers who may be in a hardship situation.

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<sup>20</sup> Tax balances owed by taxpayers are subject to interest under I.R.C. § 6601. The taxpayer's copy of the Notice of Federal Tax Lien advises the taxpayer the IRS will continue to charge penalty and interest until the taxpayer pays their tax liability.

<sup>21</sup> IRM 5.11.1.3.1(2) (Nov. 9, 2017) addresses pre-levy considerations, including if the levy would cause an economic hardship.



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The IRS reviewed the six cases cited in the report and determined that the procedures relating to economic hardship considerations were followed and that the seizure actions were appropriate. The IRS does not believe that the procedure suggested in the recommendation is necessary or would add value to the process.

**Office of Audit Comment:** Seizing taxpayers' assets (*e.g.*, cars, homes, and undeveloped lots of real estate) is a significant enforcement action. There are very few seizures each year (just 260 from July 1, 2017, through June 30, 2018) compared to the many thousands of account levies. IRC § 6343(a) requires prompt release of a levy if the levy is causing an economic hardship. There is no exception to the prohibition on levies in such situations for taxpayers who might own a modest amount of equity in an asset. In the cases we identified, there were clear indications the taxpayers were already experiencing an economic hardship before the revenue officer seized and sold (or tried to sell) the assets in question. The congressional intent is to protect taxpayers in an economic hardship from becoming destitute due to an enforcement action, but there is no clear IRS guidance explaining to revenue officers when seizing an asset from someone in economic distress should be avoided. The IRS's position is that taking a taxpayer's equity from a taxpayer experiencing an economic hardship does not conflict with the letter or the spirit of IRC § 6343(a).

In another audit that is in process, TIGTA identified many high-income taxpayers who have not filed their tax returns; however, the IRS is not working the cases. As such, we are also concerned that revenue officers are spending substantial amounts of time working on the cases of taxpayers experiencing economic hardships and who have modest amounts of equity in assets when many high income taxpayers, who do not even file tax returns, are not being actively worked by the IRS.

**[The Internal Revenue Service Violated Taxpayer Rights by Seizing Assets During the Collection Due Process Period and Failing to Provide the Required Notice](#)**

The I.R.C. § 6331 authorizes the IRS to seize a taxpayer's property for unpaid tax after sending the taxpayer a Letter 1058, which provides the taxpayer the opportunity to exercise their Collection Due Process (CDP) rights of appeal. If a taxpayer does not pay overdue taxes, make other arrangements to satisfy the tax debt, or request a hearing within 30 calendar days of the date of the notice, the IRS may seize the taxpayer's property.<sup>22</sup> The law requires that if the taxpayer files a timely request for a CDP hearing, levy actions on the assessments that are the subject of the CDP notice must generally be suspended during the appeal period and while any court proceedings are pending.<sup>23</sup> Additionally, the law provides that during the pendency of the

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<sup>22</sup> IRM 5.1.9.3.1(1) and (3) (June 24, 2014).

<sup>23</sup> I.R.C. § 6330(e).



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CDP hearing, the running of the collection statute of limitations is suspended.

Appeals' mission is to resolve tax controversies on a basis that is fair and impartial to the Government and the taxpayer. In CDP hearing cases, the Appeals officer is responsible for making a determination based on the facts and the law known to Appeals during the time of the hearing.<sup>24</sup> After Appeals has made its determination and if the taxpayer disagrees, the taxpayer can petition the U.S. Tax Court and appeal the CDP determination. Generally, all collection actions are suspended from the date of the taxpayer's request until a Notice of Determination is issued or the Tax Court's decision is final.

If the taxpayer did not timely request a CDP hearing with Appeals, the taxpayer may be entitled to an "equivalent hearing" with Appeals, but only if specifically requested. An equivalent hearing is equivalent to a CDP hearing in all ways except that there is no statute suspension, no retained jurisdiction, and the taxpayer does not have the right to seek judicial review of Appeals' decision at the conclusion of the hearing.<sup>25</sup>

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

We evaluated the IRS's compliance with CDP and equivalent hearing procedures prior to the seizure by reviewing the population of case files for seizures conducted from July 1, 2017, through June 30, 2018, that had a previous Appeals CDP hearing request or an equivalent hearing. We reviewed all 89 open CDP and equivalent hearing tax modules for taxpayers with a seizure and \*\*\*\*\*1\*\*\*\*\*  
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I.R.C. § 6330(e)(1) includes that any levy activity and the statute of limitations will be suspended while there is an open CDP levy hearing; \*\*\*\*\*1\*\*\*\*\*  
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<sup>24</sup> IRM 8.22.4.2.1(1) (Nov. 5, 2013).

<sup>25</sup> IRM 5.19.8.4.3 (Nov. 1, 2007).



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\*\*\*\*\*1\*\*\*\*\* we are not making a recommendation at this time.

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The IRM includes that the Letter 1058 should be hand delivered to the taxpayer if possible, left at the taxpayer's home or business if no contact was made with the taxpayer, or issued to the taxpayer by certified or registered mail with a return receipt.<sup>27</sup> The revenue officer should personally deliver the Form 668-B to the taxpayer or leave it at the residence of the taxpayer. The Letter 1058 should include all tax modules that are included on the Form 668-B. If the Letter 1058 was issued previously to the taxpayer and it did not include all of the assessed tax modules, an updated Letter 1058 needs to be issued.<sup>28</sup> The Form 668-B should generally contain all outstanding tax modules; however, there is an exception if the additional tax modules arise after approval but prior to the seizure. When this occurs, the case file must include documentation that the revenue officer attempted to advise the taxpayer that the Form 668-B does not include all of their tax liabilities.<sup>29</sup>

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\*\*\*\*\*1\*\*\*\*\* we are not making a recommendation at this time.

<sup>26</sup> \*\*\*\*\*1\*\*\*\*\* was identified in our judgmental sample of 52 seizures from the 260 seizures that the IRS conducted from July 1, 2017, through June 30, 2018.  
<sup>27</sup> IRM 5.11.1.3.3.3 (Nov. 9, 2017).  
<sup>28</sup> IRM 5.10.1.6(2) (May 20, 2016).  
<sup>29</sup> IRM 5.10.2.2(3) (Oct. 12, 2016).  
<sup>30</sup> I.R.C. § 6330(a)(1).



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**The General Services Administration's Outsourced Sales Expenses  
Were Not Always Correctly Charged to the Taxpayer's Account**

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. The IRS outsourced sales to the GSA pilot program from September 25, 2017, through August 15, 2018. On August 15, 2018, the Director, Collection, approved for the GSA to become a permanent option to outsource personal property sales. The GSA fee schedule 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 to \$5,000, the fee is 25 percent of the sale 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.

We reviewed all 26 GSA sales that occurred from September 25, 2017, through June 30, 2018, and

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**Management Action:** \*\*\*\*\*1\*\*\*\*\*  
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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. and IRS procedures. To accomplish the objective, we:

- I. Identified current IRS procedures and guidelines used by Small Business/Self-Employed Division employees during the audit period for achieving compliance with I.R.C. § 6330 through 6344.<sup>1</sup> Also, we followed up on prior TIGTA report recommendations for achieving compliance with seizure requirements.
- II. 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 of 52 of the 260 case files for seizures conducted from July 1, 2017, through June 30, 2018. A judgmental sample was used to review potentially high-risk and unique seizures.
- III. Reviewed the population of 26 GSA outsourced seizure sales that occurred from September 25, 2017, through June 30, 2018, and determined if using the GSA was in the best interest of the Government.
- IV. Evaluated the IRS's compliance with CDP and equivalent hearing procedures prior to the seizure by reviewing the population of 89 case files for seizures conducted from July 1, 2017, through June 30, 2018, that had a previous Appeals CDP hearing request or an equivalent hearing (I.R.C. § 6330). We obtained the entire population using the TIGTA's Data Center Warehouse and reviewed the cases using the IRS's Integrated Data Retrieval System to determine if the seizure occurred during the open CDP.

#### **Internal controls methodology**

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

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



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**Appendix II**

*Major Contributors to This Report*

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)  
Phyllis Heald London, Director  
Beverly K. Tamanaha, Audit Manager  
Erik Martinez, Lead Auditor



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**Appendix III**

*Report Distribution List*

Deputy Commissioner for 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, Enterprise Audit Management





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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 an I.R.C. section or the related IRM requirement when conducting seizures (see page 4).

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

We reviewed a judgmental sample of 52 of the 260 seizures conducted by the IRS from July 1, 2017, through June 30, 2018. We identified seven instances, involving six seizures, for which the IRS did not comply with a particular I.R.C. section or an IRM requirement. We made recommendations in the report for \*\*\*\*\*1\*\*\*\*\* Failure to adhere to legal and internal guidelines could result in the abuse of taxpayers' rights.

**Type and Value of Outcome Measure:**

- Taxpayer Burden – Actual; \*\*\*\*\*1\*\*\*\*\* (see page 15).

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

We selected and reviewed all 26 seizures conducted September 25, 2017, through June 30, 2018, and sold by the GSA. \*\*\*\*\*1\*\*\*\*\*  
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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 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 OIC 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 OIC or installment agreement.

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

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

**I.R.C. § 6334** enumerates property exempt from seizure. The exemption amounts are adjusted each year and include \$9,200 in fuel, provisions, furniture, and personal effects and \$4,600 in books and tools necessary for business purposes for Calendar Year 2017. For Calendar Year 2018, the amounts are \$9,380 for fuel, provisions, *etc.*, and \$4,690 for books and tools of a trade. Also, any primary residence, not just the taxpayer's, is exempt from seizure when the amount owed is \$5,000 or less other than real property which 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



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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 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, 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



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

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

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

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

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

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



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**Appendix VI**

*Prior Reports on Compliance  
With Seizure Procedures*

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

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

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

TIGTA, Ref. No. 2015-30-048, *Fiscal Year 2015 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property* (June 2015).

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



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**Appendix VII**

*Glossary of Terms*

<b>Term</b>	<b>Definition</b>
<b>Advisory Function</b>	Provides technical guidance to revenue officers and other personnel about collection issues including liens and levies.
<b>Area Office</b>	A geographic organizational level used by IRS business units and offices to help their specific types of taxpayers understand and comply with tax laws and issues.
<b>Fiscal Year</b>	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
<b>Installment Agreement</b>	The IRS allows taxpayers who are unable to pay their tax debt immediately to make monthly payments through an installment agreement.
<b>Integrated Collection System</b>	An information management system designed to improve revenue collections by providing revenue officers access to the most current taxpayer information, while in the field, using laptop computers for quicker case resolution and improved customer service.
<b>Integrated Data Retrieval System</b>	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
<b>Internal Revenue Service Data Book</b>	Provides information on activities conducted by the IRS, such as taxes collected, enforcement, taxpayer assistance, budget, workforce, and other selected activities.
<b>Levy</b>	A method used by the IRS to collect outstanding taxes from sources such as bank accounts and wages or a legal seizure of property to satisfy a tax debt.



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<b>Term</b>	<b>Definition</b>
<b>Offer in Compromise</b>	An agreement between a taxpayer and the Government that settles a tax liability for payment of less than the full amount owed.
<b>Queue</b>	A function of the Integrated Data Retrieval System, the Collection Queue is a holding area where the IRS places cases awaiting assignment to Collection function personnel.
<b>Revenue Officer</b>	Employees in the Field Collection who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by IRS campuses (formerly known as service centers) or the Automated Collection System.
<b>Seizure</b>	The taking of a taxpayer's property to satisfy his or her outstanding tax liability.
<b>Tax Period</b>	Refers to each tax return filed by the taxpayer for a specific period (year or quarter) during a calendar year for each type of tax.
<b>Taxpayer Advocate Service</b>	An independent organization within the IRS that helps taxpayers resolve problems with the IRS and recommends changes to prevent problems.





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**Appendix VIII**

*Management's Response to the Draft Report*

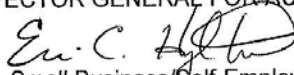


COMMISSIONER  
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

September 4, 2019

MEMORANDUM FOR MICHAEL E. McKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Eric C. Hylton   
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2019 Review of Compliance  
With Legal Guidelines When Conducting Seizures of Taxpayers'  
Property (Audit #201930001)

Thank you for the opportunity to review the above subject draft report. In response to last year's audit report recommendations, we reminded revenue officers of:

- the procedures regarding determining fair market value and expenses of sale;
- the procedures to conduct a complete public record search to verify ownership and identify all recorded encumbrances, and to document all encumbrances and interests of record; and
- the requirement to hold a discussion with Property Appraisal and Liquidation Specialists (PALS) prior to seizure as to the fair market value and seizure expenses and to document that discussion.

We also updated the selection criteria to be used in determining which seized asset sales should be outsourced to the U.S. General Services Administration.

We agree with TIGTA's recommendation to have Collection's Advisory function determine if there is an active collection case when nonjudicial foreclosure notices are received and, if there is, to notify the assigned Collection function employee. We also agree to update the Internal Revenue Manual (IRM) to provide guidance to revenue officers and PALS employees on the appropriate practice of accepting keys prior to seizure.

We do not agree with the recommendation to develop a new procedure that addresses a potential situation in which the taxpayer may be experiencing an economic hardship but possesses property where there may be some equity the taxpayer may need to access for basic living expenses. As part of the seizure determination and approval process, revenue officers and their managers are required to consider economic hardship. Numerous factors are involved in the determination, including an analysis of financial information provided by the taxpayer.





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When a taxpayer has equity in property, the revenue officer works with the taxpayer to utilize that equity to pay their tax debts. However, if the taxpayer does not voluntarily use that equity to pay the taxes, the IRS has a duty to explore alternatives including seizing the property. A tax system based on voluntary assessment would not be viable without enforcement programs to ensure compliance. By including economic hardship considerations as part of the seizure determination process, we strike a balance between our responsibility to compel non-compliant taxpayers to pay their taxes and the interests of taxpayers who may be in a hardship situation.

We reviewed the six cases cited in the report and determined that the procedures relating to economic hardship considerations were followed and that the seizure actions were appropriate. We do not believe that the procedure TIGTA suggests is necessary or would add value to the process.

We are always seeking ways to further strengthen our seizure and sale program and we appreciate your insights. Attached is a detailed response outlining our corrective actions to address your recommendations. If you have any questions, please contact me or Paul Mamo, Director, Collection Operations, Small Business/Self-Employed Division.

Attachment



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Attachment

**RECOMMENDATION 1:**

The Director, Field Collection, should require the Advisory function to determine if there is an active collection case when nonjudicial foreclosure notices are received and, if there is, to properly notify the assigned Collection function employee by providing a copy of the foreclosure notice, as required by the IRM.

**CORRECTIVE ACTION:**

We will develop the case work processes needed and use those to identify and document cases and appropriately share information when a notice of non-judicial foreclosure is received in Civil Enforcement Advice and Support Operations (CEASO) for cases assigned to field collection personnel.

**IMPLEMENTATION DATE:**

October 15, 2020

**RESPONSIBLE OFFICIAL:**

Director, Field Collection Operations, Small Business/Self-Employed Division

**CORRECTIVE ACTION MONITORING PLAN:**

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

**RECOMMENDATION 2:**

The Director, Collection Policy, Small Business/Self-Employed Division, should update the IRM to provide guidance to revenue officers and the PALS employees on the appropriate practice of accepting keys prior to seizure, including what is required to properly secure the keys when they are accepted.

**CORRECTIVE ACTION:**

We will update the IRM to provide guidance to revenue officers and PALS on the appropriate practice of accepting keys prior to seizure, including what is required to properly secure the keys when they are accepted.

**IMPLEMENTATION DATE:**

April 30, 2020

**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.



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**RECOMMENDATION 3:**

The Director, Collection Policy, Small Business/Self-Employed Division, should develop a procedure which addresses the situation in which the taxpayer is already experiencing an economic hardship, but possesses property (real or personal property) where there may be some equity the taxpayer may need to access for basic living expenses.

**CORRECTIVE ACTION:**

We disagree. As part of the seizure determination and approval process, revenue officers and their managers are required to consider economic hardship. Numerous factors are involved in the determination, including an analysis of financial information provided by the taxpayer.

When a taxpayer has equity in property, the revenue officer works with the taxpayer to utilize that equity to pay their tax debts. However, if the taxpayer does not voluntarily use that equity to pay the taxes, the IRS has a duty to explore alternatives including seizing the property. A tax system based on voluntary assessment would not be viable without enforcement programs to ensure compliance. By including economic hardship considerations as part of the seizure determination process, we strike a balance between our responsibility to compel non-compliant taxpayers to pay their taxes and the interests of taxpayers who may be in a hardship situation.

We reviewed the six cases cited in the report and determined that the procedures relating to economic hardship considerations were followed and that the seizure actions were appropriate. We do not believe that the procedure TIGTA suggests is necessary or would add value to the process.

**IMPLEMENTATION DATE:**

N/A

**RESPONSIBLE OFFICIAL:**

N/A

**CORRECTIVE ACTION MONITORING PLAN:**

N/A