

# Handbook 5.10

## Seizure and Sale Handbook

### Chapter 1 Pre-Seizure Considerations

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[5.10] 1.1 (07-26-2000)

General

1. The decision to seize a taxpayer's assets is one of the most sensitive decisions that a revenue officer will make. The case history must be well documented with all actions that have been taken in order to show the justification for seizing a taxpayer's assets. The decision to seize must be based on the individual facts and circumstances of each case, and the revenue officer must follow all legal and procedural guidelines.
2. The Service has issued the following policy statements (IRM 1218 -- Policies of the Internal Revenue Service) related to seizure action. The revenue officer should be familiar with these policy statements to ensure that enforcement is used as an appropriate case action.
  - A. P-5-1 Enforcement is a necessary component of a voluntary assessment system
  - B. P-5-28 Successive seizures -- Timing to avoid undue hardship
  - C. P-5-34 Collection to be enforced through seizure and sale of assets of a taxpayer only after thorough consideration of all factors and alternative collection methods
  - D. P-5-35 Establishment of a minimum price in distraint sales
  - E. P-5-38 Seizure of assets located on private premises
3. The revenue officer will take all seizure actions up through inventorying and securing the property. Custody of the property will then be transferred to the Property Appraisal and Liquidation Specialist (PALS), who will be responsible for all further sale related actions. The revenue officer, however, will still be responsible for the final case resolution.
4. Section 1203(b) of the Restructuring and Reform Act of 1998 provides for the mandatory termination of IRS employees under various instances of misconduct. Since several of the provisions can apply to the seizure and sale program, revenue officers and PALS should be aware of these provisions and should follow all procedures in this handbook without deviation.

[5.10] 1.2 (07-26-2000)

List of Prohibited Seizures

1. The following types of seizures are prohibited:
  - o Seizures that will result in no equity -- there must be sufficient net proceeds from the sale to provide funds to apply to the taxpayer's unpaid tax liabilities;

- o Seizures when there is a pending installment agreement plus 30 days after rejection and during pendency of appeal filed within that 30 day period;
- o Seizures when an installment agreement is in effect and if terminated plus 30 days after termination and during pendency of any appeal filed within that 30 day period;
- o Seizures when there is a pending offer in compromise plus 30 days after rejection and during pendency of appeal filed within that 30 day period;
- o Seizures conducted on the day the taxpayer has to appear for a summons;
- o Seizures when there are assessments subject to refund proceedings unless jeopardy exists or the taxpayer waives suspension of collection in writing;
- o Seizures during which communications with the taxpayer are initiated outside of the hours of 8 A.M. to 9 P.M. unless there is knowledge that such communications would not be inconvenient to the taxpayer;
- o Seizures when the taxpayer is in bankruptcy (BC Section 362);
- o Seizures which allow the taxpayer less than the exempt amounts to which they are entitled; and
- o Seizure of any real property used as a residence by the taxpayer, or any real property (other than real property that is rented) used by any other individual as a residence, if the liability is \$5,000 or less

[5.10] 1.3 (07-26-2000)

#### Actions Required Prior to Seizure

1. IRC 6331(j) outlines specific actions that must be completed before the seizure of a taxpayer's assets can be recommended:
  - o The liability must be verified,
  - o Alternative collection methods must be thoroughly considered,
  - o An analysis must be conducted to show that the expenses expected to be incurred with respect to the seizure do not exceed the fair market value of the asset to be seized, and
  - o There must be a determination that the equity is sufficient to yield net proceeds from the sale to apply to the liability.

[5.10] 1.3.1 (07-26-2000)

#### Verifying the Liability

1. In order to verify the liability, the revenue officer should confirm during taxpayer contact that the taxpayer understands the assessment. If the taxpayer does not understand the assessment, the revenue officer should explain the assessment and address any concerns the taxpayer has.
2. If the taxpayer claims the assessment is incorrect or has additional information that could impact the balance due, the case should be thoroughly investigated and the issue resolved prior to proceeding with enforcement action. The case history should be documented to reflect any concerns

raised by the taxpayer and the steps taken to address them. If the liability is the result of an SFR assessment, the revenue officer should allow the taxpayer 30 days to prepare corrected returns.

3. Some of the actions that can be taken to verify the liability include reviewing:
  - o NMF/MF transactions,
  - o Pending transactions,
  - o Copies of cancelled checks,
  - o Innocent spouse claims,
  - o Abatement requests, and
  - o IDRS history items.
4. If the issues raised by the taxpayer have been addressed under some other administrative (e.g., Collection Appeals Program (CAP), Taxpayer Advocate Services (TAS), audit reconsideration) or judicial proceeding prior to seizure action, further verification is not required and the taxpayer should be advised that the issue has previously been addressed. This should be documented in the history.
5. If the taxpayer does not respond to the attempted contacts, the revenue officer should review IDRS and any prior correspondence from the taxpayer but is not required to take any further actions to verify the liability.

[5.10] 1.3.2 (07-26-2000)

#### Alternative Methods of Collection

1. The service is required to consider alternative methods of collection prior to seizure. Alternative methods of collection include, but are not limited to:
  - o Installment agreements
  - o Offers in Compromise
  - o Posting of bond by the taxpayer
  - o Lien foreclosure
  - o Levy
  - o Assignments
  - o Judgments
  - o Specific follow up actions
2. The determination to seize should be based on the facts of the particular case and the risk to the government of pursuing these alternatives. The possible alternatives should be discussed with the taxpayer. If the taxpayer requests an alternative that is not acceptable to the Service, the reason the request is not acceptable must be explained to the taxpayer. If the taxpayer has requested an installment agreement and that request is being rejected, see IRM 5.14 for the proper appeals procedures to follow. No enforcement action may be taken while the taxpayer is undergoing an appeal.
3. To assist in the consideration of alternative collection methods, a risk analysis must be conducted. If the alternative method of collection would put the government at greater risk of recovery of the liability, it may not be acceptable. The following issues should be considered as part of the risk analysis:
  - o Past compliance history -- is there a history of non-compliance?
  - o Current compliance -- is the taxpayer current and has the cause been corrected?

- o Current financial condition -- can the taxpayer meet current obligations, including FTD's?
  - o Future financial condition -- can financial adjustments help the taxpayer experience future profits?
  - o Collection statute -- does the alternative provide for payment within the allowable statute?
  - o Interest in Asset -- is the government's interest in the asset protected and will the taxpayer's interest in the asset increase?
  - o Impact -- what impact will the seizure have on third parties or on non-compliant taxpayer groups?
  - o Yield -- will an alternative collection method potentially yield more than the seizure and sale?
4. The case history should be documented regarding the fact that alternative methods have been considered, why the alternatives were not acceptable, and the results of the risk analysis.

[5.10] 1.3.3 (07-26-2000)

#### Equity Determination

1. To determine if there will be sufficient net proceeds to apply to the liability, the revenue officer must complete an equity determination and prepare a draft minimum bid (IRM 5.10.1.3.3.1(9)) prior to recommending the case for seizure.
2. The revenue officer must document how the fair market value of the asset was determined. The fair market value should reflect the condition of the property at the time the seizure is being considered. If the taxpayer is uncooperative in providing information about the assets, the revenue officer will need to research many internal and external sources in order to determine an accurate value for the property. Some of the sources that can be used to determine the fair market value are:
  - o Used vehicle guides
  - o Assessment office
  - o Property appraisals
  - o Comparable sales
  - o Financing statements
  - o Tax returns
  - o Information provided by the taxpayer
  - o Contact with businesses or dealers that are familiar with the particular type of asset
  - o Personal observation
  - o Area realtors
  - o Collection information statement
  - o Daily stock quotations
  - o Valuation Engineers
  - o Property Appraisal and Liquidation Specialist (PALS)
3. If the property to be seized consists of specialized assets where the fair market value is not easily determined, the revenue officer should contact the PALS to discuss the valuation of the asset. The PALS may wish to view the assets with the revenue officer and then provide additional guidance as to the fair market value of the assets. The services of the PALS should be requested whenever the revenue officer believes it would be

- beneficial in determining the expected net proceeds.
4. In addition to determining the fair market value of the asset(s), a complete public records search must be conducted to identify all recorded encumbrances and interests in the property including, but not limited to:
    - o Joint owners
    - o Senior lienholders
    - o Junior lienholders
    - o Nominees
    - o Transferees
  5. At local management option, commercial firms may be contracted to provide title search and encumbrance information reports. The cost of these reports may be charged to the balance due account as an expense and should be input as a TC 360. If public records cannot be checked prior to seizure because of a jeopardy situation, they will be checked at the earliest possible date after the seizure is made and documented in the history. The case history must be documented with the facts that led to the determination that a jeopardy situation existed. See IRM 5.11.3 for information on jeopardy situations.
  6. A Notice of Federal Tax Lien (NFTL) should be filed on all open periods prior to seizing property. This is not a statutory requirement; however, to maintain priority against other parties to whom the taxpayer might convey an interest in the property, it is the Service's policy to file the NFTL before property is seized.
  7. If the NFTL is mailed, ensure that it is recorded with the local registrar before proceeding with the seizure. Taxpayers must be notified in writing that the NFTL has been filed within five business days of such filing, and they are entitled to the Due Process Appeal provisions to ensure that the lien action is warranted. See IRM 5.1.9.3 for the information on the Due Process appeal procedures that must be followed.
  8. The priority of the NFTL must be determined in relation to other creditors. See Chapter 200 of the Legal Reference Guide and IRM 5.12, Chapter 1 for information on the priority of the tax lien.
  9. If the taxpayer has a loan through the Small Business Administration (SBA), see IRM 5.1.7 for the procedures to be taken when enforcement action is being considered.
  10. The revenue officer should contact all senior lienholders in order to determine the balance remaining on each encumbrance. Letter 1029, or a similar letter, may be used for this purpose. The requirements for third party contacts should be followed for these types of requests.
  11. In the Tenth Circuit states of Kansas, Oklahoma, Wyoming, Utah, Colorado, and New Mexico, a summons must be used instead of Letter 1029 when any of the following situations exist:
    - o The financial institution is located in the Tenth Circuit
    - o The taxpayer resides in the Tenth Circuit
    - o The Internal Revenue Service office is located in the Tenth Circuit
  12. Document on Form 2434-B, Notice of Encumbrances Against or Interests in Property Offered for Sale (Exhibit 5.10.1-1),

all encumbrances and interests of record, including federal tax liens. If no recorded interests other than the NFTL are found, Form 2434-B will be documented to reflect this condition.

13. The records check must be updated no more than 30 days prior to submitting the seizure for approval.

[5.10] 1.3.3.1 (07-26-2000)

Equity Determination -- Expenses of Sale

1. After the fair market value and encumbrances have been verified and documented, the revenue officer should determine the estimated expenses of sale. Most seizures will require the expenditure of funds. These costs should be kept at the lowest possible amount in order to preserve the equity in the asset. Any travel related expenses of the revenue officer or the PALS should not be included as an expense of the seizure. Expenses that should be considered include:
  - o towing fees
  - o storage costs
  - o transportation costs
  - o locksmith fees
  - o advertising costs
  - o auctioneer services
  - o appraisal fees
  - o other miscellaneous expenses
2. In most cases the PALS will have responsibility for custody of the property after the seizure is made, and the expenses that occur after the initial seizure will be controlled by the PALS. Coordination with the PALS during the planning stage is extremely important in order to discuss the potential expenses that may be incurred. In some cases, the PALS may be more familiar with moving and storage facilities and may be able to secure a service for less than the revenue officer can on his/her own. In other cases, the revenue officer may be more familiar with local vendors and may be able to secure the lowest cost for the service.
3. During the planning stage, the revenue officer should anticipate any problems which may arise in connection with the storage and protection of property during the period of a seizure. Special actions requested to protect seized property will be noted in the case history.
4. Movable property, in the public area of a business premise, can best be protected at another location. Property that must be moved for storage should not be personally moved by the revenue officer or the PALS. Commercial services should be used. Whenever possible, government storage facilities in the area should be used; otherwise property should be stored in a warehouse operated by a responsible party. If storage, towing, transportation, or other similar charges are required, the revenue officer should determine what the expected costs will be prior to the seizure.
5. Property, such as expensive jewelry, is best stored in the district office. It should be protected in accordance with the nature and value of the property, as required by Exhibit 500-2, IRM 1(16)41 (Physical and Document Security

Handbook). Normally, storing such items in the district director's safe will afford it sufficient protection.

6. When the property to be seized is located in rented premises and consists of machinery or other property not easily transported, or is comprised of a considerable quantity of business assets, arrangements should be made with the landlord for storage of the property on the premises. If the taxpayer has not made rent or lease payments in sufficient amount to cover the period through the proposed date of sale, a reasonable charge for storage should be arranged. This charge should be based only on the number of days of actual occupancy under the seizure. In certain situations, the Government may be required to pay rent due to the nature of state law and/or the terms of the taxpayer/landlord rental agreement. The Special Procedures function should be consulted when there is doubt as to whether the Government is obligated to pay rent in such cases. IRM Exhibit 5.10.1-2 contains an example of a landlord agreement.
7. If there are indications that the taxpayer or third parties may resist the sale of seized property, additional security may be necessary to protect seized property from vandalism. If guards are needed to protect the seized property, the revenue officer should determine these costs as well.
8. Generally, there is no authority for the United States to purchase insurance coverage for seized property during the period between the date it is seized and the date it passes to a purchaser or is returned to the taxpayer. However, if the circumstances are unique, insurance coverage may possibly be acquired. A request stating all of the pertinent information should be sent to the district director, who has the authority and responsibility for any subsequent purchase, when seizure is first contemplated. Insurance coverage is to be acquired only by an authorized contracting officer through the Facilities Management function.
9. A draft minimum bid should then be prepared in order to determine if there will be net proceeds to apply to the liability. IRM 5.10.4.6 contains the procedures for preparing a minimum bid. If no net proceeds are expected based on the minimum bid calculation, the revenue officer cannot recommend the case for seizure.
10. After approval of the seizure has been secured, follow the procedures in IRM 5.10.2.18 in order to formally contract for all of these services.

[5.10] 1.3.3.2 (07-26-2000)

Expenses of Sale -- Disclosure Issues

1. Disclosure issues can arise during the seizure process, particularly when contacting vendors for services. Disclosure for investigative purposes is permissible under IRC 6103(k)(6) and 6103(n). These contacts would be still be subject to third party reporting requirements.
2. IRC 6103(k)(6) allows the revenue officer to "disclose return information to the extent that disclosure is necessary to obtain information which is not otherwise reasonable available with respect to the correct



determination of tax, liability for tax, or the amount to be collected... ." Examples of this type of disclosure include contacts with:

- o real estate professionals to secure appraisal information
  - o third parties familiar with the value of specialized equipment
3. IRC 6103(n) allows the revenue officer to "disclose return information.... to the extent necessary in connection with the . . . procurement of equipment, and the providing of services, for purposes of tax administration." Examples of this type of disclosure include contacts with:
- o vendors to determine availability and costs for locksmiths, towing, storage, etc.
  - o landlords to determine lease information, storage of assets.

[5.10] 1.3.3.3 (07-26-2000)

Equity Determination -- Exempt Assets

1. If seizure of an individual taxpayer's assets is being considered, revenue officers must be aware of the property that is exempt from levy. Revenue officers must document the case history as to how the exempt property value was determined. Vehicles are not considered as exempt property in either category.
2. The following exemptions, which will be indexed annually for inflation, apply to individual taxpayers for calendar year 2000:
  - o Wearing apparel and school books that are necessary for the taxpayer or members of his or her family are exempt from levy
  - o Fuel, provisions, furniture, personal effects in the taxpayer's household, arms for personal use, livestock, and poultry up to \$6,360 in value are exempt from levy
  - o Books and tools necessary for the trade, business or profession of the taxpayer up to \$3,180 in value are exempt from levy
3. For seizures of the assets of an individual taxpayer used in the trade or course of business, including vehicles, the revenue officer must document that the taxpayer's other assets are insufficient to satisfy the amount due plus expenses. Other assets must also include the future income that may be derived from the commercial sale of fish or wildlife harvested under a state fish or wildlife permit. These types of seizures require approval by the district director or assistant district director.
4. Undelivered mail is exempt from seizure.

[5.10] 1.3.3.4 (07-26-2000)

Equity Determination -- Documented Vessels

1. In order to determine the equity in a documented vessel, an abstract may be required. An abstract provides:
  - o the history of the vessel,
  - o bills of sale, and
  - o information about mortgages, maritime liens, and assignments.
2. The abstract can be obtained through the United States

Coast Guard by contacting the National Vessel Documentation Center (NVDC). Provide the NVDC with the official vessel number and as much information as possible about the vessel, e.g., the owner's name, hull number, and the name of the vessel.

3. The letter must be accompanied by a \$25 money order made out to the National Vessel Documentation Center. The abstract request should be sent to: National Vessel Documentation Center  
2039 Stonewall Jackson Drive  
Falling Waters, West Virginia 25419-9502.

[5.10] 1.4 (07-26-2000)

"Will Pay" , "Can't Pay" , and "Won't Pay" Factors

1. Seizures will not be conducted on taxpayers who "will pay" or "can't pay" . These categories include taxpayers who:
  - o Do not agree with the assessment and are working with the Service to properly adjust their account,
  - o Will full pay their liability within a reasonable time frame,
  - o Require a reasonable period of time to sell an asset or secure a loan,
  - o Qualify for and submit an offer in compromise,
  - o Have no ability to make payments and have no distrainable assets (currently not collectible), or
  - o Request and qualify for an installment agreement.
2. Seizure should be considered for taxpayers who "won't pay" . This category includes:
  - o Taxpayers who have the ability to remain current and/or resolve their delinquent taxes through an alternative collection method but will not do so,
  - o Taxpayers who do not have the ability to remain current and/or resolve their liability, but who have assets in excess of exempt amounts that will yield net proceeds to apply to the liability and are unwilling or unable to borrow on or liquidate these assets,
  - o Taxpayers who are pyramiding liabilities,
  - o Taxpayers who use unsupported tax arguments and continue to resist the requirements to file and pay,
  - o Taxpayers who will not cooperate with the Service, e.g., taxpayers that evade contact, will not provide financial information, etc.,
  - o Taxpayers who will not comply with the results of the Service's financial analysis or will not enter into an installment agreement or OIC,
  - o Wage earners who have not paid their tax liability and will not adjust their withholding to prevent future delinquencies,
  - o Self-employed taxpayers who have not paid their tax liability and will not make estimated payments to prevent future delinquencies, and
  - o Taxpayers who do not meet their commitments (without a valid reason) as set forth by an installment agreement, OIC, or extension of time to pay.
3. The decision to seize will not be automatic on any account. The taxpayer's current situation should be the determining factor in the seizure decision. During the

life of a collection account, a taxpayer will sometimes move from one category to another and the decision to seize must be based on their financial situation and actions at the time the seizure decision is being made.

4. Exhibits 5.10.1-3 and 5.10.1-4 contain scenarios that illustrate how case decisions can be made based on these factors.

[5.10] 1.5 (07-26-2000)

#### Pre-Seizure Taxpayer Notifications

1. Letter 1058 (L-1058), revised 01-1999, Notice of Intent to Levy and Notice of Your Right to a Hearing, must have been provided to the taxpayer at least 30 days before the seizure for each tax period that will be identified on the Form 668-B. A copy of the L-1058 is shown in Exhibit 5.10.1-5.
2. The following information must be included with the L-1058:
  - o Publication 594 (Understanding the Collection Process)
  - o Publication 1660 (Collection Appeal Rights)
  - o Form 12153 (Request for a Collection Due Process Hearing)
  - o Copy of the letter
  - o Envelope
  - o Notice 609 (IMF accounts only)
3. Taxpayers should receive only one notice regarding their rights to a collection due process hearing for each tax assessment. If the required notice for a module has already been sent and additional tax is assessed, a new notice offering a due process hearing must be sent before the additional assessment may be included on Form 668-B. See IRM 5.10.1.5.1 for information on the timeliness of this notice.
4. In jeopardy situations L-1058 is not required to be sent 30 days before the enforcement action; however, the taxpayer must receive a notification of a right to a hearing immediately after the enforcement action. Counsel approval of a jeopardy situation is required in addition to all other required approvals. Consult with SPf and Counsel when considering a jeopardy seizure. See IRM 5.11.3 and 5.10.1.7 for jeopardy information.
5. See IRM 5.11.1 for additional information on proper delivery, joint return considerations, required transaction codes, and documentation required for delivery of the L-1058.

[5.10] 1.5.1 (07-26-2000)

#### Timeliness of Pre-Seizure Taxpayer Notifications

1. If the L-1058 was sent more than 180 days prior, it is legally valid to seize. However, it has been administratively determined that the taxpayer will get a new warning of enforcement before enforcement action is taken.
2. The warning must be documented in the case file, and it can be either:
  - o Given in person or by phone that there is a deadline (not necessarily 30 days) after which there will be

- seizure action, or
  - o Given in writing if the taxpayer cannot be contacted (see Exhibit 5.1-6, Pattern letter 3174, for an example).
- 3. Do not issue another L-1058 to address the timeliness issue. Taxpayers are only entitled to one letter per tax module that advises them of their rights to a due process hearing.
- 4. Exceptions to the timeliness requirement are
  - o if collection of the tax is in jeopardy, or
  - o if enforcement has taken place in the last 180 days; enforcement only includes seizure or levy action, and the taxpayer must have been aware of the enforcement action. A pending judicial proceeding for court approval of a principal residence seizure is a seizure action. A notice of levy issued to a former employer would not be considered as enforcement since the taxpayer would have no way to know about the action. If, however, a levy is sent to a bank and a copy of the levy is provided to the taxpayer, even if there were no proceeds the taxpayer would be aware of the levy and this action would qualify as enforcement.
- 5. The L-1058 is required to be sent for every module that is included on Form 668-B. However, the taxpayer has had timely notice as long as there has been warning of enforcement for at least one module included on the 668-B within the last 180 days. The notice requirement must be met for each module included in the seizure, but the timeliness of the warning is for the entity, rather than each individual module.

[5.10] 1.5.2 (07-26-2000)

Personal Contact to Advise the Taxpayer of Proposed Seizure Action

1. In addition to the L-1058 notification, the revenue officer must attempt to personally contact the taxpayer either by a phone call or field call prior to seizure. The revenue officer should meet with the taxpayer and discuss what is necessary to avoid seizure action.
2. During this contact, the revenue officer should:
  - o Advise the taxpayer that seizure is the next planned action;
  - o Give the taxpayer an opportunity to resolve the tax liability voluntarily; if the liability is the result of an SFR assessment the taxpayer should be given an opportunity to file corrected returns;
  - o Provide and discuss the provisions of Publications 1 and 594 (if not previously provided);
  - o Advise the taxpayer about the district Taxpayer Advocate, provide form 911, and explain its provisions; if the taxpayer indicates the seizure would create hardship, the revenue officer may assist the taxpayer with the preparation of form 911 and should forward the form to the local Taxpayer Advocate if the revenue officer cannot or will not provide the requested relief;
  - o Provide the taxpayer with the name and location of

the immediate supervisor if the taxpayer requests to have the case reviewed by a supervisory official; and  
o Document on Form 9297, Summary of Taxpayer Contact, specific actions and deadlines communicated to the taxpayer

3. If personal contact is not made, document the steps taken to attempt to achieve personal contact and the reasons why contact with the taxpayer could not be achieved. Even if the taxpayer was previously unresponsive, the revenue officer must attempt to personally advise the taxpayer of the proposed seizure; however, the taxpayer's refusal to respond to attempted contacts should not prevent the revenue officer from submitting the seizure for approval.

[5.10] 1.5.3 (07-26-2000)

#### Taxpayer Appeal Rights

1. The Collection Appeals Program (CAP) was created to give taxpayers a chance for an administrative review that is independent from the Collection function. Taxpayers can appeal under CAP when they are told that a seizure action will be taken or has been taken. Their right to appeal under CAP is connected to a specific planned or actual collection action. See IRM 5.1, Chapter 9, for additional information on how to handle appeals under this program. Publication 1660, which should be provided with the L-1058 and again with the Notice of Seizure, explains the Collection Appeal Rights. The case file must be documented as to when the Publication 1660 was delivered.
2. Appeal rights after the seizure has been conducted are contained in IRM 5.10.3.5.1.

[5.10] 1.6 (07-26-2000)

#### Pre-Seizure Activity for Courtesy Seizures

1. When a taxpayer's assets are located in another district and it becomes necessary to enforce collection by seizure, form 2209, Courtesy Investigation, will be prepared. The revenue officer in the originating district and the revenue officer in the receiving district each have specific responsibilities for the seizure. The approving official in the receiving district has the final authority for approving or disapproving the seizure.
2. The revenue officer in the originating district will issue the appropriate notices and due process documents to the taxpayer and advise the taxpayer of the proposed seizure. The revenue officer in the initiating district will include the following information with the 2209:
  - o a copy of the complete ICS history, including a history notation by the group manager indicating that they concur with the seizure determination;
  - o sufficient information for the receiving revenue officer to prepare Form 668B;
  - o copies of the Collection Information Statement, Notices of Federal Tax Liens, and any other relevant documents;
  - o statement of facts involved, including alternatives considered, results of risk analysis, information regarding fair market value and encumbrances, due process notifications, etc.; and

- o any other relevant information.
- 3. The revenue officer in the receiving district will:
  - o verify that the Notices of Federal Tax Lien are filed in the appropriate jurisdictions;
  - o verify that the taxpayer was supplied with all appropriate publications and appeal rights;
  - o complete the appropriate records checks in the local jurisdiction;
  - o prepare a draft minimum bid based on the procedures in IRM 5.10.1.3.3 and IRM 5.10.4.6 and
  - o prepare all seizure documents and submit the case for approval (IRM 5.10.2.14) by the receiving office.
- 4. If the property subject to levy is located in a contiguous district within easy access of the district where the assessment is outstanding, it may be advisable to have the seizure conducted by revenue officers from the district holding the assessments. These situations will be the exception rather than the rule. The concurrence of the appropriate seizure approving officials from both districts must be secured and, where appropriate, a revenue officer from the district where the property is located should be requested to assist in the seizure. This coordination between districts should ensure that all local laws and conditions which might have a bearing on the seizure and sale proceedings are given proper consideration.
- 5. A revenue officer in the receiving district will make an investigation of the facts involved to determine the taxpayer's equity and interest in the property to be seized. If the investigation reveals there is no seizure potential due to insufficient equity to yield net proceeds to apply to the unpaid tax liability the revenue officer in the receiving district will furnish a report documenting these facts to the initiating district.
- 6. If it is determined that there is sufficient equity to yield net proceeds, the revenue officer in the receiving district will follow the procedures in IRM 5.10.2.14 for securing managerial approval.

[5.10] 1.7 (07-26-2000)

#### Jeopardy Assessments and Seizures

1. Jeopardy assessments are made when the taxpayer is, or appears to be, placing assets beyond the reach of the government by removing them from the United States, by concealing them, by dissipating them, or by transferring them to other persons. Jeopardy should also be considered in cases where the taxpayer's financial solvency is or appears to be imperiled. This last criterion does not include insolvency as a result of accrual of liabilities.
2. See IRM 5.11.3 regarding jeopardy levy. These procedures also apply to a jeopardy seizure. A jeopardy seizure is one that is made:
  - o less than 10 days after notice and demand for payment is made, or
  - o less than 30 days after notice of intent to levy is issued.
3. Although an L-1058 is not required prior to a jeopardy seizure, the taxpayer must still receive certain notices,

forms, and letters after the seizure. IRM 5.11.3.4 outlines the appropriate notices that must be sent for jeopardy seizures.

4. For jeopardy seizures, IRC 7429 provides that the taxpayer may request the Service to review whether:
  - o the making of the assessment was reasonable;
  - o the amount of the assessment is appropriate; and
  - o the levy is reasonable under the circumstances.
5. Such requests will be coordinated with the Examination Division that made the assessment. The sale of seized property will generally be suspended during this administrative review process.
6. The restrictions in IRC 6863 apply only to the sale of property and do not prohibit seizure of any type of property or rights to property of the taxpayer. However, before property is seized, a determination should be made as to whether the mere filing of a notice of lien would be adequate protection during the suspended period. If the notice of lien will not fully protect the Government's interest, the property may be seized and maintained under seizure until it can be lawfully sold or returned to the taxpayer.
7. The intent of IRC 6863 is to prevent irreparable damage to taxpayers by forced sale of their property before a determination is made as to their actual tax liabilities. The Code does not prohibit levies at any time during the suspended period on such assets as accounts receivable, bank accounts, salaries, fees, etc. The application of the proceeds of such levies to the taxpayers' accounts will not cause irreparable damage to them since the full value of the assets are normally reducible to their cash equivalent by the taxpayers without financial loss to them. See 338.35 of IRM 57(16)0, Legal Reference Guide for Revenue Officers.

[5.10] 1.8 (07-26-2000)

#### Mutual Collection Assistance Requests (MCARS)

1. Certain tax treaties have clauses whereby our treaty partners can request assistance from the Service to collect taxes owed them by individuals residing in the United States. See General Handbook, IRM 5.1.8.7.9 regarding MCARS procedures.

Exhibit [5.10] 1-1 (07-26-2000)

Form 2434-B and Instructions Reference: IRM 5.10.1.3.3(12)

Exhibit [5.10] 1-1 (07-26-2000)

Form 2434-B and Instructions Reference: IRM 5.10.1.3.3(12)

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Form 2434B Instructions

Reference: 5.10.1.3.3(12)

1. Taxpayer's name.
2. Specific type of encumbrance or interest should be shown (lien, judgment, joint owners, nominee, transferee etc.) All encumbrances senior and junior to the Federal Tax Lien should be shown.
3. Amount of encumbrance as of the date records were checked. The amount should be the current balance due when

- the secured party is contacted or the original amount recorded if the secured party can not be contacted.
4. Date the encumbrance was created or secured.
  5. Date and place the encumbrance was made a public record.
  6. Date that the records were checked or the date the information was provided by the secured party.
  7. Date notice of sale was mailed to all interests of record.
  8. Signature of Service employee.

Exhibit [5.10] 1-2 (07-26-2000)  
 Landlord Agreement Reference: IRM 5.10.1.3.3.1(6)

LANDLORD AGREEMENT

U.S. TREASURY DEPARTMENT  
 INTERNAL REVENUE SERVICE      Date \_\_\_\_\_  
 -VS-                                      STIPULATION

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ the District Director of Internal Revenue, through his duly authorized agents, has seized for the United States of America certain machinery, equipment and other personal chattels of \_\_\_\_\_ in the enforcement of a lien held by it against the said property and wishes to store the property so seized at premises where now located namely \_\_\_\_\_ until the sale thereof.

It is therefore stipulated and agreed by and between \_\_\_\_\_ landlord of the above described premises, hereafter referred to as "landlord" and the District Director of Internal Revenue through his authorized agent, hereafter referred to as Director, that Director will pay landlord for use and occupancy of the premises of the property so seized from the date hereof until the date on which the sale of said property has been held unless landlord is notified of termination of the said agreement at an earlier date, at the rate of \$ \_\_\_\_\_ per day.

It is expressly agreed and understood by and between the parties to this agreement that the U.S. Government shall not be liable for any damage or injury to person or property caused by or resulting from fire, smoke, storm, wind, hail, explosion, steam, electricity, gas, water, rain, ice, snow, riot, riot attending a strike, civil commotion, aircraft, vehicles, or from any cause or effect of nature, or any leak or flow from or into any part of the building, or from any damage or injury resulting or arising from any other cause or happening whatsoever.

In the event Landlord is a corporation the undersigned \_\_\_\_\_ hereby individually warrants that this Agreement is entered into with full power and authority on the part of the corporation and all of its stockholders.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names the day and year first above written.

ATTEST BY: \_\_\_\_\_

\_\_\_\_\_  
 District Director  
 Internal Revenue Service



Exhibit [5.10] 1-3 (07-26-2000)  
CASE SCENARIO #1 Reference: IRM 5.10.1.4(4)

Type of Business: Sanitation  
Type of Entity: Corporation  
Amount of Liability: \$200,000  
Number of Quarters Delinquent: 4  
Years Remaining on Statute: 8  
Status/Priority of NFTL: Filed; junior to first lienholder  
Is Business Current on Deposits? Now current on deposits  
Number of Employees: 25  
Ability to Pay: Analysis of CIS shows ability to pay \$5,000 per month, TP agrees with IA amount and has requested an installment agreement  
Will Payment Amount Full Pay Within Statute Plus 5? Yes  
Status of Trust Fund: 433A shows no monthly ability to pay; officer is borrowing full equity of \$25,000 on property he owns personally; TFRP waiver secured through length of proposed installment agreement

Levy Sources:  
Bank Account  
Accounts Receivable

Assets:	Fair Market Value:	Encumbrances:
10 Trucks	\$50,000 each	\$250,000
Office Furniture, Computers	\$4,000	\$0

Additional Facts of Case:  
Taxpayer had previous liabilities that have all been satisfied. The vehicles were all purchased at the same time and the encumbrance was established when the vehicles were purchased. Taxpayer has been denied a loan at three banks.

Recommended Course of Action:  
The revenue officer should complete an equity analysis; based on a draft minimum bid approximately \$50,000 (less expenses) would be the expected net proceeds. The revenue officer than conducts a risk analysis -- the alternative collection method would be an installment agreement. The taxpayer is a "will pay/can't pay" taxpayer because the corporation is in compliance with Federal Tax Deposits and has requested and qualifies for an installment agreement. Since the government would be at no greater risk by granting the installment agreement, the taxpayer should be given the installment agreement. The tax lien will protect the government's interest in the asset if the taxpayer later defaults and seizure action is required.

Exhibit [5.10] 1-4 (07-26-2000)  
CASE SCENARIO #2 Reference: IRM 5.10.1.4(4)

Type of Business: Sanitation  
Type of Entity: Corporation  
Amount of Liability: \$200,000  
Number of Quarters Delinquent: 4

Years Remaining on Statute: 8  
Status/Priority of NFTL: Filed; junior to first lienholder  
Is Business Current on Deposits? Not in Compliance  
Number of Employees: 25  
Ability to Pay: Unknown, TP has not complied with requests to complete CIS  
Will Payment Amount Full Pay Within Statute Plus 5? N/A  
Status of Trust Fund: Investigation still being completed, CIS needed for collectibility determination

Levy Sources:  
Bank Account  
Accounts Receivable

Assets:	Fair Market Value:	Encumbrances:
10 Trucks	\$50,000 each	\$250,000
Office Furniture, Computers	\$4,000	\$0

Additional Facts of Case:  
Taxpayer had liabilities for a prior corporation that were satisfied through enforced collection. The vehicles were all purchased at the same time and the encumbrance was established when the vehicles were purchased. Levies on bank account and receivables have resulted in minimal funds and have not led to case resolution.

Recommended Course of Action:  
The revenue officer should complete an equity analysis; based on a draft minimum bid approximately \$50,000 (less expenses) would be the expected net proceeds. The taxpayer is a "won't pay" taxpayer because the corporation is not in compliance with Federal Tax Deposits and will not provide financial information. The revenue officer then conducts a risk analysis -- there are no reasonable alternative collection methods. The taxpayer does not qualify for an installment agreement or offer in compromise because of the non-compliance issue. Other methods of enforcement have already been considered. Since the assets have equity and the risk analysis provides no reasonable alternatives, the seizure should be recommended after all appropriate pre-seizure actions have been completed.

Exhibit [5.10] 1-5 (07-26-2000)  
Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing Reference 5.10.1.5

-----

Internal Revenue  
Service Department of the Treasury  
Letter Number: 1058(DO)  
Letter Date:  
Social Security Number or Employer or  
Identification Number:  
Person to Contact:

CERTIFIED MAIL --  
RETURN RECEIPT Contact Phone Number

FINAL NOTICE

NOTICE OF INTENT TO LEVY AND NOTICE OF YOUR RIGHT TO A HEARING

PLEASE RESPOND IMMEDIATELY

Your federal tax is still not paid. We previously asked you to pay this, but we still haven't received your payment. This letter is your notice of our intent to levy under Internal Revenue Code (IRC) Section 6331 and your right to receive Appeals consideration under IRC Section 6330.

We may file a Notice of Federal Tax Lien at any time to protect the government's interest. A lien is a public notice to your creditors that the government has a right to your current assets, including any assets you acquire after we file the lien.

If you don't pay the amount you owe, make alternative arrangements to pay, or request Appeals consideration within 30 days from the date of this letter, we may take your property, or rights to property, such as real estate, automobiles, business assets, bank accounts, wages, commissions, and other income. We've enclosed Publication 594 with more information, Publication 1660 explaining your right to appeal, and Form 12153 to request a Collection Due Process Hearing with Appeals.

To prevent collection action, please send your full payment today. Make your check or money order payable to U.S. Treasury. Write your security number or employer identification number on your payment. Send your payment to us in the enclosed envelope with a copy of this letter. The amount you owe is:

Exhibit [5.10] 1-5 (07-26-2000)

Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing Reference 5.10.1.5

-----  
Form Tax Unpaid Amount Additional AMOUNT YOU  
Number Period from Prior Penalty & OWE  
Notices Interest

If you have recently paid this tax or you can't pay it, call us immediately at the telephone number shown at the top of this letter and let us know.

The unpaid amount from prior notices may include tax, penalties and interest you still owe. It also includes any credits and payments we've received since we sent our last notice to you.

Sincerely Yours,  
District Director

Enclosures:  
Copy of this  
letter  
Pub 594  
Pub 1660  
Form 12153

Letter 1058 (DO) (Rev.  
1-1999)  
Cat. No. 40488S

Exhibit [5.10] 1-6 (07-26-2000)

Letter 3174(P) Reference: 5.10.1.5.1

IRS Office

Address Letter Number: 3174(P)

Letter Date:

Social Security or Employer

Identification Number:

Taxpayer Name Person to Contact:

Address Telephone Number:

Address

Dear (name):

Although we previously sent you a notice of our intention to collect your unpaid tax through enforced collection, our records show that you still have not paid the amount you owe. Enforced collection may include placing a levy on your bank accounts, wages, receivables, commissions, etc. It could also involve seizing and selling your property such as real estate, vehicles, or business assets.

To prevent collection action, please pay the amount you owe, now. Make your check or money order payable to the United States Treasury, and write your social security number or employer identification number on it. Send your payment to us in the enclosed envelope along with a copy of this letter.

The amount you owe is:

Form Number	Tax Period	Unpaid Amount from Prior Notices	Additional Penalty and Interest	Amount You Owe

If you recently paid this or if you can't pay it, call us as soon as you get this letter. Our telephone number is at the top of this letter. If you disagree with our using enforcement action, you may be able to work out another solution. Speak to the person whose name is at the top of this letter, or ask for that person's manager. If you do not agree with the results, you may then fill out Form 9423, Collection Appeal Request, to ask for Appeals consideration. The unpaid amount from prior notices may include tax, penalties, and interest you still owe. It also includes credits and payments we have received since our last notice to you.

Sincerely,

Title

Enclosures

Copy of

Letter

Envelope

Cat. No. Letter 3174(P) (Rev.  
26846G 07-99)

Internal Revenue Hndbk. 5.10 Chap. 1 (07-26-2000)  
Manual Pre-Seizure Considerations

[Tax Professional's Corner]

Handbook 5.10  
Seizure and Sale Handbook

Chapter 2  
Securing Approval for Seizure Actions and Post-Approval Actions

[ Click for Text Only Version ]

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 [5.10] 2.1 (07-26-2000)  
 General

1. This chapter includes the procedures to follow for securing managerial approval for seizures, and it contains specific provisions to follow for specialized types of assets. Instructions for seizure of perishable goods are contained in IRM 5.10.2.13
2. Judicial approval is required for certain principal residence seizures. See IRM 5.10.2.15 for the procedures to follow when seeking judicial approval for the seizure of a taxpayer's principal residence. This includes any real property used as a principal residence by:
  - o the taxpayer,
  - o the taxpayer's spouse or former spouse, or
  - o the taxpayer's minor children.
3. IRM sections 5.10.2.2 through 5.10.2.12 contain special instructions that should be reviewed to determine if the asset to be seized requires any additional pre-seizure actions prior to submitting the case for approval. These procedures should be followed whenever any of the following assets are considered for seizure:
  - o Tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer,
  - o Mobile Homes,
  - o Historic Properties,
  - o FCC Broadcasting Licenses,

- o Religious Organizations,
- o Firearms,
- o Controlled Substances,
- o Drug Paraphernalia,
- o Material Considered Obscene or Pornographic, or
- o Cleared Contractor Facilities.

[5.10] 2.2 (07-26-2000)

Tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer

1. The prior written approval of the district director or assistant district director must be secured for seizure of these types of assets unless collection of tax is in jeopardy. The revenue officer must document the history that the taxpayer's other assets subject to collection are insufficient to satisfy the liability and expenses of the proceeding.
2. If the asset to be seized is a state commercial fish or wildlife license, the revenue officer must consider as an asset the future income that could be derived from the commercial sale of fish or wildlife harvested under the license.
3. This approval level is based on the actual use of the asset, not the type of liability for which the seizure is being conducted. For example, seizure of a self-employed real estate agent's or insurance agent's vehicle used in their business would require approval by the district director or assistant district director, even if it was being seized for an IMF liability.

[5.10] 2.3 (07-26-2000)

Mobile Homes

1. A mobile home may, depending upon state or local law, be either real or personal property. It is important to make this determination since personal property must be reduced to possession to be a valid seizure. Therefore, prior to seizure of a mobile home, the revenue officer should determine the type of property involved. It may be necessary to confer with the Special Procedures Staff and request an opinion from District Counsel.
2. The request should, in addition to describing the property, state whether the mobile home is attached to the ground and if so, by what means. If it is anticipated that the contents will be seized, information should be furnished as to the property involved. The current use being made of the trailer should also be provided. The approval level will depend on whether the asset is a principal residence, other residence, business asset, etc.

[5.10] 2.4 (07-26-2000)

FCC Broadcasting Licenses

1. Administrative seizure and sale of FCC broadcasting licenses is not feasible due to the difficulties involved in the transfer of ownership without the approval of the Federal Communications Commission. However, levy against other assets of the taxpayer's business is still appropriate.

[5.10] 2.5 (07-26-2000)

Historic Properties

1. The National Historic Preservation Act (NHPA) was enacted to preserve irreplaceable assets of historical significance. Prior to a seizure of such assets District Counsel must be consulted for procedures concerning the seizure of such properties identified in the Act.
2. Properties that have the following characteristics are indications of historical or cultural properties that fall under 36 CFR Part 800:
  - o a significance in history of the architecture, archeology, and/or culture in structures and objects,
  - o an association with events in history,
  - o an association with historical figures, or
  - o distinctive characteristics of period architecture, construction, artistic significance, or information important to history.

[5.10] 2.6 (07-26-2000)

Religious Organizations and Religious Freedom Restoration Act

1. Seizure of assets belonging to a religious organization is a sensitive matter. In addition to consideration of alternative methods of resolving the matter and other factors that must be considered, revenue officers must consider the implications of the Religious Freedom Restoration Act.
2. Revenue officers must secure District Counsel's approval before seeking other appropriate approvals when proposing the seizure of a religious organization's assets.

[5.10] 2.7 (07-26-2000)

Firearms

1. Firearms of substantial value may be seized if they are included as a business asset, e.g., the inventory of a sports equipment outlet, hardware store, a gunsmith, etc. Because of the sensitive nature of this type of seizure, approval of the District Director, or Assistant District Director, is required.
2. Single guns or firearms that are customarily retained for personal use should not be seized unless their value is such that a suit to enforce the Federal tax lien may be appropriately recommended. If such items are found as part of a seizure, they should be released to the taxpayer after concurrence of Bureau of Alcohol, Tobacco and Firearms (ATF). Certain arms for personal use may be exempt from seizure. See IRM 5.10.1.3.3.3(2).
3. If firearms are directly seized or are included in a general seizure of assets, the assistance of ATF should be sought in making a determination as to whether the arms are contraband or subject to forfeiture under the Gun Control Act of 1968 or by virtue of State or local law. This action should be taken prior to any disposition of the seized arms.
4. ATF is suggested because of the liaison already established between ATF, the FBI, and State and local authorities.
5. After the foregoing actions have been accomplished, a suit



to foreclose the Federal tax lien should be recommended rather than holding a public sale of any weapons remaining in inventory.

6. Firearms that are primarily collector's items, as described in IRC 5845, may be sold at public auction or sealed bid sale, with the concurrence of ATF.

[5.10] 2.8 (07-26-2000)

Controlled Substances (Narcotics and Dangerous Drugs)

1. Because of the sensitive nature of this type of seizure, approval of the district director, or assistant district director is required. IRM 5.10.3.16 for instructions on the required actions after seizure.

[5.10] 2.9 (07-26-2000)

Material Considered Obscene or Pornographic

1. Because of the nature of this type of seizure, the approval of the district director or assistant district director is required. Other avenues of collection, such as levy on bank accounts and/or accounts receivables, seizure of vehicles, cash register contents, or furniture and fixtures, should be used prior to seizing obscene or pornographic material.
2. If other assets will not satisfy the liabilities, a seizure may be made of the obscene or pornographic material. District Counsel will be consulted before such material is seized. In no event should the material be advertised or offered for sale until the following actions are taken:
  - o contact local authorities to determine whether possession of such material violates any local law -- if possession is illegal, the material should be released to those authorities;
  - o if possession is not illegal or authorities refuse to accept the material, the matter should be referred to District Counsel for an opinion whether administrative or judicial sale of such material is legal -- District Counsel should be contacted for an opinion in any case where there is a question whether the material seized is obscene or pornographic; and
  - o once District Counsel issues an opinion, a report outlining all pertinent facts in the case, including the alternative collection measures which were taken or explored prior to seizure of such material and the results of the risk analysis, should be submitted to the district director.
3. Section 1461, Title 18, United States Code, imposes restrictions on the use of the U.S. Mails to advertise the sale of obscene material. Section 6335(b) of the Internal Revenue Code requires that Notice of Sale of seized property be published in a newspaper of general circulation. Since most newspapers of general circulation are sent through the mail to some subscribers, there may be legal questions that need to be resolved prior to the disposition of such material. Consequently, caution must be exercised in the sale of seized obscene or pornographic matter. Entities which may possess such property include, but are not limited to, adult book stores, adult movie

theaters, and massage parlors. The district director's approval is required before obscene or pornographic material is advertised or offered for sale.

[5.10] 2.10 (07-26-2000)

#### High Level Drug Dealers

1. Service personnel are not authorized to participate in arrests, raids and similar activities with Drug Enforcement Administration (DEA) personnel. However, revenue officers may take seizure action against narcotics related taxpayers in connection with jeopardy or termination assessments.
2. Because of the nature of this type of seizure, the approval of the district director or assistant district director is required. Prior to making personal contact, the provisions of IRM 5.10.2.16.4, Armed Escorts, should be reviewed.

[5.10] 2.11 (07-26-2000)

#### Drug Paraphernalia

1. Because of the nature of this type of seizure, the approval of the district director or assistant district director is required. Drug paraphernalia generally includes such items as pipes, syringes and other devices designed to introduce drugs into the human body. The district director's approval is required before drug paraphernalia is advertised or offered for sale.
2. Drug paraphernalia should not be seized unless it is the sole asset through which collection can be enforced. Drug paraphernalia that is not of a commercial (wholesale or retail merchandise) use should not be seized. Other avenues of collection, such as levy on bank accounts or accounts receivable, or seizure of vehicles, cash register contents, furniture & fixture, or other non-drug paraphernalia assets should be utilized prior to seizure of drug paraphernalia.
3. If other assets will not satisfy the liabilities, a seizure may be made of the drug paraphernalia. District Counsel will be consulted before such material is seized. In no event should the material be advertised or offered for sale until the following actions are taken:
  - o contact local authorities to determine whether possession of such material violates any local law -- if possession is illegal, the material should be released to those authorities;
  - o if possession is not illegal or authorities refuse to accept the material, the matter should be referred to District Counsel for an opinion whether administrative or judicial sale of such material is legal -- District Counsel should be contacted for an opinion in any case where there is a question whether the material seized is drug paraphernalia; and
  - o once District Counsel issues an opinion, a report outlining all pertinent facts in the case, including the alternative collection measures which were taken or explored prior to seizure of such material and the results of the risk analysis, should be submitted to the district director.

[5.10] 2.12 (07-26-2000)  
Cleared Contractor Facility

1. In order to mitigate the possibility of compromise of the "classified" material, liaison has been established between the Internal Revenue Service and the Defense Contract Administration Services Region (DCASR).
2. The Defense Industrial Security Program (DISP) requires a contractor participating in the program to safeguard "classified" material and to report the termination of business for any reason. The reporting of a closure is essential to the protection of the "classified" material. DCASR representatives will establish liaison with the Internal Revenue Service district directors whose districts lie within a DCAS region.
3. Immediately upon the seizure of a firm, the revenue officer will ask a responsible officer or the owner:
  - o if the firm had been or is now a participant in the DISP,
  - o if it is cleared to perform on classified government contracts, and
  - o if it is currently in possession of any classified material for an ongoing or terminated contract.
4. If a contractor answers affirmatively to any of the above questions, immediate notice will be given to the Director of Industrial Security for the Defense Contract Administration Services Region having jurisdiction over the area. Notice may be given by:
  - o a telephone call to the DCASR, or by
  - o sending a copy of Form 2433, Notice of Seizure, to the DCASR.
5. If the place of business has been closed by the seizure, arrangements should be made to permit access to the premises by the DCASR representative.
6. Any classified items that have been placed under seizure should be released to the DCASR representative upon presentation of official credentials. Form 668-E, Release of Levy, will be used.

[5.10] 2.13 (07-26-2000)  
Perishable Goods

1. If it is determined that the property to be seized:
  - o is liable to perish or become greatly reduced in price or value by keeping, or
  - o cannot be kept without great expense,
    - the property may be sold under IRC 6336 after it has been appraised and the owner has been given an opportunity to pay the appraised value or furnish bond for payment.
2. If it is believed that the storage costs will be so excessive that the property meets the perishable goods criteria above, the revenue officer should provide documentation of all expected expenses and the minimum bid calculations reflecting the amount the Service would expect to recover from a regular sale.
3. If it is expected that the value may become greatly reduced in price or value, the revenue officer must

document why the loss is expected to occur.

4. When revenue officers plan to seize property to which they believe IRC 6336 is applicable, they will appraise the property and confer with their group manager. The appraisal may be conducted with the assistance of the PALS. The following information, in addition to the required information in IRM 5.10.2.14, will be furnished with the request for approval:
  - o name and address of taxpayer;
  - o amount of the levy;
  - o proposed date of seizure;
  - o description of the property to be seized;
  - o reason it is believed the property is a type to which IRC 6336 is applicable;
  - o determination as to the appraised value of the property; and
  - o suggested time and place of sale.
5. The district director or assistant district director will make a determination as to whether the property seized is of a type to which IRC 6336 is applicable. If he or she determines the property is not perishable within the meaning of IRC 6336, he/she will so inform the revenue officer and normal sale proceedings will be followed. If in agreement that the property is perishable, the director will advise the revenue officer to proceed and approve Form 668-B.
6. IRM 5.10.4.13 contains the procedures that must be followed for the sale of perishable goods. Coordination with the PALS during the approval process is essential for perishable goods seizures because of the expedited timeframes involved with the sale of this type of property.

[5.10] 2.14 (07-26-2000)

#### Securing Managerial Approval of Seizure Actions

1. For seizures other than seizures of the taxpayer's principal residence, if all of the requirements of 5.10.1.3 through 5.10.1.5 have been met and it is determined that seizure is the appropriate case action, the revenue officer should prepare form 668-B and the Pre-Seizure checklist (Exhibit 5.10.2-1).
2. The determination to seize and authority to sign Form 668-B, Levy, may be delegated to revenue officers GS-09 and above.
3. The case file must contain adequate documentation to justify the seizure action. The following information must be included in a summarizing history entry or on a separate fact sheet:
  - o verification of the liability,
  - o a draft minimum bid,
  - o discussion of alternatives that were considered,
  - o results of risk analysis,
  - o due process notification with appropriate forms and publications,
  - o attempts to personally notify the taxpayer of proposed seizure, and
  - o whether a consent or writ will be required (see IRM 5.10.2.16.3).

4. The case file should then be submitted for approval through the appropriate levels of management. The approval package should contain the following information:
  - o Pre-Seizure Checklist (Exhibit 5.10.2-1),
  - o Form 668-B (Pen and ink corrections need to be made on the reverse parts of form 668B under Applicable Sections of the Internal Revenue Code, Section (f), (2) and (3). These corrections must reflect updated exemption amounts),
  - o Form 4585 Draft Copy,
  - o NFTL copies,
  - o Preliminary Form 2434-B,
  - o Case History/Fact Sheet, and
  - o Any other relevant items.
5. All approvals must be written and will be retained with the case file. All Collection seizures will require a minimum approval level of the chief, collection division.
6. The following seizures require approval by the district director or assistant district director, unless collection of the tax is in jeopardy:
  - o All tangible personal property, or real property, except real property which is rented, used in the trade or business of an individual taxpayer
  - o Perishable goods determination/Perishable goods seizure
  - o Contents of a personal residence, including items located in garages and other structures on the land on which the residence is located
  - o All personal residences not requiring judicial approval
  - o Individual taxpayer's State Commercial Fishing or Wildlife License (future income must be considered)
  - o Guns, Drugs, Pornography
7. A collection chief, acting in the capacity of district director or assistant district director, may not approve such seizures.
8. The approving official(s) and the revenue officer should attempt to resolve any questions regarding the seizure as quickly as possible. Communications should be verbal, rather than written, whenever possible. Delays in the approval process should be avoided so that the seizure action is taken while it is appropriate and while the case information is still current. If the seizure is not approved, the reasons must be documented.

[5.10] 2.15 (07-26-2000)

#### Judicial Approval for Principal Residence Seizures

1. Judicial approval is required for principal residence seizures. This includes any real property used as a principal residence by:
  - o the taxpayer,
  - o the taxpayer's spouse or former spouse, or
  - o the taxpayer's minor children.
2. If all of the requirements of 5.10.1.3 through 5.10.1.5 have been met and it is determined that seizure is the appropriate case action, the revenue officer should prepare form 668-B, a fact sheet, and the Pre-Seizure checklist (Exhibit 5.10.2-1).

3. The fact sheet details the results of the investigation and the contains the recommendation to seize the principal residence. It includes:
  - o information as to the type of property, including legal description of the property and current derivation clause (if required),
  - o information on the age and health of the occupants of the residence,
  - o verification of the liability,
  - o draft minimum bid,
  - o discussion of alternatives that were considered,
  - o results of risk analysis,
  - o due process notification with appropriate forms and publications, and
  - o attempts to personally notify the taxpayer of proposed seizure.
4. The seizure recommendation package should be forwarded from the group manager, through SPf, and then through the appropriate levels of management up to the District Director or Assistant District Director. The recommendation package should contain:
  - o Pre-Seizure Checklist (Exhibit 5.10.2-1),
  - o Form 668-B (Pen and ink corrections need to be made on the reverse parts of form 668-B under Applicable Sections of the Internal Revenue Code, Section (f), (2) and (3). These corrections must reflect updated exemption amounts),
  - o Form 4585 Draft Copy,
  - o NFTL copies,
  - o Preliminary Form 2434-B,
  - o Copy of Deed to Property
  - o Case History/Fact Sheet, and
  - o Any other relevant items.
5. After the 668-B is approved by the district director or assistant district director, the revenue officer will need to prepare a suit package in order to refer the case through SPf and District Counsel to the Department of Justice.
6. The suit package should contain:
  - o Form 4477, Civil Suit Recommendation
  - o Form 4478, Civil Suit Checklist
  - o Suit Narrative Report
  - o Form 4479, Lien and Claimant Data -- Civil Suit
  - o Form 4480, Property Description -- Civil Suit
7. The suit narrative (Exhibit 5.10.2-2) should be prepared in the same manner as other civil suit recommendations (LRG Chapter 12). The narrative begins with the taxpayer's name and address and is followed by the following sections:
  - o the introduction,
  - o the body, and
  - o a conclusion and recommendation
8. Each section is labeled and the paragraphs are all consecutively numbered through out the narrative report. All information addressed or included in the narrative should be included as an exhibit in the suit. Required exhibits include:
  - o Seizure Checklist,

- o The approved 668-B,
  - o Draft Form 4585, Minimum Bid Worksheet, and
  - o Federal Tax Liens (Certified Copies).
9. No seizure of a taxpayer's principal residence will be made until court approval has been obtained. If judicial approval is denied, the revenue officer will consult with SPF, and if appropriate, District Counsel to determine further case action.

[5.10] 2.16 (07-26-2000)

Post-Approval Actions

1. After securing approval for the seizure, the revenue officer must then begin planning for the actual seizure by determining when the seizure will be conducted. Coordination with the PALS is necessary so that there will be a smooth transition of control of the property after the revenue officer has conducted the seizure. The revenue officer must also determine:
  - o how many assisting employees will be needed and how the property will be inventoried,
  - o what equipment will be necessary,
  - o if all necessary forms have been prepared,
  - o whether a consent or writ is required,
  - o what arrangements need to be made for the transportation and storage of the assets, and
  - o whether an armed escort will be required.
2. Having the appropriate number of employees present for a seizure is important. At least one other Service employee is required for a seizure. Additional employees may be required depending on many factors, such as:
  - o the type and quantity of assets,
  - o complexity of inventory,
  - o degree of cooperation from the taxpayer,
  - o landlord/vendor/utility issues, and
  - o need for removal and storage of assets.
3. In outlying offices where only one revenue officer is stationed, a revenue agent from the same location may assist with the seizure if approval is secured from the revenue agent's manager.
4. If the use of an assisting Service employee is not feasible, the chief, collection can approve the use of a local, state, or federal law enforcement officer. The non-Service employee has no authority to assist in the seizure and is used as an observer only. The case history must document the circumstances leading to the use of a non-Service witness. The revenue officer must record the name, title, badge number, and other identifying information of the law enforcement officer.
5. The assisting employees should be briefed on the background of the case; inventory, transportation, and storage plans for the assets; potential for conflict; and any other factors relevant to the seizure. The PALS may also provide assistance at the seizure for issues related to inventorying and securing the property.
6. If tenant occupied property is involved in the seizure, the revenue officer will take whatever steps are necessary to ensure that innocent third parties are not financially injured by the seizure action. Of equal concern should be

consideration for the safety and welfare of innocent third parties, as well as livestock and domestic animals.

[5.10] 2.16.1 (07-26-2000)

#### Necessary Equipment

1. Planning for and having all of the necessary equipment available to make the seizure is an important step in the pre-planning process in order to ensure that the seizure runs as smoothly as possible.
2. Prior to a seizure that will involve an extensive inventory, the revenue officer should inspect the property location to determine the:
  - o availability of water, electricity, or other needed utilities,
  - o heat or air conditioning needs,
  - o potential health hazards,
  - o presence of an alarm system, or
  - o need for any other items or services unique to the location.
3. Depending on the type of asset being seized, the following equipment may be useful:
  - o Hand tools, such as hammer, screwdrivers, pliers, and bolt cutters,
  - o Chains and locks to secure gates and storage units,
  - o Scissors, tape, markers, paper, warning tags,
  - o Flashlights, and
  - o Mobile or cellular phones.

[5.10] 2.16.2 (07-26-2000)

#### Necessary Forms

1. The revenue officer should ensure that all necessary forms are completed or available. The revenue officer should have the following forms available:
  - o Approved Form 668B, Notice of Levy;
  - o Consent, or Writ of Entry (if already secured);
  - o Form 2433, Notice of Seizure;
  - o Form 911, Application for Taxpayer Assistance Order;
  - o Publication 1660, Collection Appeal Rights;
  - o Form 668A if the property is in the possession of a third party;
  - o Warning tags (Notice 34, Notice 180, or Notice 787);
  - and
  - o Form 6888, US Government Purchase Order or Government BankCard.

[5.10] 2.16.3 (07-26-2000)

#### Determining if a Consent or Writ is Required

1. The Supreme Court of the United States held in *G.M. Leasing v. United States*, 429 U.S. 338 (1977) that an entry without a warrant onto the private areas of personal or business premises of a taxpayer for the purpose of seizing property to satisfy a tax liability is in violation of the Fourth Amendment to the Constitution of the United States. The revenue officer must determine if a Consent or Writ will be required prior to making the seizure.
2. Before entering into a private area, the revenue officer must secure:



- o written consent (IRM 5.10.3.2) from the rightful occupant, or
  - o a court order (writ) (IRM 5.10.3.4) permitting entry.
3. The revenue officer must determine if the assets are located in a private area. Some common characteristics of a private area include:
- o no accessibility to the general public,
  - o posted signs and warnings against entry,
  - o employee access only,
  - o areas with an expectation of privacy,
  - o covered or attached areas,
  - o areas behind counters, and
  - o those where the revenue officer has any suspicion or question as to the expectation of privacy.
4. Examples of the most common private areas include:
- o restaurant kitchen areas,
  - o service departments,
  - o private self-storage facilities,
  - o garages and other attached or unattached structures,
  - o product storage areas for retail establishments,
  - o manufacturing plant production properties,
  - o fenced properties,
  - o cash registers,
  - o safe deposit boxes, and
  - o company office areas.
5. Generally, in situations involving seizure of assets located on private premises, Consent to Enter will first be sought from the taxpayer or rightful occupant, as applicable. Only after consent has been denied will the revenue officer request a Writ of Entry. Case file documentation is extremely important, especially when there are exceptions to this provision. Exceptions are limited to the following situations:
- o When it is believed that advance notice will jeopardize the safety of the revenue officer(s);
  - o When attempts to contact the taxpayer or rightful occupant fail; or
  - o When there are other unforeseen circumstances.
6. If a taxpayer has previously placed assets beyond the Service's grasp after having been forewarned of enforced collection by the consent request, a Writ of Entry (IRM 5.10.3.4) should be sought without attempting consent procedures. The affidavit furnished the court must state the reason why an attempt to secure consent would compromise collection efforts.
7. In situations where consent is not being sought prior to requesting a Writ of Entry, concurrence by the level of management above the group manager is required. This authority should be used in extremely rare circumstances. The mere loss of the element of surprise will generally not be sufficient cause to justify an exception.
8. A Writ of Entry is not a search warrant nor its equivalent. A search warrant cannot be issued to a revenue officer authorizing entry upon private premises to search for property to be seized for distraint purposes.

[5.10] 2.16.3.1 (07-26-2000)

Contents of Residence -- Consent or Writ Required

1. A Consent to Enter private premises or a Writ of Entry must be obtained before seizing any assets considered the contents of residence, and these seizures must be approved by the district director or assistant district director. The definition of "contents of residence" includes items located in garages and other structures on the land on which the principal residence is located.
2. Revenue officers need to take a broad view when determining if the assets to be seized constitute the contents of a residence. Consultation with District Counsel, through the Special Procedures function, is necessary if doubt exists as to whether a Writ of Entry is required.

[5.10] 2.16.3.2 (07-26-2000)

#### Motor Vehicles -- Determining if Consent or Writ is Required

1. When a motor vehicle is being seized, a Consent or Writ is not required if the motor vehicle is parked:
  - o On public property, such as a street, state, or county road,
  - o In an unobstructed driveway or front yard, or
  - o On an unsupervised portion of a third party's premises which is accessible to the general public when the premises are accessible to the general public.
2. If there is any obstruction, such as a fence, chain or rope, which would indicate that entry onto the driveway or front yard would constitute an invasion of the taxpayer's privacy, a consent or writ is required. In addition, the vehicle must not be enclosed by any structure, such as a garage or carport.

[5.10] 2.16.4 (07-26-2000)

#### Armed Escorts

1. Revenue officers are not authorized to carry or use firearms or secondary weapons, such as mace or pepper spray, and must be alert to situations that may call for the use of an armed escort. Employee safety is the number one priority. A revenue officer should request an armed escort when there is a fear or concern for personal safety or if circumstances develop where the employee feels threatened. Criminal Investigation (CI) has information on designated problem or high crime areas in each district.
2. The revenue officer should advise the group manager of the circumstances involved. If the manager determines that the use of an escort is justified, the revenue officer should request the assistance of CI by:
  - o preparing a memorandum to the Chief, CI detailing the facts and circumstances,
  - o routing the memorandum through the chief, collection so that CI will receive it at least three business days prior to the date the armed escort is needed, and
  - o jointly preparing a plan of action once contacted by the assigned special agent.

[5.10] 2.17 (07-26-2000)

#### Seizing Property Housing a United States Postal Service Facility

1. Before seizing property housing a United States Postal Service facility:
  - o Advise the nearest postal inspector of the contemplated action,
  - o Discuss the effect of the seizure with a postal inspector, and
  - o Make every effort to avoid interfering with continued postal service to the public during the seizure and sale of the property.

[5.10] 2.18 (07-26-2000)  
Contracting for Services

1. Estimated seizure related expenses should have been determined during the preparation of the draft minimum bid prior to submitting the case for approval. (IRM 5.10.1.3.3.1 and IRM 5.10.4.6). Once the seizure has been approved, the revenue officer should begin contracting for the seizure related expenses.
2. The revenue officer should have determined in the pre-approval stage whether the property will have to be removed from its location and stored at another facility (IRM 5.10.1.3.3.1). Whenever possible, revenue officers and PALS should use blanket purchase agreements (BPAs) or other contracts arranged by the district's controller to obtain seizure-related services (e.g., towing, storage, and locksmith services). BPA's are contracts negotiated by a procurement officer. The advantages of a BPA are:
  - o There is a set price, usually at the lowest rate available, and
  - o The vendor bills the Service through the controller's office.
3. Revenue Officers, GS-09 and above, are authorized by the Assistant Commissioner (Procurement) (Delegation Order No. 106, as revised, of IRM 1229, Handbook of Delegation Orders) to procure seizure related services with the following restrictions:
  - o Procurement authority is limited to \$2,500 per service,
  - o Form 6888, U.S. Government Purchase Order--Invoice Voucher, or the Government Bankcard must be used for such purchases, and
  - o There must be sufficient funds reserved to cover the cost of the service(s); district management must establish a system to ensure that funds are available prior to the revenue officer or PALS contracting for a service.
4. Revenue officers and PALS can contract for seizure services where total expenses exceed \$2,500 as long as the cost of a single service does not exceed that figure. For example, separate Forms 6888 or bankcard purchases can be used to contract for a \$500 locksmith service, \$2,000 storage, and a \$200 towing charge, as long as all services are billed separately.
5. Form 6888 or bankcard cannot be used when the cost exceeds \$2,500 for a single service. IRM section 5.10.3.7 contains the instructions for the use and preparation of Form 6888.
6. If the seizure related service will cost more than \$2,500,

- submit Form 1334, Requisition for Equipment, Supplies, or Services, to the district's controller which will contract for the service through normal procurement channels. If a BPA is possible for a service exceeding \$2,500, immediately contact the contracting officer to get the necessary competition or sole-source justification.
7. If after contracting for a service, unanticipated costs would increase the total cost, or when emergency situations are encountered, a requisition must be submitted to the district's controller for procurement action.
  8. The requisition to the contracting officer must have the following information:
    - o a full description of the items or services required,
    - o the cost of the items and services,
    - o the vendor's name, address, and telephone number, and
    - o a signed narrative, explaining the circumstances which precluded the revenue officer from obtaining prior contracting officer approval.
  9. Emergency contracting situations should be extremely rare since ratification of procurements in such situations must be approved by the Assistant Secretary (Administration) at Treasury and could subject the person making an unauthorized procurement to disciplinary action.

[5.10] 2.19 (07-26-2000)

Lost or Stolen Form 6888

1. If a Form 6888 book, individual Form 6888, or a portion of any Form 6888 is lost or stolen, a report should be made to the chief, collection. The report should contain the following information:
  - o Name and post of duty of the employee to whom the Forms 6888 were assigned;
  - o order number of missing Forms 6888;
  - o date Forms 6888 were lost or stolen;
  - o a brief statement of circumstances surrounding the loss or theft; and
  - o a statement of action taken to recover the receipts.
2. The chief, collection will immediately notify the district controller by transmitting to them the report referred to in (1) above. The notification will ensure that the controller does not make any payment on lost or stolen Form 6888's. It is recommended that the controller be notified immediately by telephone, followed by the above report.
3. If the lost or stolen Form 6888's are later recovered, the chief, collection and the district's controller should be notified promptly. The necessary identifying information, i.e., numbers, date reported lost or stolen, etc. should be provided to them.
4. If Form 6888's are issued to revenue officers or PALS, their managers should review Form 6888 books during performance reviews in order to account for all Forms 6888.

Exhibit [5.10] 2-1 (07-26-2000)

Pre-Seizure Checklist and Approval Request Reference:

5.10.2.14

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PRE-SEIZURE CHECKLIST AND APPROVAL REQUEST

Instructions: For approval requests, use this format as a cover sheet and attach all pertinent documents (668-B and case file). After approval, this document will be returned to the originator and will be kept as part of the seizure file.

1. Originator's name and telephone number: \_\_\_\_\_ Date: \_\_\_\_\_
2. Taxpayer Type (Circle Appropriate Type): Indiv; SoleProp; Ptr; Corp; Exempt Org.; Religious Org.
3. Type(s) of Assets (Circle Appropriate Types): Principal Residence, Other Residence; Real Property; Contents of Residence; Vehicle; Safe Deposit Box; Machinery/Equipment; Office Equipment/Furniture; Cash Register; Inventory; Licenses; Other Business Prop; Other Personal Prop; Perishable Goods
4. Will consent or writ be required? Yes \_\_\_\_\_ No \_\_\_\_\_
5. Is this a jeopardy seizure? Yes \_\_\_\_\_ No \_\_\_\_\_

Exhibit [5.10] 2-1 (07-26-2000)  
Pre-Seizure Checklist and Approval Request Reference:  
5.10.2.14

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ACTIONS REQUIRED PRIOR TO SEIZURE	IRM REFERENCE	HISTORY DATE/FACT SHEET
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No prohibited seizure proposed	5.10.1.2	
Liability verified	5.10.1.3.1	
Alternatives considered/Risk Analysis	5.10.1.3.2	
Net proceeds determination/ Draft Form 4585	5.10.1.3.3	
Records check <30 days before approval	5.10.1.3.3(13)	
Individual Taxpayer -- Exempt Assets Considered	5.10.1.3.3.3(2)	
Individual taxpayer -- Business Assets/ Other assets were considered	5.10.1.3.3.3(3)	
NFTL filed on all open periods	5.10.1.3.3(6)	
L-1058 sent for all assessment periods at least 30 days prior to seizure/ additional warning if +180 days and no enforcement	5.10.1.5	
Pub 1, 1660, 594 delivered	5.10.1.5	
Attempt made to personally advise taxpayer of proposed seizure	5.10.1.5.2	

Exhibit [5.10] 2-1 (07-26-2000)  
Pre-Seizure Checklist and Approval Request Reference:  
5.10.2.14

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APPROVAL LEVEL

REQUIRED:      PRINTED NAME      SIGNATURE/DATE  
Group  
Manager    Y      \_\_\_\_\_  
Branch  
Chief      Y      \_\_\_\_\_  
Chief,  
Collection Y      \_\_\_\_\_  
District  
Director    Y N      \_\_\_\_\_  
Counsel  
Approval    Y N      \_\_\_\_\_  
(Jeopardy)  
Judicial      (Submit suit package after approval by  
Approval    Y N      district director)

Exhibit  
[5.10]  
2-2 (07-26-2000)  
Suit  
Narrative  
Report  
--  
Securing  
Judicial  
Approval  
for a  
Principal  
Residence  
Seizure  
Reference  
5.10.2.15  
-----

Format

Exhibit [5.10] 2-2 (07-26-2000)  
Suit Narrative Report -- Securing Judicial Approval for a  
Principal Residence Seizure Reference 5.10.2.15

The format of the revenue officer's suit narrative report is much the same as in other suit narrative reports. The report begins with the taxpayer's name and address, followed by three sections made up of:

- \* an introduction,
- \* a body, and
- \* a conclusion and recommendation.

Each section is labeled and subject paragraphs are numbered from one and continue in order throughout the narrative report. Information addressed or included in the fact sheet prepared for the initial seizure approval can be included as an exhibit and referenced in this narrative.

Introduction

Include the following information in the suit narrative report

in the paragraphs in the introduction:

- \* A request for institution of civil action for judicial approval of a principal residence seizure,
- \* The amount of money expected as the net sale proceeds,
- \* The type of tax and current outstanding balance,
- \* The collection statute expiration date (CSED) for all modules,
- \* A statement of administrative actions taken or the reason why specific administrative actions were not taken,
- \* Refer to the fact sheet exhibit to address all alternative collection methods considered and the reason they were not used, and
- \* The need for urgent action if required.

NOTE:

Civil action for principal residence seizure approval is not designated for Settlement Option Procedures.

### Body

The body is presented as a chronological presentation of the facts. The facts should be documented with and supported by exhibits. Include the following information in the suit narrative body paragraphs:

- \* A brief description of the taxpayer, to include:
  - o age,
  - o health,
  - o marital status,
  - o occupation, and
  - o tax payment history and other factors which have a bearing on the case
- \* Who the occupants are, to include:
  - o name(s),
  - o relationship(s) to the taxpayer,
  - o brief history,
  - o and current mailing address of the occupant(s) of the principal residence
- \* Verification of the liability to include:
  - o basis,
  - o date, and
  - o timeliness of the assessment
- \* Date of notice and demand for payment and lien filing information for all modules
- \* A summary of the relevant issues raised in prior IRC section 6320 and 6330 hearings
- \* The accurate, legal description of the property
- \* Any denial of ownership interest or evidence of such provided by the taxpayer or third party
- \* A description of anyone else's interest in the property
- \* Sufficient information to establish that all legal and procedural requirements relevant to the proposed seizure have been met, including IRC section 6331(j) requirements
- \* A brief summary to identify any related cases
- \* Documentation to demonstrate proper administrative approval secured

## Conclusion and Recommendation

The conclusion and recommendation is the closing for the report. Include the following information in the suit narrative report conclusion and recommendation section:

- \* A brief summarization and statement as to the recommendation for a principal residence seizure
- \* A restatement of the request for institution of civil action

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Internal Revenue Hndbk. 5.10 Chap. 2 Securing (07-26-2000)  
Manual Approval for Seizure Actions  
and Post-Approval Actions

Tax Stats | Tax Info For You | Tax Info For Business |  
Electronic Services  
Taxpayer Help & Ed | Tax Regs In English | IRS Newsstand |  
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[Tax Professional's Corner]

Handbook 5.10  
Seizure and Sale Handbook

Chapter 3  
Conducting the Seizure

[ Click for Text Only Version ]

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Contents

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  - o [5.10] 3.2.2 Seizure of Both Public and Private Premises
- + [5.10] 3.3 Exigent Circumstances
- + [5.10] 3.4 Writ Procedures



- o [5.10] 3.4.1 Writ Denied
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- + [5.10] 3.20 Transfer of Custody to PALS

- + Exhibit [5.10] 3-1 Form P-576 Reference: IRM 5.10.3.2
- + Exhibit [5.10] 3-2 P-577 Reference: 5.10.3.4
- + Exhibit [5.10] 3-3 P-584 Reference: 5.10.3.4
- + Exhibit [5.10] 3-4 "Indemnification of Locksmiths/Tow Truck Operators" Reference: 5.10.3.7(5)
- + Exhibit [5.10] 3-5 Form 2433 -- Notice of Seizure (Reference 5.10.3.9)
- + Exhibit [5.10] 3-6 Pattern Letter -- 2293(P) Reference: 5.10.3.11.2(4)
- + Exhibit [5.10] 3-7 Pattern Letter P-336 Reference: 5.10.3.13(1) and 5.10.3.14.2(3)
- + Exhibit [5.10] 3-8 Pattern Letter P-337 Reference 5.10.3.14.2(2)
- + Exhibit [5.10] 3-9 Pattern Letter P-415 Reference 5.10.3.15(3)
- + Exhibit [5.10] 3-10 SEIZURE AND SALE CHECKLIST Reference: 5.10.3.20

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 [5.10] 3.1 (07-26-2000)

General

1. After approval has been secured and all pre-seizure preparations have been completed, the revenue officer should conduct the seizure. Coordination with the PALS is essential before and during the seizure. The PALS should be contacted prior to the seizure date to resolve any logistical issues and to ensure an orderly transfer of property after the seizure has been conducted.
2. The revenue officer should check IDRS prior to conducting the seizure to confirm that there have been no changes to the status of the taxpayer's account, such as bankruptcy filings, adjustments, or credits.
3. The revenue officer and assisting employee(s) should enter the public portion of the premises, identify themselves by presenting their credentials, and speak with the rightful occupant. The revenue officer should explain that the purpose of the visit is to seize that taxpayer's assets located on the premises. The revenue officer should take the time to address any questions the taxpayer has regarding their rights.

[5.10] 3.2 (07-26-2000)

Conducting the Seizure -- Securing Consent

1. If the property to be seized is located on private premises either the taxpayer's written consent or a Writ of Entry is required. The request for consent should be explained to the taxpayer. Pattern Letter P-576, Consent to Enter Private Premises (Exhibit 5.10.3-1), will be used to prepare the appropriate written consent. The revenue officer should explain that:
  - o written consent is required for the revenue officer to conduct the seizure,
  - o the consent is only permission to enter the private area of the property -- the public area can be entered and property seized without consent,
  - o the taxpayer's permission is not required to seize, only to enter the private areas,
  - o the taxpayer can refuse consent, but should be

- o informed that a Writ of Entry is the next probable step, and
  - o if consent is given and the taxpayer allows the property to be stored and sold on the premises, there is usually a reduction in expenses and an increase in net proceeds.
2. The revenue officer may accompany the taxpayer or person in charge onto the private premises to discuss the matter. This cannot be considered a consent to enter a private area for the purpose of conducting the seizure.
  3. A written consent from the rightful occupant is required. The rightful occupant can be defined as the party with a legal right to be in possession of the premises. This may vary from state to state. In addition to the taxpayer, two examples of rightful occupants who can sign a Consent include:
    - o landlords who have advised the taxpayer that their lease is in default and have the right to lock the taxpayer out, and
    - o shop owners who have the taxpayer's goods on consignment for sale at their place of business.
  4. When it is not possible to request consent in person, the rightful occupant (e.g., the taxpayer) should be requested by mail or telephone to come to the revenue officer's office to give consent. The Consent must be signed by the rightful occupant or authorized representative to be valid.
  5. In most instances the seizure will be made immediately after the Consent is signed. As a general rule, the seizure should be made not more than 7 working days from the date of consent. If seizure is to be later than 7 days, a new Consent should be requested.
  6. A copy of the Consent will be provided to the person who signed it, the original will be forwarded to SPf through the group manager within 5 workdays after the seizure, a copy will be retained with the case file, and a copy will be forwarded to the PALS when custody of the property is transferred (see IRM 5.10.3.20).
  7. In no case is a signed consent to be maintained as a measure to guarantee performance of an installment agreement, timely filing, or other action.

[5.10] 3.2.1 (07-26-2000)

#### Conducting the Seizure -- Consent Denied

1. Consent may be refused in person, by mail, or by telephone. Consents are voluntary and may be revoked at any time by the person giving consent.
2. If consent to enter is denied, the revenue officer will explain that a Writ of Entry to seize the assets is the next probable step.
3. Under normal circumstances, if consent is denied, within 2 workdays of the denial the revenue officer will initiate the process to secure a writ. (See IRM 5.10.3.4, Writ Procedures.) If the revenue officer decides not to pursue a writ or is unable to meet the 2-day time frame, he or she will document the reason in the case history.

[5.10] 3.2.2 (07-26-2000)

#### Seizure of Both Public and Private Premises

1. If the assets located in the public area are not sufficient to satisfy the tax liability, and consent to enter to seize the assets on the private premises has been refused, the revenue officer must decide whether to seize the assets in the public area, or to wait until a writ is received permitting him/her to seize assets in both the public and private areas.
2. Generally, the revenue officer will wait until the writ is secured; however, if a valid reason exists for the revenue officer to proceed with the seizure of the assets on the public portion the revenue officer will advise the taxpayer or person in charge that the contents of the public area are being seized. The revenue officer will further advise the taxpayer that although the Service has seized the assets in the public area neither seizure, entry, nor inventory will be made of the private portion of the premises until a writ is obtained. The assets that are being seized should be removed to a location where they can be protected.

[5.10] 3.3 (07-26-2000)

#### Exigent Circumstances

1. If the revenue officer observes situations that can be described as "exigent circumstances," the private portion of the premises can be entered without a Writ of Entry.
2. A seizure under exigent circumstances may be defined as a seizure that must be made immediately because there is not ample time to secure the necessary Writ of Entry to prevent the taxpayer from putting property beyond the reach of the Service. Removal of property from the taxpayer's premises in the ordinary course of business, such as delivery of merchandise sold to customers, is not an exigent circumstance.
3. Extreme caution must be exercised when determining exigent circumstances. The revenue officer should obtain instructions from his or her manager about how to proceed, and extensive documentation in the case history about the procedure is necessary. A jeopardy determination or assessment by itself is not sufficient to satisfy the exigent circumstances exception.
4. In cases where exigent circumstances exist, the revenue officer:
  - o Should be certain that the taxpayer is attempting to put property beyond the reach of the Service before a seizure under exigent circumstances is made;
  - o Will secure written approval from the chief, collection division, unless the type of seizure requires the approval of the district director or the assistant district director;
  - o Will secure and document the advice of District Counsel;
  - o May immediately enter private premises, from which property is being removed, without waiting for the Writ of Entry in order to protect the interests of the government; and
  - o Will document the case file with the facts that led to a determination that "exigent circumstances"

existed. Documentation must include the efforts to explain to the taxpayer his/her rights prior to seizure.

[5.10] 3.4 (07-26-2000)

#### Writ Procedures

1. When a Writ of Entry is required, the revenue officer will prepare:
  - o an affidavit (Pattern Letter P-577, Affidavit of Revenue Officer, Exhibit 5.10.3-2), and
  - o the Data Sheet (Pattern Letter P-584, Exhibit 5.10.3-3).
2. Since affidavits are testimony under oath of the one giving the affidavit, the revenue officer must ensure that the information presented is accurate as to the facts of the case. Extraneous information and subjective opinions should not be included in the affidavit.
3. The data sheet should include all pertinent information necessary to provide a complete background on the case, as the sheet may be used to answer questions that the Judge or Magistrate might have regarding the request for a Writ of Entry.
4. The data sheet will include:
  - o employee information,
  - o taxpayer information,
  - o notice, balance, and assessment dates,
  - o a summary of actions taken on the case,
  - o the date Consent was refused,
  - o description of the property to be seized, and
  - o an explanation of how the revenue officer knows the above information.
5. If the description of the property is unknown, use a general description, such as "all of the property of (name of taxpayer) located on the premises of (complete street address)" .
6. The completed affidavit and data sheet will be forwarded through the group manager to SPf and then to District Counsel for review as soon as possible. After review, District Counsel will refer the matter to the U.S. Attorney for handling. District Counsel will advise the revenue officer or group manager of the place and time of the appointment with the district court Judge or Magistrate. The revenue officer or group manager may be present in order to answer questions the Judge or Magistrate may ask concerning the seizure.
7. As soon as the Writ of Entry is received, the revenue officer will proceed with the seizure.
8. Generally, writs are in effect for ten days, but a Judge or Magistrate may impose specific restrictions to limit such time factors.
9. Once the seizure is made, the revenue officer should forward a copy of the Writ of Entry to SPf through the group manager within 5 workdays after the seizure, retain a copy for the case file, send a copy to District Counsel, and give a copy to the PALS at the time the transfer of custody of the seized assets is completed.

[5.10] 3.4.1 (07-26-2000)

#### Writ Denied

1. If the Writ of Entry is denied and it is determined that a seizure, limited to property located in a public access area, is appropriate, District Counsel will be consulted to determine that such action will not conflict with the basis for the denial of the Writ of Entry for the private premises. If District Counsel agrees to the seizure, the property will be seized and stored as appropriate.

[5.10] 3.5 (07-26-2000)

#### Seizing the Property

1. The revenue officer will proceed with the seizure once the Consent is signed or the court order is received, when applicable. If a Writ of Entry was secured, the taxpayer will be given the original copy of the writ at the seizure site. If the taxpayer is not present, the Writ of Entry will be provided to the taxpayer as soon as possible. If a third party is in possession of the property, the revenue officer should give a copy of the Writ of Entry to them at the time of the seizure.
2. The revenue officer should then deliver Form 668-B to the taxpayer and read the statement on the form to the taxpayer or permit him or her to read it. The revenue officer should answer any questions the taxpayer may have regarding the seizure.
3. If the revenue officer arrives at the seizure site and a taxpayer's employee is in charge of the property to be seized, the revenue officer should advise him/her to call the taxpayer. If the taxpayer is not available and a writ of entry was secured, the revenue officer should conduct the seizure, and the seizure documents should be left in a sealed envelope addressed to the taxpayer at the taxpayer's residence or place of business.
4. Seizure of property should be timed in a manner to prevent entrance or interference of employees or customers as much as possible. There are situations where a seizure is made and the taxpayer's employees and customers are present. In this situation the revenue officer should:
  - o request the taxpayer to ask the employees and customers to leave,
  - o ask everyone to leave if the taxpayer will not do so, and
  - o secure the site and proceed with the seizure.
5. If the taxpayer makes full payment of the assessment plus all additions, is prepared to do so immediately, or makes some other satisfactory arrangement regarding the tax liability, the seizure will be discontinued.
6. If the taxpayer states that they have filed bankruptcy, secure the appropriate bankruptcy petition information and contact SPf for additional instructions.
7. If the taxpayer claims hardship, the revenue officer should assist the taxpayer in preparing Form 911 and route the form to the district Taxpayer Advocate. The revenue officer should determine if the actual seizure action should be discontinued, depending on the circumstances; however, any further enforcement action will be withheld during the Taxpayer Advocate's review.
8. A revenue officer is not authorized to use force in the

seizure of property. If the taxpayer or any other person bars the path or approach of the revenue officer and clearly indicates that he or she will use force in attempting to prevent the seizure, the revenue officer should withdraw and report the matter to the group manager.

9. If the revenue officer is in the process of actually seizing the property and is physically attacked, he or she may use such force as is necessary to protect himself or herself to stop the attack. The seizure should be discontinued and the assault reported to TIGTA. See text 335.3 of IRM 57(16)0, Legal Reference Guide for Revenue Officers.
10. Part 3 of Form 668-B must be:
  - o personally provided to the taxpayer,
  - o left at his or her residence or business if he or she has such within the district where the seizure is made, or
  - o mailed to the taxpayer's last known address within two business days of the seizure if the taxpayer cannot be readily located, or has no dwelling or place of business within the district.
11. Parts 1 and 2 of Form 668-B contain two statements concerning the taxpayer's presence during inventory. At the time of the seizure, the revenue officer will complete and sign the first statement, which indicates that the taxpayer (if available) was asked to be present during inventory. When inventory is taken, the revenue officer will complete the second statement, which indicates whether the taxpayer or the taxpayer's representative was present. Part 1 will be transmitted to SPf within 5 work days after the seizure is conducted.
12. When property belonging to the taxpayer is in the custody of a third party, Part 4 of Form 668-B should be given to the third party in possession of the property. Form 668-A (Notice of Levy) must also be used since the property is in the possession of a third party. Examples of this include automobiles on a private parking lot, securities in the hand of a stockbroker, or a safe deposit box at a bank.
13. If a vehicle is parked in a "park and lock" facility, and the attendant is not in possession of the keys to the vehicle, provide the person having custody of the vehicle with Part 4 of Form 668-B. If the attendant is in possession of the key to the vehicle, serve Forms 668-B and 668-A on the attendant and ask the attendant to surrender the keys. If the third party fails to surrender the keys, and/or denies access to the vehicle, the revenue officer will follow the procedures in IRM 5.11.2.1.8, "Refusal to Comply with a Levy."

[5.10] 3.5.1 (07-26-2000)

#### Management Review Process and Taxpayer Appeal Rights

1. Taxpayers whose business assets have been seized, and who request it, are entitled to an expedited case review by management. The seized assets must be tangible personal property essential in carrying on the trade or business of the taxpayer. The purpose of the management review is to

- determine whether the levy meets the release requirements of IRC 6343 and, in particular, whether the levy has created an economic hardship by preventing the taxpayer from carrying on such trade or business.
2. The management review will consist of one level only and will be conducted at the branch level. In those cases where the levy action is sustained (levy is not released) by the appropriate collection manager, the taxpayer will be advised about the district Taxpayer Advocate and or the Collection Appeal Program.
  3. Seizures involving perishable goods require immediate management attention. Local management will provide for an accelerated review process based on the merits of each case.
  4. Once a seizure action is taken, the taxpayer has 10 business days from the date the Notice of Seizure is provided to the taxpayer or left at his or her usual abode or place of business to appeal the seizure action through the Collection Appeals program (IRM 5.10.1.5.3). The taxpayer will use Form 9423, Collection Appeals Request, to request a CAP hearing.
  5. Taxpayer Advocate Service cases and Applications for Taxpayer Assistance Orders may be initiated because of Collection seizure actions. If the taxpayer claims hardship as a result of a seizure or proposed seizure action, the revenue officer should continue with the seizure if appropriate and should assist in the preparation and routing of Form 911. Further collection actions are suspended until the hardship is resolved by the Advocates' Office. See IRM 5.1.9 for criteria and procedures.

[5.10] 3.6 (07-26-2000)

#### Protecting the Property After Seizure

1. After the 668-B has been served, the revenue officer should sign the appropriate warning notices (Publications 34, 180, or 787) and attach them to the property being seized for identification. The name and phone number of the PALS who will conduct the sale should also be included on the warning notices.
2. Prior contact with vendors should have been made so that the vendor is available on the day of the seizure. It is inappropriate for the vendor to arrive before the revenue officer makes the seizure and secures the property. This is necessary to avoid unnecessary expenses in case a problem occurs with the seizure or if the taxpayer pays the liability. After the 668-B has been delivered, the revenue officer should contact the vendor. If available, a cell phone should be used so the revenue officer does not have to leave the seizure site. See IRM 5.10.3.7 and 5.10.3.8 for instructions regarding payments to vendors.
3. Unless the real estate housing the seized assets has also been seized, neither padlocking nor placing seizure warning tags on the premises is appropriate. If arrangements have been made with the taxpayer or owner/landlord, the premises may be padlocked or locks changed so that the Service has sole possession of the premises. Padlocking and changing locks is not applicable



in the seizure of personal residences and rental property where the tenant is not the taxpayer, as possession of the property remains with the owner or tenant occupant until sale or redemption occurs.

4. If the seizure involves unimproved real estate, a warning notice is not required to be posted.
5. If the taxpayer's entire business with many assets is being seized, warning notices should be attached to clearly identify the property under seizure.
6. While the procedures outlined above apply in the typical situation involving seizure of business property, there is no need to post a warning notice when that action would increase the prospects of violence or, for other reasons, it would be imprudent. Non-posting of the warning notice in such instances has no effect on the legitimacy of the seizure action taken. The reasons for non-posting will be documented in the case file.
7. The taxpayer's employees are allowed to remove their personal property and the taxpayer may remove business books and records without revenue officer inspection. If examination of the books and records is necessary in a particular case, the revenue officer should consult District Counsel to determine whether the issuance of an administrative summons is desirable.
8. If a taxpayer seeks personal items in a seized vehicle or business premises, advise the taxpayer that reentering the seized property to recover the personal items is not permitted. The revenue officer and witnessing employee should personally remove the items and return them to the taxpayer after the taxpayer signs Form 668-E, Release of Levy. The provisions in IRM 5.10.4.4(11) are to be followed when the taxpayer refuses to sign Form 668-E.
9. After attaching the warning notices, the revenue officer should begin to inventory the property under seizure.
10. When guards have been hired (IRM 5.10.1.3.3.1(7)), they should be apprised of the possibility of harassment or violence. In the majority of cases however, satisfactory protection can be ensured by notifying the local police of the seizure and requesting their cooperation in protecting the property.
11. The aid of the taxpayer should be requested to take all necessary precautions (e.g., turn off water pumps, non-essential equipment, motors, etc.) to secure the property. If the taxpayer indicates that the premises must be checked periodically to protect the property, the revenue officer or PALS should make such arrangements.

[5.10] 3.6.1 (07-26-2000)

#### Controlling Seized Property Stored in District Offices

1. When seized items are stored in the district office, the revenue officer will prepare a signed memorandum to the group manager identifying the property. It will state the determined value of the property and the approximate amount of time the property is to be stored.
2. The revenue officer and another Service employee designated by the chief of the Collection function will both sign a certification, on the revenue officer memorandum, to the effect that the property was placed in

- a safe or cabinet with the name or number and location.
3. When custody of the property is transferred to the PALS, a copy of this memorandum should be provided to the PALS.
  4. Seized property must be safeguarded in facilities commensurate with the standards in IRM 1(16)41, Physical and Document Security Handbook. Local procedures for safeguarding such property should include periodic verification checks of the property in the container by a designated official.
  5. When the property is disposed of, the revenue officer or PALS will update the memorandum referred to in (1) above with date of disposition, manner of disposition, etc. The group manager will concur by initialing the memorandum and will forward it to SPf for inclusion in the seizure file.

[5.10] 3.6.2 (07-26-2000)

#### Service and Repair Establishments

1. Business establishments, such as dry cleaners, laundries, and repair shops, contain property belonging to customers. Revenue officers conducting such seizures must make arrangements for customers to claim their property.
2. A notice should be posted on the front door of the business indicating the hours the premises will be open for customers to claim their property. The establishment should be opened for sufficient periods so that third parties are not overly inconvenienced.
3. The revenue officer, with the group manager's concurrence, will determine the hours the business will be opened based on such factors as amount of property to be claimed, location of the business and usual hours the business was opened to the public. If the taxpayer's business hours extended beyond normal IRS work hours, the establishment should be opened some portions of the non-IRS work hours. For example, if Saturday operation was customary, consideration should be given to providing at least some Saturday hours.
4. Revenue officers should make reasonable attempts to contact customers on any item with customer identifying information if the item is not claimed. In no event should items clearly identified as a customer's property be sold.
5. Custody of assets should not be turned over to the PALS until customers have had adequate time to claim their assets.

[5.10] 3.6.3 (07-26-2000)

#### Records of Attorneys, Physicians, and Accountants

1. Records maintained by attorneys, physicians, and accountants concerning professional services performed for clients are usually of little intrinsic value and possess minimum sale value.
2. Questions of confidential or privileged information contained in these records may cause complications if the records are seized. Additionally, the case files of the professional person are frequently the property of the client, and therefore are not subject to seizure.
3. Accordingly, it is not desirable to seize case files or records for payment of the taxpayer's tax liabilities. When office facilities or office equipment of attorneys,

physicians, or public accountants are seized for payment of taxes, case files and related files in seized office facilities or office equipment of such persons will not be personally examined by the revenue officer, and the taxpayer should be requested to remove all case files promptly.

4. If it is believed the storage facilities contain valuable property in addition to case files, the contents may also be seized but, as soon as possible, the case files should be released to the taxpayer. The revenue officer should be present when the taxpayer segregates the files so that other property of salable value may be taken.
5. A new notice of seizure should be issued describing any property taken. The storage facilities (cabinets, etc.) after removal of contents, may be sold at public sale in accordance with regular sale procedures.
6. If the taxpayer does not remove the files as requested, the case files will be removed intact by the revenue officer. Another Service employee should also be present at time of removal. Under no circumstances will case files be examined. The files will be placed in boxes and securely bound. Each box will be identified by name of taxpayer and date removed from files. The boxes will be left on the business premises if the premises are not also under seizure. If the business premises are under seizure, the boxes will be removed for storage at the local IRS Office.
7. When removed for storage, appropriate steps to ensure the security of the case files should be taken and, if possible, the files should be maintained in locked facilities. The revenue officer will document the fact that the case files were not examined and this statement will also be signed by the other employee who was present at time files were removed. If case file boxes are removed for storage, the taxpayer should be notified within 48 hours, by certified mail, return receipt requested, that the files must be claimed within 30 days from date of notice. If not claimed within the prescribed period, District Counsel should be requested to furnish instructions.
8. District Counsel should be consulted for the procedures to follow when computers that contain personal files are seized.

[5.10] 3.7 (07-26-2000)

#### Payment to Vendors for Services Less Than \$2,500

1. Form 6888, U.S. Government Purchase Order -- Invoice Voucher, or the Government Bankcard must be used for purchases less than \$2,500.00. Federal procurement regulations require written confirmation of the cost of a service.
2. District Collection management is responsible for controlling and issuing Form 6888, U.S. Government Purchase Order-Invoice-Voucher to revenue officers and PALS. The books contain instructions for completing and processing the appropriate parts. Additionally, the book contains a "record of purchases" which must be completed each time a Form 6888 is issued. The district's controller

will not process Form 6888's for payment unless they are properly completed.

3. Care must be taken in completing the Form 6888 to ensure that the writing is legible. Enough pressure must be used to ensure that all copies are legible. In addition to signing the document, the revenue officer or PALS must print his or her name clearly. The revenue officer/PALS' signature serves as both the procurement official and as the receiving person for goods and services received.
4. The "Taxpayer Identification Number" and "Indemnification of Locksmiths and/or Tow Truck Operators" clauses are shown on the reverse side of the Form 6888 and should be pointed out to the contractor when services are required. The "Taxpayer Identification Number" clause requires the contractor to include his or her Social Security Number (for individuals) or employer identification number (for other entities) on invoices. Thus, contractors who furnish services must show their number in the block entitled "Payee" on the front side of the form. The "Indemnification of Locksmiths and/or Tow Truck Operators" clause is only applicable to orders for locksmith and tow truck services.
5. If the revenue officer or PALS uses the Government Bankcard, he or she must provide a copy of the indemnification clause (Exhibit 5.10.3-4) to the vendor at the time of purchase.
6. The Prompt Payment Act requires interest to be paid on government obligations that are not paid within 30 days of acceptance of goods or services. Therefore, after the revenue officer or PALS has completed arrangements for services with the vendor and services have been rendered, Form 6888 should be submitted to the revenue officer or PALS for review and approval and should be processed expeditiously to avoid delay in payment. Part 3 of the Form 6888 must be submitted to the district's controller as soon as possible after the service is rendered.
7. For services procured by Form 6888, the revenue officer or PALS will submit to SPf a copy of the vendor's bill (if available) and Part 5 of Form 6888 for each service as soon as the service is rendered and the voucher is received. Revenue officers and PALS must request input of TC 360 to the balance due account for all expenses of seizure and sale that are not paid directly by the taxpayer.
8. When the revenue officer or PALS makes a purchase with the U.S. Government Bankcard, he or she will receive a monthly statement of account for reconciliation and certification. After receiving the statement, the revenue officer or PALS will take the following actions:
  - o reconcile and attach expenditure receipts to the statement;
  - o annotate the statement with the seizure number, type of service or item purchased, and the vendor's TIN;
  - o sign and date the statement on the reverse side; and
  - o forward to the approving manager within 5 calendar days to ensure prompt payment of vendors.

[5.10] 3.8 (07-26-2000)

"Not to Exceed" and Actual Costs

1. If the 6888 cannot be issued to the vendor the day the service is performed (storage of a vehicle and the bill will not be submitted until the service is completed), the cost of the service and a "not-to-exceed" amount must be entered on the Form 6888 under the "supplies and services" section; for example, "\$10 per day storage fee for 30 days, not to exceed \$300."
2. In these situations, the vendor's copies of the 6888 will be retained by the revenue officer or PALS until the service is completed. When the service is completed, note the Form 6888 with the actual cost; for example "actual cost of \$200 (\$10 per day for 20 days).
3. If the actual cost exceeds the original "not to exceed" amount, void the original Form 6888 and issue a new one as long as the total does not exceed \$2,500.
4. If there is a need to extend the service which results in the total cost exceeding the "not to exceed" amount on the Form 6888 and the new amount will be greater than \$2,500, the Form 6888 cannot be used for payment. It should be marked "void" and placed in the seizure file. The revenue officer or PALS must submit a requisition to the district controller in sufficient time to allow for the establishment of a new procurement instrument prior to expiration of the service as specified in the original Form 6888.
5. If emergency conditions exist and it is not possible to promptly submit a requisition, the revenue officer or PALS will:
  - o obtain telephonic approval from the contracting officer to continue the service, and
  - o submit a requisition within three workdays to the district's controller, who will issue a confirming order, which will cite the date and scope of the agreement, including costs and the new completion date, to the vendor.
6. If it is not possible for the revenue officer or PALS to contact the contracting officer, he/she may extend the required service for a limited duration. A requisition must then be submitted to the district controller within three workdays, and must include all the required documentation necessary to enable the contracting officer to ratify the commitment. Commitments over \$2,500 which require approval by the Assistant Secretary of the Treasury for Management, should be avoided. In addition to providing funds for the limited extension of services acquired by the revenue officer or PALS, the requisition should also provide for further coverage which may be required, thereby enabling the contracting officer to appropriately contract for the full scope of work.

[5.10] 3.9 (07-26-2000)

Notice of Seizure Form 2433 -- Preparation

1. Form 2433, Notice of Seizure, will be prepared by the revenue officer in all cases in which property has been seized. The inventory must be completed as soon as possible. Form 2433, Notice of Seizure, should be prepared as shown in Exhibit 5.10.3-5.

2. Form 2433 is an eight-part snap-out assembly which provides:
  - o copies for the taxpayer, SPf, and the service center accounting branch,
  - o two parts to release property in appropriate cases, and
  - o parts to report disposition of the property and sale proceeds.
3. The items of property seized should be described and identified with reasonable certainty in an inventory listed on the form or in an attachment to it. IRM sections 5.10.3.10 through 5.10.3.16 include additional instructions which must be followed when any of the following assets are seized:
  - o Alcoholic Beverages
  - o Cash register contents
  - o Checks and Money Orders
  - o Food Stamps
  - o Safe Deposit Boxes
  - o U.S. Savings Bonds
  - o U.S. Marketable Securities
  - o "Letter Stock" or "Restricted Stock"
  - o Securities Acquired through 668-A
  - o Funds located in Brokerage Accounts
  - o Patents and Pending Applications for Patents
  - o Controlled Substances
4. For real property, the legal description should be secured from the deed. Also, the address (or street location if available), type of structure, approximate size of building, intended usage, and any other information as is required to properly describe the property should be included on the Notice of Seizure.
5. For personal property the description should include, to the extent possible:
  - o The type of property,
  - o brand name,
  - o model description,
  - o serial number,
  - o quantities (where applicable),
  - o intended usage, etc.
6. When a motor vehicle is seized, in addition to the description of the vehicle (make, type, model, year, odometer reading, etc.) the inventory should include a listing of optional equipment such as radio, tape player, or air conditioner unit. Any damage such as dents or missing hubcaps, although not included in the description to be advertised, should be noted on Parts 5, 6, and 7 of Form 2433. The trunk and glove compartment should be opened and examined. Any contents should be described in the inventory. However, if the vehicle contains an item that demonstrates an expectation of privacy, such as a locked briefcase or locked luggage, the item may be seized but not opened without a Consent or Writ authorizing entry into that particular article or item.
7. The property value should be shown based on the pre-seizure investigation unless the taxpayer provides additional information so that the most accurate value is shown on the 2433. The case history should be documented

if there is a change to the fair market value of the asset.

8. The detailed description of individual "grocery" type items and certain retail merchandise inventories (hardware, drugstore, etc.,) may be waived for groupings of like items reasonably described.
9. Generally, the same description should appear on any subsequent forms completed in relation to the seizure and sale, i.e., Forms 2434, 2434-A, 2435, etc. The reason for any change in description should be fully explained on the corrected document or by routing slip.

[5.10] 3.9.1 (07-26-2000)

#### Notice of Seizure Form 2433 -- Multiple Forms

1. The revenue officer may encounter situations that will require the use of multiple Forms 2433. The use of multiple forms is usually the result of:
  - o different types of property seized (cash register contents, perishable goods, real or personal property)
  - o seizures conducted at separate locations, and
  - o different dates of seizures.
2. Seizures conducted on different dates will be assigned separate seizure numbers.
3. Multiple Forms 2433 issued for the same seizure (Form 668-B) will be lettered with an alpha suffix (Serial Nos. HQ-12, HQ-12A, etc.). The use of separate Forms 2433 for reporting seized property (e.g., cash register contents, perishables) will not affect the seizure count.

[5.10] 3.9.2 (07-26-2000)

#### Notice of Seizure Form 2433 -- Supplemental

1. In some instances it may be desirable to issue a Notice of Seizure before a detailed inventory is taken. This procedure, however, should only be used when it appears:
  - o that the work involved in taking the detailed inventory would be unwarranted because of the probability of prompt redemption or release,
  - o the delay may jeopardize the Government's priority claim due to impending bankruptcy or other insolvency proceedings, or
  - o large numbers of assets are involved and there is insufficient time to prepare a detailed inventory at the time the Notice of Seizure is issued.
2. Under these conditions, a Notice of Seizure may be issued by showing as complete a description as can conveniently be included at that time:
  - o list the most valuable and readily ascertainable items in as much detail as practicable, and
  - o identify the rest of the property generally and give its specific location.
3. The general description should be along these lines "and all other property of (name of taxpayer) seized on the premises of (complete address) on (date and time). A supplemental Notice of Seizure providing a detailed itemization of this property will be given as soon as a detailed inventory is completed."
4. The revenue officer should prepare the supplemental notice

as soon as possible, identifying only the items of property not previously identified. This notice should be marked "Supplemental" and should not be referred to as a "revised" or "amended" notice since it might imply that the original notice was improper or legally inadequate.

[5.10] 3.10 (07-26-2000)

#### Alcoholic Beverages

1. If personal property is being seized that includes an inventory of beer, wine or distilled spirits, the revenue officer should exclude any opened bottle or containers from the seizure and should advise the taxpayer that these items are left for his/her disposal. A bottle is considered opened if the seal has been broken.
2. If the beverage was acquired by the taxpayer through a state, county or municipal store:
  - o contact the liquor control authorities and arrange for an inventory,
  - o furnish a copy of Form 668-B to the liquor control representative,
  - o jointly take an inventory on a form provided by the representative, and
  - o retain a copy of the inventory in the case file.
3. In areas having a state, county, or municipal store system, the alcoholic beverages will not be offered for sale. The revenue officer should:
  - o contact the liquor control authorities and request directions as to the store to which the inventory of alcoholic beverages can be delivered for refund;
  - o arrange for transportation of the inventory by commercial carrier to the designated store; a state or local representative will inspect the inventory to determine if all bottles are in condition to be resold;
  - o secure an appropriate receipt for the inventory accepted;
  - o secure a refund check made payable to the United States Treasury within approximately 30 days for the accepted inventory based on the original purchase price, less approximately 10 percent and less nonrefundable taxes, etc.; and
  - o process the check in the same manner as an involuntary payment on the account.
4. As soon as possible, a determination should be made as to the prospective redemption or release of any alcoholic beverages. The revenue officer should advise the taxpayer that he or she may make preliminary arrangements for returning the inventory to the wholesalers for a payment in amount equal to the wholesale value. The arrangement should provide that the proceeds will be paid directly to the revenue officer for credit to the tax liability, and the taxpayer should be requested to notify the revenue officer when arrangements are made.
5. If it is necessary to move the alcoholic beverages, the revenue officer or PALS will:
  - o arrange for transportation and storage;
  - o take precautions to ensure that during transportation responsibility for theft and breakage is assumed by



- o the carrier; and
  - o secure a receipt and evidence of acceptance for responsibility from the storage concern.
6. If the alcoholic beverages are redeemed, Form 668-E will be prepared and the taxpayer will be requested to sign the release on the reverse. In states having a state, county, or municipal store system, a copy of Form 668-E will also be transmitted to the proper authorities with a memorandum explaining the action provided the inventory mentioned in (2) above was taken. Arrangements for transportation of the inventory from the place of storage to the licensed premises should be left to the taxpayer.
  7. If the seizure is not in an area that has a state, county, or municipal store system, or if the state or county stores are prohibited from taking back liquor for any reason, a public sale will be held in accordance with regular sale procedures. However, to avoid any problems, the PALS should check with local authorities regarding the method of sale to determine if there are restrictions that must be complied with.

[5.10] 3.11 (07-26-2000)

#### Cash Register Contents

1. Seizures of cash registers or their contents require either a taxpayer's written consent or a Writ of Entry.
2. The term "cash register," includes cash register, safe, vault, cash box or any other type of cash receptacle. The contents of a cash register are subject to levy. Since levy action may result in the seizure of assets other than cash or in the actual seizure of the cash register itself, a notice of lien should be filed prior to seizure.
3. Prior to effecting a seizure of a cash register consider notifying local law enforcement authorities in order to avoid any potential problems.
4. After securing a signed Consent or a writ and providing the taxpayer with the 668B, the revenue officer will tag the cash register with the appropriate warning notice:
  - o Publication 34 will be used when the contents are to be immediately removed; or
  - o Publication 180 will be used if removal of the contents is to be delayed -- Publication 180 should be affixed so that the cash register cannot be opened without removing, tearing or destroying the seal.
5. The taxpayer, or the person in possession of the property, should be requested to voluntarily open the cash register in the presence of the revenue officer.
6. If the request is refused, proceed to open the cash register provided it can be opened without using force. In most instances this may be done by pressing the "No Sale" key. If it can be opened by the revenue officer without using force, the seal should not be removed, but should be loosened sufficiently to permit opening of the register and access to the contents.
7. The taxpayer, or person in possession of the register, should be asked to observe the actual counting of any money removed from the register.
8. A Form 809 receipt should be issued for the amount of cash that has been seized. Across the top of Form 809 should be

written "Contents of cash register seized."

9. Only sufficient cash should be removed from the register to satisfy the amount of the levy. The remaining contents of the cash register should not be disturbed, and items in the cash register other than cash should not be seized unless there is insufficient cash to satisfy the levy.
10. Seized credit card drafts (e.g. Visa, MasterCard, etc.) may be disposed of by presenting them for payment to the issuing financial institution with an attached Form 668-A, Notice of Levy. Such drafts when converted to cash via the use of Form 668-A, and which are itemized on Form 2433, must be accounted for by deleting them from the seizure inventory via a release of levy (Form 668-E).
11. Cash should be inventoried by coin and bill denomination, and checks should be listed individually, specifying the bank name, date of check, check number and the amount. See IRM 5.10.3.11.1 for additional information regarding checks and money orders.
12. United States securities and any other assets should be described precisely on the Form 2433, Notice of Seizure. See IRM 5.10.3.13 and 5.10.3.14 for disposition of savings bonds and securities.
13. Before leaving the premises, the revenue officer will remove the warning notices and seizure tags and will prepare a notice of seizure.
14. If the cash register is not voluntarily opened or cannot be opened without using force:
  - o prepare a notice of seizure describing the property as "cash register (description by number and trade name) and contents thereof" ;
  - o If the cash register is movable, it should be removed from the premises, placed in storage, and arrangements made to have it opened;
  - o if the cash register cannot be removed from the premises, the taxpayer should be advised of the penalties for forcible rescue, dispossession, or attempt to rescue or dispossess any property that has been seized. (U.S. Code, Title 18, Chapter 109, Section 2233 provides for a fine or imprisonment of not more than 5 years or both); and
  - o a locksmith or similar mechanic should be engaged to open the cash register in order that it will not be damaged.
15. The cash register should be opened in the presence of two Service employees and the taxpayer should be notified in advance so that he/she may be present if he/she desires. The contents of the cash register should be removed and the cash counted. If there is not sufficient cash in the register to liquidate the account, the cash register and any other assets seized that are of sufficient value to warrant sale may be advertised and sold. If any of the seized property is returned, a release of levy should be issued.

[5.10] 3.11.1 (07-26-2000)

#### Checks and Money Orders

1. If checks or money orders payable to the taxpayer are seized, the following endorsement should be used: "This

check (money order) and the proceeds thereof have been seized under authority of Title 26, United States Code, Section 6331, for application on the unpaid tax liability of (name of the taxpayer), and is herewith deposited to the credit of the Treasurer of the United States, (name of the District Director), District Director of Internal Revenue Service (City and State)."

2. This endorsement may be typed or rubber-stamped on the reverse of the check. If a seized check is returned because a personal endorsement is missing, even though the check is endorsed as above, telephone the bank and alert them to the Service's authority and re-deposit the check.
3. These checks and money orders will be applied directly to the account. If the check fails to clear the depository, it will be returned with a debit advice to the Special Procedures function (SPf) for the district specified in the endorsement. SPf will forward the returned check to the appropriate revenue officer for release (Form 668-E) back to the taxpayer. No returned check penalty will be asserted.

[5.10] 3.11.2 (07-26-2000)

#### Seized Food Stamps

1. Approved retailers accepting food stamps (coupons) are able to redeem them at face value. Every approved retailer is assigned an authorization number.
2. A separate Form 2433 should be prepared to inventory seized food stamps, listing the number of stamps by denomination. Seizures are restricted to retailers and wholesalers.
3. Form 2433, Parts 8A and 8B, may be disposed of without entry.
4. When food stamps that have been seized are to be redeemed for money, prepare a letter to transmit seized food stamps to USDA (Exhibit 5.10.3-6). Mail the letter by registered mail and enclose a self-addressed return envelope.
5. The contents of the letter should include the following information:
  - o name, address and taxpayer identification number;
  - o trade name and address of retail outlet from whom food stamps were seized;
  - o authorization number assigned by USDA;
  - o number of stamps of each denomination and total value; and
  - o date seizure was made.
6. Retain Part 7B until a check is received from USDA. Complete Part 7B and check "U.S. received its interest" block and forward to Service Center Accounting Branch through Special Procedures function.
7. All other parts of Form 2433 are to be processed in accordance with existing procedures.

[5.10] 3.12 (07-26-2000)

#### Safe Deposit Boxes

1. A notice of levy, Form 668-A, with a copy of the notice of lien attached, should be served on an officer of the bank or trust company and request made for surrender of the contents of the box. The revenue officer will also provide

part 4 of Form 668-B to the official as authority to seize the taxpayer's assets. The bank or trust company should then be advised not to permit the box to be opened except in the presence of a revenue officer.

2. Ordinarily two keys are used to open a safe deposit box; a master key held by the company which owns the box and an individual key in the possession of the person who rents the box. A bank or trust company will not open a safe deposit box without the consent of the lessee of the box unless protected by a court order. Under these circumstances the government must prevent the taxpayer from having access to the box, or it must obtain a court order directing that the box be opened, usually by a locksmith.
3. At the time that a safe deposit box is secured, Publication 787, Seal for Securing Safe Deposit Boxes, will be signed by the revenue officer and affixed over the locks for security while the box remains under seizure.
4. Form 2433, Notice of Seizure, will be prepared while the revenue officer is still on the premises, or as soon as possible. The notice, addressed to the bank or trust company, should specify the amount demanded and describe the property as "contents of safe deposit box." The box should be identified as accurately as possible which would usually be by box number and name of the institution.
5. Part 1 of Form 2433 will be personally delivered to an official of the bank or trust company. Part 2 will be delivered to the taxpayer personally or left at his/her usual place of abode or business. If the taxpayer's residence cannot be readily located, or if the taxpayer has no dwelling or place of business within the district, the notice may be mailed to the last known address.
6. Usually, taxpayers who have been reluctant to cooperate will eventually find it necessary to open their boxes, and will only be able to do so in the presence of a revenue officer. At that time, the revenue officer, with Form 668-B in his/her possession, will be in a position to seize any property in the box.
7. When the rental period of the safe deposit box expires and is not renewed, a bank or trust company usually has the right and power to open the box. The revenue officer should attempt to determine if this is the situation in any given case, and if the right and power exists, should try to take advantage of this opportunity to seize the contents of the box.
8. If the revenue officer is unsuccessful in securing the taxpayer's consent or cooperation in opening the box, a Writ of Entry may then be sought or a suit requested to authorize entry into the safe deposit box (IRM 5.10.3.12.1). Securing the taxpayer's consent or cooperation is preferable as it gives the taxpayer every opportunity to comply before resorting to a court order.
9. When the deposit box is opened, either voluntarily or involuntarily, and contains assets which are seized, a new Notice of Seizure (see IRM 5.10.3.9, Notice of Seizure -- Preparation), will be prepared describing the assets.
10. When the box is eventually opened, all residue from the seal should be removed by the revenue officer, or the bank

official in the revenue officer's presence with isopropyl alcohol or a similar solvent. The seal will dissolve when saturated with alcohol and rubbed with a cloth.

[5.10] 3.12.1 (07-26-2000)

#### Court Order to Open a Safe Deposit Box

1. Occasionally, the procedures outlined in IRM 5.10.3.12, will not be satisfactory and immediate action to open the safe deposit box may be desirable or necessary. For instance, the statute of limitations may be about to expire, the taxpayer may have disappeared or be in concealment, or the taxpayer or bank officials may refuse cooperation and deny access to a safe deposit box.
2. Under these circumstances a Summons, Form 2039, should be prepared and served on the taxpayer/box-holder in an attempt to secure information as to the contents of the box and to gain access. If this action does not accomplish the desired results, a Writ of Entry should be sought or a suit requested to open the safe deposit box (see section 4(13)0 of the Legal Reference Guide).
3. Writ of entry procedures may be used, in many situations, to obtain access to the contents of a safe deposit box. (See IRM 5.10.3.4, Writ Procedures). District Counsel should be contacted, through SPf, for advice on whether a writ or suit is appropriate.
4. When a writ is requested the revenue officer's affidavit should state the need to enter the safe deposit box for the purpose of seizing the contents belonging to the taxpayer. After the writ is issued, a copy will be given to both the taxpayer and a representative of the financial institution where the safe deposit box is located.
5. The following information and documents should be provided in triplicate when a suit is requested:
  - o copies of each notice and demand issued to the taxpayer -- if a copy of a notice and demand is unavailable, prepare a statement stating the evidence that exists to prove notice and demand was prepared and issued.);
  - o copies of all notices of tax lien filed, showing the date, time, and place of filing;
  - o copies of the Notice of Levy (668-A), Levy (668-B), and Notice of Seizure (2433);
  - o copies of the summons issued and a statement, if known, as to why the summons did not produce desired results; and
  - o a statement as to what is believed will be accomplished by gaining access to the contents of the box.
6. Jurisdiction and authority of the district court to grant an order to open a safe deposit box is in IRC 7402(a). If a safe deposit box is opened as the result of a court order, the revenue officer will then follow the procedures in IRM 5.3.12.

[5.10] 3.13 (07-26-2000)

#### United States Savings Bonds

1. United States Savings Bonds are nonmarketable securities which are nonnegotiable and are payable only to, and may

not be transferred by, registered owners during their lifetimes. If these securities are levied upon, they should be transmitted to the chief of Special Procedures, together with a copy of the related levy or notice of levy for subsequent transmittal, over the signature of the Chief of the Collection division or, at his/her option, the Chief of the SPF's signature, to the Bureau of the Public Debt as provided in Exhibit 5.10.3-7.

2. If a bond is in co-ownership form and the tax liability is against one co-owner, the extent of the interests of the co-owners must be determined and payment will be made only to the extent of the interest of the co-owner against whom the liability exists. The interest may be determined by agreement of the co-owners or by a court in proceedings to which both co-owners are parties. Evidence of the agreement or court determination should be submitted with the bonds to the Bureau of the Public Debt. Form PD 1849, Disclaimer and Consent with Respect to United States Savings Bonds, may be used when a co-owner waives or agrees he/she has no interest in the bonds.
3. The Bureau of the Public Debt will forward a check payable to the district director. Balance due accounts should not be credited until the check or credit advice is received.
4. If a registered owner or a co-owner wishes to redeem savings bonds and turn the proceeds over to the district director, he/she should sign the request for payment in the presence of an authorized certifying officer and direct that the check be sent to the district director. The revenue officer should request the owner to sign an authorizing power of attorney to the district director in order that the redemption check may be deposited. Standard Form 231, Power of Attorney by Individual for the Collection of Checks Drawn on the Treasurer of the United States, should be used for this purpose. The bonds may be submitted to any Federal Reserve Bank or Branch thereof or to the Bureau of the Public Debt at Chicago, Illinois.

[5.10] 3.14 (07-26-2000)

#### United States Marketable Securities

1. Marketable United States securities are in the form of:
  - o Treasury bonds,
  - o Treasury notes,
  - o Treasury certificates of indebtedness,
  - o or Treasury bills.
2. The primary difference in the securities is the length of time before maturity. Bonds are long-term issues, notes are medium-term issues, and certificates and bills are short-term issues.
3. Treasury bonds are issued in either coupon (bearer) or registered form. Coupon bonds are payable to bearer, and title passes by delivery, without endorsement and without notice to the Department of the Treasury. Interest on this type of bond is payable semiannually upon presentation of the coupon, which is attached to the bond, to any recognized bank.
4. A registered bond is payable to the registered owner, whose name is inscribed on the bond, or to his/her registered assigns, and may be transferred only by an

assignment executed by the registered owner or his/her authorized representative. Interest is paid semiannually by a check issued by the Treasury to the owner of record. Notes, certificates, and bills are issued in coupon (or bearer) form only. Since securities of the coupon (or bearer) form are freely transferrable and may be disposed of by any person who comes into possession of the securities, appropriate safeguards are necessary.

5. The disposition of United States securities, either in coupon or registered form, will depend upon whether the securities are matured (or called) or unmatured. The maturity date is shown on the face of the security and, if callable before maturity, that date is also shown immediately before the maturity date.

[5.10] 3.14.1 (07-26-2000)

#### Unmatured Securities

1. Unmatured coupon type securities will normally be offered for sale as soon as possible under the law, in the same manner as any other seized property. The minimum bid price will be established as prescribed in IRM 5.10.4.6. However, if the securities will mature within a relatively short period, they may be held to maturity and disposed of as provided by IRM 5.10.3.14.2, Matured Securities. If securities are declared purchased for the United States as a result of the sale, the procedures in IRM 5.10.7.9, Disposition of Acquired Securities, will be followed. Unmatured registered securities will not be offered for sale but a request should be made to the Assistant Commissioner (Collection), Attention: CP:CO:C:FP for advice as to the action that may be taken. The request should identify the security, including the maturity date.

[5.10] 3.14.2 (07-26-2000)

#### Matured Securities

1. Matured (or called) securities, or those which will mature within a reasonably short period after seizure, will not be offered for sale since they are or will shortly become the equivalent of cash and are redeemable only for the amount of the par value. Thus, if the securities were offered for sale, they could not be expected to sell for an amount in excess of the par value.
2. Matured securities in coupon (or bearer) form should be personally delivered or transmitted by registered mail to the nearest Federal Reserve Bank for redemption. A letter (in duplicate) similar to the specimen provided in Exhibit 5.10.3-8. should be used to transmit these securities.
3. Matured or called Treasury bonds in registered form will be transmitted to the chief, Special Procedures function, together with a copy of the related levy and/or notice of levy for subsequent transmittal to the Bureau of the Public Debt. The letter of transmittal (in duplicate) to the Bureau of the Public Debt should be prepared as provided in Exhibit 5.10.3-7.

[5.10] 3.14.3 (07-26-2000)

#### "Letter Stock" and "Restricted" Securities

1. Securities offered through the mail or through interstate

commerce, according to the Securities Act of 1933, unless exempted by that Act, must be registered with the Securities Exchange Commission (SEC). A registration statement requires an issuer of securities to disclose certain information to protect the public.

2. Restricted stocks may or may not be identified by a statement stamped somewhere on the certificate to the effect that the stock has not been registered under the Securities Act.
3. The Service is authorized to sell seized restricted securities. Prior to seizure of these securities, revenue officers will consult with Special Procedures Function for further guidance on the appropriateness of the sale. If appropriate, Counsel advisory can be obtained for specific procedures.

[5.10] 3.14.4 (07-26-2000)

Securities and Negotiable Instruments Received Through Form 668-A, Notice of Levy

1. Notices of levy are frequently generated on taxpayers who have investments in money management funds. Though in some respects the taxpayer's interest in these funds is very much like a bank account, in actuality the ownership is reflected by shares of stock. Money market funds are regulated by the Securities and Exchange Commission which requires the issuance of stock certificates reflecting the number of shares owned. The levy attaches the stock certificates which must be surrendered by the money market fund. The certificates represent personal property and cannot be redeemed for cash. Therefore, the certificates are subject to the sale provisions of the Code.
2. Service Center Collection Branch (SCCB) sometimes receives securities or negotiable instruments in response to ACS-issued Forms 668-A, Notice of Levy. Since SCCB and ACS are unable to properly dispose of these certificates, the certificates will be transmitted to the appropriate district for disposition.
3. The revenue officer who receives the securities or negotiable instruments must decide whether to return them or whether to follow the seizure procedures in IRM 5.10, Seizure and Sale Handbook. The case file will be documented to reflect the background levy action. All appropriate documents will be prepared and copies provided to the taxpayer.
4. IRM 5.11.6.8 provides the guidelines for revenue officers to follow when securities are received in response to a CFF-issued Form 668-A, Notice of Levy.
5. Although mutual fund and money market accounts are similar to bank accounts, seizure of these assets are often required. Brokerage firms and banks are not required to issue a check of the taxpayer's interest on such accounts and seizure of the shares may be required. If revenue officers have questions about these procedures, they should consult with SPF.

[5.10] 3.15 (07-26-2000)

Patents and Pending Applications for Patents

1. A patent is a grant made by the government to an inventor,



his or her assignee, or heirs, conveying and securing to the person the right to exclude others from making, using, or selling the invention for a term of 17 years. Because of the exclusive nature, the patent may have value.

2. The law provides for the recordation of applications and issued patents in the Patent Office. Certain non-tax liens against patents may be filed with that office. However, notices of Federal tax lien cannot be filed for recordation with the Patent Office because they are extrajudicial legal documents. Part 2, Form 2433, Notice of Seizure, should be sent to the Patent Office to be placed in the taxpayer's file so that the IRS can be notified of any action to be taken on the patent.
3. A letter (in duplicate) similar to the specimen provided in Exhibit 5.10.3-9 should be used to transmit Part 2, Form 2433, to the Patent Office. In addition, a recording fee should be enclosed in the transmittal letter. Since the recording fee is subject to change, the Recording Officer at the Patent Office should be contacted by phone for information regarding the appropriate amount and to whom the money order should be made payable. The recording fee should be debited to the taxpayer's account.
4. Issued patents are subject to normal seizure and sale procedures except as stated in this subsection. Actual physical seizure of the letters of patent are not essential if they are not readily available, since title to the patent can be passed without possession of such documents. However, the Notice of Seizure and the Notice of Sale should clearly identify the patent. The Certificate of Sale should identify the patent by number. The certificate may be presented by the purchaser to the Patent Office for recordation.
5. A pending application for patent should not be seized because the application may be rejected by the Patent Office or may be abandoned by the applicant. However, suit may be recommended to institute a lien foreclosure and to request the appointment of a receiver. A court appointed receiver will be entitled to prosecute a pending application or seek to have an abandoned application reinstated.
6. Information concerning the ownership and identification of issued patents may be secured by writing to the Commissioner of Patents, Attention: Solicitor of Patents, Washington, D.C. 20231. Information on pending applications for patents may also be obtained from that office. However, since details of pending applications for patents are not of public record, the request, on official district director letterhead, must specify that information necessary to file a lien foreclosure is sought for official business purposes in connection with the collection of a named taxpayer's assessed tax liability. The Patent Office should be requested to furnish the following information with respect to a pending application:
  - o the patent application number;
  - o date of the application; and
  - o name and address of any party other than the taxpayer who has an interest in the application.

[5.10] 3.16 (07-26-2000)  
Controlled Substances

1. As soon as possible after seizure and inventory, all controlled substances (i.e., narcotics, stimulants, depressants, tranquilizers, and hallucinogenic drugs) should be separated from the other assets and placed in a location to ensure proper safeguarding and reduce the possibility of theft or commingling the controlled substances with other drugs, or selling them to an unauthorized person. Most commercial containers of controlled substances can be identified by the letter "C" and a Roman numeral (I, II, III, IV, V) imprinted in the upper right corner of the label. Older commercial containers may have, in lieu of the "C" and the Roman numeral, one of the following symbols printed on the label: "A" , "B" , "X" , or "M" (all narcotics) or "CRx" (non-narcotics).
2. The taxpayer should be notified that he or she has a reasonable time to find a registered purchaser for the controlled substances or return them to the wholesale value. (It is a general policy of drug wholesalers and manufacturers not to accept packages or bottles which have been opened and partially emptied.)
3. The taxpayer, or revenue officer making the seizure, must also request the Regional Director of Drug Enforcement Administration (DEA) in the region in which the taxpayer is located for authority and instructions to dispose of such substance. The request should be made as follows:
  - A. if the taxpayer is a registrant required to make reports pursuant to 21CFR 304.31-304.35, he/she shall list the controlled substance or substances which he/she desires to dispose of on the "b" subpart of the report normally filed by him/her, and submit three copies of that subpart to the Regional Director of DEA in his/her region;
  - B. if the taxpayer is a registrant not required to make reports pursuant to 21 CFR 304.31-304.35, he/she shall list the controlled substance or substances which he/she desires to dispose of on DEA Form 41, and Submit three copies of that form to the Regional Director in his/her region; or
  - C. if the taxpayer is not a registrant, he/she shall submit to the Regional Director a letter stating: The name and address of the taxpayer; the name and quantity of each controlled substance to be disposed of; how the taxpayer obtained the substance, if known; and the name, address, and registration number, if known, of the person who possessed the controlled substances prior to the taxpayer, if known.
4. Once the request is received by DEA, the Regional Director shall authorize and instruct the taxpayer to dispose of the controlled substances in one of the following ways:
  - o by transfer to person registered under the Federal Controlled Substances Act and authorized to possess such substance
  - o by delivery to an agent of DEA or to the nearest

- office of DEA;
  - o by destruction in the presence of an agent of DEA or other authorized person; or
  - o by such other means as the Regional Director may determine to assure that the substance does not become available to unauthorized persons.
5. The taxpayer must dispose of the controlled substances in accordance with the instruction of the Regional Director of the DEA. (It is possible in certain cases that the regional director will not permit sale to another person.)
  6. The taxpayer should also be requested to notify the revenue officer or PALS if preliminary arrangements to sell the controlled substances are made. The arrangements should provide that the proceeds will be paid directly to the revenue officer or PALS for credit to the tax liability. If the revenue officer or PALS approves the arrangements, he or she will release the property involved and request the taxpayer to sign a completed Form 668-E, Release of Levy, covering these items.
  7. If a public sale is held, the controlled substances will be offered only as a separate item and will not be offered in the aggregate. The controlled substances should be listed as a separate item on the Notice of Sale. The notice should also state that the controlled substances will be sold only to persons or organizations registered under the Federal Controlled Substances Act (see (11) below). In addition, the notice should state that the purchaser must present a completed (in triplicate) preaddressed DEA Form 222c (Federal Order Form) for all controlled substances listed on Schedules I and II of the Controlled Substances Act and a valid DEA registration number.
  8. Copy 1 and Copy 2 of DEA Form 222c should be given to the PALS and Copy 3 retained by the purchaser. The PALS shall attach the original to Form 2436, Seized Property Sale Report, and will mail Copy 2 to the nearest Regional Office of the Drug Enforcement Administration. A Certificate of Sale will be issued to the purchaser.
  9. In the event that no authorized person offers the minimum price determined for the controlled substances, the controlled substances should be declared purchased for the United States. If the controlled substances are not sold when offered for resale as prescribed in IRM 5.10.7, Acquired Property, the drugs should be delivered to the nearest Regional Office of the Drug Enforcement Administration for disposal. See 21 CFR 307.22. The PALS should secure a receipt for the controlled substances from the Drug Enforcement Administration and attach it to the memorandum report of disposition of acquired property.
  10. A qualified purchaser must be registered with a valid DEA registration number (or, in the case of certain government officials, exempted from registration) by the Drug Enforcement Administration at the location where he/she will receive the controlled substances being purchased and in all the schedules of the controlled substances being purchased (e.g., Schedule II narcotics, Schedule II non-narcotics, Schedule III narcotics, Schedule III non-narcotics, Schedule IV or Schedule V). See 21 CFR

307.21.

[5.10] 3.17 (07-26-2000)

Contacting Special Procedures for Seizure Numbers

1. As soon as possible after the seizure has been conducted, the revenue officer should fax to SPf the seizure data. SPf will assign a seizure number(s) that will be used on all documents related to the seizure. A suffix of "CS" will be used to identify courtesy seizures made for another district. SPF is responsible for assigning seizure serial numbers and will maintain a permanent serial number control register for all seizures conducted within the district.
2. All seizure and sale related documents must be forwarded to SPf within 5 workdays after the related action. If there will be a delay, the revenue officer or PALS should submit a memo through their manager explaining the delay and providing the anticipated date of submission. Each document will be reviewed by SPf upon receipt. Exhibit 5.10.6-3 contains a summary of the required forms when a seizure has been conducted.
3. Upon request for a seizure serial number or upon receipt of the opening seizure documents, SPf will establish an "Open Seizure" file. The opening date will be the date of the seizure. The opening seizure documents include:
  - o the pre-seizure checksheet,
  - o Form 668-B,
  - o Parts 6, 7A, and 8B, and
  - o Copy of the writ or Consent as appropriate.
4. Part 7A of Form 2433 should then be forwarded to the Service Center Accounting Branch.
5. For courtesy seizures, the initiating revenue officer will inform the initiating district's SPF, by memorandum, that the seizure was conducted. This is for information purposes only.

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Internal Revenue Hndbk. 5.10 Chap. 3 (07-26-2000)  
Manual Conducting the Seizure

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[Tax Professional's Corner]

Handbook 5.10  
Seizure and Sale Handbook

Chapter 5  
Sale Procedures

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[5.10] 5.1 (07-26-2000)

General

1. If the property has not been released or redeemed prior to sale, the sale should take place at the time and place as indicated in the Notice of Sale.
2. The PALS will conduct the sale, but the revenue officer must be available to both the taxpayer and the PALS by phone on the day of the sale so the taxpayer can discuss any other alternatives to the sale since case decisions are still the responsibility of the revenue officer. No revenue officers may assist in the sale of seized property.
3. Any person whose property has been seized can redeem the property (IRM 5.10.4.2), or the property may be released (IRM 5.10.4.3) at any time before the PALS declares the property sold to the highest bidder.

[5.10] 5.2 (07-26-2000)

Employee Self-Disqualification

1. Any Service employee, regardless of his/her function at the sale, must be disqualified from the sale if a member of the employee's household is present as a bidder.
2. When a Service employee involved in a sale becomes aware of a relative, close friend, or close associate offering to bid, that employee should usually self-disqualify and, if necessary, have the PALS adjourn the sale when their personal association with taxpayers or bidders could give the appearance of partiality in the proceedings. Any action taken in this respect should be well documented and made part of the seizure file. See 232.3 and 238.3 of IRM 0735.1, Handbook of the Rules of Conduct. The adjournment will be for a period of time sufficient to permit a disinterested employee to be made available for continuation of the sale; however it must not exceed one month. Information on adjournment procedures is contained in IRM 5.10.5.3.
3. If the PALS believes there are enough bidders to preclude any allegations of collusion, the sale may be continued without self-disqualification. The PALS must document in the case history the circumstances surrounding the determination not to self-disqualify, and will prepare a memorandum explaining the situation and will forward the memorandum through the manager for inclusion in the SPf seizure file.

[5.10] 5.3 (07-26-2000)

## Adjournment Procedures

1. Pursuant to *Anderson v. United States*, 44 F.3d 795 (9th Cir. 1995), the Service may adjourn a sale after commencement, but may not postpone a sale of seized property. The sale of seized property may not be delayed beyond the statutory time periods of IRC 6335, which require that the sale take place not more than 40 days from the time of giving public notice and that any adjournments shall be for a period not to exceed one month.
2. All adjournment(s) are limited to a new date not later than one month after the date fixed in the original public notice of sale. The announcement of adjournment should:
  - o be made in the presence of the prospective bidders, and
  - o if possible, include the date and time to which the sale is adjourned.
3. A sale may be adjourned at any time after the sale has commenced, including when the pre-established minimum price has been reached, but before the property is declared sold.
4. Notice of the adjourned sale should be given to the taxpayer in the same manner as the original notice of sale (IRM 5.10.3.18).
5. It is not necessary to re-advertise the sale when the new sale date is set within one month of the original sale date; however, in some cases it may be advisable to re-advertise the sale if it is believed it would generate higher sale proceeds.
6. Adjournments must be in the best interest of the government or the taxpayer.
7. If, after the sale has commenced, facts are disclosed that indicate a basis for adjusting or re-determining the minimum bid, the PALS may adjourn the sale to re-evaluate the minimum bid so it will more realistically reflect the forced sale value of the seized property in light of the existing conditions. The re-evaluation will not be made for the express purpose of adjusting the minimum bid downward to facilitate purchase of the property by the United States or to guarantee a sale to a third party.
8. If the minimum bid is revised, managerial concurrence and taxpayer notification are still required. If time is a factor, managerial concurrence can be secured over the phone. If the taxpayer is willing to waive his/her right to the 10-day waiting period, the taxpayer should signal his/her concurrence by signing the revised Form 4585. Taxpayer concurrence is only required if the revised minimum bid is used before the 10-day waiting period expires. A copy of the taxpayer's concurrence, when required, will be forwarded to SPf to be included in the seizure file.
9. If, after the sale has commenced, conditions indicate that seizure should be released (IRM 5.10.4.3), the PALS should adjourn the sale and if applicable, release the levy. The reason for the adjournment should be documented in the case history.
10. If, after commencement, it is learned that the taxpayer

filed bankruptcy, adjourn the sale and consult with SPf.

11. If the new sale date is beyond the one month time period allowed for adjournments, the property must be released.

There are no provisions that prevent the same asset from being seized again unless circumstances have changed so that the seizure is now prohibited (collection statute expired, etc.).

[5.10] 5.4 (07-26-2000)

Public Auction -- General

1. The PALS will conduct the sale and at least one other Service employee, who may not be a revenue officer, should assist with the sale and tabulation of bids, observe the proceedings, and certify as to the manner in which the sale was conducted. The number of assisting employees will be based on the complexity of the sale. The assisting employees may be other PALS, revenue agents, secretaries, or any other service employee not in the revenue officer series.
2. The PALS should be present at the place of the sale before the announced time so that he or she will be available to answer questions concerning the property, the conditions of the sale, or terms of payment. If there are changes to the payment terms, these should be announced prior to the commencement of the sale.
3. The PALS should make no statements other than those prescribed by the instructions in IRM 5.10.5.5 at any time prior to the sale or when conducting the sale.

[5.10] 5.5 (07-26-2000)

Condition of Title and of Property

1. The PALS will offer:
  - o only the right, title, and interest of the taxpayer in and to the property seized, subject to any outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid against the taxpayer and are superior to the lien of the United States,
  - o the property "as is" and "where is" and without recourse against the United States, and
  - o no guaranty or warranty, express or implied, on condition of any of the property, or its fitness for any use or purpose.
2. Form 2434-B, Notice of Encumbrances Against or Interests in Property Offered for Sale (Exhibit 5.10.1-1), will be used, when requested, to provide prospective bidders with any information the Service has learned relating to encumbrances and interests of record. Most requests for such information will usually be received prior to the date of the sale; however, the PALS should have enough completed copies of Form 2434-B available at the sale to give a copy to any prospective bidders.
3. Form 2434-B should include all encumbrances and interests of record of which the Service became aware during the course of its investigation prior to seizure and sale (See IRM 5.10.1.3.3, Equity Determination). Advise recipients that the Service does not certify in any way how accurate or current this information is.



4. In situations where no encumbrances or interests of record other than the NFTL are reflected on Form 2434-B, if a potential bidder asks what encumbrances or interests the Service has learned about, the PALS may state that the Service is not aware of any.

[5.10] 5.6 (07-26-2000)

Statement by Lienholders

1. In some cases involving personal property subject to a senior chattel lien, the lienholders are deprived of their security interests in the property as a result of the distraint sale. This occurs because the purchaser at the sale receives possession of the property immediately upon payment of the bid price. In some instances, the senior lienor cannot locate the purchaser or the property. In an effort to minimize the possibilities of losses of this type, senior chattel lienors who have established lien priority will be permitted to make an announcement concerning their liens prior to sale and to conduct a foreclosure sale immediately after the tax sale.
2. Senior lienors should, however, be advised that the Service has no authority to withhold release of the property to the successful bidder. Thus, notwithstanding the announcement by the senior lienor, the PALS will give the purchaser a certificate of sale upon full payment of the bid price and will take no action to prevent removal of the property by the purchaser.

[5.10] 5.7 (07-26-2000)

Statement by Taxpayers

1. The taxpayer may be allowed to explain the condition of his or her title to the prospective bidders. If, after the taxpayer's explanation, it is apparent that a greater sum may be realized by giving the bidders an opportunity to further investigate the condition of the title to the property, the sale may be adjourned at the discretion of the PALS. The adjournment must follow the procedures in 5.10.5.3.
2. When real property is seized, the following individuals have the right, under IRC 6337, to redeem the property at any time within 180 after the sale:
  - o The owner
  - o His or her heirs, executors, or administrators
  - o Any person having an interest in the property
  - o Any person having a lien on the property, or
  - o Any person on their behalf
3. The right to redeem is conveyable, and the taxpayer and other parties possessing the right to redeem may be advised of their right to waive or sell the right to the successful bidder at the sale. If the parties having the right to redeem do not agree to convey this privilege, the validity of the sale is not affected.
4. If the taxpayer and other parties having the right to redeem agree to convey this right, a greater amount may be realized from the sale. If the party possessing the right to redeem agrees to the sale of this right, the bidders should be informed and the party should announce the price of the right of redemption before bids are taken.

5. Even though all parties convey the right to redeem to the successful bidder, a deed cannot be issued prior to expiration of the 180-day period for redemption.

[5.10] 5.8 (07-26-2000)

#### Conducting a Public Auction

1. At the time and place set for the sale, the PALS should call the prospective bidders to order and announce the conditions under which the property will be offered. The statement provided on the reverse of Form 2434, Notice of Public Auction Sale, may be used and can be altered as necessary to fit any conditions peculiar to a particular sale. Since Form 2434 is made available to the public prior to the sale, it is not necessary that the opening statement be read aloud. However, a clear announcement directing the bidders to the statement must be made by the PALS.
2. If the Services of a professional auctioneer are used, the PALS is still responsible for reading the initial legal notice regarding right, title and interest, the condition of property, and no express or implied guarantee about the fitness of the property.
3. The terms of payment should have been determined at the time the Notice of Sale was prepared (IRM 5.10.4.10.3), and these terms are indicated on Form 2434. Any change in the terms of payment should be announced prior to the commencement of bidding.
4. The manner in which the property is being offered for sale should also have been previously determined (IRM 5.10.4.10.2). If the property is being offered for sale under only one method, the procedures in 5.10.5.9 should be followed. If the property is being offered for sale under more than one method, the procedures in 5.10.5.10 should be followed.

[5.10] 5.9 (07-26-2000)

#### Property Offered Under Only One Method

1. The PALS will open the bidding. If it has been determined to announce the minimum price before the sale, the PALS will open the bidding by requesting that bids start with \$\_\_\_\_\_, identifying such as the minimum bid price.
2. When a sale consists of two or more parcels being sold as separate items, the assisting employee should prepare a tabulation of the tentative high bids received. Form 4425, Public Sale Bid Tabulation, may be used for tabulating purposes. A running total of the tentative high bids should be maintained so it can easily be determined when the minimum bid has been reached. Any records pertaining to the tentative high bids received will be retained and submitted by the PALS with the report of the proceedings on Forms 2436, Seized Property Sale Report, as provided in IRM 5.10.6.5, Form 2436, Seized Property Sale Report.
3. If sufficient parcels are sold (or tentatively sold) to satisfy the entire liability plus the costs of the proceedings, the PALS should terminate the sale and release the remaining parcels to the taxpayer.
4. After the highest bid(s) have been determined and if the minimum bid has been reached, the PALS will announce the

name of the successful bidder(s) and make a statement similar to the following: "In accordance with the provisions of section 6335 of the Internal Revenue Code, I hereby declare this property sold to the highest bidder for the sum of \$\_\_\_\_\_."

5. IRM 5.10.5.9.1 contains the provisions to follow if the minimum bid is not reached at the sale.

[5.10] 5.9.1 (07-26-2000)

#### Minimum Bid Not Reached

1. If the minimum bid price is not reached,
  - o the property may be declared purchased at the minimum bid price for the United States, or
  - o the property may be released to the taxpayer, or
  - o the sale may be adjourned if it is in the best interest of the government or the taxpayer (IRM 5.10.5.3)
2. The decision to bid in the property for the government must have been made prior to the scheduled sale and documented in the case file (See IRM 5.10.4.6.1)
3. If the property is bid in for the government, the PALS will make a statement similar to the following: "In accordance with the provisions of section 6335 of the Internal Revenue Code, I hereby declare this property purchased for the United States for the sum of \$\_\_\_\_\_."

[5.10] 5.10 (07-26-2000)

#### Property Offered For Sale by More than One Method

1. When property is offered for sale by more than one method (see IRM 5.10.4.10.2 on the grouping of property), it should be offered first in the aggregate and then as individual lots. This should ensure that the amount offered for the aggregate is the maximum amount a bidder is willing to offer rather than an amount only slightly higher than the total amount of the bids received on all of the individual lots. The property will be declared sold under the method that produces the highest total amount, as long as the minimum bid is met.
2. The PALS will open the bidding. If it has been determined to announce the minimum price before the sale, the PALS will open the bidding by requesting that bids start with \$\_\_\_\_\_, identifying such as the minimum bid price.
3. The assisting employee should prepare a tabulation of the tentative high bids received. Form 4425, Public Sale Bid Tabulation, may be used for tabulating purposes. The records pertaining to the tentative high bids received will be retained and submitted by the PALS with the report of the proceedings on Forms 2436, Seized Property Sale Report (IRM 5.10.6.5, Form 2436, Seized Property Sale Report).
4. The sale should be recessed at the conclusion of the first bidding period long enough to tabulate the tentative high bids received. After completing a verification of this tabulation, the names of the tentative high bidder(s) should be announced. The property should then be offered for sale under the other method of sale.
5. It may be desirable, depending upon the circumstances, to secure a payment from the tentative high bidder(s) pending

the outcome of the bidding by the other method of sale. This may prevent the high bidder(s) at the initial sale from reneging on a bid. If payment is required, a tentative Form 2435, Certificate of Sale, should be issued for any cash received. The certificate should be marked "Public Auction Sale--Tentative High Bid" , and the amount received should be shown on the tentative certificate. A memorandum signed by the tentative high bidder and the PALS can also be used for this purpose.

6. If the second method of sale consists of two or more parcels being sold as separate lots, a tabulation of bids will be maintained on Form 4425, Public Sale Bid Tabulation. A running total of the high bids for each lot should be maintained so it can be easily determined when the minimum bid has been met or if the aggregate bid has been surpassed.
7. If sufficient parcels are sold (or tentatively sold) to satisfy the entire liability plus the costs of the proceedings, the PALS should terminate the sale and release the remaining parcels to the taxpayer. The successful bidder(s) will be those who bid on the individual lots, regardless of the amount bid for the aggregate. This will allow the taxpayer to retain some of his property while still satisfying the entire liability.
8. After the method that produces the highest bid has been determined and if the minimum bid has been reached, the PALS will make a statement similar to the following: "In accordance with the provisions of section 6335 of the Internal Revenue Code, I hereby declare this property sold to the highest bidder(s) for the sum of \$\_\_\_\_\_."
9. If the tentative high bidder is declared the actual high bidder, retrieve any tentative certificates and issue the actual Form 2435 at this time (IRM 5.10.5.15)
10. If no one offers the minimum price under either method, follow the procedures under IRM 5.10.5.9.1, Minimum Bid Not Met.

[5.10] 5.11 (07-26-2000)

Sealed Bid Sale -- General

1. Form 2222, Sealed Bid for Purchase of Seized Property, will be used for submission of sealed bid bids. All instructions to bidders necessary to the proper completion and submission of sealed bids are included on the back of Form 2222.
2. If a potential bidder requests information concerning encumbrances against the property, Form 2434-B, Notice of Encumbrances Against or Interests in Property Offered for Sale (Exhibit 5.10.1-1), should be provided.
3. The Notice of Sealed Bid Sale, Form 2434-A, specifies the address where the sealed bids must be submitted. If the place of sale is the local IRS office rather than the office where the PALS is located, the address where the sealed bids should be delivered will be the local office. Since the PALS will usually be travelling to the sale location, this will ensure that all bids are received at one location prior to the time of sale. A preaddressed envelope should be provided for returning sealed bids.
4. The bids will be submitted in a securely sealed envelope,

and the envelope's upper left corner should identify the bidder's name and address and the time and place of sale. All envelopes should be annotated with the name and identification number of the appropriate PALS and the statement "SEALED BID -- TO BE OPENED BY ADDRESSEE ONLY" .

5. If the sale is to be held in the office where the PALS is located, the PALS will document the bidders' name, address, and the date the bid was received for all sealed bids as they are received. Section C of Form 4425, Public Sale Bid Tabulation, should be used for this purpose. If the sale is being held at a local IRS office, the PALS should coordinate with the local office to have an employee, preferably not a revenue officer, document the bidders' name, address, and the date the bid was received for all sealed bids as they are received.
6. Sealed bids should not be opened for any reason prior to the time set for opening the bids. All sealed bids received will be retained for safekeeping in a government facility providing protection commensurate with the standards in IRM 1(16)41, Physical and Document Security Handbook.
7. A bid should not be considered unless it is received at the sale location prior to the time fixed for the opening of the bids.
8. Bids may be withdrawn upon written request received from the bidder provided the request is received by the PALS conducting the sale prior to the time fixed for opening of the bids. If a request is received, the sealed bid will be returned to the bidder unopened. The date of withdrawal should be noted on Form 4425 and the written request should be attached to the form.

[5.10] 5.11.1 (07-26-2000)

#### Consideration of Sealed Bids and Sale of Property

1. At the appointed time and place scheduled for the opening of bids, the PALS conducting the sale will call the gathering to order. If bidders are present, the PALS will state: "The sealed bids received as a result of notice of sale of property seized from (taxpayer's name), which was published (insert names of publication and dates of insertions therein), will now be opened" . Form 2434-B contains the authority and effect of sale formerly used as the opening statement. Since the form is available to the public, it is not necessary to read the statement to commence the sale.
2. The PALS should then proceed with the opening of bids, checking each bid against the tabulation previously prepared to make certain that each bid is considered in determining the successful bidder(s). The opening of bids should be done in the presence of those persons who submitted bids and the taxpayer, if such persons are present. The PALS may announce the minimum price before the sale, but is not required to do so.
3. Any sealed bid which is not accompanied by the required remittance will not be considered.
4. The PALS has the right to waive any technical defect in a bid. However, a technical defect in a bid does not give the bidder the right to withdraw the bid after it has been

opened.  
[5.10] 5.11.2 (07-26-2000)  
Successful Sealed Bid

1. After the opening, examination, and consideration of all bids (including any consideration necessary because the property was offered by more than one method), the PALS will announce the amount of the highest bid or bids and the name of the successful bidder or bidders.

If...	Then...
the property is offered by more than one method	Form 4425, Public Sale Bid Tabulation, should be used to determine the successful bidder(s).
two or more highest bids are equal	determine the successful bidder by drawing lots
the highest bid is not equal to or greater than the minimum bid	the property may be declared purchased at the minimum bid price for the United States or released back to the taxpayer (see IRM 5.10.4.6.1)

\* All Forms 2222 will be retained by the PALS and forwarded with the report of the proceedings on Form 2436. The applicable items of the "AWARD" section of Form 2222 submitted by successful bidders will be completed.

[5.10] 5.11.3 (07-26-2000)  
Unsuccessful Sealed Bids

1. At the conclusion of the sale, remittances submitted with unsuccessful bids will be returned. In no event will any remittance received with an unsuccessful bid be deposited as Internal Revenue collections or in the deposit fund account, nor will unsuccessful bidders be required to submit an application for a refund.
2. Remittances should be returned to unsuccessful bidders if they are present at the sale. Otherwise, the remittances will be returned by mail. In either case, the applicable items of the "Return of Remittance to Unsuccessful Bidder" section of the related Form 2222 should be completed.
3. Although there is no statutory requirement to make such announcement, if requested, the PALS may divulge the respective names and amount bid by unsuccessful bidders.

[5.10] 5.12 (07-26-2000)  
Payment of Purchase Price

1. All payment for property sold must be in the form of:
  - o Cash;
  - o Certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State or possession of the United States; or
  - o United States postal, bank, express, or telegraph money order.
2. If full payment is required upon acceptance of the highest bid, the payment should be made at that time or a reasonable period thereafter, to be established by the PALS.

3. If deferred payment is permitted, the initial payment will be made upon acceptance of the bid, and the balance paid on or before the date specified on Form 2434, Notice of Public Auction Sale.
4. In the case of sealed bids, the initial payment will be the remittance required to be submitted with the sealed bid. Payment terms for the balance due are indicated on Form 2434-A, Notice of Sealed Bid Sale.
5. Although Form 809, Receipt for Payment of Taxes, is normally issued for all cash payments, it should not be issued to purchasers upon full payment of the purchase price. Instead, if full payment is received, Form 2435, Certificate of Sale, will be issued.
6. Under the following conditions the PALS will issue a Form 809 receipt:
  - o if deferment of the purchase price is permitted, and an initial or interim payment is received in cash, or
  - o the purchaser requests a receipt for a non-cash payment.
7. Form 809 receipt should be marked in the upper left corner "Partial Payment on Sale of Seized Property--Seizure Number." The receipt should be complete, except that no entries will be made in the "Tax," "Penalty," "Interest," and TDA identification blocks. Part 2 should be given to the purchaser and Parts 1 and 3, stapled together in reverse order, should be submitted with ICS Form 795, Daily Report of Collection Activity.
8. If a non-cash deferred payment is made and a receipt is not requested, the remittance can be transmitted on Form 3244, Payment Posting Voucher. The voucher should be completed with only the taxpayer's name, address, identification number, transaction date, total payment, and preparer's name entered. The "Remarks" block should state, "Partial Payment on Sale of Seized Property-Seizure Number." The voucher should be submitted with ICS Form 795, Daily Report of Collection Activity.

[5.10] 5.13 (07-26-2000)

Default on Payment -- Cash Sales

1. If payment in full is required upon the acceptance of the bid and the successful bidder fails to make the payment, the PALS conducting the sale "... shall forthwith proceed to again sell the property..." (IRC 6335(e)(3)). As a general rule, this can be accomplished by voiding the defaulted high bid and announcing the next highest bid as the successful bidder. The reason for the change or correction should be explained on the corrected document (e.g., Form 4425) or by routing slip.
2. Ordinarily the deposit made by purchasers at cash sales will not be subject to forfeiture upon failure to pay the purchase price. However, since it may be possible in some cases to retain the deposit made by purchasers at cash sales or to bring an action against them for the damages caused by their default, the advice of District Counsel should be sought when action against a defaulting purchaser at a cash sale is being considered.

[5.10] 5.14 (07-26-2000)

Default on Payment -- Deferred Payment Sale

1. If the conditions of sale permit part of the payment to be deferred, and if it is not paid within the prescribed period, the following actions may be taken:
  - o recommend suit (IRM 105.2.2) against the purchaser for the unpaid bid price, including interest at an annual rate established under IRC section 6335(3), or
  - o declare the sale void for failure to make full payment and again advertise and offer the property for sale. See IRM 5.10.5.13(1).
2. The new purchaser will receive the property or rights to property free and clear of any claim or right of the defaulting purchaser. The amount paid upon the bid price by the defaulting purchaser will be forfeited. The forfeited amount will be disposed of in accordance with IRM 5.10.6.5.

[5.10] 5.15 (07-26-2000)  
Certificate of Sale

1. As soon as possible after the receipt of the full purchase price, the PALS will give the purchaser a Form 2435, Certificate of Sale of Seized Property, prepared as shown in Exhibit 5.10.5-1.
2. If the property listed on Form 2435 includes a motor vehicle, airplane, or boat, the reverse of Form 2435 must be completed.

If	Then
The property sold is a motor vehicle	Prepare Form 9287, Odometer Disclosure Statement, and provide it to the purchaser with the Form 2435.
Both personal and real property are involved	Prepare separate Certificates of Sale for each type of property.
The property is sold in the aggregate,	The amounts will be prorated in order to prepare separate certificates of sale.
The property is declared purchased for the United States	A Certificate of Sale will be prepared.

\* After the certificate is prepared, give parts 1 and 2 to the purchaser. Part 3 should be submitted with Form 2436, Seized Property Sale Report (IRM 5.10.6.5, Form 2436, Seized Property Sale Report). If property is declared purchased for the United States, the Certificate of Sale will be placed in the seizure file.

[5.10] 5.15.1 (07-26-2000)

Legal Effect of Certificate of Sale of Personal Property

1. IRC 6339(a) and regulations thereunder provide that for the sale of personal property under distraint proceedings, the Certificate of Sale issued to the purchaser:
  - o will be prima facie evidence of the right of the PALS to make such sale,
  - o will be conclusive evidence of the regularity of the proceedings in making the sale,
  - o will transfer to the purchaser all right, title, and



interest of the taxpayer in and to the property sold;  
and  
o will discharge the property from all liens,  
encumbrances and title over which the tax lien had  
priority.

2. Part 2 of Form 2435 provides pertinent citations from the Code.

[5.10] 5.15.2 (07-26-2000)

Additional Legal Effect of Certificate of Sale on Corporate Stocks and Securities

1. If the property is corporate stocks, the Certificate of Sale will be notice, when received, to any corporation, company, or association of the transfer, and will be authority to the corporation, company or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the stock certificate, in lieu of any original or prior certificate, which shall be void, whether canceled or not.
2. If the subject of sale is securities or other evidences of debt, the certificate of sale will be good and valid receipt to the person holding the certificate of sale as against any person holding or claiming to hold possession of such securities or other evidences of debt.

[5.10] 5.15.3 (07-26-2000)

Legal Effect of Certificate of Sale on Vehicles

1. If the property is a motor vehicle, the Certificate of Sale will be notice, when received, to any public official charged with the registration of title to motor vehicles, of the transfer. It will also be authority to that official to record the transfer on his/her books and records in the same manner as if the certificate of title to the motor vehicle was transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

[5.10] 5.15.4 (07-26-2000)

Legal Effect of Certificate of Sale on Documented Vessels

1. When a documented vessel (registered, enrolled, or licensed) is seized, the U.S. Coast Guard office with whom the vessel has been documented must be requested to furnish a copy of the last document issued for the vessel for use as proper identification on seizure and sale papers. When the vessel is sold, Form 2435, Certificate of Sale of Seized Property, will be issued as the Certificate of Sale.
2. Although Form 2435 passes title to purchasers under the Internal Revenue Code, the U.S. Coast Guard imposes additional requirements. The United States Coast Guard has indicated that, in most instances, it will grant a request for waiver of the additional requirements. The PALS will prepare a letter to be attached to Form 2435 (Exhibit 5.10.5-2). The purchaser should be instructed to present the copy of Form 2435 and the letter to the U.S. Coast Guard to accomplish the title transfer. Local

jurisdictions of the U.S. Coast Guard have been advised that, in most instances, it is appropriate to accept Form 2435 as adequate to pass title when accompanied by the waiver letter.

[5.10] 5.15.5 (07-26-2000)

#### Recording Certificate of Sale in Real Estate Cases

1. Circumstances may arise when a purchaser of real estate may be advised to record the Certificate of Sale. See LRG 2(11)1(2).
2. In jurisdictions which have not adopted the Uniform Federal Tax Lien Registration Act, the PALS may need to consult with District Counsel (through SPf) for legal recording instructions.

[5.10] 5.16 (07-26-2000)

#### Delivery and Removal of Personal Property

1. Responsibility of the United States for the protection or preservation of seized personal property ceases immediately upon payment of the highest bid. The risk of loss is on the purchaser of personal property upon payment of his/her bid. Personal property should not be delivered to the purchaser until the purchase price has been paid in full.
2. If payment of part of the purchase price for personal property is deferred, the property will be retained until the balance of the purchase price has been paid. The PALS should see that the property is protected in facilities commensurate with the standards in IRM 1(16)41, Physical and Document Security Handbook, until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. All charges and expenses incurred in caring for the property after the acceptance of the bid will be the responsibility of the purchaser. The successful bidder should be advised of this at the sale.

Exhibit [5.10] 5-1 (07-26-2000)

Form 2435 -- Certificate of Sale of Seized Property  
(Reference 5.10.5.15)

Exhibit [5.10]

5-1 (07-26-2000)

Form 2435 --

Certificate of Sale of

Seized Property

(Reference 5.10.5.15)

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#### Form 2435 Instructions

Exhibit [5.10] 5-1 (07-26-2000)

Form 2435 -- Certificate of Sale of Seized Property (Reference 5.10.5.15)

Taxpayer's name. Address where sale was held. Description of property covered by Certificate of Sale. This should conform to description stated in public notice of sale, except for real

property as the legal description is sufficient. Any unused space should be ruled out as shown. Purchaser's name.

Exhibit [5.10] 5-2 (07-26-2000)  
Pattern Letter 2274(P)(5-87) Reference: 5.10.5.15.4(2)

Materials to Assist in the Sale of Documented Vessels

Pattern Letter 2274(P)(5-87)  
[Notice to United States Coast Guard to Transfer Title to Documented Vessel]  
(Because of the limited need, a form will not be provided by National Office for this purpose)

Coast Guard Documentation Officer

Dear Officer:

Re: Vessel Name: \_\_\_\_\_  
Vessel No.: \_\_\_\_\_

Attached is Internal Revenue Service Form 2435, Certificate of Sale of Seized Property, issued to the purchaser of the above described vessel upon an IRS sale. This is to request that you accept the Form 2435 as fully sufficient to pass title for Coast Guard documentation purpose.

In this regard, it is requested that you waive the requirement of an acknowledgment under state law requirements. 26 USC 6338(a) and 6339(a) establish that, without more, the certificate of sale is sufficient upon execution by the revenue officer conducting the sale.

It is also requested that you waive the requirement of a statement of the percentage interest owned by the seller of the vessel. The IRS sells all the right, title and interest of the delinquent taxpayer in and to the vessel. 26 USC 6339(a)(2).

In your consideration of this request, it is suggested that you refer to Commandant Letter 16713/30, dated JUNE 22, 1987.

Sincerely,

Property Appraisal and Liquidation Specialist

\_\_\_\_\_ District

Exhibit [5.10] 5-2 (07-26-2000)  
Pattern Letter 2274(P)(5-87) Reference: 5.10.5.15.4(2)

Materials to Assist in the Sale of Documented Vessels

U.S. Department of Commandant Washington D.C. 20593-0001  
Transportation United States Staff Symbol: G-MVI-6/13  
Coast Guard Phone: (202) 267-1492

United States Coast  
Guard

16713/30  
June 22, 1987

Mr. Arnold Kaufman  
Director  
General Litigation  
Division  
Office of Chief Counsel  
Internal Revenue Service  
Washington, D.C. 20224

Dear Mr. Kaufman:

I am responding to your letter of February 26, 1987, wherein you requested the Coast Guard accept IRS Form 2435, Certificate of Sale of Seized Property, as a sufficient bill of sale for purposes of documentation of vessels sold by the Internal Revenue Service, and "as sufficient evidence...of all ownership changes subsequent to the acquisition of the interest by the taxpayer and through the point of sale of the interest by the IRS."

After careful consideration of your request, I have conducted that Form 2435 will not be accepted as evidence of all ownership changes subsequent to the acquisition of the interest by the taxpayer. The Coast Guard would be negligent in its responsibilities under the Vessel Documentation Act 1980, the Shipping Act 1916, the Shipping Act 1920, and the Ship Mortgage Act, 1920, in accepting such an arrangement.

Form 2435 may be accepted as competent and persuasive evidence of passage of the delinquent taxpayer's interest to the person named on Form 2435 where the taxpayer is the owner of record, or where the taxpayer's title clearly devolves from an owner of record, and where there is no evidence that there has been any transfer of the taxpayer's interest in the vessel subsequent to title vesting in the taxpayer. For this purpose, "owner of record" means either the current owner of record according to Coast Guard records or under some other system of registration.

A request for waiver of production of recordable instrument in a form which is substantially similar in format to the one accompanying your letter will be required to accompany Form 2435.

Sincerely,

THOMAS L. WILLIS  
Chief, Vessel  
Documentation Branch  
Merchant Vessel Inspection  
and  
Documentation Division  
By direction of the  
Commandant

End: (1) COMDT ltr dtd 22 JUN 87

Exhibit [5.10] 5-2 (07-26-2000)  
Pattern Letter 2274(P)(5-87) Reference: 5.10.5.15.4(2)

Materials to Assist in the Sale of Documented Vessels

G-MVI-6/13  
(202) 267-1492  
16713/20  
22 June  
1987

From: Commandant  
To: Distribution

Subj: Sales of Vessels by Internal  
Revenue Service  
(a) Certificate of Sale of  
Seized Property (Form 2435)

Ref: (b) Request for waiver of  
production of recordable  
instrument

1. The Internal Revenue Service ("IRS" ) has contacted COMDT (G-MVI-6) in an attempt to clarify the manner in which sales of vessels seized by the IRS for non payment of taxes will be treated by Coast Guard documentation officers.
2. Reference (a) is clearly an unrecordable instrument. Furthermore, there is no section of 46 C.F.R. Part 67 which deals with sales of this nature. A number of documentation officers, in an attempt to accommodate this type of sale, have required the IRS to follow the procedures set forth in € 67.07-11, which deals with repossessions. The IRS has asked that the Coast Guard recognize Certificates of Sale as adequate to establish title to the vessel, and that the Coast Guard not require an affidavit setting forth the procedures followed and the legal authority for the sale.
3. The authority for such sales, Subchapter D, Chapter 64 of the Internal Revenue Code is cited in the body of the Certificate. Sec. 6339 of that code, quoted on the reverse of Form 2435, states in pertinent part that "[the certificate] shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold." The taxpayer is identified on the face of the form. It is clear therefore, that the IRS is acting in an agency relationship on behalf of the delinquent taxpayer.
4. Form 2435 is competent and persuasive evidence of passage of title from the delinquent taxpayer to the purchaser when there is no evidence that the taxpayer has transferred his interest in the vessel prior to the sale by the IRS. Form 2435 is not sufficient in and of itself to establish title to the vessel for documentation purposes when the taxpayer is not the last owner of record, or in the absence of evidence of passage of title from the last owner of record to the taxpayer. For purposes of this letter, "owner of record" refers to either the current owner of the vessel according to Coast Guard records or the owner under

some other registration system.

5. Reference (b) is a standard form of request for waiver of production of recordable instrument which will be submitted as a part of any request for documentation or redocumentation of a vessel sold by the IRS where the instrument of conveyance is Form 2435.

6. Documentation officers are cautioned that sales by the IRS have no effect on encumbrances of record. No vessel which is the subject of such a sale and is also the subject of a preferred mortgage of record shall be redocumented without either a satisfaction of mortgage, or the consent of the mortgagee on form CG-4593.

(Signed) T. L. WILLIS

THOMAS L. WILLIS

By direction

(1) Form 2435 (copy)

Encl: (2) Request for production of waiver of recordable instrument

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[Tax Professional's Corner]

Handbook 5.10  
Seizure and Sale Handbook

Chapter 6  
Post Sale Actions

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  - + Exhibit [5.10] 6-3 SEIZURE FORMS AND POST-SEIZURE CHECKLIST Reference 5.10.6.11
  - + Exhibit [5.10] 6-4 Form 2436, Part 5 -- Covering Letter Reference: 5.10.6.11(8)

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 [5.10] 6.1 (07-26-2000)

Application of Proceeds of Levy

1. IRC 6342 provides instructions for the application of any money realized:
  - o Under levy and sale proceedings, whether by seizure, by surrender of property under IRC 6332, or by sale of seized property, or
  - o By the sale of property redeemed by the United States, if the interest of the United States in such property was a lien arising under the provisions of this title.
2. Any proceeds realized under these circumstances will be applied in the following order:
  - A. Expenses of the seizure and sale
  - B. Unpaid Federal taxes due on the specific property sold (i.e., excise taxes); if the tax was not previously assessed it should be assessed
  - C. The liability shown on Form 668B
  - D. Intervening tax liens in the order of their priority when there are several outstanding liens.

EXAMPLE:

10/10/96 Proceeds of Sale \$600  
 3/2/95 First Mortgage \$1000  
 5/3/96 Federal Tax Lien \$500 (includes accrued interest)  
 8/10/96 Second Mortgage \$300  
 9/7/96 Federal Tax Lien \$200  
 10/10/96 Expenses of Sale \$35

Based on the facts shown in this example, the proceeds of the sale should be applied first to the cost of sale and then to the 5/3/96 tax lien (total \$535). The balance of \$65 should be applied to the 8/10/96 encumbrance. There would be no funds remaining for application to the 9/7/96 tax lien. No proceeds are allocated to the 3/2/95 first mortgage



since the sale would have been made subject to the primary encumbrance.

[5.10] 6.2 (07-26-2000)

#### Payment of Expenses

1. It is essential that all expenses of sale be debited against the account so that these expenses are satisfied from the proceeds of the sale. Expenses from the seizure can be accounted for in several ways:
  - o If there were expenses and no sale, and the taxpayer pays the costs directly, no input of TC 360 is required;
  - o If there were expenses and no sale and the taxpayer does not pay the costs directly, request input of the TC 360 on Form 4844; or
  - o If there were expenses and a sale, input the TC 360 on Form 2436.
2. Since IRC 6342 requires that funds realized under levy and sale proceedings be applied first to the expenses of levy and sale, TC 694, Designated Payment of Fees and Collection Costs, will be used to satisfy any unsatisfied expenses of levy and sale (TC 360), when any of the following payments are received:
  - o sale proceeds,
  - o voluntary payment upon release or redemption of seized property, or
  - o payment from a Notice of Levy.
3. The TC 694 credit input must be equal to or less than the TC 360 debit on the module. Application of payments to TC 694 will go unpostable if there is no TC 360 amount present.
4. Form 3244, Payment Posting Voucher, will be used to input TC 694 transactions resulting from funds obtained through notice of levy action or from the release or redemption of seized property, when expenses have been incurred and were not paid by the taxpayer directly to the vendor(s).

[5.10] 6.3 (07-26-2000)

#### Posting Proceeds From Sale of Seized Property

1. Form 795, ICS Daily Report of Collection Activity, is used to report remittances and returns. The following items should be entered:
  - o Taxpayer's name and "Proceeds from Sale of Seized Property" ,
  - o Amount of the payment under the amount collected column, and
  - o The number of any Form 809 receipt under the receipt column.
2. Postings to the balance due accounts involved will not be made until ICS notification of credits posting are received. When the proceeds from the sale of seized property, or the minimum bid of property bid in for the United States, will satisfy the total liability for an account, the PALS should notify the revenue officer who should input TC 470, cc 93 to remove the account from inventory.

[5.10] 6.4 (07-26-2000)

Form 2433, Notice of Seizure -- After Sale

1. As soon as possible after the sale, the PALS will complete Parts 5, 7B, and 8A of Form 2433. The PALS will enter the amount of gross proceeds and will check the appropriate disposition block. The gross proceeds from the sale along with Part 8A will be submitted promptly to submission processing for deposit of the proceeds in the Deposit Fund Account.
2. If the property is bid in for the United States, the PALS will check the "Declared purchased for U.S." block in Part 7B of Form 2433. No entry is required on Part 8A and this part may be destroyed. Part 7B will be submitted through Special Procedures function to the service center accounting branch. No entries will be made on the balance due accounts involved.

[5.10] 6.5 (07-26-2000)

Form 2436, Seized Property Sale Report

1. When property is sold or is declared purchased for the United States, the PALS will complete Form 2436, Seized Property Sale Report (Exhibit 5.10.6-1).
2. The form should be completed after all receipts and vouchers for expenses have been received. The PALS should ensure that all expenses of the seizure and sale have been debited against the balance due accounts through a TC 360 as they will be the first items paid from the sale proceeds.
3. If an expense was not previously debited as a TC 360, the expense will be entered in item 5, and a schedule of the expenses incurred will be entered in item 7.
4. All expenses will be charged to the first tax period listed on Form 2436.
5. Expenses that were paid directly by the taxpayer should not be included.
6. Expenses attributable to mailing out Notices of Sale performed by Service personnel (IRM 5.10.4.12(6)) will be included in item 5 on Form 2436, and will be identified as a non-payee expense of sale in item 7.
7. The PALS should then verify the balances due on IDRS to ensure the proper posting of the sale proceeds prior to completing item 5, Application of Proceeds.
8. The serial number of the related Form 2433, Notice of Seizure should be entered in the upper right portion of Form 2436.
9. The PALS and the assisting employee should then sign Form 2436. Part 4 of Form 2436 will be forwarded to the revenue officer for retention with the ICS paper file, and parts 1, 2, and 3 will be forwarded to SPF along with the following documents, when applicable:
  - o A copy of each certificate of sale,
  - o Any vouchers for payment of expenses that were not previously submitted,
  - o Forms 2222, Sealed Bid for Purchase of Seized Property, and
  - o Tabulation of Bids (for Sealed Bids or Public Auctions).
10. SPf will review Form 2436 upon receipt, and the

appropriate information will be entered onto the Form 6670, Seizure Disposition Report. If no corrections are needed, Parts 2 and 3 will be transmitted immediately thereafter to the Service Center Accounting Branch for application of the proceeds. Part 1 will be maintained in the seizure file.

[5.10] 6.5.1 (07-26-2000)

#### Form 2436, Seized Property Sale Report -- Deferred Payments

1. If conditions of the sale permit part of the purchase price to be deferred, Form 2436 will not be prepared until the full amount of the bid price is paid or until the period for payment elapses. For sales allowing deferred payment, two or more dates may be involved. Accrued penalties and interest are to be computed to the date of payment. When more than one date is applicable, more than one computation may be required.
2. If the deferred portion is not paid within the prescribed period, the following procedures are to be used.
  - A. If the sale is declared null and void (IRM 5.10.5.14), the actual amount paid by the purchaser will be entered in item 6b of Form 2436, and the notation, "Purchaser bid -- for property but failed to fulfill agreement to pay full bid price. Sale--Null and Void," entered in item 8. Any expenses of sale are debited to the taxpayer's account. The deposit amount is forfeited without any credit to the expenses of sale or the taxpayer's liability.
  - B. If a suit against the purchaser to secure the full bid price (IRM 5.10.5.14) is appropriate, Form 2436 is completed as in (a) above except "Suit against purchaser" is substituted for "Sale--Null and Void" in item 8. The taxpayer receives credit for the amount paid by the purchaser. See IRC 6335(e)(3).

[5.10] 6.6 (07-26-2000)

#### Intervening Liens

1. Intervening liens are liens that are junior to the first NFTL but are senior to at least one other NFTL.
2. The Special Procedures function will ensure that the intervening lien is prior to subsequent Federal liens and verify the current outstanding balance of the intervening claim. If SPf cannot determine who is entitled to the funds, the case will be referred to District Counsel for an advisory opinion prior to disbursing the sale proceeds.
3. Upon receipt of District Counsel's reply and if no objections to paying the intervening claimant are noted, the Chief, Special Procedures function, should prepare a memorandum in triplicate indicating:
  - o the taxpayer's name,
  - o date of the related Form 2436, Seized Property Sale Report,
  - o the amount of the intervening claim,
  - o the name of the intervening claimant to whom the check is to be made payable, and
  - o instructions that the check be forwarded to SPf for payment.
4. Two copies of the memorandum will be forwarded to the

Service Center Accounting Branch and a copy will be retained by the SPf and filed with the related seizure case file.

[5.10] 6.7 (07-26-2000)

#### Surplus Proceeds

1. When any surplus proceeds remain, Special Procedures will prepare Letter 1762(P) (Exhibit 5.10.6-2) in triplicate. The original of the letter and Part 5 of Form 2436 will be mailed to the taxpayer, and one copy forwarded to the revenue officer for inclusion in the case file. The case should be indexed as "Surplus Proceeds--Levy" and a follow-up indicated.
2. The taxpayer is the person entitled to the surplus proceeds unless another person establishes a superior claim. SPf may advise junior encumbrances listed on Form 2434-B of the existence of surplus proceeds. All claimants will be requested to submit an affidavit to be considered in the distribution of the surplus proceeds. However, see (3) below. SPf will review all claims and determine the parties entitled to the money, regardless of the dollar amount, without referral to District Counsel. However, if SPf cannot determine who is entitled to the funds, the case will be referred to District Counsel for an advisory legal opinion prior to making disposition of the surplus proceeds.
3. The Service may retain the surplus proceeds until the 9-month statute of limitation provided by IRC 6532(c) expires. As a practical matter, the surplus proceeds may be refunded as soon as possible to the person deemed to be legally entitled to the money even when no administrative claims have been submitted. Where the taxpayer is entitled to the surplus proceeds, the Service has 30 days from the date of the over-payment in which to refund the money without paying interest as provided by IRC 6611. SPf will advise the Service Center Accounting Branch of the date for computing interest only when the taxpayer is due interest. If a third party is entitled to the surplus proceeds, the Service has no obligation to pay interest.
4. After a determination has been made as to the person or persons legally entitled to surplus proceeds, the Chief of the Special Procedures function, should prepare a memorandum report in triplicate indicating the taxpayer's name, seizure serial number, date of the related Form 2436, and amount of surplus proceeds and the disposition to be made thereof. Two copies of the memorandum will be forwarded to Service Center Accounting Branch and a copy will be retained by the Special Procedures function and filed with the related case file.
5. When a claim filed for surplus proceeds is disallowed, the Chief of the Special Procedures function, will notify the claimant (other than the taxpayer) and inform him/her of the right to bring suit against the government within the period of time prescribed in IRC 7426. The suit must be brought within nine months from the date of levy.
6. In the event no claim is made for the surplus proceeds within nine months after the taxpayer's copy of Form 2436 and Letter 1762(P) are mailed, additional efforts should

be made to notify the taxpayer of the surplus.

7. If after the expiration of one year no claim has been filed, the Special Procedures function will prepare a memorandum to the Accounting Branch requesting the surplus be transferred from the deposit fund account to the Treasury General Fund for Revenue Receipts.

[5.10] 6.8 (07-26-2000)

#### Redemption of Real Property After Sale

1. When seized real property is sold under IRC section 6335, IRC section 6337 gives the following individuals the right to redeem the property at any time within 180 days after the date the successful bid is accepted by IRS:
  - o the owners,
  - o their heirs, executors, or administrators,
  - o any person having any interest in the property,
  - o any person having a lien interest in the property, or
  - o any person on their behalf.
2. In deferred payment agreements, the redemption period also begins the date the successful bidder is announced, and is accepted by the Government as such, rather than the date the balance due is paid and the Certificate of Sale issued. This means that the property may be redeemed prior to the Service receiving the full amount of the purchase price.
3. Such arrangements require a well-coordinated effort to ensure that the Service receives full payment of the purchase price prior to or simultaneous with redemption of the property. The redemption arrangement must provide for satisfying the purchaser's deferred obligation to the Service and the amount previously paid by the purchaser to the Service, plus interest thereon.

#### EXAMPLE:

The Service sold real estate for \$50,000 and received an initial payment of \$10,000 from the purchaser with the deferred balance of \$40,000 due in 30 days. Before the 30-day period expires, the taxpayer seeks to redeem the property. The arrangement may allow for the taxpayer to tender two (2) checks--one made out to the Service for \$40,000 and one made out to the purchaser for \$10,000, plus interest thereon. Other similar arrangements may be appropriate. District Counsel may be consulted as necessary.

4. The property or tract of property may be redeemed upon payment to the purchaser of the amount paid by the purchaser plus interest at the rate of 20 percent annually.
5. If the purchaser cannot be found in the county in which the property to be redeemed is situated or if the purchaser is evading contact with the redeeming party in order to prevent redemption, the payment may be made to the district director for the Internal Revenue district in which the property is situated for the use of the purchaser, his or her heirs, or assigns.
6. If a redemption payment is received and it is timely and for the correct amount, it should be so identified and submitted to Submission Processing for deposit in the Deposit Fund Account. Expeditious action must be taken to

locate the purchaser and make appropriate payment to him/her. A memorandum posting document will be prepared, in duplicate, indicating:

- o the taxpayer's name and address,
  - o date of the related Form 2436,
  - o purchaser's name and last-known address,
  - o amount of the payment with interest indicated separately, and
  - o any other pertinent facts.
7. When real and personal property (or several tracts of real property) are purchased in the aggregate, the redemption price of the real property (or of each of the several tracts) should be determined on the basis of the ratio, as of the time of sale, of the value of the real property (or tract) to the value of the total property purchased. For this purpose, the minimum price or the highest bid price, whichever is higher, offered for the property separately or in groups will be treated as the value.
8. When real property is redeemed, entries will be made in item 37 of Record 21 and these entries will be evidence of the redemption. The entry in item 37c should state the type of interest or rights under which redemption is made. If property is redeemed under IRC 6337, a deed will not be issued and no entry will be made in item 38.
9. If a redeeming party makes payment directly to the purchaser, regulations require the redeeming party to notify the district director of the Internal Revenue district in which the property is situated. Usually, the person notified is the revenue officer who conducted the seizure or the PALS who conducted the sale. In any case, the person contacted should ask for the following information which will be reported by memorandum to the Special Procedures function;
- o Name and address of taxpayer from whom property was seized and sold;
  - o Name and address of person who redeemed property if someone other than the taxpayer;
  - o Date of redemption and of the transfer of the Certificate of Sale;
  - o The amount paid to redeem property (list breakdown of sale price plus interest); and
  - o Name and address of person from whom property was redeemed.

[5.10] 6.8.1 (07-26-2000)

#### Redemption of Real Property Bid-In for the Government

1. If real property is acquired as a result of being declared purchased for the United States, it cannot be sold as acquired property until 180 days after the day of the sale as seized property to allow for the appropriate redemption period (IRM 5.10.6.8).
2. Under IRC 7506(d), if real estate has been purchased by the United States under IRC 6335, and the entire tax liability for which the levy was made, together with interest (at the rate of one percent per month) is paid to the United States within two years from the date the real estate was declared purchased for the United States, the property may be released by deed or otherwise conveyed to

the debtor from whom it was taken, or to his/her heirs or other legal representatives.

NOTE:

This provision of law does not require the United States to hold the property for the two-year period, but merely provides that the property, if still held by the United States, may be released upon payment of the debt, plus interest at the rate of one percent per month, within two years from the date the property was declared purchased for the United States.

3. Whenever real property is redeemed from the United States, whether under IRC 6337 or 7506(d), the payment should be so identified and submitted for deposit as Internal Revenue Receipts. The payments will be accompanied by a memorandum posting document, in duplicate, indicating the taxpayer's name and address, date of the related Form 2436, and the amount of the payment with interest indicated separately.

[5.10] 6.9 (07-26-2000)

Deed to Real Property

1. IRC 6338(b) provides that whenever real property is not redeemed within the 180-day period, the district director will issue a deed to the purchaser or his/her assigns, upon surrender of the Certificate of Sale.
2. The deed will be in accordance with the laws of the state in which the real property is situated pertaining to sales of real property under execution. The deed should be prepared in duplicate by Special Procedures and forwarded to District Counsel for approval in states with an attorney approval requirement. In states with no attorney approval requirement, SPf will prepare the deed for the district director's signature without referral to District Counsel. A standard format for such deeds can be pre-arranged with District Counsel.
3. After approval, the original will be given to the purchaser upon surrender of the Certificate of Sale. The duplicate copy, noted as to the date and the name of the district director by whom executed, will be retained by the Special Procedures function.
4. If real property is declared purchased by the United States, the "grantor" in these cases, will be the district director and the "grantee" will be the United States. The deed should be recorded without delay in the property registry of deeds and then retained by the Special Procedures function. Appropriate entries will be made in items 39 and 40 of Record 21 (see IRM 5.10.6.10).

[5.10] 6.10 (07-26-2000)

Record 21, Record of Seizure and Sale of Real Estate

1. Record 21, Record of Seizure and Sale of Real Estate, will be used for real property. A copy of Form 2434-B will be attached to the back of Record 21. Whenever real property is sold to the highest bidder or declared purchased for the United States, the PALS will prepare Record 21.
2. The seizure number of the related Form 2433 should be entered in the "Seizure No." block. All applicable items

should be completed. However, the block identified as "Record 21 No." will be left blank as it will be completed by the Special Procedures function. Item 15 contains notice of sale provisions to owner. The amount of the minimum bid price will be shown in item 21 regardless of whether the property is sold to the highest bidder or declared purchased for the United States. If real property is declared purchased for the United States, a statement of that fact should be made in item 32. See also IRM 5.10.6.8 Redemption of Real Property After Sale, for entries required if property is redeemed after sale.

3. Both parts of Record 21 will be submitted with Form 2436 to the Special Procedures function.
4. The approval of Record 21 will be indicated by the signature of the Chief, Special Procedures function, in item 40 of each Record 21. Both parts of Records 21 will be numbered and maintained as a permanent record in a suitable binder by the Special Procedures function. A copy of either part of Record 21, certified by the district director in whose district the property is situated, will be evidence of true facts, in any court.
5. Since there is no recording requirement for Record 21, Part 1 shall be made available for inspection to the taxpayer or to a purchaser or title insurer if required to accomplish the sale of seized property. Photocopies of Part 2 are available for public inspection.

[5.10] 6.11 (07-26-2000)

#### Special Procedures Review of Seizure File

1. SPf is responsible for the following actions on a seizure and sale case:
  - o assigning seizure serial numbers,
  - o maintaining a permanent serial number control register for all seizures conducted within the district,
  - o receiving the documents that comprise the seizure and sale file,
  - o conducting a post-review of the forms and documents to ensure conformity with statutes, regulations and the procedural guidelines of the IRM,
  - o completing the Seizure Disposition Report, Form 6670, for each closed seizure,
  - o maintaining the permanent record of the seizure file,
  - o providing the taxpayer with copies of the permanent record and the balance remaining on the account, and
  - o preparing the semiannual summarization of the 6670 forms.
2. Each seizure document should be reviewed upon receipt. Timely receipt and processing of all documents should be monitored by SPf personnel. The seizure file should be post reviewed upon receipt of Form 2436, Seized Property Sale Report, or when the file is otherwise closed. Local management should provide for a follow-up system to insure timeliness and completeness of all seizure documents. Exhibit 5.10.6-3 contains a checklist of all required forms and actions.
3. For courtesy seizures, the receiving district's SPF will process the original seizure and sale documents through



their Service Center Accounting Branch in the same manner it transmits the documents for its own seizures. After reviewing and approving the documents, the receiving SPf will send copies of all documents related to the seizure to the initiating revenue officer for inclusion in their case file.

4. Periodic quality reviews of seizure files should be conducted by local management to assure that an acceptable standard of performance is maintained. SPf should report to the appropriate Collection Field function manager any seizure file open beyond 90 days. At the end of each quarter, group managers should send a report on such cases to their appropriate Collection Field function manager. The report should address the reason the seizure is still open and the proposed date it will be closed. If custody of the property has been transferred to the PALS, the group manager should contact the PALS for information on the status of the seizure.
5. A seizure case will generally be closed after the revenue officer or the PALS submits the appropriate documents to SPf reflecting that all seized property has been disposed of. Disposition of property is accomplished through:
  - o release of levy,
  - o sale of the property, or
  - o a combination of the two.
6. SPf reviewers must ascertain that all seized property is accounted for by either a Certificate of Sale or a Release of Levy.
7. Form 5942, Reviewer's Report--Special Procedures Function, will be used by the Special Procedure function reviewer to make observations to management, to furnish advisory information and to request additional information for the originator. Parts 1 and 2 of Form 5942 are to be used to respond to the Special Procedure function when additional or corrected information is required.
8. SPf will provide Part 5 of Form 2436 to the taxpayer and include a letter explaining the above mentioned Part 5 and identifying the balance of each account after the application of proceeds from the sale of the seized assets (Exhibit 5.10.6-4).

[5.10] 6.12 (07-26-2000)

Permanent Record of Sales

1. IRC 6340 require each district director to maintain a permanent record of all sales conducted under IRC 6335 of real and personal property situated within his/her district and of all redemptions of such property. The PALS and the revenue officer will forward all appropriate records to SPf for the seizure file and for the permanent record.
2. The following forms should be enclosed in the "Permanent 6340(a) Record" , when applicable:
  - o 668-B (Levy),
  - o 2433 (Notice of Seizure),
  - o 2434 (Notice of Public Auction Sale),
  - o 2434A (Notice of Sealed Bid Sale),
  - o 2434B (Notice of Encumbrances),
  - o 2435 (Certificate of Sale of Seized Property),

- o 2222 (Sealed Bid for Purchase of Seized Property),
  - o 4425 (Public Sale Bid Tabulation),
  - o 4585 (Minimum Bid),
  - o 2436 (Seized Property Sale Report),
  - o Transmittal letter to the taxpayer explaining part 5 of Form 2436 and providing the application of proceeds and current balance remaining,
  - o Letter 1762(P) (Letter advising of Surplus Proceeds),
  - o 2274 (Sale of Documented Vessel),
  - o Record 21 (Record of Seizure and Sale of Real Estate)
3. Copies of the above records should be sent to the taxpayer, unless previously provided. A cover letter should list all of the appropriate documents and should indicate which forms were previously provided. A copy of the letter transmitting the documents to the taxpayer should also be included with the permanent record.
  4. When a copy of Forms 2435 and 2222 are mailed to the taxpayer, the successful bidder's name should be deleted when the sale does not involve real property.

[5.10] 6.13 (07-26-2000)

#### Revenue Officer Transfer of Closed Case Files to SPF and SPF Records Retention

1. When a case involving a seizure is closed, all related documents will be placed in the corresponding folder and the revenue officer will transmit the closed field case file to Special Procedures via Form 3210 noted "CLOSED CASE FILE FOR ASSOCIATION WITH SEIZURE FILE ." In the case of Integrated Collection System (ICS) files, the revenue officer will forward the existing paper documents in the case file and any printouts of information available on ICS.
2. Copies of closed courtesy seizure files, as well as the permanent records for these seizures, will be maintained in the receiving office's SPf.
3. Special Procedures will associate the closed case file received from the revenue officer with the corresponding SPF seizure case file and retain these files for two years after the seizure was closed. After the two year retention period for the seizure file expires, the closed balance due case file will be forwarded to the Federal Records Center where it will be destroyed three years after the balance due case closure date.
4. The permanent records files will be permanently retained in Special Procedures. The following documents must also be maintained for Public Inspection:
  - o Record 21, Part 2, and
  - o Form 2434B.

[5.10] 6.14 (07-26-2000)

#### Semiannual Verification of Forms 2433

1. The service centers will generate monthly and semi-annual reports to the districts under the Revenue Accounting Control System (RACS). The monthly Inventory Summary Report provides information to district SPfs and requires no response. The semi-annual Inventory Detail Report, issued as of March 31 and September 30, requires SPF verification. A response either agreeing with the report

or reconciling any discrepancy must be sent to the Service Center Accounting Branch within 30 days of receipt of the RACS report.

[5.10] 6.15 (07-26-2000)

#### Wrongful Seizure -- Payment of Claims After Sale

1. IRM 5.10.4.4 contains general information on wrongful seizures, processing wrongful seizure claims, and the procedures to follow when a person alleges that there has been a wrongful seizure and the property has not yet been sold. If property was declared purchased for the United States and has not been resold, it may be returned to its rightful owner.
2. Code section 7426 provides that if property is sold and it is later determined that there was a wrongful seizure, the successful claimant will be paid the greater of:
  - o the amount realized by the sale, or
  - o the fair market value of the property immediately before the levy.
3. The payment should be paid to the claimant at any time before the expiration of nine months from the date of the levy. It may also be refunded after such period, provided a request was made with the district director prior to the expiration of the nine-month period.
4. Any amounts paid in excess of the proceeds of sale should not be debited against the taxpayer's account, but rather will be paid out of general appropriations.
5. The amount to be returned in case of property declared purchased by the United States which has been resold will be the greater of:
  - o the fair market value of the property immediately before the levy,
  - o the amount of the minimum price established under IRC 6335(e), or
  - o the amount received from the resale.
6. This Code section also states that if money is levied upon, that amount may be returned. Interest will be paid on amounts refunded under IRC 6343. See IRM 5.11.2.2 for procedures to follow when an improper notice of levy has been served.
7. Under IRC 6503(g), the period of limitation on collection is suspended for a period equal to the period from the date property is wrongfully seized or received to the date returned under IRC 6343(b) or the date on which a judgment is secured under IRC 7426, plus an additional 30 days. The suspension is only applicable to an amount equal to the amount of money or the value of the property returned.
8. Requests submitted to revenue officers should be forwarded to Special Procedures function for referral to District Counsel for an advisory opinion. The revenue officer who conducted the seizure and the PALS who conducted the sale in question will provide a memorandum (through the manager) to SPf outlining the pertinent details.
9. If the property has been sold, the Chief, Special Procedures function, should prepare a memorandum (from information provided by the revenue officer who conducted the seizure and the PALS who conducted the sale), in triplicate, for approval by the Chief, Collection function

identifying the sale transaction or, if cash was seized, the cashier's block number and date on the Form 809 receipt. Sufficient information should be included to establish that a wrongful action was taken and that appropriate restitution should be made.

10. Two memos may be required to make appropriate restitution.

One will be addressed to the Service Center Accounting Branch to issue a manual refund to cover that portion of the claim equal to the proceeds from the sale that was credited to the TDA(s). See IRM 21.8. If this refund amount is not sufficient to full pay the amount of the allowable claim, a second memo will be addressed to Regional Controller to issue a check for the remaining portion due on the claim with the necessary supporting documentation. This latter amount is to be paid from the Collection Operating Appropriation. The amount of the refund, including a statement that interest should be paid, should also be furnished.

11. Interest payments, are to be computed in the following manner:

- o When money is seized -- the period for the payment of interest begins with the date the money is seized and ends on the refund schedule date--not to exceed thirty days prior to the day when the money is returned to the owner;
- o When the proceeds from the sale of property wrongfully seized or where an amount equal to the fair market value of the property immediately before the levy is to be refunded -- the period for the payment of interest begins with the date of sale of the property and ends on the refund schedule date--not to exceed thirty days prior to the day when the payment is made to the former owner of the property; and
- o The interest rate will be determined by the provisions of IRC 6621.

12. The refund process will be initiated by the district director via communication to the service center, as provided in IRM 21.8. The Service Center Accounting Branch will issue the refund check and any appropriate debit advices after receipt of the memorandum mentioned above.

13. If the request is disallowed, Special Procedures function should notify the claimant as soon as possible of the reason for disallowing the claim and of the right to bring suit against the government under provisions of IRC 7426. Ordinarily, suit must be brought within nine months from the date of levy. However, when a request is made, the time is extended for a period of 12 months from the date of the request or for a period of six months from date notice of disallowance is mailed to claimant by registered or certified mail, whichever is shorter.

14. A refund check issued under (3) above will be transmitted to the Chief of the Special Procedures function, who will contact the purchaser or assign it to a revenue officer on Form 2209, Courtesy Investigation. The Certificate of Sale should be secured from the purchaser before turning over the refund check. The canceled Certificate of Sale should be filed with the Special Procedures function in the

related case file. If refund results in cancellation of the sale, the seized property, if it is property of the taxpayer, may again be advertised and offered for public sale or released to the taxpayer, if applicable. If refund results only in adjustment of the purchase price, a new Certificate of Sale should be issued to the purchaser.

15. Additional information relating to return of property can be found in IRM 5.11.2, Notice of Levy Handbook, Returning Levied Property to the Taxpayer.

[5.10] 6.16 (07-26-2000)

#### Improper Levy Action

1. In instances where improper levy action (IRM 5.11.2.2 and 5.11.2.3) is known to have taken place and results in excessive collection, the Service employee handling the TDA will notify the immediate supervisor to contact the district director who will request the service center to initiate a manual refund, as provided in IRM 5.1.15.8. A follow up memorandum, explaining the details, will be sent to the service center as soon as possible after the original contact.
2. In instances where the taxpayer alleges improper levy action, once the tax liability has been paid, the taxpayer has a right to file a claim for refund under IRC 7422, if the assessment or collection is considered to be erroneous or excessive. The claim can be initiated by the preparation of:
  - o Form 1040X,
  - o Form 1120X,
  - o Form 843, or
  - o Other forms as are appropriate for the type of refund claimed.
3. A separate form must be filed for each tax year or quarter involved and must have attached the supporting information on which the claim is based. The claim is to be sent to the service center where the original return was filed.
4. A claim for refund must be filed within 3 years from the date the return was filed (returns filed before the due date are considered to have been filed on the due date) or within 2 years from the date the tax was paid, whichever date is later.
5. If the claim is rejected, a statutory notice of disallowance will be sent to the claimant. After receipt of the notice of disallowance, the taxpayer may file suit for refund in a U.S. District Court or in the U.S. Court of Claims. Suit must be filed within 2 years from the date of the notice of disallowance. Should no determination be made on the claim within 6 months from the date filed, a suit for refund may be initiated as if the claim had been rejected. If a taxpayer seeks prompt court action, without availing themselves of a Service determination, a request in writing, that the claim be immediately rejected, must accompany the claim for refund.

Exhibit [5.10] 6-1 (07-26-2000)

Form 2436 -- Seized Property Sale Report (Reference: 5.10.6.5)

Exhibit [5.10] 6-1 (07-26-2000)  
Form 2436 -- Seized Property Sale Report (Reference:  
5.10.6.5)

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Form 2436 Instructions

LRG 338.73(2)

1. Name, address and TIN from Bal Due.
2. Seizure number from Form 2433.
3. See instructions on reverse of Form 2436 part 1 for application of sale proceeds.
4. Show taxpayer's total liability, including all accruals and costs.
5. Gross proceeds of sale (Total of all certificates of sale). If purchased by U.S. use "Minimum Bid Price."
6. Show total amount for intervening claimants from Form 2434-B.
7. Net proceeds of sale (Amount available for application to taxpayer's account). This amount determined by subtracting from gross proceeds amounts to be paid (if any) to valid encumbrances intervening between Notices of Federal Tax Lien.\*
8. Surplus proceeds. Enter 7 minus 4.
9. Describe all expenses of sale--give name and address of payee, type of service rendered; i.e., custodial, appraisal, storage, etc., and amount of invoice.
10. List of purchasers to whom certificates of sale were issued.
11. Check appropriate boxes; show dates and addresses.
12. Use reverse side for continuations and additional comments.

\* if property is seized and sold to enforce several outstanding tax liens, the proceeds must be applied toward the satisfaction of tax in the order of their priority where other competing liens, whether inferior or superior, have attached to the property sold.

Exhibit [5.10] 6-1 (07-26-2000)  
Form 2436 -- Seized Property Sale Report (Reference: 5.10.6.5)

-

Seized Property Sale Report--Case Example  
Property seized 10/15/97 Sold 12/1/97, Fair Market Value,  
\$25,000.

Encumbrances:

1 Security Interest		
Recorded	1/16/96	\$10,000.00
2 U.S. Tax Lien	Recorded 4/18/96 (Interest	4,000.00
	included)	
3 Security Interest		
Recorded	5/20/96	2,000.00
4 U.S. Tax Lien	Recorded 7/21/97 (Interest	2,000.00
	included)	
Gross Proceeds From Sale		\$9,600.00

Schedule of Distribution  
of Proceeds

1 Expenses of Sale	\$100.00
2 U.S. Tax Lien Recorded 4/18/96	4,005.00
3 Intervening Security	
Interest Recorded 5/20/96	2,000.00
4 U.S. Tax Lien Recorded 7/21/97	2,000.00
Surplus Proceeds	1,495.00

NOTE:

Property sold subject to primary encumbrance of \$10,000.  
Surplus proceeds are also subject to subsequent encumbrances, if any (i.e. after 7/21/97 U.S. Tax Lien).

Item 6c represents the intervening security interest recorded 5/20/96.

Exhibit [5.10] 6-2 (07-26-2000)  
Letter 1762(P) Reference: 5.10.6.7

-

Letter 1762(P)  
(District Director Letterhead)

(Name and address of (Social Security) or (Employer taxpayer) Identification Number:

Person to Contact: (Name), Chief,  
Special Procedures Function  
Contact Address:  
Contact Telephone Number:  
Employee Identification Number

(Salutation)

Enclosed is a copy of Form 2436, Seized Property Sale Report, showing how we applied sale proceeds to your unpaid tax liabilities.

The gross proceeds of the sale are shown in item 6b. We applied these first to the expenses of sale in item 5c, second to any specific tax liability on the seized property; and then to your total liability shown in item 6a. This distribution was made in accordance with section 6342 of the Internal Revenue Code. The gross proceeds of sale are also subject to any intervening or subsequent encumbrances against the property sold. We will send you a schedule showing application of proceeds after all intervening and subsequent encumbrances are determined.

The person legally entitled to the surplus may apply to claim it by showing satisfactory proof of his or her rights to do so. All claimants must submit an affidavit to be considered in the distribution of the surplus proceeds. It must include the claimant's name and address and show the amount of surplus proceeds claimed.

Please send the application to the person whose name and address are shown above. An envelope is enclosed for your convenience. If you have any questions, you may contact (him)(her) at the above telephone number.

Thank you for your cooperation.  
Sincerely yours,  
(Signature)  
Chief, Special Procedures Function

Enclosures:  
Form 2436  
Envelope

Letter 1762(P) (Rev. 6-84)

Exhibit [5.10] 6-3 (07-26-2000)  
SEIZURE FORMS AND POST-SEIZURE CHECKLIST  
Reference 5.10.6.11

TAXPAYER NAME \_\_\_\_\_  
SEIZURE NUMBER \_\_\_\_\_ TIN: \_\_\_\_\_  
DATE SEIZURE OPENED \_\_\_\_\_

Exhibit [5.10] 6-3 (07-26-2000)  
SEIZURE FORMS AND POST-SEIZURE  
CHECKLIST  
Reference 5.10.6.11

-----  
Opening Documents PALS R/ON/A Date

Exhibit [5.10] 6-3 (07-26-2000)  
SEIZURE FORMS AND POST-SEIZURE CHECKLIST  
Reference 5.10.6.11

-  
Pre-Seizure Checklist and Approval Request  
668-B  
668-A  
2433, Part 6 (Including Estimated Equity Info.)  
2433, Part 7A (Signed by RO)  
2433, Part 8B  
2434-B, Preliminary Copy  
Writ/ Consent

Exhibit [5.10]  
6-3 (07-26-2000)  
SEIZURE FORMS  
AND POST-SEIZURE  
CHECKLIST  
Reference  
5.10.6.11

-----  
Interim Forms

Exhibit [5.10] 6-3 (07-26-2000)  
SEIZURE FORMS AND POST-SEIZURE CHECKLIST  
Reference 5.10.6.11



2434  
2434-A  
2434-B, Final Copy  
6888, Part 5  
1143  
Total Expenses Incurred (including those w/out voucher)  
Perishable Goods Memorandum  
Memo for delay in Notice of Sale preparation

Exhibit [5.10] 6-3 (07-26-2000)  
SEIZURE FORMS AND POST-SEIZURE CHECKLIST  
Reference 5.10.6.11  
-

Property Redeemed or Released Prior to Sale

Exhibit [5.10]  
6-3 (07-26-2000)  
SEIZURE FORMS  
AND POST-SEIZURE  
CHECKLIST  
Reference  
5.10.6.11  
-----

2433, Part 7B  
2433, Part 8A  
2433, Part 8B  
2433, Part 3  
668-E

Exhibit  
[5.10]  
6-3 (07-26-2000)  
SEIZURE FORMS  
AND  
POST-SEIZURE  
CHECKLIST  
Reference  
5.10.6.11  
-----

Property Sold

Exhibit [5.10] 6-3 (07-26-2000)  
SEIZURE FORMS AND POST-SEIZURE  
CHECKLIST  
Reference 5.10.6.11  
-----

2222  
4425  
2433, Part 7B  
2433, Part 8B  
2435  
2436  
Application of Proceeds Letter (SPf)  
9287 (Motor Vehicles)

Record 21, Part 1 & 2

Exhibit [5.10] 6-3 (07-26-2000)  
SEIZURE FORMS AND POST-SEIZURE CHECKLIST  
Reference 5.10.6.11

All forms are due in SPf within 5 workdays of the action; the seizure number should be entered in the upper right hand corner of all documents.

Exhibit [5.10] 6-4 (07-26-2000)  
Form 2436, Part 5 -- Covering Letter Reference: 5.10.6.11(8)

Internal Revenue Service    Department of the Treasury

District Director            Special Procedures Branch  
Address

Taxpayer Name  
Address

Person to contact:  
Telephone No: ( )  
Refer to:  
Date:  
Employee Identification Number

Dear (taxpayer name):

Enclosed is a copy of Form 2436, Seized Property Sale Report, showing how we applied the sale proceeds to your unpaid tax liabilities. Item 5 describes the kind of tax, the tax period, the amount of tax and expenses of the sale.

The gross proceeds of the sale are shown in item 6b. We applied these, first, to the expenses of the sale in item 5d; second, to any intervening claims in item 6c; and then to your total tax liability shown in item 6a. This distribution was made in accordance with Section 6342 of the Internal Revenue Code.

The balance shown below represents the current balance you owe after the application of the proceeds of the sale:

Tax Year	Tax Type	Unpaid Balance of Tax	Penalty & Interest
to__	Total		

Thank you for your cooperation.

Sincerely,

Enclosure  
Form 2436, Part 5

-----  
Internal Revenue    Hndbk. 5.10 Chap. 6 Post    (07-26-2000)  
Manual            Sale Actions

Tax Stats | Tax Info For You | Tax Info For Business |  
Electronic Services

[Tax Professional's Corner]

Handbook 5.10  
Seizure and Sale Handbook

Chapter 7  
Acquired Property and Property Redeemed by the United States

[ [Click for Text Only Version](#) ]

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  - o [5.10] 7.3.1 Agreements to Bid
  - o [5.10] 7.3.2 Time and Place of Sale
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    - + Exhibit [5.10] 7-4 Letter 1627(P) Reference 5.10.7.3.5
    - + Exhibit [5.10] 7-5 Pattern Letter P-339 Reference 5.10.7.3.5
    - + Exhibit [5.10] 7-6 Pattern Letter P-340 Reference 5.10.7.3.5
    - + Exhibit [5.10] 7-7 Opening Statement for Auction Sale Reference 5.10.7.5.2
    - + Exhibit [5.10] 7-8 Pattern Letter P-341 Reference 5.10.7.5.7
    - + Exhibit [5.10] 7-9 Pattern Letter P-342 Reference 5.10.7.9.1
    - + Exhibit [5.10] 7-10 Pattern Letter P-343 Reference 5.10.7.9.1

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[5.10] 7.1 (07-26-2000)

General

1. Acquired property means any property obtained by the United States under the following conditions:
  - A. any personal property acquired by the United States in payment of, or as security for, debts arising under the internal revenue laws, or
  - B. any real property which is, or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, property redeemed by the Government under IRC 7425, property which has been assigned, or shall be assigned, set off, or conveyed by purchase, or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, property which has been, or shall be, vested in the United States by mortgage or other security for the payment of such debts, property which has been, or shall be, declared purchased for the United States under IRC 6335(e), property redeemed by the United States, or a trust created for the use of the United States in payment of such debts due the United States.
2. Authority to sell acquired property is contained in IRC 7505 (personal property) and IRC 7506 (real property). Personal property may be sold by the district director who purchased the property for the United States. The administration and disposition of real property is the responsibility of the district director of the district in which the real property is situated. For real property, the Commissioner (or his/her delegate) may, if deemed advisable, take charge of and assume responsibility for the administration and disposition of the property by giving written notice to the district director.
3. If real property, consisting of a single parcel, is situated in more than one internal revenue district, the responsibility for the administration and disposition of the property will be that of the district director under whose direction the property was declared purchased or under whose direction the property otherwise became the property of the United States. If there is doubt as to which district director is to have charge of the property, the pertinent facts should be reported to the Assistant Commissioner (Collection), Attn: OP:CO:C, so that a designation may be made.
4. In order that a current record of all acquired property will be available for reference and follow-up purposes, the Special Procedures function will maintain a control of such property. This control will include real and personal property acquired through levy and sales under IRC 6335(e) and

- also property acquired through other circumstances stated in (1) above.
5. Property acquired by the Service through the exercise of redemption rights under the Federal tax lien does not require a memorandum to the Service Center Accounting Branch. Property acquired under IRC 6335(e) will be reported to the Service Center Accounting Branch on Form 2433, Notice of Seizure and Form 2436, Seized Property Sale Report. However, if property is acquired through other circumstances, the Special Procedures function will inform the Service Center Accounting Branch by memorandum, in duplicate. To enable the service center to enter acquired property on the accounting records, the value of the property must be provided. When the exact value of the property cannot be determined, the memorandum should be noted with the estimated value and the basis for computing it.
  6. The chief of the SPf will periodically request from the office involved the current status of acquired properties. In the case of real property, a status report should not be requested until six months after the right of redemption period has expired. A brief notation of the follow-up actions will be entered on the control. After the property is disposed of, the control will be closed.
  7. The PALS will see that acquired property located within the jurisdiction of the office is maintained as determined necessary. Ordinary and necessary expenses may be incurred in the preservation of the property. These expenses may include rent for storage of personal property, if rent-free facilities are not available, or cost of minor repairs to real property, if deemed necessary for its preservation. The procedures in IRM 5.10.3.6, Protection of Property During a Seizure are also applicable to acquired property.
  8. Estimated expenses expected to be incurred in connection with the preservation or sale of the property should be reported to the district controller per their instructions, or if applicable to the Regional Controller, so that necessary funds may be obligated. Identify the property and provide the estimated amount of expenses.
  9. The sale procedures prescribed in the sections that follow are applicable to both real and personal property unless otherwise indicated. For disposition of acquired securities, see IRM 5.10.7.9, Disposition of Acquired Securities.

[5.10] 7.2 (07-26-2000)

#### Income From Acquired Property

1. The taxpayer has no right to redeem and has no right to any income derived from personal property after it has been declared purchased for the United States.
2. For real property acquired under provision of IRC 6335, there is a 180 day right of redemption period during which the property cannot be disposed of by the government.
3. The right to any income from real property during this period of redemption depends upon the state law where the property is located. District Counsel should be consulted to determine the disposition to be made of income during this period. If it is determined that the taxpayer is entitled to the income, levy procedures may be used and the proceeds applied to any outstanding accounts of the taxpayer.
4. Income received from the acquired property will be forwarded through Submission Processing with a Form 2433, Part 8-A, Notice of Seizure, or a memorandum posting document in duplicate indicating the following:
  - o name of person from whom the income was received;
  - o nature of income, such as rent, dividends, etc.;
  - o brief description of property, such as "Real property -- Building located at (address)," "Personal property -- General Motors Stock," etc.;

- o period covered by the payment if applicable;
  - o name of taxpayer from whom the property was seized and sold;
  - o amount of remittance; and
  - o a statement that the remittance should be deposited as a courtesy deposit for the Regional Commissioner's office for credit to Miscellaneous Receipts of the Treasury or forwarded to the regional Fiscal Management Branch as may be prescribed by regional procedures.
5. Cash remittances should be converted to bank drafts issued without charge by a bank (designated as a Depository which has entered into an agreement relative to reimbursement) before transmittal to Submission Processing.

[5.10] 7.2.1 (07-26-2000)

#### Lease of Real Property

1. Real property may be leased if it is determined that it will be in the possession of the district director over an extended period of time and that the government's interest will best be served by such action. Factors to be considered are whether the property can be immediately sold for a reasonable amount, depreciation of the property, cost of maintenance, etc. The initial determination will be made by the chief of the Special Procedures function, based upon the circumstances, including any recommendation of the area office involved. However, the final decision rests with the district director whose approval must be secured before the property is offered since he/she must sign the lease.
2. If acquired property will be leased and a prospective lessee has been secured, the chief of the Special Procedures function, should request District Counsel to prepare a lease agreement in duplicate. The terms of the lease should generally not be more than a year and should not contain any provision which would prevent selling the property, subject to the lease, at any time a suitable purchaser is found. The lease agreement should specify that payments be made by check or money order made payable to the United States Treasury and sent directly to the chief of the Special Procedures function.
3. District Counsel should be furnished the following information:
  - o name and address of the lessee;
  - o district involved;
  - o description and location of property;
  - o how property was acquired by the United States,
  - o period of the lease;
  - o terms of payment (amount, manner, due date and place of payment); and
  - o any special provisions to be contained in the lease, such as maintenance of property, authorized alterations, improvements, etc.
4. Upon receipt of the proposed lease agreement from District Counsel, the chief of the Special Procedures function will review the lease to see that it conforms to the intent of the parties involved and forward the original and duplicate to the district director or his delegate.
5. After the district director or a delegate has signed the lease agreement, both copies will be returned to the Chief, Special Procedures function, who will:
  - o prepare a control card showing the name and address of the lessee, payment due and amount of payment;
  - o secure the signature of the lessee on the original lease agreement;
  - o furnish duplicate lease agreement to the lessee which may be considered authority for the lessee to have possession of the property in accordance with terms of the agreement;
  - o file original lease agreement in the related Disposition of Seized Property case file; and
  - o file control card chronologically by payment due date in a "lease control card file."

6. Upon receipt of payments under the lease agreement, the SPf will note the control card as to date payment is received and prepare and process a memorandum posting document in duplicate in accordance with IRM 5.10.7.2(4).
7. If a payment is not received within a reasonable time after the due date, the chief of the Special Procedures function, should contact the lessee to secure payment. If payment is not received, District Counsel should be consulted as to the legal action required.

[5.10] 7.3 (07-26-2000)

#### Preparations for Sale

1. When it appears that offering the acquired property for sale will yield a reasonable price, a memorandum recommending sale should be submitted to the chief of the Special Procedures function for further processing. This memorandum will ordinarily be prepared by the PALS since he/she is more likely to secure potential purchasers. However, in some instances the memorandum may be originated by the chief of the SPf. The memorandum should be prepared in duplicate and include the following:
  - o brief description and location of property;
  - o condition of property;
  - o expected sale price;
  - o government's cost, if any (bid-in price if the property was declared purchased under IRC 6335);
  - o reason it is believed that the property can be sold for a reasonable price -- if an agreement to bid has been secured, furnish details, and
  - o any other pertinent information.
2. SPf will send the original memorandum to the chief of the Collection function for approval of the sale and retain the duplicate in a suspense file pending action by the Chief of Collection.
3. The chief of the Collection function will indicate his/her approval or disapproval by so stating on the memorandum and return it to the chief of the SPf. The Area office will then be notified of the action to be taken.

[5.10] 7.3.1 (07-26-2000)

#### Agreements to Bid

1. Regulations provide that before giving a notice of sale of acquired property, offers to bid at least a specified amount may be solicited from prospective bidders. Although this procedure is not a statutory requirement, it is desirable since it aids in fixing a minimum bid at the sale and possibly encourages more sincere bidding. It also practically ensures that the property will be sold when offered for sale. Ordinarily offers to bid will be the result of solicitation by the PALS since they will be in the best position to contact prospective bidders. However, in some instances the agreement to bid may be secured by other Internal Revenue Service personnel. The agreement to bid should be similar to the specimen in Exhibit 5.10.7-1.
2. A deposit to secure performance of the agreement to bid may also be required and ordinarily is desirable. When a deposit is required, it should be the full amount of the offer to bid if the bid is \$200 or less. If the amount of the offer to bid is more than \$200, the deposit should be 20 percent of the bid or \$200, whichever is greater.
3. If a deposit is required with the agreement to bid, it should be made by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a postal, bank, express, or telegraph money order.
4. Certificates of Deposit and irrevocable letters of credit are also

acceptable if approved in advance by District Counsel. However, care should be exercised in accepting and monitoring such instruments because the period of time in which they are negotiable is generally limited.

5. Upon receipt of a bid deposit, prepare Form 2276, Collateral Deposit Record (IRM Exhibit 5.10.7-2) identifying the remittance as an "agreement to bid deposit." The remittance and Form 2276 will be submitted to the SPf for review and for safekeeping.

[5.10] 7.3.2 (07-26-2000)

#### Time and Place of Sale

1. Personal property may be sold any time after it is acquired and a notice of sale given (IRM 5.10.7.3.5(2)). However, sufficient time should be allowed to permit adequate publicity of the sale so that the maximum amount may be obtained for the property at the sale. Ordinarily, the sale of personal property should be held in the district where the property was declared purchased for the United States. If the sale is to be held in another district, the district director should advise the director of the other district.
2. Real property acquired under the provisions of IRC 6335(e) may be sold after the expiration of the period of redemption, and a public notice of sale has been given (IRM 5.10.7.3.5(2)). The notice must have been given not less than 20 days before holding the sale. Ordinarily, when real property is involved, the taxpayer has a right to redeem the property within the prescribed period. In some instances, such as in the case of real property acquired by forfeiture, the right to redeem may not exist. When real property is acquired by an action other than a sale under provisions of IRC 6335(e), District Counsel should be consulted to determine whether the taxpayer has a right to redeem.
3. When property is redeemed under 28 USC 2410 or IRC 7425, the PALS should arrange to sell it as soon as possible after proper notice of sale is given and the terms of agreements to bid permit. The property may not be sold less than 20 days after notice is given.
4. Ordinarily, the place of sale of real property should be within the county where the property is situated. However, if it is believed that a substantially higher price may be obtained, the district director may authorize the sale to be held outside such county. If the sale is to be held in another district, the district director should advise the director of the other district.

[5.10] 7.3.3 (07-26-2000)

#### Adjournment of Sale

1. Regulations provide that the PALS may adjourn the sale if an adjournment will best serve the interest of the United States. However, if the sale is adjourned for more than 30 days in the aggregate, a new notice of sale is required.
2. When a sale is to be adjourned for any purpose, the PALS should appear at the time and place originally established for the sale and make a public announcement of the adjournment and inform those present of the new date and time of sale.

[5.10] 7.3.4 (07-26-2000)

#### Offering of Property

1. Acquired property may be sold either by public auction or by sealed bids. The method used will depend upon the facts and circumstances surrounding the property, such as type of property, location, condition of property, etc. The method selected should be the one which is expected to produce the maximum amount for the property.
2. Acquired property may be sold, if divisible, in parcels or piecemeal, or



it may be combined with other acquired property and offered for sale. There are no restrictions relative to the grouping of the property for sale. It may be offered as separate items, as groups of items, in the aggregate, or both as separate items (or in groups) and in the aggregate. If the property is to be offered in groups, the groups should be segregated on the notice of sale.

[5.10] 7.3.5 (07-26-2000)

#### Notice of Sale

1. Regulations require that a notice of sale be given. If residential real property is being sold, the notice of sale should also contain a statement that the property is being sold on an open occupancy basis or nondiscriminatory basis. The notice of sale should be prepared as appropriate:
  - o Notice of Public Auction (for redeemed property), Exhibit 5.10.7-3, P-637
  - o Notice of Sealed Bid Sale (for redeemed property), Exhibit 5.10.7-4, P-1627
  - o Notice of Public Auction Sale, (other than redeemed property), Exhibit 5.10.7-5, P-339
  - o Notice of Sealed Bid Sale, (other than redeemed property), Exhibit 5.10.7-6, P-340
2. The notice of sale should be reproduced in a manner that will provide sufficient copies to satisfy the needs of the particular sale. The notice of sale will be published in a newspaper published or generally circulated within the county where the property is situated. If there is no newspaper published or circulated within the county, the notice will be posted at the post office nearest the place of sale and in at least two other public places. A copy of the notice of sale should also be retained by the PALS for submitting with the report of sale. A copy will be forwarded to the chief of the Special Procedures function.
3. Other methods of giving notice of sale and of advertising, such as radio or television spot announcements, posting on the Treasury Web Site (Internet), and trade journal advertising, may be used, in addition to those required by regulations, when it is believed that the nature of the property to be sold is such that wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property. In case of personal property, newspaper advertising may also be authorized. If commercial advertising is used, the procedure prescribed in IRM 5.10.4.12.1 should be followed.

[5.10] 7.4 (07-26-2000)

#### Release or Redemption of Real Property to Debtor

1. IRC 6337 provides that the owner of any real estate sold as provided in IRC 6335, or any person having interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of the property at any time within 180 days after the sale. Under the provisions of IRC 6337 real property, or a tract thereof, may be redeemed from the government upon payment of the bid-in price plus interest at the rate of 20 percent per annum. IRC 6337 is only applicable to property acquired by the United States under IRC 6335.
2. Under IRC 7506(d), if real property becomes the property of the United States as result of sale under IRC 6335, conveyance, or otherwise in payment of or as security for a debt arising under the laws relating to internal revenue, and the debt, together with interest at the rate of one percent per month, is paid within two years from the date of the acquisition, the property may be released by deed or otherwise conveyed to the debtor from whom it was taken, or to his/her heirs or other legal

representatives. This provision does not require the United States to hold the property for the two-year period, but merely provides that if the property is still held by the United States it may be released upon payment of the debt and interest, within two years from the date the property was acquired by the United States. Payments made within the 180 day redemption period will follow the provisions of (1) above.

3. IRM 5.10.6.8 contains the procedures to follow when the property is redeemed or released.

[5.10] 7.5 (07-26-2000)

#### Sale Procedures -- Public Auction Sale

1. The procedures for sale of acquired property are substantially the same as those used in sale of seized property. The most notable difference is that regulations under IRC 7505 and 7506 provide that the PALS conducting the sale has the right to reject any and all bids received and to withdraw the property from the sale. Thus, when it appears that the rejection of a bid, or all bids, will best serve the interest of the United States, the PALS may do so. However, the necessity of rejecting bids can usually be avoided by securing an agreement to bid (see IRM 5.10.7.3.1, Agreement to Bid) before offering the property for sale.

[5.10] 7.5.1 (07-26-2000)

#### Condition of Title and of Property

1. The procedures prescribed in IRM 5.10.5.5, Public Auction Sale are also applicable when acquired property is being sold.

[5.10] 7.5.2 (07-26-2000)

#### Auction Procedure

1. At the time and place set for the sale, the PALS should call the prospective bidders to order and read the authority for the sale and the conditions under which the property will be offered. The statement provided in Exhibit 5.10.7-7 should be used, but it may be altered as necessary to fit any conditions of a particular sale.
2. After reading the statement as to the terms and conditions of the sale, the PALS will open the bidding. If an agreement to bid has been secured and a deposit has been required, the property should be offered for sale at the amount of the offer. If a bid is not received equal to at least the amount of the offer, the sale should be adjourned and the property again offered for sale. At the conclusion of the bidding, the property will be declared sold to the highest acceptable bidder, unless it is determined that the best interest of the Government will be served by an adjournment of the sale, in which event the procedure provided in IRM 5.10.7.3, Adjournment of Sale, should be followed.
3. If the property is offered for sale by more than one method, the employee assisting in the sale will prepare a tabulation of the high bids received. Form 4425, Public Sale Bid Tabulation, may be used for this purpose. It is not necessary that a record be maintained of bids as they are tendered during the progression of the tentative high bids. The sale should be recessed at the conclusion of the bidding for a period long enough to tabulate the tentative high bids received. After completing a verification of this tabulation, the name of the successful bidder or bidders should be announced. The records pertaining to the tentative high bids received will be retained and submitted by the PALS with the report of the proceedings as stated in IRM 5.10.7.8, Report of Disposition -- Other Than Sale of Redeemed Property.
4. When property is offered for sale by more than one method, it may be desirable to secure payment from the tentative high bidders(s) pending the outcome of the bidding by the other method of sale. In these cases, the

procedures in IRM 5.10.5.10 should be followed.  
[5.10] 7.5.3 (07-26-2000)  
Sealed Bid Procedures

1. Regulations under IRC 7505 and 7506 provide that acquired property may be sold by sealed bids. If this method of sale is selected, the procedures prescribed in IRM 5.10.5.11, Sealed Bid Sale, will be followed except that:
  - o Form 2593, Sealed Bid for Purchase of Property Acquired by the United States, will be used in place of Form 2222;
  - o any references to seized property should be considered to be "property acquired by the United States;"
  - o any references to "minimum price" should be disregarded since such requirement is not applicable when selling property which has been acquired by the United States;
  - o any or all bids may be rejected at any time before declaring the property sold. See IRM 5.10.7.5, Sale Procedures, Public Auction Sale;
  - o the PALS conducting the sale will prepare a report on the proceedings in accordance with IRM 5.10.7.8, Report of Disposition -- Other Than Sale of Redeemed Property; and
  - o the return of a remittance to an unsuccessful bidder who had executed an agreement to bid, will be governed by the provisions relating to liquidating damages prescribed in IRM 5.10.7.5.5, Failure to Bid Agreed Amount and Default in Payment.
2. For property that was redeemed by the United States, the procedures prescribed in IRM 5.10.5.11, Sealed Bid Sale, will be followed except that:
  - o Form 2593-A, Sealed Bid for Purchase of Property Redeemed by the United States, will be used in place of Form 2222;
  - o any references to seized property should be considered to be "property redeemed by the United States;"
  - o any references to "minimum price" should be disregarded since such requirement is not applicable when selling property which has been redeemed by the United States;
  - o any or all bids may be rejected at any time before declaring the property sold. See IRM 5.10.7.5, Sale Procedures, Public Auction Sale;
  - o the PALS conducting the sale will prepare a report on the proceedings in accordance with IRM 5.10.7.7, Report of Disposition -- Redeemed Property; and
  - o the return of a remittance to an unsuccessful bidder who had executed an agreement to bid, will be governed by the provisions relating to liquidating damages prescribed in IRM 5.10.7.5.5, Failure to Bid Agreed Amount and Default in Payment.

[5.10] 7.5.4 (07-26-2000)  
Payment of Bid Price

1. Instructions in IRM 5.10.4.10.3, Terms of Payment are applicable.
2. A Form 809 receipt will not be issued to the purchaser upon full payment of the purchase price if personal property is sold. Instead, a Certificate of Sale will be issued. See IRM 5.10.7.5.7, Certificate of Sale -- Personal Property.
3. If deferment of the full purchase price is permitted, or if real property is sold and the payments are made by cash, the PALS will issue a Form 809 receipt for the cash payments. Parts 1, 2, and 3 of the Form 809 receipt should be marked in the upper right corner above the receipt number "Full (or partial, if applicable) Payment--Sale of Acquired Property." The

receipt should be completed except that no entries will be made in "Tax," "Penalty," "Interest," and TDA identification blocks. Part 2 should be given to the purchaser and Parts 1 and 3, stapled together in reverse order, should be submitted with the Daily Remittance Report as provided in IRM 5.10.7.8, Report of Disposition -- Other Than Sale of Redeemed Property.

[5.10] 7.5.5 (07-26-2000)

#### Failure to Bid Agreed Amount and Default in Payment

1. If a deposit is required with the agreement to bid and the depositor fails to bid the amount specified in the agreement and the property is not sold for as much as the agreed amount, the amount of the deposit (but not more than \$200) may be forfeited and retained by the Service as liquidated damages.
2. If payment in full is required upon acceptance of the bid and is not paid, or if deferred payment is permitted and is not paid within the prescribed period, the sale may be declared to be null and void and the property may again be advertised and sold as provided in these instructions. In this event, the new purchaser will receive the property or rights to property free and clear of any claim or right of the former defaulting purchaser. The amount paid upon the bid price (but not to exceed \$200) may be forfeited, i.e., retained by the United States as liquidated damages. District Counsel may be consulted, if necessary, to determine whether legal action is appropriate.
3. In case of forfeitures under either (1) or (2) above not related to property redeemed under IRC 7425, the PALS will prepare a memorandum in triplicate entitled "Forfeiture of Deposit Funds" and state thereon the:
  - o name of the depositor,
  - o amount forfeited, and
  - o reasons for the forfeiture.
4. The PALS will forward all copies of the memorandum through the manager and the chief of the Special Procedures function to Service Center Accounting Branch.
5. In case of forfeitures under (1) or (2) above related to property redeemed under IRC 7425, the PALS will report any default situation described in (1) or (2) above by memorandum, in quadruplicate, entitled "Default in Agreement to Bid" or "Default in Payment of Bid Price," as applicable. The memorandum will identify the redemption sale and will include the following information:
  - o name of the bidder or depositor,
  - o amount of the agreement to bid or sealed bid,
  - o amount of the deposit, or of remittance accompanying the bid,
  - o amount which must be returned to the revolving fund,
  - o amount received from the sale of the property, or date for rescheduled sale,
  - o actual cost of re-selling the property (if unknown, estimate), and
  - o nature of and reason for default.
6. All copies of the memorandum will be forwarded through the manager and the Chief, Special Procedures function, for distribution to the Chief, Collection function, regional Fiscal Management Branch and District Counsel. The fourth copy will be retained in SPf.
7. In order to minimize the chance of loss being incurred by the Service, the Chief, Collection function will, by memorandum, inform the regional Fiscal Management Branch, when any of the following situations occur:
  - o a bidder defaults in payment or fails to bid the agreed amount -- the memorandum will indicate what actions are planned for recovering the full amount advanced from the revolving fund,
  - o the full amount advanced from the revolving fund is recovered after a

default situation arises, through subsequent sale of the property, legal action against the defaulting bidder, etc.  
o all efforts to recover the fund advance have been exhausted and it is determined that the fund has suffered a loss which must be recovered administratively.

[5.10] 7.5.6 (07-26-2000)

#### Return of Amounts Deposited With Agreement to Bid

1. At the conclusion of the sale, remittances submitted in connection with unsuccessful sealed bids will be returned to the bidder unless the bidder defaulted in payment of the bid price.
2. In no event will any remittance received with an unsuccessful bid be deposited as internal revenue collections or in the deposit fund account, nor will unsuccessful bidders be required to submit an application for a refund. Remittances will be returned to unsuccessful bidders if they are present at the sale. Otherwise, the remittances will be returned by certified mail. In either case, the applicable items of the "Return of Remittance to Unsuccessful Bidder" section of the related Form 2593 or Form 2593-A should be completed.
3. SPf is responsible for returning deposits submitted with agreements to bid.

[5.10] 7.5.7 (07-26-2000)

#### Certificate of Sale -- Personal Property

1. As soon as possible after receipt of the full purchase price, the PALS conducting the sale will:
  - o issue in duplicate a Certificate of Sale of Personal Property in accordance with the specimen in Exhibit 5.10.7-8;
  - o furnish original certificate of sale to the purchaser;
  - o release the personal property to the purchaser, and
  - o retain duplicate certificate of sale for submission with report of sale as prescribed in IRM 5.10.7.8, Report of Disposition -- Other Than Sale of Redeemed Property.

[5.10] 7.5.8 (07-26-2000)

#### Deed to Real Property

1. Regulations under IRC 7506 provide that, upon payment in full of the purchase price, the district director will issue a deed to the purchaser.
2. The deed will be prepared in duplicate by the Special Procedures function and forwarded to District Counsel for approval in states with an attorney approval requirement. In states with no attorney approval requirement, SPf will prepare the deed for the district director's signature without referral to District Counsel. A standard format for such deeds can be pre-arranged with District Counsel. Once the deed is ready, SPf will:
  - o remove the original report of disposition from the suspense file,
  - o furnish the original deed to the purchaser,
  - o note on duplicate deed the date the original deed is executed and the date it is delivered to purchaser, and
  - o file the duplicate deed and original report of disposition in the related Record of Disposition of Seized Property case file.

[5.10] 7.5.9 (07-26-2000)

#### Expenses of Sale

1. For redeemed property, expenses of sale, including the cost of advertising, are to be deducted from the excess over the amount required to reimburse the revolving fund before application to the taxpayer's liability. However, if there is no sale, the taxpayer's account will not be debited.

[5.10] 7.6 (07-26-2000)

Post Sale Actions -- Acquired Property

1. Upon completion of the sale of acquired property, the PALS will forward a report to Special Procedures. The report will be prepared under the appropriate guidelines in the following sections:
  - o Report of Disposition -- Sale of Redeemed Property, IRM 5.10.7.7
  - o Report of Disposition -- Other than Sale of Redeemed Property, IRM 5.10.7.8
2. Upon receipt of the appropriate report, the Special Procedures function will:
  - o file a copy of the control in the case file;
  - o forward vouchers not previously submitted to the regional Fiscal Management Branch for payment;
  - o if real property involved, file the report of disposition in a suspense file pending receipt of the quitclaim deed;
  - o file the report of disposition and attachments in the related Record of Disposition of Seized Property case file if personal property involved; and
  - o forward to the Service Center Accounting function a copy of the "Report of Sale of Acquired Property" along with a copy of the memorandum posting document, "Sale of Acquired Property."

[5.10] 7.7 (07-26-2000)

Report of Disposition -- Sale of Redeemed Property

1. Upon completing the sale of redeemed property, the PALS will prepare three copies of a transmittal memorandum entitled "Proceeds from the Sale of Redeemed Property." The memorandum will contain the following:
  - o name and address of the taxpayer as shown on the Form 4376, Report of Investigation, submitted at the time redemption of the property was recommended,
  - o name and address of the purchaser,
  - o sale price,
  - o amount previously deposited with agreement to bid, if applicable, and
  - o identification of remittances accompanying the transmittal, including the amount submitted with the winning bid, if applicable, and the amount remitted to pay the balance of the purchase price.
2. Two copies of the memorandum and any accompanying remittances will be forwarded directly to the Special Procedures function (SPf). The PALS will retain the third copy of the memorandum for submission with the Report of Sale.
3. After the sale has been completed and all related vouchers for expenses have been received, the PALS will prepare a memorandum report in duplicate. Any vouchers for sale expenses should be attached to the duplicate report. The report will be entitled "Report of Sale of Redeemed Property" and will include:
  - o name and address of purchaser,
  - o sale price of property,
  - o expenses of sale shown by amount, names and addresses of payees and the services rendered,
  - o date of sale,
  - o place of sale,
  - o places and dates that notices of sale were published and/or posted, and
  - o a statement signed by the PALS conducting the sale and by the employee who assisted in the sale; the statement will certify the sale was conducted in accordance with IRC 7506 and regulations, and that the information reported is a true and correct record of the

sale proceedings.

4. Attachments to the original of the report will include:
  - o copy of the notice of sale,
  - o triplicate of the memorandum transmitting the sale proceeds,
  - o Forms 2593-A, Sealed Bid For Purchase of Property Redeemed by the United States, if applicable, and
  - o tabulation of bids.
5. The original and duplicate reports, together with all attachments, will be forwarded to the Special Procedures function (SPf).
6. Notify the taxpayer of the disposition of the credits to his/her account.

[5.10] 7.8 (07-26-2000)

#### Report of Disposition -- Other Than Sale of Redeemed Property

1. Upon completion of the sale of acquired property, other than redeemed property, the PALS will prepare a memorandum posting document in triplicate, identified as "Sale of Acquired Property."
2. If full payment is received, the posting document will include the following:
  - A. Name and address of taxpayer, and seizure serial number;
  - B. Name of purchaser;
  - C. Sale price;
  - D. Amount already on deposit in the deposit fund account which is to be applied to the sale price;
  - E. Amount of remittance and a statement as to how it should be applied (See IRC 7809 -- the taxpayer does not receive credit for any of the proceeds regardless of the amount involved, since the taxpayer's account was credited at the time property was acquired by the government);
  - F. If not previously submitted, the name and address of any person who made a deposit in connection with the property and a statement as to the disposition to be made of the deposit.
3. If the posting document is for an initial payment or part payments of a deferred sale, it should include only items b, e, and, if applicable, f in (2) above.
4. The PALS will enter on the Daily Remittance Report the name of the purchaser and "Proceeds from Sale of Acquired Property." The amount of the remittance will be entered in the "Amount Collected" column and the number of any Form 809 receipt issued in the "Receipt No." column. The PALS will submit the remittance, together with the original and duplicate memorandum posting document, on the Daily Remittance Report and retain the triplicate memorandum posting document for submission with "Report of Sale of Acquired Property" .
5. After the sale has been completed and all vouchers for expenses in connection with the sale have been received, the PALS will prepare a memorandum report. The report will be identified as "Report of Sale of Acquired Property" with the taxpayer name, TIN, and seizure number; and will include:
  - o name and address of purchaser
  - o sale price of property
  - o expenses of sale shown by amount, names and addresses of payees and the services rendered
  - o date of sale
  - o manner of sale
  - o place of sale
  - o places and dates that the notice of sale was published and/or posted, and
  - o a certification signed by the PALS conducting the sale and also the employee assisting in the sale that the sale was conducted in

accordance with IRC 7505 and 7506 (as applicable) and regulations, and that the information reported is a true and correct record of the sales proceedings.

6. In addition, a copy of the notice of sale, the triplicate of any memorandum posting document, Forms 2593 (if applicable), and the duplicate of any certificates of sale issued should be attached to the memorandum report. Any vouchers not previously submitted should be attached to the report. The report, together with attachments, will be forwarded to the Special Procedures function for appropriate review.

[5.10] 7.9 (07-26-2000)

#### Disposition of Acquired Securities

1. The method of disposing of acquired securities will depend upon the type of securities involved. Securities include stocks, bonds, notes or other similar interests. Securities are marketable (or negotiable) upon being properly assigned, or may even be marketable merely by delivery as in the case of the various coupon securities issued by the United States.
2. Acquired securities should be kept in the district director's safe or other similar place which is suitable for safekeeping. When transfer between offices is required, securities of the coupon (or bearer) type should be personally delivered or forwarded by registered mail since they are freely transferable by the person in possession. Registered mail should be used on other types of marketable (negotiable) securities.
3. For the purposes of these instructions, securities are classified in the following categories:
  - o "traded securities" -- stocks and debenture bonds which are listed on a stock exchange or are generally traded in the over-the-counter market, also unmatured United States securities (coupon type);
  - o "untraded stocks" -- those stocks which are not listed or generally traded, such as stock of closely held corporations; and
  - o "notes" -- ordinary commercial or private notes executed as evidences of debt.

[5.10] 7.9.1 (07-26-2000)

#### Traded Stocks and Bonds

1. A certificate of sale to the United States should be prepared in duplicate in accordance with Exhibit 5.10.7-9, P-342. A certificate should be prepared even though it is not required by the Code or regulations. The Certificate of Sale and the securities will be forwarded to the Chief of the Special Procedures function, who will prepare four copies of a transmittal letter following the form in Exhibit 5.10.7-10.
2. The Chief of Special Procedures function will send in one package, by registered mail or by special messenger to the Bureau of Public Debt:
  - o a transmittal letter indicating the Service's contact, phone number and appropriate Agency Location Code;
  - o the original and two copies of the transmittal letter;
  - o two certified copies of the Notice of Seizure (Form 2433);
  - o two certified copies of the notice of sale (Form 2434 or 2434A);
  - o the original certificate of sale (P-342); and
  - o the stock certificates.
3. The forms listed above must list the securities and have a visible seal.
  - o If registered mail send the package to: The Bureau of the Public Debt, Office of Public Debt Accounting  
Financial Accounting Branch Manager  
P.O. Box 1328  
Hintgen Building Room 114  
Parkersburg, VA 26106-1328
  - o If special messenger, send to: The Bureau of the Public Debt, Office



of Public Debt Accounting  
Financial Accounting Branch Manager  
Hintgen Building Room 114  
200 3rd Street  
Parkersburg, VA 26101-5312

4. SPf will retain a copy of the transmittal letter and duplicate Certificate of Sale with the related case file, and will forward a copy of the transmittal letter to the Service Center Accounting Branch.
5. The Bureau of Public Debt, Financial Accounting Branch will liquidate the securities in accordance with established Department of the Treasury procedures. Inquiries can be made at (304)480-5161.
6. Upon the sale, the Financial Accounting Branch will fax a copy of the liquidation letter to the IRS listing:
  - o the issuing company,
  - o number of shares sold,
  - o settlement date,
  - o net proceeds,
  - o account credited, and
  - o the IRS seizure number.
7. The proceeds of sale will be deposited for credit of the Service Center director for the IRS Location Code using the Fedwire Deposit System.
  - o The message field 'Orig. to Beneficiary' (6000) will show: BPD (seizure number),PROC AS NMF CALL , and the IRS contact and phone number;
  - o A deposit ticket, SF215C, will be generated from the Fedwire System via CASHLINK and forwarded to the service center on file for the Agency Location Code;
  - o The Service Center Accounting Branch will make necessary accounting entries to close the related Form 2436, Seized Property Sale Report; and
  - o The SF215C will be retained in the seizure case file.
8. The taxpayer should be notified of the disposition of the proceeds.

[5.10] 7.9.2 (07-26-2000)

#### Untraded Stocks

1. Efforts should be made to locate a prospective purchaser; the stock may be sold through regular sale procedures.
2. If the stock cannot be disposed of through sale, District Counsel should be consulted to determine whether any legal action, by the United States, as owner of the stock interest of the taxpayer, would be appropriate under the law.
3. Notify the taxpayer of the disposition.

[5.10] 7.9.3 (07-26-2000)

#### Acquired Notes

1. Acquired notes will be forwarded to the Special Procedures Staff for determination of the action that is appropriate. The Chief, Special Procedures Staff, will determine whether a sale is necessary or whether the provisions of the instrument are such that demand for payment can be made upon a person obligated thereunder within a reasonable time after acquisition. In making this determination, the District Counsel should be consulted if there is any question as to the legality of the instrument or of the proposed action.
2. If it is determined that demand for payment will be made, the Chief, Special Procedures Staff, will prepare a letter to the person obligated to make payment on the note informing him/her that the note was acquired by the United States through a sale under IRC 6335 and that further payments on the note are to be made to the United States Treasury.

3. If it is determined that the note should be offered for sale rather than demand for payment made from the person obligated, the Chief, Special Procedures Staff, will request the appropriate Area office to attempt to dispose of the note by public sale.
4. The taxpayer should be notified of the disposition of any proceeds.

Exhibit [5.10] 7-1 (07-26-2000)  
Pattern Letter P-338 Reference 5.10.7.3.1

Pattern Letter P-338

(Because of limited use, the National Office will not provide a form for this purpose.)

**AGREEMENT TO BID**

I, the undersigned, in consideration of the United States Government offering for public sale the property described below, agree to bid at least the amount of \$\_\_\_\_\_ for the property if offered for sale within 60 days from the date of this agreement.

(Description of Property)

\* I authorize the enclosed deposit of \$\_\_\_\_\_ to be applied against the sale price if I am the successful bidder.

\* I further understand and agree that if I do not bid at least the amount specified in this agreement and the property is not sold within the time specified above for at least such amount, my deposit, but not more than \$200, will be retained by the Internal Revenue Service as liquidated damages.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\*These paragraphs should be omitted if a deposit is not required.

Exhibit [5.10] 7-2 (07-26-2000)  
Collateral Deposit Record

Exhibit [5.10] 7-3 (07-26-2000)  
Pattern Letter P-637 Reference 5.10.7.3.5

Pattern Letter P-637

Department of the Treasury

Internal Revenue Service  
Washington, D.C. 20224

Date:

**NOTICE OF PUBLIC AUCTION SALE**

Date:\_\_\_\_\_

Under the authority of section 7506 of the Internal Revenue Code, the property described below will be sold at public sale. (If residential property, also insert "on an open occupancy basis." ) The United States redeemed this property under the provisions of [section 7425 of the Internal Revenue Code] [section 2410 Title 28, United States Code] on \_\_\_\_\_ (Date)

\_\_\_\_\_. The property was deeded to the United States on \_\_\_\_\_ Date) \_\_\_\_\_.  
The sale will be by public auction to be held on:  
DATE \_\_\_\_\_ TIME \_\_\_\_\_  
AT \_\_\_\_\_  
[Insert description of property]

You may inspect the property at: (street address, if any)

The opening bid for the property will be \$ \_\_\_\_\_.

The terms of payment will be: (If the payment is to be deferred, insert the following statement --A deposit equal to 20 percent of the highest bid on the property is required. When the highest bid is tentatively accepted, the highest bidder must deposit \$\_\_\_\_\_ (20 percent of the opening bid price) with the Property Appraisal and Liquidation Specialist conducting the sale. If this amount is less than 20 percent of the highest bid, the balance of the required 20 percent deposit must be paid no later than one banking day after the bid is accepted. The balance of the purchase price must be paid in full no later than \_\_\_\_\_ calendar days after the highest bid is accepted.) (If payment in cash is required, insert the following statement --When the highest bid is tentatively accepted, the highest bidder must deposit \$\_\_\_\_\_ (20 percent of the opening bid price) with the Property Appraisal and Liquidation Specialist conducting the sale. The balance of the purchase price must be paid no later than one banking day after the highest bid is accepted.)

Payment of all required deposits and the balance of the purchase price must be made by certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States. Payment may also be made by any United States postal, bank, express or telegraph money order.

If the highest bidder defaults in payment of the bid price, and the property is not sold for at least as much as the highest bid, the bidder's deposit will be kept as security until it is determined what damages the Government sustained because of the bidder's default. The deposit will be set off against the amount of the Government's damages. If the deposit is more than the amount of the damages, the balance of the deposit will be returned to the bidder. However, if the damages are more than the amount of the bidder's deposit, the bidder will be liable for the excess damages.

The Government reserves the right to reject any and all bids and to withdraw the property from the sale.

If you want additional information about the property and proposed sale, please contact the office at the address shown below.

(Insert office address and telephone number)

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit [5.10] 7-4 (07-26-2000)  
Letter 1627(P) Reference 5.10.7.3.5

-

#### NOTICE OF SEALED BID SALE

(date)\_\_\_\_\_

Under authority contained in section 7506 of the Internal Revenue Code, the property described below will be sold at a public sale.\* The United States acquired this property from \_\_\_\_\_ (insert name) \_\_\_\_\_ as a result of redemption under the provisions of section 7425 of the Internal Revenue Code, or Title 28, United States Code, section 2410, on \_\_\_\_\_ (date property was

redeemed) \_\_\_\_\_. Deed was executed to the United States on \_\_\_\_\_. The sealed bids will be opened on:

DATE \_\_\_\_\_ TIME \_\_\_\_\_

AT \_\_\_\_\_

Description of Property

You may inspect the property at: \_\_\_\_\_ (Street address, if any) \_\_\_\_\_

To submit a bid, complete Form 2593-A, Sealed Bid for Purchase of Property Redeemed by the United States, and give or send it to the person named at the end of this notice.

You must include with Form 2593-A a deposit equal to at least 20 percent of the amount bid. Payment of the balance of the purchase price should be made upon acceptance of the highest bid, but in no event more than 14 calendar days after acceptance.

If the highest bidder defaults in payment of the bid price, and the property is not sold for at least the amount of the highest bid, the bidder's deposit will be retained pending final determination of the damages the Government sustained because of the bidder's default. If damages exceed the amount of the deposit, the bidder will be liable for the excess damages.

The Government reserves the right to reject any and all bids and to withdraw the property from the sale.

You may obtain information about the property and proposed sale, and Form 2593-A, by contacting the office at the address shown below.

Address for information:

Telephone number:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*If residential property, also insert, "on an open occupancy basis."

Exhibit [5.10] 7-5 (07-26-2000)  
Pattern Letter P-339 Reference 5.10.7.3.5

-

Pattern Letter P-339

(Because of limited use, the National Office will not provide a form for this purpose.)

(District Director Letterhead)

#### NOTICE OF PUBLIC AUCTION SALE

Date: \_\_\_\_\_

Under authority contained in section (7505 or 7506) of the Internal Revenue Code, the property described below will be sold.<sup>1</sup> The United States acquired this property from (name of person) as a result of (describe how property was acquired, such as: distraint sale under provisions of section 6335 of the IRC) on (date of sale, \_\_\_\_\_).<sup>2</sup> The sale will be by public auction to be held on:

Date \_\_\_\_\_ Time \_\_\_\_\_

At \_\_\_\_\_

Description of Property

You may inspect the property at: (street address if any)

The terms of payment will be: \_\_\_\_\_

\_\_\_\_\_

In case of default in payment of bid price, the amount of any required deposit or payments, but not more than \$200, may be retained as liquidated damages.

The Government reserves the right to reject any and all bids and to withdraw the property from the sale.

Address for information about the sale:

Telephone number:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

1 If residential property, also insert, "on an open occupancy basis."

2 If real property is offered for sale, also show, "Deed executed to the United States on \_\_\_\_\_."

Exhibit [5.10] 7-6 (07-26-2000)  
Pattern Letter P-340 Reference 5.10.7.3.5

Pattern Letter P-340

(Because of limited use, the National Office will not provide a form for this purpose.)

(District Director Letterhead)

#### NOTICE OF SEALED BID SALE

Date: \_\_\_\_\_

Under authority contained in section (7505 or 7506) of the Internal Revenue Code, the property described below will be sold at a public sale.<sup>1</sup> The United States acquired the property from (name of taxpayer) as a result of (describe how property was acquired, such as: distraint sale under provisions of section 6335 of the IRC) on (date of sale, \_\_\_\_\_).<sup>2</sup>

The sealed bids will be opened on:

Date \_\_\_\_\_

Time \_\_\_\_\_

At \_\_\_\_\_

#### Description of Property

To submit a bid, complete Form 2593, Sealed Bid for Purchase of Property Acquired by the United States, and give or send it to the person named at the end of this notice.

If the bid is \$200 or less, include a payment equal to the amount of the bid. If the bid exceeds \$200, include payment of 20 percent of the full amount or \$200, whichever is greater. The terms of payment of the balance of the purchase price are If the highest bidder defaults in payment of the bid price, the amount of any required deposit or payments, but not more than \$200, may be retained as liquidated damages.

The Government reserves the right to reject any and all bids and to withdraw the property from the sale.

You may obtain information about the property and proposed sale, and Form 2593, by contacting the office at the address shown below.

Address for information about the sale:

Telephone number:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

1 If residential property, also insert, "on an open occupancy basis."

2 If real property is offered for sale, also show, "Deed executed to the United States on (Date)."

Exhibit [5.10] 7-7 (07-26-2000)

Opening Statement for Auction Sale Reference 5.10.7.5.2

-

#### Opening Statement for Auction Sale--Acquired Property

Pursuant to authority contained in Section (7505 or 7506) of the Internal Revenue Code and the regulations thereunder, I hereby offer all right, title and interest of the United States in and to the property described hereafter. The property is offered subject to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid. Upon request, the Internal Revenue Service furnishes information regarding possible encumbrances which may be useful in determining the value of the interest being sold. Anyone who has not received such information is advised that other bidders present may have obtained it.

The property will be sold "as is" and "where is" and without recourse against the United States. The Government makes no guaranty or warranty, express or implied, as to the validity of the title, quality, quantity, weight, size, or condition of the property, or its fitness for any use or purpose. No claim will be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to conform with any representation, express or implied. Notice of sale has been given in accordance with requirements of law. The notice of sale specifies that the property to be sold as follows: (the Property Appraisal and Liquidation Specialist should then read the description of the property directly from the notice of sale).

The property is offered for sale (insert method announced in notice of sale).

The property will be sold to the highest acceptable bidder and the sale will be final upon acceptance of such bid. However, the United States reserves the right to reject any and all bids and withdraw the property from the sale. (If liquidated damages are to be claimed insert a statement to that effect.) The terms of the sale are (insert terms of payment from notice of sale).

Payment must be made by cash, certified check, cashier's or treasurer's check or by a United States postal, bank, express, or telegraph money order. All checks or money orders should be made payable to the "United States Treasury."

(If personal property state) A certificate of sale of personal property

will be delivered to the successful bidders as soon as possible after payment in full of the purchase price.

(If real property state) A quitclaim deed will be issued to the successful bidders by the District Director as soon as possible after payment in full of the purchase price.

Exhibit [5.10] 7-8 (07-26-2000)  
Pattern Letter P-341 Reference 5.10.7.5.7

Pattern Letter P-341

(District Director Letterhead)

CERTIFICATE OF SALE OF PERSONAL PROPERTY

(Acquired by United States Under Internal Revenue Laws)

Date \_\_\_\_\_

I hereby certify that I sold at public sale on \_\_\_\_\_ held at \_\_\_\_\_ in the county of \_\_\_\_\_ the personal property described below, which was acquired by the United States on \_\_\_\_\_, from

\_\_\_\_\_ as a result of a sale made in accordance with section 6335 of the Internal Revenue Code and regulations thereunder.

Description of Property Sold

The personal property was sold to \_\_\_\_\_ of \_\_\_\_\_ for \$ \_\_\_\_\_, the highest acceptable bid received, the receipt of which is hereby acknowledged.

The sale was conducted in accordance with the provisions of Section 7505 of the Internal Revenue Code and the regulations thereunder.

This certificate transfers to \_\_\_\_\_ all right, title, and interest of the United States in and to the property sold.

\_\_\_\_\_

Signature \_\_\_\_\_

Name and Address \_\_\_\_\_

Exhibit [5.10] 7-9 (07-26-2000)  
Pattern Letter P-342 Reference 5.10.7.9.1

Pattern Letter P-342

(Because of limited use, the National Office will not provide a form for this purpose.)

(District Director Letterhead)

CERTIFICATE OF SALE OF SEIZED PROPERTY

Date \_\_\_\_\_

I hereby certify that I sold at public sale on \_\_\_\_\_ held at \_\_\_\_\_ in the county of \_\_\_\_\_ the securities described below seized for nonpayment of delinquent internal revenue taxes due from \_\_\_\_\_.

Description of Securities

These securities were declared purchased for the United States of America for \$ \_\_\_\_\_, the highest bid received.

The sale was conducted in accordance with the provisions of Subchapter D, Chapter 64 of the Internal Revenue Code and the regulations thereunder.

This certificate transfers to the United States of America all right, title, and interest of the said \_\_\_\_\_ in and to the property sold.

\_\_\_\_\_  
\_\_\_\_\_

Signature\_\_\_\_\_

Name and

Title\_\_\_\_\_

Address\_\_\_\_\_

Exhibit [5.10] 7-10 (07-26-2000)  
Pattern Letter P-343 Reference 5.10.7.9.1

-

Pattern Letter P-343

Fiscal Assistant Secretary  
Department of the Treasury  
15th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

(Salutation)

The security identified below was levied upon and offered for sale to pay Federal tax of \$ (amount) due from (taxpayer's name, address, and Form 2433 serial number).

Kind of Security	Issuing Company	Number of Shares	Serial Number	Issue Date
------------------	-----------------	------------------	---------------	------------

The levy and sale were made under sections 6331 and 6335 of the Internal Revenue Code and related regulations, and the security was declared purchased for the United States under section 6335(e) of the Code.

As required by the Treasury Department, we are now presenting the certificate for sale. The proceeds of the sale should be deposited as internal revenue receipts for credit to the IRS Service Center Director's account. Upon the sale, please fax a copy of the liquidation letter listing:2

- [bullet image] issuing company
- [bullet image] number of shares sold
- [bullet image] settlement date
- [bullet image] net proceeds
- [bullet image] account credited, and
- [bullet image] IRS seizure number

An addressed envelope is enclosed for your convenience. The copy of this letter is for your records.

Thank you for your cooperation.

Sincerely yours,



(Signature)

District Director

Enclosures:

Envelope

2 copies of this letter

Certificate of Sale

2 copies of Notice of Sale (certified)

2 copies of Notice of Seizure (certified)

P-343 (Rev. 1-78)

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Internal Revenue Hndbk. 5.10 Chap. 7 Acquired (07-26-2000)  
Manual Property and Property  
Redeemed by the United States

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