



## Part 5. Collecting Process

### Chapter 10. Seizure and Sale

#### Section 1. Pre-Seizure Considerations

##### 5.10.1 Pre-Seizure Considerations

- 5.10.1.1 [Overview](#)
- 5.10.1.2 [List of Prohibited Seizures](#)
- 5.10.1.3 [Actions Required Prior to Seizure by IRC 6331\(i\)](#)
- 5.10.1.4 [Perishable Goods Criteria, Definitions, and Examples](#)
- 5.10.1.5 [Perishable Goods Pre-Seizure Development](#)
- 5.10.1.6 ["Will Pay", "Can't Pay", and "Won't Pay" Factors](#)
- 5.10.1.7 [Pre-Seizure Taxpayer Notifications](#)
- 5.10.1.8 [Pre-Seizure Activity for Courtesy Seizures](#)
- 5.10.1.9 [Jeopardy Assessments and Seizures](#)
- 5.10.1.10 [Mutual Collection Assistance Requests \(MCARs\)](#)
- 5.10.1.11 [Seizure and Sale Procedures in U.S. Territories](#)
- Exhibit 5.10.1-1 [Form 2434-B and Instructions Reference: 5.10.1.3.3\(12\)](#)
- Exhibit 5.10.1-2 [Landlord Agreement Reference: 5.10.1.3.3.1\(7\)](#)
- Exhibit 5.10.1-3 [Perishable Goods Criteria and Sale Plan Template, Reference IRM 5.10.1.5\(4\)](#)
- Exhibit 5.10.1-4 [CASE SCENARIO #1 Reference: 5.10.1.6\(4\)](#)
- Exhibit 5.10.1-5 [CASE SCENARIO #2 Reference: 5.10.1.6\(4\)](#)

##### Manual Transmittal

August 04, 2014

##### Purpose

(1) This transmits a revision to IRM 5.10.1, Pre-Seizure Considerations, in IRM 5.10, Seizure and Sale.

##### Material Changes

- (1) An overview of the section is added.
- (2) IRM 5.10.1.1 is amended to provide a reference to Policy Statement P-5-40.
- (3) IRM 5.10.1.3.2 is revised to amend the risk analysis. "Future Financial Condition" is clarified, "Interest in Assets" is removed, and "Potential Sensitivity" is added.
- (4) A note is added to IRM 5.10.1.3.3.2 to provide a cross-reference to IRM 5.11.1.
- (5) The note in IRM 5.10.1.3.2(2) is deleted as redundant.
- (6) IRM 5.10.1.3.3(5) is revised to reflect a change in procurement systems.
- (7) The timeframe for a timely records check prior to seizure in IRM 5.10.1.3.3(12) is expanded to 90 days.
- (8) IRM 5.10.1.3.3.1(2) is added to clarify that Revenue Officers should consider all expenses in the equity determination, including those that will arise between seizure and sale.
- (9) IRM 5.10.1.3.3.3 is revised to clarify that 1) the exemption for wearing apparel and school books is not adjusted for inflation and 2) motor vehicles are not generally considered a tool of trade for exemption purposes.
- (10) Language is added to IRM 5.10.1.3.3.6(2) to clarify that there is more than one method available to estimate the value of a leasehold interest.
- (11) Language is added to IRM 5.10.1.7 that provides instructions for determining whether a final notice was sent.
- (12) A note is added to IRM 5.10.1.8 to clarify that ATAT ROs are deemed to be located in the same territory as co-located general program ROs when using the procedures in 5.10.1.8.
- (13) IRM 5.10.1.10 is revised to provide IRM references for Mutual Collection Assistance Requests (MCAR).
- (14) IRM 5.10.1.11(2) is revised to designate the PALS Territory manager as the contact point for assignment of PALS when the taxpayer is outside the U.S.
- (15) IRM 5.10.1.11(5) is added to provide contact information for questions regarding collection issues in U.S. Territories.
- (16) Usage and grammar changes have been made throughout the section.

##### Effect on Other Documents

This material supersedes IRM 5.10.1 dated July 3, 2009.

##### Audience

Small Business/Self-Employed Compliance Employees

##### Effective Date

(08-04-2014)

Rocco A. Steco

### 5.10.1.1 (08-04-2014)

#### Overview

1. This section provides guidance to Revenue Officers in determining the feasibility of seizing assets for sale to collect tax liabilities.
2. 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 must be based on the individual facts and circumstances of each case, and the revenue officer must follow all legal and procedural guidelines. If the facts of the case indicate seizure would be the next appropriate step, the revenue officer should begin the seizure process.
3. In order to ensure that enforcement action is used as an appropriate case action, collection employees should be familiar with the following policy statements (IRM 1.2.14, *Policies of the Internal Revenue Service*) related to seizure action:
  - P-5-1 Enforcement is a necessary component of a voluntary assessment system
  - P-5-28 Successive seizures — Timing to avoid undue hardship
  - 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
  - P-5-35 Establishment of a minimum price in distraint sales
  - P-5-38 Seizure of assets located on private premises
  - P-5-40 Welfare of livestock and domestic animals to be considered before or during course of seizure
4. Revenue Officers have the authority to seize assets and Property Appraisal and Liquidation Specialists (PALS) have the authority to sell assets. Coordination between the revenue officer and PALS is essential before, during, and after the seizure. The revenue officer will make the seizure and take all seizure actions up through inventory and securing of the property. The revenue officer and the PALS may work together to complete the inventory after the seizure has been conducted. As soon as possible after the inventory, transfer custody of the property to the PALS, who will generally be responsible for all further sale related actions. The revenue officer will retain responsibility for final case resolution.

### 5.10.1.2 (08-04-2014)

#### List of Prohibited Seizures

1. The Internal Revenue Code (IRC) prohibits seizure under the following circumstances:
  - Taxpayer has insufficient equity in the property - there must be sufficient net proceeds from the sale to provide funds to apply to the taxpayer's unpaid tax liabilities
  - An Installment Agreement (IA) a) is pending, b) was rejected fewer than 30 days prior, or c) an appeal was filed within that 30 day period
  - An IA is in effect, or if terminated, 30 days after termination and during pendency of any appeal filed within that 30 day period
  - There is a pending Offer in Compromise (OIC), plus 30 days after rejection and during pendency of an appeal filed within that 30 day period

#### Note:

Employees should be familiar with the prohibition against seizure action on certain OIC or IA accounts, but should also be familiar with the applicable procedures for *Offers Submitted Solely to Delay Collection per Forms 657*, (IRM 5.8.3.13.1) and *Installment Agreement Requests Made to Delay Collection Action*, (IRM 5.14.3.2).

- On the day the taxpayer has to appear in response to a summons
  - When employment taxes or employment tax-based trust fund recovery penalty assessments are also the subject of refund suits by the person whose property is to be seized (unless jeopardy exists or the taxpayer waives suspension of collection in writing)
  - When seizure would require communications with the taxpayer outside of the hours of 8 A.M. to 9 P.M. (unless the employee knows that such communications would not be inconvenient to the taxpayer)
  - When the taxpayer is in bankruptcy and the Automatic Stay is in effect (Bankruptcy Code Section 362)
  - When the taxpayer would receive less than the exempt amounts to which they are entitled
  - When the taxpayer uses the property as a residence, 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
  - When levy action is prohibited by the IRC, including seizures before Collection Due Process (CDP) notices are issued or while CDP hearings and appeals are pending (unless there is jeopardy), seizures while innocent spouse claims are pending, and seizures of principal residences without court approval
2. Prior to conducting a seizure, the revenue officer must review the list of prohibited seizures to ensure the case does not meet any of these conditions. The case history should be documented to reflect that the revenue officer reviewed the list of prohibited seizures and that no prohibition against seizure exists.

### 5.10.1.3 (08-04-2014)

#### Actions Required Prior to Seizure by IRC 6331(j)

1. IRC 6331(j) describes specific actions that must be completed before the seizure of a taxpayer's assets:
  - A. Verify the liability
  - B. Thoroughly consider alternative collection methods
  - C. Analyze available information to determine whether the fair market value of the assets to be seized exceed the amount of expenses anticipated
  - D. Verify that the equity is sufficient to yield net proceeds from the sale

### 5.10.1.3.1 (08-04-2014)

#### 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, explain the assessment and address any concerns. The revenue officer should:
  - Research IDRS
  - Review information from the taxpayer

- Resolve any open items

**Note:**

In many cases, the verification of the liability will take place during the initial contact with the taxpayer or during follow-up contacts with the taxpayer.

2. If the taxpayer claims the assessment is incorrect or has additional information that could change the balance due, thoroughly investigate the taxpayer's claims and resolve the issue prior to enforcement action. Document the case history 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. Sources that can be reviewed to verify the liability include:
  - NMF/MF transactions
  - Pending transactions or adjustments
  - Litigation
  - Copies of cancelled checks
  - Innocent spouse claims
  - Abatement requests or amended returns
  - IDRS history items
  - Correspondence from the taxpayer
4. If the issues raised by the taxpayer were already addressed under some other administrative or judicial proceeding (e.g., Collection Appeals Program (CAP), Taxpayer Advocate Services (TAS), audit reconsideration), further verification is not required and the taxpayer should be advised that the issue was previously 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.
6. Document the case history with the steps taken to verify the liability.

**5.10.1.3.2 (08-04-2014)**

**Alternative Methods of Collection**

1. The Service is required to **consider** alternative methods of collection prior to seizure. Some of the alternative methods of collection that can be considered include:
  - Installment agreements
  - Offers in Compromise
  - Posting of bond by the taxpayer
  - Levy (Form 668-A or 668-W)
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 5.14.9, *Routine and Manually Monitored Installment Agreement Dispositions, Independent Review and Appeals*, for appeals procedures. No enforcement action (except jeopardy action) may be taken while the taxpayer is pursuing an appeal.
3. To assist in the consideration of alternative collection methods, complete a risk analysis. In the analysis, compare the advantages and disadvantages of the alternative method of collection to the proposed seizure action. If the alternative method of collection would put the government at greater risk of failure to recover the liability, it may not be acceptable. Consider the following issues as part of the risk analysis:
  - Past compliance history — is there a history of non-compliance?
  - Current compliance — is the taxpayer current and has the cause of past non-compliance been corrected?
  - Current financial condition — can the taxpayer meet current obligations, including FTD's?
  - Future financial condition — is the taxpayer willing and able to change financial practices to resolve the liability and avoid future delinquencies?
  - Collection statute — does the alternative provide for payment within the collection statute?
  - Impact — what impact will the seizure have on third parties?
  - Yield — will an alternative collection method potentially yield more than the seizure and sale?
  - Potential sensitivity - are there factors that present potential conflicts with IRS policy (e.g., aged or terminally ill taxpayers, charitable organization)?
4. Either the case history or a fact sheet submitted with the approval request must document the alternative methods that were considered, why the alternatives were not acceptable, and the results of the risk analysis.
5. For more information on pre-levy considerations, see IRM 5.11.1, *Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions*.

**5.10.1.3.3 (08-04-2014)**

**Equity Determination**

1. To determine if there will be net proceeds available to apply to the liability, the revenue officer must complete and document an equity determination (IRM 5.10.1.3.3.1(12), *Equity Determination - Expenses of Sale*) prior to recommending seizure.

**Note:**

There is no minimum amount that is required to be applied to the liability. In situations where there is a minimal amount of expected net proceeds, it is extremely important for the revenue officer and PALS to discuss the fair market value, logistical issues, and timing of the seizure so that expenses can be controlled to ensure that proceeds are realized for application to the liability.

2. The first step is to determine the fair market value (FMV) of the property. The revenue officer must document how the FMV of the asset was determined. The FMV should reflect the condition of the property at the time the seizure is being considered. Document the condition of the asset in the case history. The FMV can be influenced by market conditions, age and condition of the asset, zoning requirements, technology, demand, fitness for use, and other factors. Whenever possible, the revenue officer should attempt to personally view the assets to determine the FMV. If the taxpayer is uncooperative access internal and/or external sources to determine the FMV. Some of these sources are:

- Used vehicle guides
- Assessment office
- Property appraisals
- Comparable sales
- Financing statements
- Tax returns
- Contact with businesses or dealers that are familiar with the particular type of asset
- Personal observation
- Area realtors
- Trade Publications
- Banks
- Collection Information Statement
- Daily stock quotations
- Valuation Engineers
- Property Appraisal and Liquidation Specialist (PALS)

**Note:**

If the property consists of assets where an accurate FMV is not readily determined, contact the PALS to discuss valuation methods or to request that the PALS appraise the property.

3. Contact the PALS to discuss FMV, moving and storage issues and the estimated expenses in order to accurately estimate the net proceeds of the sale. In certain situations, the PALS may need to view the assets with the revenue officer. Examples of such instances include:

- It appears there is marginal equity
- The asset is unique or unusual
- There is a large volume of personal property involved
- Logistical and expense factors are a major consideration

When possible, the PALS and the revenue officer should agree on the FMV prior to the seizure. A discussion between the revenue officer and PALS must be held and documented in the case history within 60 days of routing the seizure approval request.

4. In addition to determining the FMV of the asset(s), conduct a complete public records search to verify ownership and identify all recorded encumbrances against and interests in the property including:

- Joint owners
- Senior lienholders
- Junior lienholders
- Nominee/Alter Ego situations
- Transferees
- Intervening lienholders

**Reminder:**

Researching only a computer based record service, such as Accurint, is not an adequate records check when seizure is being considered since it may not accurately reflect the current status of the taxpayer's interest in the property or encumbrances against the property.

**Caution:**

Be alert to local law provisions that determine the location for filing security interests against the personal property of corporations. The general rule is that the security interest is filed in the state of the debtor's incorporation.

5. At local management option, commercial firms may be contracted to provide title search and encumbrance information reports. The delegation authority to approve the use of commercial title searches is contained in Delegation Order SBSE - 5.6. If the title search is requested in anticipation of a seizure, the cost **may only be charged to the balance due account as an expense of seizure and sale if the property is seized**. A revenue officer or other Service employee will normally complete the records search. Securing a commercial title report prior to seizure should be limited to those cases involving clouded title or complex lien issues identified in the employee's search of public records. If public records cannot be checked prior to seizure because of a jeopardy situation, complete this action as soon as possible after the seizure and document the results in the history. Payments for revenue officer commercial title searches must be made through the Integrated Procurement System (IPS). Document the case history with the facts that led to the determination that a jeopardy situation existed. See IRM 5.11.3, *Jeopardy Levy Without a Jeopardy Assessment*, for information on jeopardy situations.

**Note:**

A commercial title report is required on all cases requiring judicial approval for seizure of a principal residence.

6. A Notice of Federal Tax Lien (NFTL) must be filed on all open periods and assessments included on Form 668-B, *Levy*, prior to seizure. NFTLs must be filed even if the modules do not meet the general NFTL filing requirements in IRM 5.12.2, *Notice of Lien Determinations*. This is not a statutory requirement; however, to maintain priority against other parties, it is IRS policy to file the NFTL on all modules before property is seized.

7. Ensure that the NFTL is recorded with the appropriate local office prior to 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 Due Process Appeal rights for the first NFTL filed for each tax period. Due Process rights for NFTLs do not necessarily suspend other collection activity. See IRM 5.1.9.3, *Collection Due Process*, for appeal procedures.
8. The priority of the federal tax lien must be determined in relation to other creditors. See IRM 5.17.2.6, *Priority of Tax Liens: Specially Protected Competing Interests*, and IRM 5.12.2, *Notice of Lien Determinations*, for information on the priority of the tax lien.
9. The revenue officer should contact all senior and intervening lienholders in order to determine the balance remaining on each encumbrance. Form 14071, *Request for Information from Lien Holder*, or a similar letter, may be used for this purpose. Follow the requirements for third party contacts for these requests.

**Note:**

Ensure that the relationship between the NFTLs and any intervening lienholders is accurately analyzed.

10. For the Tenth Circuit states of Kansas, Oklahoma, Wyoming, Utah, Colorado, and New Mexico, pursuant to *Neece v. I.R.S.*, 922 F.2d 573 (10th Cir. 1990), a summons must be used instead of Form 14071 when any of the following situations exist:
  - The financial institution is located in the Tenth Circuit
  - The taxpayer resides in the Tenth Circuit
  - The Internal Revenue Service office is located in the Tenth Circuit
11. 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, prepare Form 2434–B listing only the NFTL information.

**Reminder:**

The **complete** name and address of all encumbrances and interests of record must be shown on Form 2434–B.

12. The records check must be updated no more than 90 days prior to submitting the seizure to the group manager for approval.

**Reminder:**

After the seizure has been conducted and before the sale occurs, a current records check must be completed and Form 2434-B must be updated if the most recent records check is more than 90 days prior to the sale date (IRM 5.10.4.12.1, *Notice of Sale - Date and Place of Sale*).

**5.10.1.3.3.1 (08-04-2014)**

**Equity Determination — Expenses of Sale**

1. After the fair market value and encumbrances have been verified and documented, determine the estimated expenses of sale. Most seizures will require the expenditure of funds. The revenue officer and the PALS should coordinate to manage these costs in order to maximize the proceeds of sale. Do not include travel related expenses of the revenue officer or the PALS as an expense of the seizure. Expenses that should be considered include:
  - Towing fees
  - Storage costs
  - Transportation costs
  - Locksmith fees
  - Advertising costs
  - Auctioneer services
  - Appraisal fees
  - Title search expenses
  - Other miscellaneous expenses

**Reminder:**

Payments to senior encumbrances are not an expense of sale since the property is sold subject to the prior encumbrances.

2. When calculating expenses, consider **all** expenses expected between seizure and sale, not just the expenses of seizure. Though the exact amount of storage and advertising expense may not be available, make an estimate with the assistance of the PALS to ensure payment authorizations are not exceeded.
3. In most cases, the PALS will take custody of the property immediately after the seizure is made, and expenses that arise after the seizure will be addressed by the PALS. Coordination with the PALS during the planning stage is extremely important. Always discuss the potential expenses that may be incurred. In some cases, the PALS may be able to secure a service for less than the revenue officer. In other cases, the revenue officer may be more familiar with local vendors. The PALS will know how long it will take before a sale can be scheduled, so timing of the seizure to reduce the number of storage days should be discussed. Transfer custody of the property to the PALS as soon as possible after the seizure.
4. Plan for any problems which may arise in connection with the storage and protection of property. Document all actions taken to protect seized property in the case history.
5. Movable property can usually be best protected at a different location. Whenever possible, government storage facilities in the area should be used; otherwise property should be stored in secure commercial space. If storage, towing, transportation, or other similar charges are expected, the revenue officer, with input provided by the PALS, should determine the expected costs prior to seizure. The PALS should determine whether to move the property themselves or retain the services of a commercial shipper or mover based on the particular circumstances of the case, including:
  - Nature of the property — value, location, size, weight, ease of transport
  - Amount of property involved
  - Cost of moving the property
  - Availability of the PALS and assisting employees
6. The use of an armed escort or bonded courier should be considered if the property is of significant value, such as jewelry or gold/silver, and a commercial shipper is not being used to transport the property.

**Caution:**

Vehicles may **not** be driven to the storage location by anyone, including the taxpayer, **after** they are seized. The exception to this would be vendors hired to move the vehicles/equipment. If necessary, consult the PALS manager regarding transportation and security of the seized assets. The PALS manager must approve the use of an armed escort or bonded courier, as well as the personal transportation of seized assets.

7. Property such as expensive jewelry or stock certificates is usually best stored in an IRS office. It should be protected in accordance with the nature and value of the property, as described in IRM 10.2.15, *Minimum Protection Standards (MPS)*. Storing such items in a safe in a local office will generally provide sufficient protection.
8. When the property consists of heavy machinery, large inventories or numerous business assets that are not easily transported, the revenue officer should attempt to make arrangements for storage of the property on the premises. Unless the real estate where the property is located or the leasehold interest is seized in conjunction with the personal property, neither replacing the locks or placing warning tags on the premises is appropriate. See IRM 5.10.1.3.3.6., *Equity Determination - Leasehold Interests*. If the premises are leased, attempt to secure a copy of the lease and determine its status prior to seizure. If necessary, contact Counsel to determine the "rightful occupant." The rightful occupant has the authority to enter into an agreement with the Service to authorize replacing the locks on doors to the premises. If the seized property will be stored onsite, ensure IRS will retain exclusive access to the premises. The history must be documented as to the identity of the rightful occupant and any authorization of storage or permission to change the locks. The file must contain a written agreement or consent. See Exhibit 5.10.1-2, *Landlord Agreement*. Document an estimate of the cost to move and store the seized property in the ICS history if arrangements cannot be made to store the property at the seizure site.
9. If the taxpayer has not made rent or lease payments for the time the property will be stored, then a reasonable charge for storage should be arranged. Include only the number of days of actual occupancy by the Service. In certain situations, IRS may be required to pay rent due to the nature of state law and/or the terms of the rental agreement (see IRM 5.17.3.6.5.1, *Expenses of Sale*). Consult Advisory when there is doubt as to whether IRS is obligated to pay rent. IRM Exhibit 5.10.1-2 provides an example of a landlord agreement. A landlord agreement may be signed by the territory manager, area director, or PALS group manager.
10. Changing locks is not appropriate in the seizure of personal residences and rental real property where the tenant is not the taxpayer, as the right of possession in this case remains with the owner of the personal residence or tenant occupant for rental property.
11. If there are indications that the taxpayer or third parties may resist the sale of seized property, additional security may be necessary to prevent vandalism. If private security guards or local police services are necessary, the revenue officer should determine these costs as well.
12. Generally, there is no authority for the United States to purchase insurance coverage for seized property. However, if unusual circumstances apply and such insurance is necessary, promptly submit a detailed request to the area director. Insurance coverage will be acquired only by an authorized contracting officer through the Facilities Management function.
13. The revenue officer will determine and document in the case history or a fact sheet the estimated minimum net sale proceeds. The estimate should be prepared after considering input from the PALS regarding both the FMV and the estimated expenses of sale. If the reduced forced sale value less senior encumbrances and estimated expenses is positive, then there are estimated net sale proceeds to apply to the liability. If not, the revenue officer cannot recommend seizure. Either the case history or a fact sheet submitted with the approval request must reflect:
  - Records that were checked
  - Results of the research and FMV
  - Sixty percent (60 %) or more as the reduced forced sale value (RFSV) calculation
  - Encumbrances that were located and the balances due
  - Estimated expenses of sale
  - Estimated minimum net sale proceeds

Following is an example of the documentation of estimated minimum net sale proceeds:

Fair Market Value: \$100,000

Reduced Forced Sale Value (60 % or higher of FMV) \$ 60,000

Less: Senior encumbrances \$ 1,500

Less: Expenses: \$ 1,000

Equals estimated minimum net sale proceeds: \$ 57,500

FMV was determined by county appraisal records, discussions with real estate professionals, and personal observation. Form 2434-B completed and shows real estate taxes are the only senior encumbrance. The PALS estimated expenses at \$1,000 for advertising.

14. The revenue officer and PALS will agree when the revenue officer uses a figure higher than 60 % of FMV in the determination of estimated net sale proceeds.

**Note:**

If there are intervening claims that will be paid out of the sale proceeds, this will reduce the amount available to apply to the liability. Document the details of this situation in the estimated net sale proceeds analysis.

15. After approval of the seizure has been secured, follow the procedures in IRM 5.10.2.22, *Contracting for Services*, as required.

**5.10.1.3.3.2 (08-04-2014)**

**Expenses of Sale — Disclosure Issues**

1. Disclosure issues may arise during the pre-seizure process, particularly when contacting vendors for services. Disclosure for investigative purposes is permissible under IRC 6103(k)(6) and for contracting for services under IRC 6103(n). These contacts are still subject to third party reporting requirements.
2. IRC 6103(k)(6) allows the revenue officer to "disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected..." See IRM 11.3.21, *Investigative Disclosure*, for additional guidance. Examples of this type of disclosure include contacts with:
  - Real estate professionals to secure appraisal information

- 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 other services, for purposes of tax administration." See IRM 11.3.24, *Disclosures to Contractors*, for additional guidance in this context. Examples include contacts with:
- Vendors to determine availability and costs for locksmiths, towing, storage, etc.
  - Landlords to determine lease information and storage of assets

#### 5.10.1.3.3.3 (08-04-2014)

##### 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. These exemptions do not apply to partnerships or corporations. Revenue officers must document the case history as to how the exempt property value was determined.
2. The following exemptions, which will be indexed annually for inflation, apply to individual taxpayers for calendar year 2014:
  - Fuel, provisions, furniture, personal effects in the taxpayer's household, arms for personal use, livestock, and poultry up to \$8,940 in value
  - Books and tools necessary for the trade, business or profession of the taxpayer up to \$4,470 in value

##### Reminder:

Vehicles are not generally considered exempt property either as personal effects or as tools of the trade.

3. The following exemption also applies to individual taxpayers but is not adjusted for inflation:
  - Any wearing apparel and school books that are necessary for the taxpayer or members of his or her family
4. For seizure 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. This type of seizure requires approval by the area director.
5. Unopened mail is exempt from seizure.

#### 5.10.1.3.3.4 (10-01-2004)

##### Equity Determination — Documented Vessels

1. An abstract may be required to determine the equity in a documented vessel. An abstract provides:
  - The history of the vessel
  - Bills of sale
  - Information about mortgages, maritime liens, and assignments
2. Secure the abstract 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. Submit the letter with a \$25 money order payable to the National Vessel Documentation Center. Debit the expense to the taxpayer's account only if the asset is seized. The abstract request should be sent to:

USCG National Vessel Documentation Center  
792 T J Jackson Drive  
Falling Waters, West Virginia 25419

#### 5.10.1.3.3.5 (10-01-2004)

##### Equity Determination — Computer Equipment

1. When determining the equity in computer equipment, the revenue officer and the PALS must be aware of the procedures to remove taxpayer data from the hard drive as well as the effects of removal on the value of the asset.
2. Before selling computer equipment that contains taxpayer information, remove the contents of the hard drive, including the file allocation tables (FAT). If any software present can be resold according to the software licensing agreement, it may be reloaded onto the computer prior to sale. Consult area counsel to determine which software may be reloaded.
3. Prior to removing the FAT, provide the taxpayer with an opportunity to download all of the information from the hard drive. Procedures are contained in IRM 5.10.3.7.4, *Seizures Involving Computer Equipment*.
4. In order to accurately determine the FMV of the computer equipment, consider only those contents of the hard drive that will be available to the purchaser at the time of sale.

#### 5.10.1.3.3.6 (08-04-2014)

##### Equity Determination - Leasehold Interests

1. If you are considering seizure of personal property of a business and the taxpayer rents the premises from a third party, you must consider the value of the leasehold interest as part of the seizure determination. Review a copy of the lease agreement and determine whether the taxpayer is in default of the lease. If so, determine what actions the lessor has taken to cure the default.
2. A leasehold interest constitutes property and rights to property and therefore may be seized and offered for sale. A lease can independently have value or, when combined with other assets, contribute to an overall value when the business is appraised as a turn-key or on-going business concern. One method to determine whether a lease has independent value is to contact a commercial realtor in the area to determine the going rental rate for similar properties. If the taxpayer's lease reflects a lower rate, the lease may independently have value separate from the other assets. In other circumstances, a leasehold may have value only to specific bidders and not the general market. This presents unique issues (e.g., likelihood of sale) that must be fully considered prior to seizure. For all seizures of leasehold interests, contact and secure a PALS appraisal.
3. When determining the value of the leasehold interest, consider the potential for the lessor to bring litigation against the tax sale purchaser. Most lease agreements forbid transfer or sub-lease of the property to another party without the approval of the lessor. Such a provision will not prevent the Service from seizing and selling the taxpayer's interest in the lease. Generally the Service does not need the lessor's approval when a leasehold interest passes by operation of law such as an IRS tax sale. See *Stagecrafters' Club v. District of Columbia Division of American Legion, D.C.*, 110 F.Supp. 481 (D. D.C. 1953); aff'd, 211 F.2d (D.C. Cir. 1954) (dictum).

##### Note:

Apart from the issue of valuation, you should also be mindful of the interests of the landlord with regard to a new tenant. Contact with the landlord prior to seizure may help resolve any concerns and prevent controversy.

4. Consult Counsel to determine the priority of delinquent lease payment encumbrances. Consider any delinquent amounts due the lessor when determining the estimated minimum net sale proceeds if they are deemed a priority encumbrance against the lease.
5. When considering a perishable goods sale, address any potential leasehold interest. Include a valuation of the leasehold interest as part of the PALS appraisal and in the Perishable Goods Criteria and Sale Plan Memorandum. Document why the lease does or does not have value independently or as a part of the aggregate assets of the business. For perishable goods cases, the PALS will complete an appraisal and *Perishable Goods Criterion and Sale Plan* memorandum as part of the pre-seizure work.
6. If the taxpayer has a verbal rental agreement, this must also be addressed when considering a perishable goods sale. If the agreement is current, the leasehold may have value. Seizing the leasehold may provide additional time for the Service to market the assets and /or for a purchaser to remove property. The PALS will address these prospects in the Perishable Goods Criteria and Sale Plan Memorandum.
7. Consult Counsel with any questions regarding the lease and identification of the rightful occupant. State law and the terms of the lease may affect this determination. For example, a taxpayer current on a lease may be the only rightful occupant and the lessor may not have any standing to negotiate a Landlord Agreement with the Service when the personal property is the only asset being seized. If the taxpayer is delinquent, determine whether the lessor is considered a rightful occupant. When the Service enters into a Landlord Agreement with the taxpayer or owner of the property, the Landlord Agreement does not serve as an eviction of the occupant. After the sale, return the possession of the premises to the rightful occupant based on the terms of the Landlord Agreement. For example, the taxpayer is determined to be the rightful occupant of the real estate where the personal property is seized and agrees to a short term Landlord Agreement with the Service until a sale is completed. At the conclusion of the sale, access and keys to the real estate are returned to the taxpayer and not the owner of the real estate.
8. When seizing the leasehold interest along with the personal property located at the leased real property location, it is appropriate to change the locks to secure the real estate and personal property. The lessor is due a reasonable amount of rental payments for the time the Service has possession of the space once any pre-paid rent expires. If provided for under the terms of the taxpayer's lease, the lessor may be entitled to access the premises. Seizure of the leasehold interest early in the month after the current lease payment is made will reduce the expenses associated with the seizure and sale. A leasehold interest cannot be seized for the sole purpose of storing personal property and locking the taxpayer out of the property pending sale. The leasehold interest must be seized only for the purpose of sale.
9. Use the following description on the Form 2433, *Notice of Seizure*, when seizing a taxpayer's leasehold interest and reference the specific lease agreement only when you have determined that the Service will offer the leasehold interest for sale: "The right, title and interest of the above-named taxpayer in and to the real property, including any leasehold interest and/or rental rights as shown in the lease..."

#### 5.10.1.3.3.7 (07-03-2009)

##### Equity Determination - "Turn Key" and On Going Concerns

1. If a taxpayer's leasehold interest has no independent value, the leasehold interest cannot be seized for the sole purpose of storing personal property or locking the taxpayer out of the property. See *IRM 5.10.1.3.3.1.(8), Equity Determination - Expenses of Sale*. If the lease is being seized based on its contribution to the overall value, the PALS' appraisal must address the value of the lease when seized. If the lease does not independently have value, it may add value when the business is seized as a "turn-key" or on-going business concern.
2. A "turn-key" business valuation considers the value of the lease in conjunction with the other tangible assets of the business. In this situation, a purchaser buys all or most of the assets needed to open a business immediately. For example, the inventory and other assets of a retail plumbing supply company are seized along with the lease, stored on location and offered for sale under IRC section 6335. The sale is held in 45 days. The day after the sale the purchaser opens the doors for business.
3. An on-going business concern valuation considers the value of the lease in conjunction with all assets (both tangible and intangible). The intangibles that flow with the sale of the company may include the established customer base, goodwill, and performance on outstanding contracts. For example, the personal property, lease, trade name, telephone number, rights to current advertising and domain name are seized from a well known day spa located in an affluent area. The personal property itself has a value of \$15,000. If the business can operate and retain its walk-in customer base, perform on its pre-sold vacation packages, retain its sub-contractor staff, and maintain its reputation and goodwill, it has an on-going business valuation of \$125,000. These intangibles are not something you have seized, but their contribution to the business valuation was considered in the PALS appraisal. The sale is approved as a perishable goods sale based on the criterion that there is an expectation that a great loss in the property's value as an on-going concern would occur and the loss of value would be rapid in relation to the amount of time it would take to hold the sale under normal IRC Sec. 6335 sale time frames. Pre-seizure marketing is completed and a perishable goods sale held within 2 days of the seizure. The purchaser re-opens the doors that afternoon with the previous staff in place.
4. When recommending seizure of a business based on "turn-key" or on-going concern value, a PALS appraisal is required.

##### Note:

Normally, sales are conducted under section 6335; it is the exceptional case in which a sale under section 6336 will be appropriate. In appraising the value of a business, the PALS must determine the value of the business and the amount of anticipated proceeds under the provisions of both section 6335 and 6336. One of the criteria described in section 6336 must apply to conduct a sale under IRC 6336.

#### 5.10.1.4 (08-04-2014)

##### Perishable Goods Criteria, Definitions, and Examples

1. One of three criteria must be met to allow for the expedited sale of assets classified as perishable goods under IRC section 6336. The criteria and definitions are:
  - A. **Property is liable to perish:** The property must have a short life expectancy or limited shelf life, an expectation of spoilage, or will rapidly rot, decay, decompose, or expire. A determination must be made that the property cannot be kept and sold under normal IRC section 6335 sale time frames. Some examples are food, flowers, plants, or livestock. **Example:** A revenue officer determines a seizure of the assets of a flower nursery is the next appropriate case action. The personal property consists of flowers, plants, shrubs, gardening equipment, pottery, landscaping supplies, trailers, vehicles, tools and display shelving. The taxpayer leases the real estate housing the business from a third party and is delinquent with lease payments. The PALS completes an appraisal on the leasehold interest and determines it has no value. Counsel reviews the lease agreement and advises the Service can negotiate with the landlord as the rightful occupant. The landlord agrees to let IRS store the assets on site for a nominal fee for 60 days. It is determined that the flowers, plants, and shrubs will likely perish if kept and sold under normal IRC section 6335 sale time frames. The revenue officer requests and secures approval for a perishable goods sale of those specific assets. The revenue officer and PALS complete an inventory of all assets and the flowers, plants, and shrubs are sold as perishable goods two days later. The remainder of the assets are stored on site and sold under IRC section 6335 sale procedures.
  - B. **Property is liable to become greatly reduced in price or value by keeping:** There must be an expectation that a great loss in the property value will occur. The loss of value must be rapid in relation to the time it would take to hold the sale under normal IRC section 6335 sale time frames. **Example A:** A revenue officer determines the seizure of an automotive repair shop is the next appropriate case action. The personal property of the business consists of small tools, miscellaneous parts and inventory, several medium sized pieces of equipment and one large hydraulic lift. The taxpayer leases the real estate housing the business from a third party and is delinquent in lease payments. The PALS completes an appraisal of the leasehold interest and determines it has no value. Under the terms of the lease agreement and state law, the landlord has not taken steps to enter the property, evict the taxpayer, or perfect their interest in the personal property. As such, the corporation is the rightful occupant and the corporate president indicates he will not agree to a short term lease if a seizure of the corporation's personal property is made. The appraisal completed on all of the personal property indicates a total value of \$30,000. The hydraulic lift is the most valuable asset and is worth approximately \$20,000 if it can be shown to be in operating condition. Experts in the industry indicate if the hydraulic lift is disassembled and moved to another location for storage before sale and cannot be shown to be in operating condition, a buyer will only purchase it for parts. They further claim that in a disassembled, non-working state the lift is worth only \$2,000. In order to re-assemble the hydraulic lift after it is moved, the storage facility must have a 16 feet height clearance, and the lift will have to be bolted to the concrete floor. Because bolting the lift to the floor would cause damage to the storage facility this is not a feasible option. The revenue officer requests and secures approval for a perishable goods sale of the hydraulic lift due to the documented expectation that a great loss in the property value will occur by moving and storing it to keep for a sale conducted under IRC section 6335. Arrangements have been made to move the remainder of the assets to another location for minimal moving and storage costs. **Outcome 1A:** Immediately after the seizure is made, the corporate officer agrees



to give the Service a 45 day, no-cost lease in order to keep the assets on site while he attempts to borrow the money. The hydraulic lift is left intact on site and is included with the remainder of the assets in a sale conducted under IRC section 6335. **Outcome 2A:** On the day of seizure, the taxpayer still refuses to enter into a lease agreement with the Service. A perishable goods sale is held for the hydraulic lift and the successful bidder removes the lift after issuance of the Certificate of Sale. The remainder of assets are moved to the other location and a sale under IRC section 6335 is held at a later date. **Example B: On-Going Business Concern:** A revenue officer determines the seizure of a day spa operating as a corporation is the next appropriate case action. The revenue officer values the personal property at \$5,000 and secures a copy of the lease. During the four way meeting it is determined that the PALS will complete a valuation of the business as an on-going concern. The PALS completes an appraisal considering the value of the tangible and intangible assets of the business, to include the leasehold interest, customer base, goodwill, domain name and the business' trade name. The appraisal indicates the value of the business depends on the customer base generated by the sub-contracted specialists who work on contracts for the corporation. The value of the business as an on-going business concern is \$150,000 if the business is not closed for more than a few days and the potential buyer can retain the sub-contractors after the sale and re-open immediately. The value of the physical assets is verified at \$5,000. Based on the rapid loss of value if the business is closed and the sub-contractors are not retained by a new owner compared to the amount of time it would take to hold the sale under IRC section 6335, the revenue officer requests and secures approval of a perishable goods sale. A seizure of the tangible and intangible assets, to include the leasehold interest, personal property, trade name, contract rights, phone numbers, domain name and rights to current advertising is made.

- C. **Property cannot be kept without great expense:** A determination must be made to balance the cost of maintaining the assets, such as moving and storage costs, against the net amount expected from a sale conducted under the normal IRC section 6335 sale provisions. **Example:** A revenue officer determines the seizure of a construction machinery rental shop operating as a partnership is the next appropriate case action. The partnership owns the real estate housing the business. Since the mortgage balance and property value are both approximately \$200,000, seizure of the real estate is not feasible. The partners indicate they will not agree to a short term lease if a seizure is made. The assets of the business consist of 5 large graders, 8 front end loaders, and 6 dump trucks, for a total value of \$140,000. Vendors indicate the graders and front end loaders require a special road permit at \$1,000 each to move. The best price for moving and towing is \$1,000 each for the graders and front end loaders and \$500 each for the dump trucks. The storage price is \$100 each per day. In order to market the assets appropriately, the PALS estimates a normal sale could be conducted within 60 days. The PALS estimates minimum net sale proceeds to be \$84,000. The estimated expenses associated with such a sale are \$13,000 for road permits, \$16,000 for moving and towing, \$108,000 for storage, and \$2,000 for advertising, for a total of \$139,000. The PALS develops a pre-seizure marketing plan to identify potential bidders prior to the seizure. The revenue officer requests and secures approval of a perishable goods sale because the property cannot be kept without great expense and a sale conducted under IRC section 6335 would result in little or no proceeds. On the day the property is seized, the partners still will not agree to a low or no cost agreement and a sale is conducted under IRC section 6336.

#### 5.10.1.5 (08-04-2014)

##### Perishable Goods Pre-Seizure Development

1. Upon identification of a potential perishable goods sale, the revenue officer group manager will schedule a pre-seizure 4-way conference with the revenue officer, PALS group manager and PALS. The goals of the conference are to:
  - Discuss the perishable goods sale criteria determination
  - Identify the need for any additional strategy development
  - Agree on responsibilities and timeframes for any additional work required
  - Begin development of the perishable goods sale plan
2. Planning must include consideration of the location and storage of the assets and the related expenses. If the taxpayer is leasing the premises housing the assets, address the potential value of the leasehold interest along with the other assets.
3. A PALS appraisal is required for all perishable goods sale cases. Consideration of leasehold interests and sale of the assets as a turn-key business or on-going concern is critical.
4. Responsibility for all perishable goods sale plans, final criteria determination, and sale responsibilities rests with the PALS function. The PALS will prepare and secure PALS group manager concurrence for a *Perishable Goods Criteria and Sale Plan* memorandum for every perishable goods case. See *IRM Exhibit 5.10.1-3* for a template. The memorandum will include:
  - Identification of the appropriate criteria and an analysis that demonstrates the need to conduct the sale under IRC section 6336.
  - Asset valuation to include appraisal and inventory list.
  - Analysis of estimated expenses for both moving the assets to another location and storing on site for an IRC section 6335 sale.
  - Analysis of estimated expenses and proceeds under an IRC section 6336 sale.
  - A marketing plan including consideration of both pre- and post- seizure marketing.
  - Information regarding the need for a Consent or Writ of Entry.
  - An estimate of the timeframe from the point of seizure to sale
  - Resources required to conduct the sale (e.g., personnel, supplies, security).
  - Group manager concurrence signature line.

Upon approval, send the memorandum and other documents to the revenue officer for completion of the estimated minimum net sale proceeds, and inclusion in the seizure approval request file.

#### 5.10.1.6 (08-04-2014)

##### "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:
  - Do not agree with the assessment and are working with the Service to properly adjust their account.
  - Will full pay their liability within a reasonable time frame.
  - Require a reasonable period of time to sell an asset or secure a loan.
  - Qualify for and submit an offer in compromise.
  - Have no ability to make payments and have no distrainable assets (currently not collectible).
  - Request and qualify for an installment agreement.
2. Seizure should be considered for taxpayers who "won't pay". This category includes taxpayers who:
  - Have the ability to remain current and/or resolve their delinquent taxes through an alternative collection method but will not do so.

- Cannot remain current and/or resolve their liability, but who have assets in excess of exempt amounts that will yield net proceeds and are unwilling or unable to borrow against or liquidate these assets.
  - Are pyramiding liabilities.
  - Use unsupported tax arguments and continue to resist the requirements to file and pay.
  - Will not cooperate with the Service, (e.g., taxpayers that evade contact, will not provide financial information).
  - Will not comply with the results of the Service's financial analysis or will not enter into an installment agreement or OIC.
  - Are wage earners who have not paid their tax liability and will not adjust their withholding to prevent future delinquencies.
  - Are self-employed, have not paid their tax liability and will not make estimated payments to prevent future delinquencies.
  - 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 in any case. 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 5.10.1–4 and 5.10.1–5 contain scenarios that illustrate how case decisions can be made based on these factors.

#### 5.10.1.7 (08-04-2014)

##### Pre-Seizure Taxpayer Notifications

1. Letter 1058 (L–1058), Notice of Intent to Levy and Notice of Your Right to a Hearing, Notice CP 90, or ACS LT 11 must have been provided to the taxpayer at least 30 days before the seizure for each tax period and each assessment that will be identified on the Form 668–B. Absent personal knowledge of Letter 1058 or ACS LT 11, verify that an unreversed transaction code (TC) 971, Action Code (AC) 069 is present on each module listed on Form 668-B.

##### Caution:

The CP 504 issued when a case enters status 58 does not include the required due process notification. Do not include any assessments on Form 668–B for which the L–1058 has not been issued.

2. The following information must be included with the L–1058:
  - Publication 594, *Understanding the Collection Process*
  - Publication 1660, *Collection Appeal Rights*
  - Form 12153 *Request for a Collection Due Process Hearing*
  - Copy of the letter
  - Envelope
3. Taxpayers should receive only one pre-levy 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 5.10.1.7.1, *Supplemental Pre-Seizure Taxpayer Notification*, for information on the timeliness of this notice.

##### Note:

The taxpayer is not entitled to an additional notice offering a due process hearing if the additional assessment represents only accruals of interest, penalties, or both.

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 Advisory and area counsel when considering a jeopardy seizure. See IRM 5.11.3, *Jeopardy Levy Without a Jeopardy Assessment*, and 5.10.1.9, *Jeopardy Assessments and Seizures*.
5. See IRM 5.11.1, *Background, Pre-Levy Actions and Restrictions on Levy and Post-Levy Actions*, for additional information on proper delivery, joint return considerations, required transaction codes, and documentation required for delivery of the L–1058.
6. If the taxpayer is deceased, the CDP notice should be sent to the executor or administrator of the estate. Consult area counsel through Advisory if there are questions as to who should receive the CDP notice.

#### 5.10.1.7.1 (08-04-2014)

##### Supplemental Pre-Seizure Taxpayer Notifications

1. If the L–1058 was sent more than 180 days prior to the seizure date, there is no legal prohibition against seizure. However, IRS policy requires a new warning of enforcement to the taxpayer before enforcement action is taken.
2. Document the warning in the case file. This warning may be given either:
  - In person or by phone, advising the taxpayer of a deadline (not necessarily 30 days) after which there will be seizure action or
  - In writing if the taxpayer cannot be contacted in person or by telephone. Use Letter 3174 (CG), *New Warning of Enforcement*. Use Letter 3174-A(CG), *New Warning of Enforcement for Joint Filers*, when the letter is issued to both spouses for joint income taxes.
3. Do not issue another L–1058 when a supplemental warning is warranted. Taxpayers are only entitled to one L-1058 per tax assessment that advises them of their rights to a pre-levy due process hearing.
4. A supplemental warning is not required if:
  - collection of the tax is in jeopardy, or
  - enforcement has taken place in the last 180 days. (Enforcement includes only seizure or levy action, and the taxpayer must have been aware of the enforcement action. A pending court approval of a principal residence seizure qualifies as an enforcement action in this context; a notice of levy issued to a former employer would not as the taxpayer would not necessarily know about it. 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.)

##### Note:

The Appeals Collection Due Process (CDP) Notice of Determination or a Decision Letter (Equivalent Hearing) also constitutes a warning of enforcement. For cases that were submitted to Appeals, a new warning of enforcement does not need to be sent unless it is more than 180 days after the CDP Notice of Determination or Decision Letter date.

5. An L-1058 must be sent for each module and assessment that is included on Form 668-B. However, the warning is considered timely as long as there has been warning of enforcement for at least one module included on Form 668-B within the last 180 days. The L-1058 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.

#### 5.10.1.7.2 (08-04-2014)

##### 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 attempt to meet with the taxpayer and discuss what is necessary to avoid seizure action. In situations where employee safety is an issue, the attempt at personal contact should be made by telephone.

##### Reminder:

If the taxpayer has an authorized representative, then attempt the personal contact with the authorized representative (unless the taxpayer has consented to such contact, a court has permitted such contact, or the authorized representative does not respond in a timely manner (see IRM 5.1.10.7.2, *Right to Representation*, for taxpayer contact provisions)).

2. During this contact, the revenue officer should:
  - Advise the taxpayer that seizure is the next planned action.
  - Give the taxpayer an opportunity to resolve the tax liability voluntarily; if the liability is the result of an SFR assessment the taxpayer should be given an opportunity to file corrected returns (if not previously provided).
  - Provide and discuss the provisions of Publication 1, *Your Rights as a Taxpayer*, and Publication 594, *The IRS Collection Process* (if not previously provided).
  - Advise the taxpayer about the Taxpayer Advocate, provide Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*, and explain its provisions. If the taxpayer indicates the seizure would create a hardship, assist the taxpayer with the preparation of Form 911 and forward the form to the local Taxpayer Advocate if the revenue officer cannot or will not provide the requested relief.
  - Provide the taxpayer with the name and location of the immediate supervisor if the taxpayer requests a managerial review.
  - 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 personal contact. 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.

##### Note:

The personal contact to advise the taxpayer of the seizure action can also be considered the supplemental warning of enforcement. If the revenue officer personally contacts the taxpayer to advise of the proposed seizure, then there is no need to issue an additional supplemental warning.

#### 5.10.1.7.3 (08-04-2014)

##### Collection Appeal Rights

1. The Collection Appeals Program (CAP) was created to provide taxpayers with an independent administrative review. 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 5.1.9, *Collection Appeal Rights*, for additional information. Publication 1660, *Collection Appeal Rights*, which should be provided with the L-1058 and again with the Notice of Seizure, explains these provisions. Document the case file with the date the Publication 1660 was delivered.
2. Post-seizure appeal rights are discussed in IRM 5.10.3.6.1, *Management Review Process and Taxpayer Appeal Rights*.

#### 5.10.1.8 (08-04-2014)

##### Pre-Seizure Activity for Courtesy Seizures

1. When a taxpayer's assets are located in another territory and it becomes necessary to enforce collection by seizure, prepare Form 2209, *Courtesy Investigation*. The revenue officer in the originating territory and the revenue officer in the receiving territory each have specific responsibilities for the seizure. The approving official in the receiving territory retains final authority for approval or disapproval of the seizure.

##### Exception:

If the property subject to levy is located in a contiguous territory within easy access of the office where the assessment is outstanding, revenue officers from the territory holding the assessments may choose to effect the seizure. The concurrence of the appropriate seizure approving officials from both territories must be secured and, where appropriate, a revenue officer from the territory where the property is located should be requested to assist in the seizure. This coordination between territories should ensure that all local laws and conditions receive due consideration.

##### Note:

Certain revenue officers (e.g., ATAT ROs) may receive case assignments outside the geographical territory in which their office is located. For the purposes of this section, the seizing RO's territory should be considered the same as that for general program revenue officers in their post of duty.

2. The revenue officer in the originating territory will issue the appropriate notices and due process documents to the taxpayer and advise the taxpayer of the proposed seizure. The group manager in the originating territory must document concurrence with the proposed seizure in the ICS history. The revenue officer in the originating territory will include the following information with the Form 2209:
  - Sufficient information for the receiving revenue officer to prepare Form 668-B
  - Copies of the Collection Information Statement, Notices of Federal Tax Liens, and any other relevant documents
  - Statement of facts involved, including alternatives considered, results of risk analysis, any information regarding fair market value and encumbrances, due process notifications, etc.
  - Any other relevant information
3. A revenue officer in the receiving territory will determine the taxpayer's equity in the property to be seized. If there is no seizure potential due to insufficient equity, the revenue officer in the receiving territory will furnish a report documenting these facts to the initiating office. If there is sufficient equity to yield net proceeds, the revenue officer in the receiving territory will:
  - Verify that the Notices of Federal Tax Lien are filed in the appropriate jurisdictions
  - Verify that the taxpayer was provided with all appropriate publications and appeal rights
  - Complete the appropriate records checks in the local jurisdiction

- Coordinate with the PALS for sale of the property
- Determine and document in the case history the estimated minimum net sale proceeds to apply to the liability based on the procedures in IRM 5.10.1.3.3.1(13), *Equity Determination*.
- Prepare all seizure documents and submit the case for approval (IRM 5.10.2.18), *Securing Managerial Approval of Seizure Actions*) by the receiving office.

#### 5.10.1.9 (08-04-2014)

##### 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 (not including insolvency created due to the accrual of federal tax liabilities).
2. See IRM 5.11.3, *Jeopardy Levy Without a Jeopardy Assessment*, regarding jeopardy levy. Counsel approval is normally required prior to jeopardy levy. These procedures also apply to a jeopardy seizure. A jeopardy seizure requiring Counsel approval occurs when the tax is assessed and one of the following conditions exists:
  - Notice and demand for payment has not been issued
  - It is fewer than 10 days after notice and demand for payment is issued
  - It is fewer than 30 days (and the 15 day waiting period) after notice of intent to levy is issued or that notice has not been 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, *Forms and Pattern Letters for a Jeopardy Levy Without a Jeopardy Assessment*, 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:
  - The making of the assessment was reasonable
  - The amount of the assessment is appropriate
  - The levy is reasonable under the circumstances
5. Such requests will be coordinated with the Examination office that made the assessment. The sale of seized property will generally be suspended during this administrative review process.
6. IRC 6863(c) prohibits the sale of property seized after a jeopardy assessment until the taxpayer has exhausted the specified administrative and judicial review procedures. IRC 6863 only applies to the sale of property and does 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 provide adequate protection. If the notice of lien will not fully protect the Government's interest, the property may be seized and held 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 IRM 5.17.3.3.6, *Jeopardy and Termination Cases*, and 5.17.3.6.1.4, *Jeopardy*.

#### 5.10.1.10 (08-04-2014)

##### Mutual Collection Assistance Requests (MCARs)

1. International appraisal and seizure and sale cases may include the collection of treaty partners' taxes in the United States. In treaty collection cases, the Service may collect the treaty partner's finally determined taxes in accordance with U.S. laws as if they are U.S. tax liabilities. See IRM 5.1.8.7, Incoming Mutual Collection Assistance 5) Requests, for procedures on incoming MCAR cases, and IRM 5.1.12.25, Outgoing Mutual Collection Assistance Requests, for procedures on outgoing MCAR cases.
2. There are five treaty countries with which the Service has ongoing programs for MCARs that may involve seizure and sale. The treaty partners and types of taxes covered for collection by the Service are as follows:
  - Canada — All taxes
  - France — Income, Estate and Gift, Wealth and other specified taxes
  - Denmark — Income and other specified taxes
  - Sweden — Income and other specified taxes
  - Netherlands — Income and other specified taxes

##### Note:

Many other U.S. tax treaties, consistent with U.S. Model Income Tax Convention (2006), contain a limited collection assistance provision, limited to the collection of amounts improperly claimed under a tax treaty.

3. MCAR procedures allow for the collection of foreign taxes by a revenue officer through enforcement, including levies, liens, proofs of claim, and seizures. In the same way, the treaty partner's tax agency will collect a U.S. citizen's or entity's taxes from assets located in the treaty partner's country. All treaty collection requests to, or from, these countries are made through the Deputy Commissioner (International), LB&I, who is the Competent Authority in all tax treaties.
4. Collection of these liabilities takes place through MCARs. After the Deputy Commissioner (International), LB&I, has accepted the request for treaty collection assistance, a revenue officer in International will issue a courtesy investigation requesting that a revenue officer where the asset is located conduct the seizure. The revenue officer conducting the seizure will contact the PALS responsible for the location where the seizure is being made in order to conduct the sale.
5. See IRM 5.1.8.7.7.2.3, *Seizure and Sale on MCARs*, for the exceptions to normal seizure and sale procedures when conducting seizures and sales on MCARs. Coordination with the revenue officer in International is essential for both the seizure and the sale, since all money collected is forwarded to the revenue officer in International for transmittal to the treaty partner through the Deputy Commissioner (International), LB&I, and is not applied to the account. Unless the revenue officer in International has made arrangements for the treaty partner to pay the expenses of sale outside of the remittance, the successful bid remittance should be secured in two parts — one for the seizure and sale expenses and the balance of the remittance made payable to the treaty partner.
6. After the sale, the PALS will prepare a memo to the revenue officer in International summarizing the sale information and transmitting the sale proceeds so they can be sent to the treaty partner.
7. The seizure files should be maintained in the Advisory office for the location where the seizure was conducted.
8. Advisory will be responsible for issuing the deed after the appropriate redemption period has expired when real property is sold.

#### 5.10.1.11 (08-04-2014)

##### Seizure and Sale Procedures in U.S. Territories

1. International revenue officers conduct collection activities, including seizures, to collect federal taxes in U.S. Territories, such as Puerto Rico, U.S. Virgin Islands, Guam, American Samoa and Commonwealth of Northern Mariana Islands (CNMI). Seizures and sales are conducted under normal procedures (see IRC 7651), and local law guides are available for each of the U.S. Territories. Other U.S. Territories include the following:

- Baker Island
- Howland Islands
- Jarvis Island
- Johnston Island
- Kingman Reef
- Midway Islands
- Palmyra
- Wake Island

2. Revenue officers working cases for taxpayers in a U.S. Territory should contact the PALS territory Manager for assignment of a PALS.

3. The Advisory office assigned International cases will be responsible for:

- Pre-seizure case file reviews
- Seizure advice
- Assigning seizure numbers
- Transmitting seizure files and documents
- Maintaining the permanent record
- Any other Advisory responsibilities

4. PALS will conduct the sale under normal sale procedures, including the collection and posting of successful bids.

5. For assistance in understanding tax issues related to the U.S. Territories, contact the NBI Territory Program Manager located in Washington, DC.

**Exhibit 5.10.1-1**

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

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Form 2434-B Instructions Reference: 5.10.1.3.3(12)**

1. Date on or before which copies of Notice of Sale were mailed to all parties identified on Form 2434-B (completed prior to sale by the employee who prepared the final version of Form 2434-B)

2. Taxpayer's name

3. Specific type of encumbrance or interest should be shown (lien, judgment, mortgage, joint owners, nominee, transferee etc.) All encumbrances senior and junior to the Federal Tax Lien should be shown in addition to all Notices of Federal Tax Lien. If no recorded interests other than the NFTL were identified, complete Form 2434-B with just the NFTL information. Spell out "Notice of Federal Tax Lien".

4. 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 cannot be contacted.

5. Date the encumbrance was created or secured; for NFTL's, enter the 23c date(s).

6. Date and place the encumbrance was made a public record.

7. The **complete** name and address of the party holding the encumbrance or interest.

8. Date that the records were checked or the date the information was provided by the secured party, not the date of form preparation.

Signature - should be signed and dated by the employee responsible for completing the final Form 2434-B (usually the PALS).

**Exhibit 5.10.1-2**

**Landlord Agreement Reference: 5.10.1.3.3.1(7)**

**LANDLORD AGREEMENT**

U.S. TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
-VS-

Date \_\_\_\_\_  
STIPULATION \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_, \_\_\_\_ an Area 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 Area 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 the intentional, negligent, or reckless acts of the Internal Revenue Service or its agents or employees that occurs during the term of this lease.

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:

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

Title of Authorized Agent for  
Internal Revenue Service (Territory Manager or PALS Manager)

**Exhibit 5.10.1-3**

**Perishable Goods Criteria and Sale Plan Template, Reference IRM 5.10.1.5(4)**

Date (MM-DD-YYYY)

MEMORANDUM FOR NAME

FROM: Property Appraisal and Liquidations Specialist (PALS) Group Manager  
 NAME  
 PALS  
 SUBJECT: Perishable Goods Criteria and Sale Plan

Following is the criteria selection and sale plan for a perishable goods sale approval:

Taxpayer name and address:

EIN:

Proposed Sale Location:

Information for revenue officer consideration and determination as to whether *Consent or Writ of Entry* may be required:

Yes \_\_\_\_\_ No \_\_\_\_\_ (Provide short explanation)

Selection of Perishable Goods Sale Criteria:

\_\_\_\_\_ is liable to perish (discuss the specific assets)  
 \_\_\_\_\_ is liable to become greatly reduced in price or value by keeping (explain how)  
 \_\_\_\_\_ cannot be kept without great expense – see analysis below

Asset description and valuation: (Attach copy of appraisal and inventory list)

Reduced Forced Sale Value: \$

Reductions used and reasons for reductions to arrive at forced sale and reduced forced sale value:

Complete the following for all cases:

IRC section 6335 estimated expenses to move and store off-site:

Vendor	Service		Estimate
	Moving	\$	
	Storage	\$	
	Advertising	\$	
	Other (specify)	\$	
Total all expenses:		\$	

IRC section 6335 estimated expenses to store on-site: (Provide a short explanation if the asset(s) cannot be stored on-site):

Vendor	Service		Estimate
(Rightful Occupant)	Rent	\$	
	Utilities	\$	
	Advertising	\$	
	Other (specify)	\$	
Total all expenses:		\$	

Analysis of IRC section 6335 sale proceeds after expenses:

IRC section 6336 perishable goods sale estimated expenses:

Vendor	Service		Estimate
(Rightful Occupant)	Rent	\$	
	Utilities	\$	
	Advertising	\$	
	Other (specify)	\$	
Total all expenses:		\$	

Analysis of IRC section 6336 perishable goods sale proceeds after expenses:

Marketing plan:

Sale will be scheduled within \_\_\_\_\_ days after seizure (If sale will be conducted the same day, provide a short explanation of the reason).

Sale resources required (personnel, supplies, etc.):

\_\_\_\_\_  
 Name and Signature Title: PALS \_\_\_\_\_ Date

I concur with the criteria selection and the IRC section 6336 sale:

\_\_\_\_\_  
 Name and Signature \_\_\_\_\_ Date  
 Title: PALS Group Manager

**Exhibit 5.10.1-4**  
**CASE SCENARIO #1 Reference: 5.10.1.6(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?** 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 investigation completed and TFRP waiver secured through length of proposed installment agreement plus one year

**Levy Sources:**

Bank Account  
 Accounts Receivable

<b>Assets:</b>	<b>Fair Market Value:</b>	<b>Encumbrances:</b>
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. Estimated expenses of sale for towing, storage, advertising, etc. are \$3,000.

**Recommended Course of Action:**

The revenue officer should complete an equity analysis and ; using 60 % of FMV, the RFSV of the vehicles is \$50,000; with estimated expenses of \$3,000, the expected minimum net sale proceeds would be \$47,000. The revenue officer then 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 5.10.1-5**

**CASE SCENARIO #2 Reference: 5.10.1.6(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?** N/A  
**Status of Trust Fund:** Investigation still being completed, CIS needed for collectibility determination

**Levy Sources:**  
Bank Account  
Accounts Receivable

<b>Assets:</b>	<b>Fair Market Value:</b>	<b>Encumbrances:</b>
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. Estimated expenses of sale for towing, storage, advertising, etc. are \$3,000.

**Recommended Course of Action:**

The revenue officer should complete an equity analysis and using 60 % of FMV, the RFSV of the vehicles is \$50,000. With estimated expenses of \$3,000, the expected net sale proceeds would be \$47,000. 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. 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.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 10. Seizure and Sale

#### Section 2. Securing Approval for Seizure Actions and Post-Approval Actions

##### 5.10.2 Securing Approval for Seizure Actions and Post-Approval Actions

- [5.10.2.1 Overview](#)
- [5.10.2.2 Seizures Requiring Area Director Approval](#)
- [5.10.2.3 Tangible Personal Property or Real Property \(Other than Real Property Which is Rented\) Used in the Trade or Business of an Individual Taxpayer](#)
- [5.10.2.4 Mobile Homes](#)
- [5.10.2.5 FCC Broadcasting Licenses](#)
- [5.10.2.6 Historic Properties](#)
- [5.10.2.7 Religious Organizations and Religious Freedom Restoration Act](#)
- [5.10.2.8 Firearms](#)
- [5.10.2.9 Controlled Substances or Drug Paraphernalia](#)
- [5.10.2.10 Material Considered Obscene or Pornographic](#)
- [5.10.2.11 High Level Drug Dealers](#)
- [5.10.2.12 Property With Environmental Considerations](#)
- [5.10.2.13 Cleared Contractor Facility](#)
- [5.10.2.14 Consent or Writ Determination](#)
- [5.10.2.15 Contents of Residence - Consent or Writ Required](#)
- [5.10.2.16 Motor Vehicles - Determining if Consent or Writ is Required](#)
- [5.10.2.17 Perishable Goods](#)
- [5.10.2.18 Securing Managerial Approval of Seizure Actions](#)
- [5.10.2.19 Judicial Approval for Principal Residence Seizures](#)
- [5.10.2.20 Post-Approval Actions](#)
- [5.10.2.21 Seizing Property Housing a United States Postal Service Facility](#)
- [5.10.2.22 Contracting for Services](#)
- [Exhibit 5.10.2-1 Asset Type and Approving Official: Reference 5.10.2.1](#)
- [Exhibit 5.10.2-2 Form 13719, Pre-Seizure Checklist and Approval Request Reference: 5.10.2.17](#)
- [Exhibit 5.10.2-3 Form 668-B, Levy and Instructions Reference: 5.10.2.17](#)
- [Exhibit 5.10.2-4 Order to Show Cause Reference: 5.10.2.18\(12\)](#)

##### Manual Transmittal

August 04, 2014

##### Purpose

(1) This transmits a revision to IRM 5.10.2, Seizure and Sale, *Securing Approval for Seizure Actions and Post-Approval Actions*.

##### Material Changes

- (1) IRM 5.10.2.2(1) is amended to note that the Director, Advisory/Insolvency is authorized to approve seizures.
- (2) A paragraph is added to IRM 5.10.2.18 to clarify that certain tax periods may be excluded from Form 668B for appropriate reasons, but the revenue officer must attempt to advise the taxpayer that the 668B does not include all balances owed.
- (3) IRM 5.10.2.18(3) is added to describe calculation of penalties and interest on Form 668B.
- (4) IRM 5.10.2.18(6) is amended to remove the requirement for Form 2434B when only cash is being seized.
- (5) IRM 5.10.2.18(8) is amended to require review for the issuance of a final notice in the Advisory pre-seizure review.
- (6) A note is added to IRM 5.10.2.18(8) to exclude perishable seizures from the limitations on pre-seizure review by Advisory.
- (7) IRM 5.10.2.19(16) is added to clarify that revenue officers should generally wait until 14 days after the date of judgment to execute a seizure pursuant to a court order.
- (8) References to Form 6888 are removed due to pending obsolescence of the form.

##### Effect on Other Documents

This IRM supersedes IRM 5.10.2, *Securing Approval for Seizure Actions and Post-Approval Actions*, dated April 11, 2013.

##### Audience

Small Business/Self-Employed Compliance Employees

##### Effective Date

(08-04-2014)

Rocco A. Steco  
(Acting) Director, Collection Policy

##### 5.10.2.1 (04-11-2013)

##### Overview



1. This section describes procedures for securing managerial approval for seizures and provisions for specialized assets. *IRM 5.10.2.17, Perishable Goods*, contains instructions for the approval of the seizure and sale of perishable goods. See *Exhibit 5.10.2-1* for a seizure approval reference table. The intended audience for this section consists of revenue officers in field collection and Advisory offices.
2. IRM sections 5.10.2.2 through 5.10.2.13 contain special instructions for seizures in the following particular circumstances:
  - Seizures requiring area director approval
  - Tangible Personal Property or Real Property (other than real property which is rented) Used in the Trade or Business of an Individual Taxpayer
  - Mobile homes
  - FCC broadcasting licenses
  - Historic properties
  - Religious organizations
  - Firearms
  - Controlled substances or drug paraphernalia
  - Material considered obscene or pornographic
  - High level drug dealers
  - Property with environmental considerations
  - Cleared contractor facilities

#### **5.10.2.2 (08-04-2014)**

##### **Seizures Requiring Area Director Approval**

1. The following seizures require approval by the area director (either Field Area or Advisory/Insolvency) unless collection of the tax is in jeopardy:

- All personal residences, including property owned by the taxpayer and used by any other person as a principal residence

**Note:**

See IRM 5.10.2.19, *Judicial Approval for Principal Residence Seizures*, when preparing to seize real property used as a principal residence by the taxpayer, taxpayer's spouse or former spouse, or taxpayer's minor children.

**Note:**

There is no jeopardy exception to the judicial approval requirements.

- All tangible personal property or real property used in the trade or business of an individual taxpayer, including State Commercial Fishing or Wildlife Licenses

**Exception:**

Seizures of real property rented as anything other than a principal residence only require territory manager approval.

- Perishable goods determination/Perishable goods seizure
- Contents of a personal residence, including items located in garages and other structures on the land on which the residence is located
- Firearms
- Controlled Substances and Drug Paraphernalia
- Material Considered Obscene or Pornographic
- Stock in an Individual Retirement Account

2. In addition to area director concurrence, judicial approval is required for certain principal residence seizures. (See *IRM 5.10.2.19, Judicial Approval for Principal Residence Seizures*. This includes any real property used as a principal residence by any of the following individuals:

- Taxpayer
- Taxpayer's spouse or former spouse
- Taxpayer's minor children

**Reminder:**

When planning to seize improved real property, the revenue officer must determine whether the relationship of any of the current occupants to the taxpayer meets the requirement for securing judicial approval.

#### **5.10.2.3 (04-11-2013)**

##### **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 area director must be secured for seizure of these types of assets unless collection of the tax is in jeopardy. The revenue officer must document in the history that the taxpayer's other assets subject to collection are insufficient to satisfy the liability and expenses of the proceeding (see IRM 5.17.3.4.6, *Seizure of Business Assets*).

**Note:**

The contents of a cash register are considered tangible personal property. Therefore, the area director must approve any such seizure when the cash register is used in the trade or business of an individual taxpayer.

2. If the asset to be seized is a state commercial fish or wildlife license, the revenue officer must consider the value of any 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 use of the asset, not the type of liability for which the seizure is being conducted.

4. For the purpose of determining seizure approval authority, a liquor license is considered a tangible asset. Area director approval is required to seize a liquor license from a sole proprietorship.
5. Following are examples that meet the definition of tangible personal or real property used in the trade or business of an individual taxpayer:

**A. Example:**

The taxpayer owns a restaurant as a sole proprietor. The revenue officer determines the next appropriate action is to seize the contents of the restaurant including the tables, chairs, kitchen equipment, and liquor license. The required approval level for this seizure is the area director.

**Example:**

The taxpayer owns real property with waterfront access to a river which includes a boat dock. He operates guided duck hunting and fishing trips as a sole proprietorship on this property and sells temporary permits allowing unguided access onto both the real property and the dock. A determination is made that sufficient equity exists in the real property and seizure is the next appropriate action. The required approval level for this seizure is the area director.

**Example:**

A self-employed real estate agent uses a vehicle as transportation for business. The taxpayer owes Form 1040, U.S. Individual Income taxes and the revenue officer determines seizure of the vehicle is the next appropriate action. The required approval level for this seizure is the area director.

#### **5.10.2.4 (07-03-2009)**

##### **Mobile Homes**

1. A mobile home may be either real or personal property, depending upon state or local law. It is important to make this determination *prior to* seizure since personal property must be reduced to possession to complete the seizure. It may be necessary to confer with Advisory and request an opinion from area counsel.
2. The request should:
  - Describe the property.
  - State whether the mobile home is attached to the ground and, if so, by what means.
  - Include information on the current use being made of the mobile home.
3. If the contents will be seized, specifically describe the type of property involved. The approval level will depend on whether the asset is a principal residence, other residence, business asset, etc.

#### **5.10.2.5 (10-01-2004)**

##### **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 may still be appropriate.

#### **5.10.2.6 (10-01-2004)**

##### **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, consult area counsel.
2. The following characteristics are indications of historical or cultural properties that fall under 36 CFR Part 800:
  - A significance in history of the architecture, archeology, and/or culture in structures and objects
  - An association with events in history
  - An association with historical figures
  - Distinctive characteristics of period architecture, construction, artistic significance, or information important to history
  - The area is declared historical

#### **5.10.2.7 (04-11-2013)**

##### **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 resolution, revenue officers must consider the implications of the Religious Freedom Restoration Act of 1993 which was established to protect the free exercise of religion.
2. Revenue officers must secure area counsel's approval before seeking other appropriate approvals when proposing the seizure of the assets of a religious organization.

#### **5.10.2.8 (07-03-2009)**

##### **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, or gunsmith). Because of the sensitive nature of this type of seizure, approval by the area director is required. Prior to the seizure, the revenue officer must contact the Property Appraisal and Liquidation Specialist (PALS) to discuss the potential seizure. The PALS should contact the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for information regarding firearms sales.

**Note:**

Consider recommending a suit to foreclose the federal tax lien instead of seizure.

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 foreclose the Federal tax lien may be appropriately recommended. Certain arms for personal use may be exempt from seizure (IRM 5.10.1.3.3.3(2), *Equity Determination - Exempt Assets*).
3. If firearms for personal use are unexpectedly encountered during a seizure, contact Criminal Investigation (CI) or TIGTA immediately so they can respond to the seizure location to advise the revenue officer of the appropriate action and provide protection for the revenue officer. Do not list these items on Form 2433 unless they are actually being seized.
4. If firearms are seized, contact CI for assistance 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. See IRM 5.10.4.5(15), *Actions to Release and Return Property*, for the procedures to release property when another government agency becomes involved. If the taxpayer is a convicted felon, do not release the firearms to the taxpayer. Contact area counsel, CI, and ATF for guidance on the appropriate disposition of the property.

5. After all the required actions pertaining to the seizure of firearms have been taken and the seizure is executed, transfer custody of the property to the PALS. The PALS may either conduct the sale or outsource the sale to an ATF-licensed auctioneer. If the PALS conducts the sale, he or she must use an authorized dealer to conduct any required background checks and prepare sale paperwork required by law. The PALS will issue a Form 2435, *Certificate of Sale of Seized Property*, once the authorized dealer has completed the required actions and verified the purchaser meets the legal requirements to purchase, own, or possess a firearm.

**Exception:**

Firearms that are primarily collector's items, as described in IRC 5845, may be sold by the PALS at public auction or sealed bid sale. Consult ATF if there are any questions about whether a specific firearm meets this definition.

**5.10.2.9 (04-11-2013)**

**Controlled Substances or Drug Paraphernalia**

1. Because of the sensitive nature of these seizures, approval of the area director is required. See IRM 5.10.3.17, *Controlled Substances*, for instructions on the disposal of controlled substances (i.e., narcotics, stimulants, depressants, tranquilizers, and hallucinogenic drugs) after seizure.
2. Drug paraphernalia generally includes items such as pipes, syringes and other devices designed to introduce drugs into the human body. Do not seize drug paraphernalia unless it consists of wholesale or retail inventory.
3. These assets should not be seized unless they are the sole asset through which collection can be enforced. Other avenues of collection, such as levy on bank accounts or accounts receivable, or seizure of vehicles, cash register contents, or furniture and fixtures, should be used instead.
4. If other assets will not satisfy the liabilities, a seizure may be made of the controlled substances or drug paraphernalia. Contact area counsel prior to seizure.
5. In no event should drug paraphernalia be advertised or offered for sale until the following actions are taken:
  - A. 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.
  - B. If possession is not illegal or authorities refuse to accept the material, refer the matter to area counsel for an opinion as to whether administrative or judicial sale of such material is legal. Consult area counsel in any case where there is a question whether the material seized is drug paraphernalia.
  - C. Once counsel issues an opinion, submit a report to the area director outlining all of the 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.

**5.10.2.10 (10-01-2004)**

**Material Considered Obscene or Pornographic**

1. Because of the nature of this type of seizure, the approval of the area 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. Contact area counsel before such material is seized. In no event should the material be advertised or offered for sale until the following actions are taken:
  - A. 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.
  - B. If possession is not illegal or authorities refuse to accept the material, refer the matter to area counsel for an opinion as to whether administrative or judicial sale of such material is legal. Consult area counsel in any case where there is a question whether the material seized is obscene or pornographic.
  - C. Once Counsel issues an opinion, submit a report to the area director outlining all of the 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.

**5.10.2.11 (07-03-2009)**

**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 area director is required. Prior to making personal contact, review the provisions of IRM 5.1.3.5, *Armed Escort to Contact a Taxpayer*.

**5.10.2.12 (04-11-2013)**

**Property With Environmental Considerations**

1. Several types of business may create employee safety issues and environmental concerns if they are seized. Some examples are:
  - Battery charging and handling operations
  - Laboratories
  - X-Ray equipment Facilities
  - Facilities with asbestos or Polychlorinated Biphenyls (PCB's)
  - Firing ranges
  - Warehouses storing hazardous or toxic materials
  - Photo processing or graphic arts facilities
  - Printing, etching, or plating plants
  - Welding and sheet metal shops
  - Roofing contractors
  - Auto repair and paint shops
  - Waste disposal facilities or incinerators
  - Lumber yards and processing plants
2. Before seizing property from these or similar businesses, consider the following employee safety and environmental factors :

- A. What were the past and current uses of the property?
  - B. Are there any indications of the presence of asbestos?
  - C. Were any chemicals or fuels handled at the site?
  - D. Are there now, or have there ever been, any underground storage tanks on the property?
  - E. Are there electrical transformers, capacitors, or other equipment that may contain PCB?
  - F. Are there groundwater wells on the property, or is the groundwater in the immediate area used as a source of drinking water?
  - G. Could the activities at adjacent businesses or properties pose potential environmental risks?
  - H. Is the property, or any of the adjacent properties, on a federal, state, or local list of hazardous waste or contaminated sites?
  - I. Is the property the subject of environmental litigation, regulatory citations, or enforcement action?
3. Some of the indicators of potential environmental concerns are:
    - Chemicals stored
    - Obvious physical signs of contamination, such as stained soil or concrete, vegetation damage, foul or unusual odors, or oily sheens or discoloration on the surface water on or around the property
    - Warning or cautionary signs outlining some occupational or chemical hazard
    - Spills of unknown substances on the floor
    - Personal protective equipment near employee work stations
  4. Prior to seizing these types of establishments, employees should:
    - Take all necessary safety precautions.
    - Determine whether the disposal costs of the hazardous materials and any required remediation of the property would exceed the potential proceeds from the sale of the establishment's assets.
  5. Take the following actions if property is seized and environmental hazards are discovered:
    - A. In the case of the release, spill, or leak of any chemical products, including liquids, gases, or solids, immediately contact the local hazardous materials response authority, e.g. local fire department.
    - B. Report the incident immediately to the local IRS Safety Officer. A listing of local IRS area safety officers is available on the IRS Agency-Wide Shared Services (AWSS) website .
    - C. Refer to IRM 1.14.5, *Occupational Safety and Health Program*, section 1.14.5.5, *Responsibilities*.

#### **5.10.2.13 (01-01-2006) Cleared Contractor Facility**

1. In order to mitigate the possibility of compromise of "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 area directors whose offices lie within a DCASR.
3. When considering seizure of this type of firm, the revenue officer will ask a responsible officer or the owner if the firm:
  - Has been or is now a participant in the DISP
  - Is cleared to perform on classified government contracts
  - Is currently in possession of any classified material for an ongoing or terminated contract

**Note:**

The revenue officer should consider the precautions necessary to secure this type of facility as well as the fact that classified material will be released to DCASR (IRM 5.10.2.13(6)) when determining whether seizure would be appropriate.
4. If a contractor answers yes to any of the above questions, after seizure provide immediate notice to the Director of Industrial Security for the DCASR having jurisdiction over the area. Notice may be given by either of the following methods:
  - Contacting the DCASR by telephone
  - 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.

#### **5.10.2.14 (04-11-2013) Consent or Writ Determination**

1. The Supreme Court of the United States held in G.M. Leasing Corp. vs. 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 whether a consent or writ will be required prior to making the seizure. See IRM 5.17.4.13, *Writs of Entry*.
2. Before entering into a private area, the revenue officer must secure either:
  - Written consent from the rightful occupant (IRM 5.10.3.3, *Conducting the Seizure - Securing Consent*), or
  - A court order (writ) permitting entry (IRM 5.10.3.5, *Writ Procedures*)

3. The revenue officer must determine if the assets are located in a private area. Some common characteristics of a private area include:

- No accessibility to the general public
- Posted signs and warnings against entry
- Employee access only
- Areas with an expectation of privacy
- Covered or attached areas
- Areas behind counters

4. Examples of common private areas include:

- Restaurant kitchen areas
- Service departments
- Private self-storage facilities
- Garages and other attached or unattached structures
- Product storage areas for retail establishments
- Manufacturing plant production properties
- Fenced properties
- Cash registers
- Safe deposit boxes
- 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:

- When it is believed that advance notice will jeopardize the safety of the revenue officer(s)
- When attempts to contact the taxpayer or rightful occupant fail
- When there are substantiated concerns that the taxpayer will refuse consent and then place assets beyond the reach of the IRS while a request for Writ of Entry is pending

6. In situations where it is believed that the taxpayer may try to place assets beyond the reach of the Service, or if the taxpayer has previously placed assets beyond the Service's grasp after having been forewarned of enforced collection by the consent request, secure a Writ of Entry (IRM 5.10.3.5, *Writ Procedures*) without requesting consent. The affidavit furnished to the court must state the reason why an attempt to secure consent would compromise collection efforts.

7. Prior to requesting the Writ of Entry, the reason a consent is not being sought must be documented by the revenue officer and included in the approval package documentation. The request requires concurrence by the level of management above the group manager. The approving official will document concurrence in the ICS history. 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. A search warrant cannot be issued to a revenue officer authorizing entry upon private premises to search for property to seize.

9. A consent or Writ of Entry is not an eviction of the taxpayer or rightful occupant, nor is it approval to store the assets on site without entering into an agreement with the rightful occupant. The ability to take possession and control of the real estate when the seizure involves either the real estate or leasehold interest housing the personal property is a separate issue.

#### **5.10.2.15 (07-03-2009)**

##### **Contents of Residence - Consent or Writ Required**

1. Revenue officers must consider a taxpayer's reasonable expectation of privacy when seizing the contents of a residence. A Consent to Enter private premises or a Writ of Entry must be obtained before seizing any assets considered the contents of a residence, and these seizures must be approved by the area director. The taxpayer's reasonable expectation of privacy extends to areas and buildings close to the residence. Thus, the definition of "contents of a residence" includes all items, excluding motor vehicles, located in garages and other structures on the land on which the principal residence is located.

#### **5.10.2.16 (07-03-2009)**

##### **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 in any of the following locations:

- On public property, such as a street, or county road
- In an unobstructed driveway or front yard
- On an unsupervised portion of a third party's premises which is accessible to the general public such as a public parking lot or public garage.

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.

3. Area director approval is required if the motor vehicle is used in the trade or business of an individual taxpayer.

#### **5.10.2.17 (04-11-2013)**

##### **Perishable Goods**

1. See IRM 5.10.1.4 and 5.10.1.5 for criteria and pre-seizure development procedures for perishable goods.

2. To secure approval for a seizure and expedited sale of property under IRC 6336, the revenue officer must prepare a memorandum to the area director. In addition to the information required for all seizures outlined in IRM 5.10.2.18, *Securing Managerial Approval of Seizure Actions*, include the following information in the memorandum:

- Name and address of taxpayer
- Amount of the levy

- Proposed date of seizure
- Short description of the property to be seized
- The perishable goods criterion selected
- The appraised value of the property
- The expected net sale proceeds under IRC 6335 and 6336

The PALS Perishable Goods Criteria and Sale Plan memorandum must be attached to this memorandum.

3. The area director will determine whether the property seized is of a type to which an expedited sale under IRC 6336 is applicable. If he or she determines the property is not perishable within the meaning of IRC 6336, he or she will inform the revenue officer and normal seizure and sale procedures will be followed. If the area director agrees that the property is perishable, he or she will approve Form 668-B, *Levy*, and advise the revenue officer to proceed. If the seizure and sale is approved as a normal IRC 6335 sale, the revenue officer and PALS will discuss and develop an appropriate seizure and sale case strategy given the changes to the initial plan.
4. IRM 5.10.4.15, *Pre-Sale Procedures for Perishable Goods*, contains procedures for the sale of perishable goods. The PALS function will have responsibility for all perishable goods sales with assistance from the revenue officers.

#### 5.10.2.18 (08-04-2014)

#### Securing Managerial Approval of Seizure Actions

1. If all of the IRM requirements have been met and seizure is the appropriate case action, the revenue officer should enter the appropriate asset information into the ICS seizure application and then use the application to prepare Form 13719, *Pre-Seizure Checklist and Approval Request* (Exhibit 5.10.2-2) and Form 668-B, *Levy*. See Exhibit 5.10.2-3, *Form 668-B*, for instructions on preparation. The revenue officer should review the IRM procedures for conducting the seizure to determine whether any special circumstances should be addressed before the seizure is conducted. The revenue officer should also determine to whom and where the seizure documents must be delivered. (See IRM 5.10.3.6, *Seizing the Property*, and IRM 5.10.3.20, *Notice of Seizure Form 2433 - Delivery*).

#### Note:

See IRM 5.10.2.19, *Judicial Approval for Principal Residence Seizures*, for procedures when preparing to seize real property used as a principal residence by the taxpayer, taxpayer's spouse or former spouse, or taxpayer's minor children.

#### Note:

The location and means of delivery of seizure documents are specified by IRC 6335. Failure to follow IRM instructions in IRM 5.10.3.20 can lead to significant problems and may render the seizure and sale invalid. If there is any question as to delivery requirements, consult Advisory section through your manager.

2. Form 668-B should generally contain all outstanding tax periods. Some circumstances may lend themselves to exceptions to this rule. Examples include
  - Tax periods arising after approval but prior to seizure
  - Tax balances on multiple periods significantly in excess of the fair market value of the asset when there are no junior creditors
  - Tax periods currently in appeals or pending adjustment

#### Note:

The case file **must** include documentation that the RO attempted to advise the taxpayer or representative that the Form 668-B does not include all tax liabilities.

3. Calculate penalties and interest on Form 668-B as of thirty (30) days after the date of submission for approval.
4. The determination to seize and authority to sign Form 668-B, *Levy*, may be delegated to revenue officers GS-09 and above. Delegation authority for approving Form 668-B is included in SB/SE Delegation Order 5.1.
5. The case file and seizure approval package must contain the appropriate documentation to justify the seizure action. The approval package should include an adequate description of the property that is to be seized. The following information must be included in a summarizing history entry or on a separate fact sheet:
  - Verification of the liability (IRM 5.10.1.3.1, *Verifying the Liability*)
  - Economic hardship - has the taxpayer substantiated that a verifiable economic hardship condition currently exists (or would be created by the seizure) as described in IRM 5.11.2.2.1.4, *Legal Basis for Releasing Levies?*
  - Documentation of estimated minimum net sale proceeds (IRM 5.10.1.3.3, *Equity Determination*)
  - Discussion of alternatives that were considered (IRM 5.10.1.3.2, *Alternative Methods of Collection*)
  - Results of risk analysis (IRM 5.10.1.3.2, *Alternative Methods of Collection*)
  - Due process notification with appropriate forms and publications (IRM 5.10.1.7, *Pre-Seizure Taxpayer Notifications*)
  - Attempts to personally notify the taxpayer of proposed seizure (IRM 5.10.1.7.2, *Personal Contact to Advise the Taxpayer of Proposed Seizure Action*)
  - Whether a consent or writ will be required (IRM 5.10.2.14, *Consent or Writ Determination*)
6. The case file should then be submitted for approval through the appropriate levels of management. The approval package must contain the following information:
  - Form 13719, *Pre-Seizure Checklist and Approval Request*, (Exhibit 5.10.2-2); the checklist should reference the appropriate history entry or fact sheet paragraph reference where the required action can be verified; "N/A" may only be entered for "Individual Taxpayer — Exempt Assets Considered" and "Individual taxpayer — Business Assets/ Other assets were Considered."
  - Form 668-B (enter name of area director on Form 668-B, only if seizure requires director approval).
  - NFTL Copies.
  - Preliminary Form 2434-B (not applicable if **only** cash is to be seized).
  - Case History or Fact Sheet addressing all required items in 5.10.2.18, *Securing Managerial Approval of Seizure Actions*.
  - For real property seizures, include Form 2433 and deed(s).

#### Note:

For real estate, the description should indicate whether the real estate is improved or unimproved. The approval package will address whether there are commercial or residential structures on the property, intended and actual use, whether or not any property is being used by any individual as a residence, and any other information that will allow the approving official to know exactly what type of property will be seized. This will help ensure the appropriate approval level is secured for the type of property being seized.

- For personal property seizures, include Form 2433, with the property description blank or filled in if the assets are few and known, such as specific vehicles.
  - Any other relevant items, such as title reports, appraisals, L-1058, L-3174, L-1029, information on to whom seizure documents must be delivered, etc.
7. All approvals must be written and will be retained with the case file. (An electronic signature is acceptable evidence of approval for Form 668-B.) All Collection seizures will require a minimum approval level of the territory manager. See *Exhibit 5.10.2-1* for a chart containing asset types and approving official. The revenue officer group manager will review the case file for accuracy and approval of the seizure action and forward the approved file to Advisory. The case file must be reviewed by Advisory for technical accuracy after group manager review and before it is forwarded to the territory manager for seizure approval. The revenue officer should work with Advisory throughout the entire seizure process whenever there are questions regarding the appropriate technical procedures to follow on the case.
8. In order to clarify and provide for consistency in the pre-seizure review process, Advisory's review prior to seizure will be limited to the following items:
- Approval Authority (per IRM Exhibit 5.10.2-1)
  - Asset ownership and lien interest - verification of taxpayer ownership and/or interest in the asset (e.g. deed, title, purchase information) and lien interest per IRM 5.10.1.3.3(4)
  - Consideration of exempt assets (per IRM 5.10.1.3.3.3)
  - Consent/Writ of Entry (per IRM 5.10.2.14)
  - Verification of issuance of the Final Notice as described in IRM 5.10.1.7

If the above items have been sufficiently addressed and are procedurally accurate, the seizure file will be forwarded to the territory manager for approval.

**Note:**

This limitation on pre-seizure Advisory review does not apply to seizure of property deemed perishable. In that case, Advisory should review all items listed on Form 13360, *Seizure and Sale Checklist*, for legal sufficiency.

9. 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 and retained as part of the case file.

**5.10.2.19 (08-04-2014)**

**Judicial Approval for Principal Residence Seizures**

1. The Service must secure judicial approval prior to seizing a principal residence (Internal Revenue Code (IRC) section 6334(e)(1)). This includes any real property used as a principal residence by any of the following individuals:
- Taxpayer
  - Taxpayer's spouse or former spouse
  - Taxpayer's minor children

**Note:**

For a principal residence seizure, the liability must exceed \$5,000 (IRC 6334(a)(13)(A)).

2. If there are issues related to ownership, nominee situations, collection statute concerns (CSED expires in one year or less), or other items, then a suit recommendation to foreclose the Federal Tax Lien and/or to reduce the tax claim to judgment may be the appropriate case action. Consult Advisory or area counsel for further guidance. Additional information on principal residence seizures is located in IRM 5.17.3.4.5, *Seizure of a Residence/Principal Residence*.
3. If all of the requirements of IRM 5.10.1.3, and IRM 5.10.1.6 through IRM 5.10.1.7 have been met and it is determined that seizure is the appropriate case action, enter the asset information into the ICS seizure and sale application and begin preparing the suit narrative report (see IRM 5.17.4.9, *Proceeding to Seize a Principal Residence*, and IRM 5.17.12, *Investigations and Reports*, for additional information).
4. The format of the revenue officer's suit narrative report is much the same as in other suit narrative reports. The suit narrative details the results of the investigation and contains the recommendation to seize the principal residence. Each section is labeled and paragraphs are numbered. The narrative should be complete and concise, and should contain only facts and not opinions. All supporting documents should be included as exhibits.
5. The report begins with the taxpayer's name, address, and taxpayer identification number, followed by three sections:
- Introduction
  - Body
  - Conclusion and Recommendation
6. The "Introduction" includes the following information:
- 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(s) of tax and current outstanding balance(s), including accruals, through a current date; this information should be the same as the account information included on Form 4477, Civil Suit Recommendation
  - The earliest collection statute expiration date (CSED)
  - A summary of administrative actions taken or the reason why specific administrative actions were not taken
  - The need for urgent action if required

**Note:**

Settlement Option Procedures do not apply to these actions.

7. The "Body" should contain a chronological presentation of the facts supported by exhibits. The following table describes the information and exhibits that should be included. Additional exhibits may be used as necessary.

Topic	Information to Include	Exhibits
Information about the taxpayer	<ul style="list-style-type: none"> <li>• Age</li> <li>• Health</li> <li>• Marital status</li> <li>• Occupation</li> <li>• Dependents</li> <li>• Tax compliance history</li> <li>• Current compliance</li> <li>• Any other factors that may bear on the case</li> <li>• Information on any related cases</li> <li>• ID of all persons holding valid power of attorney for or otherwise representing the taxpayer or other involved parties</li> </ul>	
Information regarding occupants (including children)	<ul style="list-style-type: none"> <li>• Name(s)</li> <li>• Relationship(s) to the taxpayer</li> <li>• Brief history (Age, health, etc.)</li> <li>• Current mailing address of the occupant(s) of the principal residence</li> </ul>	
Verification of the liability	<ul style="list-style-type: none"> <li>• Basis for assessment(s) (voluntarily filed, examination assessment, etc.)</li> <li>• Date of assessment(s)</li> <li>• Timeliness of the assessment(s) per IRC 6501</li> <li>• Date of notice and demand for payment for each liability</li> <li>• Dates of CDP notification with appropriate forms and publications for each liability</li> <li>• Results of notification – any responses received from the taxpayer</li> </ul>	<ul style="list-style-type: none"> <li>• Certificates of Assessment (Form 4340) or other certified transcripts</li> </ul>
Collection Due Process (CDP)	<ul style="list-style-type: none"> <li>• Dates of any CDP or Equivalent hearings</li> <li>• Results/CDP determinations</li> <li>• A summary of the relevant issues raised in prior IRC 6320/6330 hearings</li> </ul>	<ul style="list-style-type: none"> <li>• Letter 1058</li> <li>• CDP filing information</li> <li>• Information received from Appeals</li> <li>• Results of CDP or Equivalent hearings</li> </ul>
Lien filing information for all modules	<ul style="list-style-type: none"> <li>• Lien filing information on all modules (dates and locations, including any refiled liens)</li> <li>• IRC 6320 notification for each module</li> <li>• Dates of any CDP or Equivalent hearings</li> <li>• Results/CDP determinations</li> <li>• A summary of the relevant issues raised in prior IRC 6320 hearings</li> </ul>	<ul style="list-style-type: none"> <li>• Copies of Liens</li> <li>• CDP filing information</li> <li>• Information received from Appeals</li> <li>• Results of CDP or Equivalent hearings</li> </ul>
Property description	<ul style="list-style-type: none"> <li>• Accurate legal description of the property from the deed which has been recorded with the local recording office</li> <li>• Taxpayer's ownership interest in the property</li> </ul>	<ul style="list-style-type: none"> <li>• Copy of Deed</li> <li>• Form 2433, <i>Notice of Seizure</i></li> </ul>



	<ul style="list-style-type: none"> <li>• Any denial of ownership interest or evidence of such provided by the taxpayer or third party</li> <li>• Any additional information to describe the property</li> </ul>	
	<ul style="list-style-type: none"> <li>• Fair Market Value and how derived</li> <li>• Forced Sale Value and Minimum Bid Calculation</li> <li>• Encumbrances</li> <li>• Nature/Amount/Priority of any encumbrances</li> <li>• Identification of any parties with competing liens</li> <li>• Description of the nature and amount of anyone else's interest in the property</li> <li>• Determination of expected net proceeds</li> </ul>	<ul style="list-style-type: none"> <li>• Estimated minimum sale net proceeds calculation</li> <li>• Commercial Title search results</li> <li>• Letter 1029 or other documentation of current status and amount due for each encumbrance</li> <li>• Form 2434-B</li> <li>• Appraisal (if secured)</li> <li>• Commercial title report</li> </ul>
Valuation of the Property/Encumbrances against property		
Sufficient information to establish that all other legal and procedural requirements relevant to the proposed seizure have been met, including IRC 6331(j) requirements	<ul style="list-style-type: none"> <li>• Discussion of Alternative Methods of Collection Considered/Risk Analysis</li> <li>• Attempts to personally notify the taxpayer of proposed seizure</li> <li>• All other pre-seizure requirements met</li> </ul>	Form 13719 (Pre-Seizure Checklist and Approval Request) - the checklist should reference the appropriate paragraph from the suit narrative where the action is addressed

8. The "Conclusion and Recommendation" is the closing for the report. Include the following information in this section:

- A brief summary of the recommendation for a principal residence seizure
- A restatement of the request for institution of civil action

9. The suit package should contain:

- Form 4477, *Civil Suit Recommendation* (mark Item 3 as "Other" and enter "Judicial Approval for Principal Residence Seizure")
- Suit Narrative Report
- Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale*
- Form 2433, *Notice of Seizure*, with the current accurate legal description (and current derivation clause, if required)
- Estimated minimum net sale proceeds calculation (worksheet, memo, or excerpt from ICS history)
- Copies of Notices of Federal Tax Lien
- Form 13719, *Pre-Seizure Checklist and Approval Request*; the checklist should reference the appropriate paragraph reference from the suit narrative where the action is addressed
- Copy of Deed to Property
- Commercial title report with explanation of title search results
- Any other relevant documents, such as appraisals, L-1058, L-3174, L-1029, etc.

10. The completed suit package should be forwarded from the group manager, through Advisory, and then through the appropriate levels of management, including the area director. Advisory will complete the pre-seizure review as part of the suit review and approval process.

11. After approval of the suit recommendation, Advisory will submit the case to area counsel for referral to the Department of Justice (DOJ). The DOJ will file a petition with the court and will make an initial showing that:

- The liability is due
- The government has complied with all legal/administrative requirements
- There are no collection alternatives to the principal residence seizure

12. The taxpayer will be served with an order to show cause (Exhibit 5.10.2-4) why the residence should not be seized. In most cases, the revenue officer will be asked to serve the show cause order. Generally, the show cause order requires personal service or it may be left at the defendant's usual place of abode with someone of suitable age and discretion. Contact Advisory or counsel if there are any questions on the procedures for delivery of these documents. If the taxpayer files a response to the show cause order, a hearing will be held. The taxpayer cannot dispute the tax liability during this hearing.

13. Where the property to be seized is also the principal residence of the taxpayer's spouse, former spouse, or minor child, DOJ will send a "notice letter" to those parties informing them of the petition filed with the court and giving the number/address of the clerk of the court, if they wish to learn the date and location of the hearing.

**Note:**

These individuals will not be parties to the proceeding. Only the taxpayer will have an opportunity to be heard at the hearing.

14. This notice letter also instructs the addressee to contact the revenue officer assigned the case to provide any other relevant information the Service should consider before seizure. The revenue officer should forward any information received to the DOJ trial attorney through Advisory.

15. After the court order is received, the revenue officer should prepare Form 668-B, *Levy*, and secure the appropriate approvals, based on local guidelines. Form 668-B, *Levy*, includes only the periods for which the court order was approved.

**Reminder:**

A complete seizure package is not required and no additional Advisory review is required at this point since the necessary review took place prior to submitting the suit for approval.

16. Rule 62 of the Federal Rules of Civil Procedure generally places a 14-day stay on execution of judgements. This delay is intended to provide time for the taxpayer to post a bond or file a motion to stay the action. If it is necessary to seize the property earlier than 14 days after the date the order is signed, consult Counsel through Advisory.
17. If judicial approval is denied, consult with Advisory, and, if appropriate, area counsel, to determine further case action.

**5.10.2.20 (04-11-2013)**

**Post-Approval Actions**

1. After securing approval for the seizure, the revenue officer must determine when the seizure will be conducted. Coordination with the PALS is required at this point to facilitate transfer of custody of the property. The revenue officer must determine:
  - How many assisting employees will be needed
  - How the property will be inventoried
  - What equipment will be necessary
  - Whether all necessary forms have been prepared
  - The need for a consent or writ
  - Arrangements required for the transportation and storage of the assets
  - Whether an armed escort will be required
2. Having the appropriate number of employees present for a seizure is critical. At least one other Service employee is required for a seizure. Additional employees may be required depending on many factors, such as:
  - The type and quantity of assets
  - Complexity of inventory
  - Degree of cooperation from the taxpayer
  - Landlord/vendor/utility issues
  - 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 territory manager 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 only as an observer. The case history must be documented with 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 IRS employees should be briefed on:
  - The background of the case
  - Inventory issues
  - Transportation and storage plans for the assets
  - Potential for conflict
  - Any other factors relevant to the seizure
6. The PALS may also provide assistance at the seizure for issues related to organizing, moving and securing the property, but not for the actual seizure action.
7. 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. Also consider the safety and welfare of innocent third parties, livestock, and domestic animals.

**5.10.2.20.1 (07-03-2009)**

**Necessary Equipment**

1. Ensure the availability of all equipment necessary to make the seizure.
2. Prior to a seizure that will involve an extensive inventory, inspect the property location to determine the:
  - Availability of water, electricity, or other needed utilities
  - Heat or air conditioning needs
  - Potential health hazards
  - Presence of an alarm system
  - Need for any other items or services unique to the location
3. Depending on the circumstances, the following equipment may be useful:
  - Hand tools, such as hammer, screwdrivers, pliers, and bolt cutters
  - Chains and locks to secure gates and storage units
  - Scissors, tape, markers, paper, warning tags
  - Flashlights

- Mobile or cellular phones

#### 5.10.2.20.2 (07-03-2009)

##### Necessary Forms

1. Ensure that all necessary forms are completed or available, including::
  - Approved Form 668–B, *Levy*
  - Consent or Writ of Entry (if already secured)
  - Form 2433, *Notice of Seizure*
  - Form 911, *Application for Taxpayer Assistance Order*
  - Publication 1660, *Collection Appeal Rights*
  - Form 668–A, *Notice of Levy*, if the property is in the possession of a third party
  - Seizure warning tags (Forms 12911, 12912, or 12913)
  - Government BankCard

#### 5.10.2.20.3 (04-11-2013)

##### Armed Escorts

1. Revenue officers are not authorized to carry or use firearms or other 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 first priority. A revenue officer should request an armed escort if there is any fear or concern for personal safety or if threatening circumstances develop. If an armed escort is requested, notify the PALS group manager.
2. For procedures on requesting an armed escort, see IRM 5.1.3.5, *Armed Escort to Contact a Taxpayer*.

#### 5.10.2.21 (07-03-2009)

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

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

#### 5.10.2.22 (04-11-2013)

##### Contracting for Services

1. Estimated seizure related expenses should have been determined in consultation with the PALS prior to submitting the case for approval (IRM 5.10.1.3.3.1, *Equity Determination - Expenses of Sale*, and IRM 5.10.4.8, *Establishment of the Minimum Bid*). After the seizure has been approved, the revenue officer may begin contracting for 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, *Equity Determination - Expenses of Sale*). Whenever possible, revenue officers and PALS should use blanket purchase agreements (BPAs) or other contracts arranged by the procurement officer to obtain seizure-related services (e.g., towing, storage, and locksmith services). BPAs are contracts negotiated by a procurement officer. The advantages of a BPA are:
  - A. There is a set price, usually at the lowest rate available.
  - B. The vendor bills the Service through the contracting office.
3. Revenue Officers, GS-09 and above, and PALS are authorized (Delegation Order No. 1-14, contained in IRM 1.2.40, *Service-wide Policies and Authorities, Delegations of Authority for Organization, Finance and Management Activities*) to procure seizure related services with the following restrictions:
  - A. Procurement authority is limited to \$2,500 per service.
  - B. The Government Bankcard must be used for such purchases (PALS may also use convenience checks ).
  - C. There must be sufficient funds reserved to cover the cost of the service(s); 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 Government 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.

##### Note:

Do not split a single service into multiple billings to avoid the \$2,500 threshold.

5. Enforcement purchase authority has been added to the existing small purchase cards held by Field Collection territory secretaries. Territory secretaries will receive enforcement purchase card training and will be responsible for all requirements associated with the automated purchase card module. If the RO has no Government Bankcard for use in paying seizure expenses, the territory secretary will assist with payment.
6. The RO will conduct a preliminary discussion with the vendor regarding the projected seizure date and secure an estimated cost. The RO will verify and confirm that the expense will not exceed \$2,500 per transaction. The RO will provide all necessary information so that the territory secretary can directly contact the vendor to procure the required services. This information will include the vendor's name, telephone number, date of service, estimated cost, and a description of the activity being funded.

##### Note:

If cost will exceed \$2,500, do not order the services and do not contact a small purchase cardholder for bankcard assistance, as it is above their designated procurement authority. Instead, follow local procedures to complete a request for Procurement to issue a formal contract.

7. In order to guarantee timely assistance and payment, the RO will make every effort to provide sufficient lead time to secure the territory secretary's assistance. The RO will generally secure payment assistance for a seizure expense from the territory secretary. However, as work schedule needs dictate, any territory secretary within the area may be contacted for assistance, following local procedures.

8. As soon as possible after receipt of the services, the RO, via e-mail or fax, will provide the assisting territory secretary with verification the services were received. This can be done by annotating the invoice with the comment "Services Received and date (xx-xx-xxxx)". The following are some examples of seizure-related expenses that territory secretaries are authorized to pay:
  - Seizure-related towing and/or storage
  - Seizure-related locksmith services
  - Advertising (e.g. for bidders or for sales of perishable goods)

NOTE: This payment option cannot be used to procure title searches because other restrictions apply.
9. If an indemnification clause is required based on the type of service being requested (e.g., towing, locksmith), the RO must scan and send by secure email a copy of the signed clause to the territory secretary. The RO will maintain the original signed clause with the case file.
10. The Government BankCard and convenience checks **cannot** be used when the cost exceeds \$2,500 for a single service. If the seizure related service will cost more than \$2,500, compile the information necessary to justify the expense and submit the request through the Integrated Procurement System (IPS) so the contracting officer can 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.
11. Normally three estimates for service should be secured before submitting an IPS requisition. Some situations require a sole source justification if only one vendor is available. Some examples where sole source justification should be considered are:
  - When there is only one vendor for a particular service in a rural area
  - Assets are being stored where the property was seized and the rightful occupant has agreed to a rental amount
  - A special situation exists for a service that only a particular vendor can provide
12. If, after contracting for a service, emergency situations are encountered or unanticipated costs or delays in the sale would raise the cost above \$2,500, a requisition must be submitted to the contracting officer for procurement action.
13. The requisition to the contracting officer must have the following information:
  - A full description of the items or services required
  - The cost of the items and services
  - The vendor's name, address, and telephone number
  - A signed narrative, explaining the circumstances which precluded the revenue officer from obtaining prior contracting officer approval
14. Emergency contracting situations should be extremely rare since ratification of procurements in such situations must be approved by the appropriate Procurement Official, as stated in AWSS' Procurement Policy & Procedure 1.6a, *Ratification Procedures*. Ratifications could subject the person making an unauthorized procurement to disciplinary action.

**Exhibit 5.10.2-1  
Asset Type and Approving Official: Reference 5.10.2.1**

Asset Type	Approval Authority		
	JA- Judicial AD-Area Director	Mgr. AD	TM-Territory Mgr.
<b>REAL PROPERTY:</b>			
Principal Residence – Primary dwelling of the taxpayer, the taxpayer's spouse, former spouse and/or the taxpayer's minor children. IRM 5.10.2.19 & IRC 6334(e)(1)	X	X	
Personal Residence – A principal residence of someone other than the taxpayer, the taxpayer's spouse, former spouse and/or minor children. IRM 5.10.2.2 & IRC 5.17.3.4.5(3)		X	
Real property used in the trade or business of an individual taxpayer. IRM 5.10.2.3 & IRC 6334(e)(2)		X	
Historic Real Properties – Area counsel must be consulted prior to seizure. IRM 5.10.2.6			X
Real Property belonging to a religious organization. If the property is being used as a residence, use the appropriate guidance listed above. Area counsel approval must be obtained before seeking other appropriate approvals when seizing property belonging to a religious organization. IRM 5.10.2.7			X
<b>PERSONAL PROPERTY:</b>			
Tangible personal property used in the trade of business of an individual taxpayer. IRM 5.10.2.3 & IRC 6334(e)(2)		X	
Perishable goods – Seizure and expedited sale of property under IRC 6336. IRM 5.10.2.17		X	
Historic personal property – Area counsel must be consulted prior to seizure. IRM 5.10.2.6			X
Personal Property belonging to a religious organization. Area counsel approval must be obtained before seeking other appropriate approvals when seizing property belonging to a religious organization. IRM 5.10.2.7			X
Firearms of substantial value may be seized if they are included as a business asset (sports equipment outlet, hardware store, gun shop, etc). Prior to the seizure the revenue officer must contact PALS who will contact area counsel and ATF. IRM 5.10.2.8		X	
Controlled substances or drug paraphernalia. IRM 5.10.2.9		X	
Material considered obscene or pornographic – Area counsel must be contacted before such material is seized. IRM 5.10.2.10		X	
High Level Drug Dealers (assets of narcotics related taxpayers in connection with jeopardy/termination assessments). IRM 5.10.2.11		X	
Property with environmental considerations. IRM 5.10.2.12			X
Cleared Contractor Facility. IRM 5.10.2.13			X

**Exhibit 5.10.2-2  
Form 13719, Pre-Seizure Checklist and Approval Request Reference: 5.10.2.17**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.10.2-3  
Form 668-B, Levy and Instructions Reference: 5.10.2.17**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

Form 668B  
Instructions  
(Parts 1 -  
4)

1. Taxpayers name and address
2. Taxpayer Identification Number
3. Collection Territory
4. Type of tax (ie. 1040, 1120, 941, etc.)
5. Tax Period
6. Unpaid Balance of Assessment
7. Statutory Additions
8. Total with date to which accruals were computed (The total amount due of all modules on Form 668-B must match the total amount due on Form 2433, *Notice of Seizure*)  
Check box only if there are outstanding balances that are not listed on 668-B
10. Date of seizure (should be completed the day of the seizure)
11. Signature of seizing revenue officer
12. Date revenue officer signs form and submits for approval

**Exhibit 5.10.2-4**

**Order to Show Cause Reference: 5.10.2.18(12)**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 10. Seizure and Sale

#### Section 3. Conducting the Seizure

##### 5.10.3 Conducting the Seizure

- 5.10.3.1 [Overview](#)
- 5.10.3.2 [General](#)
- 5.10.3.3 [Conducting the Seizure — Securing Consent](#)
- 5.10.3.4 [Exigent Circumstances](#)
- 5.10.3.5 [Writ Procedures](#)
- 5.10.3.6 [Seizing the Property](#)
- 5.10.3.7 [Protecting the Property After Seizure](#)
- 5.10.3.8 [Payment to Vendors for Services Less Than or Equal to \\$2,500](#)
- 5.10.3.9 ["Not to Exceed" and Actual Costs](#)
- 5.10.3.10 [Notice of Seizure Form 2433 — Preparation](#)
- 5.10.3.11 [Alcoholic Beverages](#)
- 5.10.3.12 [Cash Register Contents](#)
- 5.10.3.13 [Safe Deposit Boxes](#)
- 5.10.3.14 [United States Treasury Securities](#)
- 5.10.3.15 [United States Marketable Securities](#)
- 5.10.3.16 [Patents and Pending Applications for Patents](#)
- 5.10.3.17 [Controlled Substances](#)
- 5.10.3.18 [Contacting Advisory for Seizure Numbers](#)
- 5.10.3.19 [Seizure Log](#)
- 5.10.3.20 [Notice of Seizure Form 2433 — Delivery](#)
- 5.10.3.21 [Property that is Tampered With, Rescued, or Stolen](#)
- 5.10.3.22 [Transfer of Custody to PALS](#)
- 5.10.3.23 [Transfer of Custody of Assets Back to the Field](#)
- Exhibit 5.10.3-1 [Form 10404, Consent to Enter Private Premises Reference: 5.10.3.3](#)
- Exhibit 5.10.3-2 [Declaration of Revenue Officer Reference: 5.10.3.5](#)
- Exhibit 5.10.3-3 [P-584, Data Sheet Reference: 5.10.3.5](#)
- Exhibit 5.10.3-4 [Form 2433, Notice of Seizure Reference: 5.10.3.10](#)
- Exhibit 5.10.3-5 [Letter P-336, Transmittal of Non-Marketable Securities to Bureau of Public Debt Reference: 5.10.3.14 and 5.10.3.15](#)
- Exhibit 5.10.3-6 [Letter P-337, Transmittal of Matured Securities to Federal Reserve Bank Reference 5.10.3.15](#)
- Exhibit 5.10.3-7 [Letter P-415, Transmittal of Form 2433 to Patent Office Reference 5.10.3.16](#)
- Exhibit 5.10.3-8 [Taxpayer/Responsible Officer's Acknowledgment of Opportunity to Download Computer Information Reference 5.10.3.7.4](#)
- Exhibit 5.10.3-9 [Form 2433 - Estimated Equity Reference 5.10.3.19](#)

##### Manual Transmittal

October 27, 2014

##### Purpose

- (1) This transmits revised IRM 5.10.3 *Seizure and Sale, Conducting the Seizure*.

##### Material Changes

- (1) References to parts 8A and 8B of Form 2433 are removed. Part 7B of 2433 is now to be used to post payments resulting from a seizure of property.
- (2) Exhibit 5.10.3-4 is amended to reflect the revised version of Form 2433.

##### Effect on Other Documents

This material supersedes IRM 5.10.3, dated August 4, 2014

##### Audience

Small Business/Self-Employed Compliance Employees

##### Effective Date

(10-27-2014)

Rocco A. Steco  
(Acting) Director, Collection Policy

##### 5.10.3.1 (04-03-2013)

###### Overview

1. This IRM section describes the procedures for completing seizures of property. The section includes direction that applies to all seizures as well as special instructions for particular types of property. The procedures for delivery of seizure forms are provided by IRC 6335 and must be followed carefully.

##### 5.10.3.2 (04-03-2013)

###### 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 Property

Appraisal and Liquidation Specialist (PALS) is essential before, during, and after the seizure. The PALS must be contacted prior to the seizure date to determine asset value, estimate sale expenses, resolve any logistical issues and to ensure an orderly transfer of property.

2. The revenue officer must 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 that would cause the seizure action to no longer be allowable or warranted.
3. Two employees (at least one of whom must be a revenue officer) are required for all seizures. See IRM 5.10.2.20 (2) *Post-Approval Actions* for procedures when only one revenue officer is available to make the seizure.
4. 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 the taxpayer's assets located on the premises. The revenue officer should take the time to address any questions the taxpayer has regarding his or her rights (see IRM 5.10.3.6.1, *Management Review Process and Taxpayer Appeal Rights* for additional information on taxpayer rights during the seizure process).

### 5.10.3.3 (08-04-2014)

#### Conducting the Seizure — Securing Consent

1. If the property to be seized is located on private premises, either the written consent of the rightful occupant (see IRM 5.10.3.2(3), *Conducting the Seizure - Securing Consent*) or a Writ of Entry is required to enter the premises. The request for consent should be explained to the rightful occupant. Use Form 10404, *Consent to Enter Private Premises*, (Exhibit 5.10.3-1), to secure the appropriate written consent. The revenue officer should explain that:
  - A. Written consent is not required for the revenue officer to conduct the seizure.
  - B. The consent is only permission to enter the private area of the property — the public area can be entered and property seized without consent.
  - C. The rightful occupant can refuse consent, but should be informed that a Writ of Entry is the next probable step.
  - D. If consent is given and the rightful occupant allows the property to be stored and sold on the premises, there is usually a reduction in expenses and an increase in net sale proceeds.
2. The revenue officer may accompany the rightful occupant 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. The taxpayer is usually, but not always, the rightful occupant. In addition to the taxpayer, two examples of rightful occupants who may have authority to sign a consent are:
  - Landlords who have advised the taxpayer that their lease is in default and have the right to lock the taxpayer out
  - Shop owners who have the taxpayer's goods on consignment for sale at their place of business

#### Note:

Local law may affect the landlord's rights in defaulted lease situations. Contact Area Counsel if there are questions regarding the landlord's right to enter the premises.

4. When it is not possible to request consent in person, the revenue officer should contact the rightful occupant by mail or telephone, and request that the rightful occupant appear before the revenue officer to give consent. The consent must be signed by the rightful occupant or their 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 the seizure must be made more than 7 days later, a new consent should be requested.
6. The original consent will be sent to Advisory through the group manager within five days of the seizure. Distribute copies of the consent as follows:
  - The person who signed it
  - The case file
  - The PALS when custody of the property is transferred (see IRM 5.10.3.22, *Transfer of Custody to PALS*)
7. In no case is a signed consent to be maintained as guarantee of performance on an installment agreement, timely filing, or other action.

### 5.10.3.3.1 (04-03-2013)

#### 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. If consent is denied, within 2 workdays of the denial the revenue officer will initiate the process to secure a writ (IRM 5.10.3.5, *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.

### 5.10.3.3.2 (10-01-2004)

#### 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 entry to 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 control that assets in 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 in the private portion of the premises until a writ is obtained. The assets that are seized should be removed to a location where they can be protected.

### 5.10.3.4 (04-03-2013)

#### 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 is defined as a seizure that must be made immediately because there is insufficient 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 direction from his or her manager, and extensive documentation in the case history is required.
4. In cases where exigent circumstances exist, the revenue officer:

- Must be certain that the taxpayer is attempting to put property beyond the reach of the Service.
- Will secure written approval from the territory manager and also the area director if required.
- Will secure and document the advice of area counsel.
- 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.
- Will document the case file with the facts that led to a determination that "exigent circumstances" existed — this documentation must include the efforts to explain to the taxpayer his/her rights prior to seizure.

#### **5.10.3.5 (08-04-2014)**

##### **Writ Procedures**

1. When a Writ of Entry is required, the revenue officer will prepare:
  - A declaration under penalties of perjury (Declaration of Revenue Officer, Exhibit 5.10.3–2)
  - A Data Sheet (Pattern Letter P–584, Exhibit 5.10.3–3)
2. Since declarations are testimony under oath, the revenue officer must ensure that the information presented is accurate and factual. Extraneous information and subjective opinions should not be included in the declaration. Declarations do not require the signature of a notary public.
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 any questions from the judge or magistrate.
4. The data sheet will include:
  - Employee information
  - Taxpayer information
  - Notice, balance, and assessment dates
  - Summary of actions taken on the case
  - Rightful occupant information, if the taxpayer is not the rightful occupant
  - Date consent was refused
  - Description of the property to be seized
  - Description of the premises to be entered
  - An explanation of how the revenue officer knows the above information
5. If the revenue officer has reason to believe that property of the taxpayer is on the premises that he or she wishes to enter, but is unsure of precisely what property is located on the premises, contact area counsel to discuss how to describe the property to be seized.
6. Forward the completed declaration and data sheet through the group manager and Advisory to area counsel as soon as possible. After review, area counsel will refer the matter to the U.S. Attorney. Area 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 need to appear in order to answer questions from the judge or magistrate.

##### **Note:**

Ensure the PALS manager is aware of the pending application for writ of entry so timely transfer of the property can take place.

7. When the Writ of Entry is received, the revenue officer will notify the PALS manager and proceed with the seizure. The revenue officer should check IDRS after the writ has been secured in order to confirm that there have been no changes to the status of the taxpayer's account, such as bankruptcy filings, adjustments, or credits that would cause the seizure action to no longer be allowable or warranted. If the premises to be entered may be locked, the revenue officer should take the following actions:
  - A. Attempt to schedule the seizure at a time when the premises are expected to be open.
  - B. If there are no known times when the premises are expected to be open, contact the taxpayer to advise that the writ has been received and to make arrangements to meet at the premises to gain entry.
  - C. If the taxpayer refuses or does not respond, take the necessary action, such as securing the services of a locksmith, to enter the premises.
8. Generally, writs are in effect for ten days, but a judge or magistrate may limit or increase the time parameters.
9. For certain cases, it may be advisable to request that the writ allow for multiple entries of the same premises over a period of time. For example, if cash register contents are the only asset to be seized, successive levies on several days may be more efficient than requesting a new writ for each levy. Consult Counsel through Advisory to determine the language required on the affidavit in this context.

#### **5.10.3.5.1 (04-03-2013)**

##### **Writ Denied**

1. If the Writ of Entry is denied and it is determined that seizure of property located in a public access area is appropriate, consult with area counsel to determine whether such action will conflict with the basis for the denial of the Writ of Entry for the private premises. If area counsel concurs with the seizure, the property will be seized and stored as appropriate.

#### **5.10.3.6 (08-04-2014)**

##### **Seizing the Property**

1. The revenue officer will proceed with the seizure once the consent is signed or the court order is received. If a Writ of Entry was secured, the taxpayer will be given a 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 with Form 668-A at the time of the seizure. Distribute copies of the writ to:
  - Advisory (through the group manager) within 5 workdays after the seizure
  - The RO case file
  - Area counsel



- The PALS upon transfer of custody of the seized assets
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 control 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 delivered as required in IRM 5.10.3.20, *Notice of Seizure Form 2433 - Delivery*.
  4. Seizure of property should be timed to minimize entrance or interference of employees or customers. Sometimes a seizure is made and the taxpayer's employees and customers are present. In this situation the revenue officer should:
    - A. Ask the taxpayer or the taxpayer's employee in control of the property to advise the employees and customers to leave the premises.
    - B. Ask everyone to leave if the taxpayer or the taxpayer's employee in control of the property will not.
    - C. Secure the site and proceed with the seizure.
  5. The seizure should be discontinued if the taxpayer makes:
    - Full payment of the assessment plus all additions, or
    - Some other satisfactory arrangement regarding the tax liability
  6. If the taxpayer states that a bankruptcy petition was filed, secure the appropriate bankruptcy petition information and contact Advisory for additional instructions.
  7. If the taxpayer claims a hardship situation, the revenue officer should determine, based on the particular circumstances whether the seizure action should be discontinued. See IRM 5.10.3.6.1(6), *Management Review Process and Taxpayer Appeal Rights*, for procedures if the taxpayer claims a hardship and the revenue officer will not or cannot provide the relief requested. Any further enforcement action must be withheld during the Taxpayer Advocate Service (TAS) review (see IRM 13.1.7 *Taxpayer Advocate Service (TAS) Case Criteria*, for other situations that qualify for TAS referral).
  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 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 for self-protection and to stop the attack. The seizure should be discontinued and the assault reported to TIGTA (see IRM 5.17.3.5.4.1, *Criminal Acts*).
  10. Part 3 of Form 668–B must be:
    - Personally provided to the taxpayer,
    - Left at his or her residence or business, if he or she has such within the territory where the seizure was made, or
    - Mailed to the taxpayer's last known address within two business days of the seizure only if the taxpayer cannot be readily located, or has no dwelling or place of business within the territory where the seizure was conducted.

**Note:**

If the taxpayer's address is known and is located in the territory where the seizure was made, the documents must be left at the place of abode or business if the taxpayer is not available for personal delivery. The revenue officer may mail the documents in addition to leaving them at the place of abode or business, but they cannot only be mailed in these situations.

11. When personal property belonging to the taxpayer is in the custody of a third party, provide Part 4 of Form 668–B 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 include automobiles on a private parking lot or a safe deposit box at a bank.

**Note:**

If the Taxpayer Identification Number (TIN) is not needed by the third party to identify the asset, redact the TIN from Part 4 of Form 668-B and on Form 668-A. Do not redact the TIN on Parts 1, 2, or 3 of Form 668-B.

12. If a vehicle is located 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 for the keys. If the attendant fails to surrender the keys, and/or denies access to the vehicle, follow the procedures in IRM 5.11.2.1.9, *Refusing to Comply with a Levy*.

**5.10.3.6.1 (08-04-2014)**

**Management Review Process and Taxpayer Appeal Rights**

1. Taxpayers whose business assets have been seized are entitled to an expedited case review by management upon request. The seized assets must consist of 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 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 territory level. In those cases where the levy action is sustained (levy is not released), the taxpayer will be advised of the Taxpayer Advocate Service (TAS) and the Collection Appeal Program (CAP).
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 ten 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 CAP process (IRM 5.10.1.7.3 *Collection Appeal Rights*). The taxpayer will use Form 9423 *Collection Appeals Request* to request a CAP hearing.
5. TAS cases may be initiated because of seizure actions. If the taxpayer claims a hardship as a result of a seizure or proposed seizure action, determine whether the seizure action should continue (see IRM 13.1.7, *Taxpayer Advocate Service (TAS) Case Criteria*, for other situations that qualify for TAS referral).
6. If the revenue officer cannot or will not initiate action to resolve the taxpayer's inquiry or to provide the relief requested by the taxpayer, the revenue officer must assist the taxpayer in preparing Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*. Form 911 must state the hardship and/or problem, and it must document the relief requested. The revenue officer must document the reason why the requested action was not taken. Send Form 911 to TAS within one workday of identifying that the contact potentially meets TAS criteria (unless the taxpayer prefers to send it to TAS personally).
7. Further collection actions are generally suspended until the hardship is resolved by the TAS Office. See IRM 13.1.7, *Taxpayer Advocate Service (TAS) Case Criteria*, for TAS criteria and procedures.

**5.10.3.7 (04-03-2013)**

**Protecting the Property After Seizure**

1. After Form 668-B has been served, the revenue officer and/or PALS should sign the appropriate warning notices (Forms 12911, 12912, or 12913) and attach them to the property being seized. The name and phone number of the PALS who will conduct the sale and the revenue officer who conducted the seizure should both be included on the warning notices. If a PALS has not yet been assigned, include the name and telephone number of the PALS group manager.
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 will prevent unnecessary expenses if the sale is delayed or cancelled. After the Form 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 5.10.3.8, *Payments to Vendors for Services Less Than or Equal to \$2,500*, and 5.10.3.9, *"Not to Exceed" and Actual Costs*, 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. See IRM 5.10.1.3.3.1(7) and (8), *Equity Determination - Expenses of Sale*, for procedures in these situations.
4. When only real estate is seized, neither padlocking the premises nor changing the locks is appropriate, as possession of the real property remains with the owner or tenant until after the 180 day redemption period expires and the deed is issued. If the seizure involves unimproved real estate or the real estate is currently occupied or in use, do not post a warning notice.
5. If the taxpayer's entire business including both real and personal property is seized, warning notices should be attached to clearly identify the property under seizure.
6. While the procedures above apply in typical situations involving seizure of business property, there is no need to post a warning notice on any seizure when it would increase the prospects of violence or otherwise be imprudent. Not posting the warning notice has no effect on the legitimacy of the seizure action. Document the reasons for not posting 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 area 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 re-entering 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*. Follow the provisions in IRM 5.10.4.5(11), *Actions to Release and Return Property*, 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. The PALS may assist with the inventory of the property, but not the actual seizure.
10. When guards have been hired they should be apprised of the possibility of harassment or violence. In most cases satisfactory protection can be ensured by notifying the local police of the seizure and requesting their cooperation in protecting the property. Revenue officers and PALS may also conduct periodic visits to the seizure location to ensure the security of the assets .
11. Ask the taxpayer to take all necessary precautions (e.g., turn off water pumps, non-essential equipment, motors, etc.) to secure the property. If the premises must be checked periodically to protect the property, the revenue officer or PALS should make such arrangements.

#### **5.10.3.7.1 (04-03-2013)**

##### **Controlling Seized Property Stored in IRS Offices**

1. Parts 5 and 6 of Form 2433 and the ICS history are used for control purposes when seized items are stored in an IRS office. The revenue officer or PALS will ensure the property description is complete and document the value of the property on the appropriate section of parts 5 & 6. Reference to an attachment is appropriate if the complete description will not fit on Form 2433 or a supplemental Notice of Seizure is prepared.
2. The revenue officer or PALS will document in the ICS history the location of the safe, cabinet or other location with the name and number of the person controlling access.
3. Upon transfer of custody of the property to the PALS, the PALS will sign part 5 and 6 of Form 2433 and forward a copy of part 6 to Advisory and the PALS group manager.
4. Seized property must be safeguarded in facilities commensurate with the standards in IRM 1.16.15, *Minimum Protection Standards*. Local procedures for safeguarding such property will include periodic verification checks of the property in the container by a designated official.

#### **5.10.3.7.2 (04-03-2013)**

##### **Service and Repair Establishments**

1. Some businesses (e.g., dry cleaners, laundries, and repair shops) may possess 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 group manager concurrence, will determine the hours the business will be open based on such factors as amount of property to be claimed, location of the business and the usual hours the business was open 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, consider providing at least some Saturday hours.
4. Make reasonable attempts to contact customers regarding 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. The revenue officer and the PALS should coordinate the transfer of custody of the assets so customers have adequate time to claim their property.

#### **5.10.3.7.3 (04-03-2013)**

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

1. Records maintained by attorneys, physicians, and accountants concerning professional services performed are usually of little or no 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 are not subject to seizure.
3. Therefore, do not seize case files or records. When office facilities or office equipment of attorneys, physicians, or public accountants are seized for payment of taxes, do not examine case files and related files and ask the taxpayer to promptly remove all files.
4. If it is believed that the storage facilities, such as file cabinets, contain valuable property in addition to case files, the contents may also be seized but the case files should be released to the taxpayer as soon as possible. The revenue officer should be present when the taxpayer retrieves the files so that other property of value is not removed.
5. A supplemental notice of seizure should be issued describing the contents that remain under seizure. Issue Form 668-E for any property released back to the taxpayer. After the contents have been removed, the storage facilities (cabinets, etc.) may be sold.
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 the time of removal. Under no circumstances will case files be examined. Place the files in boxes and securely bind them. Label each box with the name of the taxpayer and the date it was removed. If the premises are not also under seizure, leave the boxes at the business premises. If the business premises are under seizure, remove the boxes for storage at the local IRS Office.

7. When files are removed for storage, ensure the security of the case files, and, if possible, store them in locked containers. 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 the time the files were removed. If case file boxes are removed for storage, notify the taxpayer 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, ask area counsel for guidance.

#### 5.10.3.7.4 (07-03-2009)

##### Seizures Involving Computer Equipment

1. IRM 5.10.1.3.3.5, *Equity Determination - Computer Equipment*, contains pre-seizure guidelines when determining whether to seize computer equipment. All taxpayer data on the hard drive must be removed prior to sale.
2. Once the property is seized, the taxpayer must be given an opportunity to download the data from the hard drive before it is eliminated by the PALS prior to sale. Advise the taxpayer that the Service will remove all of the information from the hard drive, even if the taxpayer does not download the data.
3. Document the case history when you advise the taxpayer of the need to download the information. The revenue officer or PALS may make this request. Exhibit 5.10.3-9, *Taxpayer/Responsible Officer's Acknowledgment of Opportunity to Download Computer Information*, should be used to document that the taxpayer was given the opportunity to download the information. Retain a copy of this document in the seizure file.
4. The PALS should:
  - Ensure that the taxpayer has been given the opportunity to download the information.
  - Take the appropriate action to eliminate all of the information from the hard drive as close to the scheduled sale date as possible.

#### Note:

This should allow the taxpayer to receive the equipment back in its original condition if the property is released or redeemed prior to sale.

5. Only the PALS are authorized to use the WipeDisk software to remove all of the material from the hard drive. Licensed software that can be sold with the computer should be reloaded to the hard drive whenever possible so that the value of the equipment is preserved. Consult area counsel on any software licensing questions.

#### 5.10.3.7.5 (08-04-2014)

##### Disposition of Abandoned Personally Identifiable Information (PII)

1. Safeguarding Personally Identifiable Information (PII) in the government's possession is essential to maintaining the public's trust. As part of IRS' commitment to protect privacy rights, revenue officers should pro-actively address the safeguarding of PII located on or in seized property.
2. Whenever possible prior to seizure, revenue officers should make arrangements for the taxpayer or owner of the seized property to remove PII (on paper or removable electronic media, such as flash drives) that is not being seized. The removal may occur before, during, or after the seizure.
3. In certain cases, the coordination of the removal of PII by the taxpayer or owner of the seizure property is unsuccessful. This may occur before, during, or after the seizure is completed. For example, the taxpayer may be unable to contact/locate, or the presence of PII may be unknown prior to the seizure, but discovered during or after the seizure is executed. PII contained within seized property should not be abandoned.
4. When the coordination of the removal of PII from seized property is unsuccessful, the revenue officer should temporarily take possession of the PII.
5. If the PALS discovers the PII after taking possession of the property, the PALS should notify the seizing revenue officer to remove and dispose of the PII. The responsibility of addressing the PII remains with the seizing revenue officer.
6. Once the revenue officer takes possession of the PII, the revenue officer should ensure it is protected from unauthorized access or use. After taking possession of the PII, if possible, the revenue officer should make arrangements for pick-up or delivery of the PII to the taxpayer or owner of the seized property. PII should be sent via private carrier (UPS), following PII shipping procedures in IRM 10.2.13.4.4.1, to the:
  - taxpayer's last known address when there is reasonable certainty the taxpayer is receiving mail at that location. **Do not send PII to the taxpayer's last known address without reasonable certainty the taxpayer is receiving mail at that location.**
  - valid Power of Attorney (POA).
  - officer/owner/general partner of a Corporation/LLC/Partnership when the corporation/LLC/Partnership is the taxpayer.
7. In very rare situations involving seized property, the address of the taxpayer is unknown or IRS cannot contact the taxpayer. If the taxpayer is unable to locate/contact, and there is no business reason to keep the PII, then it may be destroyed. Every effort to contact, locate, and confirm the taxpayer's address should be made before destroying the PII. The case should meet criteria for an unable to contact/locate closure per IRM 5.1.11.3, *Unable to Locate*, and/or IRM 5.1.18, *Locating Taxpayers and their Assets*. The revenue officer must secure approval from the Area Director before destroying PII.
8. Refer to IRM 10.2.13.4.5, *Disposition and Destruction*, for guidance on PII destruction. For removable electronic media, contact \*IT Media Destruction.

#### 5.10.3.8 (04-03-2013)

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

1. For purchases less than or equal to \$2,500, payment must be made under one of the following methods:
  - Government BankCard (IRM 5.10.3.7.1 *Government BankCard and Convenience Checks*)
  - Convenience Checks (PALS use only)
  - Form 6888 *U.S. Government Purchase Order — Invoice Voucher* (IRM 5.10.3.7.2, *Form 6888 Procedures*)

#### Note:

The Integrated Procurement System (IPS) must be used to pay the costs of a pre-seizure commercial title search. See IRM 5.10.1.3.3(5) *Equity Determination - Computer Equipment*.

2. Federal procurement regulations require written confirmation of the cost of a service.
3. Services that exceed \$2,500 require a purchase order through procurement channels and the request must be submitted through the IPS for funding by the local budget office. IRM 5.10.2.22, *Contracting for Services*, contains procedures for when services will exceed the authorized limit.
4. Prior to incurring any expense, the revenue officer or PALS must ensure that there are sufficient funds available to satisfy the expected expenses.

#### 5.10.3.8.1 (04-03-2013)

##### Government BankCard and Convenience Checks

1. The preferred method for procuring seizure and related services under \$2,500.00 is the Government BankCard. Each local area budget office has entered a bulk commitment into the IPS for estimated BankCard services.
2. If using the Government BankCard or convenience checks for locksmith or towing services, give the vendor a copy of Form 13857, *Indemnification of Locksmiths and Tow Truck Operators*. The vendor must sign and date Form 13857 to acknowledge receipt. The vendor must be provided a signed copy and the original must be retained with the other supporting documentation for the transaction.
3. When the revenue officer or PALS makes a purchase with the U.S. Government BankCard or convenience checks, 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:
  - A. Reconcile expenditure receipts to the statement.
  - B. Annotate the statement with the seizure number, type of service or item purchased, and the vendor's TIN.
  - C. Sign and date the statement.
  - D. Forward to the approving manager within 5 calendar days to ensure prompt payment.
4. The appropriate document identification number for each spending office should be referenced on all BankCard statements. This number can be found in the *Management and Finance Handbook — Financial Operating Policies and Guidelines*.
5. Additional information on the use of the Government BankCard can be found in Document Number 9185, *Purchase Card Guide*.
6. For services procured by the Government BankCard or convenience checks, submit a copy of the vendor's bill for each service rendered as part of the closing documents sent to Advisory.

**Note:**

If the RO does not have a Government BankCard and the vendor will not accept Form 6888, see IRM 5.10.2.22, *Contracting for Services*.

**5.10.3.8.2 (04-03-2013)  
Form 6888 Procedures**

1. Area 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. The book contains a "record of purchases" which must be documented each time a Form 6888 is issued. The revenue officer or PALS must ensure that the Form 6888 is properly completed so that it can be processed for payment.
2. Ensure that the writing is legible on all of the copies.
3. 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 those services are required. The "Taxpayer Identification Number" (TIN) clause requires the contractor to include their Social Security Number (for individuals) or employer identification number (for other entities) on invoices. Contractors who furnish services must include their TIN in the block entitled "Payee" on the front side of Form 6888.
4. The following information should be entered on Form 6888:
  - Date of Order — Date that you ordered the goods/services
  - Order Number — Number with which to identify the vendor's invoice
  - Payee — Vendor's full name, address, and TIN
  - Furnish Supplies or Services To — Name, address, and **telephone number** of the employee contracting for the services (revenue officer or PALS)
  - Supplies or Services Description — Description of the goods/services; date the goods/services were received; quantity, unit price, amount; enter the requisition document ID (provided for bulk estimate of 6888s) on the last line of this block
  - Total and Discount Terms — Total to be paid and any applicable discount terms (the total is the amount the employee is authorizing to be paid)
  - IRS Billing Address:  
Internal Revenue Service  
Beckley Finance Center  
P. O. Box 9002  
Beckley, WV 25802-9002
  - Ordered By — the revenue officer or PALS must print his or her name clearly in addition to signing the document
  - Accounting Data — Seizure number, spending office code and program activity code
  - Date Invoice Received — Actual date the invoice was received in the office (must be entered on all Forms 6888.)
5. The employee signing the Form 6888 (RO or PALS) serves as both the procurement official and the receiving person for goods and services obtained.
6. Provide Parts 1 and 2 to the vendor.
7. The contractor can either submit Part 1, Form 6888 as their original invoice or attach their own itemized invoice. If Form 6888 is submitted without an invoice attached, the contractor must sign and date the payment request box and annotate the amount requested. This section does not have to be completed by the vendor if he or she is submitting a separate invoice, but Form 6888 must be completed with all other information and must accompany the vendor's invoice. Instruct the vendors to mail Part 1 of Form 6888 (and any applicable invoices) to the Beckley Finance Center at the address shown above.
8. 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 or the date of receipt of a proper invoice, whichever is later. **The invoice receipt date must be clearly documented on the Form 6888 and/or vendor's invoice.** After the services have been rendered, the revenue officer or PALS should process Form 6888 expeditiously to avoid delay in payment. Send Part 3 of Form 6888 to the Beckley Finance Center within five calendar days of the date the goods/services were received. The revenue officer or PALS confirms receipt and acceptance by signing Part 3 of Form 6888 and documenting the actual date the goods/services were received. Proper acceptance dates are as follows:
  - Advertising — last date the ad was published
  - Towing — date of the tow
  - Storage — last date of service
  - Locksmith — date of service
  - Utilities — last date of billing period

- Miscellaneous Expenses — the date of the service or last date of billing period

9. For services procured by Form 6888, submit a copy of the vendor's bill if available, and Part 5 of Form 6888 to Advisory for each service rendered as part of the closing documents. 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. See IRM 5.10.6.2(1), *Payment of Expenses*, for guidelines on the input of TC 360.

#### 5.10.3.9 (04-03-2013)

##### "Not to Exceed" and Actual Costs

1. If the Form 6888 cannot be issued to the vendor the day the service is performed (for example, 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 Form 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 field budget officer 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:
  - Obtain telephonic approval from the contracting officer to continue the service
  - Submit a requisition within three workdays to the field budget officer, who will issue a confirming order, citing 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, the employee may extend the required service for a limited duration. A requisition must then be submitted to the field budget officer within three workdays, and must include all the required documentation necessary to enable the contracting officer to ratify the commitment. Commitments over \$2,500 require approval by the Assistant Secretary of the Treasury for Management and 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.

#### 5.10.3.10 (08-04-2014)

##### 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 should be prepared as shown in Exhibit 5.10.3-4.
2. Form 2433 is a seven-part form with copies for:
  - The taxpayer, owner, Advisory, and Accounting Control/Services
  - Releasing property in appropriate cases
  - Reporting sale proceeds and the disposition of the property
3. The items seized should be described and identified with reasonable certainty in an inventory listed on the form or in an attachment to it. Request the assistance of the PALS with the inventory after the seizure is made for cases with a large number of lots. IRM sections 5.10.3.11, *Alcoholic Beverages*, through 5.10.3.17 *Controlled Substances*, include additional instructions when any of the following assets are seized:
  - Alcoholic Beverages
  - Cash Register Contents
  - Checks and Money Orders
  - Safe Deposit Boxes
  - U.S. Savings Bonds
  - U.S. Marketable Securities
  - Patents and Pending Applications for Patents
  - Controlled Substances
4. For real property, the full legal description need not be used. The address (or street location if available), type of structure, approximate size of building, intended usage, and a description of the file location of the most recent deed generally describes the property in sufficient detail.
5. For personal property the description should include, to the extent possible:
  - Type of property
  - Brand name
  - Model description
  - Serial number
  - Quantities (where applicable)
  - Intended usage
  - Any other relevant information, such as the condition of the asset
6. When a motor vehicle is seized, in addition to the description of the vehicle (make, type, model, year, odometer reading, VIN, etc.), the inventory should include a listing of optional equipment such as radio, tape player, or air conditioner, etc. Any damage such as dents or missing hubcaps, 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. See IRM 5.10.2.8(3), *Firearms*, for the procedures to follow when firearms are found in a seized vehicle.

7. Parts 5, 6, and 7 of Form 2433 should reflect the most accurate fair market value possible. Do not include the fair market value on the parts of Form 2433 provided to the taxpayer or third parties, as this information is used for internal accounting purposes. The fair market value should be based on the pre-seizure investigation unless the taxpayer provides additional information during the seizure. Document the case history if there is a change to the estimated fair market value of the asset.

**Note:**

If information becomes available after the seizure that indicates sale will not generate proceeds to apply to the tax liability, immediately contact the PALS and RO group manager to determine whether release of the seizure is appropriate

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. Check the box indicating whether the taxpayer was present at inventory of the seized property. If the taxpayer was not present, provide the reason.

**5.10.3.10.1 (04-03-2013)**

**Notice of Seizure Form 2433 — Multiple Forms**

1. Revenue officers may encounter situations where multiple Forms 2433 may be needed. This is usually the result of the seizure of multiple assets from a single taxpayer. In these cases, a determination should be made regarding when to consider the seizures as separate actions requiring separate seizure numbers and when to consider them subsets (using alpha suffixes) of a single seizure.
2. In general, if assets are seized on the same day from the same taxpayer, use alpha suffixes for different groups of property if doing so would be beneficial (e.g., different types of dispositions, separate sales, redemption periods, separate parcels of real estate, possible litigation on some assets, etc.).
3. If any of the following conditions apply, separate seizure numbers must be used:
  - Assets are in the custody of different parties
  - Assets are seized on different days
  - Assets are seized from a different taxpayer (e.g., jointly held asset seized after individual asset)

**Note:**

A separate Form 668B and complete set of seizure paperwork is required for each seizure number issued.

**5.10.3.10.2 (04-03-2013)**

**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 should only be used when :
  - The work involved in taking the detailed inventory would be unwarranted because of the probability of prompt redemption or release
  - The delay may jeopardize the Government's claim for adequate protection due to impending bankruptcy or other insolvency proceeding, or
  - Many assets have been seized and there is insufficient time to prepare a detailed inventory at the time the Notice of Seizure is issued.
2. Under these conditions, issue the Notice of Seizure describing the property to the extent practicable:
  - A. List the most valuable and readily identifiable items.
  - B. Identify the rest of the property generally and describe its specific location.
3. An acceptable general description is "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 provided 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.

**Note:**

This complies with the requirement in Treas. Reg. 301.6335-1(a) that, after seizing personal property, the IRS provide a Notice of Seizure containing a "list sufficient to identify the property seized."

**Note:**

The Supplemental Form 2433 (as well as the original) should be delivered as described in IRM 5.10.3.20, *Notice of Seizure Form 2433 - Delivery*.

**5.10.3.11 (04-03-2013)**

**Alcoholic Beverages**

1. If personal property is being seized that includes an inventory of beer, wine or distilled spirits, exclude any opened bottle or containers from the seizure and 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 it is necessary to move the alcoholic beverages, the revenue officer or PALS will:
  - A. Arrange for transportation and storage.
  - B. Ensure that responsibility for theft and breakage is assumed by the carrier during transportation.
  - C. Secure a receipt and evidence of acceptance for responsibility from the transportation and/or storage vendor.
3. If the beverage was acquired by the taxpayer through a state, county or municipal store:
  - A. Contact the liquor control authorities and arrange for an inventory.
  - B. Furnish a copy of Form 668-B to the liquor control representative.
  - C. Jointly take an inventory on a form provided by the representative.
  - D. Retain a copy of the inventory in the case file.
4. In areas restricting the sale of liquor to a state, county, or municipal store system, contact area counsel for advice in conducting the sale. In some situations, state law restricts the sale of liquor to the public, but sale may be made to anyone holding a liquor license.

5. As soon as possible, determine the potential for 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 an 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. Ask the taxpayer to advise when arrangements are made.
6. If the alcoholic beverages are redeemed, prepare Form 668–E and ask the taxpayer to sign the release on the reverse. In jurisdictions with a state, county, or municipal store system, a copy of Form 668–E will also be supplied to the proper authorities with a memorandum explaining the action. 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 accepting returned product, a public sale will be held under regular sale procedures. The PALS should check with local authorities regarding the method of sale to identify any special restrictions.

#### **5.10.3.12 (04-03-2013)**

##### **Cash Register Contents**

1. Seizures of cash registers or their contents require either the 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 seizure of the cash register itself, file an NFTL prior to seizure.
3. Prior to seizing a cash register consider notifying local law enforcement authorities.
4. After securing a signed consent or a writ and providing the taxpayer with the Form 668–B, the revenue officer will apply the appropriate warning notice to the cash register:
  - A. Form 12913 will be used when the contents are to be immediately removed.
  - B. Form 12912 will be used if removal of the contents is to be delayed — it should be affixed so that the cash register cannot be opened without removing, tearing or destroying the seal.
5. Ask the taxpayer or the person in possession of the property to open the cash register in the presence of the revenue officer and the assisting employee.
6. If the request is refused, 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. Ask the taxpayer, or person in possession of the register to observe the counting of any money removed from the register.
8. Issue a Form 809 receipt for the amount of cash seized. Write "Contents of cash register seized" across the top of Form 809.
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. Dispose of any seized credit card drafts (e.g., Visa, MasterCard,) by presenting them for payment to the issuing financial institution with an attached Form 668–A, *Notice of Levy*. When the drafts have been itemized on Form 2433 and are later converted to cash through the use of Form 668–A, they must be accounted for by removing them from the seizure inventory through a release of levy (Form 668–E).
11. Cash should be inventoried by coin and bill denomination. Checks should be listed individually, specifying the check number, bank name, date of check, and the amount. See IRM 5.10.3.12.1, *Checks and Money Orders*, for additional information regarding checks and money orders.
12. United States securities and any other assets removed from the cash register should be described in detail on the Form 2433, *Notice of Seizure*. See IRM 5.10.3.14.1, *United States Savings Bonds*, and 5.10.3.15, *United States Marketable Securities*, for disposition of savings bonds and securities.
13. Before leaving the premises, the revenue officer will remove the warning notices and seizure tags and prepare the Form 2433.
14. If the cash register is not voluntarily opened or cannot be opened without using force:
  - A. Prepare a notice of seizure describing the property as "cash register (description by number and trade name) and contents thereof" .
  - B. If the cash register is movable, it should be removed from the premises, placed in storage, and arrangements made to have it opened.
  - C. If the cash register cannot be removed from the premises, advise the taxpayer 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).
  - D. Obtain the services of a locksmith to open the cash register to avoid damage.
15. The cash register should be opened in the presence of two Service employees. Notify the taxpayer in advance so that he/she may decide whether to be present. 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, issue a release of levy.

#### **5.10.3.12.1 (01-22-2008)**

##### **Checks and Money Orders**

1. If checks or money orders payable to the taxpayer are seized, use the following endorsement: "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 area director), Area Director of Internal Revenue Service (Area Number)."
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, 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 Advisory Territory Manager for the area specified in the endorsement. Advisory 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.

#### **5.10.3.13 (04-03-2013)**

##### **Safe Deposit Boxes**

1. Serve a Notice of Levy, *Form 668–A*, with a copy of the NFTL attached on an officer of the bank or trust company and request 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, Form 12912, *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 after leaving the premises. 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 (usually by box number and name of the institution).
5. Personally deliver Part 2 of Form 2433 to an official of the bank or trust company. Deliver Part 1 to the taxpayer according to the procedures in IRM 5.10.3.20, *Notice of Seizure Form 2433 - Delivery*.
6. When the rental period of the safe deposit box expires and is not renewed, a bank or trust company usually has the right to open the box. The revenue officer should attempt to determine if this is the situation in any given case, and if the right exists, use this opportunity to seize the contents of the box.
7. 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 5.10.3.13.1, *Court Order to Open Safe Deposit Box*). Securing the taxpayer's consent or cooperation is preferable as it gives the taxpayer every opportunity to comply before resorting to a court order.
8. When the deposit box is opened at a later date, either voluntarily or involuntarily, and the deposit box contains assets which are seized, a Supplemental Notice of Seizure (see IRM 5.10.3.10.2, *Notice of Seizure Form 2433 - Supplemental*) will be prepared describing the assets.
9. When the box is opened, all residue from the seal should be removed by the revenue officer, or the bank official in the revenue officer's presence.

#### 5.10.3.13.1 (01-22-2008)

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

1. Occasionally, the procedures outlined in IRM 5.10.3.13, *Safe Deposit Boxes*, will not be satisfactory and immediate action to open the safe deposit box may be 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.
2. Under these circumstances Form 2039, *Summons*, should be prepared and served on the taxpayer/box-holder in an attempt to secure information as to the contents of the box. 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 IRM 5.17.4, *Suits by the United States*, and 5.17.12, *Investigation and Reports*).
3. Writ of entry procedures may be used, in many situations, to obtain access to the contents of a safe deposit box. (See IRM 5.10.3.5, *Writ Procedures*). Contact area counsel through Advisory for advice on whether a writ or suit is appropriate.
4. When a writ is requested the revenue officer's declaration 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:
  - 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
  - Copies of all notices of tax lien filed, showing the date, time, and place of filing
  - Copies of Form 688-A, *Notice of Levy*; Form 668-B, *Levy*; and Form 2433, *Notice of Seizure*
  - Copies of the summons issued and a statement, if known, as to why the summons did not produce desired results
  - 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 5.10.3.13, *Safe Deposit Boxes*.

#### 5.10.3.14 (04-03-2013)

##### United States Treasury Securities

1. The United States Department of the Treasury issues a variety of marketable and non-marketable securities, most of which are now issued in uncertificated, electronic form. Many prior issues remain outstanding in certificated (paper) form. When considering levy, the form in which the security was issued must be considered.

#### 5.10.3.14.1 (04-03-2013)

##### United States Savings Bonds

1. United States Savings Bonds are nonmarketable (nonnegotiable) securities which are nonnegotiable and are payable only to, and may not be transferred by, registered owners during their lifetimes. Savings bonds are generally redeemable at any time after being held for one year. As of January 1, 2012, Series EE and Series I bonds (except for Series I bonds purchased through the Tax Time Program) are no longer sold in certificated form. Series HH bonds (not issued after September 1, 2004) were issued in certificated form. The following instructions are applicable to certificated nonmarketable Treasury Securities.

#### Note:

In addition to savings bonds, Treasury-issued certificates of indebtedness are also nonmarketable.

2. If certificated savings bonds are levied upon, they should be transmitted to the Advisory Territory Manager, together with a copy of the related levy or notice of levy for subsequent transmittal, over the signature of the territory manager or, at his/her option, the Advisory Territory Manager's signature, to the Bureau of the Public Debt as provided in Exhibit 5.10.3-7.
3. The Bureau of the Public Debt will forward a check payable to the area director. Balance due accounts should not be credited until the check is received.
4. If a registered owner or a co-owner wishes to redeem savings bonds and turn over the proceeds to the area 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 area director. The revenue officer should request the owner to sign an authorizing power of attorney to the area 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 in Parkersburg, West Virginia.
5. Savings bonds held electronically may be levied using Form 668-A.

#### 5.10.3.15 (04-03-2013)

##### United States Marketable Securities

1. Marketable United States securities are issued in the form of:
  - Treasury bonds



- Treasury notes
- Treasury certificates of indebtedness
- Treasury bills
- Treasury Inflation-Protected Securities (TIPS)

**Note:**

U.S. marketable securities are now issued in electronic form. The following instructions apply to seizures of these securities that were issued in certificated form.

2. A key difference in the securities is the length of time before maturity. Bonds are long-term issues, notes are medium-term issues, TIPS are mid-long term issues, and certificates and bills are short-term issues.
3. Certificated Treasury bonds were 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. Certificated notes and bills were issued in coupon (or bearer) form only. Since securities of the coupon (or bearer) form are freely transferable 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.

**5.10.3.15.1 (04-03-2013)**

**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 5.10.4.8, *Establishment of the Minimum Bid*. However, if the securities will mature within a relatively short period, they may be held to maturity and disposed of as provided by IRM 5.10.3.15.2, *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 Director, Collection Policy for advice as to the action that may be taken. The request should identify the security, including the maturity date.
2. If the securities will mature within a relatively short period (e.g., 30 days) they may be held to maturity and disposed of as provided in IRM 5.10.3.15.2, *Matured Securities*.

**5.10.3.15.2 (04-03-2013)**

**Matured Securities**

1. Matured (or called) securities, or those which will mature within a reasonably short period after seizure, may be reached by Form 668-A, *Notice of Levy* and will not be offered for sale since they are or will shortly become the equivalent of cash redeemable at 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. Unredeemed matured or called Treasury securities are subject to levy via Form 668-A.
3. 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 sample provided in Exhibit 5.10.3-6 should be used to transmit these securities.
4. Matured or called Treasury bonds in registered form will be transmitted to the Advisory Territory Manager, 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 5.10.3-5.

**5.10.3.15.3 (08-04-2014)**

**Stocks subject to seizure and sale procedures**

1. Taxpayers may have accounts or own stock without certificates. These securities are not represented by certificates but rather are held electronically. Shares of stock that are not represented by certificates are subject to administrative seizure and sale procedures. **Do not demand that the brokerage or bank liquidate these shares and send a cash payment; the shares must be seized and sold.** If the brokerage/bank does not possess physical stock certificates, these shares may be treated as an intangible asset. In this case, serve Forms 668-B and 2433 with a copy of the Notice of Federal Tax Lien to the brokerage or bank and send a copy to the taxpayer or owner of record. The PALS will then sell the shares at public auction and issue a Certificate of Sale to the successful bidder. The bidder may then choose to liquidate, transfer, or certificate the stock. If the brokerage or bank independently liquidates the shares and sends the proceeds in response to the levy, no seizure is required and the funds may be applied directly to the account.

**Note:**

Personal service of required seizure forms may require a courtesy investigation. See IRM 5.10.3.20 for delivery requirements.

2. Taxpayers may also have interests that are represented by certificates. The certificates are also subject to administrative seizure and sale procedures. **Do not demand that the brokerage or bank liquidate these shares and send a cash payment; the shares must be seized and sold.** However, if the brokerage or bank independently liquidates the shares and sends the proceeds in response to the levy, no seizure is required and the funds may be applied directly to the account.

**Note:**

Interests in mutual funds (whether certificated or not) are redeemable and subject to the third-party levy provisions in IRM 5.11.6, *Notice of Levy in Special Cases*

3. Campus Compliance Services sometimes receives certificates in response to levies. Since they are unable to properly dispose of these negotiable certificates, the negotiable certificates will be transmitted to the appropriate collection area for disposition.
4. Within thirty (30) days of notification of a hold placed on certificates or receipt of certificates from a third party or Campus Compliance Services, the revenue officer who receives the certificates must decide whether to release the levy and return the certificates, if applicable, or prepare and forward the seizure approval package. The case file will be documented to reflect the background levy action. Exceptions to this 30 day time frame include situations when the current value of the stock cannot be ascertained and the time frame would then start once the value of the stock is known. The reason for any delay must be documented in the case history.

**Note:**

The certificates should be secured with the same precautions as seized property (IRM 5.10.3.7.1 *Controlling Seized Property Stored in IRS Offices*).

5. The seizure will be treated as a third party in possession of the asset seizure. The following table describes when the Form 668-B *Levy* and Form 2433 *Notice of Seizure* should be prepared and issued for stock certificate seizures:

<b>If</b>	<b>Then</b>
The bank or brokerage firm sends only notification that the certificates have been placed on hold as a result of the Form 668-A Levy	The Form 668-B Levy must be prepared and issued to both the taxpayer and the bank or brokerage firm. The Form 2433 Notice of Seizure must be prepared and issued to both the taxpayer and the bank or brokerage firm.
The bank or brokerage firm sends the certificates as a result of the Form 668-A Levy	The Form 668-B Levy and Form 2433 Notice of Seizure should be prepared and issued to both the taxpayer and the bank or brokerage firm.
If the stock is held electronically,	The Form 668-B Levy and Form 2433 Notice of Seizure should be prepared and issued to both the taxpayer and the bank or brokerage firm.

#### 5.10.3.15.4 (10-01-2004)

##### Securities and Negotiable Instruments Seized Directly From the Taxpayer

1. When certificated securities are received directly from the taxpayer, the issuing agent is not aware that the securities have been seized. In order to prevent the taxpayer from contacting the issuing agent to have the stocks re-issued so they can be sold by the taxpayer, send Part 2 of Form 2433 to the issuing agent.
2. A letter should accompany Form 2433 advising that the stocks have been seized and should not be re-issued until the seizure and sale is resolved.
3. A copy of the Notice of Sale may be sent to the issuing agent as well.

#### 5.10.3.15.5 (11-22-2013)

##### "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. On September 3, 1997 the SEC issued a No-Action Letter that allows the Service to sell seized restricted securities at IRC 6335 sales. In the past the Service was unable to sell seized restricted securities because of the constraints imposed on the resale of such securities by the Securities Act of 1933.
4. Prior to seizure of these securities, revenue officers should consult with the PALS and Advisory for further guidance on the appropriateness of the sale. If appropriate, counsel advice can be obtained for specific procedures. The Service may sell restricted securities by public sale under the provisions of IRC 6335, subject to the restrictions outlined below.
5. The restricted securities of any one issuer may be sold to only one purchaser as a block.
6. All publicly available financial and other information concerning any issuer that the Service may by law provide to the purchaser, other than returns or return information made confidential under IRC section 6103, will be made available to any prospective purchaser.
7. Sales will be made only to purchasers who are financially sophisticated and can afford the risk of investment.
8. Each purchaser of restricted securities will be required to represent that the restricted securities are being acquired for the purchaser's own account and not with a view to the sale or distribution thereof, and that the restricted securities will not be resold unless pursuant to an effective registration statement under the Act or under a valid exemption from such registration.
9. The purchaser of the restricted securities at the tax sale would be required to acknowledge and represent to the Service (or the Service shall certify if it is the purchaser) in writing to the effect that:
  - A. The purchaser (either alone or with such purchaser's attorneys, accountants, or other advisors) possesses the requisite business and investment knowledge and experience to effectively evaluate the potential risks and merits of the investment.
  - B. The purchaser has sufficient financial ability and net worth to bear the economic risk of the investment.
  - C. The purchaser is aware of the fact that the restricted securities have not been registered under the Act or applicable state securities law.
  - D. The restricted securities are being acquired as an investment for the purchaser's own account and not with a view to the sale or distribution thereof.
  - E. The restricted securities will not be resold unless they are registered under the Act and applicable state securities laws or there exist valid exemptions from such registration requirements.
  - F. Certificates evidencing the restricted securities to be received by the purchaser will bear a legend to the effect that such securities represented thereby are not registered under the Act or under any state securities laws and may not be resold or transferred without registration under the Act and applicable state securities laws or the availability of valid exemptions from such registration requirements.

#### 5.10.3.16 (01-22-2008)

##### 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, generally, 20 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, NFTLs cannot be filed for recordation with the Patent Office because they are ex parte 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 example provided in Exhibit 5.10.3-7 should be used to transmit Part 2 of 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, contact the Recording Officer at the Patent Office by phone for information regarding the appropriate recording amount, to whom the money order should be made payable, and to request any necessary documents, such as the Recordation Form Cover Sheet. Secure a money order for the appropriate recording amount, mail it with the transmittal letter and Part 2 of Form 2433, and debit the recording fee to the taxpayer's account through a TC 360.
4. Issued patents are subject to normal seizure and sale procedures, including delivery of Part 1 of Form 2433 and Part 3 of Form 668-B to the taxpayer, except as stated in this subsection. Since title to the patent can be passed without possession of such documents, actual physical seizure of the letters of patent is not essential if they are not readily available. However, the Notice of Seizure and the Notice of Sale should clearly identify the patent, including identifying the patent by number. The certificate may be presented by the purchaser to the Patent Office for recordation. Do not serve Form 668-A or Form 668-B on the Patent Office.
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 area 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:

- The patent application number
- Date of the application
- Name and address of any party other than the taxpayer who has an interest in the application

#### **5.10.3.17 (08-04-2014) 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, the revenue officer making the seizure, or the PALS 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 21 CFR Part 1304, 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 Part 1304, 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 appropriate Regional Director.
  - 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.
3. Once the request is received by DEA, the Regional Director shall authorize the disposition of the controlled substances in one of the following ways:
  - By transfer to person registered under the Federal Controlled Substances Act and authorized to possess such substance
  - By delivery to an agent of DEA or to the nearest office of DEA
  - By destruction in the presence of an agent of DEA or other authorized person
  - By such other means as the Regional Director may determine to assure that the substance does not become available to unauthorized persons
4. The controlled substances must be disposed of 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.
5. Ask the taxpayer 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 ask the taxpayer to sign a completed Form 668–E *Release of Levy* covering these items.

#### **5.10.3.18 (08-04-2014) Contacting Advisory for Seizure Numbers**

1. As soon as possible after seizure, the revenue officer should submit the seizure data to Advisory by fax or by telephone. Do not request a seizure number until after the seizure has been made. Advisory will then assign a seizure number(s) to be used on all documents related to the seizure. A suffix of "CS" will be used to identify courtesy seizures made for another territory or area. One Advisory office in each field collection area should be responsible for assigning seizure serial numbers and should maintain a permanent Seizure Log for all seizures conducted within the area. The format for the seizure numbers will be as follows: 08–01–01–001A (two digit fiscal year — two digit Field Collection Area number — two digit Advisory group number — three digit sequential number with alpha sequence if needed). The Advisory group number should be the number for the Advisory group that is controlling the seizure file. See IRM 5.10.3.10.1, *Notice of Seizure Form 2433 - Multiple Forms*, for information on the use of multiple seizure numbers and/or alpha suffixes. After the seizure number has been secured, enter the appropriate seizure information into the ICS seizure and sale application.

#### **Note:**

Enter the seizure number exactly as it was assigned by Advisory, including the hyphens, into the appropriate field in the ICS seizure and sale application. For cases with no alpha suffix or a single letter suffix, enter one or two hyphens to the right of the seizure number for any unused spaces to completely fill this field.

2. Upon request for a seizure serial number or upon receipt in the group of the opening seizure documents, Advisory will open an NFOI on ICS within seven calendar days. The opening date will be the date of the seizure. Form 13361 should be initiated when the opening documents are received.
3. Revenue officers must send all seizure and sale related documents to Advisory within 5 workdays after the related action. Because the PALS are usually conducting the sales outside of their local offices, their sale related documents should be sent to Advisory within 10 workdays of the related action. If there will be a delay, the revenue officer or PALS should submit a memorandum through their manager to the Advisory group manager explaining the delay and providing the anticipated date of submission. When a PALS/RO misses a specific deadline, follow-up action should be initiated no later than ten (10) calendar days after the missed deadline.
4. Advisory will review each document upon receipt. Form 13361, *Post-Seizure Review Checklist*, must be used by Advisory when completing the post-seizure review. The checklist contains a list of the necessary forms and actions when a seizure has been conducted. The completed review sheet must be included in the seizure case file maintained in Advisory.
5. Document 12474, *Seizure File Folder Tabs*, will be used by Advisory employees when assembling seizure file folders. The employee should assemble the case file in a neat fashion and it should contain all required documents.
6. In order to clarify and provide for consistency in the post-seizure review process, Advisory's review of post-seizure items will include the following:
  - Proper approval secured (per IRM 5.10.2-1 *Asset Type and Approving Official*)
  - IDRS research prior to seizure (per IRM 5.10.1.3.1 *Verifying the Liability*)
  - Consent/Writ secured when required (per IRM 5.10.2.14 *Consent or Writ Determination*)
  - Form 668B delivery to taxpayer meets legal sufficiency
  - Form 2433 delivery to taxpayer/owner meets legal sufficiency (per IRM 5.10.3.20, *Notice of Seizure Form 2433 - Delivery*)
  - Pub 1660 provided with Form 2433
  - Not a prohibited seizure (per IRM 5.10.1.2, *List of Prohibited Seizures*)

- NFTL filed on all modules
- Letter 1058 sent for all modules on Form 668B

In addition to the above, Advisory will also ensure that all statutory requirements related to the action have been satisfied.

7. Upon request for a seizure serial number or upon receipt of the opening seizure documents, Advisory will establish an "Open Seizure" file. The opening date will be the date of the seizure. Form 13361 should be initiated when the opening documents are received.
8. For courtesy seizures, the initiating revenue officer will inform the initiating office's Advisory, by memorandum, that the seizure was conducted. This is for information purposes only.

### 5.10.3.19 (04-03-2013) Seizure Log

1. The Seizure Log is to provide consistency in the seizure control information.
2. Only one "official" Seizure Log will be maintained for each Field Collection Area by the corresponding Advisory Territory.
3. A separate Seizure Log will be maintained for each fiscal year.
4. Seizure Logs should be accurate and updated timely as actions occur on a seizure.
5. Seizure Logs will be maintained in accordance with the instructions listed in the table below.

Header	Content
Seizure Number xx-xx-xx-xxx	<u>Digits 1&amp;2</u> - Last two digits of fiscal year, <u>Digits 3&amp;4</u> - The two digit Field Collection Area <b>01</b> - North Atlantic <b>02</b> - Central <b>03</b> - South Atlantic <b>04</b> - Midwest <b>05</b> - Gulf States <b>06</b> - Western <b>07</b> - California <b>15</b> - International, <u>Digits 5&amp;6</u> - Group number of Advisory Group controlling the seizure, <u>Digits 7&amp;8&amp;9</u> - Sequential seizure number.
Alpha Suffix (if applicable)	A, B, C,..... Suffix for multiple Forms 2433, Notice of Seizure of a single (IRM 5.10.3.10.1), and/or CS, for courtesy seizure (IRM 5.10.3.18)
Taxpayer Name	Taxpayer name on Form 668B
Taxpayer TIN	Taxpayer Identification Number on Form 668B
Grade of Bal Due Case	Grade of underlying Bal Due assignment
RO Name	Name of RO conducting the seizure
RO ICS Number	RO ICS (TSIGN) Number
Date of Seizure	Date RO conducts the seizure
Date Seizure Number Issued	Date Advisory issues seizure number and opens the ICS 162 module
Property Type	<b>PR</b> -Personal Residence, <b>OR</b> - Other Real Property, <b>VE</b> - Vehicle, <b>CR</b> - Cash Register Contents, <b>OE</b> - Office Equipment and Furniture, <b>ME</b> - Machinery and Equipment, <b>IN</b> - Inventory, <b>SD</b> - Safe Deposit Box Contents, <b>OB</b> - Other Business Property, <b>OP</b> - Other Personal Property
Perishable Goods	Document if perishable goods sale- <b>Y</b> for Yes and <b>N</b> for No
How Asset Disposed	Document how the asset was disposed- Redeemed prior to sale, Released, Bid-in by the Government, or Sold
Date of Sale (Sealed Bid or Auction)	Record the date the RO/PALS conducted the sale (sealed bid or auction). If there is no sale, then record n/a  This date directly coincides with the disposition of the asset. Where there are multiple asset dispositions, use the date of the latest one. The proper date to use should be as follows: <ul style="list-style-type: none"> <li>• <b>Redemption of Property Prior to Sale</b>- Document the date the Form 668E, <i>Release of Levy</i>, or Form 2433, <i>Notice of Seizure</i> Parts 3&amp;4, <i>Release of Seizure</i>, is signed by either the RO or the PALS</li> <li>• <b>Release of Seizure</b>- Document the date the Form 668E, <i>Release of Levy</i>, or Form 2433, <i>Notice of Seizure</i>, Parts 3&amp;4, <i>Release of Seizure</i>, is signed by either the RO or the PALS</li> <li>• <b>Bid-in by the Government</b>- Document the date Form 2435, <i>Certificate of Sale</i>, is signed by the PALS declaring the asset purchased by the United States</li> <li>• <b>Sold</b>- Document the date the Form 2435, <i>Certificate of Sale</i>, is signed by the RO (Perishable Goods Sale only) or the PALS declaring the asset sold and the full purchase price has been received</li> </ul>
Date of Asset Disposition	
Date Final Paperwork Received from RO or PALS	Date on which all required closing documents are received from the RO and/or PALS
Date ICS 162 Module Closed	Date the ICS 162 Module used by Advisory is closed

### 5.10.3.20 (08-04-2014) Notice of Seizure Form 2433 — Delivery

1. The owner is entitled to Notice of Seizure at the earliest possible time after the seizure. See Exhibit 5.10.3-5 for information on the appropriate distribution of the parts.
2. For individual taxpayers:
  - A. If the owner has his/her usual place of abode or place of business in the territory where the seizure was made, the Notice of Seizure is required to be delivered personally or left at that individual's usual place of abode or business by affixing the notice, enclosed in an envelope, on the door if that individual is not available
  - B. If the owner has no dwelling or place of business within the territory where the seizure was conducted and cannot be readily located, send the notices by both certified mail, return receipt requested, and regular mail to the owner's last known address.

#### Note:

Delivery to the POA alone does not constitute proper service since attempted personal delivery to the owner is required under IRC 6335(a). For example, you seize a vehicle from an individual taxpayer in the parking lot of a mall where the taxpayer is at work and manages a store. You personally deliver the Notice of Seizure to the taxpayer at the place of business. This meets legal sufficiency for delivery of the seizure paperwork.

3. If property is owned by and seized from joint owners (e.g., husband and wife), each owner should be served separately. Service may or may not be simultaneous, but each owner should receive a separate Form 668B, 2433, 4585, etc.
4. If a seizure is made based on a joint liability but there is only one owner, do not provide notice to the non-owner taxpayer.

5. For business taxpayers (e.g., corporations, LLCs, sole proprietors):

- A. Deliver the notice personally to a principal of the business, or leave it at the place of business in a sealed envelope addressed to the business, with an employee or by affixing the notice to the door of the business.
- B. If the owner of the seized property has no place of business in the territory where the seizure was made and the owner cannot be readily located, send the notices by both certified mail, return receipt requested, and regular mail to the owner's last known address.

**Note:**

**Affixing the notice at the business principal's place of residence without personal delivery to the principal does not meet legal sufficiency for service of seizure and sale paperwork.**

**Example:**

You secure a Writ of Entry and seize both the real and personal property of a corporation in your territory. The following day, you and the PALS complete a thorough inventory for use on the supplemental *Notice of Seizure*. The business principal lives in town and as a courtesy you attempt to personally deliver the notice to the principal's residence (place of abode). The principal is not home so you affix a copy of the notice in a sealed envelope at the residence. As the taxpayer now no longer has a "usual place of business", and you were unable to personally serve a principal of the business, you must mail the seizure documents to the last known address of the business by both certified and regular mail.

6. When a third party owns or possesses seized property, the Notice of Seizure is required to be delivered as described in (2) and (5) above depending on whether the entity is an individual or a business. The statutory requirements for delivery of the Notice apply to the owner or possessor, not the taxpayer.

**Note:**

A third party is deemed to have possession if they exercise physical control over an item. The fact that an entity retains some authority over transfer of the asset (e.g., state or local liquor license issuers) does not imply possession.

7. The terms "place of abode" and "place of business" are usually apparent, but circumstances may arise where this is unclear. If the taxpayer or owner is incarcerated, for example, they may not maintain a residence outside the prison. If personal service is not possible and the facts are unclear as to whether the prisoner maintains a residence, check with area counsel through your local Advisory office for guidance. If a business taxpayer is no longer operating (possibly as a result of the seizure), they no longer have a "place of business" in the territory. Do not rely solely on the last known postal address to identify the usual "place of business" for delivery of seizure and sale documents. If a location appears to be vacant or unoccupied and a principal of the business cannot be served personally, use the exception in 5.10.3.20(3)(b) above to mail the documents to the last known address of the taxpayer.

8. The revenue officer must provide Publication 1660, *Collection Appeal Rights*, to the taxpayer with Form 2433 to ensure the taxpayer is aware of the 10 business day limitation on appealing the seizure action. Document how the taxpayer received Publication 1660 and Form 2433.

9. A copy of Form 2433 must be provided to all senior lienholders who were identified during the public records search.

**Note:**

This includes governmental third parties such as local taxing authorities, States with sales or employment tax liens, etc.

10. Deliver supplemental seizure notices in the same manner as the original.

11. Although IRC 6335 does not require delivery of seizure notices to an authorized representative, the RO will send a courtesy copy to representatives holding a valid power of attorney.

12. If personal service is possible but places the revenue officer in a hazardous situation (e.g., taxpayer identified as potentially dangerous), attempt to serve the taxpayer in an IRS office where there is sufficient security or secure an armed escort. If neither of these options are available, consult area counsel through Advisory.

**5.10.3.20.1 (08-04-2014)**

**Form 2433 — Additional Documentation and Distribution**

1. After delivering parts 1 and 2 of Form 2433, the revenue officer will make the following additional entries on Parts 5, 6, 7, and 8 as shown in Exhibit 5.10.3–4:

- Enter the assigned seizure serial number in the appropriate spaces (Item 9)
- Enter the total of all estimated expenses of the seizure and sale in the space provided (Item 10) on parts 5 through 7
- Enter the inventory value opposite each unit (item or group) of seized property and total (Item 11) on parts 5 through 7
- Enter the taxpayer's estimated equity (Item 14) on Parts 5 through 7 - The estimated equity should reflect the FMV less any senior encumbrances. If the estimated equity exceeds the taxpayer's liability, the liability should be shown as the estimated equity.

2. When multiple property types are listed on one or more Forms 2433, the revenue officer must determine the estimated value and taxpayer equity for each property type. This must be done whether the property types are encumbered individually or together. Determine which of the designated property types best describes the seized asset(s) and assign a value to each property type. Subtract any known encumbrances from the total estimated value of that type of property whether it is one or multiple items of that particular type of property. If the property types are encumbered together, the encumbrance must be allocated for each property type. The property types should be listed as follows:

- PR Personal Residence
- OR Other Real Property (any other real property, individual or business, that is not a personal residence)
- VE Vehicles
- LI Licenses
- CR Cash Register Contents
- OE Office Equipment/Furniture
- ME Machinery and Equipment
- IN Inventory
- SD Safe Deposit Box
- OB Other Business Property
- OP Other Personal Property

3. The purpose of establishing the value of seized property is to comply with the United States Code, which requires a monetary accounting control of seized property by all government agencies and to set a base for establishing the minimum bid.

4. When Form 2433 is issued before a full inventory is completed, the inventory value of the items specifically described will be shown. The inventory value for the property described as "general" will be shown as "unknown". The actual inventory values must be included on the "Supplemental" Form 2433.

5. When safe deposit boxes or cash registers are seized and sealed for contents only and will not be opened until a later date, enter "Unknown" on Form 2433 opposite the description of the safe deposit box or cash register. A second Form 2433 should be completed at the time the box or register is opened, and marked supplemental. The serial number of the original Form 2433 should be used for the supplemental form. See IRM 5.10.3.12, *Cash Register Contents*, and IRM 5.10.3.13, *Safe Deposit Boxes*, for additional instructions.
6. Enter the location of the property in the space provided on Form 2433, Parts 5 and 6. For real property, show the complete street address with city, state, and zip code if available. For personal property, show the address where property is stored, including a company/vendor name, contact name, and telephone number. *IRM 5.10.3.7.1., Controlling Seized Property Stored in IRS Offices*, for additional information regarding completion of part 6 for this situation.
7. The revenue officer conducting the seizure, as well as the accompanying Service employee, will sign Form 2433.

#### **5.10.3.20.2 (08-04-2014)**

##### **Disposition of Notice of Seizure and Opening Documents for the Seizure**

1. After taking the above actions, the revenue officer will:
  - Retain Parts 3, 4, 5, and 7B, pending disposition of the property (these parts will be transmitted to the PALS group manager if custody is transferred)
  - Retain Part 6 if assets are stored in an IRS office.
  - Transmit the opening documents through the group manager to Advisory within 5 workdays after the seizure
2. The opening seizure documents include:
  - Form 13719 *Pre-Seizure Checklist and Approval Request*
  - Form 668-B (and 668-A if applicable)
  - Parts 6, and 7A, of Form 2433
  - Copy of the Writ or Consent as appropriate
  - Copy of the current deed for real property
  - Preliminary copy of Form 2434-B

##### **Note:**

Send only a copy of Part 6 if property is stored in an IRS office.

3. Advisory will retain Part 6 in the "Open Seizure" file and will forward part 7A to Accounting Control/Services for establishment of the necessary accounting controls.

#### **5.10.3.21 (04-03-2013)**

##### **Property that is Tampered With, Rescued, or Stolen**

1. If seized property is tampered with, rescued, or stolen:
  - Discuss the facts with the territory manager and document the case history
  - Notify Criminal Investigation as soon as possible
  - Prepare a detailed written report of the incident and include a copy in the case file
  - Submit the report through the group manager to the territory manager for transmittal to the Special Agent in Charge
  - Report losses of property under seizure to the director of the compliance center where the accounting control is maintained
2. As a general rule, taxpayers are not entitled to receive any credit for the value of their property which has been stolen after the property was seized and prior to its sale by IRS.

#### **5.10.3.22 (08-04-2014)**

##### **Transfer of Custody to PALS**

1. The revenue officer will transfer custody of the property to the PALS group manager once the following actions are completed:
  - The seizure is made
  - The assets are secured
  - A detailed inventory is completed
  - Form 2433 is delivered with Publication 1660
2. Prior to conducting the seizure, the revenue officer will coordinate the timing of the seizure with the PALS, so that transfer of custody of the seized assets can be made in a timely manner (see IRM 5.10.3.2, *General*). Upon receipt of the revenue officer's documents listed in IRM 5.10.3.22(6), the PALS group manager will create an OI and assign the case to a PALS to complete all actions pertaining to the sale of seized property. Transfer custody of seized property as quickly and efficiently as possible to minimize expenses. Except as noted below in IRM 5.10.3.22(8), the transfer of custody will occur when the PALS receives the case assignment. The revenue officer will document the case history with any reasons for delay in transferring custody of seized assets to the PALS. The revenue officer may not be involved in any of the aspects of a sale under IRC 6335 including:
  - Preparation and delivery of the minimum bid
  - Preparation of the notice of sale

##### **Note:**

In some cases the revenue officer may deliver the Notice of Sale to the taxpayer (IRM 5.10.4.13, *Delivery of Notice of Sale*).

- Advertising
  - Conducting the sale (IRM 5.10.5.1(3), *General*)
3. There will be situations when the transfer of custody should be delayed. Delays of transfer may take place if there are challenges to the seizure, such as:
    - A request for release and return of seized property

- A wrongful levy claim
  - Litigation
  - Bankruptcy
4. A delay in transfer of custody may also be appropriate if the property consists of evidence held pending a criminal trial.
  5. If the taxpayer indicates that the property will be redeemed (IRM 5.10.4.2, *Redemption of Property Prior to Sale*) within a short time period and the revenue officer reasonably believes that the taxpayer will take the action, or if one of the conditions for release is present (IRM 5.10.4.3, *Conditions for Release of Seized Property*) then custody of the property should not be transferred.
  6. Send the following documents, if applicable, via overnight mail to the PALS Group Manager:
    - A. Writ of Entry or Consent
    - B. Forms 668-B and 668-A as applicable
    - C. Undistributed parts of Form 2433
    - D. Form 2434-B should be prepared in Word and emailed to the PALS manager to facilitate updating by PALS
    - E. Verification of encumbrances
    - F. Copy of deed if real property seized
    - G. Copies of all expense documents incurred in the seizure including storage information
    - H. Copy of Notice of Federal Tax Lien (Automated Lien System (ALS) copies are acceptable)

**Note:**

The revenue officer will complete the *Property is Stored* section of parts 5 and 6 of Form 2433 to include the vendor's point of contact name and phone number. For property stored in an IRS office, complete parts 5 & 6 of Form 2433.

7. In addition, any items the revenue officer may have secured that will be relevant to the sale should be forwarded to the PALS Group Manager. Items may include copies of state tax liens, UCCs, deeds, plat or tax maps, etc.
8. The PALS Group Manager (GM) will review the file upon receipt for completeness and assign the sale to a PALS on ICS. The PALS Group Manager will forward the file to the PALS to sign for transfer of custody on parts 5 and 6 of Form 2433. The following table indicates when the PALS will sign parts 5 and 6 of Form 2433 to acknowledge transfer of custody:

**If the seized property is:**

**Then:**

Real Estate	immediately sign for transfer of custody.
Personal property	as soon as possible, but no more than 30 days, for transfer of custody upon verification of the inventory.
Intangible property	verify required actions to notice third parties were completed and as soon as possible, but no more than 30 days, sign for transfer of custody.

**Note:**

To facilitate and expedite the transfer of custody for large lot or business inventory seizures, the revenue officer should coordinate with the PALS for a completion of a thorough inventory. If the PALS is unable to assist with the inventory on the day of seizure, the revenue officer should prepare a short Form 2433 and arrange for the PALS to assist with the completion of a thorough inventory on a Supplemental Form 2433. See IRM 5.10.3.10, *Notice of Seizure Form 2433-Supplemental*.

9. Because of the nature and amount of property involved, it may be necessary for both employees to meet at the site where the seized property is located. The PALS should sign and date parts 5 and 6 of Form 2433 under the property location block when custody is transferred and send a copy of part 5 of Form 2433 to the revenue officer and seizure advisor. The revenue officer should also retain copies of all documents for the balance due case file. These documents include:
  - Form 2433, Part 7B
  - Form 668-B
  - Form 2434-B
  - Writ of Entry or Consent (if applicable)
  - Copy of Deed to Real Property
  - Any other relevant information, such as title searches, verification of encumbrances, and copies of expense documents

**Note:**

If the RO has secured any documents that would inform the PALS' valuation of the property, these should be sent to the PALS group manager as well. These documents include the following in either electronic or paper format:

- Photos of the property
- Contact information for lienholders
- Any documents obtained that may describe the value of the property (private appraisals, prints of internet information, loan applications, etc.)

10. If the PALS is not located close to the storage site, the revenue officer should also maintain a key to the locked property. If the property is not stored with a commercial vendor, the revenue officer should conduct periodic inspections. Do not enter the property unless there is an emergency or the property is released or redeemed. If the PALS has already taken custody of the assets and the revenue officer will be releasing the property, the revenue officer will initial and date the storage block on part 5 of Form 2433 indicating they are taking custody of the assets. This part should then be sent to the PALS for inclusion in the file. Any entries made into the storage site by either the PALS or the revenue officer should be documented in the case history.
11. Form 13360, *Seizure and Sale Checklist*, is a two-part checklist that must be used by revenue officers and PALS when conducting a seizure and sale. Part 1 will be completed by the revenue officer and part 2 will be completed by the PALS after custody of the asset is transferred. The checklist contains a step by step listing of seizure and sale procedures with the appropriate IRM citations. Employees should review the applicable IRM references when taking the action and completing the checklist so that all current required guidelines are followed during the seizure and sale. The completed checklist will be submitted with the closing documents by the revenue officer and PALS and will be included in the seizure case file maintained in Advisory.

**Note:**

The Form 13360, *Seizure and Sale Checklist*, should be completed by PALS even when there is no sale.

- The revenue officer should remain in contact with the taxpayer in order to resolve the case and determine whether the property should be released. If there are no further anticipated collection actions, consult with the group manager to decide whether to close the bal due case. Consider potential pre-sale activity (e.g., NFTL re-filing, delivery of the Notice of Sale, etc.) that may become necessary prior to disposition of the bal due. In some instances, creation of an OI may become necessary if the bal due case is closed prior to sale. If the RO has closed the balance due case and release of the seizure becomes necessary, the PALS may release the seizure. When the balance due file is closed, the case file must be transmitted to Advisory for association with the seizure file (IRM 5.10.6.13, *Revenue Officer Transfer of Closed Case Files to Advisory and Advisory Record Retention*). If the case is reported as CNC prior to sale, the RO must ensure that the case closing letter is not sent pending sale.

**5.10.3.23 (04-03-2013)**

**Transfer of Custody of Assets Back to the Field**

- After the transfer of custody of assets to the PALS, circumstances may change requiring additional case development before the PALS can bring assets to sale. In these situations, transfer of custody of assets back to the revenue officer may be appropriate.
- When a PALS determines the need to transfer custody of assets back to a revenue officer, discuss the case with and secure concurrence from the PALS GM. Document the total expenses to date in the case history. If the PALS has already paid for seizure expenses, they should prepare the Form 4844 requesting input of TC 360 to debit the expenses to the taxpayer's account. Forward copies of Form 4844 and invoices to Advisory to associate with the seizure file. The PALS GM should prepare an informational Form 5942 to describe the necessary actions required before the case can move toward sale and close the PALS OI. The PALS GM should send the Form 5942 and the case file to the Collection Territory Manager (TM) for routing back to the collection group. The PALS GM will send a copy of the returned receipt Form 3210 and informational Form 5942 to Advisory for association with the seizure and sale file.
- The TM's signature on the Form 3210 acknowledges transfer of custody of the case and assets back to the field. If the field no longer has an open ICS case on the taxpayer, the revenue officer GM will open an OI on ICS for control purposes.

**Exhibit 5.10.3-1**

**Form 10404, Consent to Enter Private Premises Reference: 5.10.3.3**

**P-576 (9-78)**

**CONSENT TO ENTER PRIVATE PREMISES**

The Constitution of the United States guarantees a right to be secure from unreasonable searches of person, house, papers, and effects.

Having full knowledge of the above guaranteed rights, I, \_\_\_\_, consent to entry into premises located at \_\_\_\_, by Internal Revenue Service employees for the purpose of seizure, inventory, removing property, if required, and sale of property belonging to \_\_\_\_, to collect and satisfy the delinquent tax, interest and penalty liability.

My signing this consent to entry is not to be construed as an admission by me of the tax liability being collected.

\_\_\_\_\_  
(A) Signature and Address of Owner or Rightful Occupant

\_\_\_\_\_  
(B) Title of Corporate Officer Signing Consent

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

\_\_\_\_\_  
Revenue Officer  
(Signature, Name and Address)

**Exhibit 5.10.3-2**

**Declaration of Revenue Officer Reference: 5.10.3.5**

**IN THE UNITED STATES DISTRICT COURT FOR THE**

\_\_\_ DISTRICT OF \_\_\_

IN THE MATTER OF THE TAX  
INDEBTEDNESS OF

)  
)  
)  
)  
)  
)  
)

Misc. No.

**DECLARATION OF REVENUE OFFICER**

CITY OF \_\_\_\_\_)ss.:  
STATE OF \_\_\_\_\_)

I, [name of revenue officer], declare:

- I am a revenue officer employed in the Small Business/Self-Employed Division of the Internal Revenue Service, Department of the Treasury. As a revenue officer, I have the duty and authority to collect federal taxes by seizure and sale under the provisions of section 6331 of the Internal Revenue Code (IRC), 26 U.S.C.
- Assessments of tax, penalty and interest for the following periods have been made against (insert taxpayer's name, address SSN or EIN) on the dates and in the amounts set forth below:  

Form	Tax Period	Assessment Date	Amount Due
3.	The assessments set forth above were made pursuant to IRC sections 6201 and 6203, and pursuant to IRC section 6303, the first notice and demand for payment was given to the taxpayer prior to or on the date that is 60 days after the date upon which each amount was assessed, as set forth above.		
4.	The said taxpayer has neglected or refused to pay the full amount of the tax assessed within 10 days after such notice and demand and this neglect or refusal continues.		
5.	There is now due, owing and unpaid with respect to such tax, penalty and interest a total amount of \$ .		
6.	By reason of the assessment, a lien has arisen on all property and rights to property of said taxpayer as prescribed by IRC sections 6321 and 6322.		
7.	By reason of the taxpayer's neglect and failure to pay such tax within 10 days after notice and demand, a levy may be made on all property and rights to property belonging to the taxpayer or to which the federal tax lien attaches.		
8.	A notice of intention to levy, as required by IRC section 6331(d), was provided to the taxpayer by (method) on (date).		
9.	A collection due process notice as required by IRC section 6330 was provided to the taxpayer by (method) on (date).		
	(If applicable, discuss the results of any CDP hearing requests. If no CDP notice was given, explain why not.)		
10.	et seq. (Discuss in a narrative statement in numbered paragraphs the taxpayer's form of business, the taxpayer's interest in and the address of the premises, general description of the business, general description of the assets located within the premises, and NFTL filing information. The revenue officer should explain how he/she knows the above information. If the revenue officer has requested permission to enter the premises that are the subject of his/her application and declaration, for purposes of levying on property therein under section 6331 of the Code, and he/she has been refused entry or has been unable to contact anyone with authority to permit him/her to enter the premises, he/she should so state. The narrative statement should be accurate as to the facts of the case. Extraneous information and subjective opinions should be avoided.)		

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Revenue officer signature  
\_\_\_\_\_  
Revenue officer name

**Exhibit 5.10.3-3**

**P-584, Data Sheet Reference: 5.10.3.5**



**DATA SHEET**

Revenue officer's name:

Revenue officer's area office and address:

Taxpayer's name: Taxpayer's social security or employer identification number:

Taxpayer's address:

Business address (if different):

General description of kind of business (corporation, partnership, sole proprietorship, etc.)

Who owns premises to be entered (does taxpayer own, rent, lease, etc.):

Description of business activity:

Kind of tax:

Period:

Assessed amount:

Date assessed:

Current tax balance:

Statutory additions:

Date of 1st notice:

Date of final notice:

Date NFTL filed:

Where filed:

Actions taken to collect liability (contacts):

Person entitled to occupy premises has refused consent to entry on \_\_\_\_

(DATE)

General description of property to be seized:

How does the revenue officer know the above information (own knowledge, taxpayer gave information, third party information, revenue officer inspected the premises, public documents)

**Exhibit 5.10.3-4**

**Form 2433, Notice of Seizure Reference: 5.10.3.10**



# Notice of Seizure

Name and  
Address

(1)

Under the authority in section 6331 of the Internal Revenue Code, and by virtue of a levy from the Area Director of Internal Revenue of the area shown below, I have seized the property below for nonpayment of past due internal revenue taxes.

Due from

(2)

Amount

(3)

\$

Internal Revenue Area  
and Territory

Description of property

(4)

(5)

(6)

(7)

Signature of Revenue Officer making seizure

Address

Date

Signature of accompanying employee

(8)

Address

Date



# Notice of Seizure

Serial number **(9)**

Name and Address

Estimated expenses of seizure and sale  
**(10)**  
\$

Under the authority in section 6331 of the Internal Revenue Code, and by virtue of a levy from the Area Director of Internal Revenue of the area shown below, I have seized the property below for nonpayment of past due internal revenue taxes.

Due from	Amount	Internal Revenue Area and Territory
	\$	



Description of property (Enter inventory value opposite each item of seized property described)

\$  
  
**(11)**

Taxpayer's estimated equity \$ **(14)**

Total inventory value \$

Property located or stored at (Show name, address and phone number)	Disposition of Property & Date	Amt. Rec'd.
<b>(12)</b> Custody transferred to PALS on (date) _____ Signature of PALS _____ 	<input type="checkbox"/> Redeemed prior to sale _____	\$ _____
	<b>Released prior to sale</b>	
	<input type="checkbox"/> Payment agreement (amount received at time of release) _____	\$ _____
	<input type="checkbox"/> U.S. received its interest _____	\$ _____
	<input type="checkbox"/> No interest (no equity in property) _____	\$ _____
	<input type="checkbox"/> Future collection potential _____	\$ _____
	<input type="checkbox"/> Bankruptcy _____	\$ _____
	<input type="checkbox"/> Minimum bid not reached <b>(13)</b>	\$ _____
	<input type="checkbox"/> Other _____	\$ _____
	<b>Sale</b>	
<input type="checkbox"/> Public auction _____	\$ _____	
<input type="checkbox"/> Sealed bid _____	\$ _____	
<input type="checkbox"/> Declared purchased for U.S. _____	\$ _____	
<input type="checkbox"/> Disposition unnecessary (cash applied directly to account)	\$ _____	
Signature of Revenue Officer making seizure	Address	Date
Signature of accompanying employee	Address	Date

Safe deposit box  
Personal property from taxpayer  
Personal property from possessor  
Real property, T/P owner of record  
Real property, T/P not owner of record

Bank or trust company  
Taxpayer  
Possessor  
Taxpayer  
Owner of record

2. Taxpayer's name and address
3. Taxpayer's total amount due for the tax modules listed on Form 668-B *Notice of Levy*. This amount should include all accruals and match the Total Amount Due on Form 668-B. Any differences in amounts should be documented in the ICS history.
4. Legal description of real property (and the address or street location, if available), or
5. Detailed description of property
6. After completing 4 or 5, rule out unused space as shown
7. If necessary, continue description on additional sheets identified by seizure number and signed by revenue officer
8. Indicate whether the taxpayer or representative was present at inventory and, if not, the reason why.
9. Signature and address of revenue officer and assisting employee; date

Form 2433 (Parts 5 through 8)

9. Seizure number, see IRM 5.10.3.9.1 for numbering of Forms 2433
10. Estimated expenses of seizure and sale
11. Enter the estimated value opposite each item; enter the total in the "Total" block; see IRM 5.10.3.20.1
12. Personal property - enter address at which property is stored, including contact name and phone number; Real property - show address of the real property. The PALS will sign and date part 5 when custody of the asset(s) is transferred. If the asset is stored in an IRS office, select the box designated "yes" .
13. Enter manner of disposition of property and amount; property is redeemed when full amount of levy (including expenses) is satisfied; property is released if partial payment is received
14. Taxpayer's estimated equity (FMV less senior encumbrances - if the estimated equity exceeds the taxpayer's liability, the liability should be shown as the estimated equity)

• Parts 3 and 4, releases of levy, can be addressed to the party from whom the assets were seized, the taxpayer, or the owner, as appropriate.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Distribution of Form 2433**

**Part**

**Number Distribution**

- 1 For taxpayer
- 2 Personal property — for person in possession of property if property is seized from someone other than the taxpayer  
Real property — for owner of record (if not the taxpayer)
- 3 To Advisory for inclusion in seizure file after seizure is closed
- 4 For person to whom property is released
- 5 Balance Due file
- 6 Original to Advisory for control and filing with seizure and sales records unless property is stored in an IRS office. If stored in an IRS office, a copy is sent to Advisory and the original is retained by the employee with custody of the asset until disposition of the asset.
- 7A To Advisory for processing to Accounting Control/Services to establish accounting control for inventory value of seized property. Part 7A should be forwarded in every case for control purposes and audit trail. If redemption or release is anticipated within 5 working days, part 7A need not be completed at time of seizure. If *not* redeemed or released within 5 days, complete and process part 7A.
- 7B To Advisory for forwarding to Accounting Control/Services after property disposition.

**Special Situations**

Cash Register Contents *Parts 6, 7 and 8*—Annotate with legend "cash register contents" and forward to Advisory.

Safe Deposit Boxes *Part 1*—To taxpayer

*Part 2*—To official of bank or trust company

*Parts 6, 7, and 8*—Annotate original notice of seizure with the following: "contents of safe deposit box."

All other parts should be processed as shown in the beginning of this exhibit.

**Exhibit 5.10.3-5**

**Letter P-336, Transmittal of Non-Marketable Securities to Bureau of Public Debt Reference: 5.10.3.14 and 5.10.3.15**

(Because of the limited need, a form will not be provided by Headquarters for this purpose.)

(AREA DIRECTOR'S LETTERHEAD)

Bureau of the Public Debt  
Department of the Treasury  
POB 7015  
Parkersburg, West Virginia 26106

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

To Whom It May Concern:

The United States securities described below were seized under levy to satisfy internal revenue taxes due the United States from (taxpayer's name) in the amount of \$ \_\_\_\_\_.

Kind of Security Series Serial Number Denomination Issue Date Form of Registration

The securities are presented for redemption so that the proceeds may be applied to the tax indebtedness of the taxpayer.

Sincerely yours,

Advisory Territory Manager

**Exhibit 5.10.3-6**

**Letter P-337, Transmittal of Matured Securities to Federal Reserve Bank Reference 5.10.3.15**

(Because of the limited need, a form will not be provided by Headquarters for this purpose.)

(AREA DIRECTOR'S LETTERHEAD)

REGISTERED MAIL  
(Name and address  
of Federal Reserve Bank

To Whom It May Concern:

The matured United States securities described below, issued in bearer form, were seized under levy to satisfy internal revenue taxes due the United States from (taxpayer's name and address).

Kind of Security Series Denomination Issue Date Maturity (or Called) Date

The securities are presented for redemption so that the proceeds may be applied to the tax indebtedness of the taxpayer. Please send a check payable to "United States Treasury," and the copy of this letter, to the address below. Thank you for your cooperation.

Sincerely yours,

Advisory Territory Manager

Enclosure: Copy of this letter

Mailing Address:

**Exhibit 5.10.3-7**

**Letter P-415, Transmittal of Form 2433 to Patent Office Reference 5.10.3.16**

(Because of limited need, a form will not be provided by Headquarters for this purpose.)

(USE APPROPRIATE LETTERHEAD)

Commissioner of Patents  
Washington, D.C. 20231  
ATTN: Assignment Division

To Whom It May Concern:

Please record the enclosed Part 2 of Form 2433 regarding:

Patent Number—

Date—

Inventor—

Invention Title—

The recording fee of \$ \_\_\_\_\_ is enclosed. Thank you for your assistance in this matter.

Sincerely,

Property Appraisal and Liquidation Specialist

**Exhibit 5.10.3-8**

**Taxpayer/Responsible Officer's Acknowledgment of Opportunity to Download Computer Information Reference 5.10.3.7.4**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.10.3-9**

**Form 2433 - Estimated Equity Reference 5.10.3.19**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

In this example, there is a balance of \$720 remaining on the loan recorded on the vehicle and a balance of \$800 remaining on the financing statement recorded on the inventory and equipment.

The first step is to determine the percentage of the encumbrance that is applicable to each property type. Since the vehicle is encumbered separately, the total encumbrance of \$720 is deducted from the FMV for an estimated equity amount of \$2,800.

Since the other assets are covered by the same encumbrance, you must first determine what percentage each of the two property types contributes toward the combined fair market value of \$2,950 for the two property types:

Office Equipment  $1950/2950 = .66$  (66%)  
Inventory  $1000/2950 = .34$  (34%)

The next step is to multiply these percentages by the total encumbrance to determine the amount of the encumbrance applicable to each property type:

Office Equipment  $800 \times .66 = \$528$   
Inventory  $800 \times .34 = \$272$

The final step is to deduct the encumbrance from the fair market value in order to determine the estimated equity for each property type:

Office Equipment  $1950 - 528 = \$1,422$   
Inventory  $1000 - 272 = \$728$

The estimated equity of all three property types would then be added together for a total taxpayer's estimated equity of \$4,950.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 10. Seizure and Sale

#### Section 4. Actions Prior to Sale

##### 5.10.4 Actions Prior to Sale

- 5.10.4.1 [Overview](#)
- 5.10.4.2 [Redemption of Property Prior to Sale](#)
- 5.10.4.3 [Conditions for Release of Seized Property](#)
- 5.10.4.4 [Release of Wrongful Seizures for Property Not Yet Sold](#)
- 5.10.4.5 [Actions to Release and Return Property](#)
- 5.10.4.6 [Form 2436R, Seized Property Release/Redemption Report](#)
- 5.10.4.7 [PALS Sale Expenses](#)
- 5.10.4.8 [Establishment of the Minimum Bid](#)
- 5.10.4.9 [Determination of Type of Sale](#)
- 5.10.4.10 [Grouping of Property](#)
- 5.10.4.11 [Outsourcing](#)
- 5.10.4.12 [Preparation of Notice of Sale](#)
- 5.10.4.13 [Delivery of Notice of Sale](#)
- 5.10.4.14 [Methods of Advertising and Posting the Notice of Sale](#)
- 5.10.4.15 [Pre-Sale Procedures for Perishable Goods](#)
- 5.10.4.16 [Arrangements to Convert or Deposit Cash](#)
- Exhibit 5.10.4-1 [Minimum Bid Worksheet Reference: 5.10.4.8\(3\)](#)
- Exhibit 5.10.4-2 [Letter P-2530, Auctioneer Agreement to IRS Restrictions Reference: 5.10.4.11\(3\)](#)
- Exhibit 5.10.4-3 [Form 2434 — Notice of Public Auction Sale Reference: 5.10.4.12\(5\)](#)
- Exhibit 5.10.4-4 [Form 2434-A — Notice of Sealed Bid Sale Reference: 5.10.4.12\(6\)](#)
- Exhibit 5.10.4-5 [Letter P-2529, Instructions to Publishers Reference: 5.10.4.14\(3\)](#)
- Exhibit 5.10.4-6 [Template to Provide Publisher to Meet Statutory Requirements of Advertising Reference: 5.10.4.14\(3\)](#)
- Exhibit 5.10.4-7 [Mail-in Bid for Public Auction Reference: 5.10.4.9.1](#)
- Exhibit 5.10.4-8 [Perishable Goods Asset Valuation Notice Reference: 5.10.4.15\(6\)](#)
- Exhibit 5.10.4-9 [Form 2436R, Seized Property Release/Redemption Report Reference: 5.10.4.6\(1\)](#)

##### Manual Transmittal

October 30, 2014

##### Purpose

(1) This transmits revised 5.10.4, *Seizure and Sale, Actions Prior to Sale*.

##### Material Changes

(1) References to Form 2433, Part 8A are removed due to a revision of the form. Part 7B should be used as a posting document for payments resulting from seizure of property.

##### Effect on Other Documents

This material supersedes IRM 5.10.4, dated August 4, 2014.

##### Audience

Small Business/Self-Employed Compliance Employees

##### Effective Date

(10-30-2014)

Rocco A. Steco  
Acting Director, Collection Policy

##### 5.10.4.1 (06-28-2013)

###### Overview

1. This IRM provides guidance to revenue officers, Property Appraisal and Liquidations Specialists (PALS), and Advisory employees regarding actions taken prior to the sale of seized property.

##### 5.10.4.1.1 (08-04-2014)

###### General

1. Once the property has been seized and the inventory has been completed, the PALS should begin preparations for the sale. The PALS will be responsible for all sale related activities for seizures conducted under IRC 6335.

###### Note:

Though there is no statutory prohibition against revenue officers conducting perishable goods sales, current policy requires such sales to be conducted by PALS.

2. The PALS will develop a written sale plan no later than fourteen (14) calendar days prior to the sale using the standardized format for all cases.

3. The PALS should consider the need for a commercial title report. Any such report should be ordered no later than fourteen (14) calendar days of assignment or being part of a documented plan of action in the ICS history.
4. In some cases, the property may be released or redeemed prior to sale. IRM 5.10.4.2, *Redemption of Property Prior to Sale*, provides the procedures for redemption of the property prior to sale and IRM 5.10.4.3, *Conditions for Release of Seized Property*, provides the procedures for release of property prior to sale.
5. The ICS seizure application must be updated for asset information, such as the storage location, minimum bid, fair market value, etc., as well as disposition information when the related action occurs.

#### 5.10.4.1.2 (06-28-2013)

##### Actions Prior to Sale of Assets Seized Under Jeopardy or Termination Assessments

1. For jeopardy seizures, IRC 7429 provides that the taxpayer may request the Service to review a jeopardy levy or assessment. The Service must then determine whether under the circumstances:
  - Making the assessment was reasonable
  - The amount of the assessment is appropriate
  - The levy is reasonable

**Note:**

A jeopardy seizure may also follow a regular assessment. Taxpayers may have appeal rights after a jeopardy levy without a jeopardy assessment. See IRM 5.11.3.6, *Appealing the Jeopardy Levy*.

2. Such requests will be coordinated with the Examination office that made the assessment. The sale of seized property will generally be suspended during this administrative review process.
3. IRC 6863(b) and the regulations thereunder provide that any property seized for the collection of a jeopardy assessment of income, estate, or gift tax may not be sold:
  - During the period provided for filing a petition from a notice of deficiency with the United States Tax Court (if a petition is filed, a stay of sale will be in effect until a final determination is made by the Tax Court)
  - During the period for administrative and judicial review of the jeopardy assessment
4. IRC 6863(b)(3)(B) provides the following exceptions under which the property may be sold:
  - If the taxpayer consents, in writing, to the sale
  - If it is determined that the expenses of conservation and maintenance of the property will greatly reduce the net proceeds from the sale of such property
  - If the property is of a type to which IRC 6336, perishable goods, is applicable (see IRM 5.10.4.15.1, *Sale of Perishable Goods*)
5. If it is determined that the expenses will reduce the net proceeds as indicated above, the revenue officer will make a written report stating the grounds for this determination and submit it through channels for approval by the area director (unless authority to make such determinations has been re-delegated). The original of the report will be retained in a permanent file maintained by Advisory.
6. A petition can be filed with the Tax Court for review of the Service's decision to sell the property under the exceptions above. This review can be commenced upon motion by either the taxpayer or the Service. Therefore, prior to initiating a sale under IRC 6863(b)(3), consult area counsel. Except in emergency situations where an immediate sale is necessary, the Service should initiate the review process and file a motion with the Tax Court for pre-approval of a sale before the sale is scheduled.
7. 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 Federal Tax Lien (NFTL) would provide adequate protection during the suspended period. If the NFTL 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.
8. 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 since the full value of the assets are normally reducible to their cash equivalent by the taxpayers without financial loss to them (see IRM 5.17.3.3.6, *Jeopardy and Termination Cases*).
9. Property seized pursuant to assessments made under IRC 6851 or 6852 (Termination Assessments) are subject to the same stay of sale provisions stipulated in IRC 6863(b)(3) for property seized pursuant to a jeopardy assessment. The procedures described above regarding exceptions to the restrictions on sale for jeopardy seizures are also applicable to termination assessments.

#### 5.10.4.1.3 (08-04-2014)

##### Refiling Notices of Federal Tax Lien - Collection After Statute Has Expired

1. Per IRC 6502(a), tax may be collected by levy as long as the levy was made prior to expiration of the collection statute. When property has been seized, the date the levy is considered made is the date the Notice of Seizure described in IRC 6335(a) is given. See IRM 5.10.3.20, *Notice of Seizure Form 2433 Delivery*.
2. When the collection statute will expire after the Notice of Seizure is given but before the property can be sold, it may be necessary for the revenue officer to refile the NFTL (see IRM 5.12.8, *Notice of Lien Refiling*) in order to protect the government's claim against the seized asset(s) and to allow the government to collect the tax therefrom after expiration of the collection statute. Both the revenue officer and PALS need to be aware of any imminent statute cases. Consult area counsel when this situation arises. If the collection statute is imminent and the assets were seized before the collection statute expired, the revenue officer should request input of transaction code (TC) 520, closing code 80 through Advisory with an effective date prior to the pre-seizure CSED to allow for application of the proceeds from the seizure. Once the proceeds are posted, the revenue officer should request input of TC 521.
3. In these cases, the Service must use Form 668-F, *Notice of Federal Tax Lien Refile*, to refile the NFTL with specific language that limits the effect of the refiling to specifically described assets. A statement similar to the following should be entered on Form 668-F: "This refiling of Notice of Federal Tax Lien is limited to the following specific asset(s) and is not intended to affect any other assets of the taxpayer: Asset Description - ."
4. The NFTL should be filed within the last thirty days of the refile period (IRM 5.12.8.3, *Refiling Period*) in order to prevent any potential confusion over the effect of the original NFTL on all other assets of the taxpayer.

**Note:**

It is essential that the NFTL be refiled in all offices in which any prior notice was filed. See IRM 5.12.8.6.4, *Place for Refiling*.

5. If periods other than those for which the refiling is necessary are contained on the original NFTL, the refiled notice should only contain the periods for which the refiling is necessary.

6. Form 668-F is not self-releasing. Advisory will prepare and file Form 668-Z, *Certificate of Release of Federal Tax Lien* (IRM 5.12.8.8, *Release of Refiled NFTL*), once the asset has been disposed of and any applicable redemption period has expired.

#### 5.10.4.2 (01-01-2006)

##### Redemption of Property Prior to Sale

1. Any person whose property has been seized can redeem the property at any time before the PALS makes final acceptance of the highest bid at the sale.
2. In order to redeem property prior to sale, the taxpayer must pay both:
  - The full amount of taxes, penalties, and interest
  - Any expenses or costs of seizure and preparation for sale
3. Payments to redeem property prior to sale must be by cash, certified or cashier's check or money order made payable to the United States Treasury.
4. The taxpayer may redeem the property from either the revenue officer or the PALS. Expenses incurred by both the revenue officer and PALS must be included in the amount required to redeem the property. See IRM 5.10.1.3.3.1, *Equity Determination - Expenses of Sale*, for expenses that must be paid. The revenue officer and PALS must coordinate the release of the property in the most efficient manner possible. If custody of the property has already been transferred to the PALS and because of logistical issues the PALS is not able to release the property, part 5 of Form 2433 should be faxed to the revenue officer, who will initial and date the custody block of Form 2433 documenting acceptance of custody.
5. IRM 5.10.4.5, *Actions to Release and Return Property*, contains the instructions for documenting the release of levy, returning the property to the taxpayer, payment of expenses, and application of proceeds when property is released or redeemed prior to sale.

##### Note:

Expenses and proceeds for property redeemed prior to sale must be properly applied to the taxpayer's account to comply with IRC 6342.

#### 5.10.4.3 (08-04-2014)

##### Conditions for Release of Seized Property

1. Release and return of seized property is authorized under a number of conditions.
2. If the revenue officer or PALS becomes aware of the need for release and return of the property, such release and return should be made as soon as possible. Questions should be referred to Advisory.
3. IRC 6343 provides for release of levy upon all, or part of, seized property or rights to property under any of the following circumstances:
  - The liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time
  - Release of levy will facilitate the collection of the liability
  - The taxpayer has entered into an agreement under IRC Section 6159 to satisfy the liability (unless the agreement provides otherwise)
  - The Secretary has determined that the levy is creating an economic hardship due to the financial condition of the taxpayer
  - The fair market value of the property exceeds the liability and release of a part of the property could be made without hindering the collection of the liability
4. Immediate release and return of property is required if it is learned that the seizure was prohibited by any of the following situations:
  - An automatic stay in bankruptcy
  - A pending installment agreement (unless the agreement provides otherwise), offer in compromise, or request for relief from joint and several liability (innocent spouse)
  - The lack of taxpayer equity in the seized property
  - A CDP notice was not given, or a CDP hearing is pending
  - A CDP notice was issued fewer than 30 days prior to the date of the levy
  - The seizure was prohibited as defined in IRM 5.10.1.2, *List of Prohibited Seizures*
5. Release and return of property must also be made if so directed by:
  - Appeals after a review under the Collection Appeal Process (CAP)
  - A Taxpayer Assistance Order (unless it is being appealed)
  - The group manager after review
6. Section 6343(d)(2) authorizes the Service, in its discretion, to return levied upon property where it determines that (A) the levy was premature or otherwise not in accordance with the Service's administrative procedures, (B) the taxpayer has entered into an installment agreement to satisfy the tax liability for which the levy was made, unless the agreement provides otherwise, (C) the return of such property will facilitate the collection of the tax liability, or (D) with the consent of the taxpayer or the National Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer and the United States. Under the Treasury Regulations, if the IRS makes a seizure in violation of the law, it is in the best interests of the United States and the taxpayer to return the property to the taxpayer. Treas. Reg. 301.6343-3(d).
7. The provisions for wrongful seizure under section 6343 apply to returning property to the taxpayer, except there is no allowance for payment of interest.
8. Release and return of property should also be made if new information is discovered about the status of real property being used as a residence that would render the seizure improper, or if the seizure is determined to be wrongful or improper, or if other justification is discovered.
9. The property may also be released if:
  - The taxpayer files bankruptcy after seizure (after consultation with Insolvency regarding an Adequate Protection Agreement)
  - The government receives its interest in the property
  - Future collection potential is enhanced by release of the property
10. As described in IRM 5.10.3.6.1, *Management Review Process and Taxpayer Appeal Rights*, when the taxpayer requests the return of seized property in writing and the property is tangible personal property essential in carrying on a trade or business, the request must be expedited. The territory manager is responsible for reviewing such requests and determining if conditions requiring release under IRC 6343 are present, and, in particular, whether the levy has created an economic hardship by preventing the taxpayer from carrying on the trade or business. As provided by CFR 301.6343-2, the taxpayer must submit this request at least six days prior to sale, and include:



- The name, address, and taxpayer identification number of the taxpayer
  - A description of the property levied upon
  - The type of tax and the period for which the tax is due
  - The date of the levy and the originating territory, if known
  - A statement of the grounds upon which the request for release of the levy is based
  - An explanation of why the property levied upon qualifies for an expedited determination
11. The results of the review must be provided to the taxpayer by the earlier of ten business days after receipt of the completed request or prior to sale. If necessary, the sale should be delayed (if the public notice of sale has not been published) or adjourned to provide the taxpayer with the required response. See IRM 5.10.5.4, *Adjournment Procedures*.

#### 5.10.4.4 (07-03-2009)

##### Release of Wrongful Seizures for Property Not Yet Sold

1. Any person or other entity claiming an interest in or a lien on seized property, other than the person against whom the tax is assessed on which the levy arose, may submit a claim for return of wrongfully seized property (see IRM 5.17.3.5.6.3, *Wrongful Levy*). A seizure is considered wrongful if any of the following circumstances exist:
  - The seizure is of property in which the taxpayer had no interest at the time the Federal Tax Lien arose, or thereafter
  - The seized property is owned by a person who is a purchaser against whom the tax lien is invalid under IRC 6323
  - The sale will effectively destroy, or otherwise irreparably injure a third party's interest in the property which is senior to the Federal tax lien
2. IRC 6343 provides for return of property not belonging to the taxpayer that has been wrongfully seized. When a person alleges that there has been a wrongful seizure, and the property has not yet been sold, it may be returned to the rightful owner at any time prior to sale to a third party. If property was declared purchased for the United States and has not been resold, it may be returned to its rightful owner.
3. If there is a question over ownership, advise the third party to submit a written request, signed under the penalties of perjury, addressed to the area director and directed to the attention of the Advisory territory manager for the area office in which the seizure was made.
4. The written request must contain all of the following items:
  - The name and address of the person submitting the request
  - A detailed description of the property levied upon
  - A description of the claimant's basis for claiming an interest in the property levied upon
  - The name and address of the taxpayer
  - The originating IRS area
  - Date of the NFTL or levy, as shown on the NFTL, Form 668–A, or Form 668–B, or in lieu thereof, a statement of the reasons why such information cannot be furnished
5. The revenue officer or PALS must:
  - Explain the process to potential claimants as necessary
  - Immediately forward any claims received to Advisory along with a memorandum outlining the pertinent details
  - Halt any further action on the seizure and sale until the claim is resolved
6. The third party may also choose to file a suit under IRC 7426(a) without first filing a claim. However, if they are also seeking damages under IRC 7426(h), they must have exhausted all administrative remedies prior to filing suit.
7. If the property to be returned involves cash (or cash equivalent) of \$10,000 or more, the matter will be referred to Examination and Criminal Investigation.
8. If it is determined that the property should be released to the third party making the wrongful levy claim, follow the procedures in IRM 5.10.4.5, *Actions to Release and Return Property*. If Form 668–E, *Release of Levy*, is used to release the property, modify the second printed line on the form by deleting "belonging to the above named taxpayer."
9. If the claim is disallowed, Advisory should notify the claimant in writing as soon as possible of the reason for disallowing the claim and of the right to bring suit against the government. (See IRM 5.17.3.5.6.3, *Wrongful Levy*). If the claim is disallowed because it was not made within nine months from the date of the levy, send the claimant Letter 3973, *Wrongful Levy Claim Rejection Letter - Untimely Claim*, via certified mail. If the claim is disallowed because it does not meet one of the requirements detailed in IRM 5.10.4.4(1), *Release of Wrongful Seizures for Property Not Yet Sold*, send the claimant Letter 3974, *Wrongful Levy Claim Rejection Letter*, signed by the appropriate delegated official, via certified mail. Disallowance of the claim may be appealed through the Collection Appeals Program (CAP).
10. IRM 5.10.6.15, *Wrongful Seizure - Payment of Claims After Sale*, contains the procedures for when a wrongful levy claim is received after the property has been sold.

#### 5.10.4.5 (10-30-2014)

##### Actions to Release and Return Property

1. Two forms may be used to release seized property:
  - Form 2433, *Notice of Seizure*, Parts 3 and 4
  - Form 668–E, *Release of Levy*.
2. Release and return of seized property may only be made to:
  - The person from whom it was seized
  - A person holding a properly designated power of attorney for the person from whom the property was seized
  - The rightful owner in wrongful seizure situations
3. The property description of the released property should be taken from Form 2433, while all of the other information required to complete the release should be taken from Form 668–B. If Form 2433 was not prepared prior to the release, describe the property in sufficient detail to identify it.

4. Form 668-E or Part 4 of Form 2433 should be given and seized property should be released at the place where the property was stored. At the time of release, two Service employees should be present to witness the return of the property. A witness is not required when unimproved real estate is being released.
5. When necessary, the revenue officer or PALS may release the property accompanied by a local, state or federal law enforcement officer who should sign Form 2433, Parts 3 and 4 or Form 668-E. The revenue officer or PALS must document the case history describing the circumstances leading to the use of the non-Service witness and include a complete identification of the witnessing law enforcement officer (i.e., name, organization, address, badge number).
6. The revenue officer or PALS should remove all seizure warning notices from the property at the time the release of levy is given.
7. When a decision is reached to release and return seized property that has been stored pending sale, notify the storage facility operator or landlord immediately. Document the notification in writing and indicate that the Service has no further obligation for storage or rental fees subsequent to the date of release, other than fees for which the Service is already obligated.
8. As a general rule when property is released or redeemed prior to sale, arrange for direct payment of any seizure expenses by the taxpayer. This will minimize expense processing. If the taxpayer is to pay any storage or rental fees due for the time prior to release, the revenue officer or PALS should document the terms in writing. The revenue officer or PALS should secure a copy of the receipt for payment to forward to the field budget officer to avoid double payment to the vendor and confirm that the expense was paid.
9. If expenses are incurred and not paid directly to the vendor, the cost must be debited to the taxpayer's account via input of TC 360. If no proceeds were received for the release, the expenses will be collected through normal means. If payments were received for the release or redemption, the expenses will be debited with a TC 360 and paid simultaneously with the application of the payments by posting the corresponding credit with TC 694. The RO or PALS will prepare Form 2436R (See IRM 5.10.4.6, *Seized Property Release/Redemption Report*) to request input of TC 360 and/or a TC 694.

**Note:**

All payments received for the release or redemption of seized property must be submitted with Form 2433, Part 7B- Remittance Processor to the Ogden Submission Processing Center and **not** on Form 795. Do **not** post release/redemption payments to the balance due accounts on ICS. The module balances will be automatically updated after the Form 2436R is processed. Submit the documents on Form 3210 (with the seizure number included) to the following address:

IRS - Ogden Submission Processing Center  
 Attn: Payment Perfection  
 1973 N. Rulon White Blvd.  
 Mail Stop 2003 (for remittances over \$100,000)  
 Mail Stop 1999 (for remittances \$100,000 or less)  
 Ogden, UT 84404

10. Provide Part 4 of Form 2433 or Part 2 of Form 668-E to the taxpayer or the person from whom the property was seized. If the taxpayer or the person from whom the property was seized cannot be located, mail the appropriate part to the last known address by certified mail, return receipt requested. Forward Part 3 of Form 2433 or Part 1 of Form 668-E to Advisory for inclusion in the seizure case file.
11. Generally, seized property should not be released and returned until the recipient signs the "Receipt for Property Returned" on the reverse of Form 668-E or parts 3 and 4 of Form 2433. If the taxpayer or the person from whom the property was seized cannot be located or refuses to sign the release, the property may nevertheless be released. The revenue officer or PALS should note the reason for failure to secure the acknowledged receipt in the "Signature of Recipient" space.
12. If the taxpayer or person from whom the property was seized cannot be located to take possession of the released or redeemed property, contact area counsel and the field budget officer through Advisory for advice on the disposition of the property.
13. The revenue officer or PALS will indicate disposition of the property by checking the appropriate blocks on Form 2433 and entering the dollar amount received (if any) on Parts 5 and 7B. Advisory will enter the corresponding information on the related Part 6 in its files. When property is released or redeemed, after properly posting the expenses and credits using Form 2436R, the only required actions are:
  - Completion of Form 2433
  - Documenting the case history with the release/redemption information
  - Forwarding the closing documents (Part 7B of Form 2433, Part 3 of Form 2433 or Form 668-E, and any expense related information) to Advisory
14. When individual items are released back to the taxpayer after the original Form 4585 has been delivered to the taxpayer, revise the minimum bid to reflect the loss of the value of the assets released. The taxpayer will not be allowed additional appeal rights if the fair market value of the remaining assets is not being changed (IRM 5.10.4.8.7, *Revised Minimum Bid Form - No Opportunity to Protest*). Document the case history with the fair market value of the assets released and the total fair market value of the remaining assets. Use the new fair market value in the preparation of the revised Form 4585. The same percentage reductions used in determining the original minimum bid should ordinarily be used in determining the new minimum bid. Enter an explanation in item 8 of Form 4585, and mark out the information that explains the appeal rights on the reverse of the form. The revised form can be hand delivered to the taxpayer or sent by regular mail. Personal delivery to the taxpayer at the time the release documents are provided is optimal so that the reasons for the revised minimum bid can be explained.
15. When another government agency becomes involved after a seizure, prepare a release of levy before any property is released or turned over to that agency. Consult area counsel, through Advisory, before any action is taken to turn over the property.
16. The employee releasing the property must update the ICS seizure and sale application when the property is released or redeemed.

**5.10.4.6 (10-30-2014)**

**Form 2436R, Seized Property Release/Redemption Report**

1. The employee releasing the seizure will prepare Form 2436R, *Seized Property Release/Redemption Report*, (Exhibit 5.10.4-9) when either of the following conditions exist:
  - A. Expenses are incurred but not paid directly by the taxpayer and the property is released or redeemed prior to sale.
  - B. Payments are received from the taxpayer and the property is released or redeemed prior to sale.
2. Complete the Form 2436R and send it to Advisory within 10 calendar days of the receipt of payment from the taxpayer.
3. The form should be completed after all receipts and vouchers for expenses have been reviewed. Ensure all expenses are debited against the balance due accounts through a TC 360.
4. Document expense information as follows:
  - A. Enter the expense in item 5d. A schedule of the expenses incurred will be entered in item 7.
  - B. Attribute all expenses to the first tax period listed on Form 2436R.
  - C. Do not include expenses paid directly by the taxpayer.
5. Verify the balance due on IDRS to ensure the proper posting of release/redemption payments prior to completing item 5, "Application of Payments" .
6. Enter the seizure number in the upper right portion of Form 2436R.

7. After signing the Form 2436R, retain Part 4 with the ICS paper file, and send parts 1, 2, and 3 to Advisory. In addition to Form 2436R, send copies of all receipts, vouchers, and other related documentation for expenses of the seizure.
8. All payments received for the release or redemption of seized property must be submitted with Form 2433, Part 7B- to the Remittance Processor at the Ogden Submission Processing Center and should not be submitted on Form 795. The module balances will be automatically updated after the Form 2436R is processed. Post-seizure payments that are not anticipated to result in release or redemption may be processed normally.
9. Advisory will review Form 2436R upon receipt, and enter the appropriate information onto Form 6670, *Seizure Disposition Report*. If no corrections are needed, Parts 2 and 3 will be transmitted immediately to Accounting Control/Services for application of the payments. Part 1 will be maintained in the seizure file. Advisory will be responsible for following up on the application of the payments from the Form 2436R and should contact the Revenue Accounting Control System (RACS) unit to resolve any misapplied funds. It is extremely important that all expenses be debited with a TC 360 and the applicable TC 694 credit be posted to the account so that all payments from the seizure are applied according to IRC 6342(a).
10. In all cases that result in the full payment of the taxpayer's liability and/or an underlying federal tax lien, including any expenses which may have been incurred as a result of the seizure, the RO assigned to the case will issue a manual release of NFTL via Form 13794, *Request for Release or Partial Release of Federal Tax Lien*, according to the procedures which are currently in place for issuance of such releases. Per IRM 5.12.6.5.1(3) *Certificate of Release*, such requests may be faxed or sent by secure email to Centralized Lien Organization (CLO). Highlight "immediate release" at the top of the request. This action should be initiated as soon as it is determined that the liability and/or underlying federal tax lien and all expenses of the seizure are satisfied. As a general rule, when property is released or redeemed prior to sale, arrangements should be made for direct payment of any seizure expenses by the taxpayer. If expenses are incurred and not paid directly to the vendor, the cost must be debited to the taxpayer's account via input of Transaction Code (TC) 360. Payments made to redeem property prior to sale must be by cash, certified or cashier's check or money order made payable to the United States Treasury.

#### 5.10.4.7 (07-03-2009) PALS Sale Expenses

1. The PALS must determine a minimum price for the property considering the expenses of the levy and sale. The PALS must also determine whether it might be in the best interest of the United States to bid the property in at that minimum price for property sold under IRC Section 6335. IRC Section 6341 requires that the Service determine expenses to be allowed in all cases of levy and sale. Treasury Regulation 301.6341-1 states that "Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as actual expenses incurred in connection with the sale thereof."
2. PALS may incur as expenses of sale, goods or services needed to determine the value of the property to be sold as well as to protect and preserve the value of the property. Such expenses may include :
  - Installing a battery in a vehicle to determine its condition and value
  - Hiring a vendor to mow a lot
  - Engaging a mechanic to diagnose a problem and possibly make a minor repair that restores a piece of valuable construction or farm equipment to working order
3. Other repairs and maintenance may also be necessary to protect and preserve the property, including:
  - Cleaning a swimming pool (even if seized in a dirty condition) to prevent further damage to the pool interior and equipment
  - Repairs to a leaking roof or broken window to prevent water damage to the interior of the building
  - Regular mowing to ensure compliance with local codes and ordinances and to discourage rodent and snake infestations
4. PALS should exercise sound judgment to identify necessary expenditures and determine whether they can be charged as expenses of sale. To make this determination, consider the following:
  - Expenses made solely to improve or enhance the value of property or the price brought at sale should not be incurred
  - Expenses made to preserve the value of the property and prevent wasting may be incurred as an expense of sale
  - Expenses to determine the value of the property to calculate the minimum bid and to make a bid-in decision may be incurred as an expense of sale
5. Purchases of tables, chairs, signs or equipment used for multiple sales are **not** considered expenses of sale for a particular seizure.

#### 5.10.4.8 (08-04-2014) Establishment of the Minimum Bid

1. IRC 6335 requires that a minimum bid price be established for seized property offered for sale. The minimum bid price will be determined by the PALS assigned to the sale. The primary purpose of a minimum bid price is to avoid selling the property at substantially less than the forced sale value.
 

**Note:**

Establishment of a minimum bid is not required for perishable goods sales (IRM 5.10.4.15, *Pre-Sale Procedures for Perishable Goods*).
2. The minimum bid price must be correctly determined to provide for the equitable preservation of the property value; however, Policy Statement 5-35 limits the amount of the minimum bid to the government's lien interest in the property plus costs.
3. Form 4585, *Minimum Bid Worksheet*, is used in determining the minimum bid price (Exhibit 5.10.4-1). The fair market value on Form 2433 is the starting point for the calculation. This value should have been previously determined by the revenue officer and PALS. The basis for the fair market value determination must be documented in Item 5 of Form 4585. Use Item 13 on Form 4585 if additional space is needed.
4. If facts not known at the time of the seizure justify a change to the property value, it is not necessary to adjust the amounts on Form 2433 for accounting control purposes; however, the reason an adjusted figure is used as a basis for computing the minimum bid price should be fully explained in the history.
5. The revenue officer and PALS should have agreed to the property value prior to seizure. If new facts emerge and a change to the value is appropriate, the PALS manager must obtain revenue officer group manager concurrence in the new value. Both managers should document their agreement in the ICS case history. If the managers cannot agree, the field territory manager who approved the seizure must determine whether to proceed with sale or release the seizure. If the decision is elevated to the managers or TM, they must document the results of any discussions in the ICS history.
6. A property value reduction, not to exceed 25%, should then be applied to determine the forced sale value. This reduction reflects the fact that the sale is "forced" (i.e., is not being made by a willing seller). The difficulties associated with a forced government sale, such as no guarantee of clear title, property sold "as is, where is", and no warranty on the property, should be considered when determining this percentage. The reason(s) for the percentage reduction is reflected in Item 6 of Form 4585.
7. The forced sale value may then be reduced by a maximum of 20% in order to determine the reduced forced sale value. The PALS should check the appropriate reason(s) for the percentage reduction in Item 8 on Form 4585. Reasons listed on Form 4585 include:
  - Past experience at sales for the type of property seized
  - The possibility that senior lienholders may foreclose on the seized property
  - How the property is titled and if there are other owners of record

- Whether the purchaser will have to re-negotiate prior encumbrances
- The effect the redemption period has on finding willing buyers
- Whether conditional financing is available
- Whether the property is subject to conditional sale procedures

**Note:**

If there are any other factors that might depress the value of the property at the sale, they should be documented in Item 8 on Form 4585.

8. The percentage reductions selected should be based on the facts of the case. The reasons for the percentage reductions must be documented on Form 4585.
9. All encumbrances from Form 2434–B that are **senior** to the first NFTL should then be listed in Item 10. Subtract the total of all prior claims from the reduced forced sale value to compute the minimum bid price.
10. The minimum bid price, in all instances, will be limited to an amount not to exceed the total tax, penalty, interest, NFTL filing fees, expenses of levy and sale, and other charges, which represent the Government's lien interest in the seized property (See IRM 1.2.14.1.9, *Policy Statement 5–35*). If this is the basis for the minimum bid, it must be documented in Item 12 on Form 4585 by checking the box **Limited to the Government's Lien Interest**. If more than one Form 4585 is prepared for the same taxpayer (e.g., multiple real estate parcels are being sold separately), the combined minimum bid must be limited to the government's lien interest.

**Note:**

The government's lien interest can generally be determined by adding line 3 (Liability) and line 4 (Estimated expenses of sale) from Form 4585. Do not add intervening liens to this amount when calculating the government's lien interest in the property.

11. The minimum price for securities traded on the New York Stock Exchange, NYSE MKT (formerly NYSE Amex and American Stock Exchange), regional exchanges, or NASDAQ will be fixed at not less than 95% of the closing market price as of the day preceding the sale (See IRM 1.2.14.1.9, *Policy Statement 5–35*). When stocks are involved, enter 0% reduction in Item 6 and enter 5% reduction in Item 8 of Form 4585, and write an explanation that the minimum bid will be 95% of the closing price of the stock on the day before the sale. Form 4585 must still be delivered to the taxpayer, but the taxpayer may not dispute the minimum bid under these circumstances.

**Note:**

If this price is greater than the taxpayer's interest in the property, the minimum bid will still be limited to the taxpayer's interest in the property (IRM 5.10.4.8(9), *Establishment of the Minimum Bid*).

12. The minimum bid price for precious metals that are traded by weight on the New York Mercantile Exchange should be set at 80% of the spot price per troy ounce as of the day preceding the sale. For coins that are identifiable, the appropriate percentage should be 95% of the spot price per troy ounce. When these types of assets are involved, enter 0% in Item 6 and the appropriate (20% or 5%) reduction in Item 8 of Form 4585, and write the appropriate explanation that the minimum bid will be 80% or 95% of the spot price per troy ounce as of the day preceding the sale. Form 4585 must still be delivered to the taxpayer, but the taxpayer may not dispute the minimum bid under these circumstances.

**Note:**

The Service will not guarantee the weight or purity of the gold or silver.

**Note:**

If other factors (collectability, etc.) increase the value of identifiable coins above their value as a precious metal, consider using the greater of fair market value or face value to determine the minimum bid.

**5.10.4.8.1 (07-03-2009)**

**Decision to Bid In the Property for the Government**

1. Under IRC 6335(e), if the minimum bid price is not reached by bidders at the sale, the Service may purchase the property for the minimum price if it is in the best interest of the government to do so. It is important that the minimum bid price be correctly determined since the taxpayer receives credit on the account for the amount of the minimum bid price, less expenses of levy and sale, when the property is declared purchased for the United States.
2. The decision whether or not to bid in the property for the government can be made up until the time the sale is adjourned or cancelled or the property is declared sold. The decision must be documented as part of the sale day case history. In deciding whether to bid in property, the PALS should consider the following factors:
  - The threat of foreclosure or repossession by senior encumbrance holders
  - Marketability of the property
  - Cost of maintaining the property
  - Cost of repairing or restoring the property
  - Cost of transporting the property
  - Cost of safeguarding the property
  - Cost of potential toxic waste cleanup
  - Any unique factors particular to the type of property
  - Additional information discovered during the auction and not known prior to the auction itself
  - Risks to the Government
  - Whether to bid in all or part of the property, and if so, based on the contribution to the over-all minimum bid as a factor, what the bid-in price will be when only a portion of the property is bid in for the Government.
3. The PALS will discuss and secure concurrence from the PALS group manager before bidding in property for the government. If only bidding in a portion of the property, the amount will also be discussed and manager concurrence is required.
4. If the PALS decides to not bid in the property for the government, the property will be released to the taxpayer if the minimum bid is not reached at the sale or, if applicable, at a subsequent sale if the original sale is adjourned (IRM 5.10.5.4, *Adjournment Procedures*).

**5.10.4.8.2 (06-28-2013)**

**Delivery of Form 4585, Minimum Bid Worksheet**

1. Submit the completed Form 4585 to the manager of the PALS for approval prior to giving public notice of sale.

2. After approval of the minimum bid is secured, the PALS will complete the reverse of Part 3 of Form 4585 and deliver the form to the taxpayer. The PALS must either
  - deliver the Form 4585 to the taxpayer's business or place of abode, or
  - send the Form 4585 to the taxpayer's last known address by certified mail, return receipt requested, and by regular mail.

The PALS must then document the method of delivery.

**Exception:**

When a third party other than the taxpayer is the owner of the property, then Form 4585 must be delivered under the above guidelines to the owner. The taxpayer should receive a copy of the Form 4585, but any references to the 10-day appeal timeframes should be deleted. The owner of the property is entitled to appeal the minimum bid, not the taxpayer. Contact area counsel if there are any questions as to who should receive Form 4585, especially in nominee or alter-ego situations.

3. A copy of Form 4585 must be forwarded to Advisory within 10 workdays after the copy is provided to the taxpayer.

**5.10.4.8.3 (08-04-2014)**

**Challenges to the Minimum Bid**

1. The taxpayer/owner has 10 days to respond to the minimum bid. Delivery should normally occur prior to giving the public notice of sale to permit ample time to finalize the minimum bid price before the sale date. If the taxpayer/owner does not respond within the 10 day waiting period, no further action is required.
2. The minimum bid price cannot exceed the amount of the tax liability plus expenses of sale (See IRM 1.2.14.1.9, *Policy Statement 5-35*). The minimum price for securities traded on the New York Stock Exchange, the NYSE MKT (formerly NYSE Amex and American Stock Exchange), regional exchanges, or NASDAQ will be fixed at not less than 95% of the closing market price as of the day preceding the sale (See IRM 1.2.14.1.9, *Policy Statement 5-35*). Therefore, when the minimum bid price is established by following either of these provisions, agreement is not required and a request for reevaluation will not be considered.
3. When challenging the minimum bid, the taxpayer must provide the basis of their disagreement (e.g., personal knowledge of market, appraisal) and their estimate of the property value. Their opinion need not be substantiated by a third party, but they must supply the amount and basis. If the taxpayer refuses to provide this information, proceed with sale as if there was no challenge.

**5.10.4.8.4 (07-03-2009)**

**PALS Agrees Fully With Challenge to Minimum Bid**

1. If the taxpayer/owner responds with information regarding the property value and the PALS agrees, the PALS should revise the minimum bid. Document the reasons for revision in Item 13 of the revised Form 4585.
2. The revised minimum bid should be delivered under the same provisions as the original (IRM 5.10.4.8.2(2), *Delivery of Form 4585, Minimum Bid Worksheet*) or it may be faxed to the taxpayer/owner if there has been personal contact with the taxpayer or Power of Attorney to discuss the revision. The reference to the 10 days in which to protest the minimum bid should be deleted from the reverse of Form 4585. Send a copy to Advisory within 10 workdays of delivery to the taxpayer/owner.

**Note:**

If, after reviewing the additional information, the PALS determines the sale is no longer expected to result in any net proceeds, the property must be released.

3. Under these circumstances, the taxpayer/owner does not have an additional opportunity to dispute the revised minimum bid, and there is no requirement to wait an additional 10 days.

**5.10.4.8.5 (07-03-2009)**

**PALS Agrees Partially With Challenge to Minimum Bid**

1. If the taxpayer/owner responds with information regarding the property value and the PALS agrees in part, revise the minimum bid based on an analysis of the information submitted. Document the reasons for revision in Item 13 of the revised Form 4585.
2. Deliver the revised minimum bid under the same provisions as the original minimum bid (IRM 5.10.4.8.2(2), *Delivery of Form 4585, Minimum Bid Worksheet*). Send a copy to Advisory within 10 workdays of delivery to the taxpayer.
3. If the taxpayer/owner agrees with the revised minimum bid and is willing to waive the 10 day waiting period, obtain a written statement and the taxpayer/owner's signature on the revised form and document the case history. If the signature is not secured, document the case history accordingly and allow the 10 day waiting period to expire. Concurrence with the minimum bid is only required when the minimum bid will be used before the end of the 10 day period.
4. Send a copy of the taxpayer/owner's concurrence with the minimum bid to Advisory. The taxpayer/owner's written signature and statement waiving the 10 day waiting period on Form 4585 suffices as concurrence when revising the minimum bid.
5. If the taxpayer/owner does not respond to the revised minimum bid within the 10 day waiting period, no further action is required.
6. If the taxpayer/owner still disagrees with the revised minimum bid, see IRM 5.10.4.8.6, *PALS Disagrees With Challenge to Minimum Bid*.

**5.10.4.8.6 (07-03-2009)**

**PALS Disagrees With Challenge to Minimum Bid**

1. If the taxpayer/owner challenges the minimum bid and the PALS does not agree, advise the taxpayer/owner to secure the services of an independent appraiser acceptable to both the Service and the taxpayer. If the taxpayer/owner does not secure an acceptable appraiser within a reasonable time period (usually 10 days) the PALS may choose an outside appraiser. An Internal Revenue Service Valuation Engineer or Appraiser may be used when feasible and available.
2. If the professional appraiser or valuation engineer recommends a forced sale value unacceptable to the taxpayer/owner, the services of another appraiser may be secured with an average of both appraisals being used to compute the value of the property.
3. If the revised minimum bid is based on an average of the two appraisals, the taxpayer/owner does not have an additional opportunity to dispute the minimum bid and there is no requirement to wait an additional 10 days. Generally, the revised minimum bid should be delivered under the same provisions as the original minimum bid. It may be faxed to the taxpayer/owner if there has been personal contact with the taxpayer/owner or representative to discuss the revised minimum bid. The reference to the ten days in which to protest the minimum bid should be deleted from the reverse of Form 4585. Send a copy to Advisory within 10 workdays of delivery to the taxpayer/owner.

**Note:**

If, after reviewing the additional information, the PALS determines the sale is no longer expected to result in any net proceeds, the property must be released.

4. The cost of obtaining the services of private appraisers may be paid directly by the taxpayer or may be made a part of the expenses of levy and sale to be charged to the account via TC 360.

**5.10.4.8.7 (07-03-2009)**

**Revised Minimum Bid Forms — No Opportunity to Protest**

1. If the minimum bid form is being revised for any of the following reasons, the taxpayer/owner does not have an additional opportunity to protest the minimum bid and the reference to the 10 days within which to submit a protest should be deleted from the reverse of Form 4585:

- Additional encumbrances were located
- Balances due on encumbrances are being adjusted or updated
- Some of the seized property was released and reductions are being made to the fair market value based on the released assets (see IRM 5.10.4.5(14), *Actions to Release and Return Property*)

**Note:**

If any changes are being made to the FMV of the remaining assets in addition to the changes above, then the taxpayer/owner may protest the revised minimum bid.

#### **5.10.4.9 (07-03-2009)**

##### **Determination of Type of Sale**

1. The PALS must determine by which method the seized property will be sold. Seized property may be sold either by:
  - Public auction, at which open competitive bids are received and mail-in bids may be accepted
  - Public sale by sealed bid
2. Relevant factors should be considered when selecting the method of sale, including:
  - The type of property
  - The location of the property
  - The condition of property
  - How the property is titled
3. The use of sealed bid sale provisions may reduce the likelihood of disruption when the potential exists for taxpayer or third party resistance to the sale. Select the method of sale that will maximize the net proceeds.

#### **5.10.4.9.1 (07-03-2009)**

##### **Mail-in Bids for Public Auction Sales**

1. The Service may accept mail-in bids for public auction sales. A sample mail-in bid form is provided in Exhibit 5.10.4–7. The PALS should complete the sections for mailing address, due dates of the payments, sale date, and date by which the merchandise must be picked up prior to sending the mail-in bid form to a prospective bidder or including it in the internet advertisement.
2. The form of payment and the amount of the bid must comply with the Terms of Payment as stated on the Notice of Public Auction Sale. The mail-in bid form should indicate that the bidder acknowledges:
  - That he/she must comply with all other conditions as stated in the Notice of Public Sale
  - That the bid is a mail-in bid on a public auction and is not a sealed bid
  - That there are advantages to bidding in person at the sale (inspecting the property; hearing any statement by the taxpayer, PALS, or lienholders; engaging in open, competitive bidding)
  - Responsibility for a) pick-up and delivery of the asset by a specified date and b) all costs associated with the storage and delivery of the asset after the sale is completed if he/she is the successful bidder
3. If a potential bidder requests information concerning encumbrances against the property, provide Form 2434–B, *Notice of Encumbrances Against or Interests in Property Offered for Sale* (Exhibit 5.10.1–1).
4. The mail-in bid form specifies the address and due date for submission of bids. The bids should be sent in a securely sealed envelope, and the bidder should include his/her name and address, date of sale, and lot numbers for which bids are being submitted on the upper left corner of the envelope. All envelopes should be annotated with the name and identification number of the appropriate PALS and the statement "MAIL-IN BID - TO BE OPENED BY ADDRESSEE ONLY" .
5. The PALS should advise potential bidders that they must submit separate bids with separate payments for each lot if they are bidding on multiple lots. This will facilitate the application of payments and the return of payments for unsuccessful bids.
6. The PALS will document the bidders' name, address, and the date the bid was received for all mail-in bids as they are received. If the bids are to be mailed to a local office and not directly to the PALS, the PALS should coordinate with the local office to have an employee (preferably not a revenue officer) document and control the mail-in bids as they are received. Section C of Form 4425, *Public Sale Bid Tabulation*, or a similar form, may be used for this purpose; the title should be changed to "Receipt for Mail-in Bids" . All mail-in bids received will be retained for safekeeping in a government facility providing protection commensurate with the standards in IRM 1.4.6.5.1, *Minimum Protection Standards*.
7. A bid should not be considered unless it is received at the address specified on the mail-in bid form by the due date. Bids may be withdrawn upon written request from the bidder, provided the request is received by the PALS prior to the scheduled start time of the sale. If a timely request for withdrawal is received, return the mail-in bid to the bidder. Note the date of withdrawal on Form 4425 or similar form and attach the written request to the form.
8. Procedures for integrating the mail-in bids into the public auction and returning bids to unsuccessful bidders are contained in IRM 5.10.5.10, *Property Offered Under Only One Method*.

#### **5.10.4.10 (07-03-2009)**

##### **Grouping of Property**

1. The seized property may be offered for sale:
  - As separate items
  - As groups of items
  - In the aggregate
  - Both as separate items/groups of items and in the aggregate
2. Consider offering general use property as both separate items/groups of items and in the aggregate. This may attract more bidders to the sale and increase sale proceeds. For example, when office furniture is being sold, an individual may bid on one file cabinet for home use but not on a group of ten.

3. The PALS will select the method(s) of sale expected to bring the highest price. The nature of any property being offered for sale should be considered in light of its use with any other property being offered. The decision to offer property as separate items, groups of items, or in the aggregate is often made by the PALS at the sale based on bidder interest.
4. If the property is offered as both separate items/groups of items and in the aggregate, the property will be sold under the method that produces the highest aggregate amount.
5. If the property to be sold includes both real and personal property, the real property and the personal property should be grouped separately.
6. Do not separate items or groups of items encumbered by a single senior lienholder.

#### **5.10.4.11 (07-03-2009)**

##### **Outsourcing**

1. The PALS should consider the use of an outside auctioneer if it would increase the sale proceeds (e.g., works of art, jewelry, antiques).
2. Request the service of an auctioneer by written memorandum and obtain the approval of the Advisory area director, Advisory territory manager, or PALS group manager. The cost thereof will be charged as an expense of the sale. See IRM 5.10.2.22, *Contracting for Services*, for procurement authority.
3. To prevent potential conflict of interest situations, the auctioneer must agree that neither he/she, his/her family members, nor employees or owners of his/her auctioneer company, nor agents of such company will bid on or purchase items at IRS sales conducted by the auctioneer. The above-stated restrictions will be reflected in auctioneer contract solicitations and in written statements to be signed by auctioneers selected under such solicitations (See Exhibit 5.10.4-2).
4. The PALS will send the signed statement to Advisory. If the PALS requires the services of an auctioneer not currently under contract with the Service, a memorandum documenting the reason must be submitted to the Chief Procurement Officer.
5. The PALS should work with the contracting engineer, who will consult with counsel in approving the terms and conditions of the auctioneer's proposed contract.
6. Although the outside auctioneer will conduct the sale, the presence of the PALS is required in order to begin the auction by reading the legal statement described in IRM 5.10.5.9, *Conducting a Public Auction* and, if necessary, to adjourn the sale.

#### **5.10.4.12 (08-04-2014)**

##### **Preparation of Notice of Sale**

1. Ordinarily, a notice of sale should be issued within 60 days from the date of the Notice of Seizure. Document any circumstances preventing the issuance of the notice of sale within 90 days (for personal property) or 180 days (for real property) in a memorandum to Advisory. Issue the notice as soon as possible thereafter.
2. IRC 6335(f) permits the owner of any property seized to request that the seized property be sold within sixty (60) days after such request, or within any longer period specified by the owner. The Service will comply with such requests unless such compliance would not be in the best interest of the United States.
3. Taxpayers are required to submit IRC 6335(f) requests in writing to the manager of the PALS responsible for the sale. The manager will send a written response to the taxpayer within thirty (30) days after receipt.
4. The notice of sale must contain the following items:
  - A description of the property (see IRM 5.17.3.6.1.2(4), *Notice of Sale*, for additional information)
  - Date, time, and place of sale
  - Payment terms
5. If the seized property is to be sold at public auction, Form 2434, *Notice of Public Auction Sale*, will be prepared as indicated in Exhibit 5.10.4-3.
6. If the seized property is to be sold at public sale under sealed bids, Form 2434-A, *Notice of Sealed Bid Sale*, will be prepared as indicated in Exhibit 5.10.4-4.

#### **5.10.4.12.1 (08-04-2014)**

##### **Notice of Sale — Date and Place of Sale**

1. The date of sale must be set at least 10 days but not more than 40 days from the date the notice is published in the newspaper, or, if there is no newspaper, from the date the notice is posted in public places (IRM 5.10.4.14, *Methods of Advertising and Posting the Notice of Sale*). In calculating this time period, the day of notice should be excluded and the day of the sale counted. (For example, if notice is published on March 1, sale can be held on or after March 11. The sale must be scheduled for no later than April 10.)
2. If the last public records search, or commercial title search, was conducted 90 days or more prior to the sale date, complete an updated records check to identify any subsequently recorded encumbrances or interests and document them on Form 2434-B. The PALS should ensure that NFTLs are filed in all appropriate jurisdictions prior to the sale.

##### **Note:**

Researching only a computer based record service, such as Accurint, is not sufficient since it may not be complete or reflect the most recent data available.

3. The sale should usually take place within the county in which the property was seized. A different location can be selected if it will maximize sale proceeds. Factors to consider in this decision include:
  - potential for higher bids
  - possibility of taxpayer or third party resistance at the sale which may depress the number or amount of bids
  - reduction of sale expenses
  - potential for increased number of bidders
4. For sealed bid sales, the place of sale is considered to be the site where the bids are opened. IRM 5.10.5.12, *Sealed Bid Sale - General*, contains additional information on the proper address to use when the bids will be opened in a location other than the office where the PALS is located.
5. If any sale is to be held outside the county in which the property was seized, the notice of sale shall be signed by the area director, territory manager, Advisory territory manager, or the PALS territory manager.

#### **5.10.4.12.2 (06-28-2013)**

##### **Notice of Sale — Grouping of Property**

1. If any part of the property may be offered in groups, these items should be segregated in the notice of sale so that they are easily identifiable.
2. For property offered under sealed bids, each item or group of items should be assigned a unique number in the notice of sale. These numbers should be used by bidders in submitting their bids on Form 2222, *Sealed Bid for Purchase of Seized Property*.

#### 5.10.4.12.3 (06-28-2013)

##### Notice of Sale — Terms of Payment

1. The PALS must choose one of the following terms of payment:
  - Payment in full upon acceptance of the highest bid, regardless of the amount of the bid
  - If the aggregate of all property purchased by a successful bidder is more than \$200, an initial payment of \$200 or 20% of the purchase price, whichever is greater, and the balance (including costs to protect and preserve the property from the date of sale through the date of final payment) within a specified period, not to exceed one month from the date of sale
2. For a sealed bid sale, the full amount of the bid price should be submitted if the bid price is \$200 or less. If the total bid is more than \$200, 20% of the bid or \$200, whichever is greater, should be submitted.
3. In the case of alternative bids submitted by the same bidder for items of property offered separately, in groups, or in the aggregate, the bidder should remit the full amount of the highest alternative bid submitted, if the bid is \$200 or less. If the highest alternative bid is greater than \$200, the bidder shall remit 20% of the highest alternative bid or \$200, whichever is greater.
4. If payment in full is required upon acceptance of the highest bid, the payment should be made at that time, or at a reasonable period thereafter, to be established by the PALS.

##### Note:

Do not describe the "reasonable period thereafter" in the notice of sale or any other advertisement.

5. If deferred payment is allowed, the initial payment will be made upon acceptance of the bid and the balance must be paid on or before the date specified. For sealed bids, the initial payment will be in the amount required to be submitted with the sealed bid.
6. All payments for property sold must be made by:
  - Cash,
  - Certified, cashier's or treasurer's check drawn on any bank or trust incorporated under the laws of the United States or under the laws of any state or possession of the United States, or
  - United States postal, bank, express, or telegraph money order
7. All checks and money orders should be made payable to the United States Treasury.

##### Note:

If sale of the asset is conditioned on third-party governmental approval (e.g., state-issued liquor license), note the conditional nature of the sale within the terms of payment. For example, "Transfer of liquor license 123-4567 XX must be approved by the State Department of Alcoholic Beverage Control". See IRM 5.10.4.12.4, *Conditional Sale Proceeds*

#### 5.10.4.12.4 (07-03-2009)

##### Conditional Sale Proceeds

1. The sale of a right or license that will require approval of a Federal, state, or local agency is considered "conditional". Since the sale must be approved by another agency, an interest bearing escrow fund may be used to deposit the payment amount.
2. The option to use this escrow fund should be included on the notice of sale and Advertising Order.
3. Consult with area counsel prior to completion of the notice of sale regarding the preparation of the escrow agreement. The agreement should include stipulations that the interest earned from such a fund is the property of the successful bidder, regardless of the eventual disposition of the transfer. The successful bidder will be responsible for all charges or fees for the escrow.
4. Any other pertinent terms and conditions should be reduced to writing to limit the possibility of any misunderstandings.
5. The successful bidder will be responsible for all costs associated with the approval process.
6. If an escrow fund is not used, payment should be restricted to a certified check so it can be held in safe-keeping rather than deposited. If the sale is not approved, the payment can then be immediately returned to the bidder.

#### 5.10.4.12.5 (06-28-2013)

##### Joint Tenants and Tenants in Common Property

1. Occasionally revenue officers seize real property held by joint tenants or tenants in common when separate unrelated tax liabilities are due from the owners. When this occurs, prepare separate Forms 668-B, 2433, and 4585. Although considered as one sale in the sense that the realty may be sold to one purchaser for one price, actually each tenant's interest in the real property is sold simultaneously. Since the taxpayer's right of redemption cannot be abridged, individual certificates of sale and deeds are prepared and delivered to the purchaser. If only one tenant redeems, a deed would be issued to the purchaser for only the remaining interest. The price paid by a purchaser should be apportioned to the liabilities according to the tenant's interest in the property. Expenses of the sale should also be apportioned.

#### 5.10.4.13 (06-28-2013)

##### Delivery of Notice of Sale

1. If the owner has his/her usual place of abode or place of business within the territory where the seizure was made, the original notice of sale must be personally delivered to the owner of the property (or the possessor of the property for personal property) or left at his/her usual place of abode or place of business by affixing the notice, enclosed in an envelope, on the door if the owner is not available. If the owner is unavailable, ensure that the location is an actual place of business or abode; do not rely solely on the last known postal address to make this determination.

##### Note:

The terms place of abode and place of business are usually apparent, but circumstances may arise where they are unclear. If the taxpayer or owner is incarcerated, for example, they may not maintain a residence. If personal service is not possible and the facts are unclear as to whether the taxpayer maintains a place of business or residence, consult area counsel through Advisory for guidance. If a business taxpayer is no longer operating (possibly as a result of the seizure), they no longer have a place of business within the territory. If a location appears to be vacant or unoccupied and a principal of the business or owner cannot be served personally, use the exception in 5.10.4.13(3) below to mail the documents to the last known address of the taxpayer.

2. Because of the large geographic areas that a PALS may cover, a revenue officer may deliver the notice of sale. This will generally occur when the sole purpose of the PALS travel would be to deliver the notice of sale to the taxpayer's place of abode or business, and no other sale related actions are needed. The revenue officer will deliver the documents according to IRM procedures and advise the PALS of the delivery. The revenue officer may not be involved in the preparation of the notice of sale, and while delivering the notice, the revenue officer may not discuss any aspects of the sale with the taxpayer and should advise the taxpayer to contact the PALS if there are any questions. The revenue officer can still discuss alternative methods of resolution with the taxpayer during this contact.



**Note:**

It is the PALS' responsibility to confirm proper delivery of the notice of sale and document verification of this action in the ICS history prior to the sale date.

**Note:**

Delivery to the POA alone does not constitute proper service since attempted personal delivery to the owner is required under IRC 6335(b).

3. The notice will be sent by both certified mail, return receipt requested, and regular mail to the owner's last known address (place of abode or business) if both of the following situations exist:
  - The owner has no usual place of abode or business within the territory where the seizure was conducted
  - The owner cannot be readily located

**Reminder:**

If the address is known and can be located and is within the territory where the seizure was conducted, personal contact must be attempted and the documents left on the door if the owner is not available. The documents may also be mailed in addition to being left at the place of abode or business, but they may not be delivered solely by mail in these situations. See IRM 5.1.3.5, *Armed Escort to Contact a Taxpayer* when an armed escort may be necessary.

4. If real property is being offered for sale, a reasonable effort should be made to deliver the notice personally in order to inform the taxpayer of the right to redeem the property at any time prior to sale or within 180 days of the sale. See IRM 5.10.4.2, *Redemption of Property Prior to Sale* and IRM 5.10.6.8, *Redemption of Real Property After Sale*.
5. If real property was seized and the taxpayer is not the owner of record (i.e., real property subject to a recorded NFTL was sold by the taxpayer), the original notice of sale should be furnished to the owner of record and a copy delivered to the taxpayer.
6. A copy of the notice of sale must be provided by regular mail to all interests of record (joint owners, senior and junior lien-holders, nominees, transferees, judgment creditors (regardless of whether they have perfected a lien interest), etc.) to the address reflected on Form 2434-B and also to a more current address if known. This includes any encumbrances identified in an updated records check completed after the seizure. Form 2434-B must be updated to reflect the date this action was taken.
7. Retain a copy of the notice of sale in the PALS case file. Send copies to the seizing revenue officer and Advisory within 10 workdays after the notice was issued.
8. In cases in which collection is in jeopardy and a levy is made without regard to the 10-day period provided in IRC 6331(a), a public notice of sale of the property seized should not be given within the 10-day period unless IRC 6336 (relating to perishable goods) is applicable.

**5.10.4.14 (08-04-2014)****Methods of Advertising and Posting the Notice of Sale**

1. The notice will be published in a newspaper published or generally circulated within the county in which the seizure was made. A single newspaper insertion appearing not less than 10 days prior to the date of sale meets the legal requirement. In calculating this time period, the day of notice should be excluded and the day of the sale counted. (For example, if notice is published on March 1, sale can be held on or after March 11. The sale must be scheduled for no later than April 10.) Insertions of the advertisement for additional days may be desirable and, when feasible, should run for several days leading up to the date of sale.

**Note:**

To satisfy this requirement, the property description and time, place, manner and conditions of sale in the newspaper advertisement must match the notice (Form 2434 or Form 2434-A) provided to the taxpayer. Other advertisements published for marketing purposes in addition to the legal notice described above need not include all information, but the terms of payment, time, place, manner and conditions of sale must be identical in all advertising.

2. In addition to the legally required advertising, consider additional classified or spot advertisements to attract bidders. In all cases post the sale to the PALS web site.
3. Instructions to the publisher (Exhibit 5.10.4-5) can be used to provide advertising instructions to the publisher. To meet the statutory requirement for advertising, refer to Exhibit 5.10.4-6. The instructions to publisher, regardless of the format used, must be provided to Advisory within 5 days of requesting the advertisement as part of the interim sale documents. The advertisement will generally be set solid, without paragraphing, and without any display in the heading. Display advertising may be ordered, with the concurrence of the manager, when it is determined to be necessary.
4. In addition to the newspaper advertisement, the notice of the sale may also be:
  - Posted at public places, such as libraries, public notice boards at city and township halls and county public buildings, etc.
  - Posted outside the premises where the seized property is located if such posting would facilitate the sale
  - Mailed to interested parties
5. The statute provides that if there is no newspaper published or generally circulated in the county, the notice will be posted at the post office nearest the place where the seizure is made and in not less than two other public places, such as libraries, public notice boards at city and township halls and county public buildings.
6. Any expenses incurred during the mailing process may be charged to the taxpayer's account as an expense of sale (TC 360). Such expenses may include:
  - The cost of postage (based on rates in effect at the time of mailing)
  - Material costs incurred by Service personnel attributable to the mailing of notices of sale (e.g., peel-off labels, reproduction of notice of sale forms)
  - The cost incurred if a commercial firm is used for a mailing, including the U.S. Postal Service Electronic Computer Originated Mail (E-COM)
7. A supplemental insertion of notice of sale may be placed in a newspaper to publicly advertise property omitted from the original notice of sale. However, the property included in the supplemental notice of sale is subject to the time limitations described in IRM 5.10.4.12.1, *Notice of Sale - Date and Place of Sale*. Therefore, the sale must be adjourned for all of the property to be sold at the same time, if the original date of sale is fewer than 10 days from the date of the supplemental notice. See IRM 5.10.5.4, *Adjournment Procedures*, concerning the procedures for adjourning a sale.
8. Though sales for multiple taxpayers may be held concurrently, the legally required advertisement must be separate for each taxpayer.

**5.10.4.14.1 (06-28-2013)****Commercial Advertising of Sale**

1. When contracting for commercial advertising, follow the procedures outlined in IRM 5.10.2.22, *Contracting for Services*.
2. Other methods of giving notice of sale and of advertising, such as radio or television spot announcements and trade journal advertising, may be used in addition to those required by law. These methods may be used if they are likely to increase bidding activity and proceeds of sale.
3. Advertising by radio and television requires the approval of the area director or Advisory territory manager. A memorandum, citing the reason for the request and including information on the advertisement to be ordered, should be submitted to the appropriate official. Upon approval, follow the contracting procedures outlined in IRM 5.10.2.22, *Contracting for Services*.

4. To verify services rendered, ask the advertiser to provide the full page of each issue of the publication in which the advertising appeared. These pages are known as "tear sheets." If the publisher is unable to furnish these sheets, or if the advertisement is by other methods, obtain affidavits of publications or broadcast. If the PALS cannot secure proof of publication from the vendor, document efforts to verify the advertising and attempt to secure proof by other means (e.g., copy of ad from newspaper or web site). If verification cannot be made, the PALS will take appropriate actions, such as disputing the billing charge and arranging for additional advertising for the sale if time permits. Send the proof of publication attached to the vendor bill to Advisory with the Form 2436, Seized Property Sale Report.

**Note:**

Prior to sale, the PALS must verify that the statutorily-required newspaper advertisement was published timely and contained the information required in IRM 5.10.4.14.

**5.10.4.15 (07-03-2009)**

**Pre-Sale Procedures for Perishable Goods**

1. See IRM 5.10.1.4, *Perishable Goods Criteria, Definitions, and Examples*, and IRM 5.10.1.5, *Perishable Goods Pre-Seizure Development*, for criteria and pre-seizure development procedures for perishable goods. When perishable goods are seized, the revenue officer must document why IRC 6336 is applicable in the case history. A copy of the report submitted with the approval request will become a part of the file forwarded with the closing documents.
2. Before selling property under IRC section 6336 that was seized based on a jeopardy assessment or termination assessment, secure the concurrence of area counsel.
3. Circumstances may arise where a non-perishable asset seizure must be reclassified as a perishable goods seizure. In this case, the revenue officer or PALS must prepare a memorandum describing why such reclassification is necessary. The memorandum must request that the area director approve both the:
  - Identification of the property as perishable
  - Sale of the perishable goodsA copy of the memorandum should be sent to Advisory for the seizure file.
4. In order to preserve equity and maximize sale proceeds in these expedited sales, it is important for PALS to consider marketing before the seizure has been conducted. It is equally important that no identifying information be disclosed during this marketing, for example:
  - Taxpayer's name or exact location
  - Business name or trade name
  - Signs or logos
5. Pre-sale marketing efforts should provide only a general description of the property and approximate location of the sale.
6. If the taxpayer can be readily located, a written notice of the appraised value of the property will be issued to him/her. The asset valuation notice (See Exhibit 5.10.4-8, *Perishable Goods Asset Valuation Notice*) must state that if the appraised value of the property is not paid within the time specified in the notice (or an acceptable bond for such amount is not furnished within that time), the property will be sold. The PALS group manager must approve the asset valuation notice. A diligent effort will be made to personally deliver the notice of the appraised value to the taxpayer. However, the fact that the taxpayer cannot be located does not prohibit sale of the property under IRC 6336. At the time of delivery, explain the terms of the perishable goods sale to the taxpayer, and allow an opportunity to redeem the property at the appraised value. If circumstances require immediate action, the taxpayer may be verbally notified of the appraised value. This will be confirmed in writing prior to the sale.

**5.10.4.15.1 (06-28-2013)**

**Sale of Perishable Goods**

1. If the amount of the appraised value of the seized property is not paid or a bond is not furnished within the time specified in the notice, the property should be sold, as soon as practicable, in accordance with the following terms and conditions:
  - Authority to Conduct Sales of Perishable Goods — The PALS is responsible for all sale actions to include the post seizure inventory and valuation, preparation and delivery of the sale notices and *Asset Valuation Notice*, documentation of all sale actions, and completion of the post-sale paperwork.
  - Notice of Sale — If the owner can readily be found, a notice of sale will be given to him or her. The notice of sale will also be posted in two public places in the county in which the property is to be sold. Form 2434, *Notice of Public Auction Sale* (Exhibit 5.10.4-3) may be adapted for the sale of perishable goods by changing the authority quoted from IRC 6335 to IRC 6336. The timeframes for conducting a sale under IRC 6335(d) do not apply to sales of perishable goods.
  - Sale — The property will be sold at public auction to the highest bidder, and if only perishable goods are being sold, the procedures pertaining to establishing a minimum bid price may be waived. IRM sections 5.10.5.5, *Public Auction - General*, through 5.10.5.9, *Conducting a Public Auction*, are equally applicable to sales under IRC 6336, except that any reference to IRC 6335 should be interpreted to mean a reference to IRC 6336 and any prohibitions against revenue officers being able to conduct the sale do not apply to perishable goods sales.
  - Terms — Full payment at time of acceptance of highest bid will be required in sales of this type. The payment shall be made in cash or by a certified, cashier's, or treasurer's check made payable to United States Treasury 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 by postal, bank, express, or telegraph money order

**5.10.4.16 (06-28-2013)**

**Arrangements to Convert or Deposit Cash**

1. Prior to conducting a sale, make arrangements to either deposit or convert any cash that may be received at the sale. Whenever possible, deposit proceeds into a Treasury General Account (TGA) instead of sending directly to Submission Processing. The manner in which sale proceeds are handled must always be fully documented in the case file history.
2. Any unusual arrangements, such as using an armed escort from Criminal Investigation to transport significant amounts of cash, should be discussed with the PALS manager prior to the sale.

**Exhibit 5.10.4-1**

**Minimum Bid Worksheet Reference: 5.10.4.8(3)**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.10.4-2**

**Letter P-2530, Auctioneer Agreement to IRS Restrictions Reference: 5.10.4.11(3)**

(Reference IRM 5.10.4.9(3))

(Because of the limited need, a form will not be provided by Headquarters)

**STATEMENT OF AGREEMENT WITH THE RESTRICTIONS TO  
THE IRS CONTRACT FOR AUCTIONEERING SERVICES**

By signing this statement, I hereby acknowledge and agree that I shall not, nor shall any of my family members, nor any of the employees or owners of any auctioneering company

to which I am affiliated, nor any agents thereof, purchase any property at the IRS sale I have been contracted to conduct.

(signature)

(date)

(name, print or type)

(address)

**Exhibit 5.10.4-3**  
**Form 2434 — Notice of Public Auction Sale Reference: 5.10.4.12(5)**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Form 2434 Instructions**

1. Taxpayer's name (taxpayer's address may also be included if it will help identify the delinquent taxpayer).
2. Date of sale — this date must be at least 10 but not more than 40 days from the date notice is to be published in newspaper or if no newspaper, from the date notice is posted in public places (IRM 5.10.4.12.1).
3. Time of sale, including AM or PM.
4. Sale location
5. Taxpayer's name.
6. Itemized description of property to be offered for sale. Enter odometer reading if property sold is a motor vehicle. If offering is to be in groups of items, groupings should be readily identified. If it is known at the time of preparation how the property will be offered, the following statement should be added: "The property will be offered for sale (show method as selected from IRM 5.10.4.12.3 and IRM 5.10.4.10)". If not known, the following statement should be added: "The property may be offered for sale in the aggregate and/or as individual groups or lots".
7. Rule out any unused space.
8. Address and times at which the property may be inspected.
9. Select full payment or enter applicable payment terms (IRM 5.10.4.12.3).
10. Name of employee conducting sale.
11. Title of employee conducting sale.
12. Address and phone number where prospective bidders can request additional information about the sale.

**Exhibit 5.10.4-4**  
**Form 2434-A — Notice of Sealed Bid Sale Reference: 5.10.4.12(6)**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Form 2434-A Instructions**

1. Taxpayer's name (taxpayer's address may also be included if it will help identify the delinquent taxpayer).
2. Date bids will be opened (date of sale) — this date must be at least 10 but not more than 40 days from the date notice is to be published in newspaper or if no newspaper, from the date notice is posted in public places (IRM 5.10.4.12.1).
3. Time bids will be opened (include AM or PM).
4. Location where bids will be opened.
5. Name of taxpayer.
6. Itemized description of property offered for sale. Enter odometer reading if property sold is a motor vehicle. If offering is to be in groups of items, groupings should be readily identified. If it is known at the time of preparation how the property will be offered, the following statement should be added: "The property will be offered for sale (show method as selected from IRM 5.10.4.12.3 and IRM 5.10.4.10)". If not known, the following statement should be added: "The property may be offered for sale in the aggregate and/or as individual groups or lots"
7. Rule out any unused space.
8. Address and times at which the property may be inspected.
9. Select full payment or enter applicable payment terms (IRM 5.10.4.12.3).
10. Name of employee conducting sale.
11. Title of employee conducting sale.
12. Address and phone number where prospective bidders can request additional information about the sale.
13. Address where sealed bids should be submitted (IRM 5.10.5.12).

**Exhibit 5.10.4-5**  
**Letter P-2529, Instructions to Publishers Reference: 5.10.4.14(3)**

**INSTRUCTIONS TO PUBLISHERS**

**FROM:**

Internal Revenue Service Date: \_\_\_\_\_  
Address: \_\_\_\_\_

Telephone: \_\_\_\_\_  
Person to Contact: \_\_\_\_\_

TO:  
Name of Publication: \_\_\_\_\_  
Address: \_\_\_\_\_

Name of Publisher or Representative: \_\_\_\_\_

**INSTRUCTIONS:**

Subject of Advertisement: \_\_\_\_\_  
Edition of Paper Advertisement to Appear In: \_\_\_\_\_  
Number of Times Advertisement to Appear: \_\_\_\_\_  
Dates Advertisement to Appear: \_\_\_\_\_

**SPECIFICATIONS FOR ADVERTISEMENT (check one):**

\_\_\_\_\_ Advertisement is to be set solid, without paragraphing, and without any display in the heading.

\_\_\_\_\_ Advertisement should be set as follows:

**COPY FOR ADVERTISEMENT:**

Forward two copies of the advertisement (including upper and lower rules) to the IRS address listed above. If the copies are not available, sign the following affidavit.

**AFFIDAVIT**

I affirm that the advertisement described above appeared in the named publication on the dates indicated.

Signature of Publisher or Representative: \_\_\_\_\_

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

**Exhibit 5.10.4-6**

**Template to Provide Publisher to Meet Statutory Requirements of Advertising Reference: 5.10.4.14(3)**

IRS PUBLIC AUCTION SALE

Date of Sale: (Enter Date and Time of Sale)

Location: (Enter location of sale)

Property Offered: (short description for personal property and identifying short description for real estate with address)

Under the authority in IRC Section 6331, the property described below has been seized for non payment of taxes due from (TP Name). Property will be sold at public auction as provided in IRC Section 6335 and related regulations. Only the right, title and interest of (TP Name) in and to the property will be offered for sale. (Enter terms of payment, e.g., Full/partial payment will be due (enter dates) of the conclusion of the sale and must be made by cash, cashier's check or money order made payable to the US Treasury.

For more information go to [www.irsauctions.gov](http://www.irsauctions.gov) or contact (PALS or Service Employee contact information).

**Note:**

The information in this template must match that reflected on the notice of sale.

**Exhibit 5.10.4-7**

**Mail-in Bid for Public Auction Reference: 5.10.4.9.1**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.10.4-8**

**Perishable Goods Asset Valuation Notice Reference: 5.10.4.15(6)**

Date: (MM-DD-YYYY)

Taxpayer Name  
Address  
City, ST and Zip Code

Reference: Seizure and Sale of (Taxpayer)

Dear (Taxpayer):

The assets of (taxpayer or owner) located at (current location) have been seized for non-payment of Internal Revenue Service taxes. This letter is to advise you that as the Property Appraisal and Liquidation Specialist (PALS), I have inspected the assets and determined the Fair Market Value (FMV) to be \$XXXX. The attachment provides a detailed list of the assets.

I have set a date and time of sale at the above location as follows:

Date of Sale:

Time of Sale:

In order to avoid the sale of the seized property you must deliver a cashier's or certified check made payable to the U.S.Treasury, cash or acceptable bond in the amount of the FMV shown above to Revenue Officer XXXX or myself prior to the sale. Revenue Officer XXXX may be contacted at (XXX) XXX-XXX and you may contact me at (XXX) XXX-XXXX. Please feel free to call me if you have any questions. You will receive a report of the sale as soon as possible.

\_\_\_\_\_  
Name: (Enter name of PALS)

Employee Number: xx-xxxxx

\_\_\_\_\_  
Name: (Enter name of PALS group manager)

Title: PALS Group Manager

Employee Number: xx-xxxxx

Attachment(s)

**Exhibit 5.10.4-9**

**Form 2436R, Seized Property Release/Redemption Report Reference: 5.10.4.6(1)**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)





## Part 5. Collecting Process

### Chapter 10. Seizure and Sale

#### Section 5. Sale Procedures

##### 5.10.5 Sale Procedures

- 5.10.5.1 [General](#)
- 5.10.5.2 [Treasury Employee Prohibition on Purchase of Certain Assets](#)
- 5.10.5.3 [Employee Self-Disqualification](#)
- 5.10.5.4 [Adjournment Procedures](#)
- 5.10.5.5 [Public Auction — General](#)
- 5.10.5.6 [Condition of Title and of Property](#)
- 5.10.5.7 [Statement by Lienholders](#)
- 5.10.5.8 [Statement by Taxpayers](#)
- 5.10.5.9 [Conducting a Public Auction](#)
- 5.10.5.10 [Property Offered Under Only One Method](#)
- 5.10.5.11 [Property Offered For Sale by More than One Method](#)
- 5.10.5.12 [Sealed Bid Sale — General](#)
- 5.10.5.13 [Payment of Purchase Price](#)
- 5.10.5.14 [Default on Payment — Cash Sales](#)
- 5.10.5.15 [Default on Payment — Deferred Payment Sale](#)
- 5.10.5.16 [Certificate of Sale](#)
- 5.10.5.17 [Delivery and Removal of Personal Property](#)
- 5.10.5.18 [Protection of Real Property During Redemption Period](#)
- 5.10.5.19 [Securing and Depositing Sale Proceeds](#)
- Exhibit 5.10.5-1 [Wire Instruction Document](#)
- Exhibit 5.10.5-2 [Form 2435 — Certificate of Sale of Seized Property Reference: 5.10.5.16](#)
- Exhibit 5.10.5-3 [Letter 2274\(P\), Materials to Assist in the Sale of Documented Vessels Reference: 5.10.5.16.4\(2\)](#)
- Exhibit 5.10.5-4 [SF 215-A, Deposit Ticket Reference: IRM 5.10.5.18\(4\)](#)
- Exhibit 5.10.5-5 [Form 1963, Collection Register Reference: IRM 5.10.5.18\(4\)](#)
- Exhibit 5.10.5-6 [Log for SF 215-A, Deposit Ticket Reference: IRM 5.10.5.18\(6\)](#)

##### Manual Transmittal

October 27, 2014

##### Purpose

(1) This transmits revised IRM 5.10.5, Seizure and Sale, Sale Procedures.

##### Material Changes

(1) References to Form 2433, Part 8A, revised to Form 2433, Part 7B.

##### Effect on Other Documents

This material supersedes IRM 5.10.5, dated August 4, 2014.

##### Audience

Small Business/Self-Employed Compliance Employees

##### Effective Date

(10-27-2014)

Rocco A. Steco  
Acting Director, Collection Policy

##### 5.10.5.1 (08-04-2014)

###### 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. The revenue officer should advise the Property Appraisal Liquidation Specialists (PALS) if the taxpayer files bankruptcy or if a resolution is reached prior to the scheduled sale (e.g. TAS contacts the revenue officer and resolution is reached requiring release of the seizure.)

###### Note:

Prior to conducting the sale, the PALS should check ICS and contact the revenue officer to verify that no changes have been made to the account, such as those listed in IRM 5.10.4.3, *Conditions for Release of Seized Property*. This contact should generally be made within 2 days of the sale date. PALS should also check the Public Access to Court Electronic Records (PACER) system if there is an indication the taxpayer may have filed bankruptcy.

2. The PALS will conduct the sale, but an employee who has the authority to make a case decision regarding a proposed collection alternative, usually the seizing revenue officer and/or the group manager, may be present at the sale site in order to discuss possible case resolution alternatives with the taxpayer. If this employee is not present at the sale, he or she must be available to both the taxpayer and the PALS by phone on the day of the sale so the taxpayer can discuss any alternatives to the sale. If this employee agrees that an alternative resolution is appropriate, the employee will advise the PALS that circumstances exist which warrant adjournment of the sale and/or release of the levy and return of the seized property.

**Note:**

The statutory provision, section 6331 of the IRC, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), does not prohibit the sale of property that was seized before an offer or an installment agreement became pending. To determine when an offer or installment agreement is considered pending, see IRM 5.8.3, Processability, and IRM 5.14.1.3, Identifying Pending, Approved and Rejected Installment Agreement Proposals on IDRS, respectively.

3. Neither the seizing revenue officer nor any other revenue officer may be involved with any aspect of the actual sale under IRC 6335, including, but not limited to:
  - Grouping and lotting of property prior to sale after the Form 2433 has been completed
  - Registering bidders
  - Tabulating bids
  - Assisting in the collection of money
  - Issuing certificates of sale
  - Answering sale related questions
  - Any other sale related activity involving interaction with anyone attending or conducting the sale

**Note:**

Revenue officers may participate in sales of perishable goods since these sales do not take place under IRC 6335. Responsibility for all perishable goods sales resides with the PALS function, see IRM 5.10.1.5(4).

4. Any person whose property has been seized can redeem the property (IRM 5.10.4.2, Redemption of Property Prior to Sale), or the property may be released (IRM 5.10.4.3, Conditions for Release of Seized Property) at any time before the PALS declares the property sold to the highest bidder.

**5.10.5.1.1 (07-03-2009)****Securing Change for the Sale with the Use of Convenience Checks**

1. These procedures should be used to ensure that sufficient money is available to provide change to successful bidders at cash sales.
2. To obtain a convenience check, the PALS will complete the "Request for Funds" template and secure group manager approval. Allow a minimum of two weeks, under normal circumstances, to process the written request and Request Tracking System (RTS) information. Emergency requests for funds must be weighed on a case-by-case basis.
3. Submit the approved form to SB/SE Finance for processing. Upon receipt of an approved request for funds, SB/SE Finance will initiate an RTS request with an action type of "IMPR" . The RTS request will include the following information in the description field:
  - Name and address of the PALS employee receiving the cash advance. If overnight mail is required, there must be a street address (post office boxes are unacceptable).
  - The statement: "Cash is requested for change-making purposes for a sale scheduled on XX-XX-XXXX. The funds will be returned no later than XX-XX-XXXX."

**Note:**

Funds must be returned no later than ten days from the date of sale.

4. The RTS approval will be forwarded to the Agency-Wide Shared Services (AWSS) Imprest Fund Cashier for processing. SB/SE Finance will:
  - Fund the request to the PALS' cost office, functional area 7D, material group P100
  - Review, sign and forward the "Request for Funds" form to the cashier (as soon as the RTS document is approved and received by the cashier)
  - Record each "advance" on a log and associate repayments to close out the requests
  - Perform periodic follow-up of open items, if necessary, and communicate any concerns directly with the PALS group manager.
5. The Imprest Fund cashier will mail a convenience check to the PALS employee specified in the RTS request and on the faxed "Request for Funds" form.
6. The PALS employee receiving the check will be responsible for converting the check to cash. Procedures for repayment of funds must be strictly adhered to because the PALS to whom the check is sent will be responsible for the funds until such time as repayment has been verified. The PALS is responsible for full repayment, regardless of whether any loss occurred, either through negligence or error, unless relief is granted pursuant to procedures found in IRM 5.10.5.1.1(8).
7. The following steps should be followed in order to guarantee full repayment:
  - A. Within ten days after completion of the sale, convert the cash back to a check (either cashier's or certified) or money order and forward the reimbursement to SB/SE Finance.
  - B. Attach the check to a Form 3210 so that verification of receipt can be forwarded back to the requester. At a minimum, include the RTS request number on the Form 3210 and in the comments portion of the check. This will be the only way to match the repayment to the original request. Without the ability to match the repayment to the original request, it will appear that the original amount is still an outstanding debt. Once the requester receives the signed 3210 that verifies receipt of the repayment, this will serve as proof of repayment, so the signed 3210 should be kept in the case file.
  - C. SB/SE Finance will record the repayment on the log, closing out the request. The check will be forwarded to Beckley Finance Center for deposit and the original RTS request number and full accounting string will be provided on the Form 3210 to ensure repayment to operating funds.
8. In the event of loss or theft after the check has been negotiated, the PALS can apply for relief by forwarding a formal memorandum through the PALS group manager to the Advisory Territory Manager detailing the specific circumstances involved in the loss. If the Advisory Territory Manager concurs that the employee should be relieved of the responsibility to repay the funds, the memorandum with his/her concurrence should be forwarded to the plan manager. After final consideration, all parties will be notified of the final outcome (relief or requirement to repay in full).

**5.10.5.2 (07-03-2009)****Treasury Employee Prohibition on Purchase of Certain Assets**

1. 5 CFR § 3101.103 states that, unless a waiver is obtained, no employees of the Department of the Treasury shall purchase, directly or indirectly, property:
  - A. Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or
  - B. Sold under the direction or incident to the function of the employee's bureau.

### 5.10.5.3 (07-03-2009)

#### 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 5 CFR 3101, Standards of Ethical 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 5.10.5.4, Adjournment Procedures.
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 Advisory seizure file.

### 5.10.5.4 (08-04-2014)

#### Adjournment Procedures

1. Pursuant to Anderson v. United States, 44 F.3d 795 (9th Cir. 1995), the Service may adjourn, but not postpone, a sale of seized property (see IRM 5.17.3.6.1.3, Time of Sale - Adjournment). The sale of seized property may not be delayed beyond the statutory time periods of IRC 6335(d). The sale must be held not less than 10 days, nor more than 40 days from the date public notice of sale is given, unless it is adjourned for a period not to exceed one month. A sale may be temporarily enjoined by a court order, in which case the actual period of suspension should not be included in computing the time for sale under the code.

#### Note:

If the taxpayer files bankruptcy after the notice of sale has been given, then the automatic stay prohibits the Service from conducting the sale as scheduled. Since the sale is cancelled, not adjourned, the time limitations in IRC 6335(e)(2)(F) do not apply. Since the sale never takes place, IRC 6335(e)(1)(D) is also inapplicable and the property does not have to be released. If the bankruptcy trustee does not demand turnover of the property, consider releasing the property and re-seizing when the automatic stay is no longer in effect when such action would present minimal additional harm or expense to the Service--i.e., the subject property is real property. Contact Advisory and local counsel for additional information on how to proceed. Any subsequent sale of the seized property, including giving a new notice of sale, must take place following the statutory guidelines in IRC 6335(d).

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 (not including the time period for which the sale is enjoined by a court order). The announcement of adjournment should:
  - Be made in the presence of the prospective bidders
  - Include the date and time to which the sale is adjourned, if possible
3. A sale may be adjourned at any time after the sale has commenced, including after the pre-established minimum price has been reached, until the property is declared sold. For sales with multiple minimum bids, portions of the property can be declared sold when the minimum bid is reached and the sale adjourned on the remaining items.
4. Notice of the new sale date should be given to the taxpayer in the same manner as the original notice of sale (IRM 5.10.4.12, Delivery of Notice of Sale).

#### Note:

The adjourned sale may be held at a different location so long as the sale is otherwise conducted properly. That includes notice of the new sale location on the notice of adjournment sale. However, if the sale were moved outside the county, it would have to meet the same requirement as an initial sale for being held outside the county as provided in IRM 5.10.4.12.1, *Notice of Sale - Date and Place of Sale*, including ensuring the appropriate management official signature is on the notice of sale.

5. It is not necessary to re-advertise the sale when the new sale date is set within the allowable time period; 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 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. Though the re-evaluation will not be made solely to facilitate the purchase of the property by the United States or to guarantee a sale to a third party, if new information obtained during the sale (e.g., defects in the property, bidder consensus that the fair market value is overstated) indicates a lower value is appropriate, the PALS should consider lowering the fair market value to facilitate sale.
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 indicate his/her concurrence by signing the revised Form 4585. Taxpayer concurrence is only required if IRM 5.10.4.8.7, *Revised Minimum Bid Forms - No Opportunity to Protest* does not apply and 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 Advisory to be included in the seizure file.

#### Note:

If the PALS obtains PALS group manager and taxpayer concurrence of a revised fair market value (FMV) at the sale, the Field Collection group manager need not be advised of the new value. However, if the taxpayer is unavailable and the PALS has to send the new minimum bid draft to the taxpayer and wait 10 days as described in IRM 5.10.4.8.3, the field group manager should be asked for their concurrence of the revised fair market value per IRM 5.10.4.8(5), "Establishment of the Minimum Bid."

9. If, after the sale has commenced, conditions indicate that seizure should be released (IRM 5.10.4.3, Conditions for Release of Levy), 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 Advisory.
11. If the new sale date for an adjourned sale 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 immediately being seized again unless circumstances have changed so that the seizure is now prohibited (collection statute expired, etc.).

#### Note:

If property must be seized again due to the time constraints related to an adjournment, all required approvals must be obtained prior to the second seizure.

12. There is no statutory basis for the Service to rescind an adjourned sale after the Service becomes aware of a defect in the sale procedures. In the event the PALS determines an IRM or IRC requirement may not have been met during the seizure and sale process and the property has been declared sold discuss the case with the PALS GM. Do not declare the sale "void" or "rescinded." Contact Advisory and associate area counsel on how to proceed. Where the taxpayer, owner of the property, or purchaser make a complaint, consult IRM 5.10.6.15, *Wrongful Seizure - Payment of Claims After Sale*, and IRM 5.10.6.16, *Improper Levy Action and Claims for Refund*, and confer with area counsel.
13. Cancellation of a sale before the sale commences may be announced by any IRS employee that is not a revenue officer. This may occur when the taxpayer redeems property before the sale and the travel cost of the PALS to announce the cancellation is not cost effective. The PALS should request the local employee's assistance in announcing the cancellation through the employee's manager.

### 5.10.5.5 (08-04-2014)



## Public Auction — General

1. With the exception of perishable goods sales, the PALS will conduct the sale and at least one other Service employee, who may not be in the GS-1169 Revenue Officer series, must assist with the sale.

### Exception:

In rare situations a law enforcement officer may assist with a public auction sale if no Service employee is available.

2. The PALS must determine the number of personnel that will be required to assist with the sale. The complexity of the sale will influence the number of assisting employees that will be required. The assisting employees may be other PALS, revenue agents, secretaries, or any other service employee not in the revenue officer series. Some of the normal sales responsibilities for which assistance may be needed include:
  - Helping to group and lot the property prior to sale
  - Helping to organize the sale area prior to sale
  - Signing in bidders, assigning bidder numbers, and issuing bidder cards
  - Helping spot bids and recording bid amounts
  - Assisting in collecting or counting money
  - Meeting and greeting bidders, monitoring the crowd, answering questions or directing prospective bidders to the appropriate person
  - Assisting in the preparation of Form 2435, Certificate of Sale of Seized Property
  - Matching Form 2435 against property removed after the sale

### Note:

Ensure that the assisting employees understand their roles and responsibilities for assisting at the sale and that procedures are in place to adequately safeguard proceeds from the sale. Assign tasks based on the technical abilities of the assisting employees and ensure the delegated authority for signing Certificates of Sale, etc. is not assigned to employees outside of the delegated positions.

3. The PALS will first look to non GS-1169 series employees of Advisory and Insolvency (AI) including other PALS, to assist at sales. In situations where it is not feasible or cost-effective for employees of AI to assist with sales, the PALS will request assistance from the Collection territory manager where the seizure was conducted. The PALS will identify the number of employees needed to assist at the sale and the Collection territory manager will provide the assistance needed in accordance with IRM 5.10.5.5(1) & (2).
4. The name and title of the assisting IRS employee (or in rare situations a law enforcement officer if no Service employee is available) should be documented on Form 2436, Notice of Seized Property Report. Form 2436 instructions are in IRM 5.10.6.5. If more than one employee assists with the sale, the PALS should document the name and title of the other assisting employees in the ICS history.
5. 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.
6. The PALS should make no statements other than those prescribed by the instructions in IRM 5.10.5.6, Condition of Title and of Property, at any time prior to the sale or when conducting the sale.

### 5.10.5.6 (07-03-2009) Condition of Title and of Property

1. The PALS will offer:
  - 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
  - The property "as is" and "where is" and without recourse against the United States
  - No guaranty or warranty, express or implied, on the 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 supplied, 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 prospective bidders.

### Note:

Form 2434-B must be provided to all parties identified on the form prior to the sale (IRM 5.10.4.13, Delivery of Notice of Sale).

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. Form 2434-B contains a statement advising bidders to verify for themselves the validity, priority, and amount of encumbrances against the property that is offered for sale.
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 others beside the NFTLs.
5. Consult local counsel for the procedures to follow when there are questions as to the validity of a recorded lien.
6. Since the sale of real property under IRC 6335 gives a 180 day right of redemption period after the sale, bidders should be advised that they cannot assume control of the property until this redemption period lapses, or the persons who have rights of redemption convey them to the successful bidder. See IRM 5.10.5.8(3) through (5), Statement by Taxpayers. If, during this allowable redemption period, the successful bidder incurs any expenses to conserve, maintain, repair, or improve the real property and the property is later redeemed, the purchaser has no claim against the government or against the redemption proceeds to recover these expenses. Any claim for recovery must be made against the taxpayer/owner under appropriate state law.

### 5.10.5.7 (07-03-2009) Statement by Lienholders

1. In some cases involving personal property subject to a senior chattel lien, the security interest of the lienholder in the property is made more difficult to enforce 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.

- 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.

#### **5.10.5.8 (08-04-2014) Statement by Taxpayers**

- 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. Any adjournment must follow the procedures in 5.10.5.4, Adjournment Procedures.
- When real property is seized, the following individuals have the right, under IRC 6337, to redeem the property at any time within 180 days after the sale:
  - The owner
  - His or her heirs, executors, or administrators
  - Any person having an interest in the property
  - Any person having a lien on the property
  - Any person on their behalf

Refer to IRM 5.17.3.5.5, *Redemption*, for additional information regarding who has redemption rights and instructions regarding consulting Area counsel.

- 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.
- 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.
- 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.

#### **5.10.5.9 (07-03-2009) Conducting a Public Auction**

- 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.
- 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 or for making the announcement directing the bidders to the statement on Form 2434.
- The terms of payment should have been determined at the time the Notice of Sale was prepared (IRM 5.10.4.12.3, Notice of Sale - Terms of Payment), and these terms should be indicated on Form 2434. Any change in the terms of payment should be announced prior to the commencement of bidding.
- The manner in which the property is being offered for sale should also have been previously determined (IRM 5.10.4.12.2, Notice of Sale - Grouping of Property). If the property is being offered for sale under only one method, the procedures in 5.10.5.10, Property Offered Under Only One Method, should be followed. If the property is being offered for sale under more than one method, the procedures in 5.10.5.11, Property Offered for Sale by More Than One Method, should be followed.

#### **5.10.5.10 (07-03-2009) Property Offered Under Only One Method**

- Once the sale is called to order and the opening statement made, the PALS will open the bidding.
- If mail-in bids have been received, they should be opened at the start of the bidding for each of the lots for which they were submitted.
- 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, or a similar form, 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 Form 2436, Seized Property Sale Report, as provided in IRM 5.10.6.5, Form 2436, Seized Property Sale Report.
- If sufficient parcels are sold (or tentatively sold) to satisfy the entire liability plus the costs of the proceedings, the PALS should end the sale and release the remaining parcels to the taxpayer.

#### **Note:**

In certain situations, it may be appropriate to continue with the sale of all assets and process any surplus proceeds according to the procedures in IRM 5.10.6.7, Surplus Proceeds. This could occur if the taxpayer has indicated he or she does not want the remaining assets returned or if there are other circumstances where the release of the assets would be problematic. Document the history with the specific circumstances if the sale of the remaining assets is completed.

- 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 \$\_\_\_\_." If two or more highest mail-in bids are equal, determine the successful bidder by drawing lots.
- IRM 5.10.5.10.1, Minimum Bid Not Reached, contains the provisions to follow if the minimum bid is not reached at the sale.
- If mail-in bids were received which were not the successful bid, the deposits should be returned by mail and the appropriate section of the mail-in bid form should be completed.

#### **5.10.5.10.1 (07-03-2009) Minimum Bid Not Reached**

- If the minimum bid price is not reached,
  - The property may be declared purchased at the minimum bid price for the United States.
  - The property may be released to the taxpayer.
  - The sale may be adjourned if it is in the best interest of the government or the taxpayer (IRM 5.10.5.4, Adjournment Procedures).
- The decision whether or not to bid in the property for the government can be made up to the point the property is declared sold, or the sale is adjourned or cancelled. The decision must be documented prior to or as part of the sale day actions (IRM 5.10.4.8.1, Decision to Bid-In the Property for the Government).

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 \$\_\_\_\_."

#### 5.10.5.10.2 (08-04-2014)

##### Public Sale of Controlled Substances

1. IRM 5.10.3.17, *Controlled Substances*, provides guidance regarding the seizure of Controlled Substances.
2. If a public sale is held, offer the controlled substances **only** as a separate item and **not** in the aggregate with any of the other property. 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. 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.
3. 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 DEA. A Certificate of Sale will be issued to the purchaser.
4. 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 and Property Redeemed by the United States* the drugs should be delivered to the nearest Regional Office of the DEA for disposal. See 21 CFR 1307.21. The PALS should secure a receipt for the controlled substances from the DEA and attach it to the memorandum report of disposition of acquired property.
5. 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 DEA 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).

#### 5.10.5.11 (07-03-2009)

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

1. When property is offered for sale by more than one method (IRM 5.10.4.12.2, Notice of Sale - 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 mail-in bids were received, the procedures contained in IRM 5.10.5.10, Property Offered Under Only One Method, for integrating the mail-in bids into the auction and processing unsuccessful mail-in bids should also be followed when the property is offered for sale by more than one method.
3. The assisting employee should prepare a tabulation of the tentative high bids received. Form 4425, Public Sale Bid Tabulation, or a similar form may be used for tabulating purposes. Any records pertaining to the tentative high bids received will be retained and submitted by the PALS with the report of the proceedings on Form 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 PALS will make a statement similar to the following: "In accordance with the provisions of IRC 6335, I hereby declare the property tentatively sold to bidder number \_\_\_\_ pending the outcome of the property being offered by another method." The property should then be offered for sale under the other method(s) 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 or similar form. 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 end 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.

##### Note:

In certain situations, it may be appropriate to continue with the sale of all assets and process any surplus proceeds according to the procedures in IRM 5.10.6.7, Surplus Proceeds. This could occur if the taxpayer has indicated he or she does not want the remaining assets returned or if there are other circumstances where the release of the assets would be problematic. Document the history with the specific circumstances if the sale of the remaining assets is completed.

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 (IRM 5.10.5.16, Certificate of Sale), after receipt of the full bid amount.
10. If no one offers the minimum price under either method, follow the procedures under IRM 5.10.5.10.1, Minimum Bid Not Reached.

#### 5.10.5.12 (07-03-2009)

##### 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 for 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. 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. Form 2434—B contains a statement advising bidders to verify for themselves the validity, priority, and amount of encumbrances against the property that is offered for sale.
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. Each bidder will submit their bid in a securely sealed envelope with their name, address, and the time and place of sale on the upper left corner of the envelope. The envelope 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 or an employee in the office where the PALS is located will document each bidder's name, address, and the date the sealed bid was received for all sealed bids as they are received. Section C of Form 4425 or a similar form 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 on Form 4425

each bidder's 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 1.16.15, Minimum Protection Standards 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.

#### **5.10.5.12.1 (07-03-2009)**

##### **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-A contains the authority and effect of sale used as the opening statement. Since the form is available to the public, it is not necessary to read the statement prior to commencing 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.

#### **5.10.5.12.2 (07-03-2009)**

##### **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...**

The property is offered by more than one method  
Two or more highest bids are equal  
The highest bid is not equal to or greater than the minimum bid

##### **Then...**

Form 4425, Public Sale Bid Tabulation, or similar form should be used to determine the successful bidder(s).  
Determine the successful bidder by drawing lots.  
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).

2. All Forms 2222 will be retained by the PALS and will be forwarded with the report of the proceedings on Form 2436. The PALS will complete all applicable items of the successful bidder section of Forms 2222 submitted by successful bidders.

#### **5.10.5.12.3 (07-03-2009)**

##### **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, complete the applicable items of the "Return of Remittance to Unsuccessful Bidder" section of the related Form 2222.
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.

#### **5.10.5.13 (10-27-2014)**

##### **Payment of Purchase Price**

1. All payment for property sold must be in the form of:
  - Cash
  - Certified, cashier's, Official Bank Check, 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
  - 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. If the highest bidder is the result of a mail-in bid, the PALS should notify the successful bidder as soon as possible so the balance of the bid price can be secured. The appropriate section at the bottom of the mail-in bid form should be completed.
6. PALS may determine payment of the bid price through a Fed Wire Transfer is applicable. In these situations, the Notice of Sale should state a Certificate of Sale will not be issued, and personal property removal may not begin until after confirmation of full payment of the bid price. Confirmation of full payment may take 24 to 48 hours after the transfer is initiated. PALS should provide the "Wire Instructions Document", as shown in Exhibit 5.10.5-1, to bidders who choose this payment option. PALS will complete a Form 2433, Part 7B, for the Fed Wire transaction annotating FED WIRE TRANSFER, the total sum of the wire transaction, and the date of sale. PALS will also complete Form 1963, Collection Register, listing each wire transaction separately and will include FED WIRE TRANSFER to block 2. Both the Forms 2433, Part 7B and 1963 must be sent to Ogden Submission Processing by fax or secure email. PALS contacts Ogden Submission processing within 24 hours of the wire transaction for verification the funds have been received and identified in Cash Link. After such verification, PALS will contact the successful bidder(s) and advise the wire transactions have been confirmed then issue Forms 2435, Certificate of Sale and property removal can begin, if applicable.
7. 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 in cash of the purchase price. Instead, if full payment is received in cash, Form 2435, Certificate of Sale, will be issued.
8. Under the following conditions the PALS will prepare a record of receipt to provide to the purchaser:
  - If deferment of the purchase price is permitted, and an initial or interim payment is received in cash

- The purchaser requests a receipt for a non-cash payment
9. A copy of the record of receipt should be submitted on Form 3210, Document Transmittal. Form 3210 should include the taxpayer's identification number as well as the seizure number and should be marked "Partial Proceeds from the Sale of Seized Property". A copy of Part 7B of Form 2433 marked "Partial Proceeds from the Sale of Seized Property" should also be included to ensure proper handling of the proceeds. The payment will be applied to the appropriate module when Form 2436 is submitted. The record of receipt should include the following information:
- Identity of purchaser
  - Amount of payment
  - Date of payment
  - Description of item purchased
  - Remaining balance due
  - Date remaining balance is due
  - Address to submit balance due
  - Signature of PALS
10. If a non-cash deferred payment is made and a receipt is not requested, the remittance should be submitted with a copy of Part 7B of Form 2433 marked "Partial Proceeds from the Sale of Seized Property". The documents should be transmitted via Form 3210, Document Transmittal. Form 3210 should include the taxpayer's identification number as well as the seizure number, and should state "Partial Proceeds from the Sale of Seized Property".
11. There is no statutory basis for the Service to rescind a sale after the Service becomes aware of a defect in the sale procedures. In the event the PALS determines an IRM or IRC requirement may not have been met during the seizure and sale process and the property has been declared sold discuss the case with the PALS GM. Do not declare the sale "void" or "rescinded." Contact Advisory and obtain associate area counsel on how to proceed. Where the taxpayer, owner of the property, or purchaser make a complaint, consult IRM 5.10.6.15, *Wrongful Seizure - Payment of Claims After Sale*, and IRM 5.10.6.16, *Improper Levy Action and Claims for Refund*, and confer with area counsel.

#### 5.10.5.14 (07-03-2009)

##### Default on Payment — Cash Sales

1. If payment in full is required upon the acceptance of the bid (or a reasonable period thereafter) 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, seek the advice of area counsel when action against a defaulting purchaser at a cash sale is being considered.

#### 5.10.5.15 (08-04-2014)

##### 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:
  - A. Recommend suit (IRM 5.17.4, Suits by the United States) against the purchaser for the unpaid bid price, including interest at an annual rate established under IRC section 6335(e)(3).
  - B. Declare the sale void for failure to make full payment and again advertise and offer the property for sale (see IRM 5.10.5.14(1), Default on Payment - Cash Sales, and IRM 5.17.3.6.2.3, Acceptance of Bid - Payment).

**Note:**

Since the original sale is being declared void, the time periods related to adjourned sales (IRM 5.10.5.4, Adjournment Procedures) do not apply. The new sale date should be advertised and the sale conducted within the appropriate timeframes (IRM 5.10.4.12.1, Notice of Sale - Date and Place of Sale) based on the new date of public notice.

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 5.10.6.5.1(2), Form 2436, Seized Property and Sale Report - Deferred Payments. See IRM 3.17.63.26.12.5, *Sale of Seized Property Null and Void*, for procedures Redesign Revenue Accounting Control System (RRACS) employees follow for the disposition of the forfeited amount upon receipt of the Form 2436.

#### 5.10.5.16 (08-04-2014)

##### 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 5.10.5-2.
2. If the property listed on Form 2435 includes a motor vehicle, airplane, or boat, the reverse of Form 2435 must be completed. The reverse of Form 2435 may be noted with "See attached Form 2434-B." and a copy of Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale* attached.

<b>If</b>	<b>Then</b>
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	Prepare a consolidated Certificate of Sale.
The property is declared purchased for the United States	Prepare a Certificate of Sale.

3. 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.

#### 5.10.5.16.1 (07-03-2009)

##### 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 will:
  - Be prima facie evidence of the right of the PALS to make such sale
  - Be conclusive evidence of the regularity of the proceedings in making the sale

- Transfer to the purchaser all right, title, and interest of the taxpayer in and to the property sold
- 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.

#### **5.10.5.16.2 (07-03-2009)**

##### **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 the 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.

#### **5.10.5.16.3 (07-03-2009)**

##### **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 the 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.

#### **5.10.5.16.4 (07-03-2009)**

##### **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 (See IRM 5.10.1.3.3.4, Equity Determination — Documented Vessels) 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 (Exhibit 5.10.5-3) to be attached to Form 2435. 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.

#### **5.10.5.16.5 (07-03-2009)**

##### **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. Recording the Certificate of Sale precludes the taxpayer from transferring the property to a bona fide purchaser for value.
2. In jurisdictions which have not adopted the Uniform Federal Tax Lien Registration Act, the PALS may need to consult with area counsel (through Advisory) for legal recording instructions.

#### **5.10.5.17 (07-03-2009)**

##### **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.

**Note:**

Even if all appropriate precautions were taken to protect the property, situations may arise where property is damaged or is found missing after the sale. If the successful bidder breaks or damages the property, that bidder remains responsible for the item and for full payment of the purchase price. Contact the PALS manager, Advisory, or Counsel for the appropriate procedures to follow in all other cases. The case file must be fully documented with all actions taken regarding the missing or damaged property.

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 1.16.15, Minimum Protection Standards, 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.

#### **5.10.5.18 (08-04-2014)**

##### **Protection of Real Property During Redemption Period**

1. When seized property is sold under IRC 6335, IRC 6337 gives certain individuals the right to redeem the property per IRM 5.10.6.8 , *Redemption of Real Property after Sale*.
2. For real property after the sale and before the redemption period expires both the IRS and the purchaser have a responsibility to keep the property from wasting.

#### **5.10.5.18.1 (08-04-2014)**

##### **Protection of Vacant Real Property during Redemption Period**

1. Where the property is vacant, and the IRS knows that maintenance is necessary, the IRS can enter without a writ, or make arrangements for the purchaser to enter as is necessary to prevent damage and waste. If the purchaser knows that action is necessary to keep the property from damage/waste, the purchaser may enter to prevent the same without contacting the IRS. If the taxpayer provides keys to the real property voluntarily, the keys may be given to the purchaser for the purpose of preventing wasting.

#### **5.10.5.18.2 (08-04-2014)**

##### **Protection of Occupied Real Property during Redemption Period**

1. Where the property is not vacant, contact area counsel to determine if a writ is necessary if maintenance is warranted to prevent the property from wasting. If the taxpayer provides keys to the real property voluntarily contact area counsel to determine if keys may be given to the purchaser for the purpose of preventing wasting.

#### **5.10.5.19 (08-04-2014)**

##### **Securing and Depositing Sale Proceeds**

1. Immediately after the sale the PALS should take the necessary action to deposit proceeds from the sale of seized or acquired property. Arrangements to deposit sale proceeds should have been planned prior to the sale (IRM 5.10.4.16).
2. To minimize risk of loss and to ensure employee safety, sale proceeds should be converted or deposited by the close of the business day on which it was received, or as soon as possible on the next business day with the bank identified by the Treasury's General Account Management Team, Federal Reserve Bank - St. Louis at the nearest depository.

3. Prior to depositing sale proceeds, use necessary precautions to safeguard the cash while in the field (while driving secure money in a locked compartment in the vehicle, for overnight storage attempt to secure in a local IRS office in a safe or locking cabinet, etc.). PALS employees and managers should become familiar with IRM 3.0.167, Losses and Shortages.
4. Prior to making the deposit, prepare the following documents:
  - SF 215-A, Deposit Ticket (Exhibit 5.10.5-4)

**Note:**

No corrections may be made to this form; if an error is made, complete a new form and record the voided form on the deposit ticket log (IRM 5.10.5.19(6), Securing and Depositing Sale Proceeds.

  - Form 1963, Collection Register (Exhibit 5.10.5-5)

**Note:**

Instructions for submitting these documents are contained in IRM 5.10.6.3, Submitting Cash Deposit Information of Proceeds From Sale of Seized Property.
5. Once the deposit is made, the bank employee will verify the amount and sign block 8 of the SF 215-A, Deposit Ticket. The bank will retain the Original Copy and the Depository Copy. The bank will return to the PALS the Memorandum Copy, Agency Copy, and Confirmed Copy.
6. The PALS employee will maintain a log (Exhibit 5.10.5-6) for the SF 215-A Deposit Tickets. The log will include:
  - Deposit Number
  - Date of Deposit
  - Amount of Deposit
  - Seizure Control Number
  - Unique Identifying Number
  - Any voided SF 215-A Deposit Tickets

**Exhibit 5.10.5-1  
Wire Instruction Document**

WIRE INSTRUCTIONS- TYPE 1000  
TYPE 1000 THIRD PARTY FUNDS TRANSFER MESSAGE TO TREAS NYC

<u>TAG NAME</u>	<u>TAG # REQUIRED INFORMATION</u>
TYPE/SUBTYPE CODE	(1510) 1000
AMOUNT	(2000) \$(FILLED IN BY SENDER)
SENDER FI	(3100) 123456789 BANKY XYZ (SENDER (ABA# AND NAME)
SENDER REFERENCE	(3320) (FILLED IN BY SENDER)
RECEIVER FI	(3400) 021030004 TREAS NYC
BENEFICIARY	(4200) D 20092900 IRS
ORIGINATOR TO BENEFICIARY INFO (6000)	Public Auction Seizure No. (Insert Seizure number) PALS Name:

**Exhibit 5.10.5-2  
Form 2435 — Certificate of Sale of Seized Property Reference: 5.10.5.16**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)  
**Form 2435 Instructions**

1. Taxpayer's name.
  2. Date of sale.
  3. Sale location.
  4. County where sale was held.
  5. Description of property covered by Certificate of Sale. This should conform to description stated on Form 2433, except for real property as the legal description is sufficient.
  6. Rule out any unused space.
  7. Sale amount for property identified on certificate.
  8. Name of Purchaser (For real property, the name should be entered as it is to be entered as grantee of any quitclaim deed subsequently granted by the Service).
  9. Purchaser's address.
  10. Office address of employee issuing Certificate of Sale.
- The employee issuing the certificate should sign and date the form and enter the area and territory office information in the spaces provided.

**Exhibit 5.10.5-3  
Letter 2274(P), Materials to Assist in the Sale of Documented Vessels Reference: 5.10.5.16.4(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 Headquarters 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 property appraisal and liquidation specialist 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  
Area Office \_\_\_\_\_

**Materials to Assist in the Sale of Documented Vessels**

U.S. Department of Transportation

Commandant  
United States Coast Guard

Washington D.C. 20593-0001  
Staff Symbol: G-MVI-6/13  
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

**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  
Ref: (a) Certificate of Sale of Seized Property (Form 2435)  
(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

Encl: (1) Form 2435 (copy)  
(2) Request for production of waiver of recordable instrument

**DISTRIBUTION:**

CG MSO Boston  
CG MIO New York  
CG MIO St. Louis  
CG MSO Hampton Roads  
CG MIO Philadelphia  
CG MSO Miami  
CG MIO New Orleans  
CG MIO Houston  
CG MSO Los Angeles—Long Beach  
CG MSO San Francisco  
CG MSO Puget Sound  
CG MSO Portland  
CG MSO Honolulu  
CG MSO Juneau  
CGDNINE (m)

Copy Office of Chief Counsel  
Internal Revenue Service  
Washington, D.C. 20224

**Exhibit 5.10.5-4**

**SF 215-A, Deposit Ticket Reference: IRM 5.10.5.18(4)**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Procedures for SF 215-A Deposit Ticket**

**Preparation**

NOTE: Prepare only one SF 215-A, Deposit Ticket, for the entire cash deposit. If multiple sales were performed on the same day you must combine all cash received that day and prepare only one SF 215-A. No corrections may be made to the SF 215-A; if errors are made, void the deposit ticket and complete a new form (also include the voided deposit ticket on the deposit ticket log).

**Box 1 - Deposit Number:** This will come pre-printed from the distributor

**Box 2 - Date Presented to Bank:** Enter the date you are taking the cash to the bank

**Box 3 - Agency Location Code:** This will always be 20-09-2900-4

**Box 4 - Amount:** You will enter the amount from Form 2679, Box 12

**Box 5 - Date Confirmed:** Date deposit confirmed by bank

**Tax Class break down:**

—Tax Class 1 through 8 will be blank

—Tax Class 9 - Enter 20X6879.009 to the left of Box 9; Enter the amount from Form 1963, Collection Register, column (k) to the right of Box 9

**Box 6 - Control Number:** Enter as follows: P-SEID#-XXX (your SEID#, then 3 digit sequence number starting with 001 on October 1st of each year)

**Box 7 - Name and Address of Depository:** Enter bank name and address

**Box 8 - Bank Certification of Receipt of Deposit:** The bank teller must sign and date before you leave.

**Box 9 - Name and Address of Depositor:** Always enter as follows:

Director  
Ogden Submission Processing Center  
1973 N. Rulon White Blvd.  
Mail Stop 6261  
Ogden, UT 84404

**Distribution**

**Part 1 - Original (white & blue):** Bank will retain

**Part 2 - Memorandum Copy (white & black):** Include with the deposit package sent to the Ogden Submission Processing Campus.

**Part 3 - Depository Copy (blue):** Bank will retain

**Part 4 - Agency Copy (yellow):** The PALS employee will maintain

**Part 5 - Confirmed Copy (green):** Include with the deposit package sent to the Ogden Submission Processing Campus.

Note: The copy must contain the bank teller's signature and date.

**Procedures for Preparing SF 215-A Deposit Ticket Containing Excess Cash**

In the event a cash overage is discovered, only prepare one SF 215-A, Deposit Ticket, containing the seizure cash and the overage. You will also have to prepare a Form 3244, Payment Posting Voucher, for the overage.

Boxes (1) through (9) will be completed in the same manner as a regular deposit ticket.

The Tax Class break down will be completed as follows:

—Tax Class 1: leave blank

—Tax Class 2: Enter the amount from Form 3244

—Tax Class 3 through 8: leave blank

—Tax Class 9: complete the same as the normal SF 215-A Deposit Ticket

**Distribution**

The distribution of SF 215-A will be the same as the regular deposit ticket, except Form 3244, Payment Posting Voucher, will also be included with the deposit package sent to the Ogden Submission Processing Campus.

**Exhibit 5.10.5-5**

**Form 1963, Collection Register Reference: IRM 5.10.5.18(4)**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.10.5-6**

**Log for SF 215-A, Deposit Ticket Reference: IRM 5.10.5.18(6)**

**SF 215-A DEPOSIT TICKET LOG**

**Control # Ticket # Deposit Date Total Deposit Amount Date Mailed**

(1)        (2)        (3)        (4)        (5)

Control Number - Box 6 of SF 215-A

(1) Format: P-SEID#-XXX

NOTE: The control number will start at 001 beginning October 1st of each year.

(2) Ticket Number - Box 1 of SF 215-A

(3) Deposit Date - Box 2 of SF 215-A

(4) Total Deposit Amount - Box 4 of SF 215-A

(5) Date Mailed - Date documents mailed to Submission Processing

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 10. Seizure and Sale

#### Section 6. Post Sale Actions and Responsibilities of Advisory

##### 5.10.6 Post Sale Actions and Responsibilities of Advisory

- 5.10.6.1 [Overview](#)
- 5.10.6.2 [Application of Proceeds of Levy](#)
- 5.10.6.3 [Submitting Bank Deposit Information or Certified Funds from Sale of Seized Property](#)
- 5.10.6.4 [Form 2433, Notice of Seizure — After Sale](#)
- 5.10.6.5 [Form 2436, Seized Property Sale Report](#)
- 5.10.6.6 [Intervening Liens](#)
- 5.10.6.7 [Surplus Sale Proceeds](#)
- 5.10.6.8 [Redemption of Real Property After Sale](#)
- 5.10.6.9 [Deed to Real Property](#)
- 5.10.6.10 [Record 21, Record of Seizure and Sale](#)
- 5.10.6.11 [Advisory Review of Seizure Files](#)
- 5.10.6.12 [Permanent Record of Sales](#)
- 5.10.6.13 [Revenue Officer Transfer of Closed Case Files to Advisory and Advisory Records Retention](#)
- 5.10.6.14 [Seizures Open Over 90 Days and Semiannual Verification of Forms 2433](#)
- 5.10.6.15 [Wrongful Seizure — Payment of Claims After Sale](#)
- 5.10.6.16 [Improper Levy Action and Claims for Refunds](#)
- Exhibit 5.10.6-1 [Form 2436 — Seized Property Sale Report Reference: 5.10.6.5](#)
- Exhibit 5.10.6-2 [Letter 1762\(P\), Notification to Taxpayer of Surplus Proceeds Reference: 5.10.6.7](#)
- Exhibit 5.10.6-3 [Letter 3074, Letter Providing Permanent Record and Final Balance to Taxpayer Reference: 5.10.6.11\(7\)](#)

##### Manual Transmittal

October 27, 2014

##### Purpose

(1) This transmits revised IRM 5.10.6, Seizure and Sale, Post Sale Actions and Responsibilities of Advisory

##### Material Changes

(1) References to Form 2433, Part 8A, revised to Form 2433, Part 7B.

##### Effect on Other Documents

This material supersedes IRM 5.10.6, dated August 2, 2013.

##### Audience

Small Business/Self-Employed Compliance Employees

##### Effective Date

(10-27-2014)

Rocco A. Steco  
Acting Director, Collection Policy

##### 5.10.6.1 (04-19-2013)

###### Overview

1. This IRM is used by revenue officers, property appraisal and liquidation specialists and technical services employees for completing post sale actions of seized property. These actions include application of monies realized from sale, Advisory post sale review, and the permanent record of sale creation, disposition, and retention.

##### 5.10.6.2 (04-19-2013)

###### Application of Proceeds of Levy

1. IRC 6342 provides instructions for the application of any money realized:
  - Under levy and sale proceedings, whether by seizure (including release or redemption), by surrender of property under IRC 6332, or by sale of seized property
  - 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); take the appropriate action to assess the tax if it was not previously assessed
  - C. The liability shown on Form 668–B
  - D. Intervening liens in the order of their priority when there are several outstanding liens
  - E. To the taxpayer, unless another person establishes a superior claim to any surplus proceeds

**EXAMPLE:**

10/10/2000 Proceeds of Sale \$600  
 3/2/1995 First Mortgage \$1000  
 5/3/2000 Federal Tax Lien \$500 (includes accrued interest)  
 8/10/2000 Second Mortgage \$300  
 9/7/2000 Federal Tax Lien \$200  
 10/10/2000 Expenses of Sale \$35

**Note:**

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 5/3/2000 tax lien (total \$535). The balance of \$65 should be applied to the 8/10/2000 encumbrance. There would be no funds remaining for application to the 9/7/2000 tax lien. No proceeds are allocated to the 3/2/1995 first mortgage since the sale would have been made subject to the primary encumbrance.

**5.10.6.2.1 (04-19-2013)****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 seizure or the sale. See IRM 5.10.6.2.1(2) through (4), *Payment of Expenses*, for the procedures to follow for input of the TC 694 to credit the proceeds against the expenses. Expenses from the seizure can be accounted for in several ways:
  - A. If there were expenses and the taxpayer paid the cost(s) directly to the vendor(s), no input of TC 360 is required for those expenses. A copy of the receipt should be secured to confirm that the expense was paid.
  - B. If there was no sale and no proceeds are received for the release of the seizure but there were expenses where the taxpayer did not pay the cost(s) directly to the vendor(s), request input of the TC 360 on Form 2436-R, *Seized Property Release/Redemption Report*. See IRM 5.10.4.6 for instructions on preparing Form 2436-R. Retain a copy of Form 2436-R in the case file and submit to the Ogden Submission Processing Center via secure email (preferred method) or fax. Electronic versions of Forms 2436 and 2436-R will be transmitted via secure email to: \*W&I Seizures. The form number and originating area number should be included in the subject line to ensure proper routing. This is a dedicated email address to be used only for this purpose. In the event it is not possible to transmit the aforementioned by email, transmit the Forms 2436 and 2436-R to Submission Processing via the following fax numbers: (801) 620-6856 or (801) 620-6866.
  - C. If there was no sale but proceeds for release or redemption were received and there were expenses where the taxpayer did not pay the cost(s) directly to the vendor(s), input the TC 360 and the TC 694 to offset the proceeds against the expenses on the same Form 2436-R used to transmit the proceeds to the Ogden Submission Processing Center at the following address:  
 IRS - Ogden Submission Processing Center  
 Attn: Payment Perfection  
 Mail Stop 2003 (for remittances over \$100,000)  
 Mail Stop 1999 (for remittances \$100,000 or less)  
 1973 N. Rulon White Blvd.  
  
 Ogden, UT 84404
  - D. If there was a sale and there were expenses where the taxpayer did not pay the cost(s) directly to the vendor(s), input the TC 360 and related TC 694 on Form 2436.

**Note:**

The employee who incurred the expense should take the appropriate action to ensure that the expenses are debited to the account, including re-submitting any applicable documents if the expense has not been debited within a reasonable time period. The revenue officer and Property Appraisal Liquidation Specialist (PALS) should coordinate with each other to ensure all expenses have been debited to the account.

2. IRC 6342 requires that funds realized under levy and sale proceedings be applied first to the expenses of levy and sale. Transaction Code 694, Designated Payment of Fees and Collection Costs, will be used to offset any unsatisfied expenses of levy and sale (TC 360), when any of the following payments are received:
  - Sale proceeds
  - Voluntary payment upon release or redemption of seized property
  - Payment from a Notice of Levy
3. The TC 694 credit input must be equal to or greater than the TC 360 debit on the module. Application of payments using TC 694 will go unpostable if there is no TC 360 amount present.
4. When seizure expenses have been paid by the Service and there is no sale, include a copy of the document debiting the expense amount, part 3 of Form 6888, and a copy of the invoice with the closing documents. If paid by Government BankCard or convenience check, include a copy of the invoice and note how it was paid.

**5.10.6.3 (10-27-2014)****Submitting Bank Deposit Information or Certified Funds from Sale of Seized Property**

1. Form 3210 is used to submit Part 7B of Form 2433 along with the proceeds or bank deposit information from the sale of seized property. The Form 3210 should include the taxpayer's name, taxpayer identification number, seizure number, and amount of payment or deposit, and it should state "Proceeds from Sale of Seized Property" .

**Note:**

Telephone Submission Processing when forwarding proceeds in excess of \$100,000.

2. Proceeds from the sale of seized property:
  - Must be deposited or remitted the same day as they are received or no later than the next business day
  - If certified funds are remitted in lieu of deposit, they must be remitted via overnight traceable mail to:  
 IRS Ogden Submission Processing Center  
 1973 N. Rulon White Blvd.  
 Mail Stop 1999 (for proceeds of \$100,000 or less)  
 Mail Stop 2003 (for proceeds in excess of \$100,000)  
 Ogden, UT 84404
3. When proceeds are deposited using SF 215-A, *Deposit Ticket*, the following documents should be submitted with Form 3210 to the Ogden Submission Processing Center via overnight traceable mail the same day of deposit or no later than the next morning:
  - Part 7B of Form 2433
  - Memorandum Copy and Confirmed Copy of SF 215-A "Deposit Ticket"

- Form 1963 "Collection Register"
- Any record of receipt issued by the bank

**Note:**

These documents should be sent to:  
 IRS Ogden Submission Processing Center  
 1973 N. Rulon White Blvd  
 Mail Stop 6261 BANK DEPOSITS  
 Ogden, UT 84404

4. Do not post sale proceeds to the balance due accounts on ICS. The module balances will be automatically updated after the Form 2436 is processed. 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 a balance due module, the PALS will notify the revenue officer by sending Part 4 of Form 2436 (see IRM 5.10.6.5(8) below). The revenue officer will then input TC 470, cc 93 to remove the balance due module from inventory.

**5.10.6.4 (10-27-2014)**

**Form 2433, Notice of Seizure — After Sale**

1. As soon as possible after the sale, the PALS will complete Parts 5 and 7B of Form 2433. The PALS will enter the amount of gross proceeds and will check the appropriate disposition block. Part 7B of Form 2433 along with the gross proceeds from the sale (or the applicable cash deposit information) will be submitted promptly to Submission Processing following the procedures in IRM 5.10.6.3, *Submitting Cash Deposit Information or Proceeds From Sale of Seized Property*.
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. Part 7B will be submitted through Advisory to Accounting Control/Services. No entries will be made on the balance due accounts involved.
3. The PALS will also update the ICS seizure and sale application with the appropriate sale information once the sale has been completed.

**5.10.6.5 (10-27-2014)**

**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).

**Note:**

If some of the property was sold and some of the property was bid in for the same seizure, separate Forms 2436 must be prepared for the two disposition types.

2. Complete Form 2436 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. If the expense has not been debited, then the PALS should take the appropriate action to have the expense debited to the account.
3. Submit Form 2436, Form 2434-B, and Record 21 (including any attachments to describe personal property) through the group manager, to Advisory with the other closing documents per IRM 5.10.6.5(7) no later than fourteen (14) calendar days after receipt in the group of the full purchase price and all vendor expenses.
4. Expense information should be included as follows:
  - A. If an expense was not previously debited as a TC 360, the expense will be entered in item 5. A schedule of the expenses incurred will be entered in item 7.
  - B. All expenses will be charged to the first tax period listed on Form 2436.
  - C. Expenses that were paid directly by the taxpayer should not be included.
  - D. Expenses attributable to mailing out Notices of Sale performed by Service personnel (IRM 5.10.4.14(6), *Methods of Advertising and Posting the Notice of Sale*) will be included in item 5 on Form 2436, and will be identified as a non-payee expense of sale in item 7.
5. 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*.
6. The serial number of the related Form 2433, *Notice of Seizure*, should be entered in the upper right portion of Form 2436.
7. The PALS 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, 3, and 5 will be forwarded to Advisory along with the following closing documents, when applicable:
  - Parts 7B of Form 2433 (if not already submitted)
  - Part 3 of each Form 2435, *Certificate of Sale* (or entire certificate if property is bid in)
  - Part 3 of any Forms 6888 issued and copies of any invoices/vouchers for payment of expenses
  - A copy of the vendor's bill for each service rendered and paid for services procured by Government Bankcard or convenience check
  - Forms 2222, *Sealed Bid for Purchase of Seized Property*
  - Tabulation of Bids (for Sealed Bids or, if applicable, Public Auctions)
  - Record 21 (IRM 5.10.6.10, *Record 21, Record of Seizure and Sale*)
  - Final Form 2434–B (if not previously provided)
  - Form 13360, Section II, *Property Appraisal & Liquidation Specialist (PALS) Actions*
8. Advisory will review Form 2436 upon receipt, and will enter the appropriate information on Form 6670, *Seizure Disposition Report*. If no corrections are needed, Parts 2 and 3 will be transmitted immediately via secure email or fax to Accounting Control/Services for application of the proceeds. Part 1 will be maintained in the seizure file. Part 5 will be transmitted to the taxpayer according to the instructions in IRM 5.10.6.11(7), *Advisory Review of Seizure Files*. Advisory will be responsible for following up on the application of the proceeds from the Form 2436 and should contact the RACS unit to resolve any misapplied funds. It is extremely important that all expenses be debited with a TC 360 and the applicable TC 694 credit be posted to the account so that all proceeds from the seizure or sale are applied according to IRC 6342(a).

**5.10.6.5.1 (04-19-2013)**

**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. When applying the bidder's payment to the taxpayer's liability, accrued penalties and interest are to be computed to the date of the bidder's payment. For sales allowing deferred payment, two or more bidder payment dates may be involved. 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 5.10.5.15, *Default on Payment Deferred Payment Sales*), on Form 2436 designate in item 6c "Purchaser bid for property but failed to fulfill agreement to pay full bid price. Sale—Null and Void," and enter the actual amount paid by the purchaser in item 8b. 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.

**Note:**

When the asset is resold, separate Forms 2436 should be prepared for each sale date.

- B. If a suit against the purchaser to secure the full bid price (IRM 5.10.5.15, *Default on Payment Deferred Payment Sales*) is appropriate, Form 2436 is completed as in IRM 5.10.6.5.1(2)(a) above except "Suit against purchaser" is substituted for "Sale—Null and Void" in item 6c. The taxpayer receives credit for the amount paid by the purchaser (IRC 6335(e)(3)).

**Note:**

IRM 3.17.63 gives Accounting instructions on the disbursement of forfeited bid-in amounts.

**5.10.6.5.2 (04-19-2013)**

**Form 2436, Seized Property Sale Report - Court Ordered Payments**

1. Take the following actions in situations where the Service is directed by a court order to pay a third party a portion of the sale proceeds:
  - Submit the proceeds following normal procedures so the funds can be deposited into a 4720 account
  - List the third party on the Form 2436 as an Intervening Claim
  - Contact the Lead in the RACS unit at (801) 620-6826 and provide the seizure control number and dollar amounts involved
  - Attach to Form 2436 a copy of the court order and a cover letter or memorandum explaining the circumstances
  - Submit Form 2436 as expeditiously as possible, via secure email or fax, particularly if the Service must also pay interest to the third party

**5.10.6.6 (04-19-2013)**

**Intervening Liens**

1. Intervening liens are liens that are junior to the first NFTL, but are senior to at least one other NFTL.
2. Advisory will ensure that the intervening lien is prior to subsequent federal liens and verify the current outstanding balance of the intervening claim. If Advisory cannot determine who is entitled to the funds, the case will be referred to area counsel for an legal opinion prior to disbursing the sale proceeds.
3. Upon receipt of area counsel's reply and if no objections to paying the intervening claimant are noted, the Advisory group manager should prepare a memorandum in triplicate indicating:
  - The taxpayer's name
  - Date of the related Form 2436, *Seized Property Sale Report*
  - The amount of the intervening claim
  - The name of the intervening claimant to whom the check is to be made payable
  - Instructions that the check be forwarded to Advisory for payment
4. Two copies of the memorandum will be forwarded to Accounting Control/Services and a copy will be retained by Advisory and filed with the related seizure case file.

**5.10.6.7 (04-19-2013)**

**Surplus Sale Proceeds**

1. If the amount of sale proceeds exceeds the current balance of the taxpayer's liability from the Notice of Levy plus the amount of any seizure related expenses, surplus sale proceeds remain.
2. When surplus proceeds remain, Advisory will prepare Letter 1762(P), Exhibit 5.10.6-2. Immediately after confirming that all seizure expenses have posted and the sale proceeds have been applied to the taxpayer's account in accordance with Form 2436, the Letter 1762(P) and Part 5 of Form 2436 will be mailed to the taxpayer. Advisory will retain a copy of the letter with the case file and open an ICS control under Surplus Proceeds, time code 164, and schedule the case for follow-up.
3. Although not required to do so, it is recommended that Advisory notify junior encumbrances listed on Form 2434B of the existence of surplus proceeds. Choosing not to notify junior encumbrances may impact the ability of Advisory to make a determination on the disposition of the surplus proceeds.
4. The taxpayer is the person entitled to the surplus proceeds, unless another person establishes a superior claim. It is not necessary for the taxpayer to submit an administrative claim for the Service to consider disbursing the surplus proceeds to the taxpayer; however, the Service may require such claim. All third party claimants will be required to submit an affidavit to be considered in the distribution of the surplus proceeds.

**Note:**

If the taxpayer has other tax liabilities that were not included on the original Notice of Levy or were assessed after the seizure was made, those liabilities may be treated as claims against the surplus proceeds and should compete against other claims in accordance with IRC 6323.

5. After allowing a reasonable number of days for claims to be submitted, Advisory will review all claims and determine the parties entitled to the money. It is not necessary to consult area counsel, however, if Advisory cannot determine who is entitled to the funds, the case will be referred to area counsel for a legal opinion prior to making disposition of the surplus proceeds.
6. The Advisory group manager will notify the taxpayer of the determination regarding the surplus proceeds. If the Service does not refund the money to the taxpayer, the taxpayer may file a claim to recover the surplus proceeds and to protect his/her right to bring a civil action for a refund under IRC 7422.
7. When a third party claim for surplus proceeds is disallowed, the Advisory group manager will notify the claimant and inform him/her of the right to bring suit against the government within the period of time prescribed in IRC 7426. Ordinarily, suit must be brought within nine months from the date of the levy. However, when a written request for the return of property is made within the nine-month period, the time is extended for a period of twelve months from the date of the request or for a period of six months from the date the notice of disallowance is mailed to the claimant, whichever is shorter. (See IRC 6532(c)). The notice of disallowance should be sent by registered or certified mail. It is not necessary for a third party to file an administrative claim before instituting an action under IRC 7426.
8. Immediately upon determining the person(s) deemed to be legally entitled to the surplus proceeds, actions should be taken to disburse the money. It is not required to wait nine months for the expiration of the statute time frame of IRC 6532(c) to disburse the funds. If the taxpayer or a third party is entitled to the surplus proceeds, the Service has no obligation to pay interest.

9. When a determination has been made regarding the surplus proceeds, the Advisory group manager will 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 Accounting Control/Services and a copy will be retained by Advisory and filed with the related case file. Advisory will monitor the disbursement of the proceeds.
10. In the event that within nine months after the proceeds were received no disposition has been made, additional efforts should be made to notify the taxpayer of the surplus.
11. If, after the expiration of one year from when the proceeds were received, no claim has been filed, and the location of the taxpayer is unknown or it has been determined that the proceeds should not be refunded to the taxpayer, Advisory 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. The case history must be documented as to why the surplus proceeds were not refunded to the taxpayer.

#### 5.10.6.8 (04-19-2013)

#### 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 (see IRM 5.17.3.5.5, *Redemption*) at any time within 180 days after the date the successful bid is accepted by IRS:
  - The owners
  - The heirs, executors, or administrators of the owners
  - Any person having any interest in the property
  - Any person having a lien interest in the property
  - Any person on the behalf of those listed above
2. 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.
3. For cash sales, 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 per annum.

#### Note:

IRC 6622 requires that the interest be compounded daily. Advisory may be asked by the redeeming party to provide assistance in calculating the redemption amount - Table 45 of Rev. Proc. 95-17 contains the appropriate calculation figures.

4. In deferred payment agreements, the redemption period begins the date the successful bidder is announced and the bid is accepted by the Government as such, rather than the date the balance due is paid and the Certificate of Sale issued. 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 at the rate of 20 percent per annum.

#### Note:

IRC 6622 requires that the interest be compounded daily. If the purchaser made multiple payments, the interest should be calculated based on the actual payment dates. Advisory may be asked by the redeeming party to provide assistance in calculating the redemption amount - Table 45 of Rev. Proc. 95-17 contains the appropriate calculation figures. In the following example, a purchaser bid \$80,000 for the property and paid \$40,000 on 06/15/2003, \$20,000 on 06/30/2003, and the balance of \$20,000 on 07/15/2003. If the taxpayer wants to redeem the property on 08/15/2003, the interest would be calculated as follows:

Payment Date	Number of Days (from payment date to redemption date)	Payment Amount	Factor	Interest
06/15/2003	61	40,000	.033980072	\$1,359.20
06/30/2003	46	20,000	.025518744	\$510.37
07/15/2003	31	20,000	.017126657	\$342.53
<b>TOTAL</b>				<b>\$2,212.10</b>

5. This means that the property may be redeemed prior to the Service receiving the full amount of the purchase price. 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.

#### 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 United States Treasury for \$40,000 and one made out to the purchaser for \$10,000, plus interest thereon. Other similar arrangements may be appropriate. Area counsel may be consulted as necessary.

6. 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 area director for the Internal Revenue area in which the property is situated for the use of the purchaser, his or her heirs, or assigns.
7. 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:
  - The taxpayer's name and address
  - Date of the related Form 2436
  - Purchaser's name and last-known address
  - Amount of the payment with interest indicated separately
  - Any other pertinent facts
8. If a redeeming party makes the payment directly to the purchaser, regulations require the redeeming party to notify the area director of the Internal Revenue area in which the property is situated. Usually, the redeeming party will notify the revenue officer who conducted the seizure or the PALS who conducted the sale since they had prior contact with these individuals. If contacted by a party who has already redeemed the property, the person contacted should refer the redeeming party to the Advisory redemption advisor or should secure the following information and provide it to the Advisory redemption advisor:
  - Name and address of taxpayer from whom property was seized and sold
  - Name and address of person who redeemed property if someone other than the taxpayer

- Date of redemption and of the transfer of the Certificate of Sale
  - The amount paid to redeem property (list breakdown of sale price plus interest)
  - Name and address of person from whom property was redeemed
9. 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 37(c) 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.

#### 5.10.6.8.1 (04-19-2013)

#### 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, *Redemption of Real Property After Sale*).
2. Under IRC 7506(d), if real estate has been purchased by the United States under IRC 6335, and the debt 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. The term "debt" includes the entire tax liability including penalties and interest; this amount would also include any credit given to the taxpayer for the minimum bid since the credit would be reversed if the property was returned to the taxpayer.

**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, the seizure number, and the amount of the payment with interest indicated separately.

#### 5.10.6.9 (04-19-2013)

#### Deed to Real Property

1. IRC 6338(b) provides that whenever real property is not redeemed within the 180-day period, the purchaser, or his/her assigns, will be issued a deed upon surrender of the Certificate of Sale.

**Note:**

In some cases it may be necessary to contact the purchaser to secure the Certificate of Sale in order to prepare and issue the deed timely.

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 Advisory and forwarded to area counsel for approval in states with an attorney approval requirement. In states with no attorney approval requirement, Advisory may prepare the deed for the appropriate signature without referral to area counsel. A standard format for such deeds can be pre-arranged with area counsel. The authority to sign the deed is contained in SB/SE Delegation Order 5.1.
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 individual by whom executed, will be retained by Advisory. If the original Certificate of Sale was recorded in the local recording office, surrender of a certified copy will suffice.

**Note:**

If the Certificate of Sale has been lost or stolen, the purchaser will need to execute an affidavit of lost certificate and the IRS can issue a deed from that affidavit. The affidavit should be drafted by local counsel and titled Affidavit of Loss of Certificate of Sale.

4. If real property is declared purchased by the United States, the "grantor" in these cases, will be the area 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 Advisory. Appropriate entries will be made in items 39 and 40 of Record 21 (see IRM 5.10.6.10, Record 21, *Record of Seizure and Sale*).

**Note:**

A copy of the deed may also be provided to the appropriate taxing authority or assessor in the county of record to avoid potential problems with unpaid property taxes.

#### 5.10.6.10 (04-19-2013)

#### Record 21, Record of Seizure and Sale

1. Whenever any type of property is sold to the highest bidder or declared purchased for the United States, the employee conducting the sale will prepare Record 21, *Record of Seizure and Sale*.
2. Record 21 should be prepared after Form 2436 has been completed. When preparing Record 21, check the appropriate block to indicate whether the sale was for real property or personal property. Complete all applicable items according to the following instructions (use a continuation sheet if additional space is required):

Item Number	Description of Information to Enter
1	Taxpayer's name and address
2	Seizure number
3	Leave blank - to be entered by Advisory
4	Area and Territory office information Only list periods included on Form 668-B
	5 - Tax form number
	6 - Tax period
5 - 10	7 - Assessment date(s)
	8 - Taxpayer identification number (Redacted on Part II, Public Record Copy)
	9a - 1st notice date - generally the same as the assessment date
	9b - Date of <i>Notice of Intent to Levy and Notice of Your Right to a Hearing</i>
	10 - Balance due for each tax period. The amount must include accruals and match the amount on Form 668-B, <i>Notice of Levy</i> , for each tax period.
11 - 12	Include all Notices of Federal Tax Lien, not just those to which payments were applied
13	Date property was seized Date of proper delivery of Notice of Seizure and Notice of Sale to the owner. Check: "Given" if the forms were either personally provided to the owner or left at their usual place of abode or business
14 - 15	"Certified" only if the usual place of abode or business was located outside of the territory where the seizure was made or if the address was not known or could not be located and the forms had to be mailed certified (IRM 5.10.3.19, <i>Notice of Seizure Form 2433 - Delivery</i> , and 5.10.4.13, <i>Delivery of Notice of Sale</i> )



## 16 -17 Applicable information on advertising and posting of the Notice of Sale

For real property, include the legal description of the property, which should be the same as Form 2433 and Form 2435; additional information may be required based on local requirements - contact Advisory if there are any questions as to the required information for a specific location.

18 For personal property, if the description of the property that was sold is reasonably concise, enter the appropriate property description in this section. For sales consisting of multiple lots that will include a lengthy description that cannot easily be included on the Record 21, Form(s) 2433, 2434, 2434-A, or PALS inventory listing or clerking report can be attached rather than describing the property on the Record 21. Ensure that only property that was seized and sold (and not released) is included in the description or attachment. If an attachment is being provided, enter the following statement: "See attachment for detailed property description" .

19 Name of owner of property; for real property this should be the same as recorded on the deed where the taxpayer received his interest

20 Prior liens (excluding the NFTL) should equal the amount shown on Form 2434-B

21 Enter in the appropriate block the amount of the minimum bid regardless of whether the property was sold to the highest bidder or declared purchased for the United States.

22 Check appropriate sale type

23 Date property was sold

24 Location of sale

25 Dates(s) of any adjournments or postponements

26 Complete list of expenses of seizure and sale

27 Item 27(a) Gross Proceeds- enter the gross proceeds from sale; item 27(b) Expenses- enter the total amount of expenses for the seizure and sale; item 27(c) Total amount of intervening creditors- enter the amount of any intervening creditors; item 27(d) Net Proceeds- subtract items 27(b) & 27(c) from item 27(a);

28 Amount applied to tax liability should be the same as lines 27(d) unless funds are paid to intervening creditors or there are surplus proceeds

29 Surplus proceeds should be the same as item 6f of Form 2436

30 Date of certificate of sale

31 Name of person to whom certificate was issued (Redacted on Part III, Taxpayer Copy)

32 Include a statement if real property is declared purchased for the United States

33 - 34 Date and signature of PALS

35 -36 Date and signature of manager

37 - 39 To be completed by Advisory for real property sales only

3. Submit Record 21 (and any attachments to describe the personal property) with Form 2436 and Form 2434-B through the group manager to Advisory through the PALS group manager with the other closing documents (IRM 5.10.6.5(7), Form 2436, *Seized Property Sale Report*). These documents must be submitted no later than 14 calendar days after receipt in the group of the full purchase price and all vendor expenses. The PALS file should be complete and maintained in an organized manner.

4. Advisory will review the form for accuracy and will assign the Record 21 number in item number 3. After the redemption period expires for real property sales, Advisory will enter the appropriate information in items 37, 38, and 39 (IRM 5.10.6.8(9), *Redemption of Real Property After Sale*). The appropriate approving official will sign and date Record 21 for both real and personal property sales. Delegation authority to sign Record 21 is contained in SB/SE Delegation Order 5.1. A copy of part 1 or 2 of Record 21, certified by the appropriate individual in the area where the property is situated, will be evidence of true facts, in any court.

5. Record 21 will be distributed as follows:

- Part 1 of Record 21 will be maintained as part of the permanent record for real or personal property sales (IRM 5.10.6.12, *Permanent Record of Sale*); since there is no recording requirement for real property 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.
- For real property sales, Part 2 is maintained in the public inspection file with a copy of Form 2434-B attached; for personal property sales, Part 2 may be destroyed. The Taxpayer Identification Number must be redacted on Part 2.
- Part 3 will be provided to the taxpayer as part of the permanent record (IRM 5.10.6.12, *Permanent Record of Sale*) for both real and personal property sales. The purchasers name must be redacted from Part 3 issued to the taxpayer.

### Note:

For personal property sales, any attachment describing the seized property will be attached to both Part 3 provided to the taxpayer and Part 1 maintained in the permanent record.

## 5.10.6.11 (10-27-2014)

### Advisory Review of Seizure Files

1. Advisory is responsible for the following actions on a seizure and sale case:

- Assigning seizure serial numbers
- Maintaining a Seizure Log for all seizures conducted within the area
- Receiving the documents that comprise the seizure and sale file and maintaining the file according to standard guidelines
- Conducting a post-review of the forms and documents to verify whether the actions conformed with statutes, regulations and the procedural guidelines of the IRM (IRM 5.10.6.11(2) and (6), *Advisory Review of Seizure Files*)
- Completing the Seizure Disposition Report, Form 6670, for each closed seizure
- Maintaining the permanent record of the seizure file (IRM 5.10.6.12, *Permanent Record of Sale*)
- Providing the taxpayer with copies of the permanent record (IRM 5.10.6.12, *Permanent Record of Sale*) and providing the total balance remaining on the taxpayer's account after application of the sale proceeds (IRM 5.10.6.11(7), *Advisory Review of Seizure Files*)
- Updating the ICS seizure and sale application with applicable closing information, including deed issuance, intervening liens, surplus proceeds, etc.
- Preparing the semiannual summarization of the 6670 forms
- Ensuring that all TC 360, TC 694, and TC 670 entries on Form 2436 and Form 2436-R are posted correctly and contacting the RACS unit to resolve any discrepancies

2. Each seizure document should be reviewed upon receipt (generally within 10 days of receipt). In addition to reviewing the specific document that was submitted, the reviewer should also review the ICS history to identify any other potential issues or areas of concern at the earliest possible time. Timely receipt and processing of all documents should be monitored by Advisory personnel. The seizure file should be 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 ensure timeliness and completeness of all seizure documents. Form 13361 must be updated during the post seizure review in order to ensure that all required actions were taken. The completed form will be maintained as part of the seizure file in Advisory.

3. For courtesy seizures, the receiving office's Advisory will process the original seizure and sale documents through their Accounting Control/Services in the same manner it transmits the documents for its own seizures. After reviewing and approving the documents, the receiving Advisory office will send copies of all documents related to the seizure to the initiating revenue officer for inclusion in their case file.
4. The revenue officer or the PALS will generally close their seizure case after submitting the appropriate documents to Advisory reflecting that all seized property has been disposed of. Disposition of property is accomplished through:
  - Release of levy
  - Sale of the property
  - Combination of the two
5. Reviewers in Advisory must verify that all seized property is accounted for by either a Certificate of Sale or a Release of Levy.
6. While reviewing the forms, documents, and the ICS history, reviewers may encounter situations where the proper procedures were not followed. Form 5942, *Reviewer's Report*, may be used by the Advisory reviewer to make observations to management, to furnish advisory information, to request a corrective action be taken, or to request additional information from the originator. Parts 1 and 2 of Form 5942 are to be used to respond to Advisory when additional or corrected information is required. If the property has not yet been sold, in some situations it may be possible to correct an error identified prior to the sale. In some situations the seizure may need to be released and the error corrected before making a determination on re-seizing the property. Consult area counsel when questions arise as to the appropriate course of action to take if an error is identified prior to or after the sale has been conducted.
7. The information contained on Form 5942 can be used for training, correcting case actions, providing positive feedback, conducting trend analysis, and improving the overall quality of the seizure and sale. The errors identified on the following chart will require a mandatory issuance of Form 5942 and a mandatory response from the applicable group manager:

<u>Pre-Seizure</u>	<u>Post Seizure</u>	<u>Interim</u>	<u>Closed Seizure</u>
Incorrect Approval Level	Form 668B not completed correctly	Form 4585 preparation, delivery and documentation	Form 2436 preparation, accuracy, and timeliness
Ownership/Lien Interest	Form 2433 not completed correctly	Form 2434 preparation, delivery, and documentation	Record 21 preparation, accuracy, and timeliness
Consent/Writ of Entry	Documentation & Delivery of Form 668B & Form 2433	Incorrect or no advertising order	Form 2436-R preparation, accuracy, and timeliness
Consideration of Exempt Assets	Problems with Consent/Writ of Entry	No approval for change of sale location	Invoices not received from PALS Form 2435 preparation Form 2433, Part 7B not received from RO/PALS RO/PALS does not submit closed case file

8. After confirming that all expenses have posted and the proceeds have been correctly applied, Advisory will prepare Letter 3074 (Exhibit 5.10.6-3). This letter is used to comply with IRC 6340 by providing the taxpayer with a copy of the permanent record (IRM 5.10.6.12, *Permanent Record of Sale*) and the balance remaining on the taxpayer's account after the application of proceeds from the sale of the seized assets. Secure a copy of updated transcripts and enter the total balance and accruals for all modules on the account, even if no proceeds were applied to a specific module. The following documents must be provided to the taxpayer with Letter 3074:
  - Part 5 of Form 2436
  - Record 21 (IRM 5.10.6.10, *Record 21, Record of Seizure and Sale*) with any attachments for the property description for personal property sales

**Note:**

If using a pre-March 2008 revision of Record 21, the purchaser's name must be redacted from the taxpayer's copy.

- Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale*

**Note:**

Retain a copy of Letter 3074 for the permanent record file (IRM 5.10.6.12, *Permanent Record of Sale*).

9. Advisory will close the ICS 162 module when all of the following actions are completed:
  - All paperwork is received and correct,
  - IDRS reflects all payments and expenses are posted correctly,
  - RACS issues have been resolved, and
  - The taxpayer is sent L3074 with all appropriate attachments.

**5.10.6.12 (04-19-2013)  
Permanent Record of Sales**

1. For all seizures conducted after July 22, 1998, IRC 6340 requires each area director to maintain a permanent record of all sales conducted under IRC 6335 of real and personal property situated within his/her area and of all redemptions of such property. The PALS and the revenue officer will forward all appropriate records to Advisory for the seizure file and for the permanent record.

**Note:**

Permanent record files are not required for any seizure that did not go to sale.

2. For any case where property is sold on or after January 1, 2006, the following documents must be maintained as the permanent record:
  - Record 21, *Record of Seizure and Sale* (with any attachments for personal property description)
  - Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale*
  - Letter 3074, *Transmittal Letter Providing Balance Remaining on the Account after Application of Proceeds* (IRM 5.10.6.11(7), *Advisory Review of Seizure Files*)
3. The permanent record documents should generally be provided to the taxpayer within 30 days of certification of Record 21.
4. For any case where the property was sold prior to January 1, 2006, the following forms, when applicable, are to be included in the "Permanent 6340(a) Record:"
  - 668-B (Levy)

- 2433 (Notice of Seizure)
- 668-E (Release of Levy) to account for any property released prior to sale
- 2434 (Notice of Public Auction Sale)
- 2434–A (Notice of Sealed Bid Sale)
- 2434–B (Notice of Encumbrances Against or Interests in Property Offered for Sale)
- 2435 (Certificate of Sale of Seized Property)
- 2222 (Sealed Bid for Purchase of Seized Property) from the successful bidder
- 4425 (Public Sale Bid Tabulation) or comparable form
- 4585 (Minimum Bid)
- 2436 (Seized Property Sale Report)
- Transmittal letter to the taxpayer explaining part 5 of Form 2436 and providing the application of proceeds and current balance remaining
- Letter 1762(P) (Letter advising of Surplus Proceeds)
- 2274 (Sale of Documented Vessel)
- Record 21 (Record of Seizure and Sale of Real Estate)

**Note:**

For these cases, the taxpayer must also be provided with copies of the above documents. Original documents should be maintained in the permanent record file whenever possible. Advisory will provide copies of any documents not previously provided to the taxpayer. For personal property sales, all bidder information should be redacted from Forms 2435, 4425, and 2222; for real property sales only the unsuccessful bidder information must be redacted from Form 4425. Verification of the redacted information should be maintained as part of the case file. Maintain a copy of any transmittal letters for these documents as part of the permanent record file.

**5.10.6.13 (07-03-2009)**

**Revenue Officer Transfer of Closed Case Files to Advisory and Advisory Records Retention**

1. When a balance due case involving a seizure is closed, all related documents will be placed in the corresponding folder and the revenue officer will forward the closed balance due case file to Advisory 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 a complete ICS case transcript.
2. Copies of closed courtesy seizure files, as well as the permanent records for these seizures and the related closed bal due files, will be maintained in the receiving office's Advisory.
3. When received, Advisory will associate the closed case file received from the revenue officer with the corresponding Advisory seizure case file and retain the seizure file for two years after the seizure was closed or two years after the redemption period expired. 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 Advisory. The following documents must also be maintained for public inspection:
  - Record 21, Part 2
  - Form 2434–B

**5.10.6.14 (04-19-2013)**

**Seizures Open Over 90 Days and Semiannual Verification of Forms 2433**

1. At the end of each quarterly period ending March 31, June 30, September 30, and December 31, Advisory must initiate Form 13464, 90-Day Open Seizure and Semi-Annual Verification Report, for any seizure file that has been open beyond 90 days and still has at least one asset that has not been disposed of. Advisory will complete Section I (Seizure Identification) and will then forward Form 13464 to the group manager or manager of the PALS, depending on which employee has custody of the asset. The completed forms must be returned to Advisory within 60 days of the end of the quarterly reporting period.

**Note:**

No report is required if the seizure is still open but all assets have been disposed of.

2. For all four quarterly periods, the appropriate manager will ensure that Section II (Status of 90-Day Overage Status) is completed and will send the completed report back to Advisory for review. Advisory will then forward a copy to the Advisory territory manager and Collection territory manager. The report will include the following information:
  - Reason the seizure is still open
  - Expenses on prior report
  - Additional expenses incurred since last report
  - Total expenses incurred to date
  - Whether or not there are any bankruptcy issues
  - Expected closure date
3. If expenses, such as storage costs, are continuing to accrue because of a delay in the sale, these expenses should be carefully reviewed to determine if they will exceed the \$2,500 procurement limit. If these expenses are expected to exceed the authorized limit, the procedures in IRM 5.10.2.21, *Contracting for Services*, should be followed. In addition, if the expenses reach an amount where it appears there will no longer be any expected net proceeds to apply to the liability, the case should be reviewed to determine if the property should be released.
4. For the quarterly periods ending March 31 and September 30, Section III (Physical Inventory Verification) must also be completed. Generally, the employee who has custody of the asset(s) will complete the verification of the inventory and return the completed report to Advisory. Because of logistical issues, the employee conducting the verification may require assistance from other employees in order to complete the verification. This review should be conducted to confirm that the property shown on Form 2433 is still under the control of the Service and that no property has been tampered with, rescued, or stolen (IRM 5.10.3.20, *Property that is Tampered With, Rescued, or Stolen*). After review, Advisory will forward a copy of the report to the Advisory Territory Manager.

**Note:**

Physical asset verification is not required if assets consist solely of unimproved real estate. Advisory can complete the verification if the assets are located in an IRS safe at their location.

5. The Ogden Campus will generate Report #135, *Seized, Acquired, and Collateral Inventory Detail Report*, monthly to the area Advisory under the Revenue Accounting Control System (RACS). Advisory should review the report for accuracy and take any corrective actions necessary.
  - A. Each month Advisory will provide a status report on sale proceeds that are unresolved for 90 days or more from the date of the Report #135. This status report will be submitted to Accounting Control/Services within ten (10) days of the receipt of Report # 135.
  - B. Each March and September, Advisory will review the Report #135 and provide a response either agreeing with the report or reconciling any discrepancy. This verification must be submitted to Accounting Control/Services within 30 days of receipt of the RACS report.

#### 5.10.6.15 (04-19-2013)

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

1. This section provides the instructions to follow when a wrongful seizure claim is made and the property has already been sold. IRM 5.10.4.4, *Release of Wrongful Seizures for Property Not Yet Sold*, contains 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. Any person or other entity claiming an interest in or a lien on seized property, other than the person against whom is assessed the tax on which the levy arose, may submit a claim for return of wrongfully seized property. A seizure is considered wrongful in the following situations:
  - The seizure is of property in which the taxpayer had no interest at the time the Federal Tax Lien arose, or thereafter
  - The seized property is owned by a person who is a purchaser against whom the tax lien is invalid under IRC 6323
  - The sale will effectively destroy, or otherwise irreparably injure a third party's interest in the property which is senior to the Federal tax lien
3. If there is a question over ownership, the third party should be advised to submit a written request, signed under the penalties of perjury, addressed to the area director and directed to the attention of the Advisory territory manager for the Internal Revenue area office in which the seizure was made.
4. In order to be considered an adequate request, the written request must contain:
  - The name and address of the person submitting the request
  - A detailed description of the property levied upon
  - A description of the claimant's basis for claiming an interest in the property levied upon
  - The name and address of the taxpayer
  - The originating IRS area
  - Date of the lien or levy, as shown on the NFTL, Form 668–A, or Form 668–B, or in lieu thereof, a statement of the reasons why such information cannot be furnished
5. Internal Revenue Code section 6343(b) provides that after property has been seized and sold and it is administratively determined that there was a wrongful seizure, the individual from whom the property was wrongfully seized will be paid either:
  - An amount of money equal to the amount of money levied upon
  - An amount of money equal to that received by the United States from the sale of such property
6. The amount to be returned when property that was declared purchased by the United States has been resold will be the greater of:
  - The minimum price established under IRC 6335(e)
  - The amount received from the resale of the property
7. An amount of money equal to the amount of money levied upon or received from the sale should be returned before the expiration of nine months from the date of the levy. If the written request is made within nine months from the date of the levy or if the Service makes a determination to return the money within the nine-month period, the payment may be made within a reasonable period of time after the nine-month period.
8. Requests submitted to revenue officers should be forwarded to Advisory for referral to area counsel for a legal opinion. The revenue officer who conducted the seizure and the PALS who conducted the sale in question will provide a memorandum (through their managers) to Advisory outlining the pertinent details.
9. If the property has been sold, the Advisory territory manager 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 Field Collection territory manager identifying the sale transaction or, if cash was seized, the date and number of 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. Interest payments are to be computed in the following manner:
  - A. When returning an amount of money equal to the amount of money levied upon, interest is paid from the date the Service received the money through the refund schedule date—not to exceed 30 days prior to the day when the money is returned to the owner.
  - B. When returning an amount equal to the amount of money received from the sale of the property, 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 30 days prior to the day when the payment is made to the former owner of the property.
  - C. The interest rate will be determined by the provisions of IRC 6621.
11. The refund process will be initiated by the area director or the Advisory territory manager via communication to the compliance center, as provided in IRM 5.19.4.4.12, *Wrongful Levies*, except for the following changes:
  - The memorandum and supporting documents will replace the ACS screens
  - The approving official (per Delegation Order 5-3) will be the SB/SE Field Collection territory manager or Advisory territory manager instead of the ACS Operations Chief.
12. Two memos may be required to make appropriate restitution. One will be addressed to Accounting Control/Services to issue a manual refund to cover that portion of the claim equal to the proceeds from the sale that was credited to the balance due account(s). If this refund amount is not sufficient to full pay the amount of the allowable claim, a second memo will be addressed to Chief, HQ Financial Management (Execution) 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.

13. If the request is disallowed, Advisory should notify the claimant in writing as soon as possible of the reason for disallowing the claim and of the right to bring suit against the government. (See IRM 5.17.5.17.1 *Wrongful Levy*, and IRM 5.17.5.17.3, *Recovery of Property*). If the claim is disallowed because it was not made within nine months from the date of the levy, send the claimant Letter 3973, signed by the appropriate delegated official, via certified mail. If the claim is disallowed because it does not meet one of the requirements detailed in section 5.10.6.15, *Wrongful Seizure - Payment of Claims After Sale*, send the claimant Letter 3974 via certified mail. Disallowance of the claim may be appealed through the Collection Appeals Program (CAP).
14. Ordinarily, suit must be brought within nine months from the date of levy. However, when a written request for the return of property is made within the nine-month period, the time is extended for a period of 12 months from the date of the request or for a period of six months from the date the notice of disallowance is mailed to the claimant by registered or certified mail, whichever is shorter. It is not necessary for a person to file an administrative claim before instituting an action under IRC 7426.
15. If the court determines that there was a wrongful levy, under IRC 7426(b)(2) the court may:
  - Order the return of specific property if the United States is still in possession of the property
  - Grant a judgment for the amount of money levied upon
  - Grant a judgment for an amount not exceeding the greater of the amount received by the United States from the sale of such property or the fair market value of the property immediately before the levy if the property was sold
16. Section 7426(g) contains the instructions for the payment of interest under this provision.
17. Under IRC 6503(f), 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.
18. 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.

#### 5.10.6.15.1 (04-19-2013)

#### Return of Property After Sale for Other than Wrongful Seizure

1. The government may return the property pursuant to IRC 6343(d) for the following reasons:
  - The seizure of property is premature (for example, the seizure is conducted less than 30 days after the notice of intent to levy was sent to the taxpayer)
  - Administrative procedures were not followed
  - The taxpayer has entered into an agreement under IRC Section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise
  - The return of such property will facilitate the collection of the tax liability
  - The return of the seized property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the best interests of the United States (as determined by Collection)
2. The provisions of IRC 6343(b) as detailed in IRM 5.10.6.15(5),(6), and (7), *Wrongful Seizure - Payment of Claims After Sale*, shall apply in the same manner as if such property had been wrongfully levied upon, but no interest will be allowed as outlined in IRM 5.10.6.15(10), *Wrongful Seizure - Payment of Claims After Sale*.

#### 5.10.6.16 (04-19-2013)

#### Improper Levy Action and Claims for Refunds

1. In instances where improper levy action (IRM 5.11.2.3.1, *Current Authority for Returning Levied Property to the Taxpayer*) is known to have taken place and results in excessive collection, the Service employee handling the balance due account will notify the immediate supervisor to contact the area director who will request the Campus to initiate a manual refund, as provided in IRM 5.1.12.20, *Manual Refund*. A follow up memorandum, explaining the details, will be sent to the Campus 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:
  - Form 1040X
  - Form 1120X
  - Form 843
  - 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 the supporting information on which the claim is based must be attached. The claim is to be sent to the compliance center where the original return was filed.
4. Generally, a claim for refund must be filed within three 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 two 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 two years from the date of the notice of disallowance. Should no determination be made on the claim within six 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, the taxpayer may file a written waiver of the requirement that the Service mail a notice of disallowance. If the taxpayer files a waiver, the two-year period in which the taxpayer may file suit begins on the date that the waiver is filed.

#### Exhibit 5.10.6-1

#### Form 2436 — Seized Property Sale Report Reference: 5.10.6.5

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

#### Form 2436 Instructions (IRM 5.10.6.5)

**Complete only after all payments and all expense receipts or vouchers are received. If some property from the same seizure number was sold and some was bid-in for the government, prepare separate Forms 2436 for the two disposition types.**

Item Number	Description
1	Name, address and TIN of taxpayer
2	Area and territory office information
3	Seizure number from Form 2433
4a	Specific location where sale was conducted, only city and state required
4b	Name and title of assisting employee

4c Date sale was conducted

**5. Application of Proceeds**

Also see additional instructions on form - include each period where proceeds were applied; for each period, there is a TC (transaction code) column on the left and a column to enter the related information. The only line items that allow for entries in the TC column are lines "g" and "h" when the account contains manually assessed penalties or restricted interest.

- a Tax form number for tax periods where proceeds are to be applied; enter tax periods in order of application of proceeds
- b Tax period
- c Date payment was made; will generally be the date of sale except in deferred payment situations where more than one payment date may be applicable; for deferred payment sales, calculate penalties and interest though each payment date (IRM 5.10.6.5.1)
- d List amount of expenses not paid directly by the taxpayer (enter for first module only) and not already posted to the account as a TC 360
- e Enter the proceeds to be applied against the expenses (payments must be offset against all expenses first); amount must be equal to or greater than the total seizure expenses posted to the module
- f Enter the amount to be applied to the tax liability.
- g Designated payment code of "06" will be entered for all seizure payments; no entry required
- h Total amount of proceeds to be applied to each module; sum of lines "e" and "f" ; will equal line "f" for all modules except the first module where the TC 694 was input

**6. Sale Proceedings**

- a Check applicable blocks for property that was sold to highest bidder; select one block from items 1 through 3, and also select either item 4 or 5
- b Check applicable block for property that was bid in for the government; if item 2 is selected, also enter applicable lot numbers
- c Check the block when IRM 5.10.5.15(1)b applies.

**7. Schedule of Expenses**

7 Describe all expenses of sale—give name, type of service rendered; i.e., custodial, appraisal, storage, etc., and amount of invoice

**8. Sale Proceeds**

- a Provide taxpayer's total liability from the Form 668B and taxpayer's total liability including accruals through the date of payment. These amounts will generally be different because the date of preparation of the Form 668B is different than the date of payment.
- b Gross proceeds of sale (total of all certificates of sale); if purchased by U.S. use the "Minimum Bid Price"
- c Total Expenses (Amount from 5d and, if applicable, TC 360 already charged on the account for seizure related expense).
- d Intervening Claims
- e Net proceeds of sale (amount available for application to taxpayer's account): this amount is determined by subtracting any amounts paid to offset seizure and sale expenses (from line 8c) plus any amount paid to valid encumbrances intervening between Notices of Federal Tax Lien (from line 8d) from the gross proceeds (line 8b).

**Note:**

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.

- f Surplus proceeds: this amount is determined by subtracting the taxpayer's total liability (line 8a "As of final payment" ) from the net proceeds (line 8e) - enter \$0 if the liability exceeds the net proceeds.

The employee who conducted the sale should complete the information and then sign and date the form. Copies of the bid tabulation should be attached to the form, and for sealed bid sales, Forms 2222, Sealed Bid for Purchase of Sealed Property, should also be attached.

**Seized Property Sale Report—Case Example**

Property seized 10/15/2000; Sold 12/1/2000

<i>Encumbrance</i>	<i>Date Recorded</i>	<i>Amount (Including Interest)</i>
Security Interest Recorded	1/16/1999	\$10,000.00
U.S. Tax Lien Recorded	4/18/1999	4,000.00
Security Interest Recorded	5/20/1999	2,000.00
U.S. Tax Lien Recorded	7/21/2000	2,000.00

**Schedule of Distribution of Proceeds**

Property sold subject to \$10,000 1/16/1999 senior encumbrance

Proceeds of Sale (\$9,600) Applied in the Following Order:

Expenses		\$105
NFTL	4/18/1999	\$4,000.00
Intervening Security Interest	5/20/1999	\$2,000.00
NFTL	7/21/2000	\$2,000.00
Surplus Proceeds		\$1,495.00

*Documentation on Form 2436*

Item 8a (Taxpayer's total liability)	4/18/1999 NFTL 7/21/2000 NFTL	\$6,000
Item 8b (Gross Proceeds)	Total amount received at sale	\$9,600
Item 8c (Expenses)	Expenses (\$105)	\$105
Item 8d (Intervening claims)	5/20/1999 Security Interest	\$2,000
Item 8e (Net Proceeds)	Gross proceeds (8b) less expenses (8c) and intervening claims (8d)	\$7,495
Item 8f (Surplus Proceeds)	Net proceeds (8e) less total liability (8a)	\$1,495

**Exhibit 5.10.6-2**

**Letter 1762(P), Notification to Taxpayer of Surplus Proceeds Reference: 5.10.6.7**

**Letter 1762(P)**

**(Area Director Letterhead)**

(Name and address of taxpayer)

(Social Security) or (Employer Identification) Number:  
 Person to Contact: (Name), Advisory Group Manager  
 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 8b. 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 8a. 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)  
Advisory Group Manager

Enclosures:  
Form 2436  
Envelope

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

**Exhibit 5.10.6-3**

**Letter 3074, Letter Providing Permanent Record and Final Balance to Taxpayer Reference: 5.10.6.11(7)**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 10. Seizure and Sale

#### Section 7. Acquired Property and Property Redeemed by the United States

##### 5.10.7 Acquired Property and Property Redeemed by the United States

- 5.10.7.1 [General](#)
- 5.10.7.2 [Income From Acquired Property](#)
- 5.10.7.3 [Preparations for Sale](#)
- 5.10.7.4 [Release or Redemption of Real Property to Debtor](#)
- 5.10.7.5 [Sale Procedures — Public Auction Sale](#)
- 5.10.7.6 [Post Sale Actions — Acquired Property](#)
- 5.10.7.7 [Report of Disposition — Sale of Redeemed Property](#)
- 5.10.7.8 [Report of Disposition — Other Than Sale of Redeemed Property](#)
- 5.10.7.9 [Disposition of Acquired Securities](#)
- Exhibit 5.10.7-1 [Pattern Letter P-338 \(Agreement to Bid\) Reference: 5.10.7.3.1](#)
- Exhibit 5.10.7-2 [Collateral Deposit Record Reference: 5.10.7.3.1\(5\)](#)
- Exhibit 5.10.7-3 [Pattern Letter P-637 \(Notice of Public Auction Sale - Redeemed Property\) Reference: 5.10.7.3.5](#)
- Exhibit 5.10.7-4 [Pattern Letter P-1627 \(Notice of Sealed Bid Sale - Redeemed Property\) Reference: 5.10.7.3.5](#)
- Exhibit 5.10.7-5 [Pattern Letter P-339 \(Notice of Public Auction Sale - Other than Redeemed Property\) Reference: 5.10.7.3.5](#)
- Exhibit 5.10.7-6 [Pattern Letter P-340 \(Notice of Sealed Bid Sale - Other than Redeemed Property\) Reference: 5.10.7.3.5](#)
- Exhibit 5.10.7-7 [Opening Statement for Auction - Sale of Acquired Property Reference: 5.10.7.5.2](#)
- Exhibit 5.10.7-8 [Pattern Letter P-341 \(Certificate of Sale of Personal Property\) Reference: 5.10.7.5.7](#)
- Exhibit 5.10.7-9 [Pattern Letter P-342 \(Certificate of Sale of Seized Property - Securities\) Reference: 5.10.7.9.1](#)
- Exhibit 5.10.7-10 [Pattern Letter P-343 \(Transmittal of Securities to Bureau of Public Debt\) Reference: 5.10.7.9.1](#)

##### Manual Transmittal

October 27, 2014

##### Purpose

(1) This transmits a revision to IRM 5.10.7, Seizure and sale, *Acquired Property and Property Redeemed by the United States*.

##### Material Changes

(1) References to Form 2433, Part 8A, revised to Form 2433, Part 7B

##### Effect on Other Documents

IRM 5.10.7 dated June 20, 2014 is superseded.

##### Audience

Small Business/Self-Employed Compliance Employees

##### Effective Date

(10-27-2014)

Rocco A. Steco  
Acting Director, Collection Policy

##### 5.10.7.1 (06-20-2014)

###### General

1. For personal property, acquired property means any property obtained by the United States in payment of, or as security for, debts arising under the internal revenue laws.
2. For real property, acquired property means any property which is, or shall become property of the United States under the following conditions:
  - By judgment of forfeiture under the internal revenue laws
  - By redemption by the Government under IRC 7425
  - By assignment, set off, conveyance by purchase, or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue
  - By being vested in the United States by mortgage or other security for the payment of such debts
  - By declaration of purchased for the United States under IRC 6335(e)
  - By bidding in at a judicial foreclosure sale where authorization under IRM 34.6.1.2.3, *Appointment of Agent to Bid at Execution Sale*, was obtained.
3. Authority to sell acquired property is contained in IRC 7505 (personal property) and IRC 7506 (real property). Either a property appraisal and liquidation specialist (PALS) or a revenue officer may conduct a sale of acquired property; however, since the PALS is a specialist in the sale process, it is recommended that the PALS conduct these sales whenever possible. The administration and disposition of personal property is the responsibility of the area director of the area in which the property became the property of the United States. The administration and disposition of real property is the responsibility of the area director of the area in which the real property is situated. For real property, the Commissioner Small Business/Self-Employed (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 area director.



4. If real property, consisting of a single parcel, is situated in more than one internal revenue area, the responsibility for the administration and disposition of the property will be that of the area 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 area director is to have charge of the property, the pertinent facts should be reported to the Director, Collection Policy, Attn: SE:S:ECS:CP, so that a designation may be made.
5. In order that a current record of all acquired property will be available for reference and follow-up purposes, Advisory will maintain an Integrated Collection System (ICS) control of such property. This ICS 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 5.10.7.1(1) and (2) above.
6. Property acquired under IRC 6335(e) will be reported to the Redesign Revenue Accounting Control System (RRACS) staff, (RRACS was formerly Interim Revenue Accounting Control System (IRACS)), on Form 2433, *Notice of Seizure*, and Form 2436, *Seized Property Sale Report*. However, if property is acquired through other circumstances, Advisory will inform RRACS by memorandum, in duplicate. To enable the compliance 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.

**Note:**

Property acquired by the Service through the exercise of redemption rights under the Federal tax lien does not require a memorandum to RRACS. Additional information about the administration of redeemed property can be found in IRM 5.12.5.7, *Administration of Redeemed Property*.

7. The Advisory Territory Manager 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 in the ICS control history. After the property is disposed of, the ICS control will be closed.
8. The PALS or the revenue officer 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 the cost of minor repairs to real property, if deemed necessary for its preservation. The procedures in IRM 5.10.3.7, *Protection of Property After a Seizure*, are also applicable to acquired property.
9. Estimated expenses expected to be incurred in connection with the preservation or sale of the property should be reported to the field budget officer per their instructions, or if applicable to the Chief, HQ Financial Management (Execution), so that necessary funds may be obligated. Identify the property and provide the estimated amount of expenses.
10. The sale procedures 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*.
11. Since property acquired other than as a result of redemption is sold exclusively for the benefit of the government with no benefit to the original taxpayer, third party contact reporting requirements are not relevant for this type of sale.
12. Where property has been acquired other than as a result of redemption, if it is determined that it is in the best interest of the Service to transfer ownership of the property for any reason to another federal government agency, such as the Department of the Interior, National Park Service, or U.S. Forestry Service, etc., this can be done with agreement by the other federal agency without offering the property for sale under sections 7505 or 7506. This cannot be done with a non-federal agency, such as a state or local government agency. Approval for this transfer is obtained from the Advisory Territory Manager. The PALS will prepare a memo for routing through the PALS manager to the Advisory Territory Manager requesting approval to transfer the asset to another agency. The memo should provide sufficient information regarding the acquisition and recommended transfer of the property.

**5.10.7.1.1 (06-20-2014)**

**ICS Case Control Identification Numbers**

1. Advisory will establish an Integrated Collection System (ICS) control by opening a non-field Other Investigation with an Action Code 165, Acquired Property, within 7 calendar days of notification of such property.
2. Property acquired by means other than through seizure action (e.g. see IRM 5.10.7.1(1) and (2)) and for which the taxpayer's account has been or is being credited will be controlled on ICS using an assigned identification number which begins with "00-9". The artificial assigned TIN will follow the format 00-9AOXXXX, where "00-9" represents Advisory's function code for ICS; AO is the Collection Field Area Office Number (01 through 07, 15, or 99\*); and XXXX is a four digit sequential numeric control (e.g. 00-9 02 0001).
3. For property acquired through seizure, or for which the taxpayer's account will not be credited until later, the taxpayer's TIN will continue to be used to control the case on ICS.
4. Advisory will assign an acquired property serial number in accordance with IRM 5.6.1.6, *Collateral Agreement and Other Acquired Property Serial Numbers*, and IRM 5.6.1.7, *Preparing Form 2276, Collateral Deposit Record*.

**5.10.7.1.2 (06-20-2014)**

**Acquired Property Control**

1. Within 10 calendar days of establishing the ICS control, Advisory will prepare a memorandum for the RRACS staff requesting that they open an acquired property control. The memorandum titled, "Acquired Property Control," will include the following information:
  - acquired property serial number
  - taxpayer's name and control TIN
  - type of property
  - value of property
  - a statement indicating whether the taxpayer's account has been, or should be, credited with the assigned value of the acquired property or if the account will be credited after the property is disposed of. If account should be credited immediately, provide instructions as to how the credit should be applied.
2. Upon receipt of the memorandum, the RRACS staff will open an acquired property control on the RRACS Report 135. Based on the information provided, the RRACS staff will either use the assigned value of the property or assign a value of \$1.00, if the account is to be credited after disposing of the property.
3. The advisor will then coordinate with the PALS to dispose of the acquired property.

**5.10.7.1.3 (06-20-2014)**

**Proceeds From the Sale of Acquired Property**

1. Proceeds obtained from the sale of the acquired property will be forwarded by the RO or PALS to the Ogden Teller Unit via a memorandum at the following address:

IRS Ogden Submission Processing Center  
 1973 N. Rulon White Blvd  
 Mail Stop 6261, Acquired Property

The memorandum titled, "Proceeds from the Sale of Acquired Property" will include the following information: acquired property serial number; date of the sale, and amount of proceeds.

2. The RO or PALS responsible for conducting the sale will send Advisory a summary memorandum of the acquired property sale. The RO or PALS will forward all applicable documents to Advisory, including a copy of the memorandum mentioned above.
3. Within 10 calendar days of the RO or PALS documentation, Advisory will then prepare a memorandum to the IRACS staff at the Ogden Campus. The memorandum titled "Disposition of Acquired Property" will include the following information: acquired property serial number; date of disposition; and a statement regarding the disposition of proceeds.
  - If the taxpayer's account was NOT previously credited for the value of the acquired property, the advisor will provide the necessary information to ensure adequate posting of the sale proceeds. At a minimum, this will include the taxpayer's name, TIN and tax period information.
  - If the taxpayer's account was previously credited (i.e. redemption), the advisor will notify the IRACS staff to close out the 7100 Acquired Property Account.

**Note:**

Because the property being sold is owned by the government, expenses of sale are not to be charged to the taxpayer's account.

4. Once the disposition of the proceeds has been verified and all required actions have been completed, the advisor will update the acquired property log and close the ICS control.

**5.10.7.2 (10-27-2014)**

**Income From Acquired Property**

1. For real property acquired under the provisions of IRC 6335, there is a 180 day right of redemption period during which the government cannot dispose of the property.
2. The right to any income from real property during this period of redemption depends upon the state law where the property is located. Area 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 the outstanding accounts of the taxpayer.
3. The taxpayer has no right to redeem, nor any right to any income derived from, personal property after it has been declared purchased for the United States.
4. Income received from the acquired property will be forwarded through Submission Processing with a Form 2433, Part 7B, Notice of Seizure, or a memorandum posting document in duplicate indicating the following:
  - Name of person from whom the income was received
  - Nature of income, such as rent, dividends, etc.
  - Brief description of property, such as "Real property — Building located at (address)," "Personal property — General Motors Stock," etc.
  - Period covered by the payment if applicable
  - Name of taxpayer from whom the property was seized and sold
  - Amount of remittance
  - A statement that the remittance should be deposited as a courtesy deposit for credit to Miscellaneous Receipts of the Treasury
5. Cash remittances must be converted before transmittal to Submission Processing.

**5.10.7.2.1 (06-20-2014)**

**Lease of Real Property**

1. Real property may be leased if it is determined that it will be in the possession of the area 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:
  - Depreciation of the property
  - Whether the property can be immediately sold for a reasonable amount
  - Cost of maintenance, etc.
2. The initial determination will be made by the Advisory Group Manager, based upon the circumstances, including any recommendation of the area office involved. The final decision rests with the Advisory Territory Manager whose approval must be secured before the property is offered since he/she must sign the lease.
3. If acquired property will be leased and a prospective lessee has been secured, the Advisory Group Manager should request area 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 Advisory Group Manager.
4. The following information should be furnished to area counsel:
  - Name and address of the lessee
  - Area involved
  - Description and location of property
  - How property was acquired by the United States
  - Period of the lease
  - Terms of payment (amount, manner, due date and place of payment)
  - Any special provisions to be contained in the lease, such as maintenance of property, authorized alterations, improvements, etc.
5. Upon receipt of the proposed lease agreement from area counsel, the Advisory Group Manager will review the lease to see that it conforms to the intent of the parties involved and will forward the original and duplicate to the Advisory Territory Manager for his or her signature.
6. After the Advisory Territory Manager has signed the lease agreement, both copies will be returned to the Advisory Group Manager who will:
  - A. Prepare a control card showing the name and address of the lessee, payment due and amount of payment.

- B. Secure the signature of the lessee on the original lease agreement.
  - C. 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.
  - D. File original lease agreement in the related Disposition of Seized Property case file.
  - E. File control card chronologically by payment due date in a "lease control card file."
7. Upon receipt of payments under the lease agreement, Advisory 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), *Income From Acquired Property*.
  8. If a payment is not received within a reasonable time after the due date, the Advisory Group Manager should contact the lessee to secure payment. If payment is not received, area counsel should be consulted as to the legal action required.

### **5.10.7.3 (06-20-2014) Preparations for Sale**

1. As soon as practical after acquisition of the property and when it appears that offering the acquired property for sale will yield a reasonable price, the RO or PALS should provide the following information via ICS history entry to the Advisory advisor maintaining the control for the acquired property:
  - Brief description and location of property
  - Condition of property
  - Expected sale price
  - Government's cost, if any (bid-in price if the property was declared purchased under IRC 6335, or bid-in price where the property was acquired by foreclosure sale.)
  - Reason it is believed that the property can be sold for a reasonable price (if an agreement to bid has been secured, furnish details)
  - Any other pertinent information
2. The revenue officer or the PALS should then begin taking the appropriate actions to begin the sale process.

### **5.10.7.3.1 (06-20-2014) Agreements to Bid**

1. Regulations provide that offers to bid at least a specified amount may be solicited from prospective bidders before giving a notice of sale of acquired property. Although this procedure is not a statutory requirement, it is desirable since it encourages more sincere bidding and 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 or the revenue officer 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 Service personnel. The agreement to bid should be similar to the example 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 area 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). The remittance and Form 2276 will be submitted to Advisory for review and safekeeping. Additional information on collaterals can be found in IRM 5.6.1, *Collateral Agreements and Security Type Collateral*, and IRM 5.6.2, *Maintenance*. When completing the form:
  - Complete items 1 - 11 as captioned.
  - Item 2 - Secure the serial number from Advisory.
  - Only complete item 8 if the collateral was submitted by someone other than the taxpayer.
  - In item (b) "Description" , enter "Agreement to Bid Deposit" .
  - In item (d) "Estimated Fair Market Value" , enter "For Safekeeping" .

### **5.10.7.3.2 (06-20-2014) 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), Notice of Sale). 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 area where the property was declared purchased for the United States. If the sale is to be held in another area, the area director should advise the director of the other area.
2. Real property acquired under the provisions of IRC 6335(e) may be sold after the 180-day period of redemption expires and a public notice of sale has been given (IRM 5.10.7.3.5(2), Notice of Sale). The notice must have been given not less than 20 days before holding the sale. Ordinarily, when real property is involved, the taxpayer or other persons with an interest in the property, or a person on their behalf, have 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), consult area counsel to determine whether redemption rights exist.
3. When real 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 area director or Advisory Territory Manager may authorize the sale to be held outside such county. If this move causes the sale to be held in another area office, the area director should be notified by the approving official in the area where the property is situated.

### **5.10.7.3.3 (10-01-2004) Adjournment of Sale**

1. Regulations provide that the employee conducting the sale 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 employee conducting the sale should appear at the time and place originally established for the sale and make a public announcement of the adjournment and, if possible, inform those present of the new date and time of sale.

#### 5.10.7.3.4 (10-01-2004)

##### 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 (06-20-2014)

##### Notice of Sale

1. Regulations require that a notice of sale be publicly given. The notice of sale should be prepared as appropriate:
  - Notice of Public Auction (for redeemed property), Exhibit 5.10.7-3, P-637
  - Notice of Sealed Bid Sale (for redeemed property), Exhibit 5.10.7-4, P-1627
  - Notice of Public Auction Sale, (other than redeemed property), Exhibit 5.10.7-5, P-339
  - Notice of Sealed Bid Sale, (other than redeemed property), Exhibit 5.10.7-6, P-340
2. 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 reproduced in a manner that will provide sufficient copies to satisfy the needs of the particular sale. For real property, the notice of sale must 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. For personal property the notice of sale must be posted at the post office nearest the place of sale and in at least two other public places. For personal property, newspaper advertising may also be authorized but is not required. 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 Advisory.
3. Other methods of giving public 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 wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property. If commercial advertising is used, the procedures prescribed in IRM 5.10.4.14.1, *Commercial Advertising of Sale*, should be followed.

#### 5.10.7.4 (06-20-2014)

##### 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. The term "debt" includes the entire tax liability including penalties and interest; this amount would also include any credit given to the taxpayer for the minimum bid since the credit would be reversed if the property was returned to the taxpayer.

##### Note:

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.

3. Payments made within the 180 day redemption period will follow the provisions of IRM 5.10.7.4(1), Release or Redemption of Real Property to Debtor.
4. IRM 5.10.6.8, *Redemption of Real Property After Sale*, contains the procedures to follow when the property is redeemed or released.

#### 5.10.7.5 (10-01-2004)

##### Sale Procedures — Public Auction Sale

1. The procedures for sale of acquired property are substantially the same as those used in the sale of seized property. The most notable difference is that regulations under IRC 7505 and 7506 provide that the employee 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 employee conducting the sale may do so. However, the necessity of rejecting bids can usually be avoided by securing an agreement to bid (IRM 5.10.7.3.1, Agreements to Bid) before offering the property for sale.

#### 5.10.7.5.1 (06-20-2014)

##### Condition of Title and of Property

1. The procedures prescribed in IRM 5.10.5.5, *Condition of Title and of Property*, are also applicable when acquired property is being sold.
2. Because Form 2434-B, Notice of Encumbrances Against and Interests in Property Offered for Sale, is normally used for sales of seized assets, the following changes should be made when conducting a sale of acquired property:
  - A. On the front of the form in the space below "Internal Revenue taxes due from: (Taxpayer)", enter a statement to indicate how the Service acquired the property; for example — "The United States acquired the property from a distraint sale under the provisions of IRC section 6335 on 07/01/2000. Deed was executed to the United States on 02/05/2001. "
  - B. On the reverse of the form, change the first paragraph from "will be sold" to either "was sold and acquired by the United States" or "was acquired by the United States. "
  - C. On the reverse of the form, in the last paragraph, delete everything after the first sentence and add the following sentence: "Upon full payment of the accepted bid price, the United States will issue a Certificate of Sale for personal property or a deed for real property."

#### 5.10.7.5.2 (06-20-2014)

##### Auction Procedure

1. At the time and place set for the sale, the employee conducting the sale 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 the conditions of a particular sale.

2. After reading the statement as to the terms and conditions of the sale, the employee conducting the sale will open the bidding. If an agreement to bid has been secured and a deposit has been required, and a higher opening bid is not received, 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 a later date. 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 (IRM 5.10.7.3.3, Adjournment of Sale).
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, or similar form, 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 employee conducting the sale 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 bidder(s) pending the outcome of the bidding by the other method of sale. In these cases, the procedures in IRM 5.10.5.10, *Property Offered for Sale by More Than One Method*, should be followed.

#### **5.10.7.5.3 (06-20-2014) Sealed Bid Procedures**

1. Regulations under IRC 7505 and 7506 provide that acquired property may also be sold by sealed bids. If the property was not redeemed by the United States, the procedures prescribed in IRM 5.10.5.11, *Sealed Bid Sale - General*, will be followed except that:
  - A. Form 2593, Sealed Bid for Purchase of Property Acquired by the United States, will be used in place of Form 2222.
  - B. Any references to seized property should be considered to be "property acquired by the United States."
  - C. 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.
  - D. 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).
  - E. Form 2434-B will be prepared as described in IRM 5.10.7.5.1, Condition of Title and of Property.
  - F. The employee 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.
  - G. The return of a remittance to an unsuccessful bidder who had executed an agreement to bid will be governed by IRM 5.10.7.5.6, Return of Unsuccessful Sealed Bids and Amounts Deposited with Agreements to Bid.
2. For property that was redeemed by the United States, the procedures prescribed in IRM 5.10.5.11, *Sealed Bid Sale - General*, will be followed except that:
  - A. Form 2593-A, Sealed Bid for Purchase of Property Redeemed by the United States, will be used in place of Form 2222.
  - B. Any references to seized property should be considered to be "property redeemed by the United States."
  - C. 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.
  - D. 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.
  - E. Form 2434-B will be prepared as described in IRM 5.10.7.5.1, Condition of Title and of Property.
  - F. The employee conducting the sale will prepare a report on the proceedings in accordance with IRM 5.10.7.7, Report of Disposition — Redeemed Property.
  - G. The return of a remittance to an unsuccessful bidder who had executed an agreement to bid, will be governed by IRM 5.10.7.5.6, Return of Unsuccessful Sealed Bids and Amounts Deposited with Agreements to Bid.

#### **5.10.7.5.4 (10-01-2004) Payment of Bid Price**

1. Instructions in IRM 5.10.4.10.3, Notice of Sale - 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 employee 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 only entries that should be made are the taxpayer's name and the amount of the payment. Part 2 should be given to the purchaser and Parts 1 and 3, stapled together in reverse order, should be submitted via Form 3210, Document Transmittal, as provided in IRM 5.10.7.8, Report of Disposition — Other Than Sale of Redeemed Property.

#### **5.10.7.5.5 (06-20-2014) 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 either the property is not sold for as much as the agreed amount or the Service incurs any costs resulting from the need for a subsequent sale, the amount of the deposit may be retained by the Service as 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 may be retained by the United States pending determination of actual damages. Area counsel may be consulted, if necessary, to determine whether legal action is appropriate.
3. In case of a deposit retained as damages under either 5.10.7.5.5(1) or (2) above not related to property redeemed under IRC 7425, the employee who conducted the sale will prepare a memorandum in triplicate entitled "Retained Deposit Funds" and state thereon the:
  - Name of the depositor
  - Amount retained
  - Reasons for retaining the funds
4. The employee conducting the sale will forward all copies of the memorandum through their manager to the Advisory Group Manager to submit to RRACS.

5. In case of a deposit retained as damages under 5.10.7.5.5(1) or (2) above related to property redeemed under IRC 7425, the employee will report any default situation described 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:
  - Name of the bidder or depositor
  - Amount of the agreement to bid or sealed bid
  - Amount of the deposit, or of remittance accompanying the bid
  - Amount which must be returned to the revolving fund
  - Amount received from the sale of the property, or date for rescheduled sale
  - Actual cost of re-selling the property (if unknown, estimate)
  - Nature of and reason for default
6. All copies of the memorandum will then be forwarded through the group manager and the Advisory Territory Manager for distribution to the Advisory Area Manager, Management & Finance Field Office, and area counsel. The fourth copy will be retained in Advisory.
7. In order to minimize the chance of loss being incurred by the Service, the Advisory Territory Manager will, by memorandum, inform the Management and Support Field Office when any of the following situations occur:
  - 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
  - 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.
  - 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 (06-20-2014)**

##### **Return of Unsuccessful Sealed Bids and Amounts Deposited With Agreements 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, complete the applicable items of the "Return of Remittance to Unsuccessful Bidder" section of the related Form 2593 or Form 2593-A.
3. Advisory is responsible for returning deposits submitted with agreements to bid if, after the sale, the individual who submitted the deposit was not the successful bidder.

#### **5.10.7.5.7 (10-01-2004)**

##### **Certificate of Sale — Personal Property**

1. As soon as possible after receipt of the full purchase price, the employee conducting the sale will:
  - A. Issue in duplicate a Certificate of Sale of Personal Property in accordance with the specimen in Exhibit 5.10.7-8.
  - B. Furnish the original certificate of sale to the purchaser.
  - C. Release the personal property to the purchaser.
  - D. 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 (06-20-2014)**

##### **Deed to Real Property**

1. Regulations under IRC 7506 provide that, upon payment in full of the purchase price, the delegated official will issue a deed to the purchaser. Authority to sign deeds is contained in SB/SE Delegation Order 5.1.
2. The deed will be prepared in duplicate by Advisory and forwarded to area counsel for approval. A standard format for such deeds can be pre-arranged with area counsel. Once the deed is ready, Advisory will:
  - A. Remove the original Report of Sale from the suspense file.
  - B. Secure the appropriate signature on the deed.
  - C. Furnish the original deed to the purchaser.
  - D. Note on duplicate deed the date the original deed is executed and the date it is delivered to purchaser.
  - E. File the duplicate deed and original report of disposition in the related Record of Disposition of Seized Property case file.

##### **Note:**

Because of the limited retention period for these types of records, it is highly recommended that the proper recording of the deed by the purchaser be verified before the case is closed. Take appropriate follow-up action if the deed has not been recorded.

#### **5.10.7.5.9 (06-20-2014)**

##### **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 (See IRM 5.12.5.7.5, *Disposition of Redemption Sale Proceeds*).
2. For other than redeemed property, expenses of sale, including the cost of advertising, are to be identified on the "Report of Sale of Acquired Property" per IRM 5.10.7.8, *Report of Disposition — Other than Sale of Redeemed Property*.

#### **5.10.7.6 (06-20-2014)**

##### **Post Sale Actions — Acquired Property**

1. Upon completion of the sale of acquired property, the employee who conducted the sale will forward a report to Advisory. The report will be prepared under the appropriate guidelines in the following sections:
  - Report of Disposition — Sale of Redeemed Property, IRM 5.10.7.7
  - Report of Disposition — Other than Sale of Redeemed Property, IRM 5.10.7.8
2. If the successful bidder submitted a deposit with the agreement to bid, the employee who conducted the sale will contact Advisory and fax a copy of the "Sale of Acquired Property" memorandum (IRM 5.10.7.8(1), Report of Disposition — Other than Sale of Redeemed Property) or the "Proceeds from Sale of Redeemed Property" memorandum (IRM 5.10.7.7(1), Report of Disposition — Sale of Redeemed Property) to Advisory for disposition of the deposit. If the individual who made the deposit was not the successful bidder, contact Advisory so the procedures in IRM 5.10.7.5.6(3), Return of Unsuccessful Sealed Bids and Amounts Deposited With Agreements to Bid, can be followed.
3. Upon receipt of the appropriate report, Advisory will:
  - A. File a copy of the control in the case file.
  - B. Forward vouchers not previously submitted to the Management & Finance Field Office for payment.
  - C. File the report of disposition in a suspense file pending receipt of the quitclaim deed if real property is involved.
  - D. File the report of disposition and attachments in the related Record of Disposition of Seized Property case file if property was acquired by declaration of purchased for the United States under IRC 6335(e).
  - E. Forward to RRACS 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 (06-20-2014)**

##### **Report of Disposition — Sale of Redeemed Property**

1. Upon completing the sale of redeemed property, the employee who conducted the sale will prepare three copies of a transmittal memorandum entitled "Proceeds from the Sale of Redeemed Property." The memorandum will contain the following:
  - 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
  - Name and address of the purchaser
  - Sale price
  - Amount previously deposited with agreement to bid, if applicable
  - 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 Advisory . The employee who conducted the sale will retain the third copy of the memorandum for submission with the "Report of Sale of Redeemed Property" .
3. After the sale has been completed and all related vouchers for expenses have been received, the employee who conducted the sale 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:
  - Name and address of purchaser
  - Sale price of property
  - Expenses of sale shown by amount, names and addresses of payees and the services rendered
  - Date of sale
  - Place of sale
  - Places and dates that notices of sale were published and/or posted
  - A statement signed by the employee conducting the sale that certifies that 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:
  - Copy of the notice of sale
  - Third copy of the memorandum "Proceeds from the Sale of Redeemed Property"
  - Forms 2593-A, Sealed Bid For Purchase of Property Redeemed by the United States, if applicable
  - Tabulation of bids
5. The original and duplicate reports, together with all attachments, will be forwarded to Advisory.

#### **5.10.7.8 (06-20-2014)**

##### **Report of Disposition — Other Than Sale of Redeemed Property**

1. Upon completion of the sale of acquired property, other than redeemed property, the employee who conducted the sale will prepare a memorandum posting document in triplicate, identified as "Sale of Acquired Property. "
2. If full payment of the bid amount is received, the memorandum will include the following:
  - Taxpayer's Name, Address, and Taxpayer Identification Number
  - Seizure serial number
  - Name of purchaser
  - Sale price
  - Amount already on deposit in the deposit fund account which is to be withdrawn from the deposit fund account and deposited in the Treasury of the United States as internal revenue collection

- Amount of remittance and a statement as to how it should be applied — the following statement can be used for real property: "As the sale was conducted under IRC section 7506, deposit the remittance in the Treasury of the United States as internal revenue collection per IRC section 7809(b)."

**Note:**

See IRC 7809 — the taxpayer does not receive credit for any of the proceeds regardless of the amount involved, if the taxpayer's account was credited at the time property was acquired by the government.

- 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 payment of a deferred sale, it should include only the name of the purchaser and the last two items shown in (2) above.
  4. The employee who conducted the sale will enter on Form 3210, Document Transmittal, the name of the purchaser and "Proceeds from Sale of Acquired Property." The amount of the remittance will be entered and the number of any Form 809 receipt issued. The employee will submit the remittance, together with the original and duplicate memorandum posting document, on Form 3210 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 employee who conducted the sale 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:
    - Name and address of purchaser
    - Sale price of property
    - Expenses of sale shown by amount, names and addresses of payees and the services rendered
    - Net proceeds of sale after expenses
    - Date of sale
    - Manner of sale
    - Place of sale
    - Places and dates that the notice of sale was published and/or posted, and
    - A statement signed by the employee conducting the sale that certifies the sale was conducted in accordance with IRC 7505 or 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 Advisory for appropriate review.
  7. Update the ICS seizure and sale application with any applicable information after disposition of property that was acquired by bidding in the property for the government.

**5.10.7.9 (10-01-2004)**

**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 area 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. Certified 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:
  - "Traded Securities" — stocks and debenture bonds which are listed on a stock exchange or are generally traded in the over-the-counter market, also unmaturred United States securities (coupon type);
  - "Untraded Stocks" — those stocks which are not listed or generally traded, such as stock of closely held corporations; and
  - "Notes" — ordinary commercial or private notes executed as evidences of debt.

**5.10.7.9.1 (06-20-2014)**

**Traded Stocks and Bonds**

1. If Form 2435 was not previously prepared, a certificate of sale to the United States should be prepared in duplicate in accordance with Exhibit 5.10.7-9 (P-342). The Certificate of Sale and the securities will be forwarded to the Advisory Group Manager, who will prepare four copies of a transmittal letter following the form in Exhibit 5.10.7-10.
2. The Advisory Group Manager will send the following information in one package, by registered mail or by special messenger, to the Bureau of Fiscal Service :
  - A transmittal letter (Exhibit 5.10.7-10) indicating the Service's contact, phone number, fax number, and appropriate Agency Location Code (IRM 3.17.63.1.2, Agency Location Codes)
  - The original and two copies of the transmittal letter
  - Two certified copies of the Notice of Seizure (Form 2433)
  - Two certified copies of the notice of sale (Form 2434 or 2434-A)
  - The original certificate of sale (Form 2435 or Exhibit 5.10.7-9, P-342)
  - The stock certificates and/or bonds
3. The forms listed above must list the securities and have a visible seal.
  - A. If registered mail send the package to:



The Bureau of the Fiscal Service, Office of Public Debt Accounting  
Debt Accounting Branch Manager  
P.O. Box 1328  
Hintgen Building Room 114  
Parkersburg, WV 26106-1328

B. If special messenger, send to:

The Bureau of the Fiscal Service, Office of Public Debt Accounting  
Debt Accounting Branch Manager  
Hintgen Building Room 114  
200 3rd Street  
Parkersburg, WV 26101-5312

4. Advisory 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 RRACS.
5. The Bureau of the Fiscal Service, Debt 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 Debt Accounting Branch will fax a copy of the liquidation letter to the IRS listing:
  - The issuing company
  - Number of shares sold
  - Settlement date
  - Net proceeds
  - Account credited
  - IRS seizure number
7. The proceeds of sale will be deposited for credit of the Campus director for the IRS Location Code using the Fedwire Deposit System.
  - A. The message field 'Orig. to Beneficiary' (6000) will show: BPD (seizure number), PROC AS NMF CALL, and the IRS contact and phone number.
  - B. 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.
  - C. The RRACS will make necessary accounting entries to close the related Form 2436, Seized Property Sale Report.
  - D. The SF215C will be retained in the seizure case file.

#### 5.10.7.9.2 (10-01-2004)

##### Untraded Stocks

1. Efforts should be made to locate a prospective purchaser. The stock may be sold through regular sale procedures for acquired property.

##### Note:

For closely held corporations, the persons most likely to be interested purchasers are other stockholders. It may be worthwhile to summons for a list of registered shareholders if one cannot be obtained voluntarily.

2. If the stock cannot be disposed of through sale, area 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.

#### 5.10.7.9.3 (06-20-2014)

##### Acquired Notes

1. Acquired notes will be forwarded to Advisory for determination of the action that is appropriate. The Advisory Group Manager 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, area 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 Advisory Group Manager 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 Advisory Group Manager will request the appropriate area office to attempt to dispose of the note by public sale.

#### Exhibit 5.10.7-1

##### Pattern Letter P-338 (Agreement to Bid) Reference: 5.10.7.3.1

##### Pattern Letter P-338

(Because of limited use, Headquarters 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)

*If a deposit is required, enter the following:*

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 either the property is not sold within the time specified above for at least such amount or the Service incurs any costs resulting from the need for a subsequent sale, my deposit will be retained pending final determination of the damages the Government sustained because of the default. If damages exceed the amount of the deposit, I will be liable for the excess damages.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Exhibit 5.10.7-2**  
**Collateral Deposit Record Reference: 5.10.7.3.1(5)**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.10.7-3**  
**Pattern Letter P-637 (Notice of Public Auction Sale - Redeemed Property) Reference: 5.10.7.3.5**

**Pattern Letter P-637**

(Because of limited use, Headquarters will not provide a form for this purpose.)  
(Area Director Letterhead)

Date:

**NOTICE OF PUBLIC AUCTION SALE - REDEEMED PROPERTY**

Under the authority of section 7506 of the Internal Revenue Code, the property described below will be sold at public sale (*If residential property, insert "on an open occupancy (nondiscriminatory) 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 \_\_\_\_\_

Property Description:

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, use 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 employee 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, use the following statement—*When the highest bid is tentatively accepted, the highest bidder must deposit \$ \_\_\_\_\_ (20 percent of the opening bid price) with the employee 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. All checks and money orders should be made payable to the United States Treasury.

If the highest bidder defaults in payment of the bid price, and either the property is not sold for at least the amount of the highest bid or the Service incurs any costs resulting from the need for a subsequent sale, the bidder's deposit will be retained pending final determination of the damages the Government sustained because of the bidder's default. If 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**  
**Pattern Letter P-1627 (Notice of Sealed Bid Sale - Redeemed Property) Reference: 5.10.7.3.5**

**Pattern Letter P-1627**

(Because of limited use, Headquarters will not provide a form for this purpose.)  
(Area Director Letterhead)

Date:

**NOTICE OF SEALED BID SALE - REDEEMED PROPERTY**

Under the authority contained in section 7506 of the Internal Revenue Code, the property described below will be sold at a public sale (*If residential property, also insert "on an open occupancy (nondiscriminatory) basis."*). 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 either the property is not sold for at least the amount of the highest bid or the Service incurs any costs resulting from the need for a subsequent sale, 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: (insert office address and phone number).

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

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

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

**Exhibit 5.10.7-5**  
**Pattern Letter P-339 (Notice of Public Auction Sale - Other than Redeemed Property) Reference: 5.10.7.3.5**

(Because of limited use, Headquarters will not provide a form for this purpose.)  
(Area Director Letterhead)

Date:

**NOTICE OF PUBLIC AUCTION SALE (OTHER THAN REDEEMED PROPERTY)**

Under the authority contained in section (7505 or 7506) of the Internal Revenue Code, the property described below will be sold (*If residential property, also insert "on an open occupancy (nondiscriminatory) basis."*). 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)\_\_\_\_. *If real property is offered for sale, also show, "Deed executed to the United States on (date)\_\_\_\_\_."*

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: \_\_\_\_\_

\_\_\_\_\_

If the highest bidder defaults in payment of the bid price and either the property is not sold for at least the amount of the highest bid or the Service incurs any costs resulting from the need for a subsequent sale, 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 by contacting the office at the address shown below: (insert office address and telephone number).

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

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

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

**Exhibit 5.10.7-6**

**Pattern Letter P-340 (Notice of Sealed Bid Sale - Other than Redeemed Property) Reference: 5.10.7.3.5**

**Pattern Letter P-340**

(Because of limited use, Headquarters will not provide a form for this purpose.)  
(Area Director Letterhead)

Date:

**NOTICE OF SEALED BID SALE (OTHER THAN REDEEMED PROPERTY)**

Under the authority contained in section (7505 or 7506) of the Internal Revenue Code, the property described below will be sold at a public sale. *If residential property, also insert, "on an open occupancy (nondiscriminatory) basis."* 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, \_\_\_\_). *If real property is offered for sale, also show, "Deed executed to the United States on (date)\_\_\_\_\_."*

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 and either the property is not sold for at least the amount of the highest bid or the Service incurs any costs resulting from the need for a subsequent sale, the bidder's deposit will be retained pending final determination of the damages the Government sustained because of the bidder's default. If 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.

You may obtain information about the property and proposed sale, and Form 2593, by contacting the office at the address shown below: (insert office address and telephone number).

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

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

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

**Exhibit 5.10.7-7**

**Opening Statement for Auction - Sale of Acquired Property Reference: 5.10.7.5.2**

**Opening Statement for Auction - Sale of 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 employee conducting the sale 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. 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 area director as soon as possible after payment in full of the purchase price.

**Exhibit 5.10.7-8**

**Pattern Letter P-341 (Certificate of Sale of Personal Property) Reference: 5.10.7.5.7**

**Pattern Letter P-341**

(Because of limited use, Headquarters will not provide a form for this purpose.)  
(Area Director Letterhead)

Date:

**CERTIFICATE OF SALE OF PERSONAL PROPERTY**

(For Property Acquired by United States Under Internal Revenue Laws)

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 Title \_\_\_\_\_

Address \_\_\_\_\_

**Exhibit 5.10.7-9**

**Pattern Letter P-342 (Certificate of Sale of Seized Property - Securities) Reference: 5.10.7.9.1**

**Pattern Letter P-342**

(Because of limited use, Headquarters will not provide a form for this purpose.)  
(Area Director Letterhead)

Date:

**CERTIFICATE OF SALE OF SEIZED PROPERTY - SECURITIES**

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**

**Pattern Letter P-343 (Transmittal of Securities to Bureau of Public Debt) Reference: 5.10.7.9.1**

**Pattern Letter P-343**

(Because of limited use, Headquarters will not provide a form for this purpose.)  
(Area Director Letterhead)

Date:

The Bureau of the Fiscal Service  
Office of Public Debt Accounting  
Debt Accounting Branch Manager  
Hintgen Building Room 114  
200 3rd Street  
Parkersburg, WV 26101-5312

(Salutation)

The securities 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).

<u>Kind of Security</u>	<u>Issuing Company</u>	<u>Number of Shares</u>	<u>Serial Number</u>	<u>Issue Date</u>
-------------------------	------------------------	-------------------------	----------------------	-------------------

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:

- issuing company
- number of shares sold
- settlement date
- net proceeds
- account credited, and
- 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)  
Advisory Group Manager

Enclosures:

Envelope

2 copies of this letter

Certificate of Sale (Form 2435 or P-342)

2 copies of Notice of Sale (certified)

2 copies of Notice of Seizure (certified)

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 10. Seizure and Sale

#### Section 8. Judicial Sales

##### 5.10.8 Judicial Sales

- 5.10.8.1 [Introduction to Judicial Sales](#)
- 5.10.8.2 [Order of Sale](#)
- 5.10.8.3 [Pre-Sale Actions](#)
- 5.10.8.4 [Private Sales](#)
- 5.10.8.5 [Notice of Sale](#)
- 5.10.8.6 [Sale Day Actions](#)
- 5.10.8.7 [Declaration](#)
- 5.10.8.8 [Evictions](#)
- 5.10.8.9 [Closing Memorandum](#)
- 5.10.8.10 [Deed Issuance](#)
- 5.10.8.11 [Record of Judicial Sales](#)
- Exhibit 5.10.8-1 [Judicial Sale Process Receipt and Return Document \(Reference IRM 5.10.8.3\(6\)\)](#)
- Exhibit 5.10.8-2 [Eviction Letter Template](#)
- Exhibit 5.10.8-3 [Notice of Sale \(Reference IRM 5.10.8.5\(1\)\)](#)
- Exhibit 5.10.8-4 [Letter to Purchaser \(Reference IRM 5.10.8.6.1\(3\)\)](#)
- Exhibit 5.10.8-5 [Deed \(Reference IRM 5.10.8.9\(1\)\)](#)

##### Manual Transmittal

June 20, 2014

##### Purpose

(1) This transmits revised IRM 5.10.8, Seizure and Sale, Judicial Sales.

##### Material Changes

- (1) IRM 5.10.8.3(11), new paragraph regarding rent payment collection guidance included in the Order of Sale.
- (2) IRM 5.10.8.6.1, note added to refer PALS to IRM 5.10.8.9(5) when the judge includes a statement for IRS to distribute sale proceeds.
- (3) IRM 5.10.8.9(5), new paragraph clarifying process for distribution of judicial sale proceeds when judge includes statement for IRS to distribute sale proceeds.
- (4) Minor editorial changes throughout.

##### Effect on Other Documents

IRM 5.10.8 dated September 16, 2011 is superseded.

##### Audience

Small Business/Self-Employed Compliance Employees

##### Effective Date

(06-20-2014)

Rocco A. Steco  
Acting Director, Collection Policy

##### 5.10.8.1 (06-20-2014)

##### Introduction to Judicial Sales

1. Employees of the IRS are authorized to sell property pursuant to a court order when the United States obtains a judgment related to taxes. The cases normally originate from a revenue officer's request for a tax lien foreclosure suit. The suit recommendation is then referred by IRS Area Counsel to the Department of Justice (DOJ). The DOJ trial attorney will then file suit and obtain the judgment. Once a judgment is obtained, the property may be sold. In the past, the U.S. Marshals Service has conducted these sales. The Order of Sale may now provide that a Service employee, usually the Property Appraisal and Liquidation Specialist (PALS), may conduct the sale.
2. Once a judgment is entered in favor of the government, a judicial sale is held in accordance with the court's order. The court supervises the judicial sale from judgment entry through sale confirmation.
3. The type of sale is discussed with and recommended by local counsel to the DOJ. There are two types of judicial sales:
  - Public Auction
  - Private Sale
4. The judge enters an Order of Sale in the judicial proceeding. This order directs:
  - Sale of a specific piece of property with proper notice
  - Specific time and place of sale

- Specific terms and conditions of sale
5. The United States can request the establishment of a minimum bid for a public auction sale or a minimum sale price for a private sale.
  6. The terms and conditions of the sale are at the discretion of the court and may either be specific or leave some items open for the employee to determine while arranging the sale.
  7. The court may order that prior encumbrances be paid from the sale proceeds or that the property be sold subject to the prior encumbrances, but generally, the purchaser receives clear title to the property in a judicial sale after confirmation by the court.
  8. There is no right of redemption in a judicial sale.

#### **5.10.8.2 (06-20-2014)** **Order of Sale**

1. The PALS or other specified IRS employee can provide input to Counsel and the DOJ prior to the submission of the Order of Sale, and when the Order of Sale is entered, review the Order of Sale to determine how to proceed with the sale.
2. Unlike a seized property sale, an Order of Sale can contain specific provisions to facilitate the sale of the property. In some instances, a foreclosure action was recommended by the revenue officer because an administrative sale was attempted and failed, or the administrative sale was never attempted because it would not have been successful.
3. The Order of Sale may contain specific provisions that require the taxpayer or debtor to take certain actions which can help facilitate a sale of difficult property. These actions may include instructions to:
  - Refrain from damaging the property or otherwise interfering with the sale
  - Refrain from filing deeds, NFTLs, or other documents that would hurt the sale
  - Vacate the property and turn over the keys to the property on a specific date which can be either before or after the sale
  - Specify personal property that has not been removed from the vacated property is deemed to be abandoned and forfeited.
4. The Order of Sale may contain a Notice of Sale. If it does not, the employee will need to prepare one (IRM 5.10.8.5, *Notice of Sale*.)
5. Contacts made on cases in litigation are not subject to third party reporting requirements.
6. In certain situations, such as when the taxpayer may try to interfere with the sale, the court can authorize the Service to conduct a private sale. This sale is different from a public sale because the employee will attempt to independently locate a buyer for the subject property.

#### **5.10.8.3 (06-20-2014)** **Pre-Sale Actions**

1. The sale is similar to a sale of seized property; however, there are some differences and other actions to take in order to conduct a judicial sale.
2. 28 USC section 2001 requires that the public sale be held at one of the following:
  - The courthouse of the county, parish, or city in which the greater part of the property is located, or
  - The premises of the property itself
3. The employee should provide Counsel with information as to the best location for the sale so the information can be included in the Order of Sale.
4. The employee will conduct a current title search or secure a current title search report, to include:
  - The Lis Pendens filing date
  - Judgment information related to the Order of Sale
  - Other recorded encumbrances, including those filed after the commencement date of the court action
  - Any delinquent real property taxes, whether recorded or not
  - Any other recorded encumbrance holders who will be affected by the sale of the property
  - The NFTL recording information or other recording information evidencing the government's interest in the property
  - Date the Abstract of Judgment was recorded. If it has not been recorded, contact the DOJ trial attorney to discuss whether it should be recorded in the county where the property is situated prior to sale.
5. The employee will contact holders of all senior encumbrances, as recognized by the judgment, and secure a current payoff amount from them.
6. The Order of Sale will normally list the parties that should receive a copy of the Notice of Sale. Mail the Notice of Sale to all persons holding encumbrances of record and to the taxpayer or debtor in the judgment. The Order of Sale may specify the required method of delivery, and in some cases it may require the preparation of a Judicial Sale Process Receipt and Return document. See Exhibit 5.10.8-1, *Judicial Sale Process Receipt and Return Document*.
7. In most cases the court order will contain language ordering all persons occupying the property to vacate the property permanently. This is commonly referred to as an eviction notice. The Service will not conduct the eviction, but will coordinate the eviction with the U.S. Marshals office. In most cases, the Service will pay the eviction expenses as part of the sale expenses with the U.S. Marshals office conducting the eviction. Expenses can include, but are not limited to, locksmith, electrician, plumber, and trash removal; however, there is normally no charge by the U.S. Marshals Service. The Order of Sale should indicate the above coordination concerning the eviction. Refer to IRM 5.10.8.8, *Evictions*, for additional information.
8. If the Order of Sale contains an eviction notice, the PALS should prepare a letter directing the taxpayer/occupants to vacate the property by the required date stated in the Order. The date is usually 30 days from the date the Order was entered. See Exhibit 5.10.8-2, *Eviction Letter Template*. Personal service of the letter is preferable, but it can be mailed by both regular and certified mail along with a copy of the Order.

#### **Note:**

When considering the delivery method exercise judgment before attempting personal service. Refer to IRM 5.1.3, *Safety, Security, and Control*, for guidance regarding personal contact with the taxpayer/occupant.

9. Contact the U.S. Marshal's office in the jurisdiction where the property is located to advise them of the Order containing the eviction notice. Provide a copy of the Order and the eviction letter so they can be prepared should an eviction be necessary.
10. If the taxpayer files bankruptcy before the sale, the employee should contact the appropriate Field Insolvency office immediately for guidance per IRM 5.9.1.3(6), *Cessation of Collection Actions*.

11. The Order of Sale may contain language regarding rent payment collection from tenants of the sale property. The PALS or other specified employee can provide input to counsel and DOJ regarding the rent payment collection method before the Order of Sale is issued. The facts and circumstances of each case are unique and ultimately the terms and conditions of the sale, including the rent payment collection method, are at the discretion of the court. After the Order of Sale is issued, the PALS may consult with the DOJ attorney or counsel regarding concerns with the Order of Sale, including the rent payment collection method.

#### **5.10.8.3.1 (06-20-2014)**

##### **NFTL Information**

1. The employee must ensure that the NFTLs are correct, and if applicable, were timely refiled by Collection. If the NFTLs are not current, the judgment priority date changes, which can change the equity in the property being sold.
2. If the NFTL has expired and the statutory lien has self-released, coordinate with Advisory to have Collection file a revocation of lien release, file a new NFTL, and determine whether the priority has changed.

##### **Note:**

Verification of priority dates is extremely important.

#### **5.10.8.4 (06-20-2014)**

##### **Private Sales**

1. A private sale may be preferred for difficult situations and properties. This type of sale is rare, but it can be ordered by the court, usually at the request of the DOJ.
2. If the court determines that the best interest of the parties are served through a private sale, the Service will attempt to locate a purchaser for the property.
3. The court will appoint three disinterested parties to appraise the property. The purchase price obtained by the employee may not be confirmed at less than two-thirds of the appraised value.
4. Before the court confirms a private sale, the employee must publish the terms of the private purchase agreement in a newspaper or newspapers of general circulation as directed by the court at least ten days before confirmation.
5. The private sale will not be confirmed if another potential purchaser tenders an offer, under the conditions of the court, which offers at least a ten percent increase over the published purchase price and original offer.

#### **5.10.8.5 (06-20-2014)**

##### **Notice of Sale**

1. The employee must publish the Notice of Sale (Exhibit 5.10.8-3) for public auctions per the legal requirements. Section 2002 of 28 USC contains the legal requirements for advertising a judicial sale. The Notice of Sale must be published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States where the realty is situated. The first notice must appear at least 28 days before the sale.
2. In addition, the Notice of Sale should be posted and advertised in order to market the property and attract prospective bidders. The Notice of Sale may be posted at:
  - The county courthouse
  - Other county offices
  - The local IRS office
  - Any other location that could attract prospective bidders
3. The Notice of Sale information should also be included on the internet. The employee should inform prospective bidders (and include on the internet advertisement) that it is a judicial sale and not a sale of seized property. The benefits of a judicial sale should be explained to the prospective purchasers.

#### **5.10.8.6 (06-20-2014)**

##### **Sale Day Actions**

1. A public auction judicial sale is similar to a seized property sale. The employee will make the opening statement regarding the type of sale, property being sold, and the conditions of the sale. This information should all be contained in the Notice of Sale. The sale of property still requires an assisting employee; however, the assistance need not be provided by a Service employee. If circumstances warrant, and with the concurrence of the PALS group manager, the assisting employee may be a law enforcement officer, including the U.S. Marshal or Deputy Marshal. The case history should clearly identify the assisting employee.
2. In addition, it is important for the employee to state that:
  - A. The sale is a result of an order of judicial foreclosure obtained by the DOJ, ordered in the district court. The order states that the federal tax lien be foreclosed upon and the property sold.
  - B. The taxpayer or debtor has no rights of redemption.
  - C. The successful purchaser is responsible for the eviction of any current tenants or residents of the sold property, if not provided for otherwise in the Order of Sale.
  - D. The court will confirm the sale. Confirmation of the sale will discharge the property from all liens, encumbrances, and titles over which the United States has priority or as otherwise provided by the Order of Sale.
  - E. The sale shall be free and clear of the taxpayer's or debtor's interests.
3. After making the opening statement, the employee will begin the public auction sale. At the conclusion of the bidding, the employee will make the following statement: "In accordance with the provisions of 28 USC sections 2001 and 2002, I hereby declare this property sold to the highest bidder for the sum of \$ \_\_\_\_\_."

#### **5.10.8.6.1 (06-20-2014)**

##### **Payment of Bid**

1. The court will determine:
  - How the purchaser tenders the deposit
  - Payment of the bid price
  - How the Service will deposit the remittance
2. Coordination among the employee specified to conduct the sale, IRS Area Counsel, the DOJ trial attorney, and the Assistant U.S. Attorney (if applicable) in the early planning stages will make this aspect of the sale go smoothly.



**Reminder:**

DOJ forwards the Order of Sale or proposed Order of Sale to the PALS group manager for assignment. The manager will review the case prior to assignment to ensure the Order of Sale requires sale proceeds be made payable to the Clerk of the Court with jurisdiction. All judicial sale proceeds should go through the court. If the Order of Sale does not provide for this the DOJ trial attorney can file a motion to amend the Order of Sale and must do so in order for the Service to conduct the sale.

**Note:**

Sometimes, for a variety of reasons, the judge may include a statement in the final judgment (Order of Sale) for the IRS to distribute the proceeds. When this happens follow procedures in IRM 5.10.8.9(5).

3. Upon declaring the property sold, the employee will issue a letter to the purchaser (Exhibit 5.10.8-4) to indicate:
  - The amount of the successful bid and name of the purchaser
  - The date and description of the property sold
  - The type of payment and amount received
  - If payment is deferred, the due date and amount due for the balance
  - The sale is subject to confirmation of the court before a deed can be issued
4. The employee must convert any cash remittances to conform to the court order and forward the payment as directed by the Order of Sale. If sale proceeds are to be mailed to the Clerk of Court, you must include two copies of the Order of Sale, PALS contact information, and a self addressed postage paid envelope. A request should be made to the Clerk of the Court to return a stamped copy of the Order of Sale and a receipt for the deposit of funds into the court's registry. When possible, these deposits should be made in person with the court. If it is necessary to mail a remittance, it must be sent via overnight traceable delivery.
5. Expenses incurred on the account should be charged to the taxpayer's account with the input of transaction code (TC) 360 for the amount of the applicable expense.

**Note:**

The request for input of TC 360 for expenses should be routed to the Field Office Resource Team (FORT) in Centralized Case Processing in the Philadelphia Campus. For more information regarding the FORT Unit, go to <http://mysbse.web.irs.gov/AboutSBSE/aboutccs/ccsprog/casepro/ccpcoll/fort/21056.aspx>.

**5.10.8.6.2 (06-20-2014)****Default on Bid**

1. If full payment is not received, or if the deferred payment is not received within the prescribed period, declare the sale null and void, and re-advertise and sell the property again unless the Order of Sale contains specific language dealing with default. If so, follow the provisions in the Order of Sale and any direction provided by the DOJ trial attorney.
2. The new purchaser at the new sale will receive the property or rights to property free and clear of any claim or right of the defaulting purchaser.
3. As provided for in the court order, the deposit on a deferred payment may be retained by the United States as damages. Consult with the DOJ trial attorney to determine what action is appropriate.
4. The amount deposited will be applied to the expenses of sale, including the costs of advertising for the new sale. Normally, the court order will provide that any excess be applied to the liability of the taxpayer whose liability is the subject of the lien foreclosure action, but the court order may in some cases provide that the excess be returned to the depositor.

**5.10.8.7 (06-20-2014)****Declaration**

1. Immediately after the sale, provide the trial attorney with a declaration.
2. In some jurisdictions the DOJ trial attorney may provide a template for the declaration, if not, it will include the following information:
  - How, when and where the Notice of Sale was published
  - The number of bidders present at the sale
  - The successful bid amount
  - A breakdown of the sale expenses (expenses should be charged to the account with a TC 360)
  - The name and address of the successful bidder
  - The original "publisher's affidavit"
  - Any other information required by the trial attorney specific to the case
3. Provide a copy of the declaration to the advisor in Advisory who maintains the judicial sale cases.

**5.10.8.8 (06-20-2014)****Evictions**

1. If it is determined that the taxpayer/occupants have not vacated the property in accordance with the Order of Sale, the PALS should either contact the DOJ trial attorney to coordinate the contact with the U.S. Marshal's office or contact the U.S. Marshal's office directly. Verification that the property has been vacated can be completed by the PALS if the property is located within his/her collection territory. If not, the PALS should contact the local law enforcement office to verify whether or not the property has been vacated.

**Note:**

If the property is not located within the PALS' collection territory, and local law enforcement is not cooperative, the PALS may consider contacting the local collection group manager for assistance in verifying whether or not the property has been vacated.

2. The PALS should coordinate with the U.S. Marshal's office for the date of eviction. The PALS will need to schedule a locksmith to secure the property after eviction.
3. Depending on the time of year, it may be necessary to take additional steps to preserve the property including, but not limited to:
  - Winterizing the property
  - Turning on or shutting off utilities

- Maintaining the lawn

**Note:**

The Order of Sale may state that maintaining the property up to the time of sale is the taxpayer's responsibility at their expense; however, depending on the individual facts of the case, the PALS may need to take the necessary steps to preserve the property.

4. The Order of Sale should state that personal property that has not been removed is deemed to be abandoned and forfeited. The PALS will dispose of the property in a reasonable and efficient manner. Proceeds from the sale of any abandoned or forfeited property will be applied to the tax debt.

**5.10.8.9 (06-20-2014)  
Closing Memorandum**

1. Prepare a memorandum titled, "Proceeds from the Judicial Sale of Real Property," and include the following information:

- Case number
- Name and address of the taxpayer or debtor
- Name and address of the purchaser
- Sale amount
- Previous deposit amount, if any
- Full payment remittance amount
- Breakdown of expenses of sale, including name, address, amount, and services rendered
- Application of the proceeds

**Note:**

If any senior encumbrances will be paid through the proceeds, include the name, address for payment, type of encumbrance, amount of payoff, and date through which the payoff amount is calculated.

2. Attach copies of the expense invoices, including copies of the publisher's affidavit and the information secured from the senior encumbrances representing the current payoff amounts.

3. Provide the DOJ trial attorney with the:

- Original memorandum
- Remittance
- Attachments

4. A copy of the memorandum should be retained in the sale file, and a copy should be sent to:

- U.S. Attorney
- Counsel
- Advisor in Advisory

5. The proceeds from judicial sales should not be sent to Submission Processing in Ogden. The judge issues an Order of Sale included in the final judgment. Therefore a memo and the remittance are to be sent to DOJ. DOJ (and sometimes the court) transmits the money to the IRS and this transmission may occur by Intra-Governmental Payment & Collections (IPAC). The PALS may contact the DOJ trial attorney to determine the DOJ contact that facilitates the IPAC transfer of funds to the IRS. The PALS may also contact the Submission Processing Account Contact for the Redesign Revenue Accounting Control System (RRACS) in Kansas City listed in IRM 3.17.15.11(1), *Points of Contact*, to determine the DOJ contact for the DOJ transfer to IRS process. Contact Advisory to address questions regarding the transfer of the sale proceeds. Elevated questions regarding the proceeds from judicial sales should be referred through advisory management and/or the Advisory subject matter experts.

**Note:**

Sometimes the judge may include a statement in the final judgment for the IRS to distribute the proceeds. The PALS should follow the same procedure of preparing the memo outlined in IRM 5.10.8.9(1) describing the distribution of proceeds and forward to the DOJ trial attorney. The DOJ trial attorney may work with the DOJ contact that facilitates the IPAC transfer of funds to the IRS to distribute the proceeds per the PALS instructions.

**5.10.8.10 (06-20-2014)  
Deed Issuance**

1. Upon confirmation of the sale by the Court, Advisory will prepare and issue a deed in accordance with the laws of the state in which the real property is situated. See Exhibit 5.10.8-5 for a sample of a deed issued for property sold under a judicial sale. The deed should be prepared within 30 days of confirmation, and sooner if possible.
2. The deed will be prepared in triplicate and will be forwarded through Area Counsel to the DOJ trial attorney for approval. After approval by the trial attorney, the Area Director or delegated authority will sign the deed. The delegated authority to sign these deeds is the same as the delegated authority to sign deeds for seized property (SB/SE Delegation Order 5.1). The deed will then be notarized and given to the purchaser of record. Ordinarily, the purchaser will record the deed, but in some limited circumstances the deed may be recorded before being given to the purchaser.

**5.10.8.11 (06-20-2014)  
Record of Judicial Sales**

1. A record of the administrative judicial sale file is maintained by Advisory and will contain copies of the:

- "Proceeds from the Judicial Sale of Real Property" memorandum (See IRM 5.10.8.9)
- Declaration memorandum (See IRM 5.10.8.7)
- Judicial Order of Sale
- Notice of Sale
- Deed

**Exhibit 5.10.8-1  
Judicial Sale Process Receipt and Return Document (Reference IRM 5.10.8.3(6))**

Date: \_\_\_\_\_ Type of Process: **Process Receipt and Return**  
Court Case No.  
Plaintiff  
Defendant  
Name(s) and  
Address(s) for  
Service  
Special Instructions or Other information that will assist with service: Alternate addresses or telephone numbers.

Signature of Attorney or other Originator requesting service on behalf of : plaintiff / defendant  
Telephone Number \_\_\_\_\_ Date \_\_\_\_\_

-----**Space Below for use of Property Appraisal and Liquidation Specialist only**-----

I hereby certify and return that I have personally served, have executed as shown in remarks, the process described on the individual, company, corporation, etc... shown at the address inserted above.

Name and Title of Individual Served  
\_a person of suitable age and discretion then residing in the defendant's usual place of abode.  
Date and Time of Service  
Signature of Property Appraisal and Liquidation Specialist  
Remarks

**Part 1 - Clerk of the Court**

Date: \_\_\_\_\_ Type of Process: **Process Receipt and Return**  
Court Case No.  
Plaintiff  
Defendant  
Name(s) and  
Address(s) for  
Service  
Special Instructions or Other information that will assist with service: Alternate addresses or telephone numbers.

Signature of Attorney or other Originator requesting service on behalf of : plaintiff / defendant  
Telephone Number \_\_\_\_\_ Date \_\_\_\_\_

-----**Space Below for use of Property Appraisal and Liquidation Specialist only**-----

I hereby certify and return that I have personally served, have executed as shown in remarks, the process described on the individual, company, corporation, etc... shown at the address inserted above.

Name and Title of Individual Served  
\_a person of suitable age and discretion then residing in the defendant's usual place of abode.  
Date and Time of Service  
Signature of Property Appraisal and Liquidation Specialist  
Remarks

**Part 2- PALS Record**

Date: \_\_\_\_\_ Type of Process: **Process Receipt and Return**  
Court Case No.  
Plaintiff  
Defendant  
Name(s) and  
Address(s) for  
Service  
Special Instructions or Other information that will assist with service: Alternate addresses or telephone numbers.

Signature of Attorney or other Originator requesting service on behalf of : plaintiff / defendant  
Telephone Number \_\_\_\_\_ Date \_\_\_\_\_

-----**Space Below for use of Property Appraisal and Liquidation Specialist only**-----

I hereby certify and return that I have personally served, have executed as shown in remarks, the process described on the individual, company, corporation, etc... shown at the address inserted above.

Name and Title of Individual Served  
\_a person of suitable age and discretion then residing in the defendant's usual place of abode.  
Date and Time of Service  
Signature of Property Appraisal and Liquidation Specialist  
Remarks

**Part 3- Department of Justice**

Date: \_\_\_\_\_ Type of Process: **Process Receipt and Return**  
Court Case No.  
Plaintiff  
Defendant  
Name(s) and  
Address(s) for  
Service  
Special Instructions or Other information that will assist with service: Alternate addresses or telephone numbers.

Signature of Attorney or other Originator requesting service on behalf of : plaintiff / defendant  
Telephone Number \_\_\_\_\_ Date \_\_\_\_\_

-----**Space Below for use of Property Appraisal and Liquidation Specialist only**-----

I hereby certify and return that I have personally served, have executed as shown in remarks, the process described on the individual, company, corporation, etc... shown at the address inserted above.

Name and Title of Individual Served  
\_a person of suitable age and discretion then residing in the defendant's usual place of abode.

Date and Time of Service  
Signature of Property Appraisal and Liquidation Specialist  
Remarks

**Part 4- Acknowledgment of Receipt**

**Exhibit 5.10.8-2  
Eviction Letter Template**

Date: (enter date)

(Taxpayer/Occupant's Name)  
(Taxpayer/Occupant's Address)

Dear: (Enter Taxpayer/Occupant's Name)

In the matter of the United States v. (enter name and case citation) an Order of Sale was entered on (enter date). The Order in part states all persons occupying the Properties shall leave and vacate the properties permanently within 30 days of receipt of this order each taking with them all personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the property.) A copy of the order is attached for your convenience.

This letter will serve as your notice that the IRS intends to take possession of the real estate as prescribed by the order. If you have not vacated the subject property [enter either (by Month Day, Year) or (within 30 days of the receipt of the Order of Sale)] the Internal Revenue Service will, in conjunction with the United States Marshal, at its earliest convenience take "all actions that are reasonably necessary to bring about ejection/eviction."

If you have any questions or need more information, please contact me at the address or the telephone number listed below.

Enter Property Appraisal and Liquidation Specialist name, Address, Phone Numbers, and ID #

Sincerely,

(Enter PALS name)  
Prop. app. & Liquidation Specialist  
Employee ID#: (enter ID#)

**Exhibit 5.10.8-3  
Notice of Sale (Reference IRM 5.10.8.5(1))**

Notice of Real Estate Auction

Under an Order of Judicial Sale entered in *United States v* \_\_\_\_\_, the United States will offer to sell at public auction property located in \_\_\_\_\_, \_\_\_\_\_ located at \_\_\_\_\_.

Enter Legal Description:

Date and Time of Auction:

Location of Auction:

Minimum Bid:

Terms and Conditions of Sale

The successful bidder shall be required to deposit at the time of the sale with the Internal Revenue Service, Property Appraisal and Liquidation Specialist, \$\_\_\_\_\_, with the deposit to be made by certified or cashier's check. Before being permitted to bid at the sale, bidders shall display to the Internal Revenue Service proof that they are able to comply with this requirement. No bids will be accepted from anyone who has not presented that proof.

The balance of the purchase price for the realty shall be paid to the Internal Revenue Service, Property Appraisal and Liquidation Specialist, within thirty (30) days after the bid is accepted by certified or cashier's check payable as instructed by the Internal Revenue Service, Property Appraisal and Liquidation Specialist. If the bidder fails to fulfill this requirement, the deposit shall be forfeited. The realty shall again be offered for sale, under the terms and conditions of the judgment and decree. The United States may bid as a creditor against its judgment without any tender of cash.

The government reserves the right to reject any and all bids and to withdraw the property from sale. The sale shall be free and clear of all transfers and/or conveyances after \_\_\_\_\_, \_\_\_\_\_. The sale shall be subject to building lines if established, all laws, ordinances, and governmental regulation (including building and zoning ordinances), affecting the premises, and easements and restrictions of record, if any.

The United States District Court entered a judgment that \_\_\_\_\_ owned the property at the time the federal tax lien arose. *United States v* \_\_\_\_\_, \_\_\_\_\_. The judgment is now final. The United States will sell the right, title, and interest of \_\_\_\_\_ in the subject property, and \_\_\_\_\_ will have no right to redeem the property after the judicial sale.

The property is offered for sale "where is" and "as is" and without recourse against the United States. The United States makes no guaranty or warranty of condition of the property, or its fitness for any purpose. The United States will not consider any claim for allowance or adjustment or for the rescission of the sale based on failure of the property to comply with any expressed or implied representation.

The Court will confirm the sale. Confirmation of the sale shall discharge the property from all liens, encumbrances, and titles over which the United States had priority, or as provided in the Order of Sale.

Important Information

This is not an advertisement of a sale of seized property. This is an information notice only regarding a sale being conducted by the Internal Revenue Service as a result of an Order of Sale to collect unpaid federal taxes obtained by the Department of Justice.

Additional information can be found at <http://www.treas.gov/auctions/irs> or call (xxx) xxx-xxxx. The information stated in other hyperlinks on this web page does not apply to this type of sale. It is important that any interested purchaser contact trial attorney \_\_\_\_\_ at (xxx) xxx-xxxx or Property Appraisal and Liquidation Specialist \_\_\_\_\_ at (xxx) xxx-xxxx for more information regarding this sale.

**Exhibit 5.10.8-4  
Letter to Purchaser (Reference IRM 5.10.8.6.1(3))**

Date:

Purchaser's Name  
Purchaser's Address

Dear:

Receipt for Deposit

On (enter date) the real property located at (enter physical address) was sold at public auction under an (amended) order for sale of real property located at (enter physical address), county of (enter county). Case No. (enter case number), *The United States v*. (enter all party names).

The above property was sold to you as the highest bidder for \$\_\_\_\_\_.

This is a receipt for the deposit (or full payment) of \$\_\_\_\_\_ for the purchase of this property as received by (enter PALS NAME), Property Appraisal and Liquidation Specialist for the Internal Revenue Service, Employee No. (enter number).

(If applicable) The balance of the purchase price, \$\_\_\_\_\_, must be received by (enter PALS NAME), Internal Revenue Service, (enter address and phone number), on or before (enter date of final payment) by (enter time). The payment must be made by (enter type of payment and who to make it out to as per the court order). If the purchaser fails to fulfill this requirement, the deposit shall be forfeited.

A deed will be issued upon final payment and sale confirmation by the court.

Purchaser's Signature:

Date:

Name of PALS

Date:

Witnessed:

Date:

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

**Exhibit 5.10.8-5  
Deed (Reference IRM 5.10.8.9(1))**

**DEED TO REAL PROPERTY**

THIS INDENTURE, made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and between (enter area director's name, Compliance Area Director, Area \_\_\_\_, authorized delegate of the Treasury, grantor; and (enter name of purchaser), (enter how title to be held), grantee.

**WITNESSETH**

WHEREAS, the United States District Court for the (enter District), in a Judgment entered on (enter date of judgment), in the case of the United States of America v (enter case name and number), ordered that the federal tax lien be foreclosed against the hereinafter described real property in order to pay delinquent Internal Revenue taxes assessed against (enter taxpayer's name).

AND WHEREAS, the said property was sold on (enter date of sale) to (enter name of purchaser) for the sum of \$(enter amount), the receipt of which is hereby acknowledged, does grant, bargain, and sell to (enter purchasers name), all right, title, and interest in the real property in (enter county and state where the property is located) described as:

(ENTER THE LEGAL DESCRIPTION OF THE PROPERTY)

The property commonly known as (enter the common street address and the county recorder's parcel number, if applicable).

The property shall be free and clear of all interests of the defendants, (enter the taxpayer(s)' name(s)). The property shall be free and clear of all transfers and/or conveyances after (date Notice of Federal Tax Lien filed).

IN WITNESS WHEREOF, the grantor has hereunto set his hand on the date first above written.

\_\_\_\_\_

Signature

Title:

\_\_\_\_\_

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 10. Seizure and Sale

#### Section 9. Property Appraisal and Liquidation Specialists (PALS) Valuation Standards and Guidelines

##### 5.10.9 Property Appraisal and Liquidation Specialists (PALS) Valuation Standards and Guidelines

- 5.10.9.1 [Definition and Purpose](#)
- 5.10.9.2 [Value Estimates](#)
- 5.10.9.3 [Equity determination examples](#)
- 5.10.9.4 [Information required for valuation](#)
- 5.10.9.5 [PALS Time and Case Code Reporting](#)
- 5.10.9.6 [Planning and Identifying](#)
- 5.10.9.7 [Intangible Property](#)
- 5.10.9.8 [Analysis](#)
- 5.10.9.9 [Value conclusions](#)
- 5.10.9.10 [Written reports](#)

##### Manual Transmittal

June 19, 2014

##### Purpose

(1) This transmits revised IRM 5.10.9, Property Appraisal and Liquidation Specialists (PALS) Valuation Standards and Guidelines

##### Material Changes

- (1) IRM 5.10.9.3(1), caution regarding county tax records added.
- (2) IRM 5.10.9.6, Planning and Identifying; amended to specifically identify the priority of judicial action sales.
- (3) IRM 5.10.9.9(1), clarification added to include limitations of property valuations in the valuation report when property information is limited.
- (4) Editorial changes in various sections.

##### Effect on Other Documents

This material supersedes IRM 5.10.9 dated October 12, 2010.

##### Audience

The intended audience is Property Appraisal and Liquidation Specialists and managers in SB/SE Collection.

##### Effective Date

(06-19-2014)

Rocco A. Steco  
Acting Director, Collection Policy

##### 5.10.9.1 (10-12-2010)

###### Definition and Purpose

1. This IRM establishes valuation standards to facilitate a consistent, professional-quality work product among all IRS valuation personnel. These standards represent the minimum requirements for all appraisal work performed by Property Appraisal and Liquidation Specialists (PALS). The results of PALS appraisals will be documented in the ICS case file history. This documentation should be concise yet complete.

##### 5.10.9.2 (06-19-2014)

###### Value Estimates

1. PALS generally complete appraisals to:
  - value assets for the purpose of liquidation after enforcement or redemption
  - assist the field in making an equity determination for potential enforcement and estimate expenses associated with such action, or
  - assist the Department of Justice in settlement discussions and other litigation issues, including judicial sales of property.

###### Note:

PALS value estimates are prepared in a restricted use format and are not qualified appraisals.

2. PALS are available to discuss the valuation of assets but a formal appraisal is not necessary on every case. If equity is already well established there is no need for a pre-seizure appraisal. For additional guidance regarding pre-seizure valuations see IRM 5.10.1.3.3(2), *Equity Determination*.
3. Requests for valuation work are made through the PALS group manager, who will review the appraisal request and open an appraisal case if pre-seizure valuation work is warranted. These requests can be made via memorandum, secure E-mail or telephonically. If the PALS manager determines a formal appraisal is not necessary, the manager will return the request to the originator with an explanation documented in the ICS history. If a formal valuation is warranted, the PALS should contact the originating RO and discuss at a minimum:

- What and where are the assets?
  - Is a NFTL properly recorded?
  - What is the purpose of the appraisal?
  - Has the RO viewed the assets? Are they still available for observation?
  - Are other appraisals, pictures or purchasing information available?
  - Is the taxpayer trying to sell the assets? If so, at what price?
  - If the taxpayer does not own the premises, has a copy of the lease been secured?
  - What is the level of cooperation from the taxpayer?
  - If the asset is real estate, what is its current use (e.g., commercial, residential)?
4. Generally the RO should have the results of public records checks, Form 433A/B, *Collection Information Statements*, for individuals and business respectively, any prior appraisals and updated balances due on senior encumbrances available for the discussion.

#### 5.10.9.3 (06-19-2014)

##### Equity determination examples

1. Example 1: A revenue officer contacts a PALS to request an appraisal of a single-family residential property and conveys the following information:

- Fair market value per county tax records is \$129,000.00
- The RO has viewed the property and noted some minor deferred maintenance but nothing significant
- The only known encumbrance is delinquent property tax in the amount of \$5,837.25

In this case, the equity is well established and no appraisal is necessary.

##### Caution:

County tax records should be checked to ensure they are not out-of-date or based on arbitrary determinations. Also, some records reflect only a set percentage of fair market value and indirectly adjust for the difference by setting a higher rate of tax.

2. Example 2: A revenue officer contacts a PALS to request an appraisal of a duplex for possible enforcement and provides the following information:

- Fair market value per county tax records is \$285,500.00
- The RO viewed the property and it is in good to average condition.
- Both sides of the duplex are currently occupied and copies of the lease agreements are available
- The senior encumbrance is a mortgage with a current balance of \$205,000.00
- There are no other known encumbrances

In this case the equity is not well established because reduced forced sale value, based on 60 % of fair market value (FMV) is less than the amount due on the senior encumbrance. The county valuation does not consider the revenue stream produced by this property and an appraisal is warranted to determine the value.

#### 5.10.9.4 (06-19-2014)

##### Information required for valuation

1. The PALS should secure the following information from the RO for appraisals of **personal property** as applicable:

- Inventory list
- Copy of UCCs (security interests filed per the Uniform Commercial Code and held by other persons)
- Copy of titles/DMV research
- Directions to location of property
- Information on access/availability including the contact name and telephone number
- Copy of lease or information on realty ownership
- Storage and Vendor Information
- Copies of prior appraisals
- Form 433A/B, *Collection Information Statements* and Tax Returns
- Draft Form 2434-B, *Notice of Encumbrances Against or Interests in Seized Property*
- Current balances on prior encumbrances
- Partnership agreements

2. The PALS should secure the following information from the RO for appraisals of **real property** as applicable:

- Copy of tax assessor's valuation
- Copy of deed/mortgages or Deeds of Trust
- Directions to property
- Information on access

- Current balance on priority encumbrances
- Copy of any prior appraisal
- Form 433A/B
- Draft Form 2434-B or list of encumbrances
- Lease information

#### 5.10.9.5 (10-12-2010)

##### PALS Time and Case Code Reporting

1. PALS should report their time on cases as follows:

Time/Case Code	Definition	Description
151	PALS Appraisals	Time spent on appraisals other than judicial appraisals which are reported as 157.
157	Judicial Appraisals	Time spent on appraisals requested by the Department of Justice in support of litigation
122	Oral Opinions	Time spent answering general questions from revenue officers on non-assigned cases concerning the value of property.

#### 5.10.9.6 (06-19-2014)

##### Planning and Identifying

1. Specialists will adequately plan and schedule valuation work based upon the priority of cases in their inventory.

2. Work priorities are:

- A. Seizure Sale Case—Expenses are accruing
- B. Other Sale Cases—Expenses are accruing
- C. Judicial Sale Cases—Expenses are accruing or not accruing
- D. Appraisal & logistical work on potential perishable goods cases
- E. Appraisal Work—Redemption Investigations
- F. Seizure Sale Case—Expenses are not accruing
- G. Appraisal and Logistics Work on Potential Seizure Cases
- H. Other Sale Cases—Expenses are not accruing

##### Note:

The importance of executing judicial sales with expediency, especially judicial sales resulting from IRS initiated actions, should be a factor for the PALS (and the PALS GM) to consider when determining work priority. The PALS should recognize the court, and in some cases the IRS, has spent valuable resources in bringing a case to judgment, therefore the PALS should take action on these cases as quickly as inventory constraints allow.

3. In developing an appraisal, the PALS will determine the scope of work necessary depending on the facts of the case. At a minimum the following will be identified:

- Subject of appraisal
- Interest to be valued
- Effective date of appraisal
- Purpose
- Statement of Value
- Information sources
- Estimate of expenses of seizure and sale
- Statement of estimated net proceeds if seizure is made

4. Descriptions of machinery and equipment should include:

- Manufacturer
- Model and Serial Numbers
- Age and Hours
- Condition

5. Descriptions of automobiles should include:

- Make
- Model
- Vehicle Identification Number (VIN)
- Condition
- Odometer Reading

6. Descriptions of real property should include:

- Legal and physical description, including address
- Description of improvements
- Current use



#### **5.10.9.7 (10-12-2010)** **Intangible Property**

1. Intangible property can assume many different forms, refer to IRM 5.17.3.5.3.2 for more information. To have economic value, intangible property should be:
  - specifically identified and described
  - subject to legal existence and protection
  - privately owned and legally transferable
  - capable of generating some measurable economic benefit
2. Examples of intangible property include:
  - Patents, inventions, formulas, processes, designs, patterns, know-how
  - Copyrights and literary, musical or artistic compositions
  - Trademarks, trade names, or brand names
  - Methods, programs, systems, procedures, surveys, studies, forecasts, customer lists, or technical data
  - Franchises, licenses, or contracts
  - Other similar items of value based on intellectual content

#### **5.10.9.8 (10-12-2010)** **Analysis**

1. In developing valuations, the PALS should obtain and analyze all relevant information readily available.
2. In valuing real estate, a specific valuation approach (e.g., comparable sales, income, or cost) should be used as appropriate. Good judgment should be used to select the approach that most accurately defines the value of the subject property.
3. When appraising personal property, the income and cost approaches rarely apply. The general market conditions near the valuation date should be considered as well as the market demand for the property. The appraiser should clearly identify and explain the data analyzed and conclusions reached. Specific data analyzed should be identified, such as:
  - Comparable sales of like property from the internet, newspapers, or periodicals
  - Information from an expert in the field
  - Discussion with a dealer of similar properties
4. In developing a valuation for a business, the PALS should obtain and analyze relevant information including:
  - The nature and history of the business
  - The general economic outlook and that of the specific industry
  - The book value of the stock or interest
  - The financial condition of the business
  - Any goodwill or other intangible value including a leasehold interest
  - The size of the stock holding or interest to be valued
  - The market price of stocks or interests of entities engaged in a similar line of business traded in an open market
  - Historical financial statements
  - Ownership control or interest in the asset to be sold
  - Value of tangible assets
5. The three generally accepted valuation methods for businesses are the asset-based, market, and income approaches. Consideration should be given to all three provided enough relevant data is available. Good judgment should be used to select the approach and methods that best indicate the value of the business interest.
6. The PALS will determine an appropriate discount and/or capitalization rate after considering all relevant factors, such as:
  - the nature of the business
  - the risk involved
  - the stability or irregularity of earnings
7. As appropriate, the PALS should consider the following factors in reaching a final conclusion of value:
  - Marketability attributable to the nature of the business, business ownership interest or security, the effect of relevant contractual and legal restrictions, and the condition of the markets
  - Ability of the appraised interest to control the operation, sale, or liquidation of the relevant business

#### **5.10.9.9 (06-19-2014)** **Value conclusions**

1. PALS may not have all information desired to reach a value conclusion. The PALS must make a proper determination based on the information available and indicate any limitations in the report.
2. PALS value estimates are not for the purpose of determining tax or for potential tax litigation cases. They are used to assist the field, Counsel, and Department of Justice with equity determinations and to arrive at forced sale value for liquidation. Taxpayers may appeal PALS seizure and sale value conclusions through administrative procedures.

3. Some types of business valuations may exceed the expertise of the specialist. After consultation with the PALS manager, a professional appraisal may be obtained from a qualified third party or a referral made to the appropriate function within the Internal Revenue Service.

#### **5.10.9.10 (10-12-2010)**

##### **Written reports**

1. Valuation reports should contain all information necessary to ensure a clear understanding of the analyses. In addition, the report should establish a framework for the logistical issues associated with seizure and sale. The report should address estimated expenses and a statement as to the anticipated net proceeds if applicable.
2. There is no standard report format that applies to all cases. The format will vary depending on the assignment.
3. Reports should be well written, communicate the results and identify the information relied upon in the valuation process. The report should effectively communicate methods and reasoning and identify supporting documentation in a concise manner.
4. PALS value estimates are prepared in a restricted use format and are not qualified appraisals.
5. Specialists will follow the short form appraisal guidelines and all appraisal reports will contain the following:
  - Name, address and TIN of taxpayer
  - Purpose of the appraisal
  - Description of property or interest to be valued
  - Effective date of appraisal
  - Approaches to value
  - Reconciliation and final value estimate
  - Logistics and anticipated expenses of seizure and sale
  - Expected net proceeds statement
  - Statement certifying the report was prepared without bias
  - Signature and date
  - Photos of subject property, if available
  - Any other relevant information such as aerial photographs, plat maps, applicable zoning ordinances, crop subsidy information, minerals or mineral production

#### **5.10.9.10.1 (10-12-2010)**

##### **Scope of Appraisal/Limiting Conditions**

1. PALS appraisals should contain the following statements, as applicable:
  - The appraisal is based on a limited, exterior drive by viewing of subject property
  - An assumption is being made that the property rights of the comparable sales used were fee simple, all transactions were in cash or cash equivalents and all transactions were arm's length unless otherwise stated
  - Information relied upon for this report was furnished by other individuals or gathered from previously existing records or documents. Unless otherwise indicated, such information is deemed reliable. No responsibility is assumed for errors or omissions, or for information not disclosed which might otherwise affect said value estimate.
  - No opinion as to the title of subject property is rendered. Data related to ownership and legal description was obtained from public records and is considered reliable. Title is assumed to be marketable.
  - No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether property is subject to surface entry for the exploration of such materials unless otherwise stated.
  - No responsibility is assumed for hidden or unapparent conditions of the property. No information was provided regarding the presence of any material or substance which would prove to be hazardous or toxic. The value estimate is predicated on an assumption that no such material or substances are present. Unless otherwise stated, this report assumes subject is in compliance with all federal, state and local environmental laws. Subject is also assumed to be in compliance with all zoning and land use regulations.
  - No opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers.
  - This report has been prepared in a restricted use format for internal use in determining value for the purpose of liquidation of the subject property pursuant to seizure or redemption. This is not a qualified appraisal.
  - This report is intended to be used in its entirety and not in part. Reproduction of this report requires written permission from the author.
  - This report is an internal use only document and the only intended user is the Internal Revenue Service and Department of Justice, if applicable.

#### **5.10.9.10.2 (10-12-2010)**

##### **Certification Statement**

1. Each written valuation report prepared by PALS should contain a signed statement that is similar in content to the following:

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.
- I have no bias with respect to the subject of this report or to the parties involved with this assignment.
- I have (or have not) made a personal inspection of the property that is the subject of this report.
- My compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in, or the use of this report.
- My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the applicable Internal Revenue Service Valuation Guidelines.

