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The Internal Revenue Service (IRS) has broad authority under the law to levy upon or seize the property of those who neglect or refuse, after notice and demand, to pay their taxes or to remit trust fund taxes. A review was conducted of IRS seizure cases closed in 1975. Findings/Conclusions: Seizure was used infrequently by IRS, and sale of seized property was even more infrequent, but seizure was an effective means of enforcing collection of delinquent taxes. IRS is required to establish a minimum price it will accept in the event that seized property is declared purchased by IRS in order to protect taxpayers' ownership interest. This is not always done because the minimum price cannot exceed taxpayers' liability and the minimum price is often set too low. Setting minimum prices at a level so low that it is very unlikely that property will have to be purchased for the Government bypasses the intent of the law. IRS often undervalued seized property. Third-party interests were not always protected because IRS did not advise landlords that they may be entitled to rent payments for storing seized property on their premises, and purchasers did not always understand that property might be encumbered by lienholders. Seizure action varied among IRS districts in: the type of taxpayers seized against, timeliness, taxpayers' awareness of appeal rights, factors considered in seizure decisions, and the extent to which planned sales were advertised. In many instances of seizures, alternative collection actions should have been explored. Recommendations: The IRS should: require its revenue officers to notify taxpayers, sufficiently in advance of the sale date, of what the minimum price is and of the possibility that the property could sell at that price; use professional appraisers

or other qualified people, or provide valuation training for valuing seized property; encourage the use of extra advertising to attract more bidders to tax sales; advise landlords that a fair rent will be paid to store seized property on their premises and prospective buyers of the possibility of encumbrances; establish criteria for timeframes for accomplishing steps in collection procedures and for more accurate property valuation; and increase the use of the separate accounting and penalty provisions of the Internal Revenue Code. The Congress should amend the law to permit IRS to return unsold property to taxpayers when IRS determines, prior to sale, that it is highly unlikely that the property could be resold for the minimum price. (HTW)

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REPORT BY THE

Comptroller General

OF THE UNITED STATES

IRS Seizure Of Taxpayer Property: Effective, But Not Uniformly Applied

In view of public criticism of how the Internal Revenue Service exercises its seizure authority, the Joint Committee on Taxation asked GAO to audit IRS procedures when seizing and disposing of property.

This report shows

- --how IRS exercises its authority,
- --the variance of use of this authority among IRS districts,
- --the frequency with which IRS makes property seizures,
- --the extent that taxpayer and third party rights are protected during the seizure and subsequent disposition of the property,
- --the extent to which the seizure is effective as a tax collection tool, and
- --possible ways to improve procedures relating to IRS' use of seizure powers.

GGD-78-42
JULY 31, 1978

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-137762

To the Chairman and Vice Chairman
Joint Committee on Taxation
Congress of the United States

This report, one of a series in response to your Committee's request, recognizes that generally, the Internal Revenue Service (IRS) is administering the seizure and sale process effectively. It does, however, recommend certain actions IRS can take to better administer the process. IRS generally agreed with the substance of our recommendations.

As arranged with your Committee, unless you publicly announce its contents earlier, we plan no further distribution until 30 days after the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE JOINT COMMITTEE ON TAXATION CONGRESS OF THE UNITED STATES

IRS SEIZURE OF TAXPAYER PROPERTY: EFFECTIVE, BUT NOT UNIFORMLY APPLIED

D I G E S T

In seizing and selling taxpayers' property to collect delinquent taxes, others have raised concerns that the Internal Revenue Service (IRS) uses seizure too readily and that taxpayers are treated differently by IRS districts.

GAO reviewed IRS seizure cases closed in 1975 and found that seizures of taxpayers' property occurred infrequently and were an effective means of enforcing the collection of delinquent taxes.

Of the taxpayers involved in seizure cases closed by IRS in 1975, about 73 percent were employers who failed to pay over income and employment taxes withheld from their employees' wages; 67 percent had been delinquent before, and 83 percent had a history of not filing their returns on time.

Administrative seizure procedures vary, and rights and interests of taxpayers and third parties are not always adequately protected.

SEIZURE USED INFREQUENTLY

In 1975 IRS closed about 18,000 seizure cases involving 17,000 taxpayers; this means of collecting taxes is used infrequently. In 1975, 7.8 million tax returns were filed which were not fully paid. IRS usually collects such unpaid taxes by (1) mailing notices, (2) telephoning, or (3) meeting with the taxpayers.

Sale of seized property is even more infrequent. Of the estimated 18,000 seizure cases closed in 1975, about 3,100

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GGD-78-42

(17.1 percent) resulted in the property's sale. Another 2,550 cases (14.2 percent involved seizures of money which IRS used to reduce taxpayers' delinquency. The remainder of the seized property (68.4 percent) was eventually returned to the taxpayers.

In 36 percent of the cases, the property was redeemed by taxpayers who fully paid their delinquent accounts. Another 32 percent of the cases involved property returned when taxpayers made agreements to pay their accounts (14 percent) or IRS decided, for other reasons, to return the property (18 percent). These statistics suggest that one-half of all seizures could have been avoided if taxpayers who eventually paid or made arrangements to pay had made such arrangements earlier. (See pp. 7 to 9.)

SEIZURE IS AN EFFECTIVE COLLECTION TOOL

From the Government's point of view, the effectiveness of seizure can be measured in several ways, such as by the

- --amount collected compared to what is owed,
- --amount of payments received after seizure,
- --number of delinquent accounts paid in full, and
- --amount collected compared to the cost spent to collect it.

For seizure cases closed in 1975, IRS either collected or had an agreement that taxpayers would pay an estimated $62 million (43 percent) of the $144 million owed. These seizure proceeds and later payments (both voluntary and involuntary) resulted in 56 percent of the delinquent accounts being paid off. In addition, if those taxpayers with payment agreements live up to their

agreements, 65 percent of the cases will attain full pay status. (See pp. 9 to 12.)

TAXPAYER AND THIRD-PARTY RIGHTS NOT ALWAYS PROTECTED

One area in which taxpayers' interests may not be adequately protected pertains to the legal requirement that IRS establish a minimum price it will accept in the event that seized property is declared purchased by IRS. The purpose of this requirement is to protect taxpayers' ownership interest in the property. This objective is not met in some cases because

--as a matter of policy, the minimum price cannot exceed taxpayers' tax liability, which may be substantially less than their interest in the property and

--the minimum price is often set at an amount so low that, in practice, IRS runs little risk of having to declare the property purchased for the Government. (See pp. 47 and 63.)

If the property is sufficiently valuable to support a minimum price equal to the tax liability, the likelihood of a taxpayer suffering financial harm is remote. Furthermore, more delinquent taxpayers can redeem the seized property by paying the amount owed or by entering into a payment agreement. GAO found that in all its sample cases taxpayers did in fact get their seized property back when the minimum price was set at the amount of the tax liability.

If taxpayers' equity in the property is less than the amount of their liability, or the value of the property is too low to support a minimum price equal to the tax liability, they may not be able to borrow sufficient funds to redeem the property.

IRS should require its revenue officers to notify taxpayers, sufficiently in advance of the sale date, of what the IRS-computed

minimum price is and of the possibility that the property could sell at that price. This should allow taxpayers time to make financial arrangements to settle their accounts.

Setting minimum prices at a level so low that it is very unlikely that property will have to be purchased for the Government bypasses the intent of the law. IRS should stop this practice. However, to avoid the requirement that the Government purchase all unsold property, the Congress should amend the law to permit IRS to return such property back to the taxpayers when IRS determines, prior to sale, that it is highly unlikely that the property could be resold for the minimum price. (See pp. 65, 68, and 76.)

IRS often undervalued seized property; as a result, the minimum price, based on a percent of taxpayers' ownership interest, was understated. Even though IRS has recently changed the minimum price rule from 50 percent of ownership interest to 80 percent of the revenue officer's estimate of forced sale value, accurate appraisals still are extremely important in regard to property accountability purposes and fairness to the taxpayers. To correct the problem, IRS should use professional appraisers or people in the same line of business, or give its revenue officers special valuation training. (See pp. 49 and 57.)

Taxpayers are hurt financially when IRS sells seized property at less than a fair market price. The depressed price either reduces the amount that can be applied against the tax debt or reduces the amount of excess proceeds returned to the taxpayers. Sale prices would be increased if sales were better advertised and if property were sold in small instead of large groupings. To this end, IRS should encourage the use of extra advertising to attract more bidders to tax sales and issue guidelines to assist revenue officers on how properly to group property for sale. (See pp. 61, 70, and 77.)

Third-party interests are not always protected because IRS does not advise landlords that they may be entitled to rent payments for storing seized property on their premises. Furthermore, many purchasers of property did not understand that they might be purchasing property which was partially encumbered by other lienholders. To better protect third-party interests, IRS should advise landlords that a fair rent will be paid to store-seized property on their premises, it should also advise prospective buyers that they are purchasing only a taxpayer's interest in the property being sold and may have to pay off any outstanding senior encumbrances.

USE OF SEIZURE VARIES AMONG IRS DISTRICTS

Taxpayers generally are treated fairly, though not always uniformly, because seizure action varies among IRS districts. Some districts seize more heavily against business taxpayers who fail to pay over taxes withheld from employees and against taxpayers with a history of delinquencies. (See pp. 7 and 43.)

Other differences among districts were also noted in

--the timeliness with which seizures are made (see p. 21),

--taxpayers' awareness of the right to appeal the revenue officer's seizure decision (see p. 30),

--factors revenue officers consider important in deciding what to seize (see p. 37), and

--the extent to which planned sales are advertised. (See p. 61.)

In some cases, uniformity can be promoted by establishing more precise criteria to be followed. To do this, IRS should

--establish timeframes for accomplishing the different steps in the enforced collection procedures and

--more accurately value property it seizes. (See pp. 33 and 57.)

OTHER CHANGES NEEDED

Seizing business property can cause businesses to fold; this affects taxpayers as well as their employees. In many of these instances, IRS should have explored alternative collection actions that may have kept the businesses open.

One alternative is that IRS more frequently use the separate accounting provision of section 7512 and the penalty provision of section 7215 of the Internal Revenue Code.

These provisions apply to income and employment taxes that employers collect from their employees and to certain employer taxes. Taxpayers against whom the separate accounting procedure is applied are allowed to remain in business despite the existence of a tax liability for taxes withheld in the past and not paid over. However, with respect to taxes collected by withholding after receipt of notice, taxpayers must deposit such taxes in a separate bank account within 2 banking days after collection. Failure to comply with the deposit requirements may result in a fine of not more than $5,000 and/or imprisonment for not more than 1 year. (See pp. 38 and 57.)

IRS generally agreed with all of GAO's recommendations and has taken, or plans to take, actions that will effectively address the problems GAO noted with the seizure and sales process that led to its recommendations for improvement. IRS pointed out that as a result of greater selectivity because of changes already made, the number of annual seizures decreased from about 18,000 to about 4,000 in 1977. (See app. I.)

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ABBREVIATIONS

GAO General Accounting Office

IRS Internal Revenue Service

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CHAPTER 1

INTRODUCTION

Tax collectors have extraordinary collection powers. Because of these powers, even their legitimate use can cause taxpayers and the general public to resent tax collectors. Actual or perceived abuses of these powers intensify these ill feelings.

Concerns about how the Internal Revenue Service (IRS) uses its seizure power are publicized from time to time. For example, a January 1977 Reader's Digest article called for more curbs on IRS powers. The article (1) cited examples where the actions of "overzealous" revenue officers caused financial harm and embarrassment to taxpayers and (2) pointed out that revenue officers were not liable for such actions. While citing some recent changes in the procedures, the article stated that much remains to be done to protect taxpayer rights and assure fairness in IRS collection procedures.

An April 1977 article in The Oklahoma Journal discussed the differences in seizure activities between IRS districts. The article asserted that Oklahoma taxpayers stand a better chance of having their property seized by IRS than do taxpayers in some other districts. This article, based on recent IRS statistics, stated that a wide discrepancy existed in the number and magnitude of attempts by IRS officials to collect delinquent accounts.

Other commentaries have appeared in the media from time to time relating to the seizure experiences of individual taxpayers. These commentaries generally depict IRS as an unrelenting, heartless bill collector, even when it exercises its legitimate seizure powers. These commentaries have criticized various aspects of seizures, such as whether liabilities were actually owed or questioned whether IRS was using these powers for taxpayer harassment rather than collecting taxes.

In view of public criticism of how IRS exercises its seizure authority, the Joint Committee on Taxation, U.S. Congress requested that we review IRS procedures in seizing and disposing of property. We looked at

--how IRS exercises its authority,

--the frequency with which IRS makes property seizures,

--whether the use of this authority varies significantly among IRS districts,

--the extent to which taxpayer and third-party rights are protected during seizure and subsequent disposition of property,

--the extent to which seizure is an effective tax collection tool, and

--possible ways to improve procedures relating to IRS use of seizure powers.

THE SEIZURE PROCESS

The Federal income tax system is a self-assessment system whereby taxpayers assess their own tax liability. Under the self-assessment system, taxpayers have a reasonable opportunity to comply voluntarily with the tax laws. Also, they are responsible for determining whether they are required to file a tax return and, if so, for determining the amount owed.

Income taxes are generally collected under the "pay-as-you-go" system--employers withhold money from employees and pay it to IRS (trust fund taxes), and/or the taxpayers themselves make periodic payments to IRS based on an estimate of their year-end tax liability. Businesses usually file several types of tax returns; these returns include those covering taxes withheld from employees, the employers' share of social security taxes, excise taxes collected, and, if applicable, corporate income taxes.

Most taxpayers file their returns and pay the taxes due on time. However, each year a relatively small number of taxpayers either do not file or do not pay their taxes. It is against these taxpayers that IRS must begin collection action.

The law (26 U.S.C. 6331) gives IRS broad authority to levy upon or seize the property of those who neglect or refuse, after notice and demand, to pay their taxes or to remit trust fund taxes. There are two types of levy--levy of property in the possession of third parties (for example, banks and employers) and levy of property in taxpayers' possession. This report focuses on IRS action against property in taxpayers' possession.

When making a seizure, the revenue officer must be accompanied by another IRS employee to assist and serve as a witness to the seizure proceedings. There is no legal requirement that taxpayers be present at the seizure and sale of their property. However, the statute requires that taxpayers be given written notice of the seizure and sale of their property. If taxpayers or their representatives are present at the seizure, the revenue officers must identify themselves, state their purpose, exhibit the levy, and state that the seizure is being made for unpaid taxes.

Revenue officers are required to take exclusive control over the seized property. The form of control depends on factors such as the type of property, its volume, and the difficulty of protecting it.

Besides taking control of the property, the revenue officer is directed to:

--Prepare a detailed record of the property seized, either at the time of seizure or under unusual circumstances, as soon as practical.

--Appraise the property to establish its inventory value.

--If applicable, arrange for the moving, storing, and protection of the property.

--Deliver copies of the related documents to the taxpayer.

IRS guidelines restrict the manner in which IRS revenue officers make seizures. Until a January 1977 Supreme Court decision, 1/ the guidelines gave revenue officers authority to enter public or private premises to seize property in the taxpayer's possession. However, the guidelines barred officers from entering a private residence without the consent of the taxpayer or another adult on the premises. Once lawful entry had been gained and if the taxpayer did not object, the revenue officer could seize property found in the residence. However, if the taxpayer objected, IRS guidelines directed that the revenue officer leave the residence immediately.

1/G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977).

These limitations did not apply to seizing property located on business premises nor property at, but outside residences, even though the taxpayers objected. Yet in no case did the guidelines permit revenue officers to use physical force against taxpayers to effect a seizure or to seize property from taxpayers' person without their consent.

At the time covered by our study (seizure cases closed in 1975), IRS revenue officers entered taxpayer property without search warrants or writs of entry because IRS did not believe such legal documents were required. Because of this belief, revenue officers made seizures in both public and private portions of business premises, outside residences, and public places. Revenue officers sometimes entered private premises other than residences to search for and seize property without the knowledge or consent of taxpayers.

In January 1977, the Supreme Court held that the search warrant requirement applied to searches conducted to seize the property of delinquent taxpayers. As a result of this decision, IRS has revised its procedures for seizing property in private premises by requiring its revenue officers to obtain either (1) a taxpayer-signed statement that waives taxpayers' fourth amendment rights or (2) a court order permitting entry.

REVIEW APPROACH

We reviewed cases closed in 1975 where IRS had seized property held by taxpayers. Our review did not include seizures of taxpayer property held by third parties, such as employers and banks, except to see whether IRS attempted these seizures before seizing taxpayer property.

We randomly reviewed 399 seizure cases so we could project our sample results to all seizure cases closed in 1975. Neither we nor IRS know exactly how many seizure cases were closed in 1975 because IRS does not keep such data. We estimate that nationally, there were between 18,000 and 19,000 such cases.

The sampling methodology used allowed us to make statistically valid statements about (1) taxpayers and seizure cases nationally and (2) observed differences in the seizure process, including those among the six IRS districts where we did our work. The sampling plan and methodology are in appendix II.

For the sampled cases, we reviewed IRS seizure case files; interviewed revenue officers responsible for the seizures; interviewed taxpayers who could be located and were willing to talk to us; and interviewed certain affected third parties, such as landlords of taxpayers who stored seized property for IRS, and those who purchased the seized property. We also interviewed State and local government officials and officials of lending institutions to find out how they collect delinquent accounts and dispose of seized or repossessed property. In addition, we reviewed pertinent IRS manuals, policies, regulations, procedures, and practices applicable to the seizure process. Also, we reviewed recent IRS internal audit reports on seizures and the report to the Administrative Conference of the United States, 1/ as it related to collection activities, especially seizures. Our review did not include IRS seizure activities after the 1977 Supreme Court Decision.

We did our work at IRS' national office in Washington, D.C.; and at district offices located at Atlanta, Georgia; Nashville, Tennessee; Reno, Nevada; Buffalo, New York; Cincinnati, Ohio; and Oklahoma City, Oklahoma.

1/The Administrative Conference of the United States, a Federal agency, commissioned a study of the operations of IRS by a team of tax experts. In October 1975, the study group issued a report on the administrative procedures of IRS.

CHAPTER 2

WHO IS SUBJECTED TO SEIZURE, WHEN IT IS USED, AND HOW EFFECTIVE IT IS

Most taxpayers file their returns and pay their taxes on time. For those relatively few taxpayers who do not, IRS goes through several time-consuming, but usually effective, processes to force the taxpayers to pay.

TAXPAYING CHARACTERISTICS OF THOSE SUBJECTED TO SEIZURES

What type of taxpayers were subjected to seizure actions? About 73 percent of the seizure cases closed in 1975 involved employers who owed taxes which they withheld from employees' wages but did not turn over to IRS. 1/ The remaining seizures involved income tax only (25 percent) or miscellaneous taxes, such as excise and estate (2 percent).

	Districts						
	1	2	3	4	5	6	All
Percent of seizures involving:							
Trust funds plus other taxes	66	85	60	72	82	78	73
Income tax	28	15	37	27	18	16	25
Other	6	0	3	1	0	6	2

Although most seizures involved employers, usually the taxpayers were individuals rather than corporations or partnerships. Corporate taxpayers involved in seizures ranged from a low of 19 percent in one district to a high of 42 percent in another. Seizures against individual taxpayers--many of whom were employers--ranged from 52 percent to 76 percent of all seizures.

1/IRS efforts to identify employers who do not pay over taxes withheld from employees' wages is the subject of another of our reports to the Joint Committee on Taxation: "IRS Can Improve Its Programs To Collect Taxes Withheld By Employers," GGD-78-14, Feb. 21, 1978.

	Districts						
	1	2	3	4	5	6	All
Percent of seizure by type of taxpayer:							
Individual	76	52	65	72	53	54	63
Corporation	19	37	21	28	42	27	29
Partnership	3	11	11	0	3	11	6
Other or combination of above	2	0	3	0	2	8	2

Regardless of whether employment or income taxes were involved, about 67 percent of the taxpayers had been delinquent before the delinquency which resulted in seizure. As shown below, an even higher percentage had a history of untimely filing of their tax returns.

No. of returns not filed timely	Percent of seizures
0	15
1-5	45
6-10	26
11 or more	12
Unknown	2
Total	100

The number of untimely filed returns should not be equated with years, since many of the returns were employment tax returns which must be filed quarterly.

In most seizure cases, taxpayers had more than one delinquent account, ranging from 2 to 29. Each account represented one filing period.

Number of delinquent accounts	Percent of seizures
1	26
2	25
3 or 4	27
5 to 10	19
11 or more	3
Total	100

Generally, taxpayers had a sizeable outstanding tax liability when IRS seized their property; it averaged $8,783.

Amount due	Percent of seizures
Less than $1,000	15
$1,000 to $4,999	42
$5,000 to $9,999	24
$10,000 to $19,999	10
$20,000 and up	9
Total	100

About 26 percent of the delinquent account liability for which seizures were taken was for such items as interest and penalties.

Amount of nontax items	Percent of seizures
$ 1 to 99	9
100 to 499	28
500 to 999	19
1,000 to 1,999	20
2,000 to 4,999	15
5,000 to 9,999	7
10,000 to 19,999	1
20,000 to and up	1
Total	100

The tax delinquency background of taxpayers varied considerably among districts. About 84 percent of the seizures in one district involved taxpayers with a history of prior delinquencies. This percentage was high compared to 50 percent of seizures in another district.

	Districts						
	1	2	3	4	5	6	All
Percent of taxpayers with previous delinquencies	58	76	55	75	84	50	65

In 51 percent of the cases involving trust fund taxes (37 percent of all cases), taxpayers continued to deduct moneys from their employees' wages after the revenue officers started their collection efforts or contacted the

taxpayers. In 95 percent of these cases, the taxpayers did not timely remit these moneys either. Thus, the amount of the liability continued to pyramid.

Clearly, most taxpayers subject to seizure action by IRS have a history of being delinquent.

SEIZURE IS USED INFREQUENTLY

IRS seized property in the possession of about 17,000 taxpayers on about 18,000 occasions in 1975. Such seizure action is relatively infrequent; during the same year, 7.8 million not-fully-paid tax returns were filed, and 2.5 million accounts were designated by IRS as delinquent. The vast majority of these unpaid accounts are collected by such means as mailing notices, meeting with the taxpayers, and seizing assets possessed by third parties.

Taxpayer-held property is seized infrequently; sale of seized property is even more infrequent. Of the estimated 18,000 seizures made, only 3,132 (17 percent) eventually resulted in property being sold, and 2,556 (14 percent) involved seizures of money which was applied directly to the taxpayers' accounts.

The rest of the property seized (68 percent) was eventually returned to the taxpayers. In 36 percent of the cases, the property was redeemed by taxpayers who paid their delinquent accounts in full. The other 32 percent of the cases involved property which was returned when taxpayers agreed to pay their accounts (14 percent) or IRS decided for other reasons to return the property (18 percent). These figures suggest that half of all seizures could have been avoided if those who paid or arranged to pay had made and complied with these arrangements before seizure.

SEIZURE IS AN EFFECTIVE COLLECTION TOOL

From the Government's point of view, the effectiveness of seizures can be measured in several ways. These include the

--amount collected compared to what was owed,

--amount of payments received after seizure,

--number of delinquent accounts which were paid in full, and

--amount collected compared to the cost spent to collect it.

IRS seizures were effective by all but the last of these measurements.

For seizure cases closed in 1975, IRS either collected or persuaded taxpayers to agree to pay an estimated $62 million, or 43 percent of the $144 million owed. This amount included $46.6 million, which represented payments made by taxpayers to redeem their property, sales proceeds, and cash seized; $10.3 million, which taxpayers agreed to pay if property were released to them; and $4.7 million in voluntary payments received after the seizure action. These collections resulted in the accounts being paid off in 56 percent of the delinquent cases. In addition, if those taxpayers with a payment agreement live up to that agreement, the accounts will be paid off in 65 percent of the cases.

The following table shows national projections of these measures by type of dispositions.

Type of disposition	Amount owed	Seizure proceeds	Agreements to pay, and voluntary payments	Percent of accounts paid in full at time of review
	-----	-----(millions)	--------	
Redeemed	$ 24.2	$23.6	$ 0.1	36
Released with payment agreement	21.4	11.1	10.3	5
Released without payment agreement	34.8	1.0	1.5	5
Cash register content seizures	6.9	.4	1.9	8
Sales to third parties or Government	56.2	10.5	1.2	2
Total	$143.5	$46.6	$15.0	a/56

a/Includes accounts fully paid as a result of other forced collections.

Although seizures are effective in collecting tax liabilities owed, they are not always cost effective when the cost of seizure is compared to the proceeds of seizure. This problem was noted in a December 1972 IRS internal audit report. That report said that in 14.3 percent of the cases tested, the cost of processing the seizure exceeded the proceeds. The principal causes cited for the losses were (1) insufficient consideration of costs, such as for advertising, salary, travel, and overhead, in relation to the estimated sales proceeds and (2) the absence of preseizure reviews by supervisors. The report recommended that preseizure reports for review by supervisors be required, which set forth the reasons why seizure is required, the estimated costs of the seizure, and the estimated sales proceeds likely to be realized.

In presenting its findings, the Internal Audit Division developed data showing, by the amount of sales revenue, the percent of sales expected to cost more than revenue realized. Using this data, we estimate that 12 percent of the sales cases closed in 1975 experienced losses. This estimate is probably understated because of cost increases between 1972 and 1975.

Details of our estimate of total sales resulting in losses using IRS Internal Audit Division experience follow.

Internal Audit Division estimates		Projection to 1975 sales cases	
Net sales revenue	Loss cases as percent of total	Estimated total	Estimated number of sales with loss
0 to 99	89.7	265	238
100 to 199	21.7	194	42
200 to 299	18.5	140	26
300 to 399	12.5	97	12
400 to 499	.0	213	-
500 to 999	5.4	653	35
1000 to 4999	1.0	993	10
5000 and over	.0	483	-
Total		3,038	363

The Collection Division did not implement the Internal Audit recommendation. Its position was that compliance and enforcement were the prime factors to be considered and that the decision to seize should not depend on the cost/benefit ratio of the action. The rationale for this belief

was that such seizures prevented the "pyramiding" of tax liabilities; in other words, it might be necessary to close a business down to keep it from increasing its trust fund liabilities, regardless of the cost of the seizure and sale action.

We agree with the thrust of Internal Audit's position; we also question the benefit of seizures which result in a net loss to the Government. Preparation of preseizure cost estimates, as recommended by internal audit, would provide a basis for evaluating the financial soundness of the seizures. For financially unsound cases, IRS should document why it proceeded with the seizure.

CONCLUSIONS

Seizure is a powerful tool which is used as a last resort after other collection efforts have failed. It is used infrequently and generally against taxpayers with a history of tax delinquency and/or employers who withheld taxes from employees' wages but did not turn them over to the Government.

This seizure authority was not administered uniformly either within IRS districts or among districts. Probably this differing treatment causes concern over whether some taxpayers are dealt with more harshly than others. Nonuniformity, however, is not to be equated with unfairness. As discussed in later chapters, we found that as a general rule, taxpayers were treated fairly.

We believe these variances exist principally because of the wide discretionary authority given to revenue officers in deciding when and what to seize. The important variations in property seized, timeliness of seizure actions, and taxpayer awareness of appeal rights are also discussed in the following chapters.

Overall, seizure is effective in that delinquent taxes are collected, usually without sale, and most accounts are eventually paid in full. In fact, seizure is the catalyst that gets taxpayers' attention and results in full payment of delinquent accounts. In more than one-third of the cases, taxpayers paid their accounts in full almost immediately after seizure to avoid sale of their property. They apparently had money available to them but would not use it to pay their taxes until forced to do so.

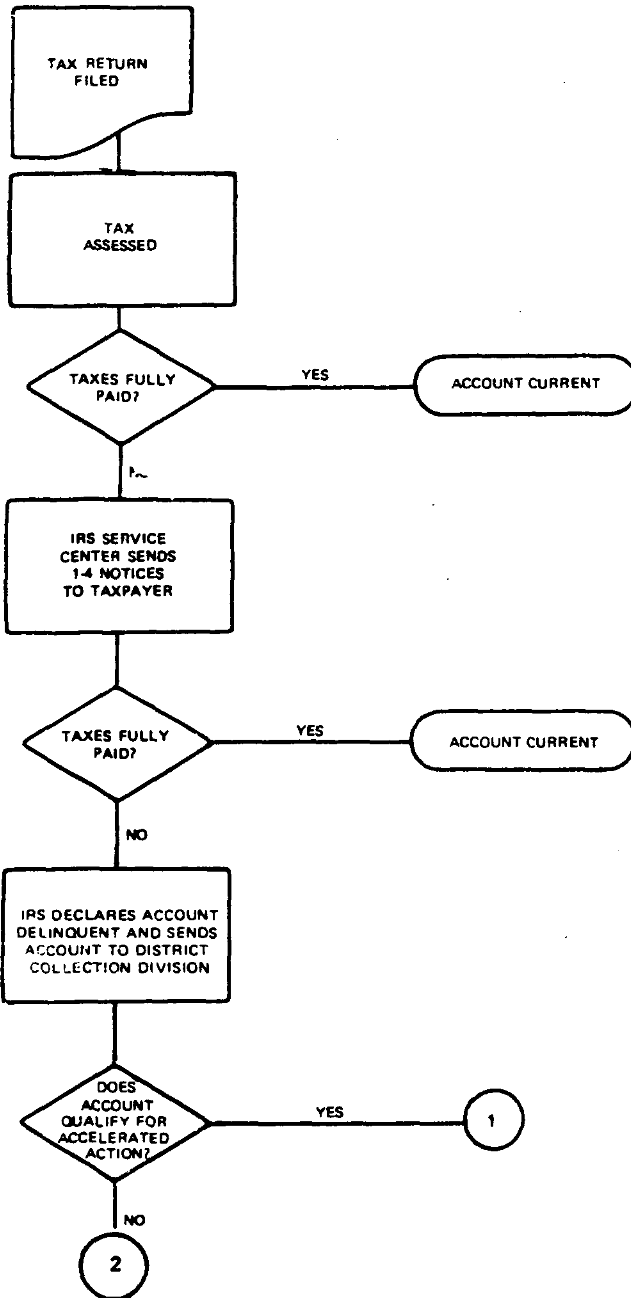
Despite the effectiveness and fairness of IRS seizure, we found specific problems in the seizure process which should be corrected. These are discussed in detail in the following chapters along with our specific recommendations for improvement.

The following chart gives an overview of the tax return filing, collection, and seizure processes and notes where appropriate processes are discussed in this report.

FLOW CHART OF

IRS TAX RETURN FILING AND COLLECTION PROCESS

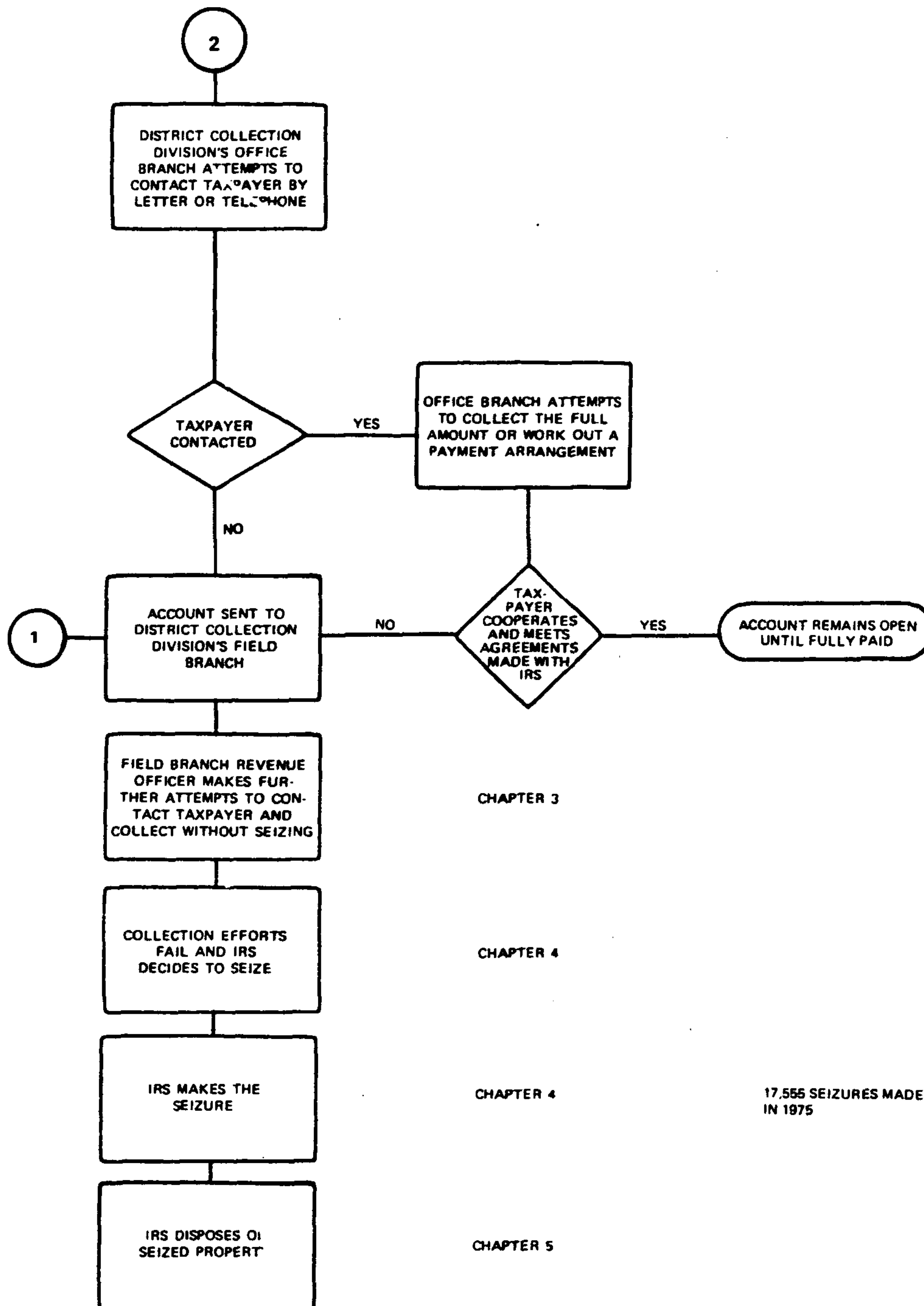
RELATED TO SEIZURE OF TAXPAYER ASSETS



125 MILLION RETURNS FILED IN 1975

7.8 MILLION FIRST NOTICES SENT IN 1975

2.5 MILLION DELINQUENT ACCOUNTS SENT TO DISTRICTS IN 1976


2
DISTRICT COLLECTION DIVISION'S OFFICE BRANCH ATTEMPTS TO CONTACT TAXPAYER BY LETTER OR TELEPHONE
TAXPAYER CONTACTED
YES
OFFICE BRANCH ATTEMPTS TO COLLECT THE FULL AMOUNT OR WORK OUT A PAYMENT ARRANGEMENT
NO
1
ACCOUNT SENT TO DISTRICT COLLECTION DIVISION'S FIELD BRANCH
NO
TAXPAYER COOPERATES AND MEETS AGREEMENTS MADE WITH IRS
YES
ACCOUNT REMAINS OPEN UNTIL FULLY PAID
FIELD BRANCH REVENUE OFFICER MAKES FURTHER ATTEMPTS TO CONTACT TAXPAYER AND COLLECT WITHOUT SEIZING
CHAPTER 3
COLLECTION EFFORTS FAIL AND IRS DECIDES TO SEIZE
CHAPTER 4
IRS MAKES THE SEIZURE
CHAPTER 4
17,555 SEIZURES MADE IN 1975
IRS DISPOSES OF SEIZED PROPERTY
CHAPTER 5

CHAPTER 3

COLLECTION EFFORTS ARE MADE

BEFORE DECIDING TO SEIZE

Generally, seizing taxpayer property is a last resort for collecting delinquent taxes. Before taking this action, IRS makes various attempts to collect overdue taxes and generally informs taxpayers of the possibility of seizure action. The results of our rev[illegible] of IRS seizures presented in this chapter answer the following questions:

--Were taxpayers given an adequate opportunity to voluntarily pay before seizure took place?

--Were alternative methods of payment explored?

--Were taxpayers aware that IRS would seize their property?

--Did taxpayers have an opportunity to appeal the proposed seizure action?

--Are the Government's and taxpayers' interests protected while IRS attempts to collect?

TAXPAYERS ARE GIVEN MORE THAN AN ADEQUATE OPPORTUNITY TO PAY VOLUNTARILY BEFORE PROPERTY IS SEIZED

Before seizing property, IRS gives most delinquent taxpayers months and sometimes over a year to voluntarily pay taxes due. This time is spent mailing notices and/or establishing contact with taxpayers. Once contact is made, the IRS revenue officer may work extensively with the taxpayer in an attempt to arrange payment of the delinquent account.

In over one-half of the seizure cases, taxpayers had more than 200 days between the tax assessment and seizure date to pay delinquent accounts. On the average, seizure did not occur until 315 days after assessment. Considering the taxpayers' noncompliance histories, IRS not only gave them more than ample time to voluntarily pay, but did not make seizures soon enough in some cases.

Opportunity to pay before account is assigned to a revenue officer

IRS procedures and processes provide taxpayers ample opportunity to voluntarily pay before IRS turns the account over to a revenue officer for collection. IRS cannot begin collection action until the tax has been assessed. It assesses the tax by establishing an account against the taxpayer. Within 60 days after assessing the tax, IRS is required by law to notify taxpayers of the amount of taxes due, including any interest and penalties, and to demand payment. This notification process is usually done by IRS service centers, using computer-generated notices to the taxpayers.

The service centers may mail up to three notices on business accounts and up to four notices on individual accounts over a period of 77 days and 98 days, respectively. But only one notice is sent to trust fund accounts that meet certain tolerance criteria.

The notice process can be shortened or terminated if the

--service center notice is returned as undeliverable;

--taxpayer gives IRS a bad check;

--collection of the tax is in jeopardy for such reasons as the taxpayer is or appears to be leaving the country or removing his assets from IRS reach;

--taxpayer has another account already being worked by district collection personnel;

--assessed amount meets IRS-established tolerances; or

--taxpayer fully pays the taxes due.

Service centers mailed 7.8 million first notices in 1975. If the accounts are still overdue after the notice process is completed, IRS classifies them as delinquent, and they are sent to the district offices for more attention. IRS designated about 2.5 million accounts as delinquent in 1975.

The district offices generally allowed taxpayers more time to voluntarily pay before seizure was considered. These accounts can be pursued for up to 60 days by office

branch personnel before they are transferred to the field branch. Except for jeopardy cases where the taxes are in jeopardy of not being paid, field branch revenue officers make further attempts to contact taxpayers. Upon making contact, they determine the taxpayers' ability to pay all or part of the delinquent account.

Opportunity to pay after account is assigned to a revenue officer

IRS guidelines provide that revenue officers should contact taxpayers and inform them of the consequences of not paying the accounts. The guidelines, however, do not specify how long or how many times revenue officers should attempt to make contact. IRS records show that in 94 percent of the cases, revenue officers attempted to contact taxpayers; in 3 percent, no attempt was made; and in the remaining 3 percent, the records did not indicate whether or not an attempt was made.

These numerous attempts to contact taxpayers further delayed the collection effort and provided taxpayers more time to pay the delinquent account. On the average, this delay amounted to 17 days per case, ranging from no delay when contact was made on the first attempt to collect taxes to 262 days.

Days delayed trying to contact taxpayer	Percent
0	50
1 to 25	25
26 to 50	8
51 to 70	3
71 to 100	2
101 to 200	2
201 to 300	2
Unknown	8
Total	100

Revenue officers eventually contacted taxpayers in 87 percent of the cases. As shown by the following table, the method of contact varied. (Some taxpayers were contacted by more than one method.)

Method used	Percent of cases
Personal visit	85
Telephone	68
Notice left at taxpayer's premises	29
Notice left with taxpayer's spouse	17
Letter	16

We estimate that revenue officers made an average of three attempts to first contact taxpayers; contact was made on the first attempt 42 percent of the time. More than one attempt was made in 52 percent of the cases, and either no contact was attempted or the number of attempts is unknown in the remaining 6 percent.

After making the first contact, revenue officers usually contact taxpayers several times before seizure. Overall, revenue officers made an average of 5 contacts per case. These contacts, which ranged from 1 to 45, were made to (1) work out payment agreements, (2) advise taxpayers of the consequences of nonpayment, and (3) determine taxpayers' ability to pay and/or identify taxpayer assets which could be seized.

We examined case records to determine if the number of contacts made with taxpayers had any relationship to the (1) taxpayers' having been previously delinquent; (2) district making the seizure; or (3) type of tax liability, such as trust fund or individual taxes. No relationship could be established between the number of contacts and the district involved or the type of tax owed. However, taxpayers with previous delinquencies were more likely to have been contacted six or more times than were those without past delinquencies. We cannot explain why revenue officers were making more contacts with previously delinquent taxpayers. But, in any case, we question whether that many contacts are needed before initiating seizure action.

Considering that taxpayers have been given time to voluntarily pay before revenue officers get the accounts, officers should, after no more than three contacts, be able to decide whether or not to seize. The three contacts are needed to locate taxpayers and request full payment, obtain a financial statement, and recommend a plan for paying the delinquent tax. Unnecessarily increasing the number of contacts increases Government costs.

DELAYS IN SEIZING PROPERTY NOT ALWAYS JUSTIFIED

Although extended delays give taxpayers additional time to pay, delays can also jeopardize the Government's ability to collect the taxes owed and allow additional tax delinquencies to accumulate. Unwarranted delays can also undermine IRS credibility with taxpayers. Repeated warnings that property may be seized could not be taken as seriously as a single warning followed by a seizure.

The following examples describe the circumstances of some cases that experienced protracted delays.

Case 1

Seizure was made 11 months after the earliest date of assessment. Three revenue officers contacted the taxpayer 20 times over an 8-month period. Seizure did not occur until 4 months after the first revenue officer and his group manager agreed that a seizure should be made.

The third revenue officer said he would have seized sooner if he had the case to do over. The delay was caused by the revenue officers' continual acceptance of the taxpayer's verbal assurances that tax payment was imminent.

Case 2

Seizure occurred about 7 months after the earliest date of assessment. Since the revenue officer had attempted to contact the taxpayer only once in 3 months, the group manager reviewing the case noted in the file that there had been "ineffective contact." The revenue officer's next recommended action, 4 months later, was seizure. IRS records indicate that the revenue officer contacted the taxpayer only once before seizure. However, before the assessment date of this levy and seizure, IRS had been in contact with this taxpayer concerning earlier delinquent accounts.

Case 3

Seizure was made about 15 months after the earliest date of assessment. The first revenue officer did not receive the account until 5 months after assessment. During the remaining 10 months, there were two 2-month and two 1-month intervals in which no attempts were made to contact the taxpayer. Some of this delay occurred because three different revenue officers handled the case.

Why these delays occur

Several factors contribute to delays in making seizures. One factor is that revenue officers do not receive formal guidance indicating how long they should work on a case before beginning seizure action. Each revenue officer is permitted to use his or her own judgment on how best to handle a case, although after August 1975 supervisory approval was required before actual seizure was made.

Delays can also occur when cases are worked by more than one revenue officer. Also, in some cases, revenue officers continually accepted taxpayers' verbal assurances that payment was imminent. In other cases, revenue officers failed to timely pursue or follow up on assigned cases.

Prompt seizure action not always taken

We examined the period between assessment and seizure as two distinct time intervals: (1) from assessment to the revenue officer's first attempt to make contact with the taxpayer and (2) from that first attempt at contact to the actual seizure. This distinction is based on the fact that during the earlier period, none of the IRS personnel assigned to a case are empowered to seize taxpayer-held property. During the later period, however, revenue officers may seize at any time since all legal notices and warning requirements have been met. Once the revenue officer begins to work on an account, the timing of the seizure largely depends on how the officer interprets and applies the provisions of the tax code and IRS policies and regulations, including the written and unwritten policies of the district and the supervisor. Our analysis was directed at establishing the effect certain factors had on these two time periods.

As shown by the following table, the time required to move cases through each phase of the process from assessment to seizure varied considerably.

Elapsed number of days	Assessment to first attempt to contact	First attempt to contact to seizure	Assessment to seizure
	----------------(percent)----------------		
Before assessment	5	-	-
Same day	3	2	a/0
1 to 25	19	15	7
26 to 50	12	11	6
51 to 100	15	19	13
101 to 200	19	18	22
201 to 300	8	12	15
Over 300	11	15	37
Unknown due to inadequate records	8	8	b/ 0
Total	100	100	100

a/ Less than 1/2 percent.

b/ The percent unknown is zero because the records showed the date of assessment and seizure, but in 8 percent of the cases, the records did not show the date of first attempt to contact.

Timeliness of seizures varies among districts

A statistical analysis of when seizure took place showed that the time between assessment of delinquent taxes and the seizure varied significantly among districts. As shown in the following table, two districts (3 and 4) took over 300 days to seize property in almost one-half of their cases. The other districts took that much time in only 31 percent or less of their cases. The following chart shows the amount of time in different districts from assessment to seizure.

Time interval	District 1	2	3	4	5	6	All
	----------(percent)----------						
0 to 100 days	35	34	16	15	35	36	28
101 to 300 days	34	40	35	37	40	42	38
Over 300 days	31	26	49	48	25	22	34

Further analysis showed that significant differences exist among districts both for the period of time from

assessment to first attempt to contact, and first attempt to contact to seizure. This analysis showed that the same two districts (3 and 4) took more time to process a greater portion of their cases than the other districts. Most of their cases (51 percent) took more than 100 days to move from assessment to revenue officers' first attempt to contact taxpayers. For the time between first attempt to contact and seizure, these same two districts processed a smaller proportion of their cases in under 100 days. The district also took more than 300 days to process a greater portion of their cases than the other four districts. The following chart shows the time spent from assessment to first attempt at contact.

Time interval	District 1	2	3	4	5	6	All
	(percent)						
100 days or less	56	71	49	49	73	66	61
Over 100 days	44	29	51	51	27	34	39

The following chart shows the time between first attempt to contact and seizure.

Time interval	District 1	2	3	4	5	6	All
	(percent)						
0 to 100 days	63	51	49	45	51	66	54
101 to 300 days	28	40	37	21	39	23	31
Over 300 days	9	9	14	34	10	11	15

We were concerned about these differences and attempted to obtain an explanation using data collected during our review.

Most of the time difference unexplained

In analyzing the period between assessment and revenue officers' first contact attempt, we selected seven factors. 1/ These factors included

--whether taxpayers were delinquent in the past,

--the dollar amount of delinquent accounts,

--the number of delinquent accounts,

--the type of tax owed,

--whether tax returns were filed timely,

--the number of returns not filed timely, and

--whether IRS considered or tried to seize taxpayer assets held by third parties.

We found that none of these factors explained the speed with which some cases were processed in one district. However, our analysis indicates that in the remaining 5 districts, the type of tax did influence how fast cases were processed. Specifically, we found that the presence of a case involving trust fund taxes, as opposed to cases that did not, explained only about 35 percent of the time variance in two districts; 14 percent in two districts; and 10 percent in the fifth district. In the fifth district, two additional factors--number and amount of delinquent accounts--accounted for an additional 20 percent of the time variance.

1/Regression analysis was used to determine what impact, if any, the factors listed above had on the length of time from assessment to revenue officers' first attempt to contact taxpayers. For example, if revenue officers became involved earlier in cases that had histories of past delinquencies, then the time between assessment and revenue officers' first contact could be expected to be shorter on cases having this attribute. Regression analysis allows us to identify and measure the impact of a history of delinquency on the period between assessment and first contact.

District	Percent of time variance explained by: Type of tax	Number and amount of delinquent accounts	Percent of time variance unexplained	Total variances
1	35	-	65	100
2	34	-	66	100
3	14	-	86	100
4	13	-	87	100
5	10	20	70	100
6	-	-	100	100

Thus, our analysis shows that most of the variance in the time between assessment and first attempt to contact--65 to 100 percent, depending on the district involved--could not be explained in terms of the above factors.

The same general approach was used in trying to find out why, after making their first attempt to contact taxpayers, revenue officers waited longer to make the seizure in some cases than in others. In examining this period, we used 15 factors:

--The dollar amount of the delinquent account(s).

--The number of delinquent accounts.

--The type of tax owed.

--The number of returns not filed timely.

--Whether IRS considered or tried to seize taxpayer assets from third parties.

--The number of attempts to contact taxpayers before either contact was made or if no contact was made before seizure.

--Whether revenue officers contacted taxpayers.

--The type of property seized.

--The ratio of the IRS-established value of the seized property to the dollar amount of the levy.

--The time between the revenue officers' first contact attempt to when a lien was filed against taxpayers.

--The extent to which hardship was a consideration in determining the property to seize.

--The extent to which prohibiting future delinquencies was a factor in determining the property to seize.

--The extent to which taxpayers' history of delinquencies was a factor in deciding to make seizures.

--The extent to which prevention of future delinquencies was a factor in deciding to make seizures.

--The extent to which placing additional pressure on taxpayers to pay liabilities had an effect on deciding to make seizures.

In analyzing these factors, little uniformity among districts was observed. These factors explained from 27 to 81 percent of the time variance in each district; however, the factors included and their degree of emphasis ranged widely. The most prevalent factor was the number of delinquent accounts on the levy document. This factor was the most important in three districts and a significant factor in a fourth. At least one of the revenue officer judgment factors--the last five factors listed--was important in three districts, but none was found to be the most important factor in explaining the time variance. For the balance of the factors, no discernible pattern was observed, which indicates that each revenue officer, influenced by the district, decides when a case has reached the next major point in the seizure process.

The district handling the case should not be that important a determinant in the seizure process. As it is now, a factor, such as the extent to which revenue officers consider hardships on taxpayers when deciding what property to seize, can vary the time between first attempt to make contact and seizure in one district while having no measurable impact on that time in other districts. Although we could not specifically determine why the time varies among cases as to when seizures were made, our analysis does show that the current guidance to revenue officers must be improved if taxpayers are to be treated equally during seizure.

Without specific guidance, the timeliness of seizure actions will continue to differ according to which district handles the case, and taxpayer treatment will remain inconsistent. Understandably, seizure is not likely to

occur in exactly the same number of days from a given time. However, effective case management requires criteria to measure satisfactory progress for each step of the process. While deviations from such criteria may still occur, written justification can explain the reasons for the departure.

TAXPAYERS AFFORDED ALTERNATIVES TO IMMEDIATE FULL PAYMENT

Guidelines require that revenue officers first request taxpayers to make immediate full payment. Should taxpayers fail to immediately pay their account in full on initial contact, guidelines require that officers request taxpayers to furnish a financial statement. Revenue officers should use these financial statements to evaluate taxpayers' ability to pay and payment options proposed. They should also use the statements to identify property that can be seized, pledged, or readily converted to cash to pay the account.

The officers frequently used their authority to propose or consider other payment options. IRS records do not always show whether any options were considered; however, 6 percent of the sampled cases specifically showed that no options were proposed, and 52 percent showed that options were considered.

The alternative usually proposed was that taxpayers pay the full amount within 10 days. However, this and other proposals proved to be unrealistic. Occasionally, revenue officers allowed more than 10 days or proposed an installment plan. Failure to comply with the terms of the agreed-to option eventually resulted in taxpayers having their property seized.

While IRS records specifically showed that no options were proposed, they generally did not indicate why. When they did, the major reasons given were that (1) taxpayers were previously delinquent, (2) taxpayers were not paying their current taxes, or (3) trust fund taxes were involved. We could not show that statistically significant differences existed among districts in the extent to which proposals were or were not made.

In addition to revenue officer proposals, some taxpayers also proposed certain options. Thirty-five percent of the case files show that taxpayers requested more time to pay or a payment plan. When taxpayers made such a request, revenue officers usually (about 73 percent of the time) accepted the offer. When rejected, the records cite

past delinquencies, trust fund tax liabilities, and taxpayer financial instability as reasons.

Although these reasons were given for not accepting an alternative proposal, we did not find a relationship between whether revenue officers made proposals and whether taxpayers were previously delinquent or owed trust fund taxes. This result indicates that revenue officers do not discriminate against taxpayers with a past history of delinquency or failure to pay trust fund taxes when deciding whether to propose alternatives to immediate full payment.

FINANCIAL STATEMENTS NOT OBTAINED TO EVALUATE ALTERNATIVES

If full payment is not assured immediately, guidelines require that taxpayers be requested to furnish financial statements. Financial statements provide a basis for deciding whether to

--insist on immediate full payment,

--have taxpayers execute payment agreements,

--identify assets to seize should taxpayers have the ability to pay all or part of their accounts but refuse to cooperate, or

--determine that the account is uncollectible.

They also help identify assets to seize should taxpayers not pay the due amount.

Although IRS instructions require financial statements, the files we reviewed indicated that revenue officers requested them in only 61 percent of the cases where officers contacted taxpayers. When requested, taxpayers provided them 89 percent of the time. IRS records do not show why the remaining 11 percent were not obtained.

Statistically, there are significant differences among districts as to whether or not financial statements were requested or obtained. In one district, financial statements were requested in only 33 percent of the cases, whereas another district requested them in about 80 percent of its cases. Financial statements were obtained in only 21 percent of the cases in one district but in 68 percent of the cases in another district. Apparently, some revenue officers and their supervisors are not aware of the

requirements or do not consider them important in evaluating how to handle cases.

Revenue officers were no more likely to obtain financial statements from taxpayers with employment tax delinquencies than from those who owed income taxes. This fact indicates that the type of tax due did not explain why financial statements were or were not obtained. However, officers were likely to obtain them when a payment plan existed.

Further analysis showed a statistically significant relationship between the number of contacts and whether the revenue officer had requested a financial statement. Such statements were more likely to be requested when the number of contacts was six or more. Officers also were more likely to request financial statements as the time between first contact and seizure increased.

MOST TAXPAYERS ARE AWARE THAT IRS COULD SEIZE PROPERTY

Taxpayers can be informed about IRS seizure authority from several sources. IRS attempts to make taxpayers aware of its authority through the notice process and by explanations by revenue officers. In addition, officers should inform taxpayers of the contemplated seizure action except in cases where collection is in jeopardy. Taxpayers can also find out from sources other than IRS. Seventy-four percent of the taxpayers we interviewed said they knew before seizure about IRS seizure authority. The following table shows how taxpayers said they learned about this authority. (Respondents could give more than one answer.)

Source	Percent of interviewees aware of seizure powers
Revenue officer told taxpayer before seizure	38
Other IRS employee told taxpayer	3
Notice received from IRS	19
Prior IRS seizure	17
Tax advisor told taxpayer	10

Despite IRS efforts, 25 percent of the taxpayers interviewed said they were unaware of IRS seizure authority. Furthermore, 57 percent said they were not told that seizure was the next action to be taken.

Informing taxpayers about these powers and that seizure is the next action might reduce seizures. For those taxpayers who said they were unaware of IRS seizure powers, 54 percent redeemed their property by paying their delinquent taxes in full after seizure. This number compares to only 33 percent of those who said they knew.

The higher percentages of uninformed taxpayers who redeemed their property indicates that some seizures could be avoided provided revenue officers take the time to inform taxpayers that (1) IRS can seize property and (2) seizure is the next action to be taken. Avoiding seizure can save both IRS and the taxpayers time, trouble, and expense.

MANY TAXPAYERS ARE NOT INFORMED THAT THEY CAN APPEAL THE PROPOSED SEIZURE ACTIONS

Taxpayers have a right to appeal revenue officer decisions concerning payment options proposed, taxpayer offers rejected, and the decision to seize. When taxpayers reach an impasse with revenue officers as to whether their financial situation has been given full consideration, IRS guidelines provide that taxpayers be given the opportunity to request a review by a supervisor. In the event taxpayers do not ask for this higher level review, revenue officers are required to advise them of their right to appeal. Additionally, if taxpayers state they do not understand what is expected of them or question IRS authority to take specific actions, the officers should provide them with a copy of IRS Publication 586--The Collection Process (Income Tax Accounts)--to help explain the process.

This requirement is apparently not being followed. We asked revenue officers if they had any reason to believe the taxpayers knew about their appeal rights. We found a significant difference among the districts in the answers received. The following table shows the revenue officers' responses to the questions.

Response	Districts						
	1	2	3	4	5	6	All
	(percent)						
No	16	44	39	36	39	50	36
Simply assumed the taxpayer knew	15	17	9	19	32	15	18
Taxpayer appealed or had made appeals on prior seizures	14	9	14	0	6	14	10
Revenue officer personally informed the taxpayer	31	19	16	31	17	2	20
Other	7	1	8	3	2	2	4
Unknown	17	10	14	11	4	17	12

Our analysis showed that a statistically significant difference existed among districts in revenue officers' answers to this question. Revenue officers in one district were twice as likely to state they knew taxpayers were aware of these rights as were those in two of the other districts. Therefore, in addition to some taxpayers' not being told of their appeal rights, their district can influence whether they might be told of this right or not. Revenue officers in all districts need to substantially improve their performance in advising taxpayers of this right.

TAX LIENS ARE NOT ALWAYS RELEASED TIMELY

The Government has a right to establish its claim against taxpayers' assets before that of subsequent secured creditors and to prevent taxpayers from passing clear title. IRS does this by filing a lien.

The guidelines provide that the tax lien be released promptly when (1) the liability is satisfied, (2) the liability becomes unenforceable, (3) an offer to compromise is accepted, or (4) the liability has been secured by a bond. These rules were not always followed.

IRS failed to release the tax lien after the account was paid in 2 percent of the cases closed in 1975. In about 42 percent of the cases, IRS properly released all outstanding liens after the accounts were paid. In 50 percent of the cases, liens were not released because the unpaid tax liability had not been paid in full.

Even when liens were released, IRS failed to do it promptly. The following table shows how long it took IRS to release the liens.

Days from disposition to release of lien	Estimated number of cases	Percent of cases
Up to 10	3,581	46
11 to 25	1,323	17
26 to 50	1,[illegible]79	19
51 to 100	311	4
Over 100	1,090	14
Total	7,784	100

As shown, IRS took over 100 days to release liens in 14 percent of the cases. In March 1976, IRS changed its guidelines so that if payment was made by personal check in an amount of $500 or more, the lien was not to be released before 60 days. The 60-day criteria was used to allow sufficient time for the check to clear all necessary banks and IRS offices.

CONCLUSIONS

Taxpayers who fail to file returns and/or pay their taxes on time are given ample opportunity to voluntarily do so before IRS decides to seize their property. Indeed, in many cases, IRS does not actively pursue accounts in a timely manner. Yet, in other cases, collection efforts are accelerated and justifiably so. In practice, IRS was less demanding of some taxpayers in that it allowed them more time to pay before resorting to seizure.

While good reason might exist for delaying the assignment of cases to revenue officers, case records contained no justification why the officers' first attempt to contact taxpayers occurred so long after assessment. In fact, many records were so sketchy that we could not determine when a case was assigned to a revenue officer.

To provide for uniform treatment of taxpayers with similar taxes, filing, and payment histories, and to bring about timely initiation of attempts to contact taxpayers, IRS should establish a set time period for management to assign a case and another time period for revenue officers to start contacting taxpayers.

Likewise, criteria are needed to limit the (1) amount of time taken to make a diligent effort to contact taxpayers and (2) number of contacts made. Presently, revenue officers spend an excessive amount of time in both contacting taxpayers and in working with them after the first contact. We believe that three contacts should be sufficient. These three would allow for requesting immediate full payment, reviewing ability to pay, and considering alternatives to seizure.

Despite the numerous contacts being made, revenue officers did not use them effectively. Taxpayers were not always advised of their appeal rights or of IRS seizure powers. Furthermore, taxpayers did not always request financial statements even though revenue officers frequently made offers or contemplated taxpayer offers of something other than immediate full payment. These financial statements provide a basis for evaluating taxpayers' ability to honor proposals. To accept unrealistic proposals only tends to defer seizure.

While most taxpayers knew about IRS seizure powers, in most cases officers failed to explain the powers to the taxpayers during contact. Revenue officers need to inform taxpayers of IRS seizure powers and that seizure would be the next step. Doing so could bring about settlement of some accounts without seizure. Also, while required to inform taxpayers of their appeal rights, officers do a poor job of informing them.

Revenue officers, while generally filing a lien before seizure, do not promptly release liens once an account has been paid. Failure to promptly release liens can adversely affect taxpayers' business activities or other financial interests. The 60-day criteria IRS initiated in 1976 appears reasonable to assure that liens are released on time.

RECOMMENDATIONS TO THE COMMISSIONER OF INTERNAL REVENUE

To promote uniform treatment of taxpayers and effective management of cases, we recommend that the Commissioner:

--Establish time frames for accomplishing significant steps in the collection process with a maximum time allowable for

(1) assigning a case to a revenue officer,

(2) initiating an attempt to contact the taxpayer, and

(3) accomplishing contact with the taxpayer.

--Require revenue officers to

(1) notify taxpayers before initiating seizure action of IRS seizure powers and the consequences of continued nonpayment and

(2) advise taxpayers of their appeal rights.

INTERNAL REVENUE SERVICE COMMENTS

By letter dated June 6, 1978, the Commissioner stated that IRS substantially agrees with most of our recommendations. (See app. I.) He noted that IRS has made several improvements since 1975 (the year cases we sampled were closed) to better ensure that (1) tax laws relating to collection were administered fairly and impartially; (2) civil tax laws were not used punitively; (3) the appropriate level of enforcement was used to accomplish IRS' mission; and (4) taxpayers are informed of their rights. The Commissioner's response indicates that IRS is responding positively to the concerns expressed by us and others, such as the Administrative Conference of the United States, that the seizure and sales process be administered fairly and effectively.

IRS agreed with our recommendation to establish time frames for contacting taxpayers and will usually require initial contact within 45 days after assigning a case to a revenue officer. IRS did not believe it should set a specific time frame within which cases should be assigned to a revenue officer, although it did state that IRS employees should "promptly work cases." IRS believes it is important to maintain "management discretion and flexibility" and that its current procedures and this management need "outweigh the advantage of uniformity in fixing a maximum time" for assigning cases to revenue officers.

While we understand IRS concern about the need to maintain managerial discretion, we still believe it is appropriate for IRS to at least set some Service-wide goals for local management to strive to meet. Without national goals, there is a danger that local management will use so much discretion that there will be significant variances among local IRS offices, resulting in inequitable treatment of taxpayers. Accordingly, IRS should, at a minimum, provide its Service Center and District collection personnel

with time-frame goals to try to meet when assigning cases to revenue officers.

IRS generally agreed with our recommendations to notify taxpayers of their appeal rights, its seizure powers, and the consequences of continued nonpayment. IRS said it was important for revenue officers to have discretion in determining exactly when they notify taxpayers of contemplated seizure action. We agree and have revised our recommendation to say that IRS should notify taxpayers "before initiating seizure action," rather than during the "initial contact."

CHAPTER 4

SEIZURE: A LAST RESORT

When other attempts to settle taxpayers' accounts fail, revenue officers must decide whether to seize taxpayers' property. IRS provided revenue officers little guidance in reaching this decision. The only guidance, which was to start in August 1975, was a revenue officer's supervisor reviewing and concurring in the seizure decision. We reviewed seizure decisions to answer the following questions.

--Why does IRS seize?

--Is the decision to seize uniformly applied?

--How does IRS decide what property is to be seized?

--Is taxpayer equity and ownership in seized property correctly determined and adequately protected?

Having decided to seize specific property belonging to taxpayers, revenue officers are required to follow certain procedures in making a seizure and in handling the property pending its final disposition. We reviewed seizure cases and evaluated the procedures involved to determine

--whether IRS followed its own procedures and

--whether taxpayers' and the Government's interests in the seized property are adequately protected.

SEIZURE IS USED AS A LAST RESORT

Taxpayer property is seized because it is often the last method available to collect taxes owed the Government. Seizure is used when the notice process and district office contacts with taxpayers did not result in the delinquent account being paid. Also, in many cases taxpayers failed to comply with alternative payment arrangements agreed to with IRS. As discussed in chapter 3, these collection efforts were generally time consuming and gave taxpayers adequate time to pay the amounts due. On the average, seizures occurred 315 days after tax assessment and 174 days after the first attempts by revenue officers to contact taxpayers.

Interviews with revenue officers indicate that seizure is primarily used for three reasons. First, it is used to

obtain money either by seizing cash or by eventually selling the asset and secondly, to gain taxpayers' cooperation by letting them know that IRS has the power to seize and will use that power. The third reason is to prevent business taxpayers from pyramiding their tax liability, particularly the withholding of taxes from employee wages, and not turning them over to IRS. This can mean putting taxpayers out of business by seizing and selling their business property.

FACTORS REVENUE OFFICERS CONSIDER IMPORTANT IN DECIDING TO SEIZE

To determine what factors revenue officers considered when deciding to seize property, we asked officers to

Factor	Not very important	or very important	Statistically significant difference by District	Type of tax
	(percent)			
Taxpayer's history of delinquencies	19	81	Yes	Yes
Taxpayer refusing to discuss situation	66	34	Yes	No
Taxpayer about to abandon property	91	9	(a)	No
Taxpayer about to remove property from reach of IRS	86	14	No	No
To prevent future delinquencies	22	78	No	No
To place additional pressure on taxpayer to full pay delinquent account	36	64	Yes	No
District policy	69	31	Yes	No
Supervisor's direction--he told you to.	90	10	(a)	No

a/The number of cases where this factor was a consideration is too small to test for significant differences.

identify whether several predetermined factors were important in making their decisions to seize. Their responses are summarized in the table on the previous page along with whether the responses differed significantly by district or type of tax. 1/

As shown, there are considerable differences in the factors revenue officers considered important in deciding to make seizures. Based on the revenue officers' responses, 81 percent considered taxpayers' history of delinquencies a factor in deciding to make a seizure. This factor was particularly true when trust fund taxes were involved. Additionally, 78 percent stated they considered the prevention of future delinquencies important, while 64 percent saw placing pressure on taxpayers to fully pay their tax liability important.

Fewer revenue officers considered taxpayers' attitudes, district policy, supervisors' influence, or fear that taxpayers were about to abandon or place the property outside IRS reach as important factors in deciding to make a seizure. Revenue officers' responses also indicate that factors which influence seizure decisions in one IRS district may differ from those in another district. This difference existed in four of the eight factors.

Some seizures close businesses

The IRS decision to seize business property can have the effect of closing the business. Sometimes businesses are closed temporarily until taxpayers redeem their property or IRS decides to release it; sometimes, permanently if IRS sells the property. For example, 11 businesses closed permanently in one district, 8 in another, and 7 in another after IRS sold the property. In these cases, the employers were delinquent in paying the taxes withheld from employees' wages. The revenue officers in 75 percent of these cases said that an important consideration in deciding to seize was to prevent future delinquencies.

Such seizures were usually made before all other alternatives had been explored. One little-used alternative to seizing a business is to use the trust fund penalty provision of Section 7512 of the Internal Revenue Code for

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1/The table does not include a percentage for those revenue officers whom we could not interview or for those who said they could not remember.

current and future employment taxes required to be withheld and paid over. Under this provision, taxpayers are required to make deposits in a special account within 2 banking days after the funds are withheld from employee wages. Taxpayers are also required to file monthly instead of quarterly tax returns. Failure to meet these requirements makes taxpayers, upon conviction, guilty of a misdemeanor and subject to a fine of up to $5,000 and/or imprisonment of not more than 1 year, together with the cost of prosecution (section 7215).

At the time of our study, IRS guidelines emphasized that the use of the special deposit provision should be limited to those cases having the most promise of successful prosecution in the event of continued delinquency and that it should not be used merely as a threat.

To determine whether successful prosecution appears likely in the event of continued delinquency, IRS instructions provided that revenue officers consider such things as taxpayers' past records of delinquency, the amount of back taxes owed, the reasons for the delinquencies, and the taxpayers' attitude toward their tax obligation. Additionally, they provided that, generally, the special deposit provisions should not be used unless

--at least one $500 trust fund delinquent account is outstanding against the taxpayer and

--the revenue officer received a second $500 trust fund delinquent account or is reasonably certain that the taxpayer has an unpaid liability of at least $500 for a current year.

An analysis of IRS seizure cases sampled indicates that special deposit provision notices could have been issued to 29 percent of the businesses which had seizure cases closed in 1975. This amount totals about 1,400 seizure cases nationally. The following table shows our national projections of the action taken on these cases.

Action taken by IRS on cases meeting criteria for issuing notice

	Cases	Percent
Notices issued	446	13
Considered issuing a notice but did not	309	9
No evidence that notice was issued or considered	2,675	78
Total	3,430	100

As shown, relatively few notices were issued. The infrequent issuance of notices keeps us from making a reliable statistical analysis of the differences among districts in issuing such notices. However, almost all notices in our sample, and incorporated into our projections, were issued in two of our sample districts. Three of the districts may not have issued any notices; at least none was found in our sample. There were cases that met the notice requirements in each district.

In May 1976, IRS relaxed the requirement that the special deposit provision be limited to those cases having the most promise of successful prosecution in the event of continued delinquency. This change should allow for more widespread use of this collection method to prevent pyramiding of unpaid employment taxes and to avoid seizures.

A companion concern about using seizure instead of the special deposit provision is the impact of seizures on taxpayers' employees. If seizures close businesses permanently, employees lose their jobs. The special deposit provisions may allow taxpayers to work out the delinquency and continue in business, thereby increasing the possibility that employees would not lose their jobs.

PROPERTY SEIZED DEPENDS ON THE DISTRICT AND THE REVENUE OFFICER

Revenue officers not only decide when to seize but also what to seize. Except for certain amounts and categories of

income and a small amount of personal items exempted by law, revenue officers have complete authority to seize any business or personal assets of delinquent taxpayers. Yet no guidance was provided on what assets should be seized. While revenue officer judgments may influence what is seized, unwritten district policy also affects what is seized.

Exempt property

The Internal Revenue Code exempts certain property from seizure. Before the passage of the Tax Reform Act of 1976, exempt property included

--wearing apparel and school books necessary for taxpayers and for members of their families;

--fuel, provisions, furniture, and personal effects that do not exceed $500 in value;

--books and tools of trade, business, or profession that do not exceed $250 in the aggregate;

--unemployment benefits;

--undelivered mail;

--certain annuity and pension payments;

--workmen's compensation; and

--salary, wages, or other income under court judgments for support of minor children.

The Tax Reform Act of 1976 added exemptions for minimum amounts of wages, salaries, or other income determined in accordance with a prescribed formula.

What revenue officers considered important when deciding what to seize

To determine what factors revenue officers considered important in selecting property to be seized, we asked them how important were different factors which they might consider. Their responses are summarized below. 1/

1/The table does not include a percentage for those revenue officers not interviewed or for those who said they could not remember.

	Degree of importance		Statistically significant difference by	
	Major or moderate	Minor or none	District	Type of tax
	(percent)			
The hardship that it would cause the taxpayer	48	52	No	Yes
The estimated value of the property	77	23	Yes	No
The taxpayer's equity in the property	81	19	No	No
Current market value of the property	72	28	Yes	No
The transportation and storage of the property	25	75	No	No
The probability of the taxpayer paying before sale	51	49	No	[illegible]
The ease of determining ownership	48	52	No	[illegible]
The ease of determining encumbrances	46	54	No	[illegible]
The likelihood of prohibiting future delinquencies	75	25	No	No

As shown, the factors most frequently considered important by revenue officers were taxpayer equity, estimated value of property, the likelihood of prohibiting future delinquencies, and current market value of the property. An analysis of revenue officer responses showed that they varied by district for two of the factors. For example, in one district the estimated value of the property was considered an important factor in determining what to seize by 83 percent of the revenue officers responding compared to 51 percent of those in another district. A similar situation existed concerning the importance given to the current market value of the property.

Not only did responses vary by districts but they also varied by revenue officers within the same district. For example, revenue officers within a given district differed in the importance they gave to the estimated value of taxpayers' property.

District	Degree of importance: Major or moderate	Degree of importance: Minor or none
	------(percent)-----	
1	82	18
2	75	25
3	80	20
4	74	26
5	77	23
6	57	43

Our sample data also indicated that hardship and the probability of taxpayers' paying before sale were more likely to be important considerations when the case involves income tax.

The type of property seized tends to influence its eventual disposition. IRS applied cash register contents directly against taxpayers' account. For business property other than cash register contents, 41 percent is redeemed, 33 percent is released, and 26 percent is sold. For personal property, about 45 percent is redeemed, 44 percent is released, and about 11 percent is sold.

TYPES OF PROPERTY SEIZED VARY

Although there was no difference among districts as to the type of tax owed--trust fund or income--some districts

seized more personal property than others. For example, 45 percent of the seizures in one district were for personal property, while in another district, personal property was seized in only 17 percent of the cases. This difference indicates that some districts may be more reluctant to seize personal assets against business liabilities than others.

The type of tax owed influenced whether or not taxpayers' personal residences were seized. Residences were seized in 40 percent of the cases involving income taxes but in only 10 percent of the cases where trust fund taxes were involved.

The type of property seized varied considerably when business property was involved. However, when nonbusiness property was involved, real estate and vehicles were generally seized. The following table shows the percent of seizure actions which involve various types of property. Since more than one type of property can be involved in the seizure action, the column covering all items seized totals more than 100 percent. The second column relates only to the primary item involved in each seizure.

Type of property seized	All items	Primary
	--------(percent)----	
Business:		
Real estate	8	[illegible]
Production equipment	19	[illegible]
Office equipment	17	11
Fixtures	13	3
Vehicles	14	9
Inventories--nonperishable	15	2
Inventories--perishable	3	1
Cash register contents	16	15
Other business property	8	3
Nonbusiness:		
Personal residence	16	16
Other real property	7	5
Vehicles	8	7
Boats and airplanes	2	2
Other personal property	2	1

Business property seized usually included items most closely related to producing the major product or service of the businesses, thereby causing them to close, at least

temporarily. At the same time, revenue officers frequently seized office equipment and vehicles owned by businesses. If nonbusiness property was seized, there was an even chance that it would be a taxpayer's residence.

Officers in some districts were more likely to seize a personal residence than were other officers. In two of the districts, revenue officers seized homes in over 25 percent of their cases (excludes cash register), whereas in the other four districts, the revenue officers seized homes in less than 15 percent of their cases.

	District						
	1	2	3	4	5	6	All
	(Percent)						
Seizures where personal residences were seized (excluding cash register content seizures)	11	15	27	26	11	7	17

Seizure of personal residences might cause taxpayers undue hardships or inconveniencies. However, we found no significant difference in the way taxpayers evaluated the seizure's effect on their family when their homes rather than other items of property were seized. Most revenue officers, however, told us that hardship was a moderate or major consideration in determining what property to seize when a residence was involved. Only 5 percent of the residences were sold. The remainder were either released or redeemed by taxpayers.

There also is a statistically significant difference among districts as to the extent that seizures of cash register contents are made. These seizures represented 30 percent of all seizures in the highest district but only 3 percent in the lowest district.

	Districts						
	1	2	3	4	5	6	All
	(Percent)						
Cash register content seizures	16	8	3	19	30	15	14

The varying numbers are primarily attributable to differences in attitudes toward this type of seizure. An official from the district which used cash register seizures extensively

viewed them as a less extreme way to get taxpayers' attention and to show that IRS would not further delay forced collection. In contrast, an official from the district which only used such seizures infrequently viewed them as a low revenue producing effort, which was little more than harassment.

With the exception of redeemed cases, cash register seizures are as effective as other property seizures. This is evidenced by the fact that voluntary payments were made after seizures in 30 percent of the cash register seizure cases. This number is about the same voluntary payment rate as cases where other types of property were seized and later sold or released. Cash register content seizures can be as effective as property seizure in securing taxpayer payment of delinquent taxes.

Revenue officers generally support this conclusion. When asked to generally assess the effectiveness of this type of seizure as a collection tool, 85 percent of those that responded rated it as effective or very effective. Most of the other revenue officers responding rated it as marginally effective. When revenue officers were asked to identify the factor that they thought best illustrated the effectiveness of a specific cash register seizure:

--Sixty-four percent said the seizure resulted in either the tax liability being fully paid or at least some reduction in the tax liability.

--Fourteen percent stated that cash register seizures resulted in voluntary payments being made by the taxpayer.

--Another 12 percent believed the seizure deterred future delinquencies.

The third factor indicates that this feeling may be related to factors other than the collection of funds.

Our study showed that cash register content seizures were just as effective as seizures that ended as releases or sales, even though the amount seized averaged only $183. In 30 percent of the cash register content seizures, taxpayers made voluntary payments after the seizures. This rate is about the same as in sales and release cases. The same is true when comparing the full payment ratio--8 percent for cash register content seizures, 5 percent for releases, and 2 percent for sales.

Another advantage of cash register content seizures over other property seizures is that they are less costly to IRS. (There is no additional expense after a cash register content seizure.) On other property seizures, IRS must incur additional costs in protecting, storing, moving, advertising, and selling the property.

OWNERSHIP OF PROPERTY ADEQUATELY DETERMINED IN MOST CASES

As a part of the decision process on what to seize, revenue officers should determine that taxpayers own the property and what their equity in the property is. Otherwise, IRS may have to release it back to the taxpayers or the true owners. Revenue officers did a good job in determining ownership and making searches for encumbrances against the property which would diminish taxpayers' equity.

Revenue officers check several sources to determine ownership. The following table shows the frequency that revenue officers said they checked each source.

Source	Percent
Conducted title search	62
Asked taxpayer	51
Asked third party	15
Assumed taxpayer owned it because the property was located at taxpayer's premises	17
Used other sources	8

These sources are generally adequate for determining ownership. However, our 399 sample cases included 6 cases where IRS seized property not belonging to taxpayers. IRS records and interviews with revenue officers support the fact that title searches were made in these six cases.

While revenue officers, overall, do a good job of attempting to determine ownership, the erroneous seizures occurred because revenue officers failed to make thorough searches of records to identify encumbrances (1) because all property was not required to be recorded and/or (2) because the revenue officers were misled by the taxpayers.

VALUE AND AMOUNT OF TAXPAYER EQUITY IN PROPERTY NOT ACCURATELY DETERMINED

Guidelines provide that revenue officers, in deciding whether and what to seize, should determine the taxpayers'

equity in the property because IRS may have to sell the property. Because IRS cannot sell more than taxpayers' ownership interest, 1/ it obviously is not cost effective to seize and sell property where the expense of seizure and sale exceeds taxpayers' interest.

To arrive at ownership interest, revenue officers must determine the value of the property and the amount of any valid liens and encumbrances senior to IRS'.

Once property is seized, IRS is required to account for the value of seized property under its control. This value established for accounting and reporting purposes is used also to compute the value of taxpayers' ownership interest in the property for purposes of setting a minimum bid price, provided the computed price does not exceed an amount equal to the amount owed. Our review disclosed that revenue officers did not always accurately determine, prior to seizures, that taxpayers had a saleable interest in the property. In other instances, revenue officers underestimated or understated the value and, therefore, the taxpayers' ownership interest in the property. The effect of undervaluing seized property is to reduce the minimum bid price computed as a percentage of taxpayers' interest.

<u>Saleable interest not always determined before seizure</u>

In an attempt to determine taxpayers' ownership interest, IRS records show that revenue officers examined the public records for encumbrances in 72 percent of the cases--excluding cash register content seizures. In other cases, they limited their search to asking the taxpayer or third parties. Data was not available on 18 percent of the cases. Interviews with revenue officers and taxpayers further corroborated the information in the records.

1/As used here, taxpayers' ownership interest in seized property is the fair market value of the property reduced by encumbrances, if any. In the case of appreciated value property, this means that taxpayers' ownership interest may exceed their adjusted cost basis. On the other hand, if the property has depreciated in value, the taxpayers' ownership interest may be reduced below the amount of their cost investment.

Despite these efforts, in 5 percent of the cases, IRS seized property (exclusive of cash register contents) where taxpayers' ownership interest was less than $100. In over half of these cases, taxpayers owed IRS more than $5,000. In 82 percent of these cases, IRS later released the seized property; it sold the taxpayers' right, title, and interest in the property in the remaining 18 percent of the cases. While a few of these seizures were unavoidable (e.g., unknown contents of safe deposit boxes), the remaining cases indicate that the encumbrance searches were ineffective or that IRS knowingly seized property with very little taxpayer ownership interest.

On August 3, 1977, IRS notified its districts to stop seizing property when taxpayers' ownership interest was insufficient to provide any net sales proceeds. Manual instructions implementing this directive provide that when it is determined, before or after seizure, that taxpayers' ownership interest is insufficient to yield any net proceeds, seizures will not be made or, if already made, the property will be immediately released. These instructions also provide that every effort should be made to make this determination before seizure.

Accounting and reporting value and equity understated

The Budget and Accounting Act of 1921, as amended, (31 U.S.C. 66a(a)(3)) requires that all Federal agencies render an accounting of all property and assets for which they are responsible. Pursuant to this requirement, revenue officers are required to establish a value for seized property. We found that revenue officers frequently understated the accounting and reporting value; consequently, taxpayers' ownership interest in the property was reduced for purposes of computing the minimum bid price below the maximum amount equal to taxpayers' liability. In most instances a higher minimum price based on higher valuation of the seized property still would have been less than taxpayers' tax liability; but in the event of purchase by the Government, it would have given the taxpayer an increased credit.

Although guidelines permit but do not require revenue officers to obtain the help of professional appraisers or consult with other persons in the same line of business as the taxpayers, IRS records indicate that revenue officers seldom use these sources. Rather, they rely primarily on their own judgment in establishing value. None of the districts had issued instructions to assist revenue officers in valuing property or provided training on how to value

property. IRS provides guidance to employees and trains employees who value property for other tax purposes, such as estate valuation.

Some evidence that revenue officers were understating both the property's value and taxpayer equity was apparent in the file. To illustrate, in one case, the revenue officer recorded the value of the seized property as $2,400 although the value as shown on the taxpayer's financial statement was $7,250. The property was not subject to any senior liens or encumbrances.

To test the extent and magnitude of the understatement of taxpayer equity and value, we compared selling price to taxpayer equity as determined by IRS. Because IRS uses forced sales techniques, sales prices are expected to be at or below taxpayers' equity. However, we found that in 56 percent of the sales cases, sales prices equaled or exceeded the IRS-computed taxpayer equity. Overall, taxpayers' property sold for prices averaging 50 percent more than the IRS-computed taxpayer equity. The following table shows the percentage distribution of sales cases by the percent by which selling price exceeded the IRS-computed equity.

Sales price as a percent of equity	Percent
Less than equity	35
100 to 199	35
200 to 299	15
300 to 399	3
400 or more	3
Unknown	7

And the magnitude of the ratios indicates that the amount of the understatement could be substantial. By isolating the effect that an overstatement of encumbrances may have had on equity, we found that the understated equity was due primarily to understated property value.

District officials attributed the problem of understatement of value to the fact that revenue officers are not expert appraisers and are conservative in estimating value. District officials also stated that values are kept low since they are the starting point, in most seizures, for computing the minimum price IRS will accept when it sells the property in cases where the minimum bid price is less than the amount owed by taxpayers. If IRS does not receive

a bid of at least the amount [illegible] he minimum bid price, the Government is required by law [illegible] purchase the property. An understated value and, in t[illegible] [illegible] lower minimum bid price reduces the likelihood that [illegible] [illegible]overnment will have to purchase the property.

IRS Internal Audit Division has also reported on the IRS practice of undervaluing property. In a 1972 report, the Division concluded that revenue officers were inconsistent in establishing the estimated value of property seized. The report stated that revenue officers placed varying interpretations on what constituted estimated value. Some thought in terms of the fair market value of the property, while others thought in terms of the forced sale value; both methods were used for establishing value. This problem was attributed to the lack of definitive guidance as to the requirements and intentions of the manual.

Our study shows that IRS did not adequately correct the undervaluing problem pointed out in this 1972 Internal Audit report. Although IRS has changed the way it computes minimum price (see p. 67), the need to accurately determine value continues. Under the change, the minimum bid price generally will be based on revenue officers' estimate of the forced sale value of the property.

TAXPAYERS HAVE MIXED VIEWS TOWARD THE REVENUE OFFICER MAKING THE SEIZURE

Probably the most trying time for both taxpayers and revenue officers is the time of seizure. Also at this time, revenue officers are most likely to be accused by taxpayers of abusing their power. To better understand revenue officers' and taxpayers' behavior during seizures, we asked taxpayers to assess revenue officers' conduct at seizures. The following table shows that taxpayers unfavorably judged revenue officer conduct in 40 percent of the cases.

	Taxpayer views of revenue officer conduct at seizure
	(percent)
Very favorable or favorable	47
Neither favorable nor unfavorable	13
Unfavorable or very unfavorable	40

We expected a negative perception of revenue officers because of their adversary position. Taxpayer comments included descriptions such as "cold and hard," "hatchet men tactics," "rude," "overbearing," "inflexible," "arrogant," "Gestapo tactics," and "discourteous." But we could not evaluate revenue officers' conduct at these seizures.

Taxpayers' attitude at seizures is viewed to be better than that of revenue officers. Revenue officer conduct was viewed favorably in 47 percent of the cases. Yet, most revenue officers and taxpayers who expressed an opinion viewed taxpayers attitude at seizures to be either cooperative or very cooperative in 58 percent of the cases. (See the following table.)

	Revenue officer assessment of taxpayer conduct during seizure	Taxpayer view of own conduct at the seizure
	(percent)	
Very cooperative or cooperative	58	58
Neither cooperative nor uncooperative	23	25
Uncooperative or very uncooperative	16	17

We did not find a statistically significant difference among districts as to how taxpayers judged revenue officers' conduct at seizures. Also, no difference could be found regarding revenue officers' responses relative to taxpayers' conduct at seizures. However, when revenue officers made negative comments about taxpayers' conduct, it was highly likely that those taxpayers also judged the revenue officers' conduct negatively.

FEW PROBLEMS IN SEIZING, TAKING CONTROL OF, STORING, AND PROTECTING SEIZED PROPERTY

Revenue officers receive general guidance concerning how to take control of seized property, whether to move it, where to store it, and how to protect it. But revenue officers must use their judgment in deciding what to do. While security of the property appears to be the overriding concern in making these decisions, cost also can be a determinant.

In [illegible] on the first attempt [illegible] property [illegible] indicates that [illegible] experienced [illegible] problems in locating, seizing, and [illegible]. The judicial review process of [illegible], required as a result of the Supreme Court's ruling in G. M. Leasing, may delay seizures in some instances.

Guidelines [illegible] storage moving of property which is seized at the seizure site. This decision can be influenced by whether IRS will need to pay rent and the cost of moving it. Any storage or moving costs are added to taxpayers' account.

The guidelines provide that if seized property is located on third-party premises and taxpayers have not paid the rent for the expected storage period, revenue officers should try to negotiate a rent-free agreement. Revenue officers, however, are permitted to pay a reasonable rent.

Besides storing seized property at the seizure site, revenue officers can decide to move it to either commercial or Government facilities. If moved, revenue officers can hire a commercial mover, move it themselves, or have the taxpayer do it. Officials in most districts said they encourage revenue officers to either leave the property where seized or use Government storage facilities.

The following table shows the extent to which the various types of storage facilities were used and the extent to which property was moved.

Type of storage	Percent of cases	
Property moved		
Government facility	8	
Commercial facility	12	
		20
Property not moved		
On taxpayer's premises (owned or rent current)	16	
Under rent-free agreement	2	
Under rental agreement	3	
On taxpayer's premises--rental status unknown	16	
Other	1	
		38
Storage not applicable		
Cash register contents seizure	14	
Real property	28	
		42
Total		100

Revenue officers generally do not move seized property. Also, they most often store it where storage costs do not have to be paid by the Government. Such practices tend to conserve taxpayers' equity and increase the Government's yield in the event of sale.

Property is rarely lost, stolen, damaged, or destroyed

IRS guidelines state that local police protection is normally sufficient and that revenue officers are to notify the police and request their cooperation in protecting property. IRS can also hire a custodian if a revenue officer deems the added protection necessary.

At the time of our study, IRS guidelines authorized purchasing insurance if the property was unique and there was considerable risk in holding it. Actually, IRS lacked the authority to buy insurance without first obtaining the approval of the Comptroller General. IRS is revising its

procedures to obtain this approval before [illegible] insurance.

IRS guidelines state that as a general rule, taxpayers are not entitled to receive credit for the value of property lost, stolen, or damaged while under IRS control. IRS records and interviews with revenue officers indicated that property in IRS' possession was damaged in less than 2 percent of the cases. For most of the cases reviewed, the recorded loss was less than $1,500, although one case pertained to a taxpayer-insured building valued at $150,000 that was destroyed by fire. IRS did not reimburse the taxpayers for losses in any of these cases.

Taxpayers we interviewed claimed losses at a slightly higher rate than IRS records had indicated. In 4 percent of the cases, the taxpayers claimed some sort of a loss or damage to their property while it was under IRS control. Most taxpayers reporting a loss attributed it to theft and blamed either IRS, the IRS custodian, or commercial movers for the loss. In some instances, taxpayers reported they received some payment from the party responsible for the loss; some also stated they had the property insured but said no claim was filed for the loss, including the fire loss to the $150,000 building.

Some differences between what taxpayers said and what the records show might be attributable to

--the revenue officers' failing to record sufficiently detailed inventories of what was seized and

--the taxpayers' failing to notify IRS about such incidents.

CONCLUSIONS

Most decisions to seize depend on three factors: (1) taxpayers' history of delinquencies, (2) the need to place additional pressure on taxpayers to fully pay, and (3) the need to prevent future delinquencies. The extent to which the first two of these factors influenced the seizure decision varied significantly among districts; that is, the decision to seize is made for different reasons in different districts. These differences are not necessarily a reason for concern; what is important is the reason for seizures. Most seizures are made for one of three reasons:

--To get the taxpayers' attention and show that IRS is serious about collecting delinquent taxes.

--To collect delinquent taxes.

--To prevent business taxpayers from pyramiding a trust fund tax liability.

We have no problem with the first two of these reasons. However, we are concerned with the practice of making seizures which have the effect of permanently closing businesses when other alternatives to enforce compliance have not been explored. Specifically, we believe IRS should consider alternative actions, particularly the special deposit provisions of Section 7512 of the Internal Revenue Code, or justify why they were not used.

What revenue officers most often considered important in deciding what property to seize relates to taxpayers' saleable equity in the property and the likelihood of prohibiting future delinquencies. Saleable equity is important in every property seizure because sale is always a possibility. The types of property seized varied among and within districts. Some of this variance, particularly in business seizures, can be attributed to the differing types of businesses subjected to seizure.

We are concerned, however, about the reluctance of some districts to seize particular types of property, such as the contents of cash registers. Seizures of such property have proven effective in getting delinquent taxpayers to pay. In addition, cash register content seizures have the added benefit of avoiding the time and expense associated with property seizures. Because of the effectiveness and efficiency of cash register content seizures, guidelines should require revenue officers to consider using such seizures before seizing other property.

Even though the Internal Audit Division, in its 1972 report, pointed out that revenue officers were undervaluing property, officers continue to do so. According to some district officials, this practice is being done in part because revenue officers are not expert appraisers. Officials also feel it is intentionally done in part to lower the minimum bid price and increase the likelihood that the property will be sold. A more accurate property valuation could be obtained if IRS used professional appraisers, solicited appraisals from people in the same line of business, or gave

its revenue officers specific instructions on how to value property.

With regard to the other aspects of seizure, IRS, with minor exceptions, adequately determined that taxpayers owned the property and had little problem in locating, taking control, and protecting the property seized.

RECOMMENDATIONS TO THE COMMISSIONER OF INTERNAL REVENUE

We recommend that the Commissioner:

--Increase the use of the special trust fund accounting provision of section 7512 and the penalty provision of section 7215 of the Internal Revenue Code to secure compliance by employers and others in paying trust fund moneys required to be collected from employees, or collected from customers.

--Encourage the use of cash register content seizures as an aid to collection.

--More accurately establish the inventory value of property it seizes by (1) using professional appraisers, (2) soliciting appraisals from people in the same line of business as the taxpayer subject to seizure, or (3) giving revenue officers specialized training on how to make accurate appraisals.

INTERNAL REVENUE SERVICE COMMENTS

IRS generally agreed with all three of the above recommendations; it has established uniform standards for enforcement under code sections 7512 and 7215. IRS will revise training materials to emphasize the value of cash register seizures.

Emphasizing the value of cash register seizures in training courses is a positive step. Yet not all revenue officers will receive additional training soon. Accordingly, IRS should take some additional actions, such as sending out a manual supplement or memorandum to appropriate Assistant Regional Commissioners emphasizing the value and effectiveness of cash register seizures.

IRS has revised its guidelines expanding the use of professional and IRS appraisers and will develop training materials so its employees can better establish the value of seized property. The appropriate guideline section, however (5344.2), while a step in the right direction, does not adequately assure that accurate appraisals will be made. The guidelines merely state that, "In arriving at inventory values, the following factors <u>should be considered</u> * * * an appraisal by businessmen/businesswomen in the same business * * *" (emphasis supplied). IRS should be more specific and require revenue officers to use professional appraisers, or solicit appraisals from people in the same line of business as taxpayers subject to seizures, or assure that revenue officers have sufficient training to make accurate appraisals.

CHAPTER 5

SELLING SEIZED PROPERTY

Once taxpayers' property has been seized, IRS may dispose of it in several ways. If taxpayers pay their accounts in full, the property is considered redeemed and is given back to them. If taxpayers agree to an acceptable payment plan, or IRS finds that there is no saleable equity in the property, it may be released back to them. If cash is seized, it is applied to the delinquent account. As a last resort, all property not redeemed or released is sold and the sales proceeds, in excess of the costs of levy and sale, applied to the delinquent account. Surplus proceeds, if any, are credited or refunded to taxpayers or other persons legally entitled to such amounts.

The seized property is offered for sale subject to previous outstanding mortgages, encumbrances, or other liens in favor of third parties which are superior to the tax lien. No guarantee or warranty, express or implied, is made as to the validity of the title, quality, quantity, weight, size, or condition of any of the property or its fitness for any use or purpose.

Property is usually sold by public auctions or public sale by sealed bids, and the sales method is left up to the revenue officer. Revenue officers usually choose public auction (81 percent) over sealed bid (19 percent).

Before selling seized property, IRS is required by law to take a number of steps designed to protect the interests of all concerned parties. These steps include (1) publishing a notice of sale in a local newspaper, (2) establishing a minimum bid price below which the property shall not be sold; and (3) informing purchasers that they are buying only the taxpayers' right, title, and interest to the property. In addition, IRS has established procedures allowing those having liens on the property to make an announcement concerning their liens before sale.

Some of these procedures may be bypassed if the property is perishable, such as fresh produce. Special procedures designed to protect the taxpayers' and the Government's interest apply in these cases.

The property is sold to the highest bidder, as long as the bid equals or exceeds the minimum acceptable price IRS has established for the sale. The minimum bid price cannot

exceed the accrued tax, interest, penalties, lien fees, and other costs and usually is about one-half of taxpayers' equity. In all of our sampled sale cases, the minimum price was set at 50 percent or less of the IRS-computed taxpayers' equity because they owed substantially more. If no person offers an amount equal to or greater than the minimum price, then the property shall be declared purchased for the Government unless IRS adjourns the sale.

Sales of personal property are final. Where real estate is involved, taxpayers are given 120 days after the sale to redeem the property for the purchase price plus 20-percent annual interest.

We reviewed sales procedures and practices to answer the following questions:

--How frequently does IRS sell the seized property?

--How successful are IRS advertising efforts at attracting bidders?

--What is the potential of the minimum price to wipe out taxpayer's ownership interest in excess of the unpaid tax liability?

--Do the sales procedures protect taxpayer and Government interests?

--Do IRS sales practices differ from other organizations?

MOST PROPERTY IS RETURNED TO TAXPAYERS

Only 17 percent of IRS seizure cases resulted in sale of the property. Most property seized (68 percent) was eventually returned to taxpayers. In 36 percent of the cases, it was redeemed by taxpayers who paid their delinquent accounts in full. Another 32 percent of the cases involved property which was returned when taxpayers made agreements to pay their accounts (14 percent) or IRS decided for other reasons to return the property (18 percent). These reasons included the following:

--The taxpayer had little or no ownership interest in the seized property.

--The courts ordered that the property be released (for example, bankruptcy proceedings).

--No one was interested in buying the property.

--Sale of property would have created an undue hardship on the taxpayer.

--Property seized did not belong to the taxpayer.

We estimate IRS collected $35.7 million at the time the property was redeemed by or released to taxpayers. In addition IRS had agreements from taxpayers to pay an additional $10.3 million. Based on our sample, we estimate that 31 percent of the released cases were eventually paid in full.

SALES SHOULD BE BETTER ADVERTISED

Improvement is needed in notifying prospective buyers of an impending sale. To notify prospective purchasers, IRS is required to place the notice in a newspaper published in the county where the seizure was made or in a newspaper generally circulated in that county. When this requirement is impossible or for perishable goods sales, IRS must post the notice at (1) the post office nearest the place of seizure and (2) at least two other public places. We found that other methods of advertising sales were also used. When other methods were used (52 percent of the cases), it usually involved placing notices in special circulation newspapers or trade journals and/or sending notices to special interest groups or persons who had expressed interest in IRS sales (bidders list).

IRS districts varied in the extent to which they used the extra advertising. One district used extra advertising in 70 percent of the sampled cases, whereas another did so less than 20 percent of the time.

District officials said advertising was limited because selling expenses must be paid out of sales proceeds, which reduced the amount that could be applied against the tax liability. However, the districts reviewed made no attempt to determine whether the cost of more advertising might be recovered through increased proceeds.

Advertising beyond the minimum required by law can be productive. An analysis of those sales where some extra advertising effort was made indicated that the extra effort was likely to increase the property's sale price. In 71 percent

of the sampled cases evidencing extra effort, the sale realized 100 percent or more of taxpayers' IRS-computed equity, as opposed to only 53 percent in those cases without the extra effort.

About one-half of the taxpayers who responded to our question and who had goods sold by IRS said they would have preferred that IRS advertise the sale in more newspapers even though they knew they would have to pay the additional cost; about 23 percent had the same opinion about using radio and television ads.

Although IRS advertising efforts in many cases exceeded minimum requirements, these efforts often were ineffective in attracting active bidders to the sale. Based on IRS records and interviews with the revenue officers, we estimate that most of the sales (55 percent) had five or fewer active bidders.

Increasing the number of bidders can result in increased sales prices. This increase can be demonstrated by comparing the return on IRS-computed taxpayer equity in terms of the number of active bidders. In those cases where there were only one or two active bidders, 34 percent of the sales prices exceeded the IRS-computed taxpayer equity in the property. This amount compared unfavorably with the 61 percent where there were three to five active bidders and the 78 percent where there were six or more.

The limited advertising of IRS sales was criticized in a 1972 IRS internal audit report. The report concluded that practices, such as placing brief and uninformative ads in newspapers with limited circulation, could result in property being sold for much less than it was worth. The report recommended that guidelines be issued to emphasize (1) using more widely circulated newspapers, (2) placing ads in the general interest sections of classified advertising rather than under legal notices, and (3) placing ads in trade journals with appeal to specialized groups. National guidelines have not been issued to implement these recommendations.

MINIMUM PRICE PROVISIONS OFFER TAXPAYERS LITTLE PROTECTION

The Internal Revenue Code requires that a minimum price be established below which the property will not be sold. IRS has administratively determined that this price cannot exceed the amount that the taxpayers owe. The Code does not

explain what the minimum price is supposed to represent or how it is to be computed. However, IRS guidelines explain that the reason for establishing a minimum price is to avoid selling seized property at substantially less than the "forced sale value" of taxpayers' ownership interest in the property.

The general formula prescribed for computing the minimum price when we did our work was as follows:

Minimum price = one-half of (property value less prior encumbrances and estimated seizure and sale expenses)

When conditions, facts, and circumstances warrant, a ratio other than one-half can be used. Such circumstances include when (1) the taxpayer has only partial title to the property, (2) the purchaser may have difficulty taking possession, or (3) the property is poorly located. Also, the fact that IRS sells only right, title, and interest in the property and does not warrant clear title may also affect what the forced sale, and ultimately, the minimum price is set at.

The minimum bid price as determined by the formula cannot exceed the amount of tax owed. Our review disclosed that the minimum bid price was usually based on the formula because taxpayers owed substantially more than the minimum bid price. In reviewing the minimum price, we found that

--the requirement that the minimum price not exceed the amount of the tax liability has the potential to wipe out taxpayers' ownership interest in excess of the tax liability,

--the minimum price formula, as applied, makes it possible for IRS to avoid purchasing the property for the Government, and

--recent revisions in the minimum price formula offer little improvement in protection.

Minimum price has the potential to wipe out taxpayers' equity in excess of tax liability

All Federal agencies are subject to a statutory requirement that the maximum amount which can be bid on property of a U.S. debtor is the amount of the judgment (31 U.S.C. 195). This legal requirement does not apply to sales of seized property because the debt has not been reduced to a judgment.

Nevertheless, IRS uses this law, coupled with the fact that it has no money to pay more than what is owed, as a basis for limiting the minimum price to the amount owed.

As a matter of policy, for the years covered by our review, IRS directed that the minimum price normally should not be less than 50 percent of taxpayers' IRS-computed equity, less seizure and sale expenses. IRS subsequently changed this policy directive to fix the floor of the minimum bid price at "80 percent or more of the forced sale value of the property less encumbrances having priority over the Federal tax lien." Even with this change, the minimum bid price in most cases would continue to be less than the amount owed.

The requirement that the minimum price not exceed the amount of the tax liability has the potential to wipe out taxpayers' ownership interest in excess of their debt. This is true whether the debt is based upon an unpaid judgment or unpaid tax liability. The problem can be illustrated by a hypothetical example:

> A taxpayer owns a home in which he has invested $20,000. The face amount of the unpaid mortgage is $10,000; the fair market value of the property is $40,000. The home is seized in satisfaction of an unpaid tax liability of $5,000. The taxpayer's ownership interest is $30,000, consisting of his $20,000 cash investment plus the $10,000 appreciation in value. If the home is sold for $5,000 plus the cost of sale, the taxpayer stands to lose $25,000. The taxpayer, his heirs, or other legal representatives can, of course, redeem the home from the purchaser at any time within 120 days following the sale for the $5,000 sales price plus interest of 20 percent per annum. If IRS is the purchaser, it may not resell the property during the 120-day post-sale redemption period; it may reconvey the property to the taxpayer, his heirs, or other legal representatives within 2 years of the date acquired at the minimum bid price plus interest.

Most taxpayers would probably either arrange to redeem the seized property sold or borrow money against their ownership interest in situations where the result of sale would be to destroy a substantial ownership interest in the property seized. The unusual case is where taxpayers are ill or incompetent and unable to arrange their own affairs. IRS investigators have found a very limited number of cases in

which taxpayers did not redeem the property and lost it. Our review uncovered several instances in which taxpayers potentially could have lost a considerable ownership interest in their property had they not redeemed it.

In 10 of the seizure cases covered by our sample, one-half of taxpayers' equity exceeded unpaid tax liability. The property in each of these 10 cases was ultimately released or redeemed by the taxpayers, however. Our findings are summarized in the table below.

Property seized	Taxpayer's IRS-computed equity	Liability	Excess of taxpayer's IRS-computed equity over liability
Real estate lots	$ 2,400	$1,036	$ 1,364
Residence	15,170	6,346	8,824
Residence	10,000	2,814	7,186
Car	1,875	599	1,276
Residence	10,790	541	10,249
Residence	30,000	2,325	27,675
Residence	11,273	309	10,964
Backhoe	10,000	1,847	8,153
Residence	6,107	733	5,374
Residence	14,944	937	14,007

While taxpayers have 120 days after sale to redeem real property, no redemption period is provided for personal property. Taxpayers' right, title, and interest passes to the purchaser upon payment of the purchase price. Also, there is no requirement that revenue officers inform taxpayers of the amount of the IRS-computed minimum bid price. Thus, taxpayers may be unaware of the minimum bid price IRS will accept for the property. Telling taxpayers what the minimum price is and alerting them that IRS property could sell for this amount should provide the taxpayers the time and a basis for deciding whether to make necessary financial arrangements to redeem or obtain release of the property or to take a chance by letting IRS sell it.

Government purchases avoided

IRS rarely (less than one-half of 1 percent of seizure cases) purchases the property for the Government. One of the reasons for so few purchases is that, as discussed in chapter 4, taxpayers' IRS-computed equity in seized property appears frequently to be undervalued. An understated equity

resulted in computing an understated minimum price which in turn reduced the likelihood that the property would have to be purchased for the Government.

Another reason property is rarely purchased for the Government may be that IRS manual procedures provide a broader range of options than does section 6335(e)(1) of the law. The law says that if the minimum price is not bid at the sale, the property shall be purchased at that price for the Government. In cases where the minimum price is not offered, the manual permits revenue officers to postpone the sale in order to reevaluate the minimum price. Revenue officers are then permitted to lower the minimum price--which was initially set at a level lower than the taxpayers' liability--to more realistically reflect the value of the seized property in light of existing conditions. However, if it is deemed in the best interest of the Government and the taxpayers, the property may be purchased for the Government at the minimum price.

To better understand how individual revenue officers interpret this guidance, we asked them if they would change it for any of the following reasons.

Would you revise the minimum price to:	Yes
	(percent)
Avoid another sale?	16
Avoid releasing it to the taxpayer?	5
Make sure some of the liability is collected?	12
Avoid taking title for the Government?	18

Seventeen percent of the revenue officers did not comment on these questions.

We do not believe any of these reasons justify lowering the minimum price. IRS' stated reason for establishing a minimum price is to avoid selling property at substantially less than the forced sale value of taxpayers' interest in the property. Revenue officer responses indicate that, in some cases, actual practice may be to sell at any price. Such a practice would void the reasons for establishing the minimum price.

When we discussed this matter with officials of the IRS Office of the Chief Counsel, they said that once sale begins, only one of three things should happen:

--The property should be sold at the highe bid above minimum price.

--The property should be purchased at minir price for the Government (if at least the price is not bid at the sale).

--The sale may be adjourned for extraordinary circumstances and not merely to recompute minimum price (for example, newly discovered encumbrances or damage).

An IRS Collection Division official told us that this clarification would be incorporated into the IRS manual to prevent future misunderstandings.

These changes in the guidelines should clarify any misunderstandings between IRS' intent and revenue officers' interpretation of the guidelines. However, one other problem could arise; that is, the Government may be required to purchase property which may not be in its best interest. This is because section 6335(e)(1) of the Internal Revenue Code now provides that

"* * * if no person offers for such property at the sale the amount of the minimum price, the property shall be declared to be purchased at such price for the United States * * *."

It is possible that seized property has a saleable value but that it would not be in the Government's best interest to purchase it. For example, the property may require a substantial investment to repair or clear the title before it can be used or resold. Under such circumstances, the law should be clarified to give IRS the option of either buying the property for the Government or returning it to the taxpayer.

An IRS collection official agreed that IRS should not always have to buy property when no one bids at least the minimum price. He also agreed that to do that, section 6335(e)(1) should be clarified.

Revised minimum price formula offers little improvement

On April 7, 1978, IRS revised its policy on computing the minimum price. The change gives the appearance of

providing taxpayers a higher guaranteed sales price for their property. This is not necessarily true. The new formula will be more difficult to administer and can increase the possibility of the Government's crediting the taxpayers' account with an amount greater than what the property is worth.

Under the old formula, revenue officers faced a dilemma. Minimum price was to be set at a level where the taxpayers' ownership interest was protected but not so high that, if the Government had to purchase the property, it would lose money on its subsequent resale.

The new formula will not lessen that dilemma. Under it, as under the former rule, revenue officers are charged both with setting the minimum price at a level that could readily be realized on subsequent resale of the property after acquisition by the Government and with protecting the taxpayers' equity in the property. Guidelines do not provide which of these objectives takes precedence.

Our review of Government purchases shows that this concern is legitimate. In two of seven Government purchases we reviewed in which IRS subsequently disposed of the property, the Government lost money--$15,000 in one, $2,450 in the other. Such results are undesirable because taxpayers get credit for more than the value of their property.

The new formula does not necessarily represent an increase in what the minimum price will be set at. To illustrate, a comparison of the minimum price under both formulas is as follows:

	Old formula	New formula
Inventory value	$30,000	$30,000
Estimated forced sale value	N/A	$20,000
Encumbrances	$10,000	$10,000
Basis for computing price	$20,000	$10,000
Ratio	1:2	4:5
Minimum price	$10,000	$ 8,000

Also, the amount of the encumbrances can have more impact in the new formula. For example, if the encumbrances would have been $20,000, the minimum price under the old formula would have been $5,000 but zero under the new formula. Narrowing the gap between inventory value and the estimate of forced sale value, however, would result in the minimum price being higher.

Under both formulas, inventory value is to be based on appraised value. Under the old formula, the development of the minimum price was a straightforward process based on data that could be reviewed. Under the new formula, the crucial point is the revenue officers' estimate of forced sale value. If it is too low, taxpayers' equity is not protected. If it is too high, the Government's chances of purchasing the property will be increased, and the taxpayer may be given credit for more than what the property is worth. Revenue officers must also make an accurate appraisal of what the property is worth. While IRS management could evaluate revenue officers' determinations under the old formula, it will be extremely difficult to evaluate revenue officers' forced sale estimates, especially before a sale.

An IRS Collection Division official involved in the development of the new formula said that it was devised to overcome problems associated with the old formula but agrees that the new formula could result in the Government's paying more than what the property is worth. He said that the national office plans to monitor the implementation of the new formula and, if necessary, will modify it.

Whether the new formula gives taxpayers additional protection is doubtful. IRS should closely monitor how the new formula is administered and, if necessary, make adjustments to the formula to protect the taxpayers' equity, provided taxpayers are not paid more than what the property is worth.

An option to release the property back may become increasingly important because of the change in the minimum bid price formula. Depending on the ability of revenue officers to accurately estimate the forced sale value of taxpayers' equity, there could be a marked increase in the number of sales cases where IRS would be purchasing the property for the Government. Because revenue officers never estimated forced sale value on our sampled sales cases, we cannot accurately estimate what percentage of sales cases would be involved. However, 32 percent of the sampled sales cases sold for less than 80 percent of taxpayers' equity. An

IRS Collection Division official agreed that the new formula could increase the volume of cases where no bidder offered at least the minimum bid price.

PROPERTY SHOULD NOT BE SOLD IN LARGE LOTS

Seized property can be offered for sale as separate items, as groups of items, or in the aggregate. In some cases, property is offered for sale both as separate items and in the aggregate, with the bids giving the highest price being accepted. Revenue officers are directed to use the method they believe most feasible, considering the facts and circumstances involved. The goal is to use the method which is expected to bring the highest price. According to district officials, districts lack guidelines to supplement manual instructions on grouping property for sale. Also, no work has been done to evaluate the effect various groupings might have on the selling price.

The following sample case illustrates the possible effect property grouping can have on the selling price.

> IRS seized a restaurant complex which included contents of a bar, a dining room, coffee shop, kitchen, and banquet rooms to collect on a tax liability of $30,000. The property was sold in 11 lots, organized by rooms, for $19,500. For example, the contents of the bar room included the bar, furnishings, cash registers, beverages, a piano, television, and glassware, and was sold with the contents of the ladies and boiler rooms. Another lot contained the contents of two banquet rooms which included tables, chairs, service carts, a piano, vacuum cleaner, china, and tableware. Still another lot was composed of coffee shop contents (tables, refrigeration units, foodstuffs, a cash register, and cooking and serving utensils).
>
> IRS district officials acknowledged that the lots were large and illogical and that the groupings could have been further broken down. The revenue officer who managed the sale also acknowledged that the lots could have been better organized to bring in greater proceeds which might have fully satisfied the tax liability.

To obtain an estimate of what the sale might have brought, we interviewed a private auctioneer familiar with the case. He stated that the lots were too large and effectively eliminated bidding by small businessmen. He estimated that net sales proceeds would have been about $40,000 if better grouping techniques had been used.

This case shows the possible effect that an error in a revenue officer's judgment can have. If the auctioneer is correct, the taxpayer should have received about $10,000 from the sale after settling the $30,000 liability. Instead, the taxpayer still owed about $10,000.

An official in this district stated that he agrees that smaller groupings would probably attract more bidders and consequently increase revenues. He said that larger lots may exclude some people from bidding due to the (1) corresponding large cash payment required and (2) possibility that large lots might contain items not wanted by the bidder. He also said that larger lot sizes can reduce interest in bidding or ability to bid which, in turn, would reduce bidding intensity and result in lower bids.

Although the number of similar cases that might be in the estimated 18,000 cases from which we sampled is unknown, they are probably few. Nevertheless, the above case illustrates the importance of the judgment required in grouping property for sale.

SEALED BID VERSUS PUBLIC AUCTION: NO DIFFERENCE

The Internal Revenue Code provides that seized property must be sold either at a public auction or by a sealed bid. As with determining lot sizes, guidance given to revenue officers is limited. The guidelines provide only that facts and circumstances surrounding the property should be weighed, and the method selected should be the one which is believed will bring the best price.

Interviews with revenue officers disclosed little uniformity in deciding which sales method to use. The following table shows revenue officers' responses as to whether they believed certain considerations were important in deciding to use a sealed bid as opposed to a public auction.

Factor considered	Percent of interviewed revenue officers who considered the factor important	Range of average district response	
		Lowest	Highest
Lack of local market	76	67	87
Selling price is expected to be very high	42	32	55
Property is highly specialized	80	77	93
To avoid long sale announcements that would have to be made at a public auction	2	0	9
District or regional guidelines	21	8	46

As shown, there is little consensus, individually or by district, as to the effect of these factors on the decision to use a sealed bid rather than a public auction. Thus, in the case of property expected to sell at a high price, about half might be sold using sealed bids. The rest would be sold at a public auction.

In actual practice, some districts are more inclined to use sealed bids than others. Based on our sample, one district used sealed bids in 70 percent of its sales while two others used it only 5 percent of the time. None of the districts had issued instructions on the advantages of one method over the other.

Overall, about 19 percent of sales are made using sealed bids. But most importantly, we found no statistically significant difference between the method of sale and whether or not the return on equity was more than 100 percent. Therefore, even though there are no IRS guidelines or a general consensus among districts as to which sales method is best, there is no need for IRS to take any action.

ANNOUNCEMENTS ARE MADE AT THE SALE

At public auctions, guidelines state that revenue officers should read a prepared statement as to the authority for

the sale and the conditions under which the property is sold, subject to any outstanding liens and mortgages, and "where is and as is." Before July 1976, IRS procedures did not provide for the revenue officers to disclose known encumbrances. Also, announcements of minimum prices are left to revenue officers' discretion. Announcements by taxpayers and lienholders are also permitted.

Announcing the status of encumbrances on the property

In 1975, when the sampled cases were closed, the districts disagreed as to whether the encumbrances should be announced at sales. Some districts did not disclose known encumbrances because prospective purchasers might consider them an expressed warranty as to the amount of encumbrances. Another district allowed revenue officers to announce encumbrances as long as it was made clear that these were the only ones IRS knew of and not necessarily all that existed. Most revenue officers involved in the sales cases told us they did not announce the status of encumbrances.

In July 1976, IRS changed its guidelines and specifically permitted acknowledging known encumbrances. However, practices among districts continued to differ. In one district, prospective bidders are furnished the results of IRS' search for encumbrances both before and at the sale. In other districts, some revenue officers volunteer the information, others do not, and others provide it on request.

Announcing encumbrances provides bidders information about taxpayers' right, title, and interest in the property that they are bidding on. When revenue officers made such announcements, proceeds of sales equaled 100 percent or more of equity 73 percent of the time, compared to only 60 percent for those where no announcements were made. This comparison indicates that it could be advantageous to both IRS and taxpayers to announce the status of encumbrances against the property.

Announcing minimum price

Although IRS policy leaves the decision about announcing the minimum price to the individual revenue officer, district officials have various interpretations about it. Some districts simply leave the decision to the revenue officers; however, officials from two districts said that they had an

unwritten policy of not announcing the minimum price because it might depress the amount bid. One of these officials also said that if the price was not reached, revenue officers would be forced to purchase the property for the Government.

To ascertain IRS' practice, we asked revenue officers responsible for making the seizure in our sample whether they would announce the minimum price under certain circumstances. Of 205 revenue officers interviewed, only 8 (about 4 percent) said they announced the minimum price with any regularity. Seventy-four percent said they almost never made an announcement of the minimum price, while 7 percent said they sometimes did; the remainder did not respond to the question. Some conditions and the frequency with which they said they would announce the minimum price are as follows:

Reason	Yes	No	No comment
	---------(Percent)-----------		
If all bids were below minimum price	39	51	10
At the purchaser's request	20	70	10
At the taxpayer's request	30	58	12
At the lienholder's request	18	71	11

For sampled cases, the revenue officers said that the announcement had been made in only 4 percent of the cases.

DIFFERENCES BETWEEN IRS' AND OTHER ORGANIZATIONS' USE OF FORCED SALES

State and local tax authorities and private organizations such as collection offices, banks, and loan companies, use many sales methods which are different from IRS'. The differences pertain to

--real property redemption rights,

--advertising methods and techniques of the sale, and

--who conducts the sale.

Real property redemption rights

Except for certain county governments which conduct tax sales, none of the Government or private organizations

contacted grant a redemption right after foreclosed property is sold.

While the Government's 120-day redemption period might be construed as protecting taxpayers, it might be a disadvantage for taxpayers and the Government. Officials of a State-taxing authority and a private institution believed that a redemption period tends to depress prices because of the uncertainty of getting possession until 120 days later. IRS officials in one district shared this view and suggested that it be eliminated. However, only 7 percent of the real estate purchasers said that it tended to lower what they bid. In contrast, 87 percent of them said it had no effect. Whether it affected the amount bid by unsuccessful bidders is unknown.

Advertising the sale

Other organizations do more advertising than IRS. Officials of some governmental and private institutions said they did not handle the sale of seized property but relied on the services of auctioneers and salvage companies when it came to advertising. In one State that did sell property using its own personnel, sale notices were run for 10 days before the sale. Banks usually relied on businesses specializing in property sales; however, those who did advertise ran the ad for several days before the sale. This action compares to the IRS practice of running a single insertion.

An auctioneer hired by one of the States said he ran ads each day, starting 5 days before the sale. His ads appeared in the auction section of the newspaper and in the classified section. Additionally, he used direct mailings and personal contacts to reach potential bidders. The auctioneer also said that in some instances, he would advertise the sale in much larger areas than does IRS.

CONCLUSIONS

Seized property is sold in a final effort to collect delinquent taxes. However, the threat of the sale causes most taxpayers to redeem or obtain the releases of their property by paying or arranging to pay their delinquent accounts.

IRS sales procedures, for the most part, protected the rights and interest of the Government, taxpayers, and third parties involved in the sale.

Although it is possible that taxpayers' ownership interest in excess of their tax liability could be wiped out through sale, the probability of that happening is remote. However, to give the taxpayers added protection, IRS should inform them, before the proposed sale, of the amount of the minimum bid price set by IRS. If taxpayers find out that the minimum bid price is substantially less than their ownership interest, they would then have time to try to raise additional funds to settle their liability before sale.

Also of concern is many revenue officers' attitudes about depressing the minimum bid price to avoid purchasing the property for the Government. IRS' manual guidelines seem to encourage such minimum price adjustment, although IRS officials told us this encouragement was not intended and that they would revise their manual to clarify IRS intent.

IRS should have the option to release the property back to taxpayers without selling it if IRS determines it would be in the Government's best interest. This could include property in bad repair or otherwise unmarketable unless IRS makes additional investment in the property.

A key to selling property at the highest possible price above the minimum bid price is attracting as many bidders to the sale as possible through advertising. Higher prices were obtained when there were extra advertisings. While we recognize that extra advertising costs are added to taxpayers' delinquent accounts, in many cases the higher prices will offset these costs and benefit taxpayers and IRS.

The grouping of assets is another selling technique which affects the sales prices. IRS does not provide its revenue officers with specific instructions or guidelines on asset grouping. Sales proceeds could be increased if special guidance were provided on grouping property for sale.

RECOMMENDATION TO THE CONGRESS

To better protect the interests of the Government and taxpayers, we recommend that the Congress:

--Amend section 6335(e)(1) of the Internal Revenue Code to provide that if no person offers to purchase property at a sale at the minimum bid price, the property shall be declared to be purchased at such price for the United States or released back

to the taxpayer if IRS determines it is not in the best interest of the Government to purchase the property. Such a determination must be made by IRS prior to the sale. The criteria used by IRS to make such a determination should be developed by the Commissioner.

RECOMMENDATIONS TO THE COMMISSIONER OF INTERNAL REVENUE

To protect taxpayers' interests, we recommend that IRS:

--Clarify guidelines to provide that minimum bid prices are not to be set at a depressed level which insures the Government will not have to purchase the seized property.

--Encourage the use of extra advertising to attract more bidders to the sale.

--Issue guidelines to assist revenue officers on effective ways to group property for sale.

--Require revenue officers to advise taxpayers of the minimum bid price set by IRS before the proposed sale date of the seized property.

INTERNAL REVENUE SERVICE COMMENTS

IRS agreed with all the above recommendations and has either already revised, or will revise appropriate guidelines to make the policy changes.

CHAPTER 6

SEIZURE'S IMPACT ON THIRD PARTIES

IRS seizure and sale actions can have an adverse effect on individuals other than taxpayers. IRS guidelines caution revenue officers to consider the possible adverse impact of their actions on these third parties. Some of the third parties who may be affected include rightful owners of erroneously seized property, landlords, purchasers, senior lienholders, and customers of a seized business. We reviewed IRS seizure actions, as they related to these third parties, to determine the following:

- --Do rightful owners receive compensation for losses suffered because IRS mistakenly seized property not belonging to taxpayers?
- --Do revenue officers, in implementing IRS' policy of obtaining rent-free agreements, coerce landlords into entering such agreements?
- --Do revenue officers provide prospective purchasers adequate information to determine what to bid?
- --Do revenue officers contact senior lienholders to allow them an opportunity to protect their interests in the event IRS sells the seized property?
- --Does IRS allow customers of seized businesses a reasonable opportunity to retrieve their property?

OWNERS OF WRONGFULLY SEIZED PROPERTY CAN SUFFER FINANCIAL LOSS

Section 6343(b) of the Internal Revenue Code provides that IRS can release wrongfully seized property to its rightful owner as long as IRS still has the property. In the event of sale or resale, IRS is required to pay the rightful owner an amount equal to the greater of the gross sales proceeds or the minimum bid price.

Section 7426 of the Code further provides that the rightful owner may enforce this claim to payment by a civil action in a Federal district court. However, it limits

the court's award to either recovery of the property if in the possession of the Government or to a money judgment for the amount of the minimum bid price or, if larger, the amount of the gross sales proceeds plus interest.

The district court does not have jurisdiction to make an award of money damages to the rightful owner for such things as damage suffered while IRS deprived the owner of the property or because the sales proceeds were less than the fair market replacement value of the property. However, rightful owners have a nonstatutory cause of action for damages against revenue officers whom they allege caused them harm. If revenue officers are required to pay damages, they in turn would be indemnified by the Government if they acted with probable cause.

As discussed in chapter 4, IRS wrongfully levied on property in six of our sample cases. In all cases, the rightful owner recovered the property even though, in one case, IRS had sold it. In this case, IRS was able to recover the property from the purchaser by refunding the purchase price. The property was then returned to the rightful owner. If the purchaser had not agreed to rescind the sale, the rightful owner could have recovered only the amount of the sales proceeds.

In one of the other cases, the rightful owner claimed to have lost a hauling contract because IRS deprived him of his trailer, which had been wrongfully seized. The trailer had not been sold and was returned. He had no statutory means available to recover damages suffered when he lost the hauling contract. However, he could have sought damages from the revenue officer.

LANDLORDS ARE NOT COERCED INTO PROVIDING RENT-FREE STORAGE

Landlords are not coerced into providing free storage for seized property; however, they are not always told of their right to refuse free storage and be paid rent. IRS guidelines provide that when seized property (1) is on rented premises and consists of machinery or other property not easily transported or (2) is made up of a considerable quantity of business assets, arrangements should be made with landlords for storage of the property on the premises. If taxpayers have not paid rent covering the required storage period, revenue officers may try to arrange storage rent free. They may negotiate a reasonable rent for the needed storage period if they are unable to get a rent-free

agreement. If satisfactory arrangements cannot be made, revenue officers can move the property, sell it under perishable goods criteria, or release it to the taxpayers.

Although some district officials said they advised landlords that they are entitled to rent, officials in two districts said that such advice was provided only if landlords requested rent. One district official said that he believes IRS gets better cooperation and protection from landlords when IRS pays rent.

IRS records showed that revenue officers attempted to negotiate a rental agreement in 5 percent of the cases. Rent-free agreements were obtained in 2 percent of the cases and rental agreements in another 3 percent. For all other cases, either the property was moved, the taxpayers owned the premises, the rent on the premises was current, or the file did not indicate what rental arrangements, if any, were made.

When we interviewed revenue officers who handled rent agreements, the majority stated that landlords knew their rights because of discussions held with landlords. Our interviews with landlords involved in these cases indicated that 24 percent of them did not know of their rights to refuse these rent-free proposals.

SOME PURCHASERS LACKED UNDERSTANDING OF CONDITIONS OF IRS SALES

Prospective buyers need to be informed of specific details about and the circumstances surrounding the property being sold so they can better determine the amount to bid. This information is also needed to allow purchasers to take good title to the property without any adverse impact. Although required notices and announcements were given or made in most cases, many of the purchasers of seized property apparently did not understand the meaning of "right, title, or interest."

About one-half of the purchasers we interviewed were attending an IRS sale for the first time and were purchasing the property for business use or for resale. Since most purchasers are not regular attendees of these sales, it is important that revenue officers make certain they understand the provisions under which the property is being sold.

IRS advises prospective bidders of sale conditions through sales notices, advertisements in newspapers, and required verbal announcements at the sale. These conditions

included the restriction that only the taxpayers' right, title, and interest in and to the seized property is being sold; that is, the property may be subject to prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are senior to the lien of the Government, reducing the property value to that of the taxpayers' interest.

Ninety-eight percent of the revenue officers interviewed who conducted the sampled sales cases said they regularly announced the conditions of the sale. However, 43 percent of the purchasers interviewed reported they did not know that IRS sold property subject to senior liens.

A new form, implemented in July 1976 for listing senior encumbrances, if made available to prospective bidders at IRS sales, should better inform bidders.

Our interviews indicate that senior liens do have an effect on the amount obtained from the sale. About 43 percent of the purchasers interviewed stated they knew the lien status of the property before the sale, and the remainder either did not know or did not remember if they knew the lien status before the sale. The purchasers who obtained property that was encumbered, and did not know of the encumbrance before the sale, said that had they known of the lien, they would not have bid or would have bid much less.

Another condition of sale that purchasers are requested to be informed of is the provision that real property may be redeemed by the taxpayers within 120 days after the sale. Our sample included only a small percentage of cases involving the sale of real property. The purchasers interviewed stated they knew of the redemption rights of the taxpayers before the sale. They said they learned of these rights from the sale notice or from IRS representatives. These purchasers also said taxpayers involved did not redeem the real property.

SENIOR LIENHOLDERS GENERALLY NOTIFIED OF SALE AND ALLOWED TO MAKE ANNOUNCEMENTS

IRS guidelines caution that senior lienholders of security interests in personal property are sometimes deprived of their rights as a result of a sale by IRS. The basis for this statement is the belief that since purchasers at a sale receive possession of the personal property immediately upon payment of the bid price, they can use a fictitious name, and neither the purchaser nor the property can

be located by senior lienholders. IRS does not have the authority to withhold the property from the high bidder. To help prevent such a loss, the guidelines state that senior lienholders may make announcements concerning their liens prior to the sale and conduct a foreclosure sale immediately after the sale.

Our study indicates the districts may be interpreting this guidance differently. Some of the districts have interpreted the IRS procedures allowing lienholders to make announcements at sales of personal property to mean that lienholders can make announcements only if they make a request. Another district official said IRS did not need to advise lienholders of their right to make announcements because (1) IRS has made many of their manuals available to the public and (2) the public knows their rights and what they can do. Other districts indicated that although they had no specific policy, they usually tried to get lienholders to make announcements; but few actually made announcements.

Revenue officers interviewed stated that in about 74 percent of the cases where there were senior encumbrances on the personal property, they notified the lienholder of both the time and place of the sale; in 9 percent of the cases the revenue officers said they did not remember. Based on revenue officers' interviews, lienholders were present at about 44 percent of the sales and most (62 percent) of those attending did make announcements.

To determine if lienholders were encountering problems, we asked revenue officers whether lienholders ever contacted IRS for information concerning the whereabouts of purchasers of seized property. Revenue officers said that no lienholders contacted them about the whereabouts or name(s) of purchaser(s).

CUSTOMERS HAVING PROPERTY AT SEIZED BUSINESSES ARE INCONVENIENCED

Occasionally, IRS seizes businesses which have large quantities of property on their premises belonging to taxpayers' customers. Examples of such businesses are dry cleaners, laundries, and repair shops. Such seizures can cause inconveniences to the customers in retrieving their property.

Sampled cases included two dry cleaners and an auto repair shop. At the first cleaners, IRS gave the customers

about 2 hours on each of 2 days and for unknown periods on 3 other days over a 25-day period to retrieve their property. IRS posted a notice on the door of the cleaners and ran an advertisement in the newspaper. Those customers that failed to read the advertisement but found out about the scheduled hours from the notice at the store may have had to take time off from work to retrieve their property if the IRS schedule conflicted with their work schedule.

At the other cleaners, IRS records show that notice was also posted at the premises. IRS scheduled the cleaners to be open on 5 days throughout a 45-day period, but records did not show for how long.

At the automobile repair shop, IRS sent notices to the four customers telling them that upon paying the repair bill, it would release their automobiles. IRS received payment from one customer and released the automobile. After 3 weeks. IRS released the other three automobiles, even though no money was received.

We did not attempt to contact customers of these businesses to determine whether they were inconvenienced. However, when IRS permits customers to reclaim their property at only very limited times, inconveniences could occur.

CONCLUSIONS

IRS' seizure and sale actions affect parties other than the taxpayer. Those affected are rightful owners of property that IRS erroneously seized, the landlord who owns the building or land where seized property is located, the persons who buy the property, those who have liens against the seized property, and customers whose property is mistakenly seized together with the taxpayer's property in a business establishment.

To some extent, these persons are potentially harmed financially, taken advantage of, or inconvenienced, as a result of problems which should be limited between taxpayers and IRS. Although all of these side effects cannot be eliminated, we believe more can be done to minimize them.

With regard to landlords, IRS should advise them that a fair rent will be paid to store seized property on their premises. The rent should be charged as selling expenses to taxpayers' account so that it will be paid by them if the account is eventually fully paid.

Since IRS does not warrant clear title to property it seizes, IRS should (1) explain more clearly to prospective purchasers what "right, title, and interest" means and (2) tell prospective purchasers of the existence and the amount of all known encumbrances against the property being sold. Those bidding on the property would then be in a better position to judge what a fair bid would be. It is even possible that the bids would be higher in those cases where there are no known encumbrances.

Inconvenience of customers who have property seized along with taxpayers' businesses cannot always be avoided. However, returning this property during limited hours on only 5 days scattered over 25 to 45 days is too limited. An effort should be made to keep businesses open at times convenient to the customers, such as evenings and weekends. Although we have not developed enough information on this point to make specific recommendations in this area, IRS should strive to reduce customer inconvenience when their property is seized along with that of the taxpayers' businesses. IRS advised us that it will open seized businesses "beyond normal IRS work hours, including evenings and weekends * * *," so customers will not be inconvenienced.

RECOMMENDATIONS TO THE COMMISSIONER OF INTERNAL REVENUE

We recommend that IRS revise its guidelines to require revenue officers to

--advise landlords that a fair rent will be paid to store seized property on their premises and

--advise prospective buyers that IRS does not warrant clear title to property being sold and inform them of the existence and amount of all known encumbrances.

INTERNAL REVENUE SERVICE COMMENTS

IRS agreed with the above recommendations and will expand guidelines so landlords will know that fair rent will be paid. IRS has revised the notice of sale to explain more clearly that seized property is sold subject to encumbrances superior to the tax lien. Upon request, IRS will furnish information about known encumbrances.

COMMISSIONER OF INTERNAL REVENUE

Washington, DC 20224

JUN 6 1978

The Honorable Elmer B. Staats
Comptroller General
General Accounting Office
Washington, DC 20548

Dear Mr. Staats:

Thank you for the opportunity to comment on GAO's Report to the Joint Committee on Taxation, "IRS Seizure of Taxpayer Property: Effective But Not Uniformly Applied." We are pleased that the report finds that taxpayers generally receive fair treatment and that seizures are an effective collection tool. We agree substantially with most of the recommendations. Since the report is based on a study of cases closed in 1975, our current practice reflects a number of procedural changes that did not, for the most part, apply to cases closed in that year.

In 1974, as a result of Internal Audit findings, Congressional inquiries, a study by the Administrative Conference of the United States, and complaints by taxpayers, we began an extensive reappraisal of our collection programs and procedures. Our goal was to ensure that: (1) tax laws relating to collection were administered fairly and impartially; (2) civil tax laws were not used punitively; (3) we used the level of enforcement appropriate to accomplish our total mission; and (4) we informed taxpayers of their rights. As a result of the review, we implemented several improvements in 1975 and 1976.

For example, we made a change in August 1975 requiring group manager review and concurrence in a revenue officer's decision to seize. For personal residences, we required a second level of managerial review and concurrence. We believe the requirement for managerial review effectively addresses many of the issues raised in the report concerning the need for greater uniformity and effectiveness.

We also developed a written summary notice to list outstanding encumbrances against the property offered for sale. The notice is furnished to anyone upon request and its availability is printed on our public notice of sale and announced immediately before a sale begins. More recently, we revised the standard for determining the minimum bid price for seized property offered for sale.

Department of the Treasury Internal Revenue Service

The Honorable Elmer B. Staats

Another significant change resulted from the January 1977 Supreme Court decision in G.M. Leasing Corp. v. United States. The Court held that entry onto a taxpayer's premises to seize property without a warrant violates the taxpayer's rights under the Fourth Amendment to the Constitution. Consequently, the Service now secures the taxpayer's written consent or a court order before seizing property located on private premises.

In August 1977 we decided to discontinue the practice of making no equity seizures. We no longer permit seizures in situations where we know in advance that the sale proceeds are unlikely to satisfy the costs of seizure and sale.

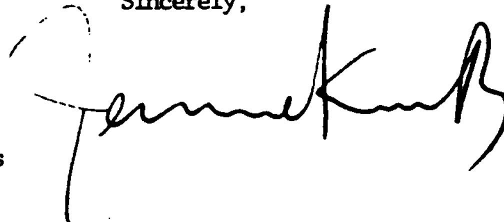
There has been a reduction in the number of seizures from some 18,000 in 1975 (the period reviewed by GAO) to approximately 4,000 annually in 1977 and 1978.

We are thoroughly reviewing the report and, while we believe that restricting a revenue officer to three contacts prior to seizure is too rigid a rule, we intend to make other revisions as appropriate. For example, we are revising our guidelines to stipulate that revenue officers may not adjourn a sale to lower the minimum bid price so that the United States can avoid purchasing the property. Also, we will revise our guidelines to ensure that Service personnel will open seized businesses so that third party customers can redeem their property. The guidelines will provide for opening the premises for some portion of time beyond normal IRS work hours, including evenings and weekends, if the business was normally open during these hours.

Our responses to the report's specific recommendations to the Commissioner are provided by Chapter order in the enclosure.

With kind regards,

Sincerely,



Enclosure
Responses to Recommendations

CHAPTER 3

Recommendations to the Commissioner of Internal Revenue

To promote uniform treatment of taxpayers and effective management of cases we recommend that IRS:

A—Establish timeframes for accomplishing significant steps in the Collection process with a maximum time allowable for
(1) assigning a case to a revenue officer,
(2) initiating an attempt to contact the taxpayer,
(3) accomplishing contact with the taxpayer, and

B—Require revenue officers to:
(1) notify taxpayers during the initial contact of IRS' seizure powers
(2) advise taxpayers of their appeal rights.

Response

A(1) We believe we should promptly work cases in the Collection Office function but should not have a precise number of days or weeks mandated before a case is assigned to a revenue officer. Current procedures require initial assignment of most cases to the Collection Office function, where we employ bulk processing procedures. Nationally, in 1977, the Collection Office function, using bulk processing procedures, closed 52% of all cases assigned to district offices. The key is to maintain management discretion and flexibility. These factors outweigh the advantage of uniformity in fixing a maximum time to assign a case to a revenue officer.

The bulk processing involves periodic actions on all assigned accounts. Usually, at 15-day intervals, we review each account in the Collection Office function. By using clerical and para-professional personnel, we make positive collection at a lower cost. When appropriate, we transfer accounts out of the bulk process directly to a revenue officer group. We believe this bulk processing is both economical and equitable.

A(2) and (3) We agree and will revise our procedures to require initial contact with the taxpayer within 45 days after assigning a case to a revenue officer. When unique circumstances exist, and we cannot contact the taxpayer within the 45-day period, we will require case history documentation.

B(1) We have revised our procedures to require that, except in jeopardy situations, the revenue officer should make reasonable effort to contact and inform the taxpayer that we contemplate seizure before we take that action. At this time, we give the taxpayer another opportunity to pay voluntarily and advise the taxpayer of his/her appeal rights. We believe it is important for the revenue officer to have discretion in determining when the taxpayer should receive notice, based on the facts of the case.

B(2) We agree. We mail Publication 586A, The Collection Process (Income Tax Accounts), to delinquent taxpayers with their second notice of delinquency. The publication contains information on enforced collection and taxpayers' rights. We recently developed Publication 594, The Collection Process (Employer's Quarterly Federal Tax Returns), which we will mail with the second notice of delinquency. It provides business taxpayers with similar collection enforcement information and appeal rights. We will require revenue officers assigned accelerated accounts (which bypass second notice issuance) to make reasonable effort to personally deliver and explain Publication 594. In all cases we will attempt personal contact to advise taxpayers of their appeal rights prior to seizure action being taken. We also will issue Manual guidelines to further emphasize the rights of taxpayers and third parties in levy and seizure situations.

CHAPTER 4

Recommendations to the Commissioner of Internal Revenue

We recommend that IRS:

(1)—Increase the use of the special trust fund penalty provisions of Sections 7512 and 7215 of the Internal Revenue Code to secure compliance by employers and others in paying over trust fund monies required to be collected from employees, or collected from customers.

(2)—Encourage the use of cash register content seizures as an aid to collection.

(3)—More accurately establish the inventory value of property it seizes by (1) using professional appraisers, (2) soliciting appraisals from businessmen in the same line of business as the taxpayer subject to seizure, or 3) giving revenue officers specialized training on how to make accurate appraisals.

Response

(1) We concur. Manual Supplement 5(10)G-23 (7/12/76) established uniform standards for enforcement under Code sections 7512 and 7215. During the period April 1976 through December 1977, we issued 42,883 L-54 letters, placed 4,552 taxpayers under monthly filing requirements, cited 3,703 under Code section 7512(b) and referred 1,100 for criminal prosecution.

(2) We will revise training materials to emphasize the value of cash register seizures under appropriate circumstances.

(3) We agree with the recommendation. We revised guidelines recently to expand the use of professional and Service appraisers in establishing property valuations and professional auctioneers in conducting sales. We are now identifying other sources for valuation assistance and are developing training materials for establishing the value of seized property.

CHAPTER 5

Recommendation to the Commissioner of Internal Revenue

To protect the interests of the taxpayer in his property which is seized and sold by IRS, we recommend that IRS:

(1)--Clarify guidelines to provide that minimum bid prices are not to be set at a depressed level which insures that the Government will not have to purchase the seized property.
(2)--Encourage the use of extra advertising to attract more bidders to the sale.
(3)--Issue guidelines to assist revenue officers on how properly to group property for sale.
(4)--Require revenue officers to advise taxpayers of the minimum bid price set by the Service before the proposed sale date of the seized property.

Response

(1) We concur. Our recently revised provisions for using professional appraisers should help establish a realistic minimum bid price. We also revised procedures for giving the taxpayer a copy of the minimum bid price computation prior to sale. A cover letter advises the taxpayer that we will use commercial appraisers to value the property if the taxpayer disagrees with the amount.

We require revenue officers to notify the taxpayer of the time of the seizure and invite his or her presence. Revenue officers must document the case file in no contact cases or when the taxpayer does not appear after notification. We ask the taxpayer to assist in establishing the ownership and inventory value of seized property.

(2) We agree. We will develop and issue expanded guidelines.

(3) We agree and will implement the recommendation.

(4) We have revised our guidelines to provide that we serve a copy of the minimum bid determination to the taxpayer prior to the proposed sale date.

CHAPTER 6

Recommendations to the Commissioner of Internal Revenue

We recommend that IRS revise its guidelines to require revenue officers to

(1)—advise landlords that fair rent will be paid to store seized property on their premises, and

(2)—advise prospective buyers that IRS does not warrant clear title to property being sold and inform them of the existence and amount of all known encumbrances.

Response

(1) We agree. We will issue expanded guidelines to cover the recommendation.

(2) We have revised the Notice of Sale to explain more clearly that we sell seized property subject to any encumbrances superior to the federal tax lien and that, upon request, the Service will furnish information about known encumbrances. We advise prospective buyers that IRS cannot warrant clear title. Prospective buyers are also told immediately before a sale begins that they can obtain a copy of Form 2434-B, Notice of Encumbrances Against Property Offered for Sale.

SAMPLING AND DATA ANALYSIS

METHODOLOGY

For our review of IRS procedures for seizing and disposing property, it was necessary to randomly select the IRS district offices in which our data was to be collected. In making this selection, the 58 district offices were ranked using the following items:

1. Number of seizures in fiscal year 1972.
2. Number of seizures in fiscal year 1973.
3. Number of seizures in fiscal year 1974.
4. Seizures per 1,000,000 taxpayers in 1972.
5. Seizures per 1,000,000 taxpayers in 1973.
6. Seizures per 1,000,000 taxpayers in 1974.

Once this ranking was completed, a scoring system was developed. This system was the inverse of the rank--that is, if a district office was ranked first, it received 58 points, and if it ranked 58th, it got 1 point. The points were then totaled across the six categories. For example, if there were three offices and they had the following rankings:

	Ranking item					
Office	1	2	3	4	5	6
A	1	1	2	2	1	3
B	2	3	1	3	3	2
C	3	2	3	1	2	1

then the scoring would be as follows:

Office	1	2	3	4	5	6	Total
A	3	3	2	2	3	1	14
B	2	1	3	1	1	2	10
C	1	2	1	3	2	3	12
Total							36

In the IRS district offices, the total of the scores was 10,266. Numbers were then assigned to each district office proportional to its score. Using our previous example, then the three offices would have been assigned the following numbers:

Office	Numbers
A	1 to 14
B	15 to 24
C	25 to 36

Using a table of random numbers, district offices were selected for review. The six district offices selected were Buffalo, N.Y.; Atlanta, Ga.; Cincinnati, O.; Nashville, Tenn.; Reno, Nev.; and Oklahoma City, Okla.

Selection of individual cases

Within each selected district office, the seizure cases were stratified into the following categories, based on their disposition: (1) released, (2) redeemed, (3) sales, (4) cash register, and (5) Government purchases. Then the cases within each stratum were sequentially numbered starting with one.

Based on the number of cases within the stratum, random numbers were computer generated to identify those cases to be selected for review. A separate set of random numbers was generated for each stratum in each district unless 100 percent of the cases for the stratum were reviewed. From the 1,759 cases in the six districts, 399 cases were selected for review.

Projection of sample results

Once the data was collected, a system of weights was developed to project sample results to

--taxpayers and seizure cases in the selected districts and

--taxpayers and seizure cases in the Nation.

Released cases in one of the districts will be used to illustrate the weighting system. There were 133 seizure cases closed in that district during 1975 by releasing the property which had been seized. We sampled 21 cases that

pertained to 20 taxpayers (that is, two cases involved the same taxpayers).

First, an estimate was made of the number of taxpayers involved in 1975-released cases in the district. This amount was determined by dividing the number of taxpayers in the sample (20) by the number of sampled cases (21) and multiplying the result by the number of released cases in the stratum (133). Using this procedure, we estimated that there were about 127 taxpayers involved in the 133 released seizure cases in the district (20/21 x 133 = 126.67).

Next, the taxpayer weights were calculated by dividing the estimated number of taxpayers in the stratum by the number of sample cases in the stratum (that is, weights for the district's released data would be 126.67/21 = 6.032). One taxpayer in the sampled released cases represents 6.032 taxpayers in the district.

The next step was the calculation of the case weight. This was calculated by dividing the stratum universe size by the stratum sample size. Again using released case data, 133/21 = 6.333; that is, any observed condition about one sampled released case can be projected to 6.333 released cases in the district.

Next, the value needed to make nationwide projections from our data was calculated by dividing the estimated number of seizure cases closed in 1975 (18,000) by the number of seizure cases in the six districts (1,759); that is, 18.000/1,759 = 10.233. This figure was then multiplied by the case and the individual (taxpayer) weights previously developed to obtain nationwide weighting factors as follows:

6.333 x 10.233 = 64.806	Nationwide case weight
6.032 x 10.233 = 61.725	Nationwide taxpayer weight

Each released case from this district represents 64.806 cases in the Nation and 61.725 taxpayers in the Nation.

For report purposes, percentages have been rounded; however, none of them are off more than one percentage point. In presenting projected data, we used the weighted mean as the best estimate because the projections are based on a statistical sample rather than a complete enumeration. The figures presented are subject to variation.

Purpose of the analysis

Our analysis was made to determine (1) whether there were associations between observed characteristics and interview responses and the significance of these associations and (2) the impact certain factors had on a given variable. The chi-square test of independence, the Mantel-Haenszel test, and regression analysis were used.

Chi-square

The chi-square test of independence was used to (1) establish whether there is an association between the variables tested and (2) to determine the significance of the identified associations.

To illustrate, data collected on one variable showed the following proportions of yes and no answers.

IRS district	Yes	No	Total
	- - - - -(percent) - - - -		
1	69.2	30.8	100
2	65.4	34.6	100
3	67.3	32.7	100
4	52.9	47.1	100
5	48.0	52.0	100
6	44.0	56.0	100

The proportion of "yes" answers varied from a high of 69.2 percent at District 1 to a low of 44.0 percent at District 6. But is the difference in proportions significant or merely the result of chance? The chi-square test of independence can be used to evaluate these possibilities.

We determined the significance of the associations between the variables tested by using confidence levels which represent the probabilities that the associations were not products of chance. In interpreting the analysis results, we used a confidence level of 95 percent or greater as being significant unless otherwise specified.

Our chi-square tests of independence were made for categorical variables and continuous variables expressed in terms of ranges. Continuous data were grouped into ranges to make the proportions of cases falling into each of the extreme categories roughly equal and contain enough cases to bring expected cell frequencies for all cells to at least five.

Mantel-Haenszel

The Mantel-Haenszel test was used in those situations in which we were concerned with whether associations could be established over our entire sample of six districts as a whole, rather than within or between the districts. Because the samples for the six districts were not proportional to district universes, we could not simply combine the samples for statistical testing. The Mantel-Haenszel test is appropriate for testing for associations under this circumstance, provided that the data can be presented in a two-by-two table.

Regression analysis

Regression analysis was used to determine what impact certain factors had on a given variable. For example, can the variance in elapsed time between cases be explained in terms of certain characteristics of the case (e.g., the type of tax). Again, a 95-percent confidence level was used.

PRINCIPAL TREASURY OFFICIALS RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of Office	
	From	To
SECRETARY OF THE TREASURY:		
W. Michael Blumenthal	Jan. 1977	Present
William E. Simon	Apr. 1974	Jan. 1977
George P. Shultz	June 1972	Apr. 1974
COMMISSIONER OF INTERNAL REVENUE:		
Jerome Kurtz	May 1977	Present
William E. Williams (acting)	Feb. 1977	May 1977
Donald C. Alexander	May 1973	Feb. 1977
Raymond F. Harless (acting)	May 1973	May 1973
Johnnie M. Walters	Aug. 1971	Apr. 1973
ASSISTANT COMMISSIONER (ACCOUNTS, COLLECTION, AND TAXPAYER SERVICE)		
James I. Owens	May 1977	Present
James I. Owens (acting)	July 1976	May 1977
Robert H. Terry	Aug. 1973	July 1976
Dean J. Barron	July 1971	Aug. 1973

(268013)