

IRM PROCEDURAL UPDATE

DATE: 08/29/2017

NUMBER: sbse-05-0817-1284

SUBJECT: Role of Revenue Officers In Sales

AFFECTED IRM(s)/SUBSECTION(s): 5.10.3

IRM 5.10.3.7 corrected form numbers for Writ of Entry Revenue Officer Declaration and Writ of Entry Data Sheet.

1. When a Writ of Entry is required, the revenue officer will prepare:
 - Form 14742, *Writ of Entry Revenue Officer Declaration*.
 - Form 14743, *Writ of Entry Data Sheet*.
2. Since declarations are testimony under oath, the revenue officer must ensure that the information presented is accurate and factual. Extraneous information and subjective opinions should not be included in the declaration. Declarations do not require the signature of a notary public. The data sheet may be used to answer any questions from the judge or magistrate.
3. If the revenue officer has reason to believe that property of the taxpayer is on the premises that he or she wishes to enter, but is unsure of precisely what property is located on the premises, contact area counsel to discuss how to describe the property to be seized.
4. Forward the completed declaration and data sheet through the group manager and Advisory to area counsel as soon as possible. After review, area counsel will refer the matter to the U.S. Attorney. Area counsel will advise the revenue officer or group manager of the place and time of the appointment with the District Court Judge or Magistrate. The revenue officer or group manager may need to appear in order to answer questions from the judge or magistrate.

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

5. When the Writ of Entry is received, the revenue officer will notify the PALS manager and proceed with the seizure. The revenue officer should check IDRS after the writ has been secured, in order to confirm that there have been no changes to the status of the taxpayer's account, such as bankruptcy filings, adjustments, or credits that would cause the seizure action to no longer be allowable or warranted.
6. If the premises to be entered may be locked, the revenue officer should take the following actions:
 1. Attempt to schedule the seizure at a time when the premises are expected to be open.

2. If there are no known times when the premises are expected to be open, contact the taxpayer to advise that the writ has been received and to make arrangements to meet at the premises to gain entry.
3. If the taxpayer refuses or does not respond, take the necessary action, such as securing the services of a locksmith, to enter the premises.
7. Generally, writs are in effect for ten days, but a judge or magistrate may limit or increase the time parameters.
8. For certain cases, it may be advisable to request that the writ allow for multiple entries of the same premises over a period of time. For example, if cash register contents are the only asset to be seized, successive levies on several days may be more efficient than requesting a new writ for each levy. Consult Counsel through Advisory to determine the language required on the affidavit in this context.

IRM 5.10.3.18.3 revised guidance on seizure of stock certificates to align with IRM 5.11.6.9.

1. Taxpayers' **publicly-traded** securities, whether or not represented by certificates, may be levied using Form 668-A, *Notice of Levy*, and a request made that the brokerage or bank liquidate the securities and send a cash payment. The levy proceeds may be reduced by the broker commission or transaction fee the broker is entitled to under the agreement with the taxpayer. The brokerage or bank may ask that the request for liquidation be made in writing. Letter 5764, *Request to Liquidate Levied Property*, should be used for this purpose. Generally, the Service will levy on these securities rather than seizing and selling them. For information on levying on securities, see IRM 5.11.6.8, *Securities - Stocks, Bonds, Mutual Funds, etc.* If the bank or brokerage refuses to liquidate the account, consideration should be given to whether the next step should be a request for production of certificates followed by an administrative sale (as described in paragraphs 2-5 below) or referring a suit for failure to honor a levy.
2. Taxpayers may also have accounts or own stock that is **not publicly-traded**. These non publicly-traded securities are subject to administrative seizure and sale procedures or a suit to foreclose on the Federal Tax Lien. Consult Local Area Counsel to determine the appropriate action to take.

NOTE: Personal service of required seizure forms may require a courtesy investigation. See IRM 5.10.3.9 for delivery requirements.

3. Campus Compliance Services sometimes receives stock certificates in response to levies. Since they are unable to properly dispose of these negotiable certificates, the negotiable certificates will be transmitted to the appropriate collection area for disposition.
4. Within thirty (30) days of notification of a hold placed on certificates or receipt of certificates from a third party or Campus Compliance Services, the revenue officer who receives the certificates must decide whether to release the levy

and return the certificates, if applicable, or return the certificates for redemption or liquidation. See IRM 5.11.6.9, *Securities - Stocks, Bonds, Mutual Funds, etc.* The case file will be documented to reflect the background levy action. Exceptions to this 30 day time frame include situations when the current value of the stock cannot be ascertained and the time frame would then start once the value of the stock is known. The reason for any delay must be documented in the case history.

NOTE: The certificates should be secured with the same precautions as seized property (IRM 5.10.3.11.2, *Controlling Seized Property Stored in IRS Offices*).

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

If	Then
The taxpayer owns non publicly-traded stock,	The Form 668-B, <i>Levy</i> must be prepared and issued to both the taxpayer and the broker or other third-party agent. The Form 2433, <i>Notice of Seizure</i> must be prepared and issued to both the taxpayer and the broker or other third-party agent.
The taxpayer owns publicly-traded stock,	The Form 668-A, <i>Notice of Levy</i> , should be prepared and issued to the broker or other third-party agent.

IRM 5.10.3.26(2) and (5) revised guidance regarding RO's participation in sales.

1. The revenue officer will transfer custody of the property to the PALS group manager once the following actions are completed:
 - o The seizure is made
 - o The assets are secured
 - o A detailed inventory is completed
 - o Form 2433 is delivered with Publication 1660
2. Prior to conducting the seizure, the revenue officer will coordinate the timing of the seizure with the PALS, so that transfer of custody of the seized assets can be made in a timely manner (see IRM 5.10.3.3, *General*). Transfer custody of seized property as quickly and efficiently as possible to minimize expenses. Upon receipt of the revenue officer's documents listed in IRM 5.10.3.9.2(4), the PALS group manager will create an OI and assign the case to a PALS to complete and/or coordinate all actions pertaining to the sale of seized property. The revenue officer will document the case history with any reasons for delay in transferring custody of seized assets to the PALS per IRM 5.10.3.26(7) & (8).

3. The PALS Group Manager (GM) will review the documents listed in IRM 5.10.3.9.2 for completeness and assign the sale to a PALS on ICS. The PALS Group Manager will forward the file to the PALS to sign for transfer of custody on parts 5 and 6 of Form 2433. The following table indicates when the PALS will sign parts 5 and 6 of Form 2433 to acknowledge transfer of custody:

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

NOTE: To facilitate and expedite the transfer of custody for large lot or business inventory seizures, the revenue officer should coordinate with the PALS for a completion of a thorough inventory. If the PALS is unable to assist with the inventory on the day of seizure, the revenue officer should prepare a short Form 2433 and arrange for the PALS to assist with the completion of a thorough inventory on a Supplemental Form 2433. See IRM 5.10.3.13.2, *Notice of Seizure Form 2433-Supplemental*.

EXCEPTION: Because of the nature and amount of property involved, it may be necessary for both employees to meet at the site where the seized property is located and transfer of property may occur before the PALS group manager creates and assigns an ICS OI to a PALS.

4. The PALS should sign and date parts 5 and 6 of Form 2433 under the property location block when custody is transferred and send a copy of part 5 of Form 2433 to the revenue officer and seizure advisor. The revenue officer should also retain copies of all documents for the balance due case file.

These documents include:

- Form 2433, Part 7B
- Form 668-B
- Form 2434-B
- Writ of Entry or Consent (if applicable)
- Copy of Deed to Real Property
- Any other relevant information, such as title searches, verification of encumbrances, and copies of expense documents

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

- Photos of the property

- Contact information for lienholders
 - Any documents obtained that may describe the value of the property (private appraisals, prints of internet information, loan applications, etc.)
5. Any revenue officer who has taken any collection actions **at any time** against the taxpayer whose assets have been seized may not be involved in any of the aspects of a sale under IRC 6335 including:
- Preparation and delivery of the minimum bid
 - Preparation of the notice of sale
 - Advertising
 - Conducting the sale (IRM 5.10.5.2(3), *General*)

NOTE: In some cases the revenue officer may deliver the Notice of Sale to the taxpayer (IRM 5.10.4.9, *Delivery of Notice of Sale*).

IRM 5.10.3.27 changed Form 5942 routing to group manager.

1. After the transfer of custody of assets to the PALS, circumstances may change requiring additional case development before the PALS can bring assets to sale. In these situations, transfer of custody of assets back to the revenue officer may be appropriate.
2. When a PALS determines the need to transfer custody of assets back to a revenue officer, discuss the case with and secure concurrence from the PALS GM. Document the total expenses to date in the case history. If the PALS has already paid for seizure expenses, they should prepare the Form 4844, *Request for Terminal Action*, requesting input of TC 360 to debit the expenses to the taxpayer's account. Forward copies of Form 4844 and invoices to Advisory to associate with the seizure file. The PALS GM should prepare an informational Form 5942, *Reviewer's Report - Technical Services Advisory*, to describe the necessary actions required before the case can move toward sale and close the PALS OI. The PALS GM should send the Form 5942 and the case file to the Collection group manager (GM) for routing back to the RO. The PALS GM will send a copy of the returned receipt Form 3210, *Document Transmittal*, and informational Form 5942 to Advisory for association with the seizure and sale file.
3. The GM's signature on the Form 3210 acknowledges transfer of custody of the case and assets back to the field. If the field no longer has an open ICS case on the taxpayer, the revenue officer GM will open an OI on ICS for control purposes. IRM 5.10.3.