



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.10.1

OCTOBER 26, 2022

EFFECTIVE DATE

(10-26-2022)

PURPOSE

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

MATERIAL CHANGES

- (1) IRM 5.10.1.4(2), added note on hardship considerations.
- (2) IRM 5.10.1.5.3.6(1), corrected link to seizure exemption amounts.
- (3) IRM 5.10.1.5.3.11, inserted subsection on virtual currency valuation.
- (4) IRM 5.10.1.6(2), removed guidance on supplemental warning of enforcement based on changes to IRS policy. Added reminder on third party contact considerations.
- (5) IRM 5.10.1.13.10, created subsection to give guidance on virtual currency.
- (6) Throughout this IRM section: editorial corrections were made to update citations, references, etc.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 5.10.1 dated April 21, 2020.

AUDIENCE

Small Business/Self-Employed Compliance employees

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5.10.1

Pre-Seizure Considerations

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Exhibits

- 5.10.1-1 Form 2434–B and Instructions Reference: IRM 5.10.1.5.3.3(2)
- 5.10.1-2 Landlord Agreement Reference: IRM 5.10.1.5.3.4(8)
- 5.10.1-3 Perishable Goods Criteria and Sale Plan Template, Reference IRM 5.10.1.8(4)
- 5.10.1-4 CASE SCENARIO #1 Reference: IRM 5.10.1.4(4)
- 5.10.1-5 CASE SCENARIO #2 Reference: IRM 5.10.1.4(4)

5.10.1.1
(08-29-2017)
Program Scope and Objectives

- (1) **Purpose:** This section provides revenue officers guidance in determining the feasibility of seizing assets to collect tax upon delinquent tax liabilities.
- (2) **Audience:** This section is for Collection employees involved in the seizure of assets.
- (3) **Policy Owner:** Director, Collection Policy.
- (4) **Program Owner:** Collection Policy, Enforcement.
- (5) **Primary Stakeholders:** The primary stakeholders are revenue officers, advisors and Property Appraisal and Liquidation Specialists (PALS).
- (6) **Program Goals:** Provide guidance and procedures on seizure of assets.

5.10.1.1.1
(08-29-2017)
Background

- (1) Internal Revenue Manual 5.10.1, Seizure and Sale, Pre-Seizure Considerations, contains procedural guidance for seizing assets for the non-payment of tax. The procedures contained in this section relate to the determination as to whether seizure is appropriate, taxpayer notifications, perishable/ courtesy/ jeopardy/ MCAR seizures, asset specific considerations, and consent or writ determinations.

5.10.1.1.2
(08-21-2018)
Authority

- (1) The authority of this IRM is based on the following:
 - IRC 6331, Levy and Distraint
 - IRC 6334, Property Exempt From Levy
 - IRC 6335, Sale of Seized Property
 - IRC 6336, Sale of Perishable Goods
 - Delegation Order 1-23-2 (Rev 2), Authority to Sign and Issue Levy and Related Documents (see IRM 1.2.65.3.1)
 - P-5-1 Enforcement is a necessary component of a voluntary assessment system
 - P-5-28 Successive seizures — Timing to avoid undue hardship
 - P-5-34 Collection enforced through seizure and sale of the assets occurs only after thorough consideration of all factors and of alternative collection methods
 - P-5-35 Establishment of minimum price in distraint sales
 - P-5-38 Seizure of Assets Located on Private Premises
 - P-5-40 Welfare of livestock and domestic animals to be considered before or during course of seizure

5.10.1.1.3
(08-29-2017)
Responsibilities

- (1) The Director of Collection Policy is responsible for overseeing the policy and procedures regarding seizure of assets.
- (2) Revenue officers are responsible for developing and conducting seizures as appropriate. Advisors are responsible for reviewing the file as outlined in IRM 5.10.2.2(10), Securing Managerial Approval of Seizure Actions, IRM 5.10.3.23(6), Contacting Advisory for Seizure Numbers, and IRM 5.10.6.11, Advisory Review of Seizure Files.

5.10.1.1.4
(08-29-2017)
**Program Management
and Review**

- (1) **Program Reports:** Per IRM 1.4.50, Collection Group Manager, Territory Manager and Area Director Operational Aid, and IRM 1.4.53, Advisory and Property Appraisal and Liquidation Specialist Group Manager Operational Aid, Group Managers are required to review ICS and Entity reports on a monthly basis to ensure cases are being effectively worked.
- (2) **Program Effectiveness:** Collection Policy completes an annual seizure and sale review to identify trends and opportunities for improvement.

5.10.1.1.5
(08-29-2017)
Terms and Acronyms

- (1) The table below lists common acronyms used in this section.

Acronym	Definition
PALS	Property Appraisal and Liquidation Specialist
FTD	Federal Tax Deposit
FMV	Fair Market Value
RFSV	Reduced Forced Sale Value
PPS	Procurement for Public Sector
NVDC	National Vessel Documentation Center
MCAR	Mutual Collection Assistance Request
DCASR	Defense Contract Administration Services Region
DISP	Defense Industry Security Program

5.10.1.2
(05-20-2016)
Overview

- (1) When the facts of the case indicate seizure is the next appropriate case action begin the seizure process. Follow all legal and procedural guidelines. Fully document the case history with support for the seizure approval request.
- (2) Revenue Officers have the authority to seize assets and Property Appraisal and Liquidation Specialists (PALS) have the authority to sell assets. When it is appropriate, a revenue officer who has not taken any collection actions **at any time** against the taxpayer whose assets have been seized may assist the PALS with some sale activities. Coordination between the revenue officer and PALS is essential before, during, and after the seizure. The revenue officer will make the seizure and take all seizure actions up through inventory and securing of the property. The revenue officer and the PALS may work together to complete the inventory after the seizure has been conducted. As soon as possible after the inventory, transfer custody of the property to the PALS, who will generally be responsible for all further sale related actions. The revenue officer will retain responsibility for final case resolution.
- (3) Form 13360, Seizure and Sale Checklist, is a two-part checklist that should be used by revenue officers and PALS when conducting a seizure and sale. Part 1 will be completed by the revenue officer and Part 2 will be completed by the

PALS after custody of the asset is transferred. The checklist contains a step by step listing of seizure and sale procedures with IRM citations. Employees should review the applicable IRM references when taking the action and completing the checklist so that all current required guidelines are followed during the seizure and sale. The completed checklist will be submitted with the closing documents by the revenue officer and PALS and will be included in the seizure case file maintained in Advisory.

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

5.10.1.3
(05-20-2016)
**List of Prohibited
Seizures**

- (1) Prior to conducting a seizure, the revenue officer must review the list of prohibited seizures as listed on Form 13719, Pre-Seizure Checklist and Approval Request, to ensure the case does not meet any of these conditions. Prior to submission for approval Form 13719 should be documented to reflect that the revenue officer reviewed the list of prohibited seizures and that no prohibition against seizure exists.

Note: The Integrated Collection System (ICS) allows the revenue officer Group Manager to approve and insert the Form 13719 into the ICS history upon securing the appropriate final level of approval of the seizure.

- (2) For more information on pre-levy considerations, also see IRM 5.11.1.3.1, Pre-Levy Considerations.

5.10.1.4
(10-26-2022)
**“Will Pay”, “Can’t Pay”,
and “Won’t Pay” Factors**

- (1) Seizures will not be conducted on taxpayers who “will pay” or “can’t pay”. These categories include taxpayers who:
- Do not agree with the assessment and are working with the IRS to properly adjust their account.
 - Will full pay their liability within a reasonable time frame.
 - Require a reasonable period of time to sell an asset or secure a loan.
 - Are in current filing compliance and submit a processable offer. See IRM 5.8.2.4.1, Determining Processability.
 - Have no ability to make payments and have no distrainable assets (currently not collectible).
 - Request and qualify for an installment agreement.
- (2) Seizure should be considered for taxpayers who “won’t pay”. This category includes taxpayers who:
- Have the ability to remain current and/or resolve their delinquent taxes through an alternative collection method but will not do so.
 - Cannot remain current and/or resolve their liability, but who have assets in excess of exempt amounts that will yield net proceeds and are unwilling or unable to borrow against or liquidate these assets.
 - Are pyramiding liabilities.
 - Use unsupported tax arguments and continue to resist the requirements to file and pay.
 - Will not cooperate with the IRS, (e.g., taxpayers that evade contact, will not provide financial information).
 - Will not comply with the results of the IRS’s financial analysis or will not enter into an installment agreement or OIC.

- Are wage earners who have not paid their tax liability and will not adjust their withholding to prevent future delinquencies.
- Are self-employed, have not paid their tax liability and will not make estimated payments to prevent future delinquencies.
- Do not meet their commitments (without a valid reason) as set forth by an installment agreement, OIC, or extension of time to pay.

Note: IRM 5.15.1.3.(2), Analyzing Financial Information, provides guidance on analyzing assets that can be utilized to resolve the account. If the revenue officer determines factors are present which indicate the seizure would impose an economic hardship as defined in IRM 5.15.1.2(16) and 26 CFR 301.6343-1(b)(4), seizure will not be pursued. If the taxpayer requests and qualifies for a guaranteed, streamlined or Express installment agreement, and the installment agreement is appropriate based on the facts and circumstances of the case (see IRM 5.14.5, Streamlined, Guaranteed and In-Business Trust Fund Express Installment Agreements), seizure should not be pursued.

- (3) The decision to seize will not be automatic in any case. The taxpayer's current situation should be the determining factor in the seizure decision. During the life of a collection account, a taxpayer will sometimes move from one category to another and the decision to seize must be based on their financial situation and actions at the time the seizure decision is being made.
- (4) Exhibit 5.10.1-4 and IRM 5.10.1.1.5. contain scenarios that illustrate how case decisions can be made based on these factors.

5.10.1.5 (05-20-2016)

Actions Required Prior to Seizure by IRC 6331(j)

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

5.10.1.5.1 (05-20-2016)

Verifying the Liability

- (1) In order to verify the liability, the revenue officer should follow and document the pre-contact IDRS/ICS research procedures in IRM 5.1.10.2, Pre-Contact. If the liability is incorrect, follow the liability correction procedures in IRM 5.1.10.3.2(5), Effective Initial Contact, and IRM 5.1.15, Abatements, Reconsiderations and Adjustments.
- (2) If issues raised by the taxpayer were already addressed under some other administrative or judicial proceeding (e.g., Collection Appeals Program (CAP), Taxpayer Advocate Services (TAS), audit reconsideration), further verification is not required and the taxpayer should be advised that the issue was previously addressed. This should be documented in the history.
- (3) If the taxpayer does not respond to the attempted contacts, in addition to the pre-contact IDRS/ICS research procedures in IRM 5.1.10.2, Pre-Contact, the revenue officer should review any prior correspondence from the taxpayer but is not required to take any further actions to verify the liability.

5.10.1.5.2
(05-20-2016)
**Alternative Methods of
Collection**

- (1) IRC 6331(j)(2)(D) requires the IRS to **consider** alternative methods of collection prior to seizure. Some of the alternative methods of collection that can be considered include:
 - Installment agreements
 - Offers in Compromise
 - Posting of bond by the taxpayer
 - Levy (Form 668-A or Form 668-W)
- (2) The determination to seize should be based on the facts of the particular case and the risk to the government of pursuing these alternatives. The possible alternatives should be discussed with the taxpayer. If the taxpayer requests an alternative that is not acceptable to the IRS, the reason the request is not acceptable must be explained to the taxpayer.
- (3) To assist in the consideration of alternative collection methods, complete and document a risk analysis. In the analysis, compare the advantages and disadvantages of the alternative method of collection to the proposed seizure action. If the alternative method of collection would put the government at greater risk of failure to collect the liability, it may not be acceptable. Form 13719 sections should be used to document the risk analysis as follows:
 - Section 1: Past and current compliance — is there a history of non-compliance, is the taxpayer current, and/or has the cause of past non-compliance been corrected?
 - Section 2: Current financial condition — can the taxpayer meet current obligations, including FTD's?
 - Section 3: Future financial condition — is the taxpayer willing and able to change financial practices to resolve the liability and avoid future delinquencies?
 - Section 4: Collection statute — does the alternative provide for payment within the collection statute?
 - Section 5: Yield — what is the expected yield from seizure and sale?
 - Section 6: Impact — how will the seizure affect the taxpayer, third parties, and the community?
 - Section 7: Cooperation — what factors contribute to a Will Pay, Can't Pay, Won't Pay determination?
 - Section 8: Alternatives considered — will an alternative collection method potentially yield more than the seizure and sale?
 - Section 22: Potential Sensitivity — are there factors that present potential conflicts with IRS policy (e.g., aged or terminally ill taxpayers, charitable organization)?

Note: See ICS User Guide for additional information regarding use of Form 13719 on the Integrated Collection System (ICS).

5.10.1.5.3
(05-20-2016)
Equity Determination

- (1) To determine if there will be net proceeds available to apply to the liability, the revenue officer must complete and document an equity determination prior to recommending seizure.

5.10.1.5.3.1
(05-20-2016)

**Equity Determination —
Documentation**

(1) The revenue officer will determine and document in the case history (Form 13719 is sufficient) the estimated minimum net sale proceeds. The estimate should be prepared after considering input from the PALS regarding both the fair market value (FMV) and the estimated expenses of seizure and sale. If the reduced forced sale value less senior encumbrances and estimated expenses is positive, then there are estimated net sale proceeds to apply to the liability. There is no minimum amount required to be applied to the liability. If there are no estimated net sale proceeds to apply to the liability, the revenue officer cannot recommend seizure. Form 13719, Pre-Seizure Checklist and Approval Request, and Form 2434-B, Notice of Encumbrances Against or Interests in Property Offered for Sale, should be used to document:

- Records that were checked
- Results of the research and FMV
- Generally use sixty percent (60 %) as the reduced forced sale value (RFSV) calculation
- Encumbrances that were located and the balances due
- Estimated expenses of sale
- Estimated minimum net sale proceeds

The following is an example of the documentation of estimated minimum net sale proceeds:	Amounts
Fair Market Value (FMV)	\$100,000
Reduced Forced Sale Value (60% of FMV)	\$60,000
Less: Senior encumbrances	\$1,500
Less: Expenses	\$1,000
Equals estimated minimum net sale proceeds	\$57,500
Note:	FMV was determined by county appraisal records, discussions with real estate professionals, and personal observation. Form 2434-B was completed and shows real estate taxes are the only senior encumbrance. The PALS estimated expenses at \$1,000 for advertising.

(2) The revenue officer and PALS should agree when the revenue officer uses a figure different than 60% of FMV in the determination of estimated net sale proceeds.

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

5.10.1.5.3.2
(08-29-2017)

**Equity Determination —
Fair Market Value**

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

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

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

(2) The FMV must exceed the anticipated expenses per IRC 6331(f). In order to accurately estimate the net proceeds of the sale, the RO should discuss the FMV with the PALS during the RO PALS discussion of the estimated sale expenses and seizure expenses including moving and storage. See IRM 5.10.1.5.3.4, Equity Determination, Expenses of Seizure and Sale. In certain situations, the PALS may need to view the assets with the revenue officer. Examples of such instances include:

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

When possible, the PALS and the revenue officer should agree on the FMV prior to the seizure. A discussion between the revenue officer and PALS should be held and documented in the case history within 60 days of routing the seizure approval request. After this discussion, the PALS will determine if the property to be sold should be done so via General Services Administration (GSA) outsourcing or a traditional PALS sale. This determination should be made after the PALS has discussed the facts of the case with the PALS GM. See IRM 5.10.4.6.1, Outsourcing to the General Services Administration, for more information on outsourcing to GSA.

- If the case does not meet the criteria for GSA sales, the PALS will continue working the case for a traditional PALS sale.

5.10.1.5.3.3
(04-21-2020)**Equity Determination —
Verify Ownership and
Identify Encumbrances**

- If the PALS determines the case is to be outsourced to GSA, the PALS will determine the estimated expenses of sale based on the interagency agreement fee schedule.

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

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

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

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

- (2) Document all encumbrances and interests of record, including federal tax liens, on Form 2434-B, Notice of Encumbrances Against or Interests in Property Offered for Sale (Exhibit 5.10.1-1). If no recorded interests other than the NFTL are found, prepare Form 2434-B listing only the NFTL information.

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

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

Reminder: After the seizure has been conducted and before the sale occurs, a current records check must be completed and Form 2434-B must be updated if the most recent records check is more than 90 days prior to the sale date (IRM 5.10.4.8.1 , Notice of Sale - Date and Place of Sale).

- (4) At local management option, commercial firms may be contracted to provide title search and encumbrance information reports. The delegation authority to approve the use of commercial title searches is contained in Delegation Order SBSE - 1-23-23 (see IRM 1.2.65.3.8). If the title search is requested in anticipation of a seizure, the cost **must be charged to the balance due account as an expense of seizure and sale if the property is seized**. A revenue officer or other IRS employee will normally complete the records search. Securing a commercial title report prior to seizure should be **limited** to those cases involving clouded title or complex lien issues identified in the employee's search of public records. The Group Manager should document the ICS history identifying the reason for the request and concurrence for approval. If public records cannot be checked prior to seizure because of a jeopardy situation,

complete this action as soon as possible after the seizure and document the results in the history. Payments for revenue officer commercial title searches must be made through Procurement for Public Sector (PPS). See IRM 5.1.18.4.2, Title Reports, for additional information. Document the case history with the facts that led to the determination that a jeopardy situation existed. See IRM 5.11.3, Jeopardy Levy Without a Jeopardy Assessment, for information on jeopardy situations.

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

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

Note: An NFTL is not required for subsequent assessments (TC 290, TC 300) that will have no impact on determining equity.

- (6) Ensure that the NFTL is recorded with the appropriate local office prior to seizure. Taxpayers must be notified in writing that the NFTL has been filed within five business days of such filing, and they are entitled to Due Process Appeal rights for the first NFTL filed for each tax period. Due Process rights for NFTLs do not necessarily suspend other collection activity. See IRM 5.1.9.3, Collection Due Process, for appeal procedures.
- (7) The priority of the federal tax lien must be determined in relation to other creditors. See IRM 5.17.2.6, Priority of Tax Liens: Specially Protected Competing Interests, and IRM 5.12.2, Notice of Lien Determinations for information on the priority of the tax lien.
- (8) The revenue officer should contact all senior and intervening lienholders in order to determine the balance remaining on each encumbrance. Letter 1040, Creditor Information Request, or a similar letter, may be used for this purpose. Follow the requirements for third party contacts for these requests.

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

- (9) For the Tenth Circuit states of Kansas, Oklahoma, Wyoming, Utah, Colorado, and New Mexico, pursuant to **Neece v. I.R.S.**, 922 F.2d 573 (10th Cir. 1990); Nonacquiescence noted in AOD-1992-13, a summons should be used instead of Letter 1040 when the lienholder is a financial institution and any of the following situations exist:
- The financial institution is located in the Tenth Circuit
 - The taxpayer resides in the Tenth Circuit
 - The Internal Revenue Service office is located in the Tenth Circuit

5.10.1.5.3.4
(04-21-2020)

**Equity Determination —
Expenses of Seizure and
Sale**

(1) After the fair market value and encumbrances have been verified and documented, determine the estimated expenses of seizure and sale. The FMV must exceed the anticipated expenses per IRC 6331 (f) and (j). Most seizures will require the expenditure of funds. The revenue officer and the PALS should coordinate to manage these costs in order to maximize the proceeds of sale. Do not include travel related expenses of the revenue officer or the PALS as an expense of the seizure. Expenses that should be considered include:

- Towing fees
- Storage costs
- Transportation costs
- Locksmith fees
- Advertising costs
- Auctioneer services
- Appraisal fees
- Title search expenses
- Other miscellaneous expenses

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

(2) When calculating expenses, consider **all** expenses expected throughout the seizure **and** sale process, not just the expenses of seizure. Though the exact amount of storage and advertising expense may not be available, make an estimate with the assistance of the PALS to ensure payment authorizations are not exceeded.

(3) In most cases, the PALS will take custody of the property immediately after the seizure is made, and expenses that arise after the seizure will be addressed by the PALS. Coordination with the PALS during the planning stage is extremely important. Always discuss the potential expenses that may be incurred. In some cases, the PALS may be able to secure a service for less than the revenue officer. In other cases, the revenue officer may be more familiar with local vendors. The PALS will know how long it will take before a sale can be scheduled, so timing of the seizure to reduce the number of storage days should be discussed. Transfer custody of the property to the PALS as soon as possible after the seizure.

(4) Plan for any problems which may arise in connection with the storage and protection of property. Document all actions taken to protect seized property in the case history.

Note: Employees should **not** accept keys to the property from the taxpayer or other party at any time **prior** to the seizure. If keys are received **after** the seizure, they should be protected in accordance with the guidance outlined in IRM 10.2.15, Minimum Protection Standards (MPS). Storing keys received **after** the seizure in a safe or locked filing cabinet in a local office will generally provide sufficient protection.

(5) Movable property can usually be best protected at a different location. Whenever possible, government storage facilities in the area should be used; otherwise property should be stored in secure commercial space. If storage, towing, transportation, or other similar charges are expected, the revenue officer, with input provided by the PALS, should determine the expected costs

prior to seizure. The PALS should determine whether to move the property themselves or retain the services of a commercial shipper or mover based on the particular circumstances of the case, including:

- Nature of the property — value, location, size, weight, ease of transport
- Amount of property involved
- Cost of moving the property
- Availability of the PALS and assisting employees

- (6) The use of an armed escort or bonded courier should be considered if the property is of significant value, such as jewelry or gold/silver, and a commercial shipper is not being used to transport the property.

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

- (7) Property such as expensive jewelry or stock certificates is usually best stored in an IRS office. It should be protected in accordance with the nature and value of the property, as described in IRM 10.2.15, Minimum Protection Standards (MPS). Storing such items in a safe or locked filing cabinet in a local office will generally provide sufficient protection.

Note: Storage requirements for cash, if not converted the day of seizure, are more stringent than other seized assets. Cash over \$1,000 must be stored in a safe or vault. Cash under and up to \$1,000 must be stored in a security container or limited area as described in IRM 10.2.14, Methods of Providing Protection. See IRM 10.2.15, Minimum Protection Standards (MPS), for more information.

- (8) When the property consists of heavy machinery, large inventories or numerous business assets that are not easily transported, the revenue officer should attempt to make arrangements for storage of the property on the premises. Unless the real estate where the property is located or the leasehold interest is seized in conjunction with the personal property, neither replacing the locks or placing warning tags on the premises is appropriate. IRM 5.10.1.5.3.9, Equity Determination - Leasehold Interests. If the premises are leased, attempt to secure a copy of the lease and determine its status prior to seizure. If necessary, contact Counsel to determine the “rightful occupant.” The rightful occupant has the authority to enter into an agreement with the IRS to authorize replacing the locks on doors to the premises. If the seized property will be stored onsite, ensure IRS will retain exclusive access to the premises. The history must be documented as to the identity of the rightful occupant and any authorization of storage or permission to change the locks. The file must contain a written agreement or consent. Exhibit 5.10.1-2, Landlord Agreement. Document an estimate of the cost to move and store the seized property in the ICS history if arrangements cannot be made to store the property at the seizure site.
- (9) If the taxpayer has not made rent or lease payments for the time the property will be stored, then a reasonable charge for storage should be arranged. Include only the number of days of actual occupancy by the IRS. In certain

situations, IRS may be required to pay rent due to the nature of state law and/or the terms of the rental agreement (see IRM 5.17.3.7.5.1, Expenses of Sale). Consult Advisory when there is doubt as to whether IRS is obligated to pay rent. Exhibit 5.10.1-2 provides an example of a landlord agreement. A landlord agreement may be signed by the territory manager, area director, or PALS group manager.

- (10) Changing locks and/or accepting keys from the taxpayer or other party is not appropriate in the seizure of personal residences and rental real property where the tenant is not the taxpayer. The right of possession in this case remains with the owner of the personal residence or tenant occupant for rental property.
- (11) If there are indications that the taxpayer or third parties may resist the sale of seized property, additional security may be necessary to prevent vandalism. If private security guards or local police services are necessary, the revenue officer should determine these costs as well.
- (12) Generally, there is no authority for the United States to purchase insurance coverage for seized property. However, if unusual circumstances apply and such insurance is necessary, promptly submit a detailed request to the area director. Insurance coverage will be acquired only by an authorized contracting officer through the Facilities Management function.
- (13) After approval of the seizure has been secured, follow the procedures in IRM 5.10.2.7, Contracting for Services, as required.

5.10.1.5.3.5
(05-20-2016)

**Equity Determination —
Expenses of Sale
(Disclosure Issues)**

- (1) Disclosure issues may arise during the pre-seizure process, particularly when contacting vendors for services. Disclosure for investigative purposes is permissible under IRC 6103(k)(6) and for contracting for services under IRC 6103(n). These contacts are still subject to third party reporting requirements.
- (2) IRC 6103(k)(6) allows the revenue officer to “disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected...”. See IRM 11.3.21, Disclosure of Returns and Return Information for Tax Administrative Purposes under IRC 6103(k), for additional guidance. Examples of this type of disclosure include contacts with:
 - Real estate professionals to secure appraisal information
 - Third parties familiar with the value of specialized equipment
- (3) IRC 6103(n) allows the revenue officer to disclose return information “to the extent necessary in connection with the . . . procurement of equipment, and the providing of other services, for purposes of tax administration.” See IRM 11.3.24, Disclosures to Contractors, for additional guidance in this context. Examples include contacts with:
 - Vendors to determine availability and costs for locksmiths, towing, storage, etc.
 - Landlords to determine lease information and storage of assets

5.10.1.5.3.6

(10-26-2022)

**Equity Determination —
Exempt Assets**

- (1) If seizure of an individual taxpayer's assets is being considered, revenue officers must be aware of the property that is exempt from levy. These exemptions do not apply to partnerships or corporations. Revenue officers must document the case history as to how the exempt property value was determined. The exempt amounts, indexed annually for inflation, can be found at *Seizure Exemption Amounts*.
- (2) The following exemptions, indexed annually for inflation, apply to individual taxpayers:
 - Fuel, provisions, furniture, personal effects in the taxpayer's household, arms for personal use, livestock, and poultry
 - Books and tools necessary for the trade, business or profession of the taxpayer

Reminder: Vehicles are not generally considered exempt property either as personal effects or as tools of the trade.
- (3) The following exemption also applies to individual taxpayers but is not adjusted for inflation:
 - Any wearing apparel and school books that are necessary for the taxpayer or members of his or her family
- (4) For seizure of the assets of an individual taxpayer used in the trade or course of business (including vehicles), the revenue officer must document that the taxpayer's other assets are insufficient to satisfy the amount due plus expenses. This type of seizure requires approval by the area director.
- (5) Unopened mail is exempt from seizure.

5.10.1.5.3.7

(05-20-2016)

**Equity Determination —
Documented Vessels**

- (1) An abstract of title may be required to determine the equity in a documented vessel. An abstract of title provides:
 - The history of the vessel
 - Bills of sale
 - Information about mortgages, maritime liens, and assignments
- (2) Secure the abstract of title by contacting the National Vessel Documentation Center (NVDC). Provide the NVDC with the official vessel number and as much information as possible about the vessel, e.g., the owner's name, hull number, and the name of the vessel.
- (3) Submit the letter with a \$25 money order payable to the National Vessel Documentation Center. Debit the expense to the taxpayer's account only if the asset is seized. The abstract of title request should be sent to:

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

5.10.1.5.3.8

(05-20-2016)

**Equity Determination —
Computer Equipment**

- (1) When determining the equity in computer equipment, the revenue officer and the PALS must be aware of the procedures to remove taxpayer data from the hard drive as well as the effects of removal on the value of the asset.

- (2) Before selling computer equipment that contains taxpayer information, remove the contents of the hard drive, including the file allocation tables (FAT). If any software present can be resold according to the software licensing agreement, it may be reloaded onto the computer prior to sale. Consult area counsel to determine which software may be reloaded.
- (3) Prior to removing the FAT, provide the taxpayer with an opportunity to download all of the information from the hard drive. Procedures are contained in IRM 5.10.3.11.5, Seizures Involving Computer Equipment.
- (4) In order to accurately determine the FMV of the computer equipment, consider only those contents of the hard drive that will be available to the purchaser at the time of sale.

5.10.1.5.3.9
(05-20-2016)

**Equity Determination —
Leasehold Interests**

- (1) If you are considering seizure of personal property of a business and the taxpayer rents the premises from a third party, you must consider the value of the leasehold interest as part of the seizure determination. Review a copy of the lease agreement and determine whether the taxpayer is in default of the lease. If so, determine what actions the lessor has taken to cure the default.
- (2) A leasehold interest constitutes property and rights to property and therefore may be seized and offered for sale. A lease can independently have value or, when combined with other assets, contribute to an overall value when the business is appraised as a turn-key or ongoing business concern. One method to determine whether a lease has independent value is to contact a commercial realtor in the area to determine the going rental rate for similar properties. If the taxpayer's lease reflects a lower rate, the lease may independently have value separate from the other assets. In other circumstances, a leasehold may have value only to specific bidders and not the general market. This presents unique issues (e.g., likelihood of sale) that must be fully considered prior to seizure. For all seizures of leasehold interests, contact and secure a PALS appraisal.
- (3) When determining the value of the leasehold interest, consider the potential for the lessor to bring litigation against the tax sale purchaser. Most lease agreements forbid transfer or sub-lease of the property to another party without the approval of the lessor. Such a provision will not prevent the IRS from seizing and selling the taxpayer's interest in the lease. Generally the IRS does not need the lessor's approval when a leasehold interest passes by operation of law such as an IRS tax sale. See **Stagecrafter's Club v. District of Columbia Division of American Legion**, 110 F. Supp. 481 (D.D.C. 1953), **aff'd**, 211 F2d 811 (D.C.Cir. 1954)(dictum).

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

- (4) Consult Counsel to determine the priority of delinquent lease payment encumbrances. Consider any delinquent amounts due the lessor when determining the estimated minimum net sale proceeds if they are deemed a priority encumbrance against the lease.
- (5) When considering a perishable goods sale, address any potential leasehold interest. Include a valuation of the leasehold interest as part of the PALS appraisal and in the Perishable Goods Criteria and Sale Plan Memorandum.

Document why the lease does or does not have value independently or as a part of the aggregate assets of the business. For perishable goods cases, the PALS will complete an appraisal and *Perishable Goods Criterion and Sale Plan* memorandum as part of the pre-seizure work.

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

5.10.1.5.3.10
(12-20-2019)
**Equity Determination
—“Turn Key” and On
Going Concerns**

- (1) If a taxpayer's leasehold interest has no independent value, the leasehold interest cannot be seized for the sole purpose of storing personal property or locking the taxpayer out of the property. IRM 5.10.1.5.3.4, Equity Determination - Expenses of Seizure and Sale. If the lease is being seized based on its contribution to the overall value, the PALS' appraisal must address the value of the lease when seized. If the lease does not independently have value, it may add value when the business is seized as a "turn-key" or ongoing business concern.

- (2) A “turn-key” business valuation considers the value of the lease in conjunction with the other tangible assets of the business. In this situation, a purchaser buys all or most of the assets needed to open a business immediately. For example, the inventory and other assets of a retail plumbing supply company are seized along with the lease, stored on location and offered for sale under IRC 6335. The sale is held in 45 days. The day after the sale the purchaser opens the doors for business.
- (3) An ongoing business concern valuation considers the value of the lease in conjunction with all assets (both tangible and intangible). The intangibles that flow with the sale of the company may include the established customer base, goodwill, and performance on outstanding contracts. For example, the personal property, lease, trade name, telephone number, rights to current advertising and domain name are seized from a well known day spa located in an affluent area. The personal property itself has a value of \$15,000. If the business can operate and retain its walk-in customer base, perform on its pre-sold vacation packages, retain its sub-contractor staff, and maintain its reputation and goodwill, it has an ongoing business valuation of \$125,000. These intangibles are not something you have seized, but their contribution adds to the FMV of the business. The sale is held in 22 days. The purchaser re-opens the doors that afternoon with the previous staff in place.
- (4) When recommending seizure of a business based on “turn-key” or ongoing concern value, a PALS appraisal is completed at the PALS discretion.

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

5.10.1.5.3.11
(10-26-2022)
**Equity Determination -
Virtual Currency**

- (1) To determine the fair market value (FMV) of virtual currency, Revenue Officers (ROs) should use the average of up to three exchanges (the availability of which is dependent on the type of virtual currency being seized), on the same date to determine the exchange rate in U.S. dollars. The date, time and exchange information should be clearly documented in the ICS history.

5.10.1.6
(10-26-2022)
**Pre-Seizure Taxpayer
Notifications**

- (1) Letter 1058, Notice of Intent to Levy and Notice of Your Right to a Collection Due Process Hearing, Notice CP 90, or ACS LT 11, requirements are the same for Form 668-B as for Form 668-A and 668-W. See IRM 5.11.1, Background, Pre-Levy Actions and Restrictions on Levy and Post-Levy Actions, for information on proper delivery, joint return considerations, required transaction codes, and documentation required for delivery of the L-1058.
- (2) Ensure third party contact requirements are met. See IRM 5.11.1.3.2, Required Notices.
- (3) In jeopardy situations L-1058 is not required to be sent 30 days before the enforcement action; however, the taxpayer must receive a notification of a right to a hearing immediately after the enforcement action. Counsel approval of a jeopardy situation is required in addition to all other required approvals. Consult with Advisory and area counsel when considering a jeopardy seizure.

See IRM 5.11.3, Jeopardy Levy Without a Jeopardy Assessment, and IRM 5.10.1.10, Jeopardy Assessments and Seizures.

5.10.1.6.1
(08-29-2017)
**Personal Contact to
Advise the Taxpayer of
Proposed Seizure Action**

- (1) In addition to the L-1058 notification, the revenue officer must **attempt** to personally contact the taxpayer either by a phone call **or** field call prior to seizure. The revenue officer should attempt to contact the taxpayer and discuss what is necessary to avoid seizure action. In situations where employee safety is an issue, the attempt at personal contact should be made by telephone.

Note: If during initial contact the revenue officer determines sufficient facts of the case (including legal sufficiency) indicate seizure is the next appropriate case action, the revenue officer may advise the taxpayer of the proposed seizure action. Document the case history with supporting evidence for the seizure approval request.

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

Note: Personal contact to advise the taxpayer of the proposed seizure action is not required if a writ is required and asking for consent puts the seizure at risk.

- (2) During this contact, the revenue officer should:

- Advise the taxpayer that seizure is the next planned action.
- Give the taxpayer an opportunity to resolve the tax liability voluntarily; if the liability is the result of an SFR assessment the taxpayer should be given an opportunity to file corrected returns (if not previously provided).
- Provide and discuss the provisions of Pub 1, Your Rights as a Taxpayer, and Pub 594, The IRS Collection Process (if not previously provided).
- Advise the taxpayer about the Taxpayer Advocate, provide Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), and explain its provisions, if not previously provided. If the taxpayer indicates the seizure would create a hardship, assist the taxpayer with the preparation of Form 911 and forward the form to the local Taxpayer Advocate if the revenue officer cannot or will not provide the requested relief.
- Provide the taxpayer with the name and location of the immediate supervisor if the taxpayer requests a managerial review.
- Document on Form 9297, Summary of Taxpayer Contact, specific actions and deadlines communicated to the taxpayer.

- (3) If personal contact is not made, document the steps taken to attempt personal contact. Even if the taxpayer was previously unresponsive, the revenue officer must attempt to personally advise the taxpayer of the proposed seizure; however, the taxpayer's refusal to respond to attempted contacts should not prevent the revenue officer from submitting the seizure for approval.

Note: Personal contact to advise the taxpayer of the seizure action can also be considered the supplemental warning of enforcement. If the revenue officer

personally contacts the taxpayer to advise of the proposed seizure, then there is no need to issue an additional supplemental warning.

5.10.1.6.2
(05-20-2016)
Collection Appeal Rights

- (1) The Collection Appeals Program (CAP) was created to provide taxpayers with an independent administrative review. Taxpayers can appeal under CAP when they are told that a seizure action will be taken or has been taken. Their right to appeal under CAP is connected to a specific planned or actual collection action. See IRM 5.1.9 , Collection Appeal Rights, for additional information. Pub 1660, Collection Appeal Rights, which should be provided with the L-1058 and again with the Notice of Seizure, explains these provisions. Document the case file with the date the Publication 1660 was delivered.
- (2) Post-seizure appeal rights are discussed in IRM 5.10.3.10, Management Review Process and Taxpayer Appeal Rights.

5.10.1.7
(12-20-2019)
**Perishable Goods
Criteria, Definitions, and
Examples**

- (1) On July 1, 2019, the Taxpayer First Act was signed into law. Section 1404 of the Taxpayer First Act changed the perishable criteria outlined in IRC 6336 and removed “property that is liable to become greatly reduced in price of value by keeping” and “property that cannot be kept without great expense.” As of July 1, 2019, perishable criteria is limited to:
 - a. **Property that is liable to perish:** The property must be tangible personal property and have a short life expectancy or limited shelf life, an expectation of spoilage, or will rapidly rot, decay, decompose, or expire. A determination must be made that the property cannot be kept and sold under normal IRC section 6335 sale time frames. Some examples may be food, flowers, plants, or livestock. **Example:** A revenue officer determines a seizure of the assets of a flower nursery is the next appropriate case action. The personal property consists of perishable flowers, plants and shrubs, as well as gardening equipment, pottery, landscaping supplies, trailers, vehicles, tools and display shelving. The taxpayer leases the real estate housing the business from a third party and is delinquent with lease payments. The PALS completes an appraisal on the leasehold interest and determines it has no value. Counsel reviews the lease agreement and advises the IRS can negotiate with the landlord as the rightful occupant. The landlord agrees to let IRS store the assets on site for a nominal fee for 60 days. It is determined that the flowers, plants, and shrubs will likely perish if kept and sold under normal IRC section 6335 sale time frames. The revenue officer requests and secures approval for a perishable goods sale of those specific assets. The revenue officer and PALS complete an inventory of all assets and the flowers, plants, and shrubs are sold as perishable goods two days later. The remainder of the assets are stored on site and sold under IRC section 6335 sale procedures.
- (2) Because of the changes to IRC 6336 made by the Taxpayer First Act, certain items that were previously considered “perishable” and warranted expedited sale are no longer considered perishable. For example, as noted above, the previous definition of perishable goods included property that was liable to become greatly reduced in price or value by keeping, such as an ongoing business concern whose value would rapidly decline in the time it would take to hold a sale under normal IRC 6335 procedures. The previous definition also included property that cannot be kept without great expense, such as heavy

machinery that would require permits to move and cost prohibitive towing and storage fees. These types of property interests are no longer considered “perishable goods” under IRC 6336.

5.10.1.8
(12-20-2019)
**Perishable Goods
Pre-Seizure
Development**

- (1) Upon identification of a potential perishable goods sale, the revenue officer group manager will schedule a pre-seizure 6-way conference with the revenue officer, territory manager, PALS territory manager, PALS group manager and PALS. The goals of the conference are to:
 - Discuss the perishable goods sale criteria determination
 - Identify the need for any additional strategy development
 - Agree on responsibilities and time frames for any additional work required
 - Begin development of the perishable goods sale plan ,
- (2) Planning must include consideration of the location and storage of the assets and the related expenses. If the taxpayer is leasing the premises housing the assets, address the potential value of the leasehold interest along with the other assets.
- (3) A PALS appraisal is required for all perishable goods sale cases. Consideration of leasehold interests and sale of the assets as a turn-key business or ongoing concern is critical.

Note: The revenue officer should use all available resources to determine the value of the property and should provide this information to the PALS to be included in the PALS appraisal. See IRM 5.10.1.5.3.2, Equity Determination - Fair Market Value, for information on determining the FMV.

- (4) Responsibility for all perishable goods sale plans, final criteria determination, and sale responsibilities rests with the PALS function. The PALS will prepare and secure concurrence from the Director of Civil Enforcement Advice and Support Operations (CEASO) for a Perishable Goods Criteria and Sale Plan-memorandum for every perishable goods case. See Exhibit 5.10.1-3 for a template. The memorandum will include:
 - Identification of the appropriate criteria and an analysis that demonstrates the need to conduct the sale under IRC section 6336.
 - Asset valuation to include appraisal and inventory list.
 - Analysis of estimated expenses for both moving the assets to another location and storing on site for an IRC section 6335 sale.
 - Analysis of estimated expenses and proceeds under an IRC section 6336 sale.
 - A marketing plan including consideration of both pre- and post- seizure marketing.
 - Information regarding the need for a Consent or Writ of Entry.
 - An estimate of the time frame from the point of seizure to sale
 - Resources required to conduct the sale (e.g., personnel, supplies, security).
 - Director of CEASO and Director of Field Collection concurrence signature line.

Note: The PALS should attach the inventory list and the actual comparable data used to complete the analysis to the *Perishable Goods Criteria and Sale Plan* memorandum.

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

5.10.1.9
(08-04-2014)
**Pre-Seizure Activity for
Courtesy Seizures**

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

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

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

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

- Determine and document in the case history the estimated minimum net sale proceeds to apply to the liability based on the procedures in IRM 5.10.1.5.3, Equity Determination.
- Prepare all seizure documents and submit the case for approval (IRM 5.10.2.2, Securing Managerial Approval of Seizure Actions) by the receiving office.

5.10.1.10
(08-04-2014)
**Jeopardy Assessments
and Seizures**

- (1) Jeopardy assessments are made when the taxpayer is, or appears to be, placing assets beyond the reach of the government by removing them from the United States, by concealing them, by dissipating them, or by transferring them to other persons. Jeopardy should also be considered in cases where the taxpayer's financial solvency is or appears to be imperiled (not including insolvency created due to the accrual of federal tax liabilities).
- (2) See IRM 5.11.3, Jeopardy Levy Without a Jeopardy Assessment, regarding jeopardy levy. Counsel approval is normally required prior to jeopardy levy. These procedures also apply to a jeopardy seizure. A jeopardy seizure requiring Counsel approval occurs when the tax is assessed and one of the following conditions exists:
 - Notice and demand for payment has not been issued
 - It is fewer than 10 days after notice and demand for payment is issued
 - It is fewer than 30 days (and the 15 day waiting period) after notice of intent to levy is issued or that notice has not been issued
- (3) Although L-1058 is not required prior to a jeopardy seizure, the taxpayer must still receive certain notices, forms, and letters after the seizure. IRM 5.11.3.5, Forms and Letters for a Jeopardy Levy Without a Jeopardy Assessment, outlines the appropriate notices that must be sent for jeopardy seizures.
- (4) For jeopardy assessments and seizures, IRC 7429 provides that the taxpayer may request the IRS to review whether:
 - The making of the assessment was reasonable
 - The amount of the assessment is appropriate
 - The levy is reasonable under the circumstances
- (5) Such requests will be coordinated with the Examination office that made the assessment. The sale of seized property will generally be suspended during this administrative review process.
- (6) IRC 6863(c) prohibits the sale of property seized after a jeopardy assessment until the taxpayer has exhausted the specified administrative and judicial review procedures. IRC 6863 only applies to the sale of property and does not prohibit seizure of any type of property or rights to property of the taxpayer. However, before property is seized, a determination should be made as to whether the mere filing of a notice of lien would provide adequate protection. If the notice of lien will not fully protect the Government's interest, the property may be seized and held until it can be lawfully sold or returned to the taxpayer.
- (7) The intent of IRC 6863 is to prevent irreparable damage to taxpayers by forced sale of their property before a determination is made as to their actual tax liabilities. The Code does not prohibit levies at any time during the suspended period on such assets as accounts receivable, bank accounts, salaries, fees, etc. The application of the proceeds of such levies to the taxpayers' accounts will not cause irreparable damage to them since the full value of the assets are

normally reducible to their cash equivalent by the taxpayers without financial loss to them. See IRM 5.17.3.4.6, Jeopardy and Termination Cases, and IRM 5.17.3.7.1.4, Jeopardy.

5.10.1.11
(05-20-2016)
**Mutual Collection
Assistance Requests
(MCARs)**

- (1) International appraisal and seizure and sale cases may include the collection of treaty partners' taxes in the United States. In treaty collection cases, the IRS may collect the treaty partner's finally determined taxes in accordance with U.S. laws as if they are U.S. tax liabilities. See IRM 5.21.7.4, Mutual Collection Assistance Requests (MCARs), for procedures on incoming and outgoing MCAR cases.
- (2) There are five treaty countries with which the IRS has ongoing programs for MCARs that may involve seizure and sale. The treaty partners and types of taxes covered for collection by the IRS are as follows:
 - Canada — All taxes
 - France — Income, Estate and Gift, Wealth and other specified taxes
 - Denmark — Income and other specified taxes
 - Sweden — Income and other specified taxes
 - Netherlands — Income and other specified taxes

Note: Many other U.S. tax treaties, consistent with U.S. Model Income Tax Convention (2006), contain a limited collection assistance provision, limited to the collection of amounts improperly claimed under a tax treaty. See IRM 5.21.7.4.4, Enforcement Action on MCARs.

- (3) MCAR procedures allow for the collection of foreign taxes by a revenue officer through enforcement, including levies, liens, proofs of claim, and seizures. In the same way, the treaty partner's tax agency will collect a U.S. citizen's or entity's taxes from assets located in the treaty partner's country. All treaty collection requests to, or from, these countries are made through the Deputy Commissioner (International), LB&I, who is the Competent Authority in all tax treaties. See IRM 5.21.7.4(4) for additional information.
- (4) Collection of these liabilities takes place through MCARs. After the Deputy Commissioner (International), LB&I, has accepted the request for treaty collection assistance, a revenue officer in International will issue a courtesy investigation requesting that a revenue officer where the asset is located conduct the seizure. The revenue officer conducting the seizure will contact the PALS responsible for the location where the seizure is being made in order to conduct the sale.
- (5) See IRM 5.21.7.4.7, Seizure and Sale on MCARs, for the exceptions to normal seizure and sale procedures when conducting seizures and sales on MCARs. Coordination with the revenue officer in International is essential for both the seizure and the sale, since all money collected is forwarded to the revenue officer in International for transmittal to the treaty partner through the Deputy Commissioner (International), LB&I, and is not applied to the account. Unless the revenue officer in International has made arrangements for the treaty partner to pay the expenses of sale outside of the remittance, the successful bid remittance should be secured in two parts — one for the seizure and sale expenses and the balance of the remittance made payable to the treaty partner.

- (6) After the sale, the PALS will prepare a memo to the revenue officer in International summarizing the sale information and transmitting the sale proceeds so they can be sent to the treaty partner.
- (7) The seizure files should be maintained in the Advisory office for the location where the seizure was conducted.
- (8) Advisory will be responsible for issuing the deed after the appropriate redemption period has expired when real property is sold. Refer to IRM 5.10.6.9, Deed to Real Property for more information on preparing deeds.

5.10.1.12
(08-04-2014)
**Seizure and Sale
Procedures in U.S.
Territories**

- (1) International revenue officers conduct collection activities, including seizures, to collect federal taxes in U.S. Territories, such as Puerto Rico, U.S. Virgin Islands, Guam, American Samoa and Commonwealth of Northern Mariana Islands (CNMI). Seizures and sales are conducted under normal procedures (see IRC 7651), and local law guides are available for each of the U.S. Territories. Other U.S. Territories include the following:
 - Baker Island
 - Howland Islands
 - Jarvis Island
 - Johnston Island
 - Kingman Reef
 - Midway Islands
 - Palmyra
 - Wake Island
- (2) Revenue officers working cases for taxpayers in a U.S. Territory should contact the PALS territory Manager for assignment of a PALS.
- (3) The Advisory office assigned International cases will be responsible for:
 - Pre-seizure case file reviews
 - Seizure advice
 - Assigning seizure numbers
 - Transmitting seizure files and documents
 - Maintaining the permanent record
 - Any other Advisory responsibilities
- (4) PALS will conduct the sale under normal sale procedures, including the collection and posting of successful bids.
- (5) For assistance in understanding tax issues related to the U.S. Territories, contact the NB:I Territory Program Manager located in Washington, DC.

5.10.1.13
(05-20-2016)
**Asset Specific
Pre-Seizure
Considerations**

- (1) When considering seizure of mobile homes, FCC broadcasting licenses, assets of religious organizations, firearms, controlled substances, pornographic material, assets associated with potential criminal enterprises, property with environmental considerations and cleared contractor facilities, refer to the guidance in this section.

- 5.10.1.13.1
(05-20-2016)
Mobile Home
- (1) A mobile home may be either real or personal property, depending upon state or local law. It is important to make this determination **prior to** seizure since personal property must be reduced to possession to complete the seizure. It may be necessary to confer with Advisory and request an opinion from area counsel.
 - (2) The determination whether the mobile home is real or personal property should be documented in the case history and should:
 - Describe the property.
 - State whether the mobile home is attached to the ground and, if so, by what means.
 - Include information on the current use being made of the mobile home.
- 5.10.1.13.2
(12-20-2019)
FCC Broadcasting Licenses
- (1) The IRS will not administratively seize and sell FCC broadcasting licenses in deference to the FCC's regulatory authority over such licenses. However, the IRS may seize the proceeds of the sale of any FCC license, and may authorize the Department of Justice to file suit to reduce tax assessments to judgment and to appoint a receiver to sell the license under FCC supervision. See IRM 5.17.4.8.1, Statutory Authority.
- 5.10.1.13.3
(05-20-2016)
Religious Organizations and Religious Freedom Restoration Act
- (1) Seizure of assets belonging to a religious organization is a sensitive matter. In addition to consideration of alternative methods of resolution, revenue officers must consider the implications of the Religious Freedom Restoration Act of 1993 which was established to protect the free exercise of religion.
 - (2) Revenue officers must secure area counsel's concurrence before seeking other appropriate approvals when proposing the seizure of the assets of a religious organization.
- 5.10.1.13.4
(08-29-2017)
Firearms
- (1) Firearms of substantial value may be seized if they are included as a business asset (e.g., the inventory of a sports equipment outlet, hardware store, or gunsmith). Because of the sensitive nature of this type of seizure, approval by the Territory Manager is required. Prior to the seizure, the revenue officer must contact the Property Appraisal and Liquidation Specialist (PALS) to discuss the potential seizure. The PALS should contact the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for information regarding firearms sales.
- Note:** Consider recommending a suit to foreclose the federal tax lien instead of seizure.
- (2) Single guns or firearms that are customarily retained for personal use should not be seized unless their value is such that a suit to foreclose the Federal tax lien may be appropriately recommended. Certain arms for personal use may be exempt from seizure (IRM 5.10.1.5.3.6, Equity Determination - Exempt Assets).
- 5.10.1.13.5
(08-29-2017)
Controlled Substances or Drug Paraphernalia
- (1) Drug paraphernalia generally includes items such as pipes, syringes and other devices designed to introduce drugs into the human body. Do not seize drug paraphernalia unless it consists of wholesale or retail inventory.

- (2) These assets should not be seized unless they are the sole asset through which collection can be enforced. Other avenues of collection, such as levy on bank accounts or accounts receivable, or seizure of vehicles, cash register contents, or furniture and fixtures, should be used instead.
- (3) If other assets will not satisfy the liabilities, a seizure may be made of the controlled substances or drug paraphernalia. Contact area counsel prior to seizure.
- (4) In no event should drug paraphernalia be advertised or offered for sale until the following actions are taken:
 - a. Contact local authorities to determine whether possession of such material violates any local law — if possession is illegal, the material should be released to those authorities.
 - b. If possession is not illegal or authorities refuse to accept the material, refer the matter to area counsel for an opinion as to whether administrative or judicial sale of such material is legal. Consult area counsel in any case where there is a question whether the material seized is drug paraphernalia.
 - c. Once counsel issues an opinion, submit a report to the territory manager outlining all of the pertinent facts in the case, including the alternative collection measures which were taken or explored prior to seizure of such material and the results of the risk analysis.

5.10.1.13.6
(08-29-2017)
**Material Considered
Obscene or
Pornographic**

- (1) Other avenues of collection, such as levy on bank accounts and/or accounts receivables, seizure of vehicles, cash register contents, or furniture and fixtures, should be used prior to seizing obscene or pornographic material.
- (2) If other assets will not satisfy the liabilities, a seizure may be made of the obscene or pornographic material. Contact area counsel before such material is seized. In no event should the material be advertised or offered for sale until the following actions are taken:
 - a. Contact local authorities to determine whether possession of such material violates any local law. If possession is illegal, the material should be released to those authorities.
 - b. If possession is not illegal or authorities refuse to accept the material, refer the matter to area counsel for an opinion as to whether administrative or judicial sale of such material is legal. Consult area counsel in any case where there is a question whether the material seized is obscene or pornographic.
 - c. Once Counsel issues an opinion, submit a report to the territory manager outlining all of the pertinent facts in the case, including the alternative collection measures which were taken or explored prior to seizure of such material and the results of the risk analysis.

5.10.1.13.7
(08-29-2017)
Criminal Enterprises

- (1) IRS personnel are not authorized to participate in arrests, raids and similar activities with Drug Enforcement Administration (DEA) personnel. However, revenue officers may take seizure action against narcotics-related taxpayers in connection with jeopardy or termination assessments.
- (2) Because of the nature of this type of seizure, the approval of the territory manager is required. Prior to making personal contact, review the provisions of IRM 5.1.3.5, Armed Escort to Contact a Taxpayer.

5.10.1.13.8
(05-20-2016)
**Property With
Environmental
Considerations**

- (1) Several types of business may create employee safety issues and environmental concerns if they are seized. Some examples are:
 - Battery charging and handling operations
 - Laboratories
 - X-Ray equipment Facilities
 - Facilities with asbestos or Polychlorinated Biphenyls (PCB's)
 - Firing ranges
 - Warehouses storing hazardous or toxic materials
 - Photo processing or graphic arts facilities
 - Printing, etching, or plating plants
 - Welding and sheet metal shops
 - Roofing contractors
 - Auto repair and paint shops
 - Waste disposal facilities or incinerators
 - Lumber yards and processing plants
- (2) Before seizing property from these or similar businesses, employees should consider the following employee safety and environmental factors :
 - a. Refer to IRM 1.14.5, Occupational Health and Safety Program, and take all necessary safety precautions
 - b. Consider the applicable environmental regulations in Title 29 CFR Part 1910, Occupational Safety and Health Standards.
 - c. Determine whether the disposal costs of the hazardous materials and any required remediation of the property would exceed the potential proceeds from the sale of the establishment's assets.
- (3) Take the following actions if property is seized and environmental hazards are discovered:
 - a. In the case of the release, spill, or leak of any chemical products, including liquids, gases, or solids, immediately contact the local hazardous materials response authority, e.g. local fire department.
 - b. Report the incident immediately to the local IRS Safety Officer. A listing of local IRS area safety officers is available on the IRS Agency-Wide Shared Services (AWSS) website.
 - c. Refer to IRM 1.14.5, Occupational Health and Safety Program.

5.10.1.13.9
(05-20-2016)
**Cleared Contractor
Facility**

- (1) In order to mitigate the possibility of compromise of **classified** material, liaison has been established between the Internal Revenue Service and the Defense Contract Administration Services Region (DCASR).
- (2) The Defense Industrial Security Program (DISP) requires a contractor participating in the program to safeguard **classified** material and to report the termination of business for any reason. The reporting of a closure is essential to the protection of the **classified** material. DCASR representatives will establish liaison with the Internal Revenue Service area directors whose offices lie within a DCASR.
- (3) When considering seizure of this type of firm, the revenue officer will ask a responsible officer or the owner if the firm:
 - Has been or is now a participant in the DISP?
 - Is cleared to perform on classified government contracts?

- Is currently in possession of any classified material for an ongoing or terminated contract?

Note: The revenue officer should consider the precautions necessary to secure this type of facility as well as the fact that classified material will be released to DCASR per IRM 5.10.1.13.9(6) when determining whether seizure would be appropriate.

- (4) If a contractor answers yes to any of the above questions, after seizure, provide immediate notice to the Director of Industrial Security for the DCASR having jurisdiction over the area. Notice may be given by either of the following methods:
 - Contacting the DCASR by telephone
 - Sending a copy of Form 2433, Notice of Seizure, to the DCASR.
- (5) If the place of business has been closed by the seizure, arrangements should be made to permit access to the premises by the DCASR representative.
- (6) Any classified items that have been placed under seizure should be released to the DCASR representative upon presentation of official credentials. Form 668–E, Release of Levy, will be used.

5.10.1.13.10
(10-26-2022)
Virtual Currency

- (1) The IRS cannot take possession of virtual currency without knowledge of the private key. A seizure is not complete until the virtual currency is transferred to a wallet with a new private key under the control of the IRS.
- (2) The IRS will generally utilize a third-party vendor to sweep the virtual currency. Sweep is the term used to describe a secure way of transferring virtual currency onto a different wallet with a new private key. The PALS will provide the RO with a list of third-party vendors to contact to gather the cost/fee information necessary to help estimate seizure expenses. Once the fee is determined, the RO should discuss fair market value and estimated expenses with the PALS to ensure there will be net funds to apply to the account.

5.10.1.14
(05-20-2016)
Consent or Writ Determination

- (1) The Supreme Court of the United States held in **G.M. Leasing Corp. vs. United States**, 429 U.S. 338 (1977), that an entry without a warrant onto the private areas of personal or business premises of a taxpayer for the purpose of seizing property to satisfy a tax liability is in violation of the Fourth Amendment to the Constitution of the United States. The revenue officer must determine whether a consent or writ will be required prior to making the seizure. See IRM 5.17.4.13, Writs of Entry
- (2) Before entering into a private area, the revenue officer must secure either:
 - Written consent from the rightful occupant (IRM 5.10.3.5, Conducting the Seizure - Securing Consent), or
 - A court order (writ) permitting entry (IRM 5.10.3.7, Writ Procedures)
- (3) The revenue officer must determine if the assets are located in a private area. Some common characteristics of a private area include:
 - No accessibility to the general public
 - Posted signs and warnings against entry
 - Employee access only
 - Areas with an expectation of privacy

- Covered or attached areas
 - Areas behind counters
- (4) Examples of common private areas include:
- Restaurant kitchen areas
 - Service departments
 - Private self-storage facilities
 - Garages and other attached or unattached structures
 - Product storage areas for retail establishments
 - Manufacturing plant production properties
 - Fenced properties
 - Cash registers
 - Safe deposit boxes
 - Company office areas
- (5) Generally, in situations involving seizure of assets located on private premises, consent to enter will first be sought from the taxpayer or rightful occupant, as applicable. Only after consent has been denied will the revenue officer request a Writ of Entry. Case file documentation is extremely important, especially when there are exceptions to this provision. Exceptions are limited to the following situations:
- When it is believed that advance notice will jeopardize the safety of the revenue officer(s)
 - When attempts to contact the taxpayer or rightful occupant fail
 - When there are substantiated concerns that the taxpayer will refuse consent and then place assets beyond the reach of the IRS while a request for Writ of Entry is pending
- (6) Consent may be requested and secured from the taxpayer or rightful occupant before submission of approval of the seizure. If consent is denied a Writ of Entry may be requested concurrently with the seizure approval package. As a general rule, the seizure should be made not more than 30 working days from the date of consent. If the seizure must be made more than 30 days later, a new consent should be requested. See IRM 5.10.3.5, Conducting the Seizure --Securing Consent for additional guidance.
- (7) In situations where it is believed that the taxpayer may try to place assets beyond the reach of the IRS, or if the taxpayer has previously placed assets beyond the IRS's grasp after having been forewarned of enforced collection by the consent request, secure a Writ of Entry (IRM 5.10.3.7, Writ Procedures) without requesting consent. The affidavit furnished to the court must state the reason why an attempt to secure consent would compromise collection efforts.
- (8) Prior to requesting the Writ of Entry, the reason a consent is not being sought must be documented by the revenue officer and included in the approval package documentation. The request requires concurrence by the level of management above the group manager. The approving official will document concurrence in the ICS history. This authority should be used in extremely rare circumstances. The mere loss of the element of surprise will generally not be sufficient cause to justify an exception.
- (9) A Writ of Entry is not a search warrant. A search warrant cannot be issued to a revenue officer authorizing entry upon private premises to search for property to seize.

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

5.10.1.15
(05-20-2016)
**Contents of Residence -
Consent or Writ
Required**

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

Note: See IRM 5.10.2.4, Seizures Requiring Area Director Approval, for the approval level of seizing the contents of a residence.

5.10.1.16
(05-20-2016)
**Motor Vehicles -
Determining if Consent
or Writ is Required**

- (1) When a motor vehicle is being seized, a Consent or Writ is not required if the motor vehicle is parked in any of the following locations:
- On public property, such as a street, or county road
 - In an unobstructed driveway or front yard
 - On an unsupervised portion of a third party's premises which is accessible to the general public such as a public parking lot or public garage.
- (2) If there is any obstruction, such as a fence, chain, or rope, which would indicate that entry onto the driveway or front yard would constitute an invasion of the taxpayer's privacy, a consent or writ is required. In addition, the vehicle must not be enclosed by any structure, such as a garage or carport.
- (3) Area director approval is required if the motor vehicle is used in the trade or business of an individual taxpayer.

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Exhibit 5.10.1-1 (05-20-2016)

Form 2434-B and Instructions Reference: IRM 5.10.1.5.3.3(2)

Form 2434-B (Rev. October 2003)	Department of the Treasury — Internal Revenue Service Notice of Encumbrances Against or Interests in Property Offered for Sale
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NOTE: The Internal Revenue Service does not warrant the correctness or completeness of the information listed but provides it solely to help the prospective bidder determine the value of the interest being sold. Bidders should, therefore, verify for themselves the validity, priority, and amount of encumbrances against the property offered for sale. Each party listed below was mailed a notice of sale on or before (Date) _____ (1)

As of this date, the following are the encumbrances against or interests in the property (as described in the Notice of Public Auction or Notice of Sealed Bid Sale) that was seized for nonpayment of Internal Revenue taxes due from (Name): _____ (2)
 Some of these encumbrances or interests may be superior to the lien of the United States.

Type of Encumbrance or Interest	Amount of Encumbrance or Interest	Date of Instrument Creating Encumbrance or Interest	Date and Place Recorded	Name and Address of Party Holding Encumbrance or Interest	Date of Information
(3)	(4)	(5)	(6)	(7)	(8)

Name		Signature	Date (mmddyyyy)
Title			

Exhibit 5.10.1-1 (Cont. 1) (05-20-2016)**Form 2434-B and Instructions Reference: IRM 5.10.1.5.3.3(2)****Form 2434-B Instructions Reference: IRM 5.10.1.5.3.3(2)**

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

2. Taxpayer's name

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

4. Amount of encumbrance as of the date records were checked. The amount should be the *current* balance due when the secured party is contacted or the original amount recorded if the secured party cannot be contacted.

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

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

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

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

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

Exhibit 5.10.1-2 (05-20-2016)

Landlord Agreement Reference: IRM 5.10.1.5.3.4(8)

LANDLORD AGREEMENT

U.S. Treasury Department
Internal Revenue Service
-VS-
Landlord Name

Date _____
STIPULATION

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

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

It is expressly agreed and understood by and between the parties to this agreement that the U.S. Government shall not be liable for any damage or injury to person or property caused by the intentional, negligent, or reckless acts of the Internal Revenue Service or its agents or employees that occurs during the term of this lease.

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

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

ATTEST BY:

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

Exhibit 5.10.1-3 (12-20-2019)
Perishable Goods Criteria and Sale Plan Template, Reference IRM 5.10.1.8(4)

Date (MM-DD-YYYY)

MEMORANDUM FOR NAME

Director, Civil Enforcement
 Advice and Support
 Operations (CEASO)

FROM: NAME

PALS

SUBJECT: Perishable Goods Criteria
 and Sale Plan

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

Taxpayer name and address:

EIN:

Proposed Sale Location:

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

Yes _____ No _____ (Provide short explanation)

Selection of Perishable Goods Sale Criteria:
 _____ is liable to perish (discuss the specific assets)

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

Reduced Forced Sale Value: \$
 Reductions used and reasons for reductions to arrive at forced sale and reduced forced sale value:

Complete the following for all cases:
 IRC section 6335 estimated expenses to move and store off-site:

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

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

Exhibit 5.10.1-3 (Cont. 1) (12-20-2019)

Perishable Goods Criteria and Sale Plan Template, Reference IRM 5.10.1.8(4)

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

Analysis of IRC section 6335 sale proceeds after expenses:

IRC section 6336 perishable goods sale estimated expenses:

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

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

Marketing plan:

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

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

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

PALS

PALS Group Manager

PALS Territory Manager

Director, CEASO

Group Manager

Territory Manager

Area Director

Director, Field Collection

Signature/Date

Printed Name

Exhibit 5.10.1-4 (05-20-2016)**CASE SCENARIO #1 Reference: IRM 5.10.1.4(4)****Type of Business:** Sanitation**Type of Entity:** Corporation**Amount of Liability:** \$200,000**Number of Quarters Delinquent:** 4**Years Remaining on Statute:** 8**Status/Priority of NFTL:** Filed; junior to first lienholder**Is Business Current on Deposits?** Now current on deposits**Number of Employees:** 25**Ability to Pay:** Analysis of CIS shows ability to pay \$5,000 per month, TP agrees with IA amount and has requested an installment agreement**Will Payment Amount Full Pay Within Statute?** Yes**Status of Trust Fund:** 433A shows no monthly ability to pay; officer is borrowing full equity of \$25,000 on property he owns personally; TFRP investigation completed and TFRP waiver secured through length of proposed installment agreement plus one year**Levy Sources:**

Bank Account

Accounts Receivable

Assets:

10 Trucks

Office Furniture, Computers

Fair Market Value:

\$50,000 each

\$4,000

Encumbrances:

\$250,000

\$0

Additional Facts of Case:

Taxpayer had previous liabilities that have all been satisfied. The vehicles were all purchased at the same time and the encumbrance was established when the vehicles were purchased. Taxpayer has been denied a loan at three banks. Estimated expenses of sale for towing, storage, advertising, etc. are \$3,000.

Recommended Course of Action:

The revenue officer should complete an equity analysis and ; using 60 % of FMV, the RFSV of the vehicles is \$50,000; with estimated expenses of \$3,000, the expected minimum net sale proceeds would be \$47,000. The revenue officer then conducts a risk analysis — the alternative collection method would be an installment agreement. The taxpayer is a "will pay/can't pay" taxpayer because the corporation is in compliance with Federal Tax Deposits and has requested and qualifies for an installment agreement. Since the government would be at no greater risk by granting the installment agreement, the taxpayer should be given the installment agreement. The tax lien will protect the government's interest in the asset if the taxpayer later defaults and seizure action is required.

Exhibit 5.10.1-5 (05-20-2016)

CASE SCENARIO #2 Reference: IRM 5.10.1.4(4)

Type of Business: Sanitation

Type of Entity: Corporation

Amount of Liability: \$200,000

Number of Quarters Delinquent: 4

Years Remaining on Statute: 8

Status/Priority of NFTL: Filed; junior to first lienholder

Is Business Current on Deposits? Not in Compliance

Number of Employees: 25

Ability to Pay: Unknown, TP has not complied with requests to complete CIS

Will Payment Amount Full Pay Within Statute? N/A

Status of Trust Fund: Investigation still being completed, CIS needed for collectibility determination

Levy Sources:

Bank Account

Accounts Receivable

Assets:

10 Trucks

Office Furniture, Computers

Fair Market Value:

\$50,000 each

\$4,000

Encumbrances:

\$250,000

\$0

Additional Facts of Case:

Taxpayer had liabilities for a prior corporation that were satisfied through enforced collection. The vehicles were all purchased at the same time and the encumbrance was established when the vehicles were purchased. Levies on bank account and receivables have resulted in minimal funds and have not led to case resolution. Estimated expenses of sale for towing, storage, advertising, etc. are \$3,000.

Recommended Course of Action:

The revenue officer should complete an equity analysis and using 60 % of FMV, the RFSV of the vehicles is \$50,000. With estimated expenses of \$3,000, the expected net sale proceeds would be \$47,000. The taxpayer is a "won't pay" taxpayer because the corporation is not in compliance with Federal Tax Deposits and will not provide financial information. The revenue officer then conducts a risk analysis — there are no reasonable alternative collection methods. The taxpayer does not qualify for an installment agreement or offer in compromise. Other methods of enforcement have already been considered. Since the assets have equity and the risk analysis provides no reasonable alternatives, the seizure should be recommended after all appropriate pre-seizure actions have been completed.

