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Tax Regs in Plain English

IRS Restructuring and Reform Act of 1998

3445 - Procedures for Seizure of Residences and Businesses

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Section 3445

A. Provision(s) covered: RRA § 3445. Procedures for Seizure of Residences and Businesses. Revises I.R.C. §§ 6334(a)(13) and 6334(e).

B. Background: The objective behind this provision is to further limit circumstances under which a taxpayer's (or other individual's) residence and/or business assets may be seized. Specific concerns are also addressed regarding the seizure of commercial fishing/wildlife licenses.

C. Change(s): This proposal amends section 6334(a)(13) relating to exemption of principal residences by exempting residences (any real property used as a residence by the taxpayer or any other individual (other than real property which is rented)) from levy if the levy amount does not exceed \$5,000. The proposal also exempts, except to the extent provided in subsection (e), the taxpayer's principal residence and tangible personal or real property used in an individual taxpayer's trade or business (other than real property which is rented). Section 6334(e) is amended to provide that levy may be allowed on a principal residence where approved by a district court. Section 6334(e) is also amended to provide that a levy on business assets may be made where the district director or assistant district director personally approves in writing such levy, or if the Secretary finds that the collection of tax is in jeopardy. A district director or assistant

district director may not approve a levy of business assets, however, unless the district director or assistant district director first determines that the taxpayer's "other assets" subject to collection are insufficient to pay the amount due, together with expenses of the proceeding. Additionally, this provision specifically includes the future income that may be derived by such taxpayer from the commercial sale of fish or wildlife under a state fish and wildlife permit in the definition of "other assets".

D. Impact: This provision limits the ability of Revenue Officers to seize residential property for tax liabilities of less than \$5,000. It requires judicial approval prior to seizure of a principal residence (where under prior law the personal approval of a district director or assistant district director in writing was sufficient). It requires a district director or assistant district director to exercise additional supervisory authority by mandating additional approval of seizures of a taxpayer's business assets. It further requires a district director or assistant district director to make an evaluation of the availability of other assets--including the projected future income from commercial sale of fish or wildlife--before approving a seizure of business assets.

E. Necessary Actions

1. Written advice and training for all district managers and revenue officers, and district counsel. The IRM and Treasury Regulations will have to be revised. Development of procedures for obtaining judicial approval prior to seizure of principal residences. See comments.
2. Upon enactment of this Act, the Service CANNOT seize residences of any individual (except rental property) where the levy amount does not exceed \$5,000, regardless of prior approval. Seizures of residences must now be approved judicially. Revenue Officers CANNOT seize a taxpayer's business assets unless the district director or assistant district director personally approves such seizure in writing. District directors/assistant district directors CANNOT grant such approval without first evaluating the availability of other assets.

F. Other Special Comments: The Conference Committee Explanation of the IRS Restructuring Bill contains further explanation regarding judicial approval of sales of principal residences, contemplating a judicial hearing. The Committee report, discussing Section 3401, Due Process in IRS Collection Actions, provides:

No seizure of a dwelling that is the principal residence of the taxpayer or the taxpayer's spouse, former spouse, or minor child would be allowed without prior judicial approval. Notice of the judicial hearing must be provided to the taxpayer and family members residing in the property. At the judicial hearing, the Secretary would be required to demonstrate (1) that the requirements of any applicable law or administrative procedure relevant to the levy have been met, (2) that the liability is owed, and (3) that no reasonable alternative for the collection of the taxpayer's debt exists. Internal Revenue Service Restructuring and Reform Act of 1998, Conference Report to Accompany H.R. 2676, at page 263.

There is nothing in the language of section 3401 regarding judicial approval prior to

seizure of a principal residence. Section 3401 is effective for collection actions initiated more than 180 days from the date of enactment.

Further consideration of this provision will be necessary. Specifically, determinations need to be made regarding how a district director or assistant district director will determine the availability of "other assets", for purposes of approving seizures of business assets--particularly with respect to determining the projected future income from commercial sales of fish or wildlife. Determinations need to be made regarding what type of proceeding will be required for judicial approval of seizures. Finally, determinations need to be made regarding the modification of current procedures for approval of seizures, in view of the new statutory language.

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