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Tax Regs in Plain English

IRS Restructuring and Reform Act of 1998

3444 - Codification of IRS Administrative Procedures for Seizure of Taxpayer's Property

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Section 3444

A. Provision covered: RRA §3444 - Codification of IRS Administrative Procedures For Seizure of Taxpayer's Property; Adds new IRC §6331(j) and changes 6331(k).

B. Background: Current law provides that "no levy may be made" if the amount of the IRS expenses from the levy and sale exceed the fair market value of the property at the time of the seizure. IRM 56(12)5.1 provides general guidelines for seizures, including verifying whether estimated expenses of levy and sale will exceed the fair market value of the property to be seized. IRM 56(12)2.1. However, in practice this could not always be done before a levy was made but is instead done while preparing for the sale. If it were determined after the seizure there would be insufficient sale proceeds, then the levy was released.

The only exception to this procedure is where there has been a pyramiding of employment taxes where seizure is taken to collect the taxes to prevent further pyramiding. Without such action, the business would continually run up tax liabilities. This provision would codify certain procedures in the IRM which require the IRS to investigate the status of the property prior to levy, and adds a new requirement that the IRS investigate other alternative means of collection before taking such action.

C. Change(s) New IRC §6331(j) will codify the IRM Manual provisions requiring the

revenue officer to determine that there will be sufficient net proceeds from the sale to apply to unpaid tax liabilities. It also requires the revenue officer to verify the liability of the taxpayer and determine if any other alternate means of collection are available.

D. Impact The provision which is effective upon enactment will apply to all seizures made after that date. "No equity" seizures to prevent pyramiding of employment taxes are prohibited.

E. Necessary Actions Issue instructions and provide training setting forth the new procedures. It is necessary to emphasize these prohibitions to stop the present practices and advise of the new requirements.

1. Actions/Procedures Instructions in memo form or IRM Supplement as well as additional training in new procedures. New forms and checksheets may need to be developed.
2. Things we cannot do.

IRS cannot conduct "no equity seizures" and must verify tax liability before seizure and explore alternative means of collection.

F. Other Special Comments. The Service should provide instructions on verifying tax liability before seizure, determining if there are alternative means of collection, and prohibiting no equity seizures.

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