



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

5.10.5

AUGUST 21, 2018

## EFFECTIVE DATE

(08-21-2018)

## PURPOSE

- (1) This transmits revised IRM 5.10.5, *Seizure and Sale, Sale Procedures*.

## MATERIAL CHANGES

- (1) 5.10.5.1, incorporated guidance found in IPU 17U1281, which inserted a subsection on Program Scope and Objectives in compliance with IRM 1.11.2 standards.
- (2) 5.10.5.2(3), incorporated guidance found in IPU 17U1281, which updated the section to reflect which revenue officers may not participate in sale activities.
- (3) 5.10.5.6(13), incorporated guidance found in IPU 17U1281, which updated the section to reflect which revenue officers may not participate in cancellation of a sale.
- (4) 5.10.5.7(1), (2) and (3), incorporated guidance found in IPU 17U1281, which updated these sections to reflect which revenue officers may not participate in sale activities.
- (5) 5.10.5.14(5), incorporated guidance found in IPU 17U1281, which updated the section to reflect which revenue officers may not assist with documenting sealed bids received in the local office.
- (6) 5.10.5.15(1), incorporated guidance found in IPU 17U1281, which updated the section on payment information to match the Form 2434, Notice of Sale.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.10.5, dated February 27, 2017 and incorporates IPU 17U1281.

## AUDIENCE

Small Business/Self-Employed Compliance Employees

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Director, Collection Policy



5.10.5  
Sale Procedures

## Table of Contents

5.10.5.1	Program Scope and Objectives
5.10.5.1.1	Background
5.10.5.1.2	Authority
5.10.5.1.3	Responsibilities
5.10.5.1.4	Program Management and Review
5.10.5.1.5	Acronyms and Definitions
5.10.5.2	General
5.10.5.3	Securing Change for the Sale via the PALS Imprest Fund
5.10.5.4	Treasury Employee Prohibition on Purchase of Certain Assets
5.10.5.5	Employee Self-Disqualification
5.10.5.6	Adjournment Procedures
5.10.5.7	Public Auction — General
5.10.5.8	Condition of Title and of Property
5.10.5.9	Statement by Lienholders
5.10.5.10	Statement by Taxpayers
5.10.5.11	Conducting a Public Auction
5.10.5.12	Property Offered Under Only One Method
5.10.5.12.1	Minimum Bid Not Reached
5.10.5.12.2	Public Sale of Controlled Substances
5.10.5.13	Property Offered For Sale by More than One Method
5.10.5.14	Sealed Bid Sale — General
5.10.5.14.1	Consideration of Sealed Bids and Sale of Property
5.10.5.14.2	Successful Sealed Bid
5.10.5.14.3	Unsuccessful Sealed Bids
5.10.5.15	Payment of Purchase Price
5.10.5.16	Default on Payment — Cash Sales
5.10.5.17	Default on Payment — Deferred Payment Sale
5.10.5.18	Certificate of Sale
5.10.5.18.1	Legal Effect of Certificate of Sale of Personal Property
5.10.5.18.2	Legal Effect of Certificate of Sale on Corporate Stocks and Securities
5.10.5.18.3	Legal Effect of Certificate of Sale on Vehicles
5.10.5.18.4	Legal Effect of Certificate of Sale on Documented Vessels
5.10.5.18.5	Recording Certificate of Sale in Real Estate Cases
5.10.5.19	Delivery and Removal of Personal Property
5.10.5.20	Protection of Real Property During Redemption Period

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- 5.10.5.20.1 Protection of Vacant Real Property during Redemption Period
  - 5.10.5.20.2 Protection of Occupied Real Property during Redemption Period
  - 5.10.5.21 Securing and Depositing Sale Proceeds

Exhibits

- 5.10.5-1 Wire Instruction Document Reference IRM 5.10.5.15(6)
- 5.10.5-2 Form 2435 — Certificate of Sale of Seized Property Reference: IRM 5.10.5.18
- 5.10.5-3 Letter 2274(P), Materials to Assist in the Sale of Documented Vessels Reference: IRM 5.10.5.18.4(2)
- 5.10.5-4 Form 1963, Collection Register Reference: IRM 5.10.5.15

5.10.5.1  
(08-29-2017)  
**Program Scope and Objectives**

- (1) **Purpose:** This section provides procedural instructions for collection staff in conducting auction sales of seized property.
- (2) **Audience:** This section is for Collection employees conducting auction sales of seized property.
- (3) **Policy Owner:** Director, Collection Policy
- (4) **Program Owner:** Small Business/Self Employed office of Headquarters Collection Policy is the policy owner of this IRM.
- (5) **Primary Stakeholders:** The primary stakeholders are Property Appraisal and Liquidation Specialists (PALS) and Revenue Officers.
- (6) **Program Goals:** Provide guidance and procedures on auction sale activities.

5.10.5.1.1  
(08-29-2017)  
**Background**

- (1) Internal Revenue Manual 5.10.5, *Seizure and Sale, Sale Procedures*, contains procedural guidance for conducting public or sealed bid auctions of property that has been seized for the non-payment of tax. The procedures contained in this section relate to activities to prepare for the auction, to open and conduct the auction and it provides guidance on various situations that the IRS employee may encounter and how to resolve them. This section also provides guidance on which revenue officers may participate in sale activities.

5.10.5.1.2  
(08-29-2017)  
**Authority**

- (1) IRC 6335, *Sale of Seized Property*
- (2) Delegation Order 1-23-2 (Rev. 2), *Authority to Sign and Issue Levy and Related Documents* <http://mysbse.web.irs.gov/opsupport/hc/facilitiesorganizationalsupport/orgsupportteam/imd/delorders/functional/ecs/30661.aspx>

5.10.5.1.3  
(08-29-2017)  
**Responsibilities**

- (1) The Director, Collection Policy is the executive responsible for the policies and procedures to be employed by collection personnel.
- (2) The Property Appraisal and Liquidation Specialists (PALS) are responsible for conducting or coordinating all the auction sale activities.
- (3) The Revenue Officers are responsible for coordinating with PALS as needed.

5.10.5.1.4  
(08-29-2017)  
**Program Management and Review**

- (1) **Program Reports:** Per IRM 1.4.53, **Advisory Group Manager Operational Guide**, PALS Group Managers are required to review ICS inventory reports on a monthly basis to ensure PALS cases are being effectively worked.
- (2) **Program Effectiveness:** Collection Policy does an annual seizure and sale review to identify trends and opportunities for improvement.

5.10.5.1.5  
(08-29-2017)  
**Acronyms and Definitions**

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

Acronym	Definition
PALS	Property Appraisal and Liquidation Specialist

Acronym	Definition
IRC	Internal Revenue Code

5.10.5.2  
(08-29-2017)  
**General**

- (1) If the property has not been released or redeemed prior to sale, the sale should take place at the time and place as indicated in the Notice of Sale. The revenue officer will advise the Property Appraisal Liquidation Specialists (PALS) if the taxpayer files bankruptcy or if a resolution is reached prior to the scheduled sale (e.g. TAS contacts the revenue officer and resolution is reached requiring release of the seizure.)

**Note:** Prior to conducting the sale, the PALS should check ICS and contact the revenue officer to verify that no changes have been made to the account, such as those listed in IRM 5.10.4.13, *Conditions for Release of Seized Property*. This contact should generally be made within 2 days of the sale date. PALS should also check the Public Access to Court Electronic Records (PACER) system if there is an indication the taxpayer may have filed bankruptcy.

- (2) The PALS will conduct the sale, but an employee who has the authority to make a case decision regarding a proposed collection alternative, usually the seizing revenue officer and/or the group manager, may be present at the sale site in order to discuss possible case resolution alternatives with the taxpayer. If this employee is not present at the sale, he or she must be available to both the taxpayer and the PALS by phone on the day of the sale so the taxpayer can discuss any alternatives to the sale. If this employee agrees that an alternative resolution is appropriate, the employee will advise the PALS that circumstances exist which warrant adjournment of the sale and/or release of the levy and return of the seized property.

**Note:** The statutory provision of IRC 6331, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), does not prohibit the sale of property that was seized before an offer or an installment agreement became pending. To determine when an offer or installment agreement is considered pending, see IRM 5.8.2.3, *Processability*, and IRM 5.14.1.3, *Identifying Pending, Approved and Rejected Installment Agreement Proposals on IDRS*, respectively.

- (3) A revenue officer who has taken any collection actions **at any time** against the taxpayer whose assets have been seized may not be involved with any aspect of the actual sale under IRC 6335, including, but not limited to:
- Grouping and lotting of property prior to sale after the Form 2433, *Notice of Seizure*, has been completed
  - Registering bidders
  - Tabulating bids
  - Assisting in the collection of money
  - Issuing certificates of sale
  - Answering sale related questions
  - Any other sale related activity involving interaction with anyone attending or conducting the sale

**Note:** Revenue officers may participate in sales of perishable goods since these sales do not take place under IRC 6335. Responsibility for all perishable goods sales resides with the PALS function, see IRM 5.10.1.7(4).

- (4) Any person whose property has been seized can redeem the property (IRM 5.10.4.12, *Redemption of Property Prior to Sale*), or the property may be released (IRM 5.10.4.13, *Conditions for Release of Seized Property*) at any time before the PALS declares the property sold to the highest bidder.

#### 5.10.5.3

(02-27-2017)

#### Securing Change for the Sale via the PALS Imprest Fund

- (1) These procedures should be used to ensure that sufficient money is available to provide change to successful bidders at cash sales.
- (2) To obtain a convenience check, the PALS will complete Form 14782, *Request for Funds - Change for PALS Sale*, and secure group manager approval. Allow a minimum of two weeks, under normal circumstances, to process the request and receive the check. Emergency requests for funds must be weighed on a case-by-case basis.
- (3) Submit the approved form to the PALS Imprest Fund Cashier (or Alternate, as necessary) for processing. Upon receipt of an approved request for funds, the PALS Imprest Fund Cashier (or Alternate) will initiate a "PALS Imprest Fund disbursement document," which will include the following information:
- Name and address of the PALS employee receiving the cash advance. If overnight mail is required, there must be a street address (post office boxes are unacceptable).
  - The statement: "Cash is requested for change-making purposes for a sale scheduled on MM-DD-YYYY. The funds will be returned no later than MM-DD-YYYY."

**Note:** Funds must be returned no later than ten days from the date of sale.

- (4) The PALS Imprest Fund cashier will prepare and mail a PALS Imprest Fund check to the PALS employee specified in the request and on the Form 14782, *Request for Funds - Change for PALS Sale*.
- (5) The PALS employee receiving the check will be responsible for converting the check to cash. Procedures for repayment of funds must be strictly adhered to because the PALS to whom the check is sent will be responsible for the funds until such time as repayment has been verified. The PALS is responsible for full repayment, regardless of whether any loss occurred, either through negligence or error, unless relief is granted pursuant to procedures found in IRM 5.10.5.1.1(7).
- (6) The following steps should be followed in order to guarantee full repayment:
- a. Within ten days after completion of the sale, convert the cash back to a check (either cashier's or certified) or money order made payable to PALS Imprest Fund and forward the reimbursement to the PALS Imprest Fund Cashier (or Alternate).

**Note:** PALS GM may approve an extension of time for returning the funds on a case-by-case basis for sales that are adjourned, delayed, or

cancelled. PALS may request additional time by submitting a memorandum detailing the circumstances of the request to the PALS GM.

- b. Attach the check to a Form 3210, *Document Transmittal*, so that verification of receipt can be forwarded back to the requester. Once the requester receives the signed 3210 that verifies receipt of the repayment, this will serve as proof of repayment, so the signed 3210 should be kept in the case file.
  - c. The PALS Imprest Fund Cashier (or Alternate) will record the repayment on the log, closing out the request. The check will be deposited into the PALS Imprest Fund. Refer to IRM 1.35.18, *Imprest Funds*, for additional information on the PALS Imprest Funds and the responsibilities of the PALS program.
- (7) In the event of loss or theft after the check has been negotiated, the PALS can apply for relief by forwarding a formal memorandum through the PALS group manager to the PALS Territory Manager detailing the specific circumstances involved in the loss. If the PALS Territory Manager concurs that the employee should be relieved of the responsibility to repay the funds, the memorandum with his/her concurrence should be forwarded to the plan manager. After final consideration, all parties will be notified of the final outcome (relief or requirement to repay in full).

5.10.5.4  
(07-03-2009)  
**Treasury Employee  
Prohibition on Purchase  
of Certain Assets**

- (1) 5 CFR § 3101.103 states that, unless a waiver is obtained, no employees of the Department of the Treasury shall purchase, directly or indirectly, property:
- a. Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or
  - b. Sold under the direction or incident to the function of the employee's bureau.

5.10.5.5  
(07-03-2009)  
**Employee  
Self-Disqualification**

- (1) Any Service employee, regardless of his/her function at the sale, must be disqualified from the sale if a member of the employee's household is present as a bidder.
- (2) When a Service employee involved in a sale becomes aware of a relative, close friend, or close associate offering to bid, that employee should usually self-disqualify and, if necessary, have the PALS adjourn the sale when their personal association with taxpayers or bidders could give the appearance of partiality in the proceedings. See 5 CFR Parts 2635 and 3101 for applicable Standards of Ethical Conduct. Any action taken in this respect should be well documented and made part of the seizure file. The adjournment will be for a period of time sufficient to permit a disinterested employee to be made available for continuation of the sale; however, it must not exceed one month. Information on adjournment procedures is contained in IRM 5.10.5.6, *Adjournment Procedures*.
- (3) If the PALS believes there are enough bidders to preclude any allegations of collusion, the sale may be continued without self-disqualification. The PALS must document in the case history the circumstances surrounding the determination not to self-disqualify, and will prepare a memorandum explaining the situation and will forward the memorandum through the manager for inclusion in the Advisory seizure file.



5.10.5.6  
(08-29-2017)  
**Adjournment  
Procedures**

- (1) Pursuant to Anderson v. United States, 44 F.3d 795 (9th Cir. 1995), the Service may adjourn, but not postpone, a sale of seized property (see IRM 5.17.3.7.1.3, *Time of Sale - Adjournment*). The sale of seized property may not be delayed beyond the statutory time periods of IRC 6335(d). The sale must be held not less than 10 days, nor more than 40 days from the date public notice of sale is given, unless it is adjourned for a period not to exceed one month. A sale may be temporarily enjoined by a court order, in which case the actual period of suspension should not be included in computing the time for sale under the code.

**Note:** If the taxpayer files bankruptcy after the notice of sale has been given, then the automatic stay prohibits the Service from conducting the sale as scheduled. Since the sale is cancelled, not adjourned, the time limitations in IRC 6335(e)(2)(F) do not apply. Since the sale never takes place, IRC 6335(e)(1)(D) is also inapplicable and the property does not have to be released. If the bankruptcy trustee does not demand turnover of the property, consider releasing the property and re-seizing when the automatic stay is no longer in effect when such action would present minimal additional harm or expense to the Service--i.e., the subject property is real property. Contact Advisory and local counsel for additional information on how to proceed. Any subsequent sale of the seized property, including giving a new notice of sale, must take place following the statutory guidelines in IRC 6335(d).

- (2) All adjournment(s) are limited to a new date not later than one month after the date fixed in the original public notice of sale (not including the time period for which the sale is enjoined by a court order). The announcement of adjournment should:
- Be made in the presence of the prospective bidders
  - Include the date and time to which the sale is adjourned, if possible
- (3) A sale may be adjourned at any time after the sale has commenced, including after the pre-established minimum price has been reached, until the property is declared sold. For sales with multiple minimum bids, portions of the property can be declared sold when the minimum bid is reached and the sale adjourned on the remaining items.
- (4) Notice of the new sale date should be given to the taxpayer in the same manner as the original notice of sale (IRM 5.10.4.9, *Delivery of Notice of Sale*).

**Note:** The adjourned sale may be held at a different location so long as the sale is otherwise conducted properly. That includes notice of the new sale location on the notice of adjournment sale. However, if the sale were moved outside the county, it would have to meet the same requirement as an initial sale for being held outside the county as provided in IRM 5.10.4.8.1, *Notice of Sale - Date and Place of Sale*, including ensuring the appropriate management official signature is on the notice of sale.

- (5) It is not necessary to re-advertise the sale when the new sale date is set within the allowable time period; however, in some cases it may be advisable to re-advertise the sale if it is believed it would generate higher sale proceeds.
- (6) Adjournments must be in the best interest of the government or the taxpayer.
- (7) If facts are disclosed that indicate a basis for adjusting or re-determining the minimum bid, the PALS may adjourn the sale to re-evaluate the minimum bid

so it will more realistically reflect the forced sale value of the seized property in light of the existing conditions. Though the re-evaluation will not be made solely to facilitate the purchase of the property by the United States or to guarantee a sale to a third party, if new information obtained during the sale (e.g., defects in the property, bidder consensus that the fair market value is overstated) indicates a lower value is appropriate, the PALS should consider lowering the fair market value to facilitate sale.

- (8) If the minimum bid is revised, managerial concurrence and taxpayer notification are still required. If time is a factor, managerial concurrence can be secured over the phone. If the taxpayer is willing to waive his/her right to the 10-day waiting period, the taxpayer should indicate his/her concurrence by signing the revised Form 4585, *Minimum Bid Worksheet*. Taxpayer concurrence is only required if IRM 5.10.4.3.8, *Revised Minimum Bid Forms - No Opportunity to Protest*, does not apply and the revised minimum bid is used before the 10-day waiting period expires. A copy of the taxpayer's concurrence, when required, will be forwarded to Advisory to be included in the seizure file.

**Note:** If the PALS obtains PALS group manager and taxpayer concurrence of a revised fair market value (FMV) at the sale, the Field Collection group manager need not be advised of the new value. However, if the taxpayer is unavailable and the PALS has to send the new minimum bid draft to the taxpayer and wait 10 days as described in IRM 5.10.4.3.4, *Challenges to the Minimum Bid*, the field group manager should be asked for their concurrence of the revised fair market value per IRM 5.10.4.3.1.2(2), *Minimum Bid - Fair Market Value*.

- (9) If, after the sale has commenced, conditions indicate that seizure should be released (IRM 5.10.4.14, *Conditions for Release of Seized Property*), the PALS should adjourn the sale and if applicable, release the levy. The reason for the adjournment should be documented in the case history.
- (10) If, after commencement, it is learned that the taxpayer filed bankruptcy, adjourn the sale and consult with Advisory.
- (11) If the new sale date for an adjourned sale is beyond the one month time period allowed for adjournments, the property must be released. There are no provisions that prevent the same asset from immediately being seized again unless circumstances have changed so that the seizure is now prohibited (collection statute expired, etc.).

**Note:** If property must be seized again due to the time constraints related to an adjournment, all required approvals must be obtained prior to the second seizure.

- (12) There is no statutory basis for the Service to rescind an adjourned sale after the Service becomes aware of a defect in the sale procedures. In the event the PALS determines an IRM or IRC requirement may not have been met during the seizure and sale process and the property has been declared sold discuss the case with the PALS GM. Do not declare the sale "void" or "rescinded." Contact Advisory and associate area counsel on how to proceed. Where the taxpayer, owner of the property, or purchaser make a complaint, consult IRM 5.10.6.15, *Wrongful Seizure - Payment of Claims After Sale*, and IRM 5.10.6.16, *Improper Levy Action and Claims for Refund*, and confer with area counsel.

- (13) Cancellation of a sale before the sale commences may be announced by any IRS employee that is revenue officer who has taken any collection actions **at any time** against the taxpayer whose assets have been seized. This may occur when the taxpayer redeems property before the sale and the travel cost of the PALS to announce the cancellation is not cost effective. The PALS should request the local employee's assistance in announcing the cancellation through the employee's manager.

5.10.5.7  
(08-29-2017)  
**Public Auction —  
General**

- (1) With the exception of perishable goods sales, the PALS will conduct the sale and at least one other Service employee, who may not be a revenue officer who has taken any collection actions **at any time** against the taxpayer whose assets have been seized, must assist with the sale. This does not apply in cases in which the sale is outsourced. See IRM 5.10.4.6 , *Outsourcing Sales*.

**Exception:** In rare situations a law enforcement officer may assist with a public auction sale if no Service employee is available.

- (2) The PALS must determine the number of personnel that will be required to assist with the sale. The complexity of the sale will influence the number of assisting employees that will be required. The assisting employees may be other PALS, revenue agents, secretaries, revenue officers who have not taken any collection actions **at any time** against the taxpayer whose assets have been seized or any other service employee. Some of the normal sales responsibilities for which assistance may be needed include:

- Helping to group and lot the property prior to sale
- Helping to organize the sale area prior to sale
- Signing in bidders, assigning bidder numbers, and issuing bidder cards
- Helping spot bids and recording bid amounts
- Assisting in collecting or counting money
- Meeting and greeting bidders, monitoring the crowd, answering questions or directing prospective bidders to the appropriate person
- Assisting in the preparation of Form 2435, *Certificate of Sale of Seized Property*
- Matching Form 2435 against property removed after the sale

**Note:** Ensure that the assisting employees understand their roles and responsibilities for assisting at the sale and that procedures are in place to adequately safeguard proceeds from the sale. Assign tasks based on the technical abilities of the assisting employees and ensure the delegated authority for signing Certificates of Sale, etc. is not assigned to employees outside of the delegated positions.

- (3) The PALS will first look to employees of Advisory and Insolvency, who have not taken any collection actions **at any time** against the taxpayer whose assets have been seized, or other PALS, to assist at sales. In situations where it is not feasible or cost-effective for employees of Advisory or Insolvency to assist with sales, the PALS will request assistance from the Collection territory manager where the seizure was conducted. The PALS will identify the number of employees needed to assist at the sale and the Collection territory manager will provide the assistance needed in accordance with IRM 5.10.5.7(1) & (2).
- (4) The name and title of the assisting IRS employee (or in rare situations a law enforcement officer if no Service employee is available) should be documented

on Form 2436, *Notice of Seized Property Report*. Form 2436 instructions are in IRM 5.10.6.5, *Seizure and Sale, Post Sale Actions and Responsibilities of Advisory*. If more than one employee assists with the sale, the PALS should document the name and title of the other assisting employees in the ICS history.

- (5) The PALS should be present at the place of the sale before the announced time so that he or she will be available to answer questions concerning the property, the conditions of the sale, or terms of payment. If there are changes to the payment terms, these should be announced prior to the commencement of the sale.
- (6) The PALS should make no statements other than those prescribed by the instructions in IRM 5.10.5.8, *Condition of Title and of Property*, at any time prior to the sale or when conducting the sale.

5.10.5.8  
(07-03-2009)

**Condition of Title and of Property**

- (1) The PALS will offer:
  - Only the right, title, and interest of the taxpayer in and to the property seized, subject to any outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid against the taxpayer and are superior to the lien of the United States
  - The property “as is” and “where is” and without recourse against the United States
  - No guaranty or warranty, express or implied, on the condition of any of the property, or its fitness for any use or purpose
- (2) Form 2434–B, *Notice of Encumbrances Against or Interests in Property Offered for Sale* (IRM Exhibit 5.10.1–1), will be supplied, when requested, to provide prospective bidders with any information the Service has learned relating to encumbrances and interests of record. Most requests for such information will usually be received prior to the date of the sale; however, the PALS should have enough completed copies of Form 2434–B available at the sale to give a copy to prospective bidders.

**Note:** Form 2434-B must be provided to all parties identified on the form prior to the sale (IRM 5.10.4.9, *Delivery of Notice of Sale*).

- (3) Form 2434–B should include all encumbrances and interests of record of which the Service became aware during the course of its investigation prior to seizure and sale (See IRM 5.10.1.5.3, *Equity Determination*). Advise recipients that the Service does not certify in any way how accurate or current this information is. Form 2434–B contains a statement advising bidders to verify for themselves the validity, priority, and amount of encumbrances against the property that is offered for sale.
- (4) In situations where no encumbrances or interests of record other than the NFTL are reflected on Form 2434–B, if a potential bidder asks what encumbrances or interests the Service has learned about, the PALS may state that the Service is not aware of any others beside the NFTLs.
- (5) Consult local counsel for the procedures to follow when there are questions as to the validity of a recorded lien.
- (6) Since the sale of real property under IRC 6335 gives a 180 day right of redemption period after the sale, bidders should be advised that they cannot

assume control of the property until this redemption period lapses, or the persons who have rights of redemption convey them to the successful bidder. See IRM 5.10.5.10(3) through (5), *Statement by Taxpayers*. If, during this allowable redemption period, the successful bidder incurs any expenses to conserve, maintain, repair, or improve the real property and the property is later redeemed, the purchaser has no claim against the government or against the redemption proceeds to recover these expenses. Any claim for recovery must be made against the taxpayer/owner under appropriate state law.

5.10.5.9  
(07-03-2009)  
**Statement by  
Lienholders**

- (1) In some cases involving personal property subject to a senior chattel lien, the security interest of the lienholder in the property is made more difficult to enforce as a result of the distraint sale. This occurs because the purchaser at the sale receives possession of the property immediately upon payment of the bid price. In some instances, the senior lienor cannot locate the purchaser or the property. In an effort to minimize the possibilities of losses of this type, senior chattel lienors who have established lien priority will be permitted to make an announcement concerning their liens prior to sale and to conduct a foreclosure sale immediately after the tax sale.
- (2) Senior lienors should, however, be advised that the Service has no authority to withhold release of the property to the successful bidder. Thus, notwithstanding the announcement by the senior lienor, the PALS will give the purchaser a certificate of sale upon full payment of the bid price and will take no action to prevent removal of the property by the purchaser.

5.10.5.10  
(08-04-2014)  
**Statement by Taxpayers**

- (1) The taxpayer may be allowed to explain the condition of his or her title to the prospective bidders. If, after the taxpayer's explanation, it is apparent that a greater sum may be realized by giving the bidders an opportunity to further investigate the condition of the title to the property, the sale may be adjourned at the discretion of the PALS. Any adjournment must follow the procedures in IRM 5.10.5.6, *Adjournment Procedures*.
- (2) When real property is seized, the following individuals have the right, under IRC 6337, to redeem the property at any time within 180 days after the sale:
  - The owner
  - His or her heirs, executors, or administrators
  - Any person having an interest in the property
  - Any person having a lien on the property
  - Any person on their behalf

Refer to IRM 5.17.3.6.5, *Redemption*, for additional information regarding who has redemption rights and instructions regarding consulting Area counsel.

- (3) The right to redeem is conveyable, and the taxpayer and other parties possessing the right to redeem may be advised of their right to waive or sell the right to the successful bidder at the sale. If the parties having the right to redeem do not agree to convey this privilege, the validity of the sale is not affected.
- (4) If the taxpayer and other parties having the right to redeem agree to convey this right, a greater amount may be realized from the sale. If the party possessing the right to redeem agrees to the sale of this right, the bidders should be informed and the party should announce the price of the right of redemption before bids are taken.



- (5) Even though all parties convey the right to redeem to the successful bidder, a deed cannot be issued prior to expiration of the 180-day period for redemption.

5.10.5.11  
(07-03-2009)  
**Conducting a Public Auction**

- (1) At the time and place set for the sale, the PALS should call the prospective bidders to order and announce the conditions under which the property will be offered. The statement provided on the reverse of Form 2434, *Notice of Public Auction Sale*, may be used and can be altered as necessary to fit any conditions peculiar to a particular sale. Since Form 2434 is made available to the public prior to the sale, it is not necessary that the opening statement be read aloud. However, a clear announcement directing the bidders to the statement must be made by the PALS.
- (2) If the services of a professional auctioneer are used, the PALS is still responsible for conveying to potential bidders the initial legal notice regarding right, title and interest, the condition of property, and no express or implied guarantee about the fitness of the property or for making the announcement directing the bidders to the statement on Form 2434.
- (3) The terms of payment should have been determined at the time the Notice of Sale was prepared (IRM 5.10.4.8.3, *Notice of Sale - Terms of Payment*), and these terms should be indicated on Form 2434. Any change in the terms of payment should be announced prior to the commencement of bidding.
- (4) The manner in which the property is being offered for sale should also have been previously determined (IRM 5.10.4.8.2, *Notice of Sale - Grouping of Property*). If the property is being offered for sale under only one method, the procedures in IRM 5.10.5.12, *Property Offered Under Only One Method*, should be followed. If the property is being offered for sale under more than one method, the procedures in IRM 5.10.5.13, *Property Offered for Sale by More Than One Method*, should be followed.

5.10.5.12  
(07-03-2009)  
**Property Offered Under Only One Method**

- (1) Once the sale is called to order and the opening statement made, the PALS will open the bidding.
- (2) If mail-in bids have been received, they should be opened at the start of the bidding for each of the lots for which they were submitted.
- (3) When a sale consists of two or more parcels being sold as separate items, the assisting employee should prepare a tabulation of the tentative high bids received. Form 4425, *Public Sale Bid Tabulation*, or a similar form, may be used for tabulating purposes. A running total of the tentative high bids should be maintained so it can easily be determined when the minimum bid has been reached. Any records pertaining to the tentative high bids received will be retained and submitted by the PALS with the report of the proceedings on Form 2436, *Seized Property Sale Report*, as provided in IRM 5.10.6.5, *Form 2436, Seized Property Sale Report*.
- (4) If sufficient parcels are sold (or tentatively sold) to satisfy the entire liability plus the costs of the proceedings, the PALS should end the sale and release the remaining parcels to the taxpayer.

**Note:** In certain situations, it may be appropriate to continue with the sale of all assets and process any surplus proceeds according to the procedures in IRM 5.10.6.7, *Surplus Proceeds*. This could occur if the taxpayer has

indicated he or she does not want the remaining assets returned or if there are other circumstances where the release of the assets would be problematic. Document the history with the specific circumstances if the sale of the remaining assets is completed.

- (5) After the highest bid(s) have been determined and if the minimum bid has been reached, the PALS will announce the name of the successful bidder(s) and make a statement similar to the following: "In accordance with the provisions of section 6335 of the Internal Revenue Code, I hereby declare this property sold to the highest bidder for the sum of \$ \_\_\_\_\_. " If two or more highest mail-in bids are equal, determine the successful bidder by drawing lots.
- (6) IRM 5.10.5.12.1, *Minimum Bid Not Reached*, contains the provisions to follow if the minimum bid is not reached at the sale.
- (7) If mail-in bids were received which were not the successful bid, the deposits should be returned by mail and the appropriate section of the mail-in bid form should be completed.

5.10.5.12.1  
(07-03-2009)  
**Minimum Bid Not Reached**

- (1) If the minimum bid price is not reached,
  - a. The property may be declared purchased at the minimum bid price for the United States.
  - b. The property may be released to the taxpayer.
  - c. The sale may be adjourned if it is in the best interest of the government or the taxpayer (IRM 5.10.5.6, *Adjournment Procedures*).
- (2) The decision whether or not to bid in the property for the government can be made up to the point the property is declared sold, or the sale is adjourned or cancelled. The decision must be documented prior to or as part of the sale day actions (IRM 5.10.4.3.2, *Decision to Bid-In the Property for the Government*).
- (3) If the property is bid in for the government, the PALS will make a statement similar to the following: "In accordance with the provisions of section 6335 of the Internal Revenue Code, I hereby declare this property purchased for the United States for the sum of \$ \_\_\_\_\_. "

5.10.5.12.2  
(08-04-2014)  
**Public Sale of Controlled Substances**

- (1) IRM 5.10.3.20, *Controlled Substances*, provides guidance regarding the seizure of Controlled Substances.
- (2) If a public sale is held, offer the controlled substances **only** as a separate item and **not** in the aggregate with any of the other property. The controlled substances should be listed as a separate item on the Notice of Sale. The notice should also state that the controlled substances will be sold only to persons or organizations registered under the Federal Controlled Substances Act . In addition, the notice should state that the purchaser must present a completed (in triplicate) pre-addressed DEA Form 222c (Federal Order Form) for all controlled substances listed on Schedules I and II of the Controlled Substances Act and a valid DEA registration number.
- (3) Copy 1 and Copy 2 of DEA Form 222c should be given to the PALS and Copy 3 retained by the purchaser. The PALS shall attach the original to Form 2436, *Seized Property Sale Report*, and will mail Copy 2 to the nearest Regional Office of the DEA. A Certificate of Sale will be issued to the purchaser.

- (4) In the event that no authorized person offers the minimum price determined for the controlled substances, the controlled substances should be declared purchased for the United States. If the controlled substances are not sold when offered for resale as prescribed in IRM 5.10.7, *Acquired Property and Property Redeemed by the United States*, the drugs should be delivered to the nearest Regional Office of the DEA for disposal. See 21 CFR 1307.21. The PALS should secure a receipt for the controlled substances from the DEA and attach it to the memorandum report of disposition of acquired property.
- (5) A qualified purchaser must be registered with a valid DEA registration number (or, in the case of certain government officials, exempted from registration) by the DEA at the location where he/she will receive the controlled substances being purchased and in all the schedules of the controlled substances being purchased (e.g., Schedule II narcotics, Schedule II non-narcotics, Schedule III narcotics, Schedule III non-narcotics, Schedule IV or Schedule V).

5.10.5.13  
(07-03-2009)

**Property Offered For  
Sale by More than One  
Method**

- (1) When property is offered for sale by more than one method (IRM 5.10.4.5, *Notice of Sale - Grouping of Property*), it should be offered first in the aggregate and then as individual lots. This should ensure that the amount offered for the aggregate is the maximum amount a bidder is willing to offer rather than an amount only slightly higher than the total amount of the bids received on all of the individual lots. The property will be declared sold under the method that produces the highest total amount, as long as the minimum bid is met.
- (2) The PALS will open the bidding. If mail-in bids were received, the procedures contained in IRM 5.10.5.12, *Property Offered Under Only One Method*, for integrating the mail-in bids into the auction and processing unsuccessful mail-in bids should also be followed when the property is offered for sale by more than one method.
- (3) The assisting employee should prepare a tabulation of the tentative high bids received. Form 4425, *Public Sale Bid Tabulation*, or a similar form may be used for tabulating purposes. Any records pertaining to the tentative high bids received will be retained and submitted by the PALS with the report of the proceedings on Form 2436, *Seized Property Sale Report* (IRM 5.10.6.5, *Form 2436, Seized Property Sale Report*).
- (4) The sale should be recessed at the conclusion of the first bidding period long enough to tabulate the tentative high bids received. After completing a verification of this tabulation, the PALS will make a statement similar to the following: "In accordance with the provisions of IRC 6335, I hereby declare the property tentatively sold to bidder number \_\_\_\_\_ pending the outcome of the property being offered by another method." The property should then be offered for sale under the other method(s) of sale.
- (5) It may be desirable, depending upon the circumstances, to secure a payment from the tentative high bidder(s) pending the outcome of the bidding by the other method of sale. This may prevent the high bidder(s) at the initial sale from reneging on a bid. If payment is required, a tentative Form 2435, *Certificate of Sale*, should be issued for any cash received. The certificate should be marked "Public Auction Sale—Tentative High Bid", and the amount received should be shown on the tentative certificate. A memorandum signed by the tentative high bidder and the PALS can also be used for this purpose.



- (6) If the second method of sale consists of two or more parcels being sold as separate lots, a tabulation of bids will be maintained on Form 4425, *Public Sale Bid Tabulation*, or similar form. A running total of the high bids for each lot should be maintained so it can be easily determined when the minimum bid has been met or if the aggregate bid has been surpassed.
- (7) If sufficient parcels are sold (or tentatively sold) to satisfy the entire liability plus the costs of the proceedings, the PALS should end the sale and release the remaining parcels to the taxpayer. The successful bidder(s) will be those who bid on the individual lots, regardless of the amount bid for the aggregate. This will allow the taxpayer to retain some of his property while still satisfying the entire liability.

**Note:** In certain situations, it may be appropriate to continue with the sale of all assets and process any surplus proceeds according to the procedures in IRM 5.10.6.7, *Surplus Proceeds*. This could occur if the taxpayer has indicated he or she does not want the remaining assets returned or if there are other circumstances where the release of the assets would be problematic. Document the history with the specific circumstances if the sale of the remaining assets is completed.

- (8) After the method that produces the highest bid has been determined and if the minimum bid has been reached, the PALS will make a statement similar to the following: "In accordance with the provisions of section 6335 of the Internal Revenue Code, I hereby declare this property sold to the highest bidder(s) for the sum of \$ \_\_\_\_\_."
- (9) If the tentative high bidder is declared the actual high bidder, retrieve any tentative certificates and issue the actual Form 2435 (IRM 5.10.5.18, *Certificate of Sale*), after receipt of the full bid amount.
- (10) If no one offers the minimum price under either method, follow the procedures under IRM 5.10.5.12.1, *Minimum Bid Not Reached*.

5.10.5.14  
(08-29-2017)  
**Sealed Bid Sale —  
General**

- (1) Form 2222, *Sealed Bid for Purchase of Seized Property*, will be used for submission of sealed bids. All instructions to bidders necessary for the proper completion and submission of sealed bids are included on the back of Form 2222.
- (2) If a potential bidder requests information concerning encumbrances against the property, Form 2434–B, *Notice of Encumbrances Against or Interests in Property Offered for Sale* (IRM Exhibit 5.10.1–1), should be provided. Form 2434–B should include all encumbrances and interests of record of which the Service became aware during the course of its investigation prior to seizure and sale (See IRM 5.10.1.5.3, *Equity Determination*). Advise recipients that the Service does not certify in any way how accurate or current this information is. Form 2434–B contains a statement advising bidders to verify for themselves the validity, priority, and amount of encumbrances against the property that is offered for sale.
- (3) The *Notice of Sealed Bid Sale*, Form 2434–A, specifies the address where the sealed bids must be submitted. If the place of sale is the local IRS office rather than the office where the PALS is located, the address where the sealed bids should be delivered will be the local office. Since the PALS will usually be trav-

elling to the sale location, this will ensure that all bids are received at one location prior to the time of sale. A pre-addressed envelope should be provided for returning sealed bids.

- (4) Each bidder will submit their bid in a securely sealed envelope with their name, address, and the time and place of sale on the upper left corner of the envelope. The envelope should be annotated with the name and identification number of the appropriate PALS and the statement "SEALED BID - TO BE OPENED BY ADDRESSEE ONLY".
- (5) If the sale is to be held in the office where the PALS is located, the PALS or an employee in the office where the PALS is located will document each bidder's name, address, and the date the sealed bid was received for all sealed bids as they are received. Section C of Form 4425 or a similar form should be used for this purpose. If the sale is being held at a local IRS office, the PALS should coordinate with the local office to have an employee, other than a revenue officer who has taken any collection actions **at any time** against the taxpayer whose assets have been seized, document on Form 4425 each bidder's name, address, and the date the bid was received for all sealed bids as they are received.
- (6) Sealed bids should not be opened for any reason prior to the time set for opening the bids. All sealed bids received will be retained for safekeeping in a government facility providing protection commensurate with the standards in IRM 10.2.15, *Minimum Protection Standards*.
- (7) A bid should not be considered unless it is received at the sale location prior to the time fixed for the opening of the bids.
- (8) Bids may be withdrawn upon written request received from the bidder provided the request is received by the PALS conducting the sale prior to the time fixed for opening of the bids. If a request is received, the sealed bid will be returned to the bidder unopened. The date of withdrawal should be noted on Form 4425 and the written request should be attached to the form.

5.10.5.14.1  
(07-03-2009)

**Consideration of Sealed  
Bids and Sale of  
Property**

- (1) At the appointed time and place scheduled for the opening of bids, the PALS conducting the sale will call the gathering to order. If bidders are present, the PALS will state: "The sealed bids received as a result of notice of sale of property seized from (taxpayer's name), which was published (insert names of publication and dates of insertions therein), will now be opened." Form 2434-A, *Notice of Sealed Bid Sale*, contains the authority and effect of sale used as the opening statement. Since the form is available to the public, it is not necessary to read the statement prior to commencing the sale.
- (2) The PALS should then proceed with the opening of bids, checking each bid against the tabulation previously prepared to make certain that each bid is considered in determining the successful bidder(s). The opening of bids should be done in the presence of those persons who submitted bids and the taxpayer, if such persons are present. The PALS may announce the minimum price before the sale, but is not required to do so.
- (3) Any sealed bid which is not accompanied by the required remittance will not be considered.

- (4) The PALS has the right to waive any technical defect in a bid. However, a technical defect in a bid does not give the bidder the right to withdraw the bid after it has been opened.

5.10.5.14.2  
(07-03-2009)

#### Successful Sealed Bid

- (1) After the opening, examination, and consideration of all bids (including any consideration necessary because the property was offered by more than one method), the PALS will announce the amount of the highest bid or bids and the name of the successful bidder or bidders.

If...	Then...
The property is offered by more than one method	Form 4425, <i>Public Sale Bid Tabulation</i> , or similar form should be used to determine the successful bidder(s).
Two or more highest bids are equal	Determine the successful bidder by drawing lots.
The highest bid is not equal to or greater than the minimum bid	The property may be declared purchased at the minimum bid price for the United States or released back to the taxpayer (see IRM 5.10.4.17).

- (2) All Forms 2222 will be retained by the PALS and will be forwarded with the report of the proceedings on Form 2436. The PALS will complete all applicable items of the successful bidder section of Forms 2222 submitted by successful bidders.

5.10.5.14.3  
(07-03-2009)

#### Unsuccessful Sealed Bids

- (1) At the conclusion of the sale, remittances submitted with unsuccessful bids will be returned. In no event will any remittance received with an unsuccessful bid be deposited as Internal Revenue collections or in the deposit fund account, nor will unsuccessful bidders be required to submit an application for a refund.
- (2) Remittances should be returned to unsuccessful bidders if they are present at the sale. Otherwise, the remittances will be returned by mail. In either case, complete the applicable items of the "Return of Remittance to Unsuccessful Bidder" section of the related Form 2222.
- (3) Although there is no statutory requirement to make such announcement, if requested, the PALS may divulge the respective names and amount bid by unsuccessful bidders.

5.10.5.15  
(08-29-2017)

#### Payment of Purchase Price

- (1) All payment for property sold must be in the form of:
- cash
  - certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory or possession of the United States,
  - or by a United States postal, bank, or express money order payable to the United States Treasury.

- (2) If full payment is required upon acceptance of the highest bid, the payment should be made at that time or a reasonable period thereafter, to be established by the PALS.
- (3) If deferred payment is permitted, the initial payment will be made upon acceptance of the bid, and the balance paid on or before the date specified on Form 2434, *Notice of Public Auction Sale*.
- (4) In the case of sealed bids, the initial payment will be the remittance required to be submitted with the sealed bid. Payment terms for the balance due are indicated on Form 2434–A, *Notice of Sealed Bid Sale*.
- (5) If the highest bidder is the result of a mail-in bid, the PALS should notify the successful bidder as soon as possible so the balance of the bid price can be secured. The appropriate section at the bottom of the mail-in bid form should be completed.
- (6) PALS may determine payment of the bid price through a Fed Wire Transfer is applicable. In these situations, the Notice of Sale should state a Certificate of Sale will not be issued, and personal property removal may not begin until after confirmation of full payment of the bid price. Confirmation of full payment may take 24 to 48 hours after the transfer is initiated. PALS should provide the "Wire Instructions Document," as shown in IRM Exhibit 5.10.5-1, to bidders who choose this payment option. PALS will complete a Form 2433, Part 7B, for the Fed Wire transaction annotating FED WIRE TRANSFER, the total sum of the wire transaction, and the date of sale. PALS will also complete Form 1963, *Collection Register* (see Exhibit 5.10.5-4 for instructions on completing this form), listing each wire transaction separately and will include FED WIRE TRANSFER in block 2. Both the Forms 2433, Part 7B and 1963 must be sent to Ogden Submission Processing by fax or secure email. PALS contacts Ogden Submission processing within 24 hours of the wire transaction for verification the funds have been received and identified in Cash Link. After such verification, PALS will contact the successful bidder(s) and advise the wire transactions have been confirmed, issue Form 2435, *Certificate of Sale*, and property removal can begin, if applicable.
- (7) Although Form 809, *Receipt for Payment of Taxes*, is normally issued for all cash payments, it should not be issued to purchasers upon full payment in cash of the purchase price. Instead, if full payment is received in cash, Form 2435, *Certificate of Sale*, will be issued.
- (8) Under the following conditions the PALS will prepare a record of receipt to provide to the purchaser:
  - If deferment of the purchase price is permitted, and an initial or interim payment is received in cash
  - The purchaser requests a receipt for a non-cash payment
- (9) A copy of the record of receipt should be submitted on Form 3210, *Document Transmittal*. Form 3210 should include the taxpayer's identification number as well as the seizure number and should be marked "Partial Proceeds from the Sale of Seized Property." A copy of Part 7B of Form 2433 marked "Partial Proceeds from the Sale of Seized Property" should also be included to ensure proper handling of the proceeds. The payment will be applied to the appropriate module when Form 2436 is submitted. The record of receipt should include the following information:

- Identity of purchaser
- Amount of payment
- Date of payment
- Description of item purchased
- Remaining balance due
- Date remaining balance is due
- Address to submit balance due
- Signature of PALS

- (10) If a non-cash deferred payment is made and a receipt is not requested, the remittance should be submitted with a copy of Part 7B of Form 2433 marked "Partial Proceeds from the Sale of Seized Property." The documents should be transmitted via Form 3210, Document Transmittal. Form 3210 should include the taxpayer's identification number as well as the seizure number, and should state "Partial Proceeds from the Sale of Seized Property."
- (11) There is no statutory basis for the Service to rescind a sale after the Service becomes aware of a defect in the sale procedures. In the event the PALS determines an IRM or IRC requirement may not have been met during the seizure and sale process and the property has been declared sold discuss the case with the PALS GM. Do not declare the sale "void" or "rescinded." Contact Advisory and obtain associate area counsel advice on how to proceed. When the taxpayer, owner of the property, or purchaser makes a complaint, consult IRM 5.10.6.15, *Wrongful Seizure - Payment of Claims After Sale*, and IRM 5.10.6.16, *Improper Levy Action and Claims for Refund*, and confer with area counsel.

5.10.5.16  
(07-03-2009)  
**Default on Payment —  
Cash Sales**

- (1) If payment in full is required upon the acceptance of the bid (or a reasonable period thereafter) and the successful bidder fails to make the payment, the PALS conducting the sale "... shall forthwith proceed to again sell the property..." (IRC 6335(e)(3)). As a general rule, this can be accomplished by voiding the defaulted high bid and announcing the next highest bid as the successful bidder. The reason for the change or correction should be explained on the corrected document (e.g., Form 4425) or by routing slip.
- (2) Ordinarily the deposit made by purchasers at cash sales will not be subject to forfeiture upon failure to pay the purchase price. However, since it may be possible in some cases to retain the deposit made by purchasers at cash sales or to bring an action against them for the damages caused by their default, seek the advice of area counsel when action against a defaulting purchaser at a cash sale is being considered.

5.10.5.17  
(08-04-2014)  
**Default on Payment —  
Deferred Payment Sale**

- (1) If the conditions of sale permit part of the payment to be deferred, and if it is not paid within the prescribed period, the following actions may be taken:
- a. Recommend suit (IRM 5.17.4, *Suits by the United States*) against the purchaser for the unpaid bid price, including interest at an annual rate established under IRC section 6335(e)(3).
  - b. Declare the sale void for failure to make full payment and again advertise and offer the property for sale (see IRM 5.10.5.16(1), *Default on Payment - Cash Sales*, and IRM 5.17.3.7.2.3, *Acceptance of Bid - Payment*).

**Note:** Since the original sale is being declared void, the time periods related to adjourned sales (IRM 5.10.5.6, *Adjournment Procedures*) do not apply. The new sale date should be advertised and the sale

conducted within the appropriate time frames (IRM 5.10.4.8.1, *Notice of Sale - Date and Place of Sale*) based on the new date of public notice.

- (2) The new purchaser will receive the property or rights to property free and clear of any claim or right of the defaulting purchaser. The amount paid upon the bid price by the defaulting purchaser will be forfeited. The forfeited amount will be disposed of in accordance with IRM 5.10.6.5.1(2), *Form 2436, Seized Property and Sale Report - Deferred Payments*. See IRM 3.17.63.9.25.1.4, *Sale of Seized Property Null and Void*, for procedures Redesign Revenue Accounting Control System (RRACS) employees follow for the disposition of the forfeited amount upon receipt of the Form 2436.

5.10.5.18  
(08-04-2014)  
**Certificate of Sale**

- (1) As soon as possible after the receipt of the full purchase price, the PALS will give the purchaser a Form 2435, *Certificate of Sale of Seized Property*, prepared as shown in Exhibit 5.10.5–2.
- (2) If the property listed on Form 2435 includes a motor vehicle, airplane, or boat, the reverse of Form 2435 must be completed. The reverse of Form 2435 may be noted with “See attached Form 2434-B” and a copy of Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale* attached.

If	Then
The property sold is a motor vehicle	Provide an Odometer Disclosure Statement to the purchaser with the Form 2435.
Both personal and real property are involved	Prepare separate Certificates of Sale for each type of property.
The property is sold in the aggregate	Prepare a consolidated Certificate of Sale.
The property is declared purchased for the United States	Prepare a Certificate of Sale.

- (3) After the certificate is prepared, give parts 1 and 2 to the purchaser. Part 3 should be submitted with Form 2436, *Seized Property Sale Report* (IRM 5.10.6.5, *Form 2436, Seized Property Sale Report*). If property is declared purchased for the United States, the Certificate of Sale will be placed in the seizure file.

5.10.5.18.1  
(07-03-2009)  
**Legal Effect of Certificate of Sale of Personal Property**

- (1) IRC 6339(a) and regulations thereunder provide that for the sale of personal property under distraint proceedings, the Certificate of Sale issued to the purchaser will:
- Be prima facie evidence of the right of the PALS to make such sale
  - Be conclusive evidence of the regularity of the proceedings in making the sale
  - Transfer to the purchaser all right, title, and interest of the taxpayer in and to the property sold
  - Discharge the property from all liens, encumbrances and title over which the tax lien had priority



- (2) Part 2 of Form 2435 provides pertinent citations from the Code.

5.10.5.18.2  
(07-03-2009)  
**Legal Effect of  
Certificate of Sale on  
Corporate Stocks and  
Securities**

- (1) If the property is corporate stocks, the Certificate of Sale will be notice, when received, to any corporation, company, or association of the transfer, and will be the authority to the corporation, company or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the stock certificate, in lieu of any original or prior certificate, which shall be void, whether canceled or not.
- (2) If the subject of sale is securities or other evidences of debt, the Certificate of Sale will be good and valid receipt to the person holding the Certificate of Sale as against any person holding or claiming to hold possession of such securities or other evidences of debt.

5.10.5.18.3  
(07-03-2009)  
**Legal Effect of  
Certificate of Sale on  
Vehicles**

- (1) If the property is a motor vehicle, the Certificate of Sale will be notice, when received, to any public official charged with the registration of title to motor vehicles, of the transfer. It will also be the authority to that official to record the transfer on his/her books and records in the same manner as if the certificate of title to the motor vehicle was transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

5.10.5.18.4  
(07-03-2009)  
**Legal Effect of  
Certificate of Sale on  
Documented Vessels**

- (1) When a documented vessel (registered, enrolled, or licensed) is seized, the U.S. Coast Guard office with whom the vessel has been documented must be requested to furnish a copy of the last document issued for the vessel (See IRM 5.10.1.5.3.7, *Equity Determination — Documented Vessels*) for use as proper identification on seizure and sale papers. When the vessel is sold, Form 2435, *Certificate of Sale of Seized Property*, will be issued as the Certificate of Sale.
- (2) Although Form 2435 passes title to purchasers under the Internal Revenue Code, the U.S. Coast Guard imposes additional requirements. The U.S. Coast Guard has indicated that, in most instances, it will grant a request for waiver of the additional requirements. The PALS will prepare a letter (IRM Exhibit 5.10.5–3) to be attached to Form 2435. The purchaser should be instructed to present the copy of Form 2435 and the letter to the U.S. Coast Guard to accomplish the title transfer. Local jurisdictions of the U.S. Coast Guard have been advised that, in most instances, it is appropriate to accept Form 2435 as adequate to pass title when accompanied by the waiver letter.

5.10.5.18.5  
(07-03-2009)  
**Recording Certificate of  
Sale in Real Estate  
Cases**

- (1) Circumstances may arise when a purchaser of real estate may be advised to record the Certificate of Sale. Recording the Certificate of Sale precludes the taxpayer from transferring the property to a bona fide purchaser for value.
- (2) In jurisdictions which have not adopted the Uniform Federal Tax Lien Registration Act, the PALS may need to consult with area counsel (through Advisory) for legal recording instructions.

5.10.5.19  
(07-03-2009)  
**Delivery and Removal of  
Personal Property**

- (1) Responsibility of the United States for the protection or preservation of seized personal property ceases immediately upon payment of the highest bid. The risk of loss is on the purchaser of personal property upon payment of his/her bid. Personal property should not be delivered to the purchaser until the purchase price has been paid in full.

**Note:** Even if all appropriate precautions were taken to protect the property, situations may arise where property is damaged or is found missing after the sale. If the successful bidder breaks or damages the property, that bidder remains responsible for the item and for full payment of the purchase price. Contact the PALS manager, Advisory, or Counsel for the appropriate procedures to follow in all other cases. The case file **must** be fully documented with all actions taken regarding the missing or damaged property.

- (2) If payment of part of the purchase price for personal property is deferred, the property will be retained until the balance of the purchase price has been paid. The PALS should see that the property is protected in facilities commensurate with the standards in IRM 10.2.15, *Minimum Protection Standards*, until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. All charges and expenses incurred in caring for the property after the acceptance of the bid will be the responsibility of the purchaser. The successful bidder should be advised of this at the sale.

5.10.5.20  
(08-04-2014)  
**Protection of Real  
Property During  
Redemption Period**

- (1) When seized property is sold under IRC 6335, IRC 6337 gives certain individuals the right to redeem the property per IRM 5.10.6.8, *Redemption of Real Property after Sale*.
- (2) For real property after the sale and before the redemption period expires both the IRS and the purchaser have a responsibility to keep the property from wasting.

5.10.5.20.1  
(08-04-2014)  
**Protection of Vacant  
Real Property during  
Redemption Period**

- (1) When the property is vacant, and the IRS knows that maintenance is necessary, the IRS can enter without a writ, or make arrangements for the purchaser to enter as is necessary to prevent damage and waste. If the purchaser knows that action is necessary to keep the property from damage/waste, the purchaser may enter to prevent the same without contacting the IRS. If the taxpayer provides keys to the real property voluntarily, the keys may be given to the purchaser for the purpose of preventing wasting.

5.10.5.20.2  
(08-04-2014)  
**Protection of Occupied  
Real Property during  
Redemption Period**

- (1) When the property is not vacant, contact area counsel to determine if a writ is necessary if maintenance is warranted to prevent the property from wasting. If the taxpayer provides keys to the real property voluntarily, contact area counsel to determine if keys may be given to the purchaser for the purpose of preventing wasting.

5.10.5.21  
(02-27-2017)  
**Securing and Depositing  
Sale Proceeds**

- (1) Immediately after the sale the PALS should take the necessary action to deposit proceeds from the sale of seized or acquired property. Arrangements to deposit sale proceeds should have been planned prior to the sale (IRM 5.10.4.19). Using Over the Counter Network (OTCnet), ensure that the desired bank is in the system, contact the OTCnet Local Security Administrator (LSA) to confirm. Additional information on OTCnet may be found in IRM 3.17.10.6, *Over the Counter Network (OTCnet)*.

**Note:** These steps are not necessary if the desired bank is Wells Fargo or Bank of America as they are already in the system.



- (2) To minimize risk of loss and to ensure employee safety, sale proceeds should be converted or deposited by the close of the business day on which it was received, or as soon as possible on the next business day with the bank identified by the Treasury's General Account Management Team, Federal Reserve Bank - St. Louis at the nearest depository.
- (3) Prior to depositing sale proceeds, use necessary precautions to safeguard the cash while in the field (while driving secure money in a locked compartment in the vehicle, for overnight storage attempt to secure in a local IRS office in a safe or locking cabinet, etc.). PALS employees and managers should become familiar with IRM 3.0.167, *Losses and Shortages*.
- (4) Prior to making the deposit, prepare the following:
  - OTCnet deposit ticket (in duplicate)

**Note:** Instructions for submitting these documents are contained in IRM 5.10.6.3, *Submitting Cash Deposit Information of Proceeds From the Sale of seized Property*.
- (5) Once the deposit is made, the bank employee will verify the amount and sign the OTCnet deposit ticket. The bank will retain an original copy and will return the duplicate copy to the PALS.

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**Exhibit 5.10.5-1 (07-03-2009)****Wire Instruction Document Reference IRM 5.10.5.15(6)**

<b>WIRE INSTRUCTIONS- TYPE 1000</b>		
TYPE 1000 THIRD PARTY FUNDS TRANSFER MESSAGE TO TREAS NYC		
<u>TAG NAME</u>	<u>TAG #</u>	<u>REQUIRED INFORMATION</u>
TYPE/SUBTYPE CODE	(1510)	1000
AMOUNT	(2000)	\$(FILLED IN BY SENDER)
SENDER FI	(3100)	123456789 BANKY XYZ (SENDER (ABA# AND NAME)
SENDER REFERENCE	(3320)	(FILLED IN BY SENDER)
RECEIVER FI	(3400)	021030004 TREAS NYC
BENEFICIARY	(4200)	D
		20092900
		IRS
ORIGINATOR TO BENEFICIARY INFO	(6000)	Public Auction
		Seizure No. (Insert Seizure number)
		PALS Name:

**Exhibit 5.10.5-2 (07-03-2009)****Form 2435 — Certificate of Sale of Seized Property Reference: IRM 5.10.5.18**

Form <b>2435</b> (Rev. January 2003)	Department of the Treasury — Internal Revenue Service <b>Certificate of Sale of Seized Property</b>		
I certify that I sold at public sale the property described below, seized for nonpayment of delinquent Internal Revenue taxes due from:			
Taxpayer's name <div style="text-align: center;">(1)</div>		Date of sale <div style="text-align: center;">(2)</div>	
Sale held at: <div style="text-align: center;">(3)</div>			
in the county of <div style="text-align: center;">(4)</div>			
<b>Description of property sold</b> <i>(If you need more space, please attach a separate sheet. If property listed includes motor vehicles, airplanes, and/or boats, see information under Notice of Encumbrances.)</i>  <div style="text-align: center;">(5)</div>   <div style="text-align: center;">(6)</div>			
The above property was sold at the highest bid received, and receipt of the bid amount is acknowledged. The sale was conducted as provided by Subchapter D, Chapter 64, of the Internal Revenue Code and related regulations.			
Sale amount \$ <div style="text-align: center;">(7)</div>	Purchaser's name <div style="text-align: center;">(8)</div>		
Purchaser's address <div style="text-align: center;">(9)</div>			
Signature of IRS employee <div style="text-align: center;">(10)</div>		Area Office / Territory Office	
Office address of IRS employee		Date	
<div style="display: flex; justify-content: space-between; font-size: small;"> <span>Part 1 — To Purchaser</span> <span>Catalog No. 18493Z</span> <span>www.irs.gov</span> <span>Form <b>2435</b> (Rev. 1-2003)</span> </div>			

**Exhibit 5.10.5-2 (Cont. 1) (07-03-2009)****Form 2435 — Certificate of Sale of Seized Property Reference: IRM 5.10.5.18****Form 2435 Instructions**

1. Taxpayer's name.
2. Date of sale.
3. Sale location.
4. County where sale was held.
5. Description of property covered by Certificate of Sale. This should conform to description stated on Form 2433, except for real property as the legal description is sufficient.
6. Rule out any unused space.
7. Sale amount for property identified on certificate.
8. Name of Purchaser (For real property, the name should be entered as it is to be entered as grantee of any quitclaim deed subsequently granted by the Service).
9. Purchaser's address.
10. Office address of employee issuing Certificate of Sale.

The employee issuing the certificate should sign and date the form and enter the area and territory office information in the spaces provided.

**Exhibit 5.10.5-3 (07-03-2009)****Letter 2274(P), Materials to Assist in the Sale of Documented Vessels Reference: IRM 5.10.5.18.4(2)****Materials to Assist in the Sale of Documented Vessels**

Pattern Letter 2274(P)(5-87)

[Notice to United States Coast Guard to Transfer Title to Documented Vessel]

(Because of the limited need, a form will not be provided by Headquarters for this purpose)

Coast Guard Documentation Officer

Dear Officer:

Re: Vessel Name: \_\_\_\_\_

Vessel No.: \_\_\_\_\_

Attached is Internal Revenue Service Form 2435, Certificate of Sale of Seized Property, issued to the purchaser of the above described vessel upon an IRS sale. This is to request that you accept the Form 2435 as fully sufficient to pass title for Coast Guard documentation purpose.

In this regard, it is requested that you waive the requirement of an acknowledgment under state law requirements. 26 USC 6338(a) and 6339(a) establish that, without more, the certificate of sale is sufficient upon execution by the property appraisal and liquidation specialist conducting the sale.

It is also requested that you waive the requirement of a statement of the percentage interest owned by the seller of the vessel. The IRS sells all the right, title and interest of the delinquent taxpayer in and to the vessel. 26 USC 6339(a)(2).

In your consideration of this request, it is suggested that you refer to Commandant Letter 16713/30, dated JUNE 22, 1987.

Sincerely,

Property Appraisal and Liquidation Specialist  
Area Office \_\_\_\_\_

**Exhibit 5.10.5-3 (Cont. 1) (07-03-2009)****Letter 2274(P), Materials to Assist in the Sale of Documented Vessels Reference: IRM 5.10.5.18.4(2)****Materials to Assist in the Sale of Documented Vessels**

U.S. Department of Transportation      Commandant  
United States Coast Guard

Washington D.C. 20593-0001  
Staff Symbol: G-MVI-6/13  
Phone: (202) 267-1492

United States  
Coast Guard

16713/30  
June 22, 1987

Mr. Arnold Kaufman  
Director  
General Litigation Division  
Office of Chief Counsel  
Internal Revenue Service  
Washington, D.C. 20224

Dear Mr. Kaufman:

I am responding to your letter of February 26, 1987, wherein you requested the Coast Guard accept IRS Form 2435, Certificate of Sale of Seized Property, as a sufficient bill of sale for purposes of documentation of vessels sold by the Internal Revenue Service, and "as sufficient evidence...of all ownership changes subsequent to the acquisition of the interest by the taxpayer and through the point of sale of the interest by the IRS."

After careful consideration of your request, I have concluded that Form 2435 will not be accepted as evidence of all ownership changes subsequent to the acquisition of the interest by the taxpayer. The Coast Guard would be negligent in its responsibilities under the Vessel Documentation Act 1980, the Shipping Act 1916, the Shipping Act 1920, and the Ship Mortgage Act, 1920, in accepting such an arrangement.

Form 2435 may be accepted as competent and persuasive evidence of passage of the delinquent taxpayer's interest to the person named on Form 2435 where the taxpayer is the owner of record, or where the taxpayer's title clearly devolves from an owner of record, and where there is no evidence that there has been any transfer of the taxpayer's interest in the vessel subsequent to title vesting in the taxpayer. For this purpose, "owner of record" means either the current owner of record according to Coast Guard records or under some other system of registration.

A request for waiver of production of recordable instrument in a form which is substantially similar in format to the one accompanying your letter will be required to accompany Form 2435.

Sincerely,

**Exhibit 5.10.5-3 (Cont. 2) (07-03-2009)**

**Letter 2274(P), Materials to Assist in the Sale of Documented Vessels Reference: IRM 5.10.5.18.4(2)**

**Materials to Assist in the Sale of Documented Vessels**

THOMAS L. WILLIS  
Chief, Vessel Documentation Branch  
Merchant Vessel Inspection and  
Documentation Division  
By direction of the Commandant

End: (1) COMDT ltr dtd 22 JUN 87



**Exhibit 5.10.5-3 (Cont. 3) (07-03-2009)****Letter 2274(P), Materials to Assist in the Sale of Documented Vessels Reference: IRM 5.10.5.18.4(2)****Materials to Assist in the Sale of Documented Vessels**G-MVI-6/13  
(202)  
267-149216713/20  
22 June  
1987

From: Commandant

To: Distribution

Subj: Sales of Vessels by Internal Revenue Service

Ref: (a) Certificate of Sale of Seized Property (Form 2435)  
(b) Request for waiver of production of recordable instrument

1. The Internal Revenue Service (IRS) has contacted COMDT (G-MVI-6) in an attempt to clarify the manner in which sales of vessels seized by the IRS for non payment of taxes will be treated by Coast Guard documentation officers.
2. Reference (a) is clearly an unrecordable instrument. Furthermore, there is no section of 46 C.F.R. Part 67 which deals with sales of this nature. A number of documentation officers, in an attempt to accommodate this type of sale, have required the IRS to follow the procedures set forth in § 67.07-11, which deals with repossessions. The IRS has asked that the Coast Guard recognize Certificates of Sale as adequate to establish title to the vessel, and that the Coast Guard not require an affidavit setting forth the procedures followed and the legal authority for the sale.
3. The authority for such sales, Subchapter D, Chapter 64 of the Internal Revenue Code is cited in the body of the Certificate. Sec. 6339 of that code, quoted on the reverse of Form 2435, states in pertinent part that "[the certificate] shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold." The taxpayer is identified on the face of the form. It is clear therefore, that the IRS is acting in an agency relationship on behalf of the delinquent taxpayer.
4. Form 2435 is competent and persuasive evidence of passage of title from the delinquent taxpayer to the purchaser when there is no evidence that the taxpayer has transferred his interest in the vessel prior to the sale by the IRS. Form 2435 is not sufficient in and of itself to establish title to the vessel for documentation purposes when the taxpayer is not the last owner of record, or in the absence of evidence of passage of title from the last owner of record to the taxpayer. For purposes of this letter, "owner of record" refers to either the current owner of the vessel according to Coast Guard records or the owner under some other registration system.
5. Reference (b) is a standard form of request for waiver of production of recordable instrument which will be submitted as a part of any request for documentation or redocumentation of a vessel sold by the IRS where the instrument of conveyance is Form 2435.
6. Documentation officers are cautioned that sales by the IRS have no effect on encumbrances of record. No vessel which is the subject of such a sale and is also the subject of a preferred mortgage of record shall be redocumented without either a satisfaction of mortgage, or the consent of the mortgagee on form CG-4593.

**Exhibit 5.10.5-3 (Cont. 4) (07-03-2009)**

**Letter 2274(P), Materials to Assist in the Sale of Documented Vessels Reference: IRM 5.10.5.18.4(2)**

**Materials to Assist in the Sale of Documented Vessels**

(Signed) T. L. WILLIS  
THOMAS L. WILLIS  
By direction

Encl: (1) Form 2435 (copy)  
(2) Request for production of waiver of recordable instrument

**DISTRIBUTION:**

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CG MSO Portland  
CG MSO Honolulu  
CG MSO Juneau  
CGDNINE (m)

Copy Office of Chief Counsel  
Internal Revenue Service  
Washington, D.C. 20224

**Form 1963, Collection Register Reference: IRM 5.10.5.15**

## Procedures for Preparing Form 1963 Collection Register

**Duplicate:** Retain until the signed Part 3 (Acknowledgement Copy) of Form 3210 is received.

