



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

April 18, 2014

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MEMORANDUM FOR DIRECTORS, CAMPUS COMPLIANCE OPERATIONS
(BROOKHAVEN, MEMPHIS)
DIRECTORS, FIELD COLLECTION AREA OPERATIONS
(SOUTH ATLANTIC, GULF STATES, SOUTHWEST)

FROM: Rocco Steco, Acting Director, Collection Policy /s/ *Rocco Steco*
(for Dretha Barham, Director, Collection Policy)

SUBJECT: Offer Investigations - Payment Options

This memorandum provides interim guidance (IG) for Collection employees working offer in compromise cases. This guidance supplements the procedures found in *Internal Revenue Manual (IRM) 5.8.1, Overview; IRM 5.8.2, Centralized Offer in Compromise Initial Processing and Processability; and IRM 5.8.4 Investigation*, and will be incorporated into the next revision of the IRM.

Background

In January, 2014 the Internal Revenue Service issued an updated Offer in Compromise Form 656 and related Form 656-B, Offer in Compromise Booklet. In addition to the adjustment to the application fee amount, the update revised the number of months allowed for payment of the offer amount when a lump sum cash offer is submitted.

Revised Terms

The following IRM sections are being revised to reflect the current definitions of lump sum cash and periodic payment offer terms.

IRM 5.8.1.7 - The Tax Increase Prevention and Reconciliation Act of 2005

(2) Taxpayers submitting requests for lump sum cash offers must include with the offer a payment equal to 20% of the offer amount. The payment is treated as a payment of tax and is nonrefundable. That is, it will not be returned even if the offer is deemed to be not processable,

later returned, withdrawn, terminated, or rejected. A lump sum cash offer means any offer of payments made in five or fewer installments within five months of offer acceptance, unless an exception as noted in IRM 5.8.1.9.4(3) exists.

IRM 5.8.1.9.4 - Payments

(3) There are two types of payment terms offered on the Form 656 that the Service and the taxpayer may agree to:

a. **Lump Sum Offer** — A lump sum cash offer (one payable in five or fewer installments within five months of offer acceptance) must be accompanied by the payment of 20% of the amount of the offer.

Note: An exception may be allowed to the five month payment requirement when instances such as the ones shown in the examples below exist (not all inclusive). In these cases, more flexible payment terms may be warranted, yet the payment terms may not exceed 24 months. Also, in these cases, while they may be submitted and considered as cash offers, the RCP should be calculated as a periodic offer (24 months).

Example: A non-profit organization submits a Doubt as to Collectibility with Special Circumstances offer. This organization's services are critical to the community and it receives funding through grants from federal and state sources. Based on when the grant funds are received, monies to pay out the OIC will be available in months six, nine and twelve. The financial statement appears to support the offer and the taxpayer's overall compliance history does not weigh against acceptance. Therefore, the offer is accepted as a lump sum cash payment offer payable in months six, nine and twelve.

Example: The taxpayer submits an offer under Effective Tax Administration based on non-economic hardship. The taxpayer was using a payroll service provider (PSP) who deducted all tax payments from the taxpayer's bank account, yet did not remit them to the Service. The taxpayer is a food service company who has been in business since 1987. Their main customer is the Department of Defense. Their overall compliance history has been positive. The majority of funding from DOD is received in October and January. The financial statement appears to support the offer. The offer is accepted as a lump sum cash payment offer payable in months eight and eleven.

b. **Periodic Payment Offer** — A periodic payment offer (one payable in six or more installments) must be accompanied by the payment of the amount of the first proposed installment and additional installments must be paid while the offer is being evaluated by the Internal Revenue Service. The total installments may not exceed 24 months.

IRM 5.8.2.2 - Initial Processing of Offers in Centralized Offers in Compromise Sites

(3) The law stipulates that, in addition to the application fee, an Offer in Compromise (OIC) received on or after July 16, 2006, must include one of the following based on the offer terms:

a. **Lump Sum Cash** – The submission of any lump sum OIC should be accompanied by 20% of the amount of the offer or the low income certification box checked on Form 656. The term “lump sum” means any offer of payments made in 5 or fewer installments within five months of offer acceptance, unless an exception as noted in IRM 5.8.1.9.4(3) exists. Enter a “C” (Cash) on the Automated Offer in Compromise (AOIC) *Terms* screen.

b. **Periodic Payment** – The submission of any periodic payment OIC should be accompanied by the amount of the first proposed installment or the low income certification box checked on Form 656. The term “periodic payment” means any offer of payments in 6 to 24 months. Enter a “D” (Deferred) on the AOIC *Terms* screen.

5.8.4.3.1 - Components of Collectibility

(1) The following four components of collectibility will ordinarily be included in calculating RCP for offer purposes:

Component	Definition
Assets	The amount collectible from the taxpayer's net realizable equity in assets.
Future Income	<p>The amount collectible from the taxpayer's expected future income after allowing for payment of necessary living expenses.</p> <ul style="list-style-type: none"> • For Lump Sum Cash offers, project for the next 12 months or the remaining statutory period, whichever is less; <p>NOTE: Any lump sum cash offer which meets the exception criteria discussed in IRM 5.8.1.9.4(3) in which payment terms exceed five months should have expected future income calculated over 24 months or the remaining statutory period, whichever is less.</p> <ul style="list-style-type: none"> • For Periodic Payment offers, project for the next 24 months or the remaining statutory period, whichever is less.
Amount Collectible from third parties	<p>The amount we could expect to collect from third parties through administrative or judicial action.</p> <p>For example, amounts collectible through a transferee assessment, nominee lien, or suit to set aside a fraudulent conveyance.</p>
Assets and/or income that are available to the taxpayer but are beyond the reach of the government	Assets that the lien will not attach such as equity in assets located outside the country.

5.8.4.13 - Notice of Federal Tax Lien Filing

(6) NOTE: Inform taxpayers that the IRS may be able to defer filing or not file a NFTL if they can make all payments within 5 months of acceptance.

5.8.4.25 - Periodic Payments Required with Offer in Compromise Submissions

(2) The form of these partial payments depends on the taxpayer's proposed offer and its terms.

- a. A lump sum cash offer (defined as payable in five or fewer payments within five months (unless an exception as discussed in IRM 5.8.1.9.4(3) exists) of offer acceptance), must be accompanied by a payment of 20% of the offered amount.
- b. A periodic payment (defined as payable in six to 24 months or through the statutory period) must be accompanied by payment of the first proposed installment, and additional payments must be paid in accordance with the taxpayer's proposed offer terms while the Service evaluates the offer. The total installments may not exceed 24 months.

SUMMARY

The guidance provided in this memorandum reinforces policy statement P-5-100 which states, "The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the Government."

You may direct any questions regarding these procedures to Diana Estey, National Offer in Compromise Program Manager, or a member of your staff may contact Senior OIC Analyst, Thomas B. Moore.

cc Director, Enterprise Collection Strategy
 Director, Collection Policy
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