



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

SMALL BUSINESS/SELF-EMPLOYED

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MEMORANDUM FOR ALL EXCISE TERRITORY MANAGERS AND FIELD GROUP
MANAGERS

FROM: Joseph J. Tiberio /s/ Joseph J. Tiberio
Acting Chief, Excise Tax Program

SUBJECT: Excise Field Exam Procedural Guidance Relating to Doubt as to
Liability, Offer in Compromise Cases

The purpose of this memo is to provide procedural guidance when an excise tax Doubt as to Liability (DATL) Offer in Compromise (OIC) case is sent to the field for consideration. Please ensure that this information is distributed to all affected employees within your organization.

A DATL exists where there is a genuine dispute as to the existence or amount of the correct tax debt under the law. Taxpayers, who have a legitimate doubt that they owe part or all of a tax debt, may file an OIC under the DATL basis.

The Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005 established legislation requiring the Service to render a decision and notify the taxpayer on all OIC within 24 months of the date the Service received the offer, or the offer will be considered to be accepted (IRC 7122 (f)). Currently there is no systemic method (AIMS, IDRS) for monitoring the 24 month requirement.

Per IRM 4.8.8.8 the Examination function is responsible for processing and investigating offers submitted based on DATL. DATL offers, except offers with a Trust Fund Recovery Penalty issue, are forwarded to the centralized DATL processing unit located at the Brookhaven campus for screening and processing.

Instructions for PSP, CCP and Campus OIC Coordinator are included in the Addendum to this memo.

Excise Tax Examiners will take the following actions upon receipt of the Case from PSP WIC OIC Coordinator:

- Work the case using procedures similar to an audit reconsideration case, except they will not issue the report to the taxpayer.
- The Excise Examiner may accept the DATL offer. See IRM 5.19.7.2.16, *DATL Acceptances*, for procedural guidance on accepting a DATL offer.
- Discuss the audit findings with the taxpayer, and solicit an OIC withdrawal of the offer. Examples of OIC withdrawal letters can be found in IRM 4.18 and should be written and signed by the taxpayer (faxed signatures are acceptable). The examiner will ensure taxpayer understands that by withdrawing the offer all Appeal rights have been forfeited.
- If the taxpayer agrees to withdraw the offer, the IAR/Tech Checklist must be updated to reflect the legal date of withdrawal as well as the date the offer was withdrawn.
- If the taxpayer will not withdraw the offer, the examiner will inform the taxpayer that their offer will be rejected and that the original audit findings are processed. Upon receipt of the reject letter (issued by PSP WIC OIC Coordinator), the taxpayer will have the right to request an Appeals hearing.
- If the taxpayer does not respond to the examiner's contact and/or does not provide information requested, the case will be closed as a "returned offer" The examiner must fully document their reasons for closing the offer as "returned" and show all attempts made to gain taxpayer cooperation. The taxpayer will not have any appeal rights for a returned offer.
- Complete Form 1271, *Rejection or Withdrawal Memorandum*, to include in the case file.
- Forward case along with Form 1271 and IAR/Tech Checklist back to PSP WIC OIC Coordinator via Form 3210.

This guidance will be incorporated into IRM 4.24.10 before the expiration date of this memo. If you have questions, you may contact me or you may contact Pam Becker Excise PSP WIC OIC Coordinator.

Cc: www.irs.gov

ADDENDUM – CASE INSTRUCTIONS FOR PSP, CCP AND CAMPUS OIC COORDINATOR

OIC requests involving taxpayer's statement that they should not be held liable for the amounts due and owing should not be sent to Excise PSP WIC OIC Coordinator. These must be addressed by Collection to determine who is responsible for payment since these claims are not questioning the assessment but rather the responsible (liable) party.

DATL Tax Examiner will make a determination if the OIC DATL is valid. If the offer can be processed, the DATL Tax Examiner will:

- Send taxpayer an Automated Offer In Compromise (AOIC) transfer letter informing the taxpayer that their case is being transferred to the Excise PSP WIC OIC Coordinator for field consideration.
- Print and attach copy of the Exam/Specialty Tech Independent Administrative Review Checklist (IAR/Tech) to the inside cover of the case file.
- Ensure any deposit received is reflected on the checklist.
- Document AOIC and Accounts Management Services (AMS) to reflect case disposition and update AOIC assignment number to reflect Excise Tax.
- Send a secured e-mail to Excise PSP WIC OIC Coordinator, Pam Becker, informing her that case is posted to AOIC and is being sent to her via Form 3210 for assignment to an excise field group.

Referral Criteria for SBSE Excise Tax:

- Taxpayers BOD code is either SBSE or LB&I;
- Tax period involves an audit assessment previously made by Area 214 Excise Tax (TC300 or TC308); or,
- Tax period involves an assessment from an original filed excise tax return (720, 730, 11-C, 2290, etc) that has not had an audit assessment made from another area.

PSP WIC OIC Coordinator Initial Screening of Case:

- Verify the TIPRA date in an effort to identify if the TIPRA date is imminent or less than 12 mos.
- Review the offer to determine if appropriate for assignment to an excise field group.
- If not, the offer will be returned to the centralized DATL processing unit. These determinations will be made within 10 days of receipt.
- Update the AOIC assignment number to 1901165901 for all case returned to the centralized DATL processing unit.
- Enter information in the AOIC remarks section regarding why the case was returned and why.

If the case belongs in Excise, the PSP WIC OIC Coordinator will:

- Request case controls on **all** quarters involved (those with a TC480) using Source Code 73 and Tracking Code 6506.
- Request the original case file work papers.
- Notify the excise group manager via e-mail that an OIC DATL case has been assigned to their group and forward case file via Form 3210 to group manager.
- Update AOIC remarks section to reflect the appropriate Employee Group Code (EGC) and a contact point.

PSP WIC OIC Coordinator Monitoring of DATL Cases:

- PSP WIC OIC Coordinator will monitor the AOIC database monthly to ensure all cases are assigned to Excise Tax by the centralized DATL processing unit and that the TIPRA dates are monitored.
- Cases received via Form 3210 will be documented by the PSP WIC OIC Coordinator in AOIC.

Note: Cases on the AOIC system that have no documentation by the PSP WIC OIC Coordinator will be researched to determine if the signed Form 3210 and attachments were received from the centralized DATL processing unit. If over 30 days old (based on AOIC information) the PSP WIC OIC Coordinator will work with the centralized DATL processing unit to determine the location of the offer case.

Independent Review Process

IRC 7122(e), *Compromises*, requires the Service to provide for independent administrative review of all proposed rejections of an OIC prior to the rejection being communicated to the taxpayer. For Excise cases, this review will be performed by an Excise Policy Subject Matter Expert (SME). The SME cannot be anyone who worked on the case or is a part of the initial rejection or acceptance decision. The SME will review the proposed rejection of OIC prior to any indication or notification of such action being given to the taxpayer. The purpose of the review is to evaluate the case and determine if rejection is the correct decision.

- PSP WIC OIC Coordinator will forward case via Form 3210 to the Excise Policy SME for Independent Review. Refer to the SBSE Examining Excise Taxes SME contact web page for list of SME contacts.
- The SME will have 15 days to review the examiner recommendations. If the SME does not agree with the examiners recommendation the case will be returned to the examiner for further development. If the SME agrees with the recommendation, the case will be forwarded to PSP WIC OIC Coordinator via Form 3210 for final processing.

Final Case Processing and Closure by PSP WIC OIC Coordinator

Upon receipt of case from the SME (for rejected offers) or the excise examiner (for withdrawal offers) the WIC PSP OIC Coordinator will:

- Generate and issue the AOIC rejection letter and add any remarks.
- For rejected offers, suspend case for 45 days to allow taxpayer time to request Appeals consideration.
- If the taxpayer requests Appeals consideration, update case assignment on AOIC and forward case to the appropriate Appeals field office following normal case routing procedures.
- Complete AOIC offer closing actions based on information on the IAR/Tech Checklist.
- Close the case to CCP for final closure if agreed or no Appeals request received.
- For accepted offer, a separate file containing a copy of Form 7249 and sanitized MFTRA for all periods compromised will be maintained for public inspection. This file is maintained for one year after which they may be destroyed. For additional information see IRM 5.8.8.
- Complete the IAR/Tech Checklist and fax or scan the sheet to the centralized DATL processing unit attention to Jaime Angieri or Margaret Meyer via fax at (855) 284-9601.