



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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MEMORANDUM FOR DISTRICT COUNSEL, INDIANA

FROM: Kathryn A. Zuba  
Chief, Branch 2 (General Litigation)

SUBJECT: Offers-in-Compromise - Effect of Bankruptcy on  
Processability

This memorandum responds to your memorandum dated January 10, 2000. You ask that we pre-review your memorandum to Acting Chief, Special Procedures Branch, Indiana District. This document is not to be cited as precedent.

We agree with your conclusion that the Service can return as nonprocessable an offer in compromise that has not been accepted or rejected as of the date of the filing of the taxpayer's bankruptcy petition. As you discussed, Service procedures provide that offers based on doubt as to collectibility or effective tax administration from taxpayers in bankruptcy are nonprocessable. IRM 5.8.3.1, IRM 5.8.10.2.1, IRM 5.9.4.7. See also Treas. Reg. 301.7122-1T(e)(5). However, with respect to taxpayers who file for bankruptcy after appealing a rejected offer, we disagree that Appeals must consider appeals of rejected offers even though the taxpayer has filed bankruptcy. Because Service procedures provide that offers from taxpayers in bankruptcy are nonprocessable, the appeal of a rejected offer is rendered moot by the bankruptcy filing. The offer can therefore be returned as nonprocessable.

Your memorandum also raises the issues decided in In re Mills, 240 B.R. 689 (Bankr. S.D. W.V. 1999), and In re Chapman, 1999 Bankr. LEXIS 1091 (S.D. W.V. June 23, 1999) concerning the Service's discretion with regard to offers in compromise from taxpayers in bankruptcy, and the impact of the automatic stay on the investigation of such an offers. We are currently in the process of developing our litigating position with regard to the issues raised in Mills and Chapman. We will respond to you in a detailed supplemental memorandum after our final position is reached.

If you have any questions, contact the attorney assigned to this matter at (202) 622-3620.

cc: Assistant Regional Counsel (GL), Southeast Region