



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ALBERT B. KERKHOVE
ASSOCIATE AREA COUNSEL (SB/SE)

FROM: Kathryn A. Zuba
Chief, Branch 2 (Collection, Bankruptcy & Summonses)

SUBJECT: Co-obligor Agreements in Trust Fund Recovery Penalty Cases

This refers to your transmittal dated October 24, 2000, forwarding for post-review a memorandum dated October 23, 2000, from your office to the Offer in Compromise Manager in your division. This document is not to be cited as precedent.

ISSUE:

Whether a co-obligor agreement is required in accepting an offer in compromise of a trust fund recovery penalty from a responsible officer when another responsible officer also has been assessed a trust fund recovery penalty.

CONCLUSION:

A co-obligor agreement is not required in accepting an offer in compromise of a trust fund recovery penalty from a responsible officer when another responsible officer also has been assessed a trust fund recovery penalty.

FACTS:

The facts as presented indicate that Taxpayers A and B exercised complete control over the finances of Corporation C. Because of the actions of Taxpayers A and B, Corporation C failed to pay employment tax liabilities. The Internal Revenue Service separately assessed trust fund recovery penalties against Taxpayers A and B pursuant to I.R.C. § 6672. Taxpayer A filed an offer in compromise as to the trust fund recovery penalty. Neither Taxpayer B nor Corporation C filed offers.

The Offer in Compromise Manager requested your advice with regard to whether the Service needs to secure a co-obligor agreement, as discussed in IRM 5.8.6.2(1), from Taxpayer B as a result of Taxpayer A's offer in compromise.

DISCUSSION:

IRM 5.8.6.2(1) provides that, in the case of a joint assessment, a co-obligor agreement should be secured from the maker of the offer in order to preserve the ability to collect from the other parties to the joint assessment. Your advisory memorandum to the Offer in Compromise Manager correctly concluded that a co-obligor agreement is not necessary in this case, since there has been no joint assessment. Taxpayers A and B are each liable in his/her own capacity as responsible officers of Corporation C. See Kelly v. Lethert, 362 F.2d 629 (8th Cir. 1966). Acceptance of an offer in compromise from Taxpayer A would have no effect on the Service's ability to collect from Taxpayer B.

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