



OFFICE OF
CHIEF COUNSEL

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

April 2, 2001

Number: **200123059**
Release Date: 6/8/2001

CC:PA:CBS:Br2
GL-131739-00
UILC: 17.00.00-00
9999.98-00

MEMORANDUM FOR MICHAEL W. BITNER
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FROM: Kathryn A. Zuba
Chief, Branch 2 (Collection, Bankruptcy & Summonses)

SUBJECT: Advisory Opinion—Offers in Compromise

This memorandum responds to a request for advice received from your office on December 26, 2000. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent. This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. You have asked us to consider whether it is necessary to amend Form 656 when a taxpayer submits an offer in compromise on the basis of doubt as to collectability, and after investigation, the Service decides to accept the offer due to effective tax administration.

ISSUE

Whether the Service must request the taxpayer to amend Form 656 when a taxpayer has submitted an offer in compromise checking the box indicating doubt as to collectability and the service has decided to accept the offer on the basis of effective tax administration?

CONCLUSION

No, the Service need not obtain an amended Form 656 from the taxpayer. The reason underlying the Service's decision to accept or reject a taxpayer's offer in compromise (whether doubt as to collectability or affective tax administration) is not a material term of the compromise agreement between the taxpayer and the Service. Thus, when a taxpayer makes an offer based upon doubt as to collectability and the Service accepts that offer on the basis of effective tax administration, the Service is not required to ask the taxpayer to amend Form 656 to reflect the change.

BACKGROUND

Your correspondence with us indicates concern arising out of language in IRM 5.8, which sets out the basic procedures for the offer in compromise program. Section 5.8.1.1(3) of the IRM provides that offers can be based on doubt as to collectability, doubt as to liability, and effective tax administration, and IRM 5.8.4.8(1) provides that taxpayers may submit an offer based upon any one or combination of these three reasons. The taxpayer indicates this choice by checking any of the three boxes on line 6 of Form 656.

The manual states that during the offer investigation, the Service will consider all bases the taxpayer indicates, but will determine only one basis for accepting the offer. See IRM 5.8.4.8(1). The manual then states that Collection is to first evaluate the offer on the grounds of doubt as to collectability, and that if while working the calculations for doubt as to collectability, they determine that reasonable collection potential is greater than the amount due, but special circumstances exist, they are to consider the offer to compromise on the basis of effective tax administration. IRM 5.8.4.8(1); IRM 5.8.4.8(5). It then states that it is not necessary to amend Form 656 to show effective tax administration. Your concern is that by attempting to accept the offer on a basis different than the taxpayer has indicated, the Service has actually made a counteroffer, and thus no enforceable contract results, or that the contract may not be enforceable because there has been no meeting of the minds. You, therefore, believe this language should be changed to require the taxpayer to amend Form 656.

DISCUSSION

The Secretary's authority to enter into offers in compromise with taxpayers comes from I.R.C. § 7122, which provides, "The Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense." The Secretary has delegated this authority to the Commissioner, who has then delegated it to various officials throughout the Service. See Delegation Order No. 11.

Treasury regulations pertaining to section 7122 likewise set out the permissible bases for offers in compromise, including doubt as to liability, doubt as to collectability, and to promote effective tax administration. The regulations further provide that a taxpayer's offer is not accepted "until the IRS issues a written notification of acceptance to the taxpayer." Treas. Reg. § 301.7122-1T(d)(1). Section 301.7122-1T(d)(5) provides that acceptance of an offer will "conclusively settle" the taxpayer's liability, and that neither the taxpayer nor the Government will be permitted to reopen the case except where the taxpayer has supplied false information or documents, the taxpayer has concealed assets, or "a mutual mistake of material fact sufficient to cause the offer agreement to be reformed or set aside is discovered."

When interpreting agreements to compromise federal tax liabilities under I.R.C. § 7122, courts have applied generally accepted contract principles. See United States v. Feinberg, 372 F.2d 352 (3d Cir. 1967); United States v. Lane, 303 F.2d 1 (5th Cir. 1962). In recognition of this concern, the Service requires the taxpayer to submit a Form 656 setting forth the essential terms of payment including the tax liabilities covered and the taxpayer's obligations, including the amount and the time in which the taxpayer has to pay. Form 656 asks the taxpayer to indicate a basis for the compromise. The stated basis provides the authority for the Service to accept the offer. It is not a term of the agreement. The taxpayer has offered to pay a stated amount to resolve the outstanding liability. The Service's acceptance of the offer binds the taxpayer to that payment obligation, regardless of the legal basis for the compromise.

In the scenario you present, the only difference between the taxpayer's offer and the Service's acceptance would be the grounds underlying the Service's decision to accept the offer; i.e., the box the taxpayer checked on line six of Form 656. The underlying basis for the compromise relates only to the Service's authority to compromise. Changing it from doubt as to collectability to effective tax administration results in no material change to the taxpayer's rights or obligations under the compromise agreement. It changes neither the payment amount, nor the timing the payments come due, or any other obligations of the taxpayer. Accordingly, it is not a material term of the contract. Thus, when the Service decides to accept the offer on the basis of effective tax administration, rather than doubt as to collectability, this acceptance does not constitute a counteroffer.

Further, compromises serve the goals of obtaining the amount potentially collectable at the earliest possible time and at the least cost to the government. See Policy Statement P-5-100; IRM 5.8.1.1.1. So long as the Service accepts the offer on the same payment terms, neither the Service nor the taxpayer would benefit from a requirement to file an amended Form 656 simply to check another box. The result would only be further delay to the process. Accepting the offer on the basis of effective tax administration without requiring the taxpayer to amend Form 656 benefits both the taxpayer and the Service, because the process is more expeditious. Because the IRM in its current form reflects these principles, we do not believe revisions are necessary at this time.

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