



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

September 18, 2017

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Effective: October 1, 2017

MEMORANDUM FOR FREDERICK W. SCHINDLER, DIRECTOR, SPECIALTY
OFFERS, LIENS & ADVISORY

FROM: Kristen E. Bailey */s/ Kristen E. Bailey*
Director Collection Policy

SUBJECT: Perfection Issues Impacting Appeals of Offers in Compromise

This interim guidance memorandum is issued to address changes in procedures impacting requests for appeals of offers in compromise, effective October 1, 2017. The attached changes will be incorporated into the next revision of IRM 5.8.7. IRM 5.8.7.7.5 *Rejection Appealed* will be revised to clarify:

- Requests for appeals must be reviewed upon receipt to ensure they are processable
- If a defect is identified, a reasonable attempt should be made to secure a perfected appeal.
- A reasonable amount of time, 15 calendar days, will be provided for the taxpayer to perfect the appeal.
- Appeals must be signed by the taxpayer or an authorized representative.
- Appeals must be signed with applicable declarations regarding the content of the appeal, as indicated in the rejection letter. Representatives may provide a declaration regarding personal knowledge of the facts presented in the appeal, in lieu of a statement under penalty of perjury. The AOIC letter notifying the taxpayer of the rejection is being modified and will contain the instructions regarding the required wording.

Note: This change does not apply to appeals signed by the taxpayer.

- If the taxpayer fails to perfect the request for appeal, an AOIC letter must be issued to advise the appeal could not be considered.
- If Appeals returns an unperfected appeal as a premature referral, the Offer Specialist / Offer Employee has 15 days from assignment to initiate contact to secure a processable appeal.

If you have any questions, please contact me, or a member of your staff may contact Christine Matz, Program Analyst.

cc: Chief, Appeals
Assistant Division Counsel, SBSE
Director Collection- Headquarters
National Taxpayer Advocate
www.irs.gov

Attachment: Revised sections of IRM 5.8.7.7.5

5.8.7.7.5 (XX-XX-XXXX)

Rejection Appealed

(1) When a request for appeal is received, it must be reviewed upon receipt to determine if it was submitted timely and contains the required statements and signatures. Document that an appeal was received; the postmark date; and provide a brief description of the contents. If a request for an appeal is received that is postmarked no later than 30 calendar days following the date of the rejection letter, the appeal will be considered timely.

Note: If the 30th day falls on a Saturday, Sunday, or holiday, the date for timely submission will be the next business day. For example, the 30th day for appeal falls on Saturday, August 8, 2015. The request for the appeal is postmarked Monday, August 10, 2015. This is considered a timely appeal because it was postmarked on the first business day following the 30th calendar day.

Note: Special rules apply in determining the postmark date for documents sent by private delivery service. See IRM 3.10.72.6.2.3, *What is a Designated Private Delivery Service (PDS)?* or IRM 3.10.72.6.2.4, *Determining Postmark Date*.

- Timely appeals — Upon transfer of the case to Appeals, notify the taxpayer that the case is being transferred and provide the telephone number of Appeals Customer Service. Notification may be verbal or in writing but should be documented. Written notification may be completed using the AOIC transfer letter, paragraph B.
- Untimely appeals — Notify the taxpayer that the appeal was not timely and will not be forwarded to Appeals for consideration. Notification may be verbal or in writing but should be documented. Written notification may be completed using AOIC transfer letter, paragraph C.
 - Note:** Although untimely, if the additional information provided allows for acceptance and is provided before the offer is closed, proceed with an acceptance processing.

(2) If the request for appeal is timely but unsigned, the request will not be considered a valid appeal. As soon as the defect is identified, make a reasonable attempt to secure a perfected appeal. See 5.8.7.7.5(5).

Note: Only authorized representatives can sign an appeal for the taxpayer.

(3) If a joint offer is rejected and only one spouse signs the request for appeal, an effort should be made to perfect the request. Contact the taxpayers and have the other spouse sign the request for appeal. If there is no response to the request for perfection, then the appeal will only be considered for the spouse who signed the request for appeal. Input TC 481 for "B" and reinput TC 480 for "P" or "S", as needed, using the same date as the original TC 480. Change the AOIC entity to the name of the spouse who requested the appeal. Appeals will secure an amended Form 656 if the offer is ultimately accepted.

Note: If only one spouse requests appeals consideration, at the conclusion of the offer investigation, a request for mirroring the accounts (MFT 30/31 and MFT 35/65) should be processed in accordance with the mirroring procedures discussed in IRM 5.19.7.2.14, *Separate OICs on Joint Liabilities*. COIC or the field investigating offices are responsible for mirroring rejected offers that meet this criterion.

(4) Any request for Appeals consideration must include a written, signed protest in accordance with guidance provided in the rejection letter issued to the taxpayer. The rejection letter and the Form 13711, *Request for Appeal of Offer in Compromise*, contain the required language. Additional information may be found in Pub 5, *Your Appeal Rights and How to Prepare a Protest If You Don't Agree*. If the request for appeal does not contain the required statements, the request will not be considered a valid appeal. As soon as the defect is identified, make a reasonable attempt to secure a perfected appeal. See 5.8.7.7.5(5).

Note: Only authorized representatives can sign an appeal for the taxpayer.

(5) While there is no statutory provision for the perfection of an appeal, it is the Service's practice to make a reasonable telephonic attempt to secure a processable appeal. If you receive a timely request for appeal which has not been signed with the required statements, make a reasonable attempt to contact the taxpayer or POA by phone as soon as the defect is identified. Allow the taxpayer or POA 15 calendar days to perfect the request by including the applicable signature(s) and/or statement(s). If you make contact, advise that failure to perfect the appeal will result in the offer being closed and the taxpayer not being provided consideration by the Office of Appeals.

Example: An appeal is postmarked on the 30th day. Due to mail time and scheduled annual leave, the OS does not discover the appeal is unsigned until the 46th day. The OS calls the POA that day and advises the appeal cannot be processed without signature. The POA may be allowed 15 days to perfect the appeal, but may expedite processing by providing the signed appeal via E-fax.

(6) If the request is signed on the taxpayer's behalf by an unauthorized representative, contact the taxpayer directly to explain the person who signed the appeal is not authorized to do so. The taxpayer may sign the appeal with the required statement, or if applicable, provide a valid Form 2848 to allow for processing of the original appeal. Allow 15 calendar days to perfect the request. If you make contact, advise that failure to perfect the appeal will result in the offer being closed and the taxpayer not being provided consideration by the Office of Appeals.

(7) If the taxpayer fails to perfect the request for appeal within the timeframe provided, the offer should be closed as "rejection no appeal." Generate a transfer letter using Option C.

(8) The taxpayer should provide specific information with the appeal letter, including a list of items of disagreement and evidence to support any of those items. If the letter provides new information not previously considered, the case should be reassigned to an OE/OS for reconsideration.

Note: Caution must be exercised when reviewing a case where new information is received and the offer reconsidered following issuance of a rejection letter. If the taxpayer's letter requested an appeal, the offer must still be forwarded to Appeals if this reconsideration of the offer results in no change to the initial decision to reject. **A new rejection letter should not be sent.**

(9) The taxpayer is entitled to an appeal of the offer rejection, even if items of disagreement are not provided or argued. If it can reasonably be determined that the letter is a request for an appeal, the taxpayer should be afforded an opportunity to provide a processable appeal.

Note: An appeal must contain the required attestation per the guidelines in the rejection letter. If it does not, you should attempt to perfect the appeal, as

indicated in 5.8.7.7.5(5).

(10) The review of the taxpayer's submitted information, preparation of any additional documents, and forwarding the taxpayer's request to Appeals should be completed in a timely manner.

Note: Refer to IRM 5.8.7.7.6, Ex Parte Issues when Rejected Offer Appealed, regarding issues relating to sharing documents with the taxpayer in accordance with ex-parte communication issues. IRM 5.8.4.10, *Follow-Up Actions*, provides guidance on timely actions. Managers should assign cases in accordance with IRM 1.4.52, Offer in Compromise Manager's Resource Guide - Field Program, and IRM 1.4.54, Offer in Compromise Managers - Centralized Offer in Compromise Program Guide, to allow for the most efficient case processing.

(11) If Appeals returns an offer with an imperfect appeal as a premature referral, the OE/OS should request perfection of the appeal from the taxpayer/POA within 15 days of receipt of the case. If the taxpayer/POA does not comply with the request for perfection within 15 days of the request by the OE/OS, the offer should be closed as "rejection no appeal." Generate a transfer letter using Option C.