



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

October 28, 2021

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Impacted IRM: 5.8.1, 5.8.4, 5.8.6,
5.8.8, 5.19.7

MEMORANDUM FOR DIRECTOR, SPECIALTY COLLECTION OFFER IN COMPROMISE

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SUBJECT: Interim Guidance on Refund Recoupments

This memorandum provides guidance to employees of Specialty Collection Offer in Compromise (SCOIC) on the refund recoupment process. Please ensure this information is distributed to all affected employees within your organization.

Purpose: The process of recouping taxpayer overpayments after an offer acceptance is being revised.

Current guidance states the Monitoring Offer in Compromise (MOIC) unit should recoup refunds (overpayments) for tax periods extending through the calendar year in which the offer in compromise (offer) is accepted. Beginning with offers accepted on or after November 1, 2021, the offer in compromise refund recoupment process will no longer be applicable for offsetting to tax periods included on the Form 656.

EXAMPLE: The taxpayer has an offer accepted November 15, 2021 (TC 780). A tax return for calendar year 2021 is assessed May 15, 2022 (TC 150), in which an overpayment is shown on the return in the amount of \$1,000.00. MOIC will take no action to recoup the taxpayer's refund (overpayment) since the TC 150 date is after the offer acceptance.

EXAMPLE: The taxpayer has an offer accepted November 15, 2021 (TC 780). The taxpayer filed a tax return for calendar year 2020 with a TC 150 date of October 15, 2021, showing an overpayment which offset to the outstanding tax liability on October 20, 2021. Since the systemic offset took place prior to the offer acceptance, there was no overpayment available for refund when the offer was accepted.

MOIC is currently responsible for monitoring and processing recoupments after an offer acceptance, but all SCOIC employees need to be aware of this guidance.

Background: Refund recoupment and/or refund offset is identified in IRM 5.8.1, 5.8.4, 5.8.6, 5.8.8, and 5.19.7. IRM 5.19.7.1 and 5.19.7.10 provide guidance to MOIC for processing refund recoupments.

Refund recoupments and offsets are completed in accordance with IRC 6402(a) and the terms/conditions of the offer contract, Form 656 (Offer in Compromise). The Form 656 states the IRS will keep any refund, including interest, due to the taxpayer because of an overpayment of any tax or other liability, for tax periods extending through the calendar year in which the offer is accepted. Currently, refund recoupment does not apply to offers accepted under the provisions of Effective Tax Administration public policy/equity or Doubt as to Collectability with special circumstances based on public policy/equity considerations as well as offers submitted under Doubt as to Liability.

Procedural Change: The applicable IRM sections and terms of the Form 656 will be updated to remove the refund recoupment requirement after the offer acceptance date. This change will be effective for offers accepted on or after November 1, 2021.

Systemic offset of overpayments will continue in accordance with IRC 6402(a) prior to the offer acceptance date. The acceptance date is identified by the TC 780 on Master File. Additionally, subsequent to offer acceptance, offset procedures in accordance with IRC6402(a) will be appropriate for application of a refund (overpayment) to tax periods not included on the offer.

Example: An offer in compromise is accepted November 15, 2021, for tax periods 2017 and 2018. On December 1, 2021, a TC 290 is assessed on the 2019 tax year. Prior to offer default, the taxpayer files the 2021 return showing a refund on February 10, 2022. Since the 2019 tax year was not included in the offer, a systemic offset of this refund would take place.

Offset of overpayments may still take place if the taxpayer files an amended return after the offer acceptance, for any tax period that was originally assessed prior to offer acceptance.

Example: An offer in compromise is accepted November 15, 2021 for tax periods 2017 and 2018. The taxpayer timely filed a return for tax year 2020 with a balance due of \$500 that was full paid with the return. The return was assessed (TC 150) on October 15, 2021. On January 15, 2022, the taxpayer files an amended 2020 tax return showing a refund of \$10,000. In this instance, since the refund is attributable to an amended return for a tax year not included on the Form 656, the refund offset may still take place.

Note: For overpayments becoming available during or after the offer investigation, a taxpayer under certain hardship conditions may seek an Offset Bypass Refund as provided in IRM 21.4.6.5.11.1 procedures by calling 800-829-1040.

Until the next revision of Form 656 removes the recoupment provision for the year of offer acceptance, and modifies it to reflect that systemic offset will continue under IRC 6402(a) prior to offer acceptance, the IRS will provide the taxpayer a notice of this modification to the offer terms.

Refer to Attachment 1 for specific IRM changes.

Effect on Other Documents: This guidance will be incorporated into IRM 5.8.1, *Overview*; IRM 5.8.4 *Investigation*; IRM 5.8.6, *Collateral Agreements*; IRM 5.8.8, *Acceptance Processing*; and IRM 5.19.7, *Liability Collection, Monitoring Offer in Compromise* within two years of the effective date. Form 656, *Offer in Compromise*, will be updated in the next revision.

Effective Date: November 01, 2021

Contact: You may direct any questions to Diana Estey, National Offer in Compromise Program Manager, or a member of your staff may contact Senior OIC Analyst, Benjamin Galfond.

cc:
Office of Chief Counsel
Taxpayer Advocate Service
Independent Office of Appeals

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Attachment 1: Interim Guidance Memorandum SBSE-05-1021-0063

The following changes are hereby effective November 1, 2021 for the IRM sections named below:

IRM 5.8.1.15.5 (2) is removed since the waiver of future refunds will not apply to any offers including accepted under Effective Tax Administration basis. Paragraph (3) will be renumbered.

IRM 5.8.6.4 is revised as follows:

- (1) Form 656 contains a term which waives refunds and overpayments through the date the offer in compromise is accepted (TC 780). This waiver is a standard term, which cannot be altered.
- (2) Waiver of refunds provisions will apply to offers accepted prior to November 1, 2021. Offers accepted on or after November 1, 2021, will no longer require a waiver of future refunds.

[REDACTED]

[REDACTED] #

IRM 5.8.4.8 (13) is added as follows:

- (13) If the taxpayer/representative requests the issuance of a refund due to a hardship for a tax return being processed during the offer investigation, inform the taxpayer they may seek an Offset Bypass Refund under the procedures in IRM 21.4.6.5.11.1 by calling 800-829-1040, if appropriate.

IRM 5.8.8.8 (4) is revised as follows:

- (4) When closing the offer on AOIC you will be prompted to answer whether the offer is being accepted under ETA criteria or not, respond based on the basis the offer is accepted.

IRM 5.19.7.1 (1) remove reference to refund recoupments and is revised as follows:

- (1) Purpose: An accepted Offer in Compromise (OIC) is a legally binding agreement between a taxpayer and the IRS that resolves the taxpayer's tax liability. IRS has

the authority to settle, or compromise, federal tax liabilities by accepting less than full payment under certain circumstances. The Service has a requirement to monitor all accepted offers for payment of the offered amount, monitoring lien releases, and the mandatory 5-year compliance period with the exception of Doubt as to Liability (DATL) offers. After the IRS has determined the disposition of an Offer in Compromise, various procedures must be followed. This section discusses how to treat these situations that involve the Monitoring Offers in Compromise (MOIC) program.

IRM 5.19.7.3.2 (3) remove TC 130 from paragraph as TC 130 will no longer be requested.

IRM 5.19.7.3.2 (3) remove Note.

IRM 5.19.7.3.5 (1) remove bullet "TC 130 (state whether input is required or not required)".

IRM 5.19.7.3.6 (3) remove reference to TC 130.

IRM 5.19.7.3.6 (3) remove Note.

IRM 5.19.7.5 (1)(f) remove "input TC 130" and remove note.

IRM 5.19.7.10 is revised as follows:

- (1) One of the terms/conditions of an OIC is that IRS will keep any refund, including interest, in accordance with IRC 6402(a) for an original tax return assessed (TC 150) prior to offer acceptance (TC 780). A refund may be offset relating to an amended/adjusted return filed after the offer acceptance date, where the tax period was not listed on the Form 656.

Note: For overpayments becoming available prior to offer acceptance date (TC 780), in which the offset has not taken place, a taxpayer under certain hardship conditions may seek an Offset Bypass Refund as provided under IRM 21.4.6.5.11.1 by calling 800-829-1040.

- (2) As a legal matter, offsets cannot be reversed unless there was a clerical error in making the offset. If an offset takes place subsequent to the offer acceptance (TC 780) and the TC 150 date is after the TC 780 date, contact the taxpayer to provide them an opportunity to submit a written request to have the overpayment applied to the offer amount. If the taxpayer does not request the payment be applied as an offer payment or there is no contact, and there are no tax liabilities other than the offer periods, a manual refund should be issued. In this instance, there was a clerical error in making the offset.

- (3) If the taxpayer requests a hardship refund of an overpayment that has been offset prior to offer acceptance, you should respond that, as a legal matter, the offset cannot be reversed unless there was a clerical error in making the offset in the first instance.

IRM 5.19.7.10 paragraphs (2), (3), (4), (5), and (6) will be removed.

IRM 5.19.7.10.1 remove (3) and renumber (4).

IRM 5.19.7.10.1 (4) is renumbered and amended as follows:

If contacted by the taxpayer or representative regarding recoupment of a refund for a year other than what is stated on the acceptance letter, apologize for the error and advise that we are entitled to the refund as a term of the OIC contract. This includes all tax returns assessed (TC 150) prior to the date of acceptance (TC 780).

IRM 5.19.7.10.3 revised as follows:

Revised Title: Applying Refunds as an Offer Payment

- (1) Taxpayers may request the IRS apply a refund to the offer amount.

Exception: A refund due from an amended/adjusted return, not included on the Form 656 and the original assessment (TC 150) was prior to offer acceptance, may not be applied to the offer amount.

- (2) Generally, this situation may arise when a taxpayer is unable to meet payment terms of an OIC. In such situations take the following steps:
1. Request the taxpayer send in written authorization.
Note: The credit cannot be applied without the written authorization.
 2. Maintain this correspondence in the OIC case file, if available.
 3. Input TC 130 immediately to hold the pending credit and TC 570 (on TXMOD) to stop the credit from offsetting.
 4. Update the history.
- (3) When the credit becomes available apply the amount to the outstanding offer amount and oldest CSED period.
- (4) If the credit becomes available and we have not received written authorization from the taxpayer:
1. Contact the taxpayer making a second request for written authorization.
 2. Give the taxpayer 15 days to respond.
 3. If the written authorization is not received, release the TC 130 freeze.
- (5) Enter all actions on the AOIC history or note the manually monitored history file.
Reminder: **DO NOT SOLICIT REFUNDS**

IRM 5.19.7.14.3 is revised as follows:

- (1) The Service is entitled to any overpayment of tax or other liability for the tax periods in which the assessment date (TC 150) is prior to the offer acceptance date (TC 780). If an overpayment is erroneously refunded, contact the taxpayer.

Note and table retained under (1).

IRM 5.19.7.14.4 is revised as follows:

- (1) Taxpayers agree, as a term of the offer, to comply with all provisions of the internal revenue laws, including requirements to timely file returns and timely pay taxes for the five year period beginning with the date of acceptance of this offer and ending through the fifth year, failure to do so is a breach of contract. This applies to both IMF and BMF tax accounts.

Note retained under (1).

IRM 5.19.7.14.4.5 is added as follows:

New Title: Overpayments from Tax Periods Prior to Offer Acceptance

- (1) One of the conditions of the Form 656 is the taxpayer may not receive a refund for a tax period in which the original assessment was prior to the offer acceptance. If a refund was issued in error based on an amended return filed for a tax period in which the original assessment was prior to the offer acceptance, follow the procedures in IRM5.19.7.10.2, Refunds Erroneously Sent to Taxpayers.

Form 656

Until Form 656 is revised, the following actions will be taken by SCOIC:

- SCOIC will notify identified taxpayers of the revision to the offer terms/conditions via the Automated Offer in Compromise Acceptance letter (5483). Letter 5483 will be revised and the following paragraph added: *Effective November 1, 2021, for offers accepted on or after this date, the IRS will not offset refunds and credits to the tax years you listed in Form 656. If applicable, you may receive any refund or credit that you are entitled to after the acceptance date of this offer. If you want your refund or credit applied to your offer amount or your liability instead of issued to you, you must contact the person listed at the top of this letter. Any refunds or credits prior to the offer acceptance date will be applied to your liability, not to your accepted offer.*
- MOIC will not input a follow-up in the recoupment screen to monitor for a refund recoupment, for offers accepted on or after November 1, 2021.