



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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Affected IRM(s): 5.8.1

MEMORANDUM FOR: Guadalupe Ortiz, Director, Specialty Collection
Offer in Compromise

FROM: Rocco A. Steco

Rocco A Steco



Digitally signed by Rocco A.
Steco Jr.
Date: 2023.10.04 09:06:41 -04'00'

Acting Director, Collection Policy

SUBJECT: Interim Guidance on Disclosure of Information to Spouses with Joint
Tax Liabilities in Offer in Compromise Cases

This memorandum issues guidance on the disclosure of information to spouses with joint tax liabilities in offer in compromise (OIC) cases until a new revision of IRM 5.8.1 is published. Please ensure this information is distributed to all affected employees within your organization.

Purpose: This memorandum provides information to Specialty Collection Offer in Compromise (SCOIC) employees to prevent unauthorized disclosures of tax information and to help employees understand disclosure guidance in joint liability situations where the taxpayers are separated or divorced.

Background/Source(s) of Authority: No guidance regarding the disclosure of information to former spouses with joint liabilities currently exists in any of the IRM 5.8 sections. There is relevant guidance on this topic in other IRM sections, such as [IRM 11.3.2.4.1.1](#) and [IRM 5.19.5.4.13](#). With the new additions to IRM 5.8.1, it will be easier for SCOIC employees to access this important information to assist them in working OIC cases where the taxpayers filed joint returns but they are divorced or separated and no longer reside in the same household.

Procedural Change: A new IRM section 5.8.1.5.1 will be added to address disclosure issues for former and separated spouses with joint liabilities.

Effect on Other Documents: This guidance will be incorporated into IRM 5.8.1, *Overview*, not to exceed two years from the date of this memo.

Effective Date: This interim guidance is effective immediately.

Contact: You may direct any questions to Diana Estey, National OIC Program Manager, or Julia Wescott, Program Analyst, OIC Collection Policy.

Attachment:
Changes to IRM 5.8.1

Distribution: Director, Headquarters Collection
Director, Collection
Taxpayer Advocate Service (TAS)
Director, Quality and Technical Support (QTS)
Director, Independent Office of Appeals
Office of Chief Counsel
IRS.gov

Attachment to Interim Guidance Memo SBSE 05-1023-0053

The following additions are hereby effective 10-04-2023:

New IRM section 5.8.1.5.1, Disclosure

- (1) When making phone contacts with taxpayers or representatives, SCOIC employees should follow guidelines in [IRM 10.5.1.6.7](#) and [IRM 11.3.2.3.2](#) to verify taxpayer identities and confirm they are authorized to discuss tax matters.
- (2) When SCOIC employees attempt to contact a taxpayer by telephone and someone other than the taxpayer answers the phone, they should leave their names and contact numbers, but they should not identify themselves as IRS employees or state the reason for the attempted contact. Follow the guidelines in [IRM 10.5.1.6.7.2](#), Answering Machine or Voicemail, for leaving messages involving confidential information on answering machines/voice mail when trying to contact taxpayers or their representatives.
- (3) IRC 6103(e)(8) authorizes the IRS to disclose certain information about the IRS's efforts to collect tax to taxpayers or their authorized representatives, when the taxpayers filed a joint return and are no longer married or they are separated and no longer reside in the same household. This guidance refers to Master File Tax (MFT) 30 and MFT 35 joint liabilities and mirrored accounts with MFT 31 and MFT 65. See [IRM 25.15.15](#) and [IRM 5.19.1.6.7](#) for a description of account mirroring.
- (4) Information that may be disclosed verbally upon receipt of a verbal or written request from an authorized representative or spouse who has been assessed the joint tax will include:
 - a. whether the IRS has attempted to collect the deficiency from the other spouse or former spouse,
 - b. the amount, if any, collected from the other spouse,
 - c. the current collection status (e.g., BAL DUE, installment agreement, suspended), and/or
 - d. the reason for any suspension, if applicable (e.g., unable to locate, hardship).

Caution: Be aware of the information the requesting spouse is not entitled to, under either IRC 6103(e)(7) and IRC 6103(e)(8). The requesting spouse is not entitled to the address, phone number or employment information of the other spouse.

- (5) See [IRM 5.1.22.4.1.1](#), Prohibited 6103(e)(8) Disclosures and [IRM 11.3.2.4.1.1](#), *Disclosure of Collection Activities with Respect to Joint Returns*, when determining what information may be disclosed to former spouses or their authorized representatives. Some examples of disclosure situations in OIC cases are as follows.

Example: James and Sarah Schnauzer filed a joint Form 1040 for tax year 2017. They are now divorced and they both have split assessments under MFT 31 for the year 2017. Sarah currently has an installment agreement. James filed an OIC and asked the assigned OE if the IRS has tried contacting Sarah. James said he would like Sarah's phone number in order to contact her to discuss their tax matters. The OE may advise James that Sarah has established an installment agreement, but the OE may not disclose Sarah's phone number from IRS records, as this is not a disclosure authorized under IRC 6103(e)(8).

Example: Recently, Karen and Richard Bulldog divorced but they have outstanding joint tax liabilities for 1040 tax years 2016 and 2018. Their joint account was split and each has MFT 31 assessments for tax years 2016 and 2018. Richard sent in a payment last month totaling \$22,316.00 and it was applied to full pay tax year 2016. There is still a balance for tax year 2018 in the amount of \$65,500.00. Karen filed an OIC and included tax years 2016 and 2018 on Form 656. Karen spoke to the OS assigned to the OIC and asked if Richard ever paid anything toward the liabilities. The OS may tell Karen the amounts of any payments applied to the account, including Richard's recent payment. The OS may disclose that the payment was applied to tax year 2016, and that it fully satisfied the liability for that year.

Example: John Labrador filed a joint Form 1040 with his spouse for tax year 2016. They are now separated and they both have split assessments under MFT 31 for the year 2016. John is currently in Chapter 13 bankruptcy. John's spouse filed an OIC and asked the assigned OE if the IRS ever contacted John. While speaking with the taxpayer, the OE may say that John's account is suspended due to bankruptcy status. The OE may not disclose when the account will be reactivated or what chapter was filed, based on IRC 6103(e)(8).

Example: Chris and Lisa Greyhound owe outstanding joint Form 1040 liabilities for tax years 2018 and 2019. They are now separated and they both have split assessments under MFT 31 for tax years 2018 and 2019. Lisa's account is in currently not collectible (CNC) hardship status. Chris filed an OIC and asked the assigned OE if the IRS ever contacted Lisa. While speaking with Chris, the OE may say that Lisa's account is suspended due to inability to pay. The OE may not disclose at what income level Lisa's account will be reactivated. Also, the OE may not disclose any information about Lisa's income or assets, based on IRC 6103(e)(8).

Example: William and Jennifer Corgi filed a joint Form 1040 for tax year 2019. They are now divorced and they both have split assessments under MFT 31 for the year 2019. William submitted an OIC that was rejected last year. Jennifer filed an OIC a few months ago and asked the assigned OS if the James has paid anything toward the liability. The OS reviews IDRS, sees a TC 480 and a TC 481 for the primary spouse William posted to Jennifer's MFT 31 module, and confirms the rejected offer on the AOIC system. While speaking with Jennifer, the OS may say that an OIC was previously submitted by William and rejected. The OS may disclose the payments/refund offsets that have been credited to the MFT 31 liability and the amount of the outstanding balance. The OS may not disclose any information to Jennifer about William's income or assets.

Example: Jeannie and Michael Chihuahua filed a joint Form 1040 for tax year 2016. They are now divorced and they both have split assessments under MFT 31 for the year 2016. Michael has a continuous wage levy. The payments are offsetting to Jeannie's MFT 31 module. Jeannie filed an OIC and asked the OE if the IRS is receiving payments from Michael. The OE may tell Jeannie that the IRS is collecting monies from Michael in the form of wage levy payments in the amount of \$350 each month, which are being credited to the 2016 tax liability. However, the source of payment (employer of the former spouse) is not to be given out. The OE may disclose the payments that have been credited to the MFT 31 account since the onset of the continuous wage levy, and the current outstanding balance. The OE may not disclose any information about Michael's employment, income or assets.

Example: In 2017, Linda and Robert Husky divorced. Linda later remarried and changed her last name to Emerald. They jointly owe Form 1040 taxes totaling \$208,000.00 for years 2015 and 2016. Robert filed an OIC, which is being rejected. The OS tells Robert that a Notice of Federal Tax Lien will be filed. Robert asks if the IRS also filed a lien against Linda. The OS

may disclose if a lien has been filed on Linda's property, although no property address or any assets may be identified. Also, the OS may not provide or confirm Linda's name change.

Example: Jane Pomeranian filed a joint Form 1040 with a spouse for tax year 2016 and they divorced in 2017. Jane's former spouse passed away in 2021. Jane filed an OIC and asked the assigned OE if there were attempts made to collect the debt from the former spouse. The OE may not disclose that the former spouse is deceased unless it is the reason for the account being suspended as CNC (closing code 08). The OE may disclose any payments made toward the joint liability, but the OE may not confirm the existence of an estate or if payments were made by the estate or an individual.