



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

SMALL BUSINESS / SELF-EMPLOYED DIVISION

May 10, 2017

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Expiration: August 31, 2017
Impacted: IRM 5.8.4

MEMORANDUM FOR DIRECTOR, SPECIALTY COLLECTION OFFERS, LIENS &
ADVISORY

FROM: Kristen E. Bailey
Director, Collection Policy

Kristen E. Bailey

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SUBJECT: Reissuance of Interim Guidance on Investigation of Offers under
Appeal's Jurisdiction

The purpose of this memorandum is to reissue interim guidance (IG) SBSE-05-0516-0022 titled *Investigation of Offers under Appeals' Jurisdiction*, dated May 20, 2016.

Background

Currently, IRM 5.8.4.15 provides guidance relative to the initial investigation of offers in compromise (OIC) submitted during a Collection Due Process (CDP) hearing for the Centralized Offer in Compromise (COIC) units located in the Brookhaven and Memphis Service Centers. The guidance in the attachment revises those procedures for COIC and expands the initial investigation of offers submitted during a CDP hearing to field OIC groups.

The revisions coincide with guidance being issued by the Office of Appeals which incorporates changes based on the Appeals Judicial Approach and Culture Project.

Situations in which the taxpayer submits a CDP during an offer investigation and the issuance of an Appeals Referral Investigation are also discussed in the attached guidance. IRM references were updated based on revisions since the original memorandum was issued.

Additional guidance has been provided in the attachment to this memorandum relative to the assignment of Appeals Referral Investigations.

SUMMARY

The guidance is effective for offers submitted after August 11, 2014, and will be incorporated into the Internal Revenue Manual (IRM) prior to the expiration of this memorandum .

You may direct any questions regarding these procedures to Diana Estey, National Offer in Compromise Program Manager, or a member of your staff may contact Senior OIC Analyst, Thomas B. Moore.

Attachment

cc: Director, Headquarters Collection
Director, Field Collection
Office of Chief Counsel
Chief, Appeals
National Taxpayer Advocate
www.irs.gov

Attachment to Reissued Interim Guidance
Memorandum IG # SBSE-05-0517-0034

5.8.4.13(MM-DD-YYYY)
Notice of Federal Tax Lien Filing

(8) In those cases where an offer is being investigated and the taxpayer files a request for a CDP or EH during the investigation, the case then comes under the jurisdiction of Appeals. Refer to IRM 5.8.4.15.3, **Actions Required when CDPs are Received while an Offer is Pending.**

NOTE: A Notice of Federal Tax Lien (NFTL) should not be filed while a CDP is open in Appeals, unless the provisions of IRM 5.8.4.13(2) which discusses a jeopardy situation are present. If the OS/OE determines that a NFTL needs to be filed on the same type of tax and tax periods that are the subject of the hearing, the offer group manager or designee will contact the Appeals Team Manager (ATM) of the assigned hearing officer, preferably via e-mail, to advise them that filing of the NFTL is planned. Determine whether Appeals has new information that may affect the decision. For example, the taxpayer may have provided Appeals with information raising doubt as to the validity of the liability.

At the conclusion of the offer investigation conducted in accordance with IRM 5.8.4.15, **Investigation of Offers under Appeals Jurisdiction**, a NFTL filing determination must be made and the case file documented as to whether a NFTL should be filed once the CDP is closed by Appeals. Additionally, an attempt to notify the TP of the proposed NFTL filing (by phone, letter, or in person) must have been made and documented before requesting the NFTL be filed.

5.8.4.15(MM-DD-YYYY)
Investigation of Offers under Appeals Jurisdiction

(1) All offers submitted during a CDP hearing or EH will be investigated in a COIC site or by a field offer specialist (OS).

(2) COIC is responsible for making a processability determination. Once a determination is made, COIC will notify Appeals using the form provided in **Exhibit 5.8.4-1.**

(3) All CDP cases will be loaded on AOIC using Offer Case Category code (OCC) 10.

(4) A CDP OIC must be returned to Appeals with no less than 270 days (9 months) remaining on the 24-month time frame in order for Appeals to make its final determination. If there is less than 9 months remaining on the 24-month period, the investigating employee must contact the Appeals employee assigned the case and provide a status report on the anticipated completion of the investigation.

Note: The investigating employee must not discuss the merits of the offer with the Appeal's employee, since this is prohibited under ex-parte communication.

(5) Collection will be responsible for monitoring the 24-month time frame for mandatory acceptance until the offer is transferred to Area 21 on AOIC. Subsequent to the transfer, the responsibility for monitoring will be with Appeals.

5.8.4.15.1 (MM-DD-YYYY)

Investigation of Offers Received by Appeals with a CDP

(1) Appeals should suspend the CDP case while the investigation is completed and forward the case to the appropriate COIC site for a processability determination. Appeals will generate L3820 and include it with the offer submitted for a processability determination.

(2) If the offer is not processable, COIC will follow procedures in **IRM 5.8.2.4**, *Not Processable*, and mail the not processable letter, refund all applicable fees, and return the case to Appeals with no further action. COIC will include a copy of the not processable letter in the case file.

(3) If the offer is processable, COIC will:

- Load the case on AOIC with jurisdiction code 1 (the jurisdiction code will not change, even though Appeals may be making the final determination);
- Mail AOIC Combo Letter and L3820 to the taxpayer advising the offer is processable. NOTE: If L3820 is not provided by Appeals, COIC will only mail the AOIC Combo Letter.
- Assign the case for investigation following current procedures in **IRM 5.8.3**; and
- Investigate the offer on cases meeting COIC criteria in accordance with **IRM 5.8.4.15.2**.

(4) For cases meeting field transfer criteria, upon receipt from COIC, field offer groups will assign cases in accordance with current procedures and investigate the offer in accordance with **IRM 5.8.4.15.2**.

Note: Procedures defined in **IRM 8.20.7** require Appeals Processing Service (APS) to close offers, closed by Appeals, on AOIC. The offer terms screen and offer amount accepted should also be updated on AOIC, if necessary. If closure

cannot be completed by the APS unit, COIC or a field area office may need to assist in closing the case in a timely manner.

5.8.4.15.2 (MM-DD-YYYY) Case Decisions on CDP Offers

(1) If the offer is to be accepted, COIC/Field OIC group will:

- Follow local assignment procedures, including review by Counsel when appropriate;
- Follow the procedures in **IRM 5.8.8, Acceptance Processing**,
- Close the case as an acceptance on AOIC;
- Forward the case file to the appropriate MOIC function for acceptance monitoring with all required documentation; and
- Forward copies of the acceptance letter, Form 7249, original Form 656, and amended Form 656/addendum, if applicable, to Appeals.

Note: On accepted offers Appeals will adopt the case decision to accept the offer in its entirety and close the CDP/EH.

(2) If the offer is returned, terminated, withdrawn voluntarily, or a mandatory withdrawal is appropriate, COIC/Field Offer Group will:

- Issue the appropriate AOIC return/termination/withdrawal letter to the taxpayer;
- Close the case on AOIC; and
- Immediately forward the entire case file with all supporting documentation (including a complete up-to-date history and a copy of the return/withdrawal letter using the transmittal document in **Exhibit 5.8.4-1**) to Appeals using traceable mail, unless the Appeals office is in the same location.

(3) If a determination is made the offer should be rejected, COIC/Field Offer Group will:

- Select OCC 10, update Offer Type "Collection Due Process" which will generate an offer type "P", and;
- Issue the pre-determination letter to the taxpayer (include the Asset/Equity Table and Income/Expense Table, if completed),
- Transfer the offer on AOIC to Area 21.
- Immediately forward the entire case file with all supporting documentation (including a complete up-to-date history and a copy of the pre-determination letter using the transmittal document in **Exhibit 5.8.4-1**) to Appeals using traceable mail, unless the Appeals office is in the same location.

NOTE: Since ex parte rules apply, the OE/OS must share or discuss any documents with the taxpayer that will be provided to the Appeals' employee.

5.8.4.15.3 (MM-DD-YYYY)

Actions Required when CDPs are Received while an Offer is Pending

(1) A CDP request may be received during the investigation of an offer. In these instances, the appropriate CDP codes must be input on IDRS.

5.8.4.15.3.1 (MM-DD-YYYY)

Actions when CDPs are Received by COIC while an Offer is Pending

(1) Procedures defined in this section apply only to those cases in COIC inventory.

(2) COIC will:

- Continue the offer investigation in accordance with **IRM 5.8.4.15.2**;
- If the lien was filed by ACS or the Field, forward the 12153 to appropriate function;
- If the lien was filed by COIC, complete the Form 14461 and follow current procedures to forward the CDP to Appeals within 5 workdays;
- Transmit the file (Forms 12153, 14461, Lien (Form 668Y), L 3172 and envelope) to Appeals using Form 3210, Document Transmittal. Include sufficient information on the Form 3210 to identify the hearing request being transmitted. For example, the Name control, last 4 digits of TIN, MFT and tax periods, hearing type and hearing received date. Suspend the control copy of the Form 3210 until the Appeals acknowledgement copy is received. Follow-up with Appeals if acknowledgement of receipt is not received within 30 days.
- Request input of the appropriate TC 971 action codes (AC) to the respective modules in the CDP request:
 - TC 971 AC 275 when the hearing type is CDP-Levy, CDP-Lien or CDP-Both
 - TC 971 AC 630 in addition to TC 971 AC 275 when the hearing type is CDP-Levy or CDP-Both
 - TC 971 AC 278 if hearing type is EH-Levy, EH-Lien or EH-Both
- Update AOIC "Remarks";

(4) If the hearing request is timely, Appeals will input the TC 520 CC 76/77, when needed, on COIC originated CDP cases.

(5) If the CDP is withdrawn after the case is sent to Appeals, forward the withdrawal to Appeals so that Appeals can close the request and input the appropriate reversing TC 971 action code (AC) to respective modules in the CDP request (TC 971 AC 276 for CDP or TC 971 AC 279 for EH).

5.8.4.15.3.2 (MM-DD-YYYY)

Actions when CDPs are Received by Field Offer Group while an Offer is Pending

(1) Procedures defined in this section apply only to those cases in Field OIC inventory.

(2) Field offer group will:

- Continue the offer investigation in accordance with **IRM 5.8.4.15.2**;
- Follow procedures in **IRM 5.1.9.3.3**, *Processing CDP and EH Requests*
- Since modules in Status 71 are not on ICS, it may be necessary to establish BAL DUE (ICS ONLY) modules on ICS for any tax period(s) listed on the CDP request. If the Status 71 modules were recently in Status 26, the user should be able to select them and add them to the ICS CDP application.
- If the offer is closed, monitor the CDP OI in accordance with the IG memorandum and group procedures.

NOTE: At the conclusion of the CDP investigation in Appeals, the (ICS ONLY) bal due modules, which were involved in the CDP, should systemically drop off ICS. The offer group is not expected to take any action(s) subsequent to the CDP hearing unless the action involves the closed offer.

(3) When transferring these requests to Appeals (refer to **IRM 5.1.9.3.3.2**, *Sending Hearing Request to Appeals*), the OS should:

- Prepare a manual Form 14461, Transmittal of CDP/EH Hearing Request
- Create a CDP OI, if one is not already present.
- Submit the transfer request with the Form 3210, Document Transmittal to the group manager for approval. The group manager will use the Form 3210 to monitor receipt of the request.

5.8.4.15.4 (MM-DD-YYYY)

Appeals Referral Investigations (ARI) (CDP Offers)

- (1) In certain instances, Appeals may request a review of additional documents submitted by the taxpayer after a recommendation to reject the offer is made by the COIC offer examiner (OE) or Field offer specialist (OS).

In these situations, an ARI will be routed to the COIC site RO or field OIC group manager/drop point based on current procedures. These offers will be transferred to the Area office on AOIC, so appropriate assignment may take place by the group manager.

NOTE: If the ARI is issued on a CDP offer which is assigned on AOIC to Area 21, an email should be provided to Collection Policy to have the offer reassigned on AOIC to the appropriate Area office number. The OIC group will need to accept transfer and then assign the case to the assigned OE/OS. Once the ARI is completed, the offer will need to be reassigned back to Area 21 (Appeals - CDP).

In most circumstances, the ARI should be completed by the employee who conducted the initial investigation, yet the manager may assign based on current workload. Since the request is based on a previous offer evaluation, these investigations should be assigned expeditiously, and if possible, closed within 45 days of receipt. If the ARI is not completed within 45 days of receipt, Appeals should be contacted to request an extension. Upon return to Appeals, the ARI must be noted if there remains less than 180 days on the TIPRA statute.

NOTE: Since the offer remains under Appeals' jurisdiction, ex parte rules apply to any discussions with or documents provided to the Appeals' employee.

5.8.4.15.5 (MM-DD-YYYY)

CDP Offer Closed in Error by Collection

- 1) Appeals may determine a return or mandatory withdrawal of an offer submitted during the CDP process was not in accordance with IRM requirements. The determination that an offer was closed contrary to guidance provided in the IRM must be made by the Appeals' employee within 30 days of receipt of the offer case file.
- 2) Upon a determination that the return or withdrawal was processed in error, if additional investigative actions are required by Collection, the Appeals employee will forward the offer case file through their Appeals'

Manager to the attention of the manager who signed the closing letter for field OIC groups, or the site RO for COIC, who will route the case file appropriately.

- 3) Upon receipt of the offer case file the COIC/Field manager will reopen the offer on AOIC, (or if the offer cannot be reopened, have a new offer established using the same receipt, waiver, and open dates as the previously closed offer). The offer will then be assigned immediately to an OE/OS for continuation of the offer investigation. The offer will be investigated in accordance with the guidance provided in **IRM 5.8.4.15.2** above.

5.8.4.22.3 (MM-DD-YYYY) Doubt as to Liability (DATL)

(2) For offers based on DATL of a TFRP or PLET, the decision to accept or reject rests primarily on a reconsideration of whether or not the person assessed was responsible for and willfully failed to pay over the subject tax.

Offers on assessments of this nature that were determined by Appeals or that received an Appeal hearing should have a rejection letter mailed to provide the taxpayer appeal rights. Collection is not responsible for any initial development of the case or securing the closed administrative file. The rejection letter should state the offer is being rejected since the initial determination was made by Appeals. The offer file should be transferred to Appeals for consideration if a timely appeal is submitted.