



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

November 22, 2022

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Expiration Date: 12-9-2024
Impacted IRMs: 5.8.10.6, 5.12.10.11,
and 5.12.10.11.3

MEMORANDUM FOR GUADALUPE ORTIZ, DIRECTOR, SPECIALTY COLLECTION
OFFER IN COMPROMISE
HANK KEA, DIRECTOR, FIELD COLLECTION

FROM: Kareem Williams Kareem Williams
Director, Collection Policy



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Williams
Date: 2022.11.22 14:01:09 -05'00'

SUBJECT: Interim Guidance on Lien Certificate Procedures in OIC cases

This memorandum issues guidance on processing payments received for discharging property from a federal tax lien or subordinating the federal tax lien when the taxpayer has a pending Offer in Compromise (OIC). Please ensure that this information is distributed to all affected employees within your organizations.

Purpose: This memorandum is to address the procedures for discharge and subordination payments outlined in IRM 5.8.10.6(2) and IRMs 5.12.10.11(4) through (5) and 5.12.10.11.3(2) through (4).

Background/Source(s) of Authority: In the last revision of IRM 5.8.10 dated March 10, 2022, we incorporated guidance from Counsel regarding lien discharge payments in IRM 5.8.10.6(4). The new addition instructs:

“If a taxpayer has not finished paying the OIC amount for an accepted offer, the lien has not yet been released, and the taxpayer sells property subject to the lien, the IRS may be entitled to all net sale proceeds that would normally be paid for the taxpayer to obtain a discharge of property from the lien. This will apply even if the total amount of the sale proceeds is greater than the total accepted OIC amount. This provision does not apply to accepted offers based on doubt as to liability. For offers accepted on the basis of NEH-ETA, this issue will be considered on a case-by-case basis”.

Sentences regarding application of any excess funds to the taxpayer's total liability were also added to the table in section 5.8.10.6(2). That table currently provides instructions for securing Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability, when an OIC is pending, and a payment is received for a discharge or subordination request.

Procedural Change: Form 3040 will no longer be secured for discharge/subordination proceeds. The proceeds will be applied directly to the taxpayer's liability using Designated Payment Codes 53 or 55.

Effect on Other Documents: This guidance will be incorporated into IRM 5.8.10, Special Case Processing, and 5.12.10, Lien Related Certificates, within two years from the date of this memorandum.

Effective Date: This interim guidance is effective immediately.

Contact: If you have any questions regarding this memorandum, contact Julia Wescott, Program Analyst, Collection Policy - OIC, or Kyle Romick, Senior Program Analyst, Collection Policy - Enforcement.

Cc: Civil Enforcement Advice and Support Operations (CEASO)
Office of Chief Counsel

Distribution:

[IRS.gov \(http://www.irs.gov\)](http://www.irs.gov)

Attachment:

Changes to IRM 5.8.10 & 5.12.10

Attachment to Interim Guidance Memo SBSE-05-1122-0077

The following changes are hereby effective 11/23/2022 for IRM 5.8.10.6.

5.8.10.6

Discharge and Subordination Requests

(2) Requests for discharge or subordination received with the [Form 656](#), or while an OIC is pending, are to be handled as follows:

If	Then
The discharge/subordination is submitted before the OIC and the payment was received prior to the offer submission.	Do not use the proceeds from the discharge (or subordination) as any part of the offer payment. The equity received from the property was applied to reduce the tax liability and it is not in the government's interest to apply the previously posted proceeds to an OIC.
The discharge/subordination is submitted before the OIC and the payment was not received prior to the offer submission.	The discharge/subordination proceeds may be applied to an accepted offer amount, if the equity in the asset was included in the taxpayer's reasonable collection potential.
The taxpayer simultaneously submits an application for discharge/subordination and an OIC to CEASO.	<p>The advisor will:</p> <ul style="list-style-type: none"> • Date stamp the OIC as being received. • Prepare Form 657, Offer in Compromise/Revenue Officer Report. The Advisor will write in red ink at the top of the Form, "Discharge/Subordination Request". This will alert COIC that this is not a solely to delay issue. • Follow IRM 5.8.2.3, Initial Processing of OICs, and forward a copy of the application for discharge/subordination, Form 657, and all offer documents (Form 656, Form 433A-OIC/ Form 433B-OIC, supporting documents,

If	Then
	<p>and payments, if applicable) to the appropriate COIC site via overnight mail.</p> <p>Note: A payment made in order to obtain a certificate of discharge may be applied as the initial TIPRA payment only if the payment is received at the time of the offer submission.</p> <p>Note: If the offer is submitted without the required TIPRA payment when a TIPRA payment is required, and the taxpayer now wants to begin the paperwork for a discharge, the offer should be treated as a not processable return.</p> <ul style="list-style-type: none"> • Because TIPRA requires that we have 2 years from the IRS received date to make a determination or the offer will automatically be accepted, the advisor will work the application for discharge or subordination expeditiously. • The COIC site process examiner will make a processability determination and process the offer as described in IRM 5.8.3, Offer in Compromise - Centralized Offer In Compromise Transfers, Perfection and Case Building. However, do not treat these offers as solely to delay collection as described in IRM 5.8.3.14.1, Offers Submitted Solely to Delay Collection per Form 657. The advisor is only using the Form 657 as a way to identify and bring to the attention of COIC that there is an application of discharge/subordination currently being investigated. • Once the offer has been deemed processable, COIC will immediately transfer the offer to the proper FOIC office and send all appropriate documents to the FOIC office. Prior to transfer, the COIC site will document the AOIC history with the advisor's name and phone number. • If the offer is not processable, the process examiner will promptly notify the advisor.

If	Then
	Throughout this process, communication between COIC, CEASO, and the field OS is vital.
The taxpayer requests a discharge/subordination while an offer is pending, and the request is approved.	<p>The advisor will:</p> <ul style="list-style-type: none"> • Advise the taxpayer that proceeds from the discharge or subordination will be applied to the OIC, if accepted, and that any excess proceeds will be applied to the tax liability. • Advise the taxpayer if the OIC is not accepted, the proceeds will be applied to the tax liability. • Post the payment with a DPC of 53 for discharges and 55 for subordinations. • The advisor will inform the OS investigating the offer of the discharge payment received. <p>Note: A TIPRA payment may not be used to offset the amount required from the taxpayer to obtain the certificate of discharge/subordination. Refer to the prior discussion if the OIC and the payment to receive a discharge/subordination are submitted simultaneously.</p>

5.8.10.6(5): If discharge or subordination payments are applied, a note should be placed on AOIC explaining that these payments were applied as DPC 53 or 55 due to a lien discharge or subordination, and the DPC will not be changed to 09 if the offer is accepted.

The following changes are hereby effective 11/23/2022 for IRM 5.12.10.11 and IRM 5.12.10.11.3.

5.12.10.11 OIC Payments and Discharges (or Subordinations)

- (1) Sometimes taxpayers request that payments remitted based on discharges or subordinations also be applied to offers in compromise (OICs). In these situations, Advisory and OIC units must be aware of the policies and procedures provided in this section to ensure consistent processing.
- (2) Work cases involving OICs and discharges (or subordinations) along with Centralized Offer in Compromise (COIC) personnel or the assigned Field Specialist. Locate the appropriate COIC unit, which is based on the state in which the taxpayer resides, by going to the IRS intranet SERP page. Procedures for OIC personnel are in [IRM 5.8.10.6](#), *Discharge and Subordination Requests*.
- (3) The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) requires taxpayers to submit a portion of the proposed offer amount unless a waiver applies. This initial TIPRA payment is in addition to the application fee. Taxpayers may request that proceeds derived from discharges or subordinations be used to pay the TIPRA or the **non-TIPRA** portion of their offer payment. Never apply proceeds from a discharge (or subordination) to the application fee.
- (4) All proceeds from a discharge (or subordination) should be applied to the tax liability, regardless of the amount offered under an OIC and whether the OIC has been accepted. The amount of the proceeds may be credited toward the offer amount, depending on when the proceeds were received in relation to the OIC (as described in the subsections below).
- (5) When a payment is received for a discharge (or subordination) certificate, post the payment with DPC 53 (discharge) or DPC 55 (subordination). Inform the OIC employee investigating the offer of the discharge payment received.
- (6) Use the guidance in the following sections to process a discharge (or subordination) request related to an OIC. Also see IRM 5.8.10.6, *Discharge and Subordination Requests*.

5.12.10.11.3 Discharge (or Subordination) After OIC Submitted

- (1) Use the procedures in this section when the taxpayer requests a discharge (or subordination) :
 - while an offer is pending, or

- after an offer in compromise has been accepted but before the payment terms have been met, and
- the taxpayer intends to include the proceeds in the offer amount.

- (2) Upon initial review of the discharge (or subordination) application if it is determined the taxpayer has a pending OIC, contact the taxpayer to advise that any proceeds from the discharge (or subordination) will be applied as a payment toward their tax liability and credited toward the offer amount.
- (3) Contact COIC and inform them of the discharge (or subordination) request. Contact COIC again after the funds are applied and/or the investigation is complete so they may note the outcome accordingly.
- (4) Upon initial review of the discharge (or subordination) application if it is determined that an Offer in Compromise has been accepted but the offer amount has not yet been paid, contact the OIC unit to find out the terms of the agreement.
 - a. If the taxpayer does not want to apply the proceeds to the tax liability and offer amount, or the taxpayer wants to apply the proceeds in another manner including keeping the proceeds, the lien certificate request should be denied.
 - b. If the proceeds for the discharge will full pay the offer amount, consult with OIC in issuing a release of lien instead of the requested lien certificate.
 - c. If the proceeds for the discharge will exceed the offer amount or the balance remaining on it, apply the excess to the tax liability.