



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.8.10

DECEMBER 5, 2019

EFFECTIVE DATE

(12-05-2019)

PURPOSE

- (1) This transmits a revision to IRM 5.8.10, *Offer in Compromise, Special Case Processing*.

MATERIAL CHANGES

- (1) IRM 5.8.10.6(2): corrects the Monitoring Offer In Compromise Unit (MOIC) website address.
- (2) IRM 5.8.10.9.3(4): corrects the Office of Professional Responsibility (OPR) website address.
- (3) IRM 5.8.10.12.1(2) and IRM 5.8.10.12.2(2): updates the Centralized Offer in Compromise (COIC) website address.

EFFECT ON OTHER DOCUMENTS

IRM 5.8.10, dated 02/14/2017, is superseded.

AUDIENCE

SB/SE Collection and Campus Compliance employees

Nikki C. Johnson
Director, Collection Policy

5.8.10
Special Case Processing

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5.8.10.1
(09-27-2011)
Overview

- (1) During the investigation of an offer in compromise (OIC), certain situations may be encountered that require consideration before a final determination can be made. This section discusses how to treat these situations when evaluating an offer.

5.8.10.2
(09-27-2011)
Bankruptcy

- (1) Bankruptcy may affect the Service's consideration of an OIC. The taxpayer may file bankruptcy and an OIC simultaneously, or file an OIC in an attempt to avoid bankruptcy, or file an OIC after a bankruptcy has been concluded.

5.8.10.2.1
(02-14-2017)
**Offer in Compromise
During Bankruptcy**

- (1) The Service will not consider an OIC under its administrative OIC procedures while a taxpayer is in bankruptcy. When a taxpayer files bankruptcy, the Bankruptcy Code provides procedures to resolve the Service's claim.
- (2) An OIC will not be considered under administrative OIC procedures until the bankruptcy is concluded. In Chapter 7 cases, an administrative compromise with the taxpayer can be considered after the taxpayer has received a discharge. See IRM 5.8.10.2.3, *Acceptance of Offer In Compromise After Chapter 7 Bankruptcy*. In Chapter 11, 12 and 13 cases an administrative compromise will not be considered until the taxpayer completes the payments under the plan or the bankruptcy is dismissed by the court.
- (3) If a taxpayer is in bankruptcy when an administrative OIC is submitted the offer is returned as non-processable. The return of the offer does not constitute a rejection of the offer and does not entitle the taxpayer to appeal the matter to Appeals. See Treas. Regs. § 301.7122-1(f)(5)(ii). If only one spouse is in bankruptcy then the offer will be returned as non-processable.
- (4) If a taxpayer files bankruptcy **during** a pending offer investigation, the offer will be returned as a processable offer.

Note: If only one spouse files bankruptcy during a pending joint offer, an amended Form 656 may be submitted by the non-petitioning spouse. A reasonable period of time should be provided for submission of an amended Form 656. If an amended Form 656 is received, update AOIC and manually send a return letter to the petitioning spouse. If an amended Form 656 is not submitted, the offer will be a processable return based on the taxpayer filing bankruptcy.

- (5) If the taxpayer files a bankruptcy during an open CDP the OS/OE will issue the return letter and provide a copy to Appeals. If the taxpayer files bankruptcy after the offer specialist has a rejection recommendation and forwarded the required documents to Appeals then Appeals will be responsible for issuing the return letter.

5.8.10.2.2
(02-14-2017)
**Offers in Compromise
Before Bankruptcy**

- (1) When a taxpayer or representative states during an offer investigation that a bankruptcy petition will be filed if the taxpayer's offer is not accepted, the offer examiner/offer specialist must determine whether the potential for a bankruptcy filing actually exists and the impact the possible bankruptcy filing may have on the collection of the outstanding tax liabilities. In order to make an informed decision as to the reasonableness of the taxpayer's Offer in Compromise, consider whether the taxpayer has been involved in previous bankruptcy proceeding(s) and/or if any tax liabilities may potentially be dischargeable. The following procedures will assist in determining the impact a potential bankruptcy filing may have on the offer investigation. Additionally, if the taxpayer or

their representative indicates the taxpayer is considering filing bankruptcy, immediately make a lien filing determination as to whether the filing of a notice of federal tax lien (NFTL) is necessary to protect the government's interest in assets during the offer investigation.

- (2) Benefits to the Service if an offer in compromise is accepted and the taxpayer does not file bankruptcy:
 - The Service can negotiate for amounts collectible from future income and from assets beyond the reach of the government that may not be collectible if the taxpayer files bankruptcy.
 - Negotiations may result in an offer amount that exceeds the amount recoverable in an insolvency proceeding.
 - Terms for payment of an offer may result in funds being collected in a shorter time than through bankruptcy.
 - The terms of the offer in compromise includes a requirement the taxpayer files and pays all tax liabilities for the succeeding five years.
- (3) Benefits to the Taxpayer:
 - Bankruptcy carries certain negative repercussions, i.e. a negative effect on the taxpayer's credit rating.
 - Bankruptcy does not discharge all tax liabilities.
 - If a NFTL has been filed, the federal tax lien may survive bankruptcy against certain assets.
- (4) While evaluating the acceptability of an OIC when the threat of bankruptcy is a consideration, determine the reasonable collection potential (RCP) as defined in IRM 5.8.5, *Offer in Compromise, Financial Analysis*. If the amount offered by the taxpayer exceeds the RCP, proceed with the offer investigation and appropriate disposition. Any special circumstances or hardship issues should also be considered prior to investigating the effect a potential bankruptcy may have on an acceptable offer amount.
- (5) Analysis of the potential amount collectible, if bankruptcy proceedings were filed, should include analysis of the taxpayer's collection information statement(s), other financial statements, draft bankruptcy schedules (if available), and a determination of which liabilities may be dischargeable. This will result in the ability to make an informed decision regarding the OIC and should open negotiation with the taxpayer.
- (6) When completing the analysis consider the following questions:
 - Is the taxpayer an individual? Although other entities could receive a discharge in an insolvency proceeding, as a matter of policy, the potential bankruptcy filing of an entity other than an individual or from a taxpayer whose only liabilities include employment taxes will not be a consideration when calculating reasonable collection potential for purposes of determining the acceptability of an OIC.
 - Is the Service the sole or major creditor?
 - Would taxes be dischargeable in bankruptcy?
 - Does the offer amount equal or exceed what the Service can reasonably expect to recover from bankruptcy?
 - Are there other considerations, such as what could be collected on liabilities that would not be discharged, or what could be collected from property outside of the bankruptcy, including third parties?

Note: The Service will not accept less than would be recoverable from a Chapter 7 bankruptcy, unless special circumstances exist. Absent special circumstances, the basis for acceptance of an offer where the RCP is adjusted based on consideration of the amount recoverable in bankruptcy will be Doubt as to Collectibility. Refer to IRM 5.8.11, *Effective Tax Administration*, for a discussion of special circumstances.

5.8.10.2.2.1
(02-14-2017)

**Consideration of a
Potential Bankruptcy
Filing on the Calculation
of RCP in an OIC
Investigation**

- (1) The following information is provided to guide you in determining if consideration should be given to a potential bankruptcy filing and in what situations involvement of an insolvency advisor or specialist is appropriate.

Note: An offer should never be accepted solely on the basis of the taxpayer offering the amount collectible through a bankruptcy proceeding without further investigation. However acceptance of an offer for less than reasonable collection potential (calculated in accordance with IRM 5.8.5, *Offer in Compromise, Financial Analysis*) may be appropriate based on the facts of the case.

If ...	Then ...	Comments
The taxpayer/representative submits an offer and indicates it should be accepted for less than RCP because a bankruptcy proceeding will be filed if the offer is not accepted.	Review the assessments to determine if any taxes may be dischargeable and conduct a review of financial statements and draft bankruptcy schedules, if available, to determine the amount potentially collectible through the bankruptcy proceeding. Refer to the additional guidance provided in this section to determine the potential reduction to future income value (FIV)	Depending on the date of the tax assessment and the type of taxes owing, certain taxes may be dischargeable. In limited instances, an adjustment to FIV may be appropriate.

- (2) The assistance of the Insolvency Unit should be pursued if the guidance in IRM 5.8.10.2.2.2 is insufficient to make a reasonable decision on a case and the unpaid balance of assessment (UBA) is \$25,000 or more. If Insolvency is contacted for assistance, document any discussions and/or calculations in the recommendation report and appropriate ICS/AOIC history. OIC employees should contact Centralized Insolvency Operation (CIO) to determine the insolvency employee who may be contacted for assistance based on the taxpayer's geographic location. The CIO phone number is listed in the SERP "Who/Where" tables under Insolvency (Bankruptcy Tools) *National Field/Centralized Site Directory*.

5.8.10.2.2.2
(02-14-2017)

**Potential Adjustments to
Reasonable Collection
Potential**

- (1) This section provides very general guidance in the determination of the amounts potentially recoverable in a bankruptcy proceeding. The estimations used in this section are only meant to arrive at the amount reasonably expected to be collected from the taxpayer as discussed in Policy Statement P-5-100.

Note: This guidance is not meant to replace the specific information provided in IRM 5.9, *Bankruptcy and other Insolvencies*, and should **not** be referred to in order to calculate amounts the Service would actually recover through any insolvency proceeding.

- (2) Although the classification of a tax liability and the potential dischargeability is a complicated matter, the following general rules may be used in determining RCP during an offer investigation where the potential for a bankruptcy filing exists. Although not all inclusive, the determination of tax liabilities which may survive bankruptcy depends on whether the liabilities are secured, the type of tax liability, and the age of the liability.

- Secured - For purposes of this section, secured tax claims are those for which a notice of federal tax lien (NFTL) has been filed or will be filed during the offer investigation to the extent of the equity to which the lien attaches. Any portion of the liability that is not secured by equity in assets will be classified as a priority or general unsecured claim.

Note: Certain “excluded” property, such as an ERISA qualified retirement plan, may be secured via the statutory lien.

- Priority - Generally, priority tax claims are those with return due dates of less than three years prior to the petition date, income tax assessments made within 240 days before petition date, and income tax deficiencies that are unassessed but are assessable prior to the petition date. Also, priority claims include all trust fund liabilities, both the trust fund portion of employment taxes and the trust fund recovery penalty. Only the tax and related interest (not penalties) is entitled to priority.
- Nondischargeable- Priority tax claims are not dischargeable in bankruptcy. Other nondischargeable taxes include taxes for which no return was filed; taxes filed late but within two years of the bankruptcy petition date, penalties related to a transaction or event within two years of the petition date, fraud, and situations when the taxpayer has willfully evaded payment of tax.

- (3) Calculation of an acceptable offer amount –

The following guidance will assist in determining the taxpayer’s RCP in situations where the filing of a bankruptcy is a viable option for the taxpayer.

- a. The equity in any assets secured by a NFTL, including real or personal property, should be included in the RCP. This includes situations where all taxes may be dischargeable in bankruptcy. The NFTL will secure the government’s ability to collect from these assets, even if they are exempt.

Note: Special circumstances and hardship issues should also be considered in determining whether an offer for less than RCP is acceptable.

- b. The taxpayer’s FIV may be reduced below the normal calculation of FIV in accordance with IRM 5.8.5, *Financial Analysis*, yet should not be

reduced to less than the balance of nondischargeable tax liabilities, since they will remain owing subsequent to the bankruptcy.

Example: A taxpayer who owes \$65,000.00 states they will be filing a Chapter 7 liquidating bankruptcy if their offer in compromise is not accepted. The taxpayer has net equity (after consideration of any prior encumbrances, allowances, or appropriate percentage reductions) in real property, vehicles, and retirement accounts equal to \$ 25,000.00 and there are no special circumstances or hardship issues to consider. A NFTL is filed on all outstanding tax liabilities. The taxpayer has the ability to pay \$500.00 per month. The tax liabilities include \$50,000.00 of dischargeable taxes and \$15,000.00 of priority taxes which will survive the bankruptcy. After all factors are considered, FIV may be reduced to approximate the \$15,000.00 which will be collectible from an installment agreement on the liabilities which will survive the bankruptcy. The net equity in all assets (\$25,000.00) should also be included in the RCP calculation for a minimum offer amount of \$40,000.00.

Example: The taxpayer has equity in assets equal to \$25,000.00 which includes real property and retirement accounts which will not be liquidated through the Chapter 7. The taxpayer has no future income ability and no ability to borrow against the \$15,000.00 equity in their residence. Additionally, it is determined the liquidation of the equity in the taxpayer's residence to pay the outstanding liability would render the taxpayer unable to meet basic living expenses and the taxpayer will need their \$10,000.00 retirement account to meet basic living expenses. The tax liabilities include \$50,000.00 of dischargeable taxes and \$15,000.00 of priority taxes which will survive the bankruptcy. Since the taxpayer has no future income ability and liquidation of the equity in the residence and retirement account would render the taxpayer unable to meet basic living expenses, the taxpayer's offer in the amount of \$2,500.00, which will be funded by a loan from a relative would be appropriate based on the taxpayer's special circumstances.

Example: All the tax liabilities are trust fund taxes and the taxpayer has stated they are going to file a Chapter 7 proceeding. Since the taxes are not dischargeable, the taxpayer's possible bankruptcy should not affect the determination of an acceptable offer.

Example: The tax liabilities are from timely filed individual tax returns which are all over three years old and have been assessed for more than 240 days with an UBA of \$50,000.00. Since the taxpayer owns no real property, it is possible the government will receive a minimal amount in a Chapter 7 proceeding. Since the UBA is over \$25,000.00, discussion with Insolvency may be appropriate, if the taxpayer's offer appears reasonable, yet less than the RCP.

5.8.10.2.3
(02-14-2017)
**Acceptance of Offer in
Compromise After
Chapter 7 Bankruptcy**

- (1) Only after a discharge has been granted or a dismissal has taken place, can an administrative OIC be considered by the Service in a Chapter 7 proceeding. Once the discharge is entered, the Service will be able to determine which taxes are discharged and will be able to make a determination of "Doubt as to Collectibility" under its administrative OIC procedures.

- (2) For debtors discharged in Chapter 7, where the bankruptcy case is still pending, it is uncertain whether the Service would still have a valid claim in bankruptcy if an OIC is accepted. Therefore, the amount acceptable should include the amount that the Service can reasonably expect to recover from the bankruptcy in addition to what can be collected from the taxpayer on non-discharged liabilities or from property outside the bankruptcy.
- (3) Refer to IRM 5.9.4.10, *Offer in Compromise and Bankruptcy*, for discussion on the Service's policy relative to specific bankruptcy chapters.
- (4) IRM 5.9.4.10(6) provides guidance on the handling of OIC payments prior to filing of a bankruptcy petition and IRM 5.9.4.10(7) discusses payments subsequent to the petition date.

5.8.10.2.4
(02-14-2017)
**Bankruptcy After Offer
In Compromise
Acceptance**

- (1) When a taxpayer files bankruptcy after an OIC is accepted, the Service may need to take specific actions to secure unpaid offer funds or to secure payment of tax through the bankruptcy proceeding. (See IRM 5.9, *Bankruptcy and Other Insolvencies*, for additional information.)
- (2) In accordance with the Bankruptcy Code, the offer should not be defaulted or payments solicited while the taxpayer is in bankruptcy.
- (3) When the Service becomes aware that a bankruptcy has been filed after the acceptance of an OIC follow the procedures in the table below:

If...	Then...
The offer funds have been paid in full	The bankruptcy filing has no effect on the accepted offer.
The offer funds have not been paid in full	Refer to IRM 5.9.4.10.1, <i>Accepted but Not Completed Administrative OICs</i> . If additional guidance is required, contact the Insolvency Unit to determine necessary action to protect the Service's interest in the bankruptcy proceeding.

5.8.10.3
(02-14-2017)
Other Insolvency Cases

- (1) A copy of the court order or other evidence should accompany Form 656, *Offer in Compromise*.
- (2) The following should be secured in "Receiverships" and other non-bankruptcy insolvencies:
 - A general statement of the circumstances which resulted in the receivership and the purpose of the receivership; that is, whether the objective is liquidation of assets, conservation of assets, foreclosure of a mortgage or reorganization.
 - A copy of the petition for the appointment of a receiver and a copy of the court order appointing the receiver or trustee can be used in lieu of a general statement, if the petition provides the information above.
 - Copies of all pertinent schedules filed with the court.

- (3) Consideration of an OIC frequently presents questions concerning the rights of the government to priority in the collection of the tax claims over the claims of other creditors of the taxpayer.
- (4) The rights of other creditors are based on liens which may be recognized by state law, but because of the taxpayer's assignment of assets for the benefit of other creditors, the provisions of 31 U.S.C. § 3713 apply.
- (5) When considering the offer:
 - Evaluate the rights of all creditors,
 - Evaluate all facts and circumstances relating to the various claims,
 - Verify all pertinent dates, such as the origin and filing of all claims and liens, and
 - Verify the steps which have been taken towards the enforcement of the claimant's alleged rights.
- (6) The following table provides information on potential options available to collect the liabilities.

If...	Then...
The priority rights of the United States are disregarded when the funds of the estate are disbursed	An assignee for the benefit of creditors, as well as an executor or administrator of a decedent's estate, may become personally liable.
A corporation is the assignor and the tax liability sought to be compromised consists of withholding of Federal Insurance Contribution Act (FICA) taxes, or taxes which the assignor might be required to withhold or collect from others and pay over to the government	Consider the possibility of enforcing the TFRP provisions of the code.

- (7) When questions arise regarding the priority rights of the United States contact Area Counsel.

5.8.10.4
(02-14-2017)

Deceased Taxpayers and Estates

- (1) Offers may be submitted for debts involving a deceased taxpayer. Due to the complex nature of probate and state law, offers involving deceased taxpayers or their estates require additional research.
- (2) The liability sought to be compromised may have been assessed against a taxpayer before or after death or the tax may be based on the value of the decedent's assets (Form 706). This section discusses how to treat these situations when evaluating an offer.

5.8.10.4.1
(02-14-2017)
Death of Taxpayer

- (1) When the Service is notified of the death of the taxpayer who submitted an OIC that is currently under consideration, the Service can no longer consider the OIC. A termination letter will be generated from AOIC and the offer should be closed with the termination closure option. If verbal contact is made with the surviving spouse or POA then explain that consideration of the offer will be terminated and that another offer can be submitted once the probate has been concluded.

Note: If the offer is submitted on behalf of the taxpayer and the taxpayer's death is prior to the TC 480 date, the offer must be submitted by a party authorized to act on behalf of the estate. If the offer is submitted by someone who is not authorized to act on behalf of the estate, the offer should be returned under processable return criteria. The open paragraph should be used to discuss the fact the offer must be submitted by someone authorized to act on behalf of the estate. The OE/OS should verify the TC 540 is input onto IDRS.

- (2) Many times the OIC under consideration was submitted jointly by a husband and wife. In that situation, contact with the surviving spouse should be made to determine whether there is a probate proceeding or non-probate/intestate proceeding. See IRM 5.5, *Decedent Estates and Estate Taxes*, and IRM 5.17.13.9, *Decedents' Estates*, for more information about decedent taxpayers and probate proceedings. A third party authorization (Form 2848, Power of Attorney and Declaration of Representative, Form 8821, Tax Information Authorization) expires with the death of the taxpayer. Do not assume the surviving spouse is the executor for the deceased spouse.
 - a. When spouses have submitted a joint offer, and one spouse dies before the offer is accepted, the IRS no longer has the authority to accept the joint offer. The surviving spouse, however, has the option of amending the joint offer to make it the offer of only the surviving spouse. If the surviving spouse does not amend the joint offer, the IRS must return the joint offer.
 - b. In many situations, after a spouse dies, a probate estate may be opened to pay the decedent's debts and distribute property. The executor does not step into the shoes of the decedent for the previously submitted joint offer; the joint offer terminated when the decedent died. Similarly, the administrator for an intestate estate does not step into the shoes of the decedent.
 - c. The IRS generally files a claim in the probate estate, which is the preferred forum for consolidating assets and paying liabilities. In rare situations, the executor may submit an offer on behalf of the decedent's estate and the IRS would consider such an offer. For example, when the IRS is the priority creditor and the executor offers to pay the IRS the full amount of the estate's liability, the IRS may choose to consider the offer rather than returning it. (If the IRS chooses to consider the offer, it should request the assistance of area counsel and coordinate with advisory if there is an open estate.) In many situations, however, the IRS will choose to return the executor's offer. Similarly, the IRS may choose to consider an offer from the administrator of an intestate estate.
- (3) At death a deceased taxpayer's assets become part of their estate. The estate and the estate administrator become liable to pay the debts of the decedent if they have knowledge of debt owed. If the estate administrator has knowledge of unpaid taxes (through notices or liens) and does not pay the taxes, or distributes assets to other creditors or heirs they become personally liable to pay

the outstanding liability under Title 31 U.S.C. Section 3713. See IRM 5.5.3.9, *Fiduciary or Transferee Liability*. Additional collection avenues that can be used to secure payment from estate administrators, heirs or transferees need to be taken in consideration when investigating an offer.

- (4) Absent special circumstances, an offer should not be accepted if it is determined that the government would receive a greater amount through the probate proceedings. If the government would receive a greater amount through the court an offer filed by an estate should not be considered due to the federal government's right to full payment or right to a priority position with regard to limited assets. See IRM 5.5.1, *Decedent Estates and Estate taxes- Decedent and Estate Tax Accounts*, and IRM 5.5.2, *Probate Proceedings*, for additional information.

Note: The estate and gift tax liens have an absolute life of 10 years from the date of death or date of the gift. They are not extended due to an offer being filed. For additional guidance on these liens and their attachment to assets see IRM 5.5.9.2, *Lien Attachment to Estate Assets*.

- (5) If the decedent's assets are being distributed in accordance with state law due to the taxpayer dying intestate, an offer may be considered if submitted by an individual authorized to act on behalf of the taxpayer's estate.

5.8.10.4.2
(02-14-2017)
**Offers Submitted for
Estate Tax Liabilities**

- (1) An offer may be submitted to compromise Form 706 for estate tax liabilities. See IRM 5.5.7.18, *Decedent Estates and Estate Taxes, Collecting Estate and Gift Tax Accounts*, and IRM 5.17.13, *Legal Reference Guide for Revenue Officers, Insolvencies and Decedents' Estates*, for additional information.
- (2) These offers should be rare since the estate tax lien arises and attaches to all assets in the gross estate at date of death. This gives the IRS a priority lien position and unique collection avenues to secure payment of the tax liability.
- (3) Consult both federal law, IRC 31 U.S.C. § 3713, and state law to determine the priority of claims against the estate when determining the RCP. See IRM 5.5.7, *Decedent Estates and Estate Taxes, Collecting Estate and Gift Tax Accounts*, for additional information.
 - a. Administrative expenses must be examined to determine if the expense is reasonable and necessary to the administration of the estate. See IRM 5.5.2.6, *Administrative Expenses*, for factors to consider when determining what expenses should be allowed as necessary administrative expenses. For example, reasonable and necessary expenses should not be permitted ahead of a tax lien if such expenses are already covered by an insurance policy, trust or other similar benefit that covers such costs.
 - b. Distributions of assets are not an administrative expense. Be aware of transferee situations when determining the amount required for compromise. See IRM 5.5.7.14, *Options to Collect Tax Due*.

5.8.10.5
(02-14-2017)
Transferee

- (1) When an OIC investigation reveals the potential for a transferee situation, the burden of proof of transferee liability rests with the government.

Note: If it is determined that a transferee investigation should be initiated, it will not be conducted by the Offer Investigator. Instead, it will be conducted by a field RO by generating an Other Investigation. OIs initiated for a transferee investigation to be conducted on an estate or gift tax case should be sent to

the ATAT field collection groups, who have responsibility for working estate and gift tax cases. *Other Investigations referred per these instructions should be considered high risk cases, code 100, and processed accordingly.*

If...	Then...
A potential transferee is discovered during an OIC investigation	Conduct an investigation to determine if a transferee exists.
A transferee liability exists	<ol style="list-style-type: none"> 1. Determine the amount the Service may reasonably expect to collect from the transferee. 2. Attempt to negotiate an acceptable OIC amount with the transferee value included in the RCP calculation.
There is a question whether a transferee liability may be established and sustained	<ol style="list-style-type: none"> 1. Determine the value of the transferee based on the degree of doubt regarding the transferee being sustained. 2. Attempt to negotiate an acceptable offer amount including this value in the RCP. <p>Note: Flexibility should be exercised during negotiations if the transferee assessment will not be pursued.</p>
During the investigation of an OIC the OE/OS determines that a transferee assessment should be pursued and negotiations have not resulted in an acceptable offer amount	<ol style="list-style-type: none"> 1. Attempt to secure a withdrawal letter from the taxpayer. 2. If the taxpayer does not withdraw the OIC, prepare the rejection closing documents and follow procedures for recommending rejection with appeal rights. Include the value of the transferee in the RCP. <p>Note: Thorough documentation of the basis for including the value of a transferred asset in the RCP is required. A discussion on the documents reviewed in making the determination that transferee issues exist should be included in the rejection narrative as well as the case history.</p> <ol style="list-style-type: none"> 3. Prepare an Other Investigation to be issued to a field RO to investigate the transferee issue.

5.8.10.6

(12-05-2019)

Discharge and Subordination Requests

- (1) An application for discharge or subordination of a federal tax lien may be received in conjunction with an offer in compromise (OIC) in a number of different scenarios including:

- When a taxpayer simultaneously submits an application for discharge/subordination and a Form 656 - *Offer in Compromise* to Advisory. See IRM 5.12.10.11, *OIC Payments and Discharges (or Subordinations)*, for additional information.

Note: If the taxpayer wants the proceeds from their discharge/subordination to be applied to their initial Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) payment refer to the guidance in (2) of this section

- , or
- When a taxpayer requests a discharge/subordination while an offer is pending and the request is approved, or
- When a taxpayer submits a discharge or subordination after an OIC has been accepted, but before all the payment terms have been met

Note: Proceeds from the discharge/subordination may not be applied as the application fee.

Note: In these cases, the discharge or subordination investigation will not be conducted by the OE/OS. Instead, it must be conducted by the appropriate Collection Advisory by generating an Other Investigation. *Other Investigations referred per these instructions should be considered high risk cases, code 100, and processed accordingly.*

- (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.

If...	Then...
<p>The taxpayer simultaneously submits an application for discharge/subordination and an OIC to Advisory.</p>	<p>The advisor will:</p> <ul style="list-style-type: none"> • Date stamp the offer in compromise as being received. • Prepare Form 657, <i>Offer in Compromise/Revenue Officer Report</i>. 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 5.8.2.2 (3) and forward a copy of the application for discharge/subordination, Form 657, and all offer documents (Form 656, Form 433A-OIC/ Form 433B-OIC, support documents, and payments, if applicable) to the appropriate COIC site via overnight mail. <p>Note: Payments made to the Service 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 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, <i>Offer in Compromise - Centralized Offer In Compromise Transfers. Perfection and Case Building</i>. However, do not treat these offers as solely to delay collection as described in IRM 5.8.3.13.1, <i>Offers Submitted Solely to Delay Collection per Form 657</i>. 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 Area and send all of the appropriate documents. 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, then the process examiner will promptly notify the advisor. <p>Throughout this process, it is vital there be communication between the site, Advisory, and the field offer specialist.</p>

If...	Then...
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. • Advise the taxpayer if the OIC is not accepted, the proceeds will be applied to the tax liability. • Before delivering the certificate of discharge or subordination, the advisor will require the taxpayer to execute a Form 3040, <i>Authorization to Apply Offer in Compromise Deposit to Liability</i>. The word "irrevocable" must be written in the signature block of the Form 3040 or the taxpayer should check the box on Form 3040 and place their initials next to that box. • The advisor will submit the funds as a deposit to the <i>Monitoring Offer In Compromise Unit</i>. If the offer is not accepted then the payment will be posted with a DPC of 53 for discharges and 55 for subordinations. • The advisor will submit a copy of the Form 3040 to the OE/OS investigating the offer and will retain the signed Form 3040 in the case file for use in the event the OIC is returned, withdrawn, or rejected. <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>

- (3) Requests for discharge or subordination received after an OIC has been accepted, but before all the payment terms have been met, should be handled as follows:

If...	Then...
The taxpayer does not intend to apply the proceeds received from the discharge or subordination to the OIC amount	Deny the discharge or subordination request.

If...	Then...
The taxpayer does intend to apply the proceeds toward the OIC amount	<p>Request an investigation of the discharge or subordination from Collection Advisory and then coordinate with Collection Advisory to apply the proceeds to the OIC amount.</p> <p>Note: The government is bound by the payment terms of an accepted OIC and cannot require payment of the offer amount in different terms, other than stated in the OIC agreement.</p>

Note: If a discharge request is submitted (Form 4422, *Application for Certificate Discharging Property Subject to Estate Tax Lien*) for property subject to the estate tax lien, the application should be sent to the Advisory Estate Tax Lien Group. See instructions on the form for address information.

5.8.10.7
(09-23-2008)

**Effect of Previous Offers
on Collection Statute**

- (1) Over the years there have been numerous changes in the law and IRS procedures relating to the extension of the statutory period for collection while OIC's are being considered. The information provided in this section will assist in determining the correct CSED, which can impact the number of required payments in periodic payment situations and in the determination of future income value.
- (2) For OIC's pending prior to 1/1/2000, the taxpayer executed a waiver of the statutory period for collection, extending the collection statute for the period the OIC was under consideration and for an additional one year. For OIC's accepted prior to 1/1/2000 this waiver of the statutory period for collection also included the period of time the terms of an accepted OIC were still in effect.

Note: RRA 98 imposed a limitation for OIC's subject to a waiver of collection statute. The waiver cannot extend the CSED beyond either 12/31/2002, or the original CSED, whichever is later.

- (3) For OIC's submitted or pending after 12/31/1999, the statutory period for collection was suspended, by operation of law, while the OIC was pending, for 30 calendar days following rejection of an OIC, and for the period the rejection was being considered in Appeals. This suspension of the collection statute is effective through 12/20/2000.
- (4) For OIC's that were pending prior to 1/1/2000 and were still pending on or after 1/1/2000, the collection statute is extended by both waiver periods and by the suspension period (See paragraphs 2 and 3 above).

Note: The limitation on the waiver of collection statute applies to these OIC periods.

- (5) The Community Renewal Tax Relief Act of 2000 was signed into law on 12/21/2000. This act eliminated the suspension of the statutory period for collection, effective on the day of enactment (12/21/2000).

- (6) The Job Creation and Workers Assistance Act was signed into law March 9, 2002. This law reinstated the suspension of the statutory period for collection, by operation of law, while the OIC is pending, for 30 calendar days following rejection of an OIC, and for the period the rejection is being considered in Appeals.
- (7) Cases may be encountered where prior rules were in effect. The following chart shows the changes that have occurred in this area.

If the offer has a...	and was...	then...
Pending date of 1/1/2000 or later	Accepted prior to 12/21/2000	The CSED is extended from the pending date (TC 480) until the acceptance date (TC 781/788).
Pending date of 1/1/2000 or later	Accepted between 12/21/2000 and 3/8/2002	The CSED is only extended from the pending date (TC 480) through 12/20/2000.
Pending date of 1/1/2000 or later	Accepted after 3/8/2002	The CSED is extended from the pending date (TC 480) through 12/20/2000 and if the offer was still pending, it was also extended from 3/9/02 until the date of acceptance (TC 780).
Pending date of 1/1/2000 or later	Rejected and taxpayer does not appeal	<p>The CSED is extended from the pending date (TC 480) until 30 calendar days after the rejection letter is issued (TC 481), excluding any portion of that period which falls between 12/21/2000 and 3/8/2002.</p> <p>Note: As of 2/2/2004, the AOIC system automatically adds 30 days to the date of the TC 481 on rejected not Appealed offer closures prior to transmission to master file. Appealed rejections carry the Appeals rejection date.</p>

If the offer has a...	and was...	then...
Pending date of 1/1/2000 or later	Rejected and sustained in Appeals	The CSED is extended from the pending date (TC 480) until the date that Appeals issues a decision letter (TC 481), excluding any portion of that period which falls between 12/21/2000 and 3/8/2002.
Pending date prior to 1/1/2000	Accepted prior to 1/1/2000	The CSED is extended from the pending date (TC 480) until all payment installments are made (TC 780) plus 1 year. The CSED cannot be extended beyond 12/31/2002 or the original CSED date, whichever is later.
Pending date prior to 1/1/2000	Accepted after 12/31/1999 but prior to 12/21/2000	The CSED is extended from the pending date (TC 480) through 12/31/99 plus 1 year. The CSED cannot be extended beyond 12/31/2002 or the original CSED date, whichever is later. If the offer was still pending on 1/1/2000, the CSED would also be extended from that date until the date of acceptance (TC 780).

If the offer has a...	and was...	then...
Pending date prior to 1/1/2000	Accepted after 12/20/2000	The CSED is extended from the pending date (TC 480) through 12/31/99 plus 1 year. The CSED cannot be extended beyond 12/31/2002 or the original CSED date, whichever is later. In addition, the CSED is extended from 1/1/2000 through 12/20/2000. However, the CSED would not be extended from 12/21/2000 until 3/8/2002. If the offer was still pending on 3/9/2002 the CSED would also be extended from that date until it was accepted (TC 780).
Pending date prior to 1/1/2000	Rejected prior to 1/1/2000	The CSED is extended from the pending date (TC 480) until the rejection date (TC 481) plus 1 year. The CSED cannot be extended beyond 12/31/2002 or the original CSED date, whichever is later.

If the offer has a...	and was...	then...
Pending date prior to 1/1/2000	Rejected 1/1/2000 or later	The CSED is extended from the pending date (TC 480) until 12/31/1999 plus one year. If the CSED was originally going to expire after 12/31/2002, then the waiver language contained on the submitted Form 656 has no effect. Rather, in this instance, the CSED is extended from 1/1/2000 until 12/20/2000 or the rejection date (TC 481) plus 30 calendar days, whichever is earlier. If the offer is still pending, the CSED is again extended from 3/9/2002 until the rejection date (TC 481) plus 30 calendar days.

- (8) If only one party to a joint assessment files an OIC, then the statute is suspended just for that person. The appropriate CSED suspension code must be input on IDRS to identify the specific taxpayer for which the offer applies. They are described below.

- P = Primary
- S = Secondary
- B = Both

5.8.10.8 (02-14-2017)

Effect of Previous Offers on Assessment Statute Expiration Date

- (1) A taxpayer submitting an offer in compromise agrees to the extension of the statute of limitations for assessment. The extension allows the Service the opportunity to evaluate the terms of an offer without the assessment statute expiring in the meantime.
- (2) An offer is considered pending or "being reviewed" when an authorized Service official signs the Form 656 up until the date a determination is made. The TC 480 date is the date the offer was signed by an authorized Service official and is therefore the date the pending period begins.
- (3) For an offer that has been accepted, the assessment statute is extended for the time the offer is pending up until the date the Service acknowledges acceptance of the offer in writing.
- (4) For an offer that has been rejected, returned (processable), terminated or withdrawn, the amount of any federal tax due for a tax period included on the offer may be assessed on the date by which any debt must currently be assessed plus the period of time the offer is pending plus one year.

Note: The appropriate calculation of the assessment statute is dependent on which revision of Form 656 the offer was submitted. Refer to the table in paragraph (6) of this section which discusses the impact the submission of an offer has on the assessment statute expiration date based on the form submitted and the manner in which the offer was closed.

- (5) The filing of an offer in compromise does not extend the assessment statute for the purpose of assessing the trust fund recovery penalty against anyone other than the taxpayer filing the offer.
- (6) The following charts illustrate the period of time the assessment statute is extended as determined by the revision date of the Offer in Compromise Form 656:

***ASED extension when offer submitted on Form 656
(Rev. March 2011) or later***

If ...	Then ...
TC 480 posted after expiration of the assessment statute expiration date (ASED).	OIC does not have any impact on calculation of the period of time for assessment which has otherwise expired.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 481 rejection or return of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 481, plus one additional year.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 482 withdrawal of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 482, plus one additional year.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 483.	ASED is not extended since the TC 483 is a reversing transaction to indicate the TC 480 was posted erroneously or returned to the taxpayer as non-processable.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 780 (acceptance).	ASED is extended from date of TC 480 to date of TC 780.

Example: An offer accepted for processing (TC 480 date) on April 1, 2011 is rejected (TC 481 date) on July 1, 2011. Prior to submission of the offer the earliest ASED was May 10, 2011. The ASED is extended for 91 days while the offer was pending, plus an additional year (365 days) for a total of 456 days which is added to the ASED of each tax period listed on the offer. The new ASED on the earliest period is August 8, 2012.

**ASED extension when offer submitted on Form 656 Revision Dates
May 2001 - March 2009**

If ...	Then ...
TC 480 posted after expiration of the assessment statute expiration date (ASED).	OIC does not have any impact on calculation of the period of time for assessment which has otherwise expired.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 481 rejection of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 481. The ASED will expire no sooner than one year after rejection of the taxpayer's offer.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 482 or a TC 481 based on a processable return of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 481/482.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 483.	ASED is not extended since the TC 483 is a reversing transaction to indicate the TC 480 was posted erroneously or returned to the taxpayer as non-processable.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 780 (acceptance).	ASED is extended from date of TC 480 to date of TC 780.

EXAMPLE (1): An offer accepted for processing (TC 480 date) on March 1, 2009 is rejected (TC 481 date) on September 1, 2009. Prior to submission of the offer the earliest ASED was March 10, 2010. Since the ASED is suspended for 184 days while the offer was pending, an additional 184 days is added to the ASED of each tax period listed on the offer. The new ASED on the earliest period is September 10, 2010.

EXAMPLE (2): The same TC 480 and 481 dates as the previous example, yet the earliest ASED prior to the offer submission was February 1, 2010. Since the additional 184 days would only extend the ASED to August 4, 2010, additional time is added to extend the ASED the one year period provided for on the Form 656, the new ASED is September 1, 2010.

EXAMPLE (3): The taxpayer in example 2, then submits a new offer which has a TC 480 date of August 1, 2010, which is rejected with a TC 481 date of November 10, 2010. The ASED would be suspended for 101 days, yet since the 101 days would only extend the ASED to December 11, 2010 additional time is added to extend the ASED the one year period provided for on the Form 656, the new ASED would be November 10, 2011.

Note: In Example 3, the extension of the ASED does not include one additional year for each offer submitted, yet if the offer was submitted on Form 656 with a revision date May 2001 through March 2009, inclusive, the Service is provided at least one year from the date the offer is closed to assess additional tax on any tax period included in the offer.

5.8.10.9

(02-14-2017)

Indicators of Potential Practitioner Misconduct

- (1) During the verification of financial statements relating to the OIC, employees should always be aware of any indications that a practitioner violated the duties and restrictions relating to practice before the IRS as described in Treasury Department Circular No. 230 (Circular 230) "Regulations Governing Practice before the Internal Revenue Service" (Revised 6/2014). Pertinent Sections of Circular 230 may include, but are not limited to, Sections 10.20, 10.21, 10.22, 10.23, 10.24 and 10.30. Incompetence and disreputable conduct is described in Section 10.51. Some examples of those indicators are:
 - a. Failure to exercise due diligence. This may be conduct where the practitioner ignored certain known facts or failed to make reasonable inquiries to ascertain the reasonableness or correctness of certain oral or written representations made by his/her client. A practitioner has a duty to make reasonable inquiries to determine the correctness of documentation they prepare or assist in the preparation thereof relating to a submission to the IRS.
 - b. Deceptive advertising with respect to offers (such as unqualified promises of settlement, or "pennies on the dollar").
 - (2) Section 822 of the American Jobs Creation Act of 2004 expanded the sanctions OPR may impose on practitioners to include the imposition of a monetary penalty. If the practitioner is acting on behalf of an employer or other entity, the Office of Professional Responsibility (OPR) may impose a monetary penalty on the employer, firm or other entity, in addition to the practitioner, if it knew, or reasonably should have known, of the conduct.
 - (3) A referral should also be made if the employee becomes aware that a suspended or disbarred practitioner is practicing or attempting to practice before the IRS, or when it is noted that an unenrolled preparer is attempting to represent the taxpayer before the IRS during the course of the offer investigation.
- Note:** The referral process is required by Section § 10.53(a) and 10.53(b) of Circular No. 230.
- (4) Employees should also report suspected violations of 18, U.S.C. § 207, Post Employment Conflicts of Interest (Circular No. 230, Section 10.25), to TIGTA or OPR. Questions regarding post employment conflicts should be directed to the Associate Chief Counsel (GLS).

5.8.10.9.1

(02-14-2017)

The Role of the Office of Professional Responsibility

- (1) Under the authority provided by 31 U.S.C. § 330 and 31 CFR § 10, which is published as Treasury Department Circular No. 230, *Regulations Governing Practice before the Internal Revenue Service* (Revised 6/2014), OPR renders decisions on applications for enrollment to practice, makes inquiries into matters under its jurisdiction, and institutes disciplinary proceedings against tax practitioners who are found to have violated any part of Circular No. 230.

5.8.10.9.2

(02-14-2017)

Examples of Tax Practitioner Misconduct in the Offer in Compromise Program

- (1) A pattern of inappropriate conduct is a factor that the OPR will consider in determining whether sufficient evidence exists to suggest a willful violation of Circular 230.
- (2) Below are some indicators of misconduct by practitioners.

- a. Example #1 — Establishing a pattern on several Offer in Compromise investigations to influence the case disposition or Service employee to obtain the desired results by:

- Using abusive language
- Threatening claims of misconduct (e.g., Section 1203 of the RRA)
- Making false claims of misconduct
- Threatening employee with personal legal action/litigation
- Verbal/Physical threats or assaults
- Offering a bribe (e.g., offering gifts or other things of value)

Note: Verbal and/or physical threats/assaults should be referred directly to the local TIGTA office or by calling the TIGTA National Hotline at 1-800-366-4484 or 1-800-589-3718 after hours.

- b. Example # 2 — Establishing a pattern on several OIC cases in which investigations are delayed by the practitioner performing one or several of the following actions:

- Missing appointments
- Canceling appointments at the last moment with no good cause provided
- Agreeing to provide requested documentation and/or information and then refusing to follow through, hindering the ability of the employee to complete the investigation of the offer
- Providing partial information requiring repeated call backs/ correspondence and delays.

Note: IRM 1.25.1.3, *Referral to the Office of Professional Responsibility*, provides that a referral must clearly document all case actions leading to the request for information/documents/substantiation, and the practitioner's failure to comply. In instances of unreasonable delay on the part of a practitioner, bypass procedures should first be initiated prior to a referral to OPR. This set of facts may also support a referral under Section 10.22 (Diligence as to accuracy) and Section 10.23 (Prompt disposition of pending matters) of Circular 230. In the event that a practitioner refused to provide documentation on grounds of privilege, the Office of Chief Counsel should be consulted.

- c. Example #3 — Establishing a pattern on several offer submissions, which could include significant omissions, or improper or unsubstantiated discounts on a number of assets. The information provided must be shown to be materially misrepresented, not merely a simple error. The omissions or material misrepresentations could include, but are not limited to, the following:

- Assets are omitted
- Listed assets are undervalued
- Understating the taxpayer's income
- Over stating the taxpayer's expenses
- CIS reflects a large number of claimed dependents
- CIS reflects similar dollar amounts in both checking and savings accounts
- CIS reflects no available credit, including credit cards
- CIS reflects omissions of assets
- CIS shows similar listings for monthly income and expenses (e.g. same low wages, same child care expenses)

- (3) The badges of practitioner misconduct may also be indicators of potential fraud. (Refer to IRM 5.8.10.10.) The inappropriate misconduct should be discussed with your Fraud Technical Advisor (FTA) if appropriate. If a decision is made to refer the practitioner to TIGTA and/or the Fraud program for potential criminal sanctions, these actions must be clearly documented in the OPR referral.

5.8.10.9.3
(12-05-2019)
**Referring Tax
Practitioner Misconduct
to the Office of
Professional
Responsibility**

- (1) Employees should be alert to the patterns and/or trends of inappropriate conduct as discussed in IRM 5.8.10.9, *Examples of Tax Practitioner Misconduct in the Offer in Compromise Program*. When patterns and/or trends are identified through OIC's submitted by a tax practitioner, or when reported to an employee by any other person other than an officer or employee of the Service, the employee should complete and submit Form 8484, *Suspected Practitioner Misconduct Report for the Office of Professional Responsibility*, to the OPR, and refer the suspected practitioner misconduct for appropriate disciplinary action.
- (2) Circular No. 230, Section 10.53 states a referral should include all of the basic information, as well as the reasons supporting the Service employee's belief that the information submitted by the practitioner was below the expected standard. The referral should contain the following specific information: the tax practitioner's name, address, telephone number, designation (i.e. attorney, certified public accountant, enrolled agent, enrolled actuary, etc.), a detailed description of the allegations, and any documents that support those allegations.
- (3) Mail, fax, or E-mail the Form 8484, the accompanying narrative, and any other supporting documents to:

IRS Office of Professional Responsibility
SE:OPR Room 7238
1111 Constitution Ave, NW
Washington, DC 20224
E-mail address: *OPR referrals

A copy of the referral should also be provided to the National Offer in Compromise Program Manager.

- (4) Additional information about reporting suspected practitioner misconduct may be found on the *OPR Intranet Website*. OPR has established an E-mail address (for internal use only) to answer questions about Circular No. 230 issues at *OPR questions@irs.gov.

5.8.10.9.4
(02-14-2017)
**Preparation of Form
8484, *Suspected
Practitioner Misconduct
Report for the Office of
Professional
Responsibility (OPR)***

(1) Part A – Practitioner Information

Practitioner information must include the practitioner's name, mailing address, telephone number, fax number, social security number, and CAF number. Indicate whether the practitioner is an attorney, certified public accountant, enrolled agent, enrolled actuary, or appraiser.

(2) Part B – Explanation of Suspected Misconduct

Complete and attach a narrative to the Form 8484. The narrative should be detailed enough to allow the OPR to give the practitioner fair notice of the suspected mis-

conduct. It should list all significant events that illustrate the inappropriate conduct in chronological order, explain how the conduct impacts on the administration of the tax laws, as well as any other supporting information that will establish a pattern of misconduct. It should include appropriate quotations from the case history that would support the alleged misconduct. If applicable, hand-written material should be transcribed. The narrative should be specific and should include: who, what, when, where, and why.

(3) Part C- Your Information

Complete with your name and mailing address and other applicable contact information. Also attach the name of other persons with knowledge of the suspected misconduct.

(4) Part D – Manager Approval

While OPR does not require any particular level of management approval, field Group Managers or Offer Examiner Unit Managers (COIC) should review and approve referrals made by OIC employees before documents are sent to OPR.

- (5) Upon receipt of Form 8484, OPR will provide you with written acknowledgment of the submission.

5.8.10.10
(02-14-2017)
**Indicators of Taxpayer
Fraud**

- (1) The following are potential fraud warning signs most identifiable during an interview:
- a. Failing to keep proper books and records in a business or profession.
 - b. No records, poorly kept records, or attempts to falsify or alter records.
 - c. Destroying books and records without plausible explanation or refusal to make certain records available.
 - d. Extent of taxpayer's control of sales and receipts and the apparent unwillingness to delegate this function to employees.
 - e. Engaging in illegal activities.
 - f. Personal living standard and asset acquisition is inconsistent with reported income.
 - g. Indications that valuable assets belonging to the taxpayer are being acquired and held in the name of others.
 - h. Self-serving statements with no documented proof.
 - i. Repeated procrastination on the part of the taxpayer in making and keeping appointments.
 - j. Hasty agreement to adjust and undue concern about immediate closing of the case may indicate a more thorough examination may be necessary.
- (2) The following are potential fraud warning signs most identifiable during verification of the financial statement:
- a. Uncooperative attitude, displayed by:
 - Not providing requested information
 - Refusal to make certain records available
 - Not furnishing adequate explanations for discrepancies or questionable items
 - b. Trying to conceal a pertinent fact or record.
 - c. Failing to deposit all receipts to the business account.
 - d. Use of nominees or false names.

- e. Unusual depletion of assets shortly before filing an offer.
 - f. Inflated salaries, payment of bonuses or cash withdrawals by officers, directors, shareholders, or other insiders.
 - g. Transfers of property to insiders, shareholders, or relatives shortly before filing the offer.
 - h. Payoff of loans to directors, officers, shareholders, relatives, or other insiders shortly before filing of the offer.
 - i. Complicated corporate structures and relationships.
 - j. Undervaluing of assets.
 - k. Overstatement of liabilities.
- (3) The fraud indicators below can fall into any of the categories in paragraphs (1) and (2) above:
- a. Making false, misleading, and inconsistent statements.
 - b. Using currency instead of bank accounts or making large expenditures in currency.
 - c. Concealment of bank accounts and other property.
- (4) If indications of fraud are identified, follow the procedures outlined in IRM 5.8.4.18, *Potential Fraud Referrals*.
- (5) Refer to IRM 5.8.4.19.1, *Open Criminal Investigations*, relative to the appropriate actions if the taxpayer is involved in an open criminal investigation.

5.8.10.11
(02-14-2017)

**Potentially Dangerous or
Caution Upon Contact
Taxpayer**

- (1) A review of IDRS Command Code **ENMOD** may show that a POA or taxpayer has been designated as either a PDT or a CAU.
- (2) A taxpayer or POA who meet these criteria should be approached with caution. See IRM 25.4.1, *Potentially Dangerous Taxpayer*, or IRM 25.4.2, *Caution Upon Contact Taxpayer*.

5.8.10.12
(02-14-2017)

**Docketed Tax Court
Cases**

- (1) Tax Court cases generally are handled by Area Counsel. The IRS has the authority to accept offers where the liability is the subject of a pending Tax Court Case. Unless the case is under Appeals jurisdiction, Doubt as to Collectibility (DATC) offers submitted while a Tax Court case is pending are under Collection jurisdiction. See IRM 5.8.1.3, *Functional Responsibilities*.
- (2) Any request from Area Counsel for a financial review from Collection in which settlement authority is being utilized outside the offer process should be provided to a Revenue Officer (RO) in Collection Field function and worked as an Other Investigation (OI). If a request is received by the offer group in error then forward to the appropriate RO group based on zip code and advise Counsel the request was forwarded to the Field RO group.
- (3) If some of the tax liabilities are under DOJ jurisdiction, then only those tax periods under IRS jurisdiction should be included on the Form 7249.
- (4) If DOJ retains jurisdiction on any tax periods then a collateral agreement should also be secured which discusses the fact that a default on the DOJ settlement will default the periods accepted on the IRS offer.
- (5) Coordination with DOJ is critical if an offer is being recommended for acceptance. A determination on the dollar amount that will be applied to the DOJ settlement and the IRS offer is necessary, so the taxpayer is aware of the ap-

plication of payments. If any tax periods are under DOJ jurisdiction the offer cannot be accepted without DOJ coordination.

- (6) If all periods are under IRS jurisdiction then all periods should be included on Form 656 and Form 7249. The Form 7249, Form 656 and the offer file should be provided to the Counsel attorney handling the litigation for certification that all of the legal requirements for compromise have been met.
- (7) Occasionally an OIC is purportedly accepted while a period is under the settlement jurisdiction of the DOJ. In these cases, although the OIC was processed as an acceptance, the IRS never actually accepted the OIC because it lacked the legal authority to do so. See IRM 5.8.1.3.1, *Tax Cases Controlled by Department of Justice*, for additional information. If an offer is accepted in error refer to IRM 5.8.9.3 regarding the appropriate actions to take.

Note: A rescission of the offer is not appropriate, as the IRS never had the authority to accept the taxpayer's offer.

5.8.10.12.1
(12-05-2019)
**Docketed Cases
Involving Pending
Liabilities**

- (1) These procedures provide guidance in situations where the taxpayer's liability has not been determined.
- (2) Responsibility of Counsel:
 - a. Regardless of whether the written OIC is complete, immediately send it and any attachments or payments to the appropriate COIC site with the "Expedited Processing Required" transmittal (Exhibit 5.8.10-1) for a processability determination. The correct COIC site is based on the location (state) of the taxpayer and can be found at *SERP Who/Where Offer-In-Compromise Centralized Service Locations*. Counsel will overnight it to the appropriate COIC site to ensure the 24 hour period for deposit is met.
 - b. A stipulation of the full amount of the deficiencies and penalties (those determined in the statutory notice or those redetermined on the merits by agreement of the parties) should be obtained and may be held in escrow by Counsel, see CCDM 35.8.6.2.1. Additionally, a signed Form 3040, *Authorization to Apply Offer in Compromise Deposit to Liability*, should be secured, and the taxpayer should be advised, if the offer is not accepted the TIPRA payment is non-refundable and will be applied to any current outstanding liability or liability determined in the court proceedings.
 - c. Counsel will advise the Offer Specialist of any new developments on the case that may impact the investigation and/or the overall decision.
- (3) Responsibilities of COIC:
 - a. Review for processability criteria.
 - b. If the offer is not processable, contact the Counsel Attorney and explain why the offer cannot be processed.

Note: If the offer is a pending liability case, the modules should be added to AOIC showing 0.00 liability.
 - c. If the offer is processable, follow current IRM procedures, including loading the offer on AOIC. Treat the offer as being received on the date that Counsel received it.
 - d. If the offer is a pending liability case, the TIPRA payment and application fee (if applicable) should be posted as a deposit.

- e. Immediately forward the case (including the "Expedite" transmittal) to the appropriate drop point.
 - f. Document the AOIC history.
 - g. The type of pending Tax Court Case determines whether the OIC is subject to the 24 month, "deemed accepted" rule of IRC §7122(f). If the proceeding is a deficiency case, the 24 month rule does not apply because the liability is in dispute.
- (4) Responsibility of the Field Group:
- a. Upon receipt of the offer in the appropriate Drop Point, assign the case within 5 days of receipt.
 - b. Upon assignment, the Offer Specialist (OS) should contact the Attorney indicated on the transmittal and provide their name and contact phone number.
 - c. The OS should complete the investigation within Counsel's (the Court's) required time frame or contact the attorney to discuss any anticipated delays.
 - d. If the investigation results in a decision to recommend acceptance of the offer, discuss the findings with the Counsel Attorney before communicating the decision to the taxpayer or their representative.
 - e. If the investigation indicates that the case could be an acceptance, but would require an increase in the offer amount, the OS should issue the preliminary acceptance letter requesting the increased amount. If the TP agrees to the increased amount, contact the Counsel Attorney prior to issuing the acceptance letter. If the TP does not agree to the increased offer amount, contact the Counsel Attorney to discuss the next appropriate action.
 - f. If the decision is other than acceptance, discuss with the Counsel Attorney the issuance of an appropriate final determination letter.
 - g. If it is determined, with Counsel concurrence, a rejection letter as discussed in 26 CFR 301.7122-1 (f), should be provided, IRM procedures requiring review by the IAR in accordance with IRC §7122 (e) will be followed.

Note: In regards to pending liabilities in docketed cases, all taxes must be assessed at the time of the acceptance.

5.8.10.12.2
(02-14-2017)
**Docketed Collection Due
Process (CDP) Cases**

- (1) These procedures provide guidance in situations where Area Counsel requests consideration of an offer by employees of an OIC function on an offer which was submitted during a docketed CDP case.
- (2) Responsibility of Counsel:
- a. Regardless of whether the written OIC is complete, immediately send it and any attachments or payments to the appropriate COIC site with the "Expedited Processing Required" transmittal (Exhibit 5.8.10-1) for a processability determination. The correct COIC site is based on the location (state) of the taxpayer and can be found at *SERP Who/Where Offer-In-Compromise Centralized Service Locations*. Counsel will overnight it to the appropriate COIC site to ensure the 24-hour period for deposit is met.
 - b. Counsel will advise the Offer Specialist of any new developments on the case that may impact the investigation and/or the overall decision.

(3) Responsibilities of COIC:

- a. Review for processability criteria.
- b. If the offer is not processable, contact the Counsel Attorney and explain why the offer cannot be processed.
- c. If the offer is processable, follow current IRM procedures, including loading the offer on AOIC. Treat the offer as being received on the date that Counsel received it.
- d. The TIPRA payment and application fee (if applicable) should be posted to the taxpayers' account.
- e. Immediately forward the case (including the "Expedite" transmittal) to the appropriate drop point.
- f. Document the AOIC history.
- g. If the taxpayer raises any tax liability in a CDP case in Tax Court, the 24 month rule applies, but the 24 month period is suspended for the period in which the tax liability is disputed in court.

Note: If the liability is not in dispute, the 24 month TIPRA statute is not suspended, unless a determination letter has been issued by Appeals or an offer decision letter has been issued by Collection.

(4) Responsibility of the Field Group:

- a. Upon receipt of the offer in the appropriate Drop Point, assign the case within 5 days of receipt.
- b. Upon assignment, the Offer Specialist (OS) should contact the Attorney indicated on the transmittal and provide their name and contact phone number.
- c. The OS should complete the investigation within Counsel's (the Court's) required time frame or contact the attorney to discuss any anticipated delays.
- d. If the investigation results in a decision to recommend acceptance of the offer, discuss the findings with the Counsel Attorney before communicating the decision to the taxpayer or their representative.
- e. If the investigation indicates that the case could be an acceptance, but would require an increase in the offer amount, the OS should contact the Counsel Attorney to discuss the potentially acceptable amount and next appropriate action.
- f. If the TP agrees to the amount deemed acceptable, discuss with the Counsel Attorney the timing of the offer acceptance letter in relation to the court proceedings.
- g. If the TP does not agree to the increased offer amount, the offer should be closed as a processable return based on the current litigation.
- h. Although the 24 month TIPRA rule applies if the taxpayer disputes any tax liability in a docketed CDP case, the 24 month period is suspended for the period in which the tax liability is disputed in court.

Note: If the liability is not in dispute, the 24 month TIPRA statute is not suspended, unless a determination letter has been issued by Appeals or an offer decision letter has been issued by Collection.

5.8.10.13
(02-14-2017)
**Offer in Compromise
Submission with
Frivolous, Delaying, or
Impeding Issues**

- (1) A taxpayer may submit an offer in compromise (OIC) which provides a frivolous or groundless position as the reason the OIC should be accepted. In these instances, the OIC should be returned under delay of collection criteria in accordance with IRM 5.8.4.20, *Offer Submitted Solely to Delay Collection*, or may be treated as though the offer was never submitted in accordance with IRC 7122(f)[g].

Note: If the submission involves a practitioner refer to IRM 5.8.10.9 relative to potential practitioner misconduct.

- (2) A determination to treat the OIC as though it was never submitted should be based on the specific facts of the case.

Note: The collection statute expiration date will not be suspended and any application fee and offer payment will be required to be returned if the offer is treated as though it was never submitted.

- (3) The taxpayer's basis for submitting the offer is deemed frivolous if it includes a tax argument discussed in Internal Revenue Service Notice 2010-33 which lists specific tax arguments determined to be frivolous, including but not limited to, federal income taxes are unconstitutional, enforcement of the tax laws invades a taxpayer's privacy under the Fourth Amendment, or the Fifth Amendment privilege against self-incrimination grants taxpayers the right not to file returns or the right to withhold all financial information from the Service.
- (4) If the taxpayer includes any of the positions listed in Notice 2010-33 as the reason an offer in compromise should be accepted, then the assertion of a penalty for a frivolous submission under IRC 6702(b) may be appropriate. IRC 6702(b) provides for a penalty in situations when there is a frivolous offer submission or an offer submission in which the taxpayer has demonstrated a desire to delay or impede the administration of federal tax laws.
- (5) The recommendation to assert the penalty under IRC 6702(b) must be based on the facts and circumstances of the particular case. In egregious situations where the assertion of the penalty is deemed appropriate, prior to returning the offer under solely to delay criteria in accordance with IRM 5.8.4.20, *Offers Submitted Solely to Delay Collection*, or determining the offer will be treated as never being submitted, refer to IRM 5.8.10.13.1, *Request for Penalty Assertion under IRC 6702(b)*, relative to the actions necessary to assert a penalty under IRC 6702(b).

Note: Although these types of submissions will most generally be under Doubt as to Liability (DATL) and processed by the DATL unit, in rare instances an offer submitted under Doubt as to Collectibility or Effective Tax Administration or which include a trust fund recovery penalty assessment may include a frivolous argument.

5.8.10.13.1
(02-14-2017)
**Request for Penalty
Assertion under IRC
6702(b)**

- (1) If the taxpayer files an offer in compromise (OIC) that states the OIC should be accepted based on a frivolous position or reflects a desire to delay or impede the administration of federal tax laws and it is determined assertion of the penalty under IRC section 6702(b) is applicable; the taxpayer should be given 30 days to withdraw or amend their OIC prior to the assertion of the penalty.

- (2) The opportunity to withdraw or amend the offer should be in writing and included in correspondence that advises the taxpayer that actions to avoid the \$5,000 IRC 6702(b) penalty are either to withdraw the offer or amend the offer so it only includes a valid reason for acceptance based on existing law.
- (3) If the taxpayer fails to withdraw the offer, then review the documentation to verify that the offer includes either a frivolous position or a desire to delay position.
- (4) Once the criteria for penalty assessment have been verified, the collection employee will take the necessary steps to have the penalty assessed by preparing a Form 3210, *Document Transmittal*, addressed to Ogden Compliance Services, Attn: FRP, M/S 4450, Sr. Technical Advisor, 1973 N. Rulon

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The following information should be listed on the Form 3210:

- TIN and Name Control
- MFT 55 for IMF or MFT 13 for BMF and Period (if multiple periods, use the latest period on the hearing request)
- Penalty Reference Code 543 which is used for IRC section 6702(b) penalties

The following documents should be attached to the Form 3210:

- The original Form 656 and related attachments discussing the basis for the offer submission.
 - A copy of the letter or letters issued soliciting a withdrawal of the taxpayer's "specified frivolous position" or desire-to-delay position.
 - A copy of any written communication received from the taxpayer in response to the withdrawal solicitation.
- (5) The group manager will document approval of the penalty assessment by writing "Determination to assess penalty pursuant to IRC 6702(b) approved" on the Form 3210 and sign the Form 3210. The request for penalty assessment

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Program at the Ogden Compliance Services Campus will review the documents and process the request for penalty assessment. Follow-up with Ogden if they do not acknowledge receipt of the Form 3210 within 15 days.

5.8.10.14
(09-27-2011)

**Taxpayer Files both
Doubt as to Liability and
Doubt as to Collectibility
Offers**

- (1) When a taxpayer files Form 656-L, *Doubt as to Liability (DATL)*, and Form 656, *Doubt as to Collectibility (DATC)*, at the same time, consideration of both offers will not occur simultaneously.
- (2) In most instances the appropriate action will be the return of the DATC offer, so the DATL offer investigation can be completed prior to consideration of any DATC issues. When a DATL and DATC offer are submitted simultaneously, the taxpayer should be contacted (preferably by telephone) and advised both offers cannot be considered at the same time and provide the taxpayer the opportunity to decide which offer they wish to be investigated. The offer not being considered will be returned. In simultaneous submission situations, if an application fee and TIPRA payment was submitted with the DATC offer, they will be refunded, if the DATC offer is returned.

- (3) If a DATL or DATC offer is submitted while another offer under a different basis is being investigated; the OE/OS must initiate contact with the taxpayer and discuss which option the taxpayer would like to pursue. If the taxpayer cannot be contacted or is unwilling to submit a withdrawal, the offer not currently under consideration will be returned. For example, if a DATC offer is under investigation, then a DATL offer is submitted, if the taxpayer determines they wish to continue the DATC offer, return the DATL offer. The taxpayer should also be advised, if the DATC offer was the initial offer being investigated and is being withdrawn or returned, any application fee or TIPRA payment will not be refunded.

Note: A taxpayer may submit an additional Form 656 requesting consideration under effective tax administration (ETA) while a Form 656 DATC offer is under consideration. The additional Form 656 should be considered an amended offer and any ETA issues presented should be considered.

Note: If a taxpayer submits a Form 656 requesting consideration under ETA while a DATL offer is under consideration, the offer should be returned as discussed in paragraph (3) above.

- (4) If a DATC offer is being returned based on a simultaneous submission, the offer should be closed as a non-processable return and any application fee or TIPRA payment should be refunded. A DATC offer returned due to being submitted subsequent to a DATL offer, should also be closed as a non-processable return with any application fee or TIPRA payment refunded. An offer returned under the provisions of paragraph (3) when the DATC was the original offer being investigated should be closed as a processable return, which does not allow for the refund of the application fee or TIPRA payment. AOIC histories should be documented appropriately.

5.8.10.15
(02-14-2017)
**Offers Submitted on
Offshore Voluntary
Disclosure Initiative**

- (1) An offer may be submitted by a taxpayer who was assessed under the Offshore Voluntary Disclosure Initiative (OVDI)/ Offshore Voluntary Disclosure Penalty (OVDP). These may be identified from the Penalty Reference Number (PRN) for the Miscellaneous Offshore Penalty ("MOP") associated with the MFT 55 TC 240. The OVDI/OVDP PRNs are: 594, 595, 596, 597, 598 and 709.
- (2) OVDI OICs will be worked by a designated group on a priority basis, but will be subject to routine IRM OIC procedures.
- (3) Due to the emphasis and importance of the voluntary disclosure aspect of these cases, if OIC processing reveals that the taxpayer has not fully disclosed pertinent financial information and/or fails to provide requested verification of income sources or assets, the OIC will be closed as a return to the taxpayer and the case file will be returned to the originating ATAT group.
- (4) Typically, taxpayers who have OVDI assessments have waived appeal rights in all collection matters, including offers in compromise, by executing Form 906, *Closing Agreement on Final Determination Covering Specific Matters*.

Note: The Form 906 language must be reviewed to determine if appeal rights were waived. Additionally, the taxpayer may have appeal rights for tax periods not included in the OVDI.

- (5) Offshore Voluntary Disclosure Initiative OICs recommended for rejection will not be afforded routine appeal rights, as specified in the IRM.
 - a. Contact the ATAT RO to see if the appeal rights were waived based on Form 906. If the taxpayer did waive appeal rights then the rejection letter in AOIC transmittals will be used in lieu of an AOIC rejection letter to notify the taxpayer that the offer has been rejected without appeal rights.
 - b. Close the offer on AOIC as "rejected, did not exercise appeal rights."

Note: Until AOIC programming changes are completed input the proposed disposition on AOIC and contact the IAR for concurrence of the closing actions.

- c. Contact OIC Collection Policy on the date the case is closed on AOIC and request that the TC 481 be deleted and manually input with a TC 481 date of the rejection letter.
- (6) OICs that are determined to be acceptable must be reviewed by Counsel and routed through appropriate management officials to the National OIC Program Manager who will provide to the Director, Collection Policy for submission to the Director of Collection for approval. Routing of the offer information may be via electronic means if practical.
- (7) Occasionally, a request will be received to determine the appropriateness of an OIC prior to the taxpayer agreeing to the OVDI assessment. In these instances, most of the financial analysis should already be completed by the ATAT Revenue Officer and the review is to determine the sufficiency of the offer in accordance with guidance in IRM 5.8. In these instances, a recommendation regarding whether the offer amount is acceptable should be provided to the ATAT RO after concurrence of the manager and the appropriate approving official.

5.8.10.16
(02-14-2017)

**Assessments Related to
Employee Benefit Plans
- MFT 74 and 76**

- (1) This section relates to offers in compromise situations in which the taxpayer has included an MFT 74 and/or MFT 76 module on the offer.
- (2) MFT 74 is penalty for late filing of Form 5500, *Annual Return/Report of Employee Benefit Plan*. MFT 76 is excise tax based on noncompliance with various statutes relating to employee benefit plans. The largest assessments usually relate to inadequate funding of employee pension plans. A tax of up to 10% [§IRC 4971(a)] of the underfunded amount may apply each year. A tax of 100% (IRC§4971(b)) can be imposed in certain cases. The tax may be self-reported on Form 5330, or identified by IRS in an Examination proceeding.

5.8.10.16.1
(02-14-2017)

**Identification of MFT 74
and MFT 76 Modules**

- (1) Currently, due to programming limitations, the systemic input of certain transaction codes to a MFT 74/76 module is not possible due to the 3 digit plan identifier associated with these assessments. Automated systems do not recognize the identifier number.
- (2) Notices are sent when the tax is assessed and every time interest is updated, but the cases do not move beyond status 21, and are therefore not delivered for a collection determination. In some cases, the assessment is reflected on IDRS with no status.
- (3) Research of these modules requires a specific format which include:

Command Code	Format	Notes
INOLEP	INOLEPxx- xxxxxxx	Lists the employee benefit plans and their 3 digit identifiers
BMFOLT	BMFOLTxx- xxxxxxx 74201212001	
TXMODA	TXMODAxx- xxxxxxx_ 74 001 201212	
MFREQ	MFREQCxx- xxxxxxx 76 201010 NAME 001	If TXMOD is needed for CFOL only period

5.8.10.16.2
(02-14-2017)
**Processing of MFT 74
and MFT 76 Modules**

- (1) The MFT 74/76 modules should be input onto the AOIC MFT screen. The uploaded transactions will appear on the error listing. Manually request TC 480. Include the 3-digit plan identifier. In AOIC Remarks, indicate the closing TC 48X will also require manual input.

Note: The status code of the modules will not update to 71. Additional instructions are in IRM 5.8.2.7.

- (2) Transfer the case on AOIC to the dedicated OIC group. Additional instructions are in IRM 5.8.3.4.

5.8.10.16.3
(02-14-2017)
**Field Actions Relating to
MFT 74 and MFT 76
Modules**

- (1) Once assigned to the dedicated group in Territory 1, the Offer Specialist should take the following action:
 - a. Refer to IRM 5.8.10.16 for background and IRM 5.8.10.1 regarding how to research these assessments.
 - b. Determine the current status of the taxpayer's employee benefit plan(s). Has the plan been terminated? If the taxpayer still owns the plan, they remain responsible for maintaining required funding levels, and are liable for additional excise tax each year.

Note: Ensure the taxpayer is aware that under the Form 656 provisions they agree to timely file tax returns and pay taxes for a five year compliance period. Accrual of any additional liability will result in the default of the offer in compromise requirements and reinstatement of the compromised liability.

- c. Inquire if the taxpayer has applied for or obtained a distress termination with the Pension Benefit Guaranty Corporation (PBGC). PBGC may have conducted a financial investigation similar to OIC. You may be able to obtain the results of their investigation to assist with your analysis.

5.8.10.16.4
(02-14-2017)

**Procedures Relating to
MFT 74 and MFT 76
Modules - Notice of
Federal Tax Lien (NFTL)**

- (1) When a NFTL is filed on a MFT 74/76 assessment, the NFTL indicator (TC 582) does not always post to IDRS. In every case, ALS and IDRS must be re-searched to verify if a NFTL was filed and is properly identified.

Caution: TC 582s are required to ensure systemic release of NFTLs.

- (2) If an NFTL has been filed and is not reflected on IDRS, prepare Form 4844 to request input of the TC 582 to each module present on the NFTL with the date the NFTL was recorded.
- (3) Forward the request to CCP.
- (4) Calendar a follow up to verify input before closing the CIP.
- (5) If you determine a NFTL is required, follow the instructions below when preparing Form 12636.

Form 12636 Instructions for MFT 74 and MFT 76

Form 5500/ MFT 74 Assessments	Form 5330/ MFT 76 Assessments
<p>a. In the Item 8, Tax Form section, enter "5500."</p> <p>Note: At this time, ALS cannot process the plan numbers for MFT 74 assessments.</p> <p>b. In Items 8-12, enter only MFT 74 periods. Do not include any other types of assessments (e.g., 941, 1120, etc.).</p>	<p>a. In the Item 8, Tax Form section, do NOT enter "5330." Instead, enter the plan number associated with the assessment, preceded by an "E" (e.g., E001).</p> <p>Note: Using the plan number is necessary for proper systemic generation and posting transaction codes to IDRS. when printed through ALS, the NFTL will convert the plan number to show Form 5330.</p> <p>b. In Items 8-12, enter only MFT 76 periods. Do not include any other types of assessments (e.g., 941, 1120, etc.).</p>

- (6) Forward the Form 12636 via secure e-mail to the Centralized Lien Operation (CLO). In your e-mail, state that the NFTL is for an employee benefit plan.
- (7) TC 582 for MFT 76 modules should systemically post, but must be verified. TC 582 for MFT 74 will not systemically post and therefore Form 4844 must be prepared to request input of the TC 582 to each module present on the NFTL.

5.8.10.16.5
(02-14-2017)

**Procedures Relating to
MFT 74 and MFT 76
Modules - Case
Closures**

- (1) The following actions are required when closing an MFT 74 or 76 case:
 - a. In all cases ,update the AOIC Remarks: “***Special Processing Required - MFT 74-76 case***”
 - b. Document AOIC regarding any NFTLs that are outstanding.
 - c. If the taxpayer is a multi-employer pension plan, ensure the OCC code in AOIC is 32 (or 3210 if the offer was submitted by a multi-employer pension plan during a CDP hearing). If the taxpayer requests review of the offer on the basis of equitable special circumstances, the NEH-ETA OIC group will direct the use of the appropriate code.
 - d. Document AMS regarding case recommendation.
- (2) Closing actions are not uploaded by AOIC. Additional action may be required as indicated in the chart below.

Closure Type	Required Actions
Return	Submit Form 4844 to CCP to request TC 481 = date of return letter
Mandatory Withdrawal	Submit Form 4844 to CCP to request TC 482 = date of mandatory withdrawal letter
Voluntary Withdrawal	Submit Form 4844 to CCP to request TC 482 = date stipulated in IRM 5.8.7.4.3
Rejection no Appeal	Submit Form 4844 to CCP to request TC 481 = date of rejection letter + 30 days
Rejection with Appeal	See IRM 5.8.10.16.5.1
Acceptance	No other action required

5.8.10.16.5.1
(02-14-2017)

**Procedures Relating to
MFT 74 and MFT 76
Modules - Closing
Rejection with Appeal**

- (1) Before forwarding the case to Appeals, take the following actions:
 - a. Clearly mark the case file that a manual request for TC 481/2 must be input by Appeals if OIC is closed as other than acceptance.
 - b. In closing, the ICS history entry must contain the following language: ““Required closing actions are in IRM 5.8.10.16.5.”” Print the updated ICS history for the file.
 - c. Annotate Form 3210: “MFT 74/76 case.”

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Exhibit 5.8.10-1 (02-14-2017)**Docketed Tax Court Case Expedited Processing Transmittal**

EXPEDITE PROCESSING REQUIRED DOCKETED TAX COURT CASE	
<p>FOR COUNSEL USE ONLY</p> <p>Counsel Contact Information: Name: _____ Contact Number: _____ E-mail: _____</p> <p>Enclosures: _____</p> <p>Application fee (Amount: _____) TIPRA payment (Amount: _____) Deposit (Amount: _____)</p> <p>Form 656 Form 433-A, Collection Information Sheet Other information provided by taxpayer to support offer Stipulated Settlement Form 3040</p> <p>TAXPAYER NAME: _____ DATE OFFER RECEIVED BY COUNSEL: _____ DATE STATUS REPORT DUE TO COURT: _____</p> <p>Mail 656 package, payments and cover sheet to the appropriate centralized site NOTE TO OFFER SPECIALIST: Upon receipt of documents, notify the contact shown above.</p>	
MCOIC Stop 880 5333 Getwell Rd. Memphis, TN 38118	BCOIC 1040 Waverly Ave Stop 680 Holtsville, NY 11742

Exhibit 5.8.10-2 (09-27-2011)**Letter requesting taxpayer withdraw offer submitted which includes a frivolous position**

Taxpayer Name Address City ST. ZIP
Dear
<p>Your offer in compromise was received in this office and reviewed.</p> <p>It has been determined that your basis for compromise is either:</p> <ul style="list-style-type: none"> • a "specified frivolous position", identified by the IRS in Notice 2010-33 (for Notice 2010-33, refer to the IRS Internet website at: http://www.irs.gov/irb/2010-17_IRB/ar13.html or • a disagreement listing moral, religious, political, constitutional, conscientious, or similar grounds that reflects a desire to delay or impede the administration of federal tax laws. <p>An offer in compromise cannot be considered if it is based solely on a specified frivolous position, or the disagreement reflects a desire to delay or impede the administration of federal tax laws.</p> <p>You can amend your offer in compromise if you have any non-frivolous basis for compromise you wish to have considered. A non-frivolous basis can include:</p> <ul style="list-style-type: none"> • Doubt as to Collectibility - Doubt as to Collectibility exists in any case where the taxpayer's assets and income cannot satisfy the full amount of the liability. • Doubt as to liability - Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. • Effective Tax Administration – Effective Tax Administration is a situation where it is determined that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses. <p>If you do not have any non-frivolous basis for your offer in compromise and, therefore, do not intend to amend your compromise proposal you can, instead, withdraw your offer in compromise and avoid the \$5,000 penalty imposed under Internal Revenue Code section 6702(b) for submitting an Offer in Compromise based on a "specified frivolous position" or reflecting a desire to delay or impede the administration of federal tax laws. Attached is a withdrawal form which may be used for this purpose.</p> <p>Please either amend (on the enclosed Form 656) or withdraw your offer in compromise within 30 days from the date of this letter by providing a non-frivolous basis for compromise. If we do not hear from you or if you submit another issue that is frivolous, or reflects a desire to delay or impede the administration of federal tax laws, you will be assessed a penalty in accordance with Internal Revenue Code Sections 6702(b) and your offer will not be considered. If you submit an amended offer that provides a non-frivolous basis for consideration, your offer will be forwarded for investigation.</p> <p>Please contact (insert contact name phone number) with any questions or concerns you have regarding this letter.</p>
Sincerely,