



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.23.7

SEPTEMBER 27, 2022

EFFECTIVE DATE

(09-27-2022)

PURPOSE

- (1) IRM 8.23.7, Offer in Compromise, Doubt as to Liability, establishes the procedures for Appeals Technical Employees (ATE) to work these types of offers in compromise (OIC).

MATERIAL CHANGES

- (1) This IRM section is new and parts of it are discussed in other IRM 8.23 sections. Removed IRM 8.23.3.10, Consideration of Doubt as to Liability, to new IRM 8.23.7, Offer in Compromise, Doubt as to Liability. Renumbered subsequent subsections.

EFFECT ON OTHER DOCUMENTS

This IRM section supports other IRM 8.23 sections and those IRM 8.22 sections where OICs, Doubt as to Liability (DATL), are discussed.

AUDIENCE

Appeals Employees

Steven M. Martin,
Director, Case and Operations Support

8.23.7

Doubt as to Liability

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8.23.7.1
(09-27-2022)
Program Scope and Objectives

- (1) *Purpose.* This IRM section explains the procedures for receipt, evaluation, and closing of DATLs. DATL receipt and closing procedures specific to Collection Due Process (CDP) DATLs are discussed in IRM 8.22.7, Alternatives to Collection Action and IRM 8.22.9, Closing and Post Closing Actions.
- (2) *Audience.* The primary users of this IRM section are ATEs who work OIC cases.
- (3) *Policy Owner.* Policy, Planning, Quality & Analysis is (PPQ&A) under the Director of Case and Operations Support.
- (4) *Program Owner.* Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals Organization and is under the Director of PPQ&A.
- (5) *Contact Information.* Appeals employees should follow established procedures on *How to Contact an Analyst*. All other employees should contact the Product Content Owner provided on the Product Catalog Information page for this IRM.

8.23.7.1.1
(09-27-2022)
Background

- (1) Per IRC 7122, doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax debt under the law. These offers are different from offers based on doubt as to collectibility, since they are not based on the ability to pay the outstanding liability.

8.23.7.1.2
(09-27-2022)
Authority

- (1) Authorities that are related to the offer program are:
 - IRC 7122 – Compromises, granting broad authority to compromise tax liabilities to the Secretary of the Treasury.
 - 26 CFR 301.7122-1, authorizing the Commissioner of Internal Revenue to compromise a liability on any one of three grounds: Doubt as to Collectibility (DATC), Doubt as to Liability (DATL), or to promote Effective Tax Administration (ETA).
 - Policy Statement P-5-89, Offer may be rejected for public policy reasons.
 - Policy Statement P-5-97, Stay of collection - offer in compromise cases.
 - Policy Statement P-5-100, Offers will be accepted.
 - 26 CFR 300.3 – Offer to compromise fee.
 - *Revenue Procedure 2003-71*, 2003-2 CB 517, defines the procedures applicable to the submission and processing of offers to compromise tax liabilities.
 - *Notice 2006-68*, 2006-2 CB 105, provides additional guidance regarding offers submitted on or after July 16, 2006. This handbook further describes, in detail, those procedures.
 - *Tax Increase Prevention and Reconciliation Act of 2005* – Section 509 (TIPRA) – Legislation enacted in May 2006, which made major changes to the OIC program.
 - IRM 1.2.2.6.1, Delegation Order 5-1 (Rev. 5), delegates the Commissioner's authority to accept, reject, return, terminate, or acknowledge withdrawals of offers.
- (2) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see Pub 5170,

Taxpayer Bill of Rights, and TBOR link, <https://irsource.web.irs.gov/Lists/General%20News/DispItemForm.aspx?ID=126>.

- 8.23.7.1.3
(09-27-2022)
Responsibilities
- (1) The Policy Analyst shown on the Product Catalog page as the Content Point of Contact is the assigned author of this IRM.
- 8.23.7.1.4
(09-27-2022)
Program Controls
- (1) The Appeals Centralized Database System (ACDS) is used by ATEs and Tax Examiners (TEs) as a method for case file intake and closing, inventory control, statute validation, and history documentation.
- (2) Small Business/Self-Employed (SB/SE's) Automated Offer in Compromise (AOIC) program is used to track offers submitted by taxpayers and record case actions.
- 8.23.7.1.5
(09-27-2022)
Program Reports
- (1) PPQ&A provides trends and data analyses and detailed summary reports for Appeals.
- 8.23.7.1.6
(09-27-2022)
Terms and Acronyms
- (1) See IRM 8.1.1-1, Common Terms Used in Appeals, for common terms and definitions used in IRM Part 8.
- 8.23.7.2
(09-27-2022)
Doubt as to Liability (DATL) Offers in Compromise
- (1) Doubt as to liability exists when there is a genuine dispute as to the existence or amount of the correct tax liability under the law.
- (2) Doubt as to liability does not exist where the liability has been established by a final court decision, a judgment concerning the existence or amount of the tax liability, or a closing agreement that determines the tax liability with finality.
- (3) When there is legitimate doubt as to the liability from both the viewpoint of the taxpayer and the IRS, there may be grounds for an Offer in Compromise, Doubt as to Liability (DATL). The taxpayer is required to submit documentation and/or other evidence to support the DATL. The evidence available for both parties must be weighed in order to determine the extent of any "doubt". The supporting evidence and circumstances of the taxpayer are evaluated when arriving at a DATL decision.
- (4) For a list of circumstances where IRS lacks the authority to accept a DATL or where the IRS would determine the DATL as not processable, see IRM 5.19.24.6.1, Not Processable Offers.
- (5) The filing of an OIC-DATL request extends an open statute for additional tax assessments in accord with the terms of the waiver provisions of Form 656-L, Offer in Compromise (Doubt as to Liability), filed by the taxpayer. See IRM 25.6.23.5.7.2.1, Offer in Compromise - Doubt as to Liability (OIC-DATL) Exam Statute Controls, for more detailed statute information. When an additional assessment is considered, steps must be taken to protect the interest of the government before the recalculated statutory period for assessment expires. The recalculated period for assessment can be extended by consent before the recalculated period expires.
- (6) In addition to the Assessment Statute Expiration Date (ASED), OIC-DATL cases have a Tax Increase Prevention and Reconciliation Act (TIPRA) statute

under IRC 7122(f). The 24-month period for a deemed acceptance begins to run on the date that the IRS receives the offer. If the offer is not returned, rejected, or withdrawn before the end of the 24-month period, the offer is deemed accepted. See also IRM 8.21.5, Collection Statutes. Therefore, when IRS issues a rejection letter in a DATL case, the TIPRA statute is closed.

- (7) DATLs should be submitted to the IRS on the most current revision of Form 656-L, Offer in Compromise (Doubt as to Liability). Before recommending a DATL for acceptance, the most recent revision of Form 656-L must be secured.
- (8) No financial statements, Forms 433A/B, application fees, and TIPRA payments are required when submitting a Form 656-L.
- (9) A DATL offer acceptance must be payable within 90 days unless an alternative payment term is approved at the time the offer is accepted. See Form 656-L.
- (10) A DATL offer may not be rejected solely because the Service cannot locate the taxpayer's return or return information. See IRC 7122(d)(3).
- (11) DATLs are received in Centralized Offer in Compromise (COIC) and other IRS offices and forwarded to the Centralized DATL processing unit located at the Brookhaven campus.
- (12) When DATL and DATC offers are received simultaneously, the DATL determination will take precedence. See IRM 5.8.10.14, Taxpayer files both Doubt as to Liability and Doubt as to Collectibility Offers.
- (13) Per *Rev. Proc. 2012-18*, OIC cases are subject to ex parte provisions. The provision found in Section 4 (Offer Terms) of the Form 656-L authorizing the Service to contact relevant third parties as needed to assist with the processing of the offer does not impact 'ex parte' communication requirements between Appeals and other IRS functions such as Examination, Collection, and IRS Counsel.

8.23.7.3
(09-27-2022)
**Consideration of
Rejected Doubt as to
Liability (DATL) Offers**

- (1) Appeals will consider DATLs where the offer was rejected by Exam, TEGE, a specialty group, or Collection. Assignment of such cases will generally be made to employees having expertise in the particular tax area for the liability in dispute.
- (2) Appeals of rejected Examination-sourced DATLs will be assigned to Examination ATEs.
- (3) Appeals of rejected Collection-sourced DATLs (those involving the Trust Fund Recovery Penalty and Personal Liability for Excise Tax assessments) will be assigned to Collection ATEs.
- (4) The Appeals process in an OIC case is not an extension of the Compliance OIC process. The role and mission of Appeals are different from that of Compliance. The ATE must employ Appeals' standard conference and settlement practices for all work streams, including OICs. See IRM 8.23.1, Offer in Compromise, Offer in Compromise Overview, Conference and Settlement Practices.
- (5) The ATE will make an independent determination regarding any offers. A DATL offer will generally be evaluated by the ATE in the same manner as an audit reconsideration case. The ATE should consider the facts and law as well as the hazards of litigation in determining the degree of doubt as to the liability.

- (6) Since the 24-month TIPRA period ends when the offer is returned, rejected, or withdrawn, most non-CDP offers received in Appeals will not have open TIPRA statute issues. However, the ATE should review both IRM 8.23.2.4, and IRM 8.23.7.4, Initial Case Review and Statute Controls, to make sure an OIC Workunit Number (WUNO) contains the proper statute controls.
- (7) If the DATL is not fully developed and its case activity record is not thoroughly documented after being rejected and coming to the ATE, the ATE will not return the case as a premature referral. The ATE should weigh the development of the case by the originating function versus information and testimony provided to Appeals by the taxpayer and make a decision based upon those factors and any litigating hazards.
- (8) If the DATL case came to the ATE because the liability at issue was previously determined by Appeals, then Appeals has jurisdiction over the case and the originating office is not responsible for the initial development of the case or securing the closed administrative file before forwarding the case to Appeals. See IRM 8.23.7.7, Examination or Specialty DATL Offers - Liability Previously Determined by Form 870-AD, for guidance pertaining to such cases.

Note: Even if Appeals recently closed a tax case (income tax, employment tax, etc.) involving the very same liability that is now the subject of the DATL offer, the ATE is still responsible for deciding the disposition of the offer. Such a case is not a premature referral, return, withdrawal or rejection, just because the previous tax case was closed recently before the submission of the DATL offer.

- (9) The total amount of money offered must be indicated and must be \$1.00 or more. If the IRS receives a DATL that offers a payment that is less than \$1.00, the ATE will close the offer by sustaining rejection; no separate independent administrative review is necessary. See Form 656-L, Section 3.
- (10) Non-compliance in filing of required federal tax returns does not preclude Appeals from considering and accepting an appealed DATL offer or from making appropriate adjustments via Form 3870, Request for Adjustment.
- (11) If a taxpayer files bankruptcy or is in bankruptcy during Appeals consideration of the DATL, the ATE must sustain rejection and indicate in the open paragraph section of Letter 5197, Offer in Compromise Rejection, that the bankruptcy is the reason Appeals is sustaining the rejection.

8.23.7.4
(09-27-2022)
**Initial Case Review and
Statute Controls**

- (1) The ATE should review the non-Collection Due Process (CDP) DATL administrative file for the following:
 - Form 656-L on which the OIC is based, and any applicable amended offers.
 - The dated rejection letter, signed by the proper delegated approving official.

Note: The dated and signed rejection letter closes the 24-month TIPRA period.

- The timeliness of the appeal (see (4) below).
- TC 480 date is the same as the IRS signature date shown under Section 8 on Form 656-L and has been input on the Integrated Data Retrieval System (IDRS) for all periods.

- Offer periods are in Master File (MF) status 71, **unless** in status 53, 12, 60, 23 or 61.
- There are no statute issues (see (2) below).
- The “OfrNum” field in ACDS is completed with the correct offer number. The offer number is located in the upper right-hand corner of Form 656-L. If the “OfrNum” field in ACDS is blank or shows the wrong offer number, submit a request to APS to make the necessary corrections in ACDS.
- The case type in ACDS should be “OIC”.
- The feature code in ACDS should have “LI”, in addition to any other feature code.

(2) ACDS must show the correct statute date and statute code:

If...	Then...
there is an open 24 month TIPRA statute (see IRM 8.23.2.4(12), Initial Case Review and Statute Controls),	<ul style="list-style-type: none"> • STATCODE = TIPRA • STATDATE = the correct 24-month statute expiration date.
the TIPRA statute is closed,	<ul style="list-style-type: none"> • STATCODE = SUSP • STATDATE = ‘blank’

- (3) Corrections to case summary card, ACDS fields, TC 480, ST 71, AOIC, etc., may be submitted on an ACDS Update Request Form and sent via encrypted email to the APS campus that will process the closed case for Appeals.
- (4) Non-CDP OIC receipts must be checked to make sure the appeal was timely. A taxpayer has 30 calendar days from the date of the rejection letter to request an administrative Appeals hearing. If the appeal was not timely, it must be returned as a premature referral because Appeals does not have the jurisdiction to consider the appeal. See IRM 5.19.24.17.2 , Taxpayer Response to DATL Rejection Letter, and IRM 8.23.2.5.1, Premature Referral - Jurisdictional Issues, for specific instructions on determining the timeliness of the appeal.
- (5) Taxpayers occasionally submit a written appeal before the offer is rejected. IRC 7122(e) states there must be an independent administrative review of any rejection of an OIC before such rejection is communicated to the taxpayer, and 26 CFR 301.7122-1(f)(1) provides that an offer in compromise has not been rejected until IRS issues a written notice to the taxpayer or his representative advising of:
- The rejection,
 - The reason(s) for rejection, and
 - The right to an appeal.

See IRM 8.23.2.5.1, Premature Referral - Jurisdictional Issues, for information on what to do if the taxpayer’s appeal pre-dates the actual rejection of the offer.

- (6) When the ATE is returning a DATL to SB/SE as a premature referral, the ATE will inform the originating Offer Examiner/Offer Specialist (OE/OS) and OE/OS manager via secure email
1. that the DATL is being returned as a premature referral,

2. the reason why the offer is being returned as a premature referral, and
 3. to notify **SBSE Collection OIC* to assign the offer to the appropriate assignment on AOIC.
- (7) In some cases, SB/SE may not have addressed the liability because it erroneously concluded that Appeals previously determined the tax liability. For example, if an earlier case was been dismissed by court, but was listed on the ACDS as docketed and closed using closing code 21, SB/SE may conclude that Appeals determined the liability. If you conclude the liability was not previously determined by Appeals, send the case back to the Brookhaven DATL unit alerting them that the case has an open TIPRA statute by using the *Form 3210* entitled, "*Appeals Returning DATL OIC (CC21)*", which is available on the *Appeals OIC Web Page*. If the liability was established by the U.S. Tax Court, you should also alert the DATL unit to that fact.
- (8) Document the following in the case activity record:
- Verification of timely appeal
 - Statute and statute control verification
 - TC 480 verification (see (1) above)
 - All ACDS correction requests

8.23.7.5
(09-27-2022)

**Examination or Specialty
DATL Offers - Liability
Previously Determined
by a Court**

- (1) If the taxpayer submits Form 656-L and the liability was determined by the U.S. Tax Court or other court, then there is no doubt concerning the existence or amount of the liability. The ATE will sustain rejection; no separate independent administrative review is necessary.
- (2) The ATE should search ACDS and IDRS for litigation codes and confirm that the case was decided on the merits, as opposed to dismissed and not considered by the Court.

Exception: If the offer is based upon a computational error by the Service after the decision was entered (e.g., penalties assessed contrary to the decision), the ATE should consider the offer. Review the decision document to ensure that the assessment is based upon the agreement. If an adjustment is required, prepare Form 3870 and return the offer. Close a return by sustaining rejection; no separate independent administrative review is necessary

Note: See IRM 8.23.2.5.2(2), Premature Referral Issues - Other Issues, for an exception for a case closed on ACDS with Closing Code 21.

8.23.7.6
(09-27-2022)

**Examination or Specialty
DATL Offers - Liability
Previously Determined
by Final Agreement**

- (1) The DATL liability may have been determined by a Final Closing Agreement authorized under IRC 7121 (e.g. Forms 866 or 906).
- (2) If the liability was determined by Form 866, Agreement as to Final Determination of Tax Liability, then there is no doubt concerning the existence or amount of the liability. The hearing officer will sustain rejection; no separate independent administrative review is necessary.
- (3) If the liability was determined by Form 906, Closing Agreement on Final Determination Covering Specific Matters, review the closing agreement:
- If the specific matters in closing agreement are basis of the DATL, sustain rejection.

- If the specific matters in closing agreement are not issues in or basis of DATL, proceed with consideration of the DATL.

8.23.7.7
(09-27-2022)
**Examination or Specialty
DATL Offers - Liability
Previously Determined
by Form 870-AD**

- (1) If the liability of the rejected DATL was previously determined in Appeals by hazards or Form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, the originating function will forward the timely appealed case to Appeals for consideration without initial development. See IRM 8.6.4.4 , Agreement Forms Secured in Appeals Cases. The ATE will secure the administrative file and make a determination on the DATL following the guidance in Policy Statements P-8-2 and P-8-3.

Caution: See IRM 8.23.2.5.2(2), Premature Referral Issues - Other Issues, for an exception for a case closed on ACDS with Closing Code 21.

- (2) If the taxpayer submits new information that requires additional analysis or investigative action, the ATE will retain jurisdiction of the case and follow procedures in IRM 8.23.7.17, Sending an Appeals Referral Investigation (ARI) to the Originating Function, below.

8.23.7.8
(09-27-2022)
**Examination or Specialty
DATL Offers - Liability
Previously Determined
by Form 870 or
Defaulted Statutory
Notice of Deficiency
(SNOD)**

- (1) If the liability of the rejected DATL was previously closed with a Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, or a defaulted SNOD and the taxpayer submits new information during appeal consideration, the ATE will retain jurisdiction and follow procedures in IRM 8.23.7.17, Sending an Appeals Referral Investigation (ARI) to the Originating Function.

8.23.7.9
(09-27-2022)
**Tax Equity and Fiscal
Responsibility Act
(TEFRA) Liability Offers**

- (1) If the liability raised in the offer results from a TEFRA assessment, DATL should not be granted where it involves changes or adjustments to partnership items as such partnership items generally have been finally and conclusively determined (including when a Final Partnership Administrative Adjustment (FPAA) has been defaulted as well as when the FPAA has been petitioned).

Note: If the assessment followed from a deficiency notice (IRC 6212) that was not petitioned, DATL could be considered with respect to partner level factual issues that have not been finally determined, but the underlying partnership items can not be adjusted. In addition, the consistent settlement provisions of IRC 6224(c)(2) apply where an agreement involves the settlement of partnership items.

- (2) For other information regarding TEFRA liabilities in OIC cases, see IRM 8.19.8.5, Offers in Compromise.

8.23.7.10
(09-27-2022)
**Doubt as to Liability
(DATL) Offers Involving
Trust Fund Recovery
Penalty (TFRP) and
Personal Liability for
Excise Tax (PLET)
Liabilities**

- (1) Most non-CDP offers that Appeals considers will not have an open TIPRA statute since the 24-month TIPRA period ends when the offer is rejected by Collection. However, review IRM 8.23.2.4 and IRM 8.23.7.4 , Initial Case Review and Statute Controls, to make sure the OIC WUNO contains the proper statute controls.
- (2) If an offer involving a TFRP or PLET assessment is based upon DATL and was rejected by Collection, the case file should be fully developed and the case activity record should be thoroughly documented. If the case file is not fully developed and/or its case history is not thoroughly documented, the ATE will not return the appeal of a rejected DATL as a premature referral. The ATE will weigh Collection's development of the issue versus information and testimony provided by the taxpayer and make a decision based upon those factors. See IRM 8.25.2.4.2, Case Analysis - Evidence, and IRM 8.23.7.17, Sending an Appeals Referral Investigation (ARI) to the Originating Function, for guidance if new information is presented by the taxpayer to Appeals.
- (3) If the TFRP or PLET DATL was assigned to an ATE because the liability at issue was previously determined by Appeals, then Appeals has jurisdiction over the case and Collection is not responsible for any initial development of the case or for securing the closed administrative file before forwarding a timely appealed case to Appeals.

Note: Even if Appeals recently closed a TFRP or PLET case involving the very same liability that is now the subject of the DATL offer, the ATE is still responsible for either accepting or sustaining rejection of the offer. Such a case is not a premature referral, return, withdrawal or rejection just because the previous TFRP case was closed recently before the DATL offer was submitted.

- (4) IRM 8.25, Trust Fund Recovery Penalty (TFRP), contains instructions for working TFRP cases in Appeals. IRM 5.8.4, Offer in Compromise, Investigation, also contains guidance for working DATL offers involving TFRP and PLET assessments. See the table at IRM 8.23.7.18, Doubt as to Liability (DATL) - Resolution Options, for how to resolve a DATL offer case (acceptance, rejection or withdrawal, and the use of Form 3870).
- (5) Once the offer amount is paid, acceptance of a DATL offer concludes the TFRP or PLET matter for the taxpayer. Once accepted, there is no five-year compliance or refund offset provisions on a DATL offer.
- (6) If an adjustment is being made to the TFRP or PLET, the ATE must prepare the Form 3870, even if the offer is to be withdrawn or rejected. Notate in the "Remarks" section of Form 5402 , Appeals Transmittal and Case Memo, for APS to forward the Form 3870 to the correct Collection Advisory Unit, along with any TFRP assessment case file, for adjustment. The ACM should also explain the basis of the adjustments.
- (7) Even if the taxpayer is not in compliance with Federal tax return filing requirements, the ATE is not prohibited from considering and accepting an appealed rejected DATL or from making appropriate adjustments via Form 3870.
- (8) A DATL offer is no longer considered while the taxpayer is in bankruptcy. If a bankruptcy is identified during consideration of the DATL offer, the ATE will

sustain rejection and indicate in the open paragraph section of Letter 5197, Offer in Compromise Rejection, that the bankruptcy is the reason Appeals is sustaining the rejection.

8.23.7.11
(09-27-2022)
**TFRP or PLET Issue
DATL Offers - Liability
Previously Determined
by a Court**

- (1) If liability of the TFRP or PLET DATL was determined by the United States District Court, or another court, there is no doubt concerning the existence or amount of the liability. The ATE will sustain the rejection. No separate independent administrative review is necessary.

Note: The ATE should first research ACDS and IDRS for litigation codes and confirm that the case was decided on the merits, as opposed to being dismissed and not considered by a court.

Exception: See IRM 8.23.2.5.2(2), Premature Referral Issues - Other Issues, for an exception for a case closed on ACDS with Closing Code 21.

Exception: If the offer is based upon a computational error made by the Service after the decision was entered, the offer should be considered. The ATE should review the decision document to ensure that the assessment is based upon the court's decision.

8.23.7.12
(09-27-2022)
**TFRP or PLET Issue
DATL Offers - Liability
Previously Determined
by Form 2751-AD**

- (1) If liability of the TFRP or PLET DATL was determined in Appeals by hazards and/or Form 2751-AD, Trust Fund Recovery Penalty-Offer of Agreement to Assessment and Collection, Collection will forward the timely appealed DATL for consideration by Appeals without any initial development. The ATE will secure the administrative file and make a determination on the DATL offer following the guidance in Policy Statements P-8-2 and P-8-3.

Note: See IRM 8.23.2.5.2(2), Premature Referral Issues - Other Issues, for an exception for a case closed on ACDS with Closing Code 21.

- (2) If the taxpayer presents new information to Appeals, the ATE will retain jurisdiction and follow the procedures in IRM 8.23.7.17, Sending an Appeals Referral Investigation (ARI) to the Originating Function. The ATE will notify the taxpayer of any referral to the originating function (e.g., Field OIC group), share the referral's findings with the taxpayer, and give an opportunity to respond prior to making a case determination. Consider using Letter 5208, Notification of Appeals Referral Investigation, to notify the taxpayer of the referral.

- (3) Consult IRM 8.25.2.4.2, Case Analysis - Evidence, for more information regarding case analysis and new evidence.

8.23.7.13
(09-27-2022)
**TFRP and PLET Issue
DATL Offers - Liability
Previously Determined
by Form 2751 or
Defaulted Letter 1153**

- (1) If liability of the rejected TFRP or PLET DATL was determined with a Form 2751, Proposed Assessment of Trust Fund Recovery Penalty, or a defaulted Letter 1153, Proposed Trust Fund Recovery Penalty Notification, and the taxpayer presents new information to Appeals, the ATE will retain jurisdiction and follow the procedures in IRM 8.23.7.17, Sending an Appeals Referral Investigation (ARI) to the Originating Function.

- (2) The ATE will notify the taxpayer of any referral to the originating function (e.g., Field OIC group), share the referral's findings with the taxpayer, and give an

opportunity to respond prior to making a case determination. Consider using Letter 5208, Notification of Appeals Referral Investigation, to notify the taxpayer of the referral.

- (3) The ATE will retain jurisdiction of the case while the originating function considers the new information.
- (4) Consult IRM 8.25.2.4.2, Case Analysis - Evidence, for more information regarding case analysis and new evidence.

8.23.7.14
(09-27-2022)
**IRC 6673 Penalties -
DATL Offers**

- (1) The IRC 6673 penalty cannot be compromised under DATL since the liability was established by a court decision or judgment.
- (2) If a taxpayer submits a Form 656-L for an IRC 6673 penalty:
 - a. Obtain a copy of the United States Tax Court decision or order imposing the penalty from the US Tax Court web page at <http://www.ustaxcourt.gov>.
 - b. Confirm the penalty was properly assessed by reviewing IDRS.
 - c. Proceed with DATL rejection.

Note: Counsel generally recommends against compromise of an IRC 6673 penalty under DATL or effective tax administration grounds. The penalty is an important tool used by the Tax Court to deter frivolous litigation. However, compromise based on Doubt as to Collectibility may be appropriate if the taxpayer abandons frivolous arguments and comes into tax compliance.

8.23.7.15
(09-27-2022)
**Death of Taxpayer While
OIC Case in Appeals**

- (1) Consideration of an OIC submitted by a single taxpayer must be terminated upon the death of that taxpayer. The date of termination and the date for the TC 482 is the date of the taxpayer's death. A sample OIC Termination Letter is available on the *Appeals OIC Web Page*.
- (2) Refer to IRM 8.23.3.10, Death of Taxpayer While OIC Case in Appeals, if there is death of taxpayer while OIC is in Appeals.

8.23.7.16
(09-27-2022)
Identity Theft Issues

- (1) The presence of identity theft (IDT) issues does not prohibit consideration of an offer. Each case will need to be considered on its own merits since there may be unique issues impacting the case decision.
- (2) See IRM 5.19.24.13, Identity Theft Overview, for an overview of IDT issues in OIC.
- (3) If an offer is accepted that involved IDT issues, information on the IDT period(s) must be provided to Monitoring Offer in Compromise (MOIC) with the acceptance file and documented in ACDS and in the "Remarks" section of Form 5402.

8.23.7.17
(09-27-2022)
**Sending an Appeals
Referral Investigation
(ARI) to the Originating
Function**

- (1) If the taxpayer submits new information that requires additional analysis or investigative action, send the new information to the originating function for additional analysis or investigative action via Form 5402 (or Form 2209, Courtesy Investigation, in the cases of TFRP or PLET DATLs). Refer to IRM 8.23.3.3.1.4, Requesting an Appeals Referral Investigation (ARI), for suspense codes to use.

Note: Documents previously inaccessible to the taxpayer or which require a more in-depth analysis or investigation would be appropriate for a referral to the originating function. This includes new issues raised by the taxpayer while in Appeals.

- (2) The ATE will retain responsibility for any open TIPRA statute while the ARI is pending.
- (3) Form 10467, Appeals Division Feedback Report and Transmittal Memorandum, or Form 2209, Courtesy Investigation, may also be used **in addition** to a Form 5402, Appeals Transmittal and Case Memo.
- (4) To request an ARI from the originating function, the ATE will send the Form 10467 or Form 2209 with new or additional information attached, to the manager of the originating OE/OS via secure email.
- (5) The ATE will notify the taxpayer of any referral to the originating function (e.g., Field Examination group) and may use Appeals' Letter 5208, Notification of Appeals Referral Investigation, to notify the taxpayer of the referral.
- (6) The originating function has 45 days to take action on the new information and respond to the ATE. This time-frame may be extended by mutual agreement. The ATE will share the referral's findings with the taxpayer and give an opportunity to respond prior to making a case determination.
- (7) If there is no response from the originating function or the taxpayer after 45 days, and no requests for extension have been agreed, the ATE will make a determination based upon the available information, including the uninvestigated items provided by the taxpayer.
- (8) If the new information only affects the consideration of hazards, the ATE will evaluate the probative value of the new information and make a determination on the DATL. A referral to the originating function should not be made in these cases.

8.23.7.18
(09-27-2022)
**Doubt as to Liability
(DATL) - Resolution
Options**

- (1) **Do not adjust the tax liability and also accept a DATL.** An adjusted tax liability and a DATL acceptance are different resolutions and are not combined for the same DATL period:
 - In a Form 3870 adjustment, the taxpayer is not required to perform any actions.
 - In an accepted DATL:
 - a. The taxpayer would still have to pay the offered amount.
 - b. The taxpayer may lose tax refunds offset during the consideration of the offer.
 - c. If the taxpayer defaults on the accepted offer, the offer will be terminated and IRS must reinstate the original assessment without any adjustments.
- (2) The table below contains actions necessary to make the adjustments to an account OR to accept a DATL offer.

If...	Then...
The case is resolved by a redetermination of liability that is not based upon hazards	The balance of the assessment in excess of the re-determined liability amount should be abated using a Form 3870. a. Ask the taxpayer to withdraw the offer. b. If the taxpayer does not withdraw the offer, sustain rejection using the DATL optional paragraph on the rejection letter (Letter 5197) on APGolf. c. The Form 3870 adjustment will be made by APS if the offer is a DATL other than TFRP or PLET. d. If the offer is on TFRP or PLET liabilities, APS will forward the Form 3870 to the correct Advisory Unit located on <i>IRS Knowledge Management page</i> , along with any TFRP assessment file.
It is determined that there is doubt as to liability based upon hazards of litigation	Close the case by accepting the offer for an acceptable amount. To communicate acceptance of the offer to the taxpayer, use Appeals' Letter 5521, DATL OIC Acceptance Letter. Do not make any Form 3870 adjustments to the account.
It is determined that there is no doubt as to the liability	Close the case by using the DATL optional paragraph on the OIC rejection letter (Letter 5197) on APGolf.

- (3) An acceptable offer amount depends on the degree of doubt established, based upon the hazards relative to the amount assessed. If the amount of the taxpayer's initial offer differs from the amount the hearing officer determined based upon hazards, amend the offer to the new amount prior to acceptance. To secure an amended offer:
1. Request an amended Form 656-L from the taxpayer for the acceptable offer amount.
 2. Mark the amended Form 656-L with "amended" on the top margin of page one of the Form 656-L.
 3. At closing, notate in the "Remarks" section of Form 5402, Appeals Transmittal and Case Memo: "Offer is amended."
- (4) When accepting a DATL, use Appeals' Letter 5521, DATL OIC Acceptance Letter, to communicate acceptance to the taxpayer.

8.23.7.19
(09-27-2022)
Accepted DATL Closing Documents and Appeals Technical Employee Procedures

- (1) When accepting a non-CDP DATL, the ACM should contain:
- Sufficient information and explanation to support the final decision, such as what hazards exist and why an adjustment is not the appropriate alternative to acceptance.
 - Compliance's reasons for rejecting the DATL.
 - The issues raised by the taxpayer.
- (2) Review the Delegation Order at IRM 1.2.2.6.1.1, Acceptance Authority, to determine the proper approving official.

- (3) When accepting a DATL where the liabilities, including tax, penalties, and interest, are \$50,000 or more, IRC 7122(b) requires an opinion from Counsel to address the legal requirements of the DATL. See IRM 8.23.4.3.3, Counsel Review of Acceptance Recommendations, and IRM 8.23.4-3, Steps for Preparing and Submitting OIC for Counsel Review, Acceptance Approval, and Closure, for procedures to obtain Counsel review. The documents to upload to Counsel's SharePoint for review are the same documents listed in paragraph (6).
- (4) Under *Chief Counsel Directives Manual (CCDM) 33.3.2.2(2)*, Offers in Compromise and the Role of Counsel, Counsel's finding that a proposed acceptance is not in keeping with IRS policy is not a justification for withholding an opinion if all of the legal requirements for compromise have been met. If Counsel does not sign Form 7249, Offer Acceptance Report, but instead provides a memo or other narrative explaining its disagreement with Appeals' application of IRS policies, the ATE should address Counsel's issues in the case activity record and follow the procedures in Form 8.23.4.3.3, Counsel Review of Acceptance Recommendations. If the DATL otherwise meets the legal requirements for compromise and Appeals wishes to accept the DATL, Appeals may proceed with acceptance without Counsel's signature on Form 7249.
- (5) Upload the approved Form 7249 to the OIC WUNO in ACDS as an attachment.
- (6) When accepting a non-CDP offer, prepare and assemble the following:
 - a. Form 7249, Offer Acceptance Report, with an IDRS transcript (TXMOD, IMFOLT) for each DATL liability.

Note: For Collection-sourced and all CDP DATLs, the ATE will complete and submit a request for an AOIC generated Form 7249 following the guidance in Exhibit 8.23.7-2.

Note: For Examination-sourced OIC-DATLs, the ATE will complete and submit a request for an AOIC generated Form 7249 following the guidance in Step Chart for AOIC Generated Form 7249 for Examination-sourced OIC DATLs, Exhibit 8.23.7-1.
 - b. Form 5402
 - c. ACM
 - d. Letter 5521, DATL OIC Acceptance
 - e. Form 656-L and Amended Form 656-L, if applicable
- (7) Enclose a copy of Form 656-L with the taxpayer's (and POA's) copy of the OIC Acceptance Letter.
- (8) Once all the above documents are complete and assembled, update the ACDS case status to 'AC/FR' and submit the case file to the ATM for approval.
- (9) All documents should be uploaded to ACDS.
- (10) See IRM 8.20.7.49, Offer in Compromise (OIC) Non-CDP Cases, for APS OIC case closing procedures.

8.23.7.20
(09-27-2022)

**Closing Documents and
Procedures for
Sustaining DATL
Rejection**

- (1) When the facts of the case do not support acceptance, the ATE should attempt to inform the taxpayer, prior to issuance of the rejection letter, of the decision to sustain the rejection of the offer.
- (2) The ATE must sustain a rejection when a taxpayer files bankruptcy. This is true even if the taxpayer filed and received a discharge while the offer was open. This type of rejection may be approved at the ATM level. If bankruptcy is identified during consideration of the DATL offer, the ATE will sustain rejection and indicate in the open paragraph section of Letter 5197, Offer in Compromise Rejection, that the bankruptcy is the reason Appeals is sustaining the rejection.
- (3) The ATE will sustain rejection of DATL offer when Appeals determines that:
 - The tax is correct as assessed or
 - When Appeals agrees to make an adjustment to the tax but the taxpayer will not withdraw the offer.
- (4) Review the Delegation Orders at IRM 1.2.2.6.1.2, Rejection Authority, to determine the proper approving official to sustain rejection of the offer.
- (5) If the case is a DATL offer involving a TFRP or PLET liability and the ATE recommends making an adjustment to the liability, the ATE will:
 1. Prepare a Form 3870.
 2. Indicate on Form 5402 "Remarks" to APS which Collection Advisory Unit to send the Form 3870 and administrative file. APS will forward the Form 3870 and the administrative files to the appropriate Collection Advisory Unit.
- (6) When sustaining a non-CDP DATL rejection, the ACM should contain:
 - Sufficient information and explanation to support the final decision, such as why the DATL is not accepted or what is the basis of an adjustment.
 - Compliance's reasons for rejecting the DATL.
 - The issues raised by the taxpayer.
- (7) When sustaining rejection of the non-CDP DATL, prepare and assemble the following:
 - a. Form 5402.
 - b. ACM.
 - c. Letter 5197, Offer in Compromise Rejection, to notify the taxpayer that Appeals sustained rejection of the offer.
 - d. Form 3870, if an adjustment is appropriate.
- (8) Once all the above documents are complete and assembled, update the ACDS case status to 'AC/FR' and submit the case file to the ATM for approval.
- (9) Upload all documents to ACDS.
- (10) See IRM 8.20.7.49, Offer in Compromise (OIC) Non-CDP Cases, for APS OIC case closing procedures.

8.23.7.21

(09-27-2022)

Closing Documents and Procedures for Withdrawn DATLs

- (1) A taxpayer may voluntarily withdraw an offer at any time before the offer is accepted, including while the case is in Appeals. A voluntary withdrawal may be made verbally or in writing, including by fax.
- (2) Written withdrawals are encouraged. Form 14773, or Form 14773-A (for joint), Offer in Compromise Withdrawal, may be used to withdraw an offer. The letters must be modified with respect to the taxpayer waiving appeal rights.
- (3) A written withdrawal is effective upon personal delivery to IRS or IRS receipt by certified mail.
 - Date stamp the withdrawal document with the received date, as that is the date on which the statutory period to collect the tax begins to run.
- (4) If the taxpayer withdraws the offer by fax or non-certified mail, the effective date of the withdrawal is the date IRS mails, or personally delivers, a written letter to taxpayer acknowledging the withdrawal. The case activity record will be documented as to the form and delivery of the taxpayer's or representative's withdrawal request.
- (5) If a taxpayer or authorized representative provides a clear oral statement requesting withdrawal of the offer, the effective date of the withdrawal is the date the IRS mails, or personally delivers, a written letter to the taxpayer acknowledging the withdrawal. The case activity record will be documented as to the form and delivery of the taxpayer's or representative's withdrawal request.
- (6) When a joint offer is withdrawn, verify both spouses concur with the withdrawal.
- (7) Document the case activity record as to how the taxpayer made the withdrawal.
- (8) The ACM for a withdrawn DATL should contain sufficient information indicating:
 - The circumstances or reasons of withdrawal, such as an adjustment to the account is the alternative to a DATL.
 - The date of withdrawal.
 - The manner in which the offer was withdrawn, e.g. verbal, written, certified mail, hand-delivery, etc.
- (9) When closing a non-CDP DATL as withdrawn, prepare and assemble the following:
 - a. Form 5402.

Note: If the OIC is an Examination-sourced DATL, the ATE will document Form 5402 under Remarks with instructions to APS to close the case to Centralized Case Processing (CCP). The file should contain the applicable documents listed in IRM 4.8.8.8.6, Case Closing Procedures.
 - b. ACM.
 - c. Letter 241, Offer in Compromise Withdrawal, to notify the taxpayer that the offer is withdrawn and the effective date of the withdrawal.
 - d. Form 3870, if appropriate.

Note: If the case is a DATL offer involving a TFRP or PLET liability and the ATE recommends making an adjustment to the liability, the ATE will prepare a Form 3870 and indicate on Form 5402 "Remarks" to

APS which Collection Advisory Unit to send the Form 3870 and administrative file. APS will forward the Form 3870 and the administrative files to the appropriate Collection Advisory Unit.

- (10) Once all of the above documents are complete and assembled, the ATE will update the ACDS case status to AC/FR and provide a copy of Form 5402 to the ATM for ACAP entry on ACDS.
- (11) Upload all documents to ACDS.
- (12) See IRM 8.20.7.49, Offer in Compromise (OIC) Non-CDP Cases, for APS OIC case closing procedures.

Exhibit 8.23.7-1 (09-27-2022)

Step Chart for AOIC Generated Form 7249 for Examination-sourced OIC-DATLs

Step	Action
1.	<p>The ATE generates Form 2209, Courtesy Investigation, found on APGolf under Collection Due Process and completes the following information in the "Remarks" section:</p> <ol style="list-style-type: none"> a. "Requesting AOIC Form 7249 for OIC-DATL. After generating DATL AOIC Form 7249 with following information, please send by secure email to the requesting ATE." b. Offer Number. c. Offer TIN. d. Offer amount to be accepted. e. Terms to be accepted (Form 656-L, Section 3). f. Updates to TP name and/or address, if applicable. g. Updates to MFT and tax periods, if applicable. h. ATE's email address.
2.	The ATE will attach a copy of the Form 656-L to the ARI.
3.	The ATE will fax the ARI and copy of Form 656-L to the fax number listed on the <i>SERP Web Page</i> for the DATL Unit within the Brookhaven Centralized OIC Operation (COIC).
4.	<p>Upon receipt of the AOIC generated Form 7249 from DATL Unit, the ATE will:</p> <ol style="list-style-type: none"> a. Review the DATL AOIC Form 7249 for completeness, accuracy, and redaction of "in care of" names, and other Personally Identifiable Information (PII). b. Continue following closing procedures found in IRM 8.23.4.

Exhibit 8.23.7-2 (09-27-2022)

Step Chart for Securing AOIC Generated Form 7249 for Collection-sourced DATLs and all CDP- DATLs

Step	Action
1.	Generate “APS Action Request Form” found on APGolf under ACDS Updates.
2.	To add periods: a. List MFT and periods. b. Attach IDRS transcript highlighting assessments dates and total liabilities with accruals. c. List the TC 480 date for the offer. d. Indicate if taxpayer is Primary, Secondary, or Both.
3.	To delete periods: a. List periods to be deleted from the offer.
4.	Under “Name and Address changes”, list any name and address change , if different from the original 656-L.
5.	Under “Other /Comments”, list or attach: a. Offer Number. b. Offer Amount. c. Original offer or amended offer. d. Offer Type (select one): DATL, CDP-DATL. e. Offer Terms: Unique Circumstance (attach copy of terms page of Form 656L). f. Signature lines: 1. ATE name. 2. Approving official name. 3. 2nd level Approving Official name, if applicable. g. Reason for acceptance: Liability.
6.	The ATE will: a. change the caption of the request form to Request for AOIC 7249 b. attach the request form and attachments to a secure e-mail with subject line reading: “Request for AOIC 7249”, and the Offer Number redacted to the last four digits as follows: XXXXXX1234. Do not include name control in subject line. c. email the request form and attachments to the APS office that will process the closed OIC.
7.	Upon receipt of the AOIC generated Form 7249 from APS, the ATE will: a. Review the AOIC Form 7249 for completeness, accuracy, and redaction of “ in care of ” names, and other Personally Identifiable Information (PII). b. Continue following closing procedures found in IRM 8.23.4.

Exhibit 8.23.7-2 (Cont. 1) (09-27-2022)

Step Chart for Securing AOIC Generated Form 7249 for Collection-sourced DATLs and all CDP- DATLs

8.	<p>To revise or update an AOIC Form 7249, the ATE will:</p> <ol style="list-style-type: none">a. Generate “APS Action Request Form.”b. Indicate the necessary revisions or changes according to Steps 2, 3, and 4.c. List Offer Type (select one): DATL, CDP-DATL.d. Signature lines:<ul style="list-style-type: none">• ATE name.• Approving Official name.• 2nd level Approving Official name, if applicable.e. List reason for acceptance.f. Change the caption of the request form to “Revise AOIC 7249.”g. Attach the request form and attachments to a secure e-mail with subject line reading: “Revise AOIC 7249”, and the Offer Number redacted to the last four digits as follows: XXXXXX1234. Do not include name control in the title of the email.h. Email the request form and attachments to the APS office that will process the closed OIC.
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