

Part III—Administrative, Procedural, and Miscellaneous

Downpayments for Offers in Compromise

Notice 2006-68

The Internal Revenue Service and the Department of the Treasury are currently revising Form 656, Offer in Compromise, and developing regulations under section 7122 of the Internal Revenue Code to implement the amendments to section 7122 made by section 509 of the Tax Increase Prevention and Reconciliation Act of 2005 (“TIPRA”), Pub. L. No. 109-222. The TIPRA amendments to section 7122 apply to offers in compromise submitted on or after July 16, 2006.

As amended, section 7122 provides that a lump-sum offer (one payable in five or fewer installments) must be accompanied by the payment of 20 percent of the amount of the offer. Section 7122 also provides that a periodic payment offer (one payable in six or more installments) must be accompanied by the payment of the amount of the first proposed installment and additional installments must be paid while the offer is being evaluated by the Internal Revenue Service.

This Notice provides interim guidance under section 7122, as amended by section 509 of TIPRA, until regulations or other guidance is issued and Form 656

is revised. Taxpayers may rely on this Notice until regulations or other guidance is issued and may continue to use the current version of Form 656 (Rev. 7-2004) to submit offers until a revised Form 656 is available. The revised Form 656 will be made available on the Internal Revenue Service's website at www.IRS.gov and taxpayers may call 1 (800) Tax-Form to request a copy of Form 656.

SECTION 1. BACKGROUND AND GENERAL RULES

.01 Section 7122 permits the Service to compromise any civil liability arising under the internal revenue laws before the case is referred to the Department of Justice for prosecution or defense. Section 509 of TIPRA amended section 7122, effective for offers in compromise submitted on or after July 16, 2006. An offer in compromise will be treated as submitted on or after July 16, 2006, if the offer is received on or after that date by the Service. The postmark date is irrelevant in determining when an offer is submitted.

.02 Section 7122(c)(1), as amended by TIPRA, requires that an offer in compromise be accompanied by a partial payment. In the case of a lump-sum offer, the partial payment required is 20 percent of the amount of the offer. If the taxpayer does not make the required 20-percent payment, the offer may be returned to the taxpayer as unprocessable. Section 7122(d)(3)(C). The Service will treat the required 20-percent payment as a payment of tax, rather than a refundable deposit under section 7809(b) or Treas. Reg. § 301.7122-1(h). Voluntary payments submitted in connection with an offer in compromise, to the extent they exceed the payment or payments required under section 7122(c)(1),

will be treated as refundable deposits if they are not designated as tax payments by the taxpayer.

.03 If the taxpayer submits a periodic payment offer, the taxpayer must include the first proposed installment with the offer. If the taxpayer does not make the first installment payment, the offer may be returned to the taxpayer as unprocessable. Section 7122(d)(3)(C). While a periodic payment offer is being evaluated by the Service, the taxpayer must make subsequent proposed installment payments as they become due. If the taxpayer fails to make an installment payment other than the first installment, the failure may be treated as a withdrawal of the offer. Section 7122(c)(1)(B)(ii). The Service will treat installment payments required for a periodic payment offer as payments of tax, rather than refundable deposits under section 7809(b) or Treas. Reg. § 301.7122-1(h). Voluntary payments submitted in connection with an offer in compromise, to the extent they exceed the payment or payments required under section 7122(c)(1), will be treated as refundable deposits if they are not designated as tax payments by the taxpayer.

.04 Section 7122(c)(2)(A) allows the taxpayer to specify how any payment made pursuant to section 7122(c)(1) is to be applied to the assessed taxes, penalties, interest, etc. The specification must be made in writing when the offer is submitted or when the payment is made. The specification should clearly indicate how the partial payment or partial payments (in the case of a periodic payment offer) are to be applied to specific taxable years (or other taxable periods) or to specific liabilities (e.g., income taxes, employment taxes, and trust

fund recovery penalties under section 6672(a)). Once the taxpayer specifies how a payment is to be applied, the specification cannot later be changed. In the absence of a specification, the Service will apply the payment or payments required by section 7122(c) in the best interests of the government.

.05 Section 7122(c)(2)(B) provides that the assessed tax or other amounts shall be reduced by any user fee imposed with respect to the taxpayer's offer in compromise. The applicable regulations provide that a \$150 user fee is generally charged for processing an offer in compromise, but no fee is charged if the offer is based solely on doubt as to liability or is made by a low-income taxpayer. Treas. Reg. § 300.3(b)(1). Because a taxpayer may not specify how the \$150 user fee for processing an offer in compromise will be applied, the Service will apply the user fee in the best interests of the government.

.06 Section 7122(c)(2)(C) provides that the Secretary may issue regulations waiving any payment required under section 7122(c)(1) in a manner consistent with the practices established in accordance with the requirements under section 7122(d)(3). See Section 4 of this Notice for information concerning waivers for low-income taxpayers and for offers based solely on doubt as to liability.

.07 Section 7122(f) provides that if an offer in compromise is not rejected within 24 months after submission of the offer, the offer shall be deemed to be accepted. Any period during which any tax liability which is the subject of the offer is in dispute in any judicial proceeding is not taken into account in determining the expiration of the 24-month period. The date of submission of an

offer for purposes of section 7122(f) is the date on which the offer is received by the Service. The postmark date is irrelevant in determining when an offer is submitted. An offer will not be deemed to be accepted if the offer is, within the 24-month period, rejected by the Service, returned by the Service to the taxpayer as nonprocessable or no longer processable, withdrawn by the taxpayer, or deemed withdrawn under section 7122(c)(1)(B)(ii) because of the taxpayer's failure to make the second or later installment due on a periodic payment offer. The date an offer is rejected for purposes of section 7122(f) is the date on which the Service issues a written notice of rejection under Treas. Reg. § 301.7122-1(f)(1). The period during which the IRS Office of Appeals considers a rejected offer in compromise is not included as part of the 24-month period because the offer was rejected by the Service within the meaning of section 7122(f) prior to consideration of the offer by the Office of Appeals.

SECTION 2. GUIDANCE FOR LUMP-SUM OFFERS

.01 Unless a waiver under Section 4 of this Notice applies, a lump-sum offer in compromise received on or after July 16, 2006, will be returned as not processable if the offer is not accompanied by a partial payment of the amount of the offer.

.02 If the taxpayer makes a partial payment when a lump-sum offer is submitted, but the payment is less than the 20-percent required amount, the Service may accept the offer for processing and solicit payment of the remaining portion of the 20-percent amount. If the taxpayer does not pay the balance of the 20-percent amount within the time allowed by the Service, the Service may return

the offer as not processable unless the Service determines that continued processing of the offer would be in the best interests of the government.

SECTION 3. GUIDANCE FOR PERIODIC PAYMENT OFFERS

.01 Unless a waiver under Section 4 of this Notice applies, a periodic payment offer in compromise received on or after July 16, 2006, will be returned as not processable if the submission of the offer is not accompanied by the full amount of the first proposed installment.

.02 If a periodic payment offer has been accepted for processing and the taxpayer fails to make full payment of the second or subsequent proposed installment while the offer is being evaluated, the Service may solicit payment from the taxpayer of the unpaid amount of the subsequent installment. The Service may issue a letter advising the taxpayer that the offer is considered withdrawn if the taxpayer does not make full payment of the installment within the time allowed unless the Service determines that continued processing of the offer is in the best interests of the government.

SECTION 4. WAIVER OF PAYMENTS UNDER SECTION 7122(c)(2)(C)

.01 The Treasury Department and the Service intend to issue regulations pursuant to section 7122(c)(2)(C) that will waive payments otherwise required by section 7122(c)(1) in two situations. Waivers will apply with respect to offers submitted by low-income taxpayers and with respect to offers submitted by other taxpayers based solely on doubt as to liability. Although regulations have not been issued, on an interim basis the Service will waive the payments otherwise

required by section 7122(c)(1) using the criteria described in Sections 4.02 and 4.03 below.

.02 No payment under section 7122(c)(1) will be required when an offer is submitted by a low-income taxpayer. A low-income taxpayer is an individual whose income falls at or below poverty levels based on guidelines established by the U.S. Department of Health and Human Services under the authority of section 673(2) of the Omnibus Reconciliation Act of 1981 (95 Stat. 357, 511), or another measure that is adopted by the Secretary. Until further guidance is issued, a taxpayer should use the worksheet to Form 656-A, Income Certification for Offer in Compromise Application Fee, to determine if the taxpayer qualifies as a low-income taxpayer who is not required to make partial payments pursuant to section 7122(c)(1).

.03 No payment under section 7122(c)(1) will be required when an offer is submitted by a taxpayer based solely on doubt as to liability. An offer is considered to be submitted solely on the basis of doubt as to liability if the taxpayer submits the offer on Form 656-L, Offer in Compromise (Doubt as to Liability), or, if the offer is submitted on Form 656, Offer in Compromise, it is clear on the face of the Form that the only basis on which the taxpayer relies in making the offer is doubt as to liability.

SECTION 5. REQUEST FOR COMMENTS

.01 The Treasury Department and the Service request comments from the public on the issues addressed in this Notice and on additional issues that should

be addressed in regulations or other guidance as a result of the recent amendments to section 7122.

.02 Comments are requested regarding the definition of low-income for purposes of section 7122(c)(2)(C). For purposes of this interim guidance, Section 4.02 of this notice defines low-income in a manner consistent with Treas. Reg. § 300.3(b)(1)(ii) regarding user fees for processing offers to compromise. However, the Treasury Department and the Service recognize that commentators have previously raised concerns regarding the definition of low-income in the context of the user fee regulations. Treasury and the Service are considering modifications to the definition of low-income for purposes of the user fee charged for processing an offer in compromise. Treasury and the Service anticipate that any modification to the definition of low-income for purposes of the user fee will be reflected in subsequent guidance issued under new section 7122(c)(2)(C).

.03 Comments should be submitted in writing on or before October 9, 2006 to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044, Attn: CC:PA:CBS (Notice 2006- 68). Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk at 950 L'Enfant Plaza, 5th Floor, Washington, DC 20024 by contacting the Legal Processing Division at (202) 874-9752. Submissions may also be sent electronically via the internet to the following email address: Notice.comments@irscounsel.treas.gov. Include the notice

number (Notice 2006-68) in the subject line. All comments will be available for public inspection and copying.

SECTION 6. DRAFTING INFORMATION

The principal author of this Notice is William F. Conroy of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice contact William F. Conroy at (202) 622-3600 (not a toll-free call).