2018 GL-1 - Lesson 16

SETTLEMENTS, OFFERS IN COMPROMISE, AND INSTALLMENT AGREEMENTS

(June 2018)

CONTENTS

I. INTRODUCTION

Internal Revenue Code section 7122(a) authorizes the Secretary of the Treasury (Secretary) to compromise any civil or criminal case arising under the internal revenue laws before the case is referred to the Department of Justice for prosecution or defense. Treas. Reg. § 301.7122-1(a)(1). This statutory provision grants the Secretary broad authority to compromise tax liabilities. IRM 5.8.1.2.2(1). The purpose of a compromise is to obtain collection of what is potentially collectible at the earliest possible time and at the least cost to the government. IRM 5.8.1.2.3 (citing Policy Statement P-5-100). In processing offers, personnel must follow the instructions, requirements, and procedures contained in IRM 5.8. Additional requirements and procedures are set forth in Rev. Proc. 2003-71, 2003-2 C.B. 517, and Notice 2006-68, 2006-31 I.R.B. 105. Chief Counsel personnel must follow the standards contained in CCDM 33.3.2.

The Service possesses the authority to compromise any civil or criminal case arising under the internal revenue laws before such case is referred to the Department of Justice for prosecution or defense. The Department of Justice possesses the authority to compromise any such case after it has been referred to the Department of Justice for prosecution or defense. I.R.C. § 7122(a).

The Service may enter into a written agreement with any taxpayer under which that taxpayer may make payment on any tax in installment payments if the Service determines that such an agreement will facilitate full or partial collection of such liability. I.R.C. § 6159 (emphasis added); see generally IRM 5.14.1 et seq.

II. OBJECTIVES

At the end of this lesson you will be able to:

- Properly classify the settlement authority for litigation matters.
- Review offers in compromise and properly advise the Collection client regarding issues arising in offer cases.
- Advise the client on installment agreement issues.

III. DISTINCTIONS AMONG SETTLEMENTS, OFFERS IN COMPROMISE, AND INSTALLMENT AGREEMENTS

A. Settlements refer to the compromise of cases in litigation by the Attorney General.

B. Offers in Compromise refer to agreements under which the Secretary or his delegate settles a tax liability for payment of less than the full amount owed.

C. Installment Agreements are arrangements under which a taxpayer makes agreed installment payments to satisfy a tax liability in part or in full.

Note: An attorney can use the same concepts applied in offers in compromise cases when reviewing offers to settle cases in litigation.

IV. SETTLEMENTS

A. Authority to settle a case

1. The Department of Justice or the U.S. Attorney's Office may settle cases that have been referred for institution of suit or the defense of a claim against the United States, including cases in which:

a) Counsel has authorized the Department of Justice or United States Attorney to institute a suit or to defend a suit naming the Internal Revenue Service or the United States as a party defendant; or

b) A trustee objects to a proof of claim filed by the United States in a bankruptcy proceeding.

2. I.R.C. § 7122 vests the Attorney General or his delegate with settlement authority only after a case has been referred to the Department of Justice for prosecution or defense. The Department of Justice continues to have settlement authority until a decision becomes final.

3. The Department of Justice routinely seeks the views of the Office of Chief Counsel regarding potential settlements. The Area Counsel office handling the litigation will write the recommendation. Area Counsel should seek the views of theDeputy Division Counsel.

4. When Area Counsel refers a case to the Department of Justice or the U.S. Attorney's Office, Area Counsel classifies the case as either STANDARD or Settlement Option Procedure (S.O.P.). CCDM 34.5.1.1.1. The case classification is significant because it generally determines whether the Department of Justice may settle the case without obtaining the views of Area Counsel. CCDM 34.5.1.1.1.3(1).

B. STANDARD Classification

1. The Attorney General or his delegate cannot settle a case classified as STANDARD without first soliciting and receiving the recommendation of Counsel. CCDM 34.5.1.1.1.3(3).

2. Cases subject to STANDARD classification are those that do not fit within the S.O.P. category. Generally, a case will be classified as STANDARD if the issue is of a continuing nature; if the issue is identical to an issue pending administratively for a related taxpayer; if the issue is identical with or very similar to that pending before the Tax Court in the case of the same taxpayer or related taxpayer; if an administrative refund is recommended; if a case is sensitive because of the identity of the taxpayer; if the case contains a clearly dispositive jurisdictional issue giving rise to an appropriate motion to dismiss; if the nature of the case would make the case a significant test case or the issue involves an important legal question that needs to be litigated for administrative reasons; if the litigation or settlement of the issue may establish a pattern for an entire industry or a large group of taxpayers similarly situated; if the case involves an issue requiring Associate office review (CCDM Exhibit 35.11.1-1); if the case involves an injunction, summons or frivolous return; or if the Service client has requested the classification STANDARD. CCDM 34.5.1.1.1.2. If the Area Counsel attorney is unable to determine whether the case meets the S.O.P. classification criteria, the attorney should enter the classification STANDARD.

3. Settlement offers in STANDARD cases are subject to a 45-day settlement procedure. If the Department of Justice concludes that Area Counsel has not responded in a timely fashion to a request for a settlement recommendation, the Department of Justice may by letter advise the Area Counsel (with a copy to the appropriate Associate Chief Counsel) or the Associate office handling the case that unless it hears from that office within 45 days from the date of its letter, it will process the case on the assumption that Area Counsel has no objection to the proposed settlement. Area Counsel is considered to have timely responded to this 45-day letter if, before the end of that period, the Department of Justice receives either a recommendation or a request for additional time and an estimate as to when the recommendation will be received. CCDM 34.8.1.1(6).

C. Settlement Option Procedure

1. Cases classified as S.O.P. cases generally may be settled on any basis by the Attorney General or his delegate without advising or informing Counsel. CCDM 34.8.1.1(1).

2. Cases subject to S.O.P. classification are those involving commonplace issues of fact, legal issues of no great importance to the revenue, or the application of legal principles that have already been substantially resolved through prior litigation. CCDM 34.5.1.1.1.1. The amount in controversy is not a substantial factor in classifying a case as S.O.P. A case is not excluded from S.O.P. classification because there appear to be jurisdictional defenses, but a case with a fatal jurisdictional defect should not be settled under any circumstances.

3. On occasion, a case may need to be reclassified from STANDARD to S.O.P. CCDM 34.5.1.1.2(3); 34.8.2.3(2), (3). This may occur in a situation where the facts or issues that led to classification of the case as STANDARD are no longer present. CCDM 34.8.2.3(2), (3). When Counsel concludes that a STANDARD case should be reclassified as S.O.P., Counsel should explain the reason for the reclassification in a letter to the Department of Justice, with a copy to Procedure and Administration. IRM 34.5.1.1.2(3).

4. Regardless of how a case has been classified, the Department of Justice shall refer any settlement offer that is based upon considerations of collectibility to Area Counsel, who, in turn, shall forward it to the Deputy Division Counsel for verification. CCDM 34.8.1.1(7). Within two business days of receipt of the Deputy Division Counselresponse, Area Counsel shall forward the response to the Department of Justice and may initial the same or may, by separate letter accompanying the Deputy Division Counselverification, furnish such comments or recommendations as are appropriate.

5. The Department of Justice shall provide Area Counsel with a written explanation as to the settlement reached in each S.O.P. case. CCDM 34.8.1.1(8). Field Counsel shall forward a copy of such explanation to the Deputy Division Counsel.

D. Communication of STANDARD or S.O.P. Classification

1. In the initial letter to the Department of Justice, the Area Counsel attorney classifies a case by entering either "S.O.P." or "STANDARD" in capital letters on the bottom of the first page. See CCDM 34.5.1.1.2 (defense letter) and 34.6.1.3 (suit letter).

2. The initial correspondence to Counsel by the Area Director should recommend that a case be classified as S.O.P. or STANDARD. If the correspondence does not include a recommendation, the Counsel attorney may request that the Office of the Area Director make one.

3. If the Counsel attorney fails to classify in the initial letter to the Department of Justice whether the case should be classified S.O.P. or STANDARD, the Department of Justice will presume that the case is S.O.P. See CCDM 34.6.1.3(2) (relating to suit letters).

V. OFFERS IN COMPROMISE

A. Elements of an OIC

(i) authority

An offer in compromise is an offer to compromise a civil or criminal case arising under the internal revenue laws. The Service has the authority to compromise such cases, so long as the case has not been referred to the Department of Justice for prosecution or defense. I.R.C. § 7122. After the referral of a civil matter to the Department of Justice, the IRS no longer has the authority to compromise the referred civil liabilities. Slovacek v. United States, 40 Fed. Cl. 828, 833 (1998); Int'l Paper Co. v. United States, 36 Fed. Cl. 313, 321-22 (1996), Isley v. Commissioner, 141 T.C. 349, 363-66 (2013). Note that the Department of Justice generally retains jurisdiction after obtaining a judgment. In the context of cases referred to the Department of Justice to collect by judicial action, the IRM and the Tax Division Settlement Reference Manual recognize that the Department of Justice retains settlement authority. When, for example, the Department of Justice seeks to reduce tax assessments to judgment or foreclose a federal tax lien and a judgment is entered in favor of the United States in the referred case, the Department of Justice has primary collection authority over that judgment. Tax Division Settlement Reference Manual at 33-34; IRM 5.17.4.6; 25.3.5.9. The authority to compromise remains with the Department of Justice even if it refers the case back to the Service for collection. Id. If the taxpayer submits an offer in compromise after a referral to the Department of Justice, the IRS should still examine the taxpayer's financial position and may seek approval from the Department of Justice for accepting the OIC. Isley, 141 T.C. at 365. If the taxpayer "has fully complied with [conditions of probation], which include the obligation to discharge his liabilities for both the conviction years and the three-year probationary period, or if those liabilities have been discharged by means of a settlement between [the taxpayer] and [the Department of Justice], there will be nothing more to collect for those years, making the issues of compromise and the continued application of [I.R.C. §] 7122(a) to the conviction years moot." Isley, 141 T.C. at 376, fn.14. See also, United States v. Wilson, 2016 WL3198629, *10 (E.D. Mich. 2016) (discussing the IRS's authority to begin or resume a civil case after a criminal referral to the Department of Justice has terminated).

(ii) submission procedures

1. The Treasury Regulations provide that a taxpayer may submit an offer in compromise based on doubt as to collectibility, doubt as to liability, the promotion of effective tax administration due to economic hardship, and the promotion of effective tax administration due to public policy or equitable considerations. Treas. Reg. § 301.7122-1(b).

2. To submit offers in compromise based on doubt as to collectibility or effective tax administration, taxpayers must use Form 656, Offer in Compromise. Such offers must cover all assessed and outstanding liabilities, and the taxpayer must

comply with all of the provisions of the Code for five years beginning on the date of acceptance of the offer . See Form 656 (rev. 3-2017). In addition, as part of the consideration for the offer, the Service retains any overpayment of any tax or liability, including interest, for tax periods extending through the calendar year in which the offer is accepted. Id.

3. To submit offers in compromise based on doubt as to liability, taxpayers must use Form 656-L, Offer in Compromise (Doubt as to Liability). Grounds for compromise on this basis may exist when there is legitimate doubt from the viewpoint of both the taxpayer and the Service that an assessed tax liability is correct. In the case of an offer made on this basis, the Service retains payments and credits made, received, or applied before the taxpayer sends in the offer or while it is under consideration, and it may keep proceeds from a levy served prior to submission of the offer but not yet received at the time the offer was sent. See Form 656-L (rev. 1-2018). However, the Service will return an over-collected amount if the Service determines that the taxpayer does not owe the taxes or the IRS ultimately over-collected the compromised tax liability, unless such refund is legally prohibited by statute. Id.

4. A taxpayer submitting a doubt as to collectibility offer or an offer based on Effective Tax Administration (ETA) generally must make a partial payment. See I.R.C. § 7122(c); Notice 2006-68. No partial payment is required for offers submitted by low-income taxpayers or for offers based solely on doubt as to liability. Notice 2006-68. For a lump sum offer, the partial payment must be 20 percent of the offered amount; for a periodic payment offer, the partial payment must be the amount of the first proposed installment. (Lump sum and partial payment offers are defined in (G) below.)

5. Generally, a submitted offer will cover the entire tax liability for a stated period, including penalties and interest. Only assessed liabilities may be compromised.

B. Prohibition on Levy and Suspension of Statute of Limitations While Offer is Pending

1. No levy may be made during the period that an offer is pending with the Service, during the 30 days after rejection of an offer, and during the period that Appeals is considering a timely-filed appeal of a rejection. I.R.C. § 6331(k); see Treas. Reg. § 301.7122-1(g)(1). (The IRS does not levy after accepting the offer, because a levy would breach the OIC-contract.) This prohibition applies with regard to offers pending on or made after December 31, 1999. An offer in compromise becomes “pending” when it is accepted for processing by the Service. An offer is accepted for processing when the Service official signs Form 656. IRM 8.23.1.2(2). The offer remains pending until it is returned, rejected, or

accepted by the Service, or until it is withdrawn by the taxpayer.

2. During the period that levy is prohibited due to a pending offer in compromise, the Service is also prohibited from commencing a proceeding in court to collect the tax to which the offer relates. See I.R.C. § 6331(k)(3)(A), (i)(4). However, the Service may authorize the Department of Justice to make a counterclaim or third-party complaint in any refund suit or to join the taxpayer in any case brought by another taxpayer also liable for the tax. Treas. Reg. § 301.7122-1(g)(6).

3. The statute of limitations on collection is suspended for the period that the Service is prohibited from levying on the taxpayer's property. See I.R.C. § 6331(k)(3)(B), (i)(5); Treas. Reg. § 301.7122-1(i)(1).

Note: For offers pending for any period between December 21, 2000, and March 9, 2002, the statute of limitations continued to run even though levy was prohibited. This is because the Community Renewal Tax Relief Act of 2000, subsection 313(b) (effective December 21, 2000), mistakenly removed from the Code the provision suspending the collection statute while the Service is prohibited from levying. This mistake was corrected by the Job Creation and Worker Assistance Act of 2002, subsection 416(e) (effective March 9, 2002).

4. For offers accepted for processing prior to January 1, 2000 – before the current section 6331(k) was enacted – there was no statutory suspension of the collection statute related to offers in compromise. Thus, the Service generally required taxpayers to sign waivers of the collection statute as a prerequisite to having their offers accepted for processing. The waivers generally operated to suspend the running of the statute during the period the offer was pending, during the period that any term of an accepted offer was not completed, and for one additional year.

a) A waiver signed on or before December 31, 1999 may not extend the collection expiration date beyond December 31, 2002, unless it was executed in connection with an installment agreement. See uncodified § 3461(c)(2) of the IRS Restructuring and Reform Act of 1998, P.L. 105-206, 112 Stat. 685, 763-64, set forth at I.R.C. § 6501(c), Amendments (CCH). See also IRC § 6502(a)(2)(A) and statutory notes.

b) For offers that were still pending as of December 31, 1999, the effective date of section 6331(k), the collection statute expiration date is determined by giving effect to both the signed waiver and the statutory suspension afforded by section 6331(k). As noted above, the waiver generally cannot operate to extend the statute expiration date beyond December 31, 2002; the statutory suspension, however, can extend the date further.

C. Processing and Return of Offers

1. Overview. For a general overview of how the Service processes offers, see Rev. Proc. 2003-71, 2003-2 C.B. 517.

2. User fees. A taxpayer submitting an offer for processing must pay a user fee for doing so, unless the offer is based solely on doubt as to liability or unless the taxpayer certifies that his or her income is at or below a specified poverty guideline level. See Treas. Reg. § 300.3. This requirement is applicable as of November 1, 2003. Treas. Reg. § 300.3(d). If the offer is returned as nonprocessable, the Service returns the user fee. IRM 5.8.2.4.1(1). If the IRS mistakenly determines an offer to be processable and later determines that the offer was nonprocessable, then the Service will keep the user fee. Treas. Reg. § 300.3(b)(3).

3. Partial Payment. A taxpayer submitting a lump sum offer generally must make a partial payment of 20 percent, and a taxpayer submitting a periodic payment offer must make a partial payment in the amount of the first proposed installment. I.R.C. § 7122(c); Notice 2006-68. This partial payment requirement is effective for offers in compromise submitted after July 15, 2006. The requirement is waived if the offer is based solely on doubt as to liability or the taxpayer certifies that his or her income is at or below a specified poverty guideline level. See Notice 2006-68. The partial payments are applied to the taxpayer's liability, and they are usually not refunded if the offer is returned or rejected. The partial payment will be returned in limited situations, e.g., there is no assessed liability to which the partial payment could be applied. See IRM 5.8.2.4.1 (listing situations in which the partial payment would be returned, including the taxpayer's bankruptcy). Aside from the situations listed in IRM 5.8.2.4.1, the Service has no discretion to return a partial payment when it can be applied to an assessed liability. See generally, George Moore Ice Cream Co. v. Rose, 289 U.S. 373, 381-82 (1933).

4. Designation of person to assist. The taxpayer may designate someone to assist the taxpayer by discussing the offer in compromise and related return information with the Service. See Announcement 2005-6, 2005-4 I.R.B. 377. The designee may be someone other than the person or persons designated in a Form 2848, Power of Attorney and Declaration of Representative. Id.

5. Return of Offers. The Service may return an offer in compromise if the Service determines the offer was submitted solely to delay collection or is otherwise nonprocessable. See Treas. Reg. § 301.7122-1(d)(2); Rev. Proc. 2003-71. This includes offers submitted following rejection of an offer if the subsequent offer is not materially different from the original offer and does not address defects identified in the original offer.

6. Frivolous positions or offers intended to delay or impede tax administration. The Service may disregard any portion of an offer in compromise that is based on a position that the Service has identified as frivolous or that reflects a desire to delay or impede the administration of Federal tax laws. I.R.C. § 7122(g). The Service also shall impose a $5,000 penalty on any person who submits such an offer in compromise. I.R.C. § 6702(b)(1). These rules apply to offers in compromise submitted after the Secretary first prescribes a list of frivolous positions under I.R.C. § 6702(c). The Secretary first published a prescribed list in Notice 2007-30, 2007-14 I.R.B. 883, issued on March 15, 2007. The Secretary modified the list in Notice 2010-33, 2010-17 I.R.B. 609, issued on April 7, 2010.

7. Nonprocessable Offers. The Service may deem an offer nonprocessable before any investigation. A nonprocessable offer is not "rejected" and the proponent has no administrative review rights afforded "rejected" offers. The IRS will return a doubt as to collectibility offer as nonprocessable without investigation if the taxpayer is in bankruptcy; if the taxpayer did not submit the user fee or the required initial payment with the offer and does not qualify for a waiver of either; if the offer contains a liability that has been referred to the Department of Justice (approval for accepting such an offer may be obtained from the Department of Justice per IRM 5.8.8.7(2)); if the offer was submitted solely to compromise a tax period that has not yet been assessed and IDRS does not show a return for that period; if the offer was submitted for which there are no liabilities due on the account and IDRS does not indicate an Exam or AUR assessment; if the offer was submitted solely for tax periods with expired CSEDs; if the total amount of payment is listed as a deposit and the taxpayer did not check the low income certification box; if the offer submitted where IDRS does not indicate a required return has been received; or if the offer submitted lists the same liability contained in an open offer. IRM 5.8.2.4.1(1) (2/2018). Note that the user fee will be returned when an offer is nonprocessable because of unfiled tax returns or because it lists the same liability contained in an open offer, but the TIPRA payment will be applied to the taxpayer's assessed liability. IRM 5.8.2.4.1(2). Furthermore, offers submitted with the user fee and a portion (but not all) of the required partial payment may be considered processable offers and the shortfall should be perfected during the case building process.

8. IRM 5.19.24.6.1 (6/2017) has different processability criteria for doubt as to liability offers:

> a. the taxpayer offers no consideration (i.e., zero dollar amount offered or the dollar amount is blank);
> b. the CSED for which the liability is in dispute is expired and it is the only tax period included on the offer
> c. the taxpayer currently has an open offer being considered based on doubt as to collectibility or effective tax administration for any of the liabilities listed in Sections 1 or 2 of Form 656-L ;

d. it is clearly not the taxpayer's intention to compromise the tax liability based on the belief that it is incorrect. For example, taxpayers may erroneously submit Form 656-L when the intent, based on the entries in Section 5 or in attachments, is to request an installment agreement to pay the existing liability, or to compromise the liability on the basis that they cannot pay;
e. the liabilities involve Bureau of Alcohol, Tobacco and Firearms and Explosives penalties;
f. the taxpayer is currently involved in a bankruptcy proceeding;
g. the Service previously denied an innocent spouse claim and the taxpayer is arguing that there is doubt as to liability because the taxpayer is entitled to innocent spouse relief. However, if the prior innocent spouse request was filed under section 6015(f), in which relief was solely denied due to the two year rule, the offer is processable.
h. the taxpayer seeks to compromise a tax period for an unassessed liability:
(1)pending in Automated Underreporter (AUR), Substitute for Return (SFR/ASFR), combined annual wage reporting (CAWR) or Federal Unemployment Tax Adjustment (FUTA);
(2)still under examination ("-L" freeze, CC AMDISA area office status codes 10 - 56), for which the 30-day letter reporting the examination changes or statutory notice of deficiency has been issued; or
(3)currently pending in Appeals ("-L" freeze, CC AMDISA area office status codes 80 - 89).
i.the offer includes periods for which a determination is pending before or upheld in a final determination made by the Tax Court, other courts, or by the Commissioner's final closing agreement authorized under section 7121 (e.g. Form 866 or Form 906);
j. research for any open or closed TC 912 or TC 914 that indicates criminal investigations activity;
k. for restitution based assessments;
l. the offer is submitted on a case under the jurisdiction of the Department of Justice;
m. there is an open control on IDRS for the same tax period as the offer;
n. the offer is submitted solely for the purpose of delaying collection;;
o. for offers requesting compromise for the same tax period that the taxpayer included in an accepted DATL or DATC offer, and the IRS later defaulted the offer;
p. when the liability is due entirely, or in part, to an erroneous refund;
q. if the offer has an MFT 35 or MFT 65, inform the taxpayer that the offer is outside the DATL unit's jurisdiction and advise him/her to submit a Form 1040X to the IRS office identified in the form;
r. if the offer is submitted with a Form SS-8, Worker Classification Determination Request, it will not be considered because it is outside the DATL unit's jurisdiction;

s. when the offer is submitted with Form 8379, Injured Spouse Allocation, which is outside of the DATL unit's jurisdiction.

9. Returns for Failure to Submit Requested Financial Information or for Compliance Failure. After an offer investigation has begun, the Service can return an offer to a taxpayer if the taxpayer fails to provide requested information, fails to come into filing compliance for past-due returns, or fails to stay in filing and payment compliance for current obligations.

D. Rejection of Offers

1. Administrative Review of Proposed Rejections.

a) Before informing a taxpayer that a proposed offer has been rejected, the Service must carry out an independent administrative review of the rejection. See I.R.C. § 7122(e)(1).

b) The Service's Independent Administrative Reviewer performs the administrative review of proposed rejections. IRM 5.8.12.

2. Rejection of Offer. Treas. Reg. § 301.7122-1(f)(1) states, "[a]n offer to compromise has not been rejected until the 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."

3. Appeal of Rejected Offers. A taxpayer may appeal any rejection of an offer to the IRS Office of Appeals. See I.R.C. § 7122(e)(2); IRM 5.8.7.7.5. Under the appeal procedures:

a) The taxpayer will receive a letter from the Service rejecting the offer and setting out the reasons for the rejection.

b) The type of appeal process may depend on the total amount of tax, penalties, and interest owed. See Publication 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree. Those amounts and the corresponding appeals processes are:

(1) $25,000 or less. The taxpayer should send a letter to Appeals indicating the reasons he does not agree with the rejection decision.

(2) Over $25,000. The taxpayer should file a written protest with Appeals. (If the taxpayer files a timely request, the taxpayer is given Appeals consideration even if the request for an appeal does not list items of disagreement.)

c) The protest must be filed within 30 days from the date of the rejection letter, or Appeals will not consider it. Treas. Reg. § 301.7122-1(f)(5).

5. No Rejection of Low Dollar Offers. The Service may not reject an offer from a low-income taxpayer "solely on the basis of the amount of the offer." I.R.C. § 7122(d)(3)(A). This prohibition was intended to address reports that some offers were being rejected because the Service had determined that the amount offered was too low to warrant expending the resources to evaluate the case.

E. Acceptance of Offers

1. Except for deemed acceptances, no offer is accepted until the Service issues a written acceptance of the offer. Treas. Reg. § 301.7122-1(e)(1). The requirement of a writing cannot be waived or abrogated in any manner. Boulez v. Comm'r, 810 F.2d 209 (D.C. Cir. 1987). However, an offer is deemed accepted if it is not rejected by the Service within 24 months of its submission. I.R.C. § 7122(f). Also, Notice 2006-68 provides that there will not be a deemed acceptance if, within the 24 month period, any of the following criteria apply: the offer is 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 deemed acceptance rule applies to offers submitted after July 15, 2006. The 24 month period is tolled for the period that any tax liability listed in the offer is disputed in any judicial proceeding.

2. Deemed acceptance issues may arise in Collection Due Process (CDP) cases. First, after the taxpayer submits an offer, the Settlement Officer (SO) may give the taxpayer an adverse notice of determination. To qualify as a rejection of an offer, however, the Service must provide the taxpayer with a written notice "advising of the rejection, the reason(s) for rejection, and the right to an appeal." Treas. Reg. § 301.7122-1(f)(1). If the Service fails to follow the regulation, there has been no formal rejection, and after 24 months, the offer would be deemed accepted. I.R.C. § 7122(f). Counsel should not assume that such a written notice of rejection was given or that an adverse notice of determination automatically meets the rejection criteria in section 301.7122-1(f)(1). Second, assuming that the rejection criteria have not been met and that the taxpayer files a Tax Court petition, Counsel needs to examine the petition to determine if the taxpayer is disputing the tax liability identified in the offer. If there is a dispute as to the tax liability, then the 24-month period is tolled for the litigation period. I.R.C. § 7122(f). However, if there is no dispute as to the tax liability and the taxpayer is arguing that the Service abused its discretion in rejecting the offer, then the 24-month period would not be tolled. Third, alternatively, if the offer has been timely rejected within the 24- month period, the Tax Court could determine that the SO had abused his discretion and remand the case back to the

SO. Such a remand, however, would not restart or trigger another 24-month period for the remanded offer. To avoid a deemed acceptance, section 7122(f) simply requires that the Service return or reject the offer within the 24-month period. If the Service incorrectly returns or rejects the offer, there can be no deemed acceptance because the Service took action within the 24-month period.

3. Section 7122 is the exclusive method by which the IRS may compromise tax cases. Botany Worsted Mills v. United States, 278 U.S. 282 (1929); United States v. Asmar, 827 F.2d 907 (3d Cir. 1987); Brooks v. United States, 833 F.2d 1136 (4th Cir. 1987). Common law principles of accord and satisfaction cannot be used to circumvent any statutory or regulatory requirements. See Laurins v. Comm'r, 889 F.2d 910 (9th Cir. 1989); Bowling v. United States, 510 F.2d 112 (5th Cir. 1975); In re Busick, No. F 89-277, 1990 WL 63069 (N.D. Ind. Apr. 11, 1990); Smith v. United States, No. 3-84-2244-R, 1986 WL 34345 (N.D. Tex. Jun. 25, 1986); United States v. Bolt, 246 F.Supp. 583 (E.D. Tenn. 1965).

4. An "informal" settlement reached between the taxpayer and a Service employee such as an Appeals Officer is not binding. Botany Worsted Mills v. United States, 278 U.S. 282 (1929) (decided under predecessor statute to section 7122).

5. An offer may be submitted by a taxpayer who also has been ordered to pay restitution. Although the IRS is authorized to pursue collection of a restitution based assessment (RBA), an OIC may only address a taxpayer's civil tax liabilities, not any criminal restitution. Restitution and any associated RBAs should not be included in any OIC. IRM 5.8.4.23.2(1) (rev. 7/2017).

F. Effect of Acceptance of an Offer

1. When the Service accepts an offer, it enters into a hybrid-contractual relationship with the taxpayer. It is not a pure contractual relationship because section 7122 and its accompanying regulation dictate certain results. This agreement applies to the entire liability for taxes, including penalties and interest, for the periods with respect to which the offer was submitted.

2. The actual compromise does not occur immediately after the Service accepts the offer. Instead, the compromise will occur when the taxpayer has fulfilled all of the requirements contained in Form 656, including the 5-year compliance provision that requires the taxpayer to timely file and pay for 5 years after the acceptance of the offer. To clarify the taxpayer's responsibility, Form 656 explains that immediately after the Service accepts the offer, the taxpayer remains responsible for the full amount of the tax liabilities, accrued penalties and interest and will remain so until all of the terms and conditions of the offer have been met.

3. When the IRS accepts the offer, it will conclusively settle the liability of the

taxpayer specified in the offer. Following the acceptance of an offer, neither the taxpayer nor the government will be permitted to reopen the case except in three narrow categories listed below. An accepted offer may only be set aside where:

a) False information or documents are supplied in conjunction with the offer;

b) The ability to pay or assets of the taxpayer are concealed; or

c) A mutual mistake of material fact sufficient to cause the offer agreement to be reformed or set aside is discovered.

Treas. Reg. § 301.7122-1(e)(5). Note there may be some confusion as to whether a mutual mistake of material fact has occurred. First, in defining a mistake, we look to Section 151 of the Restatement 2d of Contracts: "[a] mistake is a belief that is not in accord with the facts." This erroneous belief must relate to the facts as they exist at the time of the making of the contract. A party's prediction or judgment as to future events, even if erroneous, are not "mistakes." Id. at Comment (a). Second, Section 152 explains that the mistake must be mutual; there is no relief for a unilateral mistake. "Relief is only appropriate in situations where a mistake of both parties has such a material effect on the agreed exchange of performances as to upset the very basis for the contract." Id. at Comment (a).

4. The Service may terminate an accepted offer and collect the original liability, plus accrued penalties and interest, less payment made to the Service if the taxpayer violates the terms of the offer. Express conditions in an offer in compromise, such as the timely filing of returns and payment of taxes for the five years after acceptance of the offer, are subject to strict performance. Trout v. Comm'r, 131 T.C. 239 (2008). Prior to Trout, in a decision reversed by the Eighth Circuit, the Tax Court had held that the Service could terminate a compromise agreement only where the taxpayer's breach was material. See Robinette v. Comm'r, 123 T.C. 85 (2004), rev'd, 439 F.3d 455 (8th Cir. 2006).

5. If the taxpayer breaches an accepted offer, then under the election of remedies doctrine, the Service has the choice between affirming the contract and recovering the missed payment or ending the contract and recovering the unpaid balance of the offer to the original amount of the tax liability, plus accrued interest and penalties, less payment made to the Service. After electing its remedy, the Service may choose a different remedy, as long as the taxpayer did not rely on the initial remedy chosen. Quality Software v. Comm'r, T.C. Memo. 2015-107 (2015). For example, the Service could choose to end the compromise-contract, but later decide to affirm the contract instead. Even though the compromise has been breached, the compromise still represents a settlement by the taxpayer of his liability, and the taxpayer is precluded from litigating the merits of his liability in a subsequent refund action. See United States v. Feinberg, 372 F.2d 352 (3d Cir. 1967).

G. Effect and Terms of Payment

1. A lump sum offer in compromise is an offer in which the taxpayer proposes to pay in five or fewer installments. I.R.C. § 7122(c)(1)(A)(ii).

2. A periodic payment offer in compromise is an offer where the taxpayer proposes to pay the offered amount in more than five installments. Cf. I.R.C. § 7122(c)(1)(A)(ii).

3. After the taxpayer completes the offer payments, Form 656 provides for the release of the federal tax lien. Section 7122 does not provide for the release of the federal tax lien; instead, the release is a contract provision. Note that Treas. Reg. § 301.6325-1(f)(2) provides that if the taxpayer breaches the OIC-contract and the CSED is still open, the IRS can reinstate the tax lien. The regulation does not require that the IRS must also terminate/end the OIC-contract.

4. A collateral agreement provides additional consideration for an offer and is a part of the offer to which it relates. Collateral agreements may provide for additional future payments or for the forbearance from claiming tax benefits. Collateral agreements are secured only when a significant recovery is expected or securing a collateral agreement will facilitate resolution. See IRM 5.8.6.2(1). The use of collateral agreements should be the exception and not the rule.

a) Form 2261, Collateral Agreement – Future Income (Individual), is used when a taxpayer agrees to pay graduated percentages of future annual income in excess of the amounts needed to pay ordinary and necessary living expenses over a reasonable period (usually five years, but the payment period is limited by the collection statute). Annual income includes the taxpayer's adjusted gross income plus all nontaxable income and profits, and adjustments for losses from the sale or exchange of property that were included in gross income, federal income taxes paid, and payments made under the offer in compromise. The percentages and anticipated living expenses are negotiated by the taxpayer and the Service.

b) Form 2261-B, Collateral Agreement - Adjusted Basis of Specific Assets, is used where the basis of the assets owned by the taxpayer substantially exceeds the value used in determining an acceptable offer. A reduction in basis for the computation of depreciation, or the gain or loss on a sale, will enable the government to recoup a portion of the compromised tax through payment of additional taxes in future years.

c) Form 2261-C, Collateral Agreement - Waiver of Net Operating Losses, Capital Losses, and Unused Investment Credits, provides for additional consideration through future years' tax payments by waiving

any carryback or carryover benefits resulting from net operating losses, capital losses, or unused investment credits.

d) Form 2261-D, Collateral Agreement on a Delinquency Penalty Offer, is used when considering offers to compromise delinquency penalties to preclude the subsequent filing of a refund claim due to a net operating loss or investment credit carryback. The agreement clarifies that the entire liability of the taxpayer (tax, penalty and interest) for a particular period is compromised even though the only unpaid item involved in the compromise is the penalty.

e) Collateral agreements (particularly future income agreements) are monitored by the Campuses for the years in which they are in effect.

f) Where the taxpayer is jointly obligated for the tax liability being compromised, compromise with one taxpayer does not affect the Service's ability to collect from the co-obligor. Treas. Reg. § 301.7122-1(e)(5) provides, "[c]ompromise with one taxpayer does not extinguish the liability of, nor prevent the IRS from taking action to collect from, any person not named in the offer who is also liable for the tax to which the compromise relates."

As a legal matter, the compromise of employment taxes by a corporation or other entity does not affect the liability of a responsible person for the trust fund recovery penalty (TFRP). It is the Service's policy that before an offer to compromise trust fund tax will be investigated for entities in which the trust fund recovery penalty is applicable, i.e. determined to be responsible and willful in regard to the unpaid employment taxes (in business or out of business), the trust fund portion of the taxes must be paid, the TFRP must be assessed against all responsible persons, the trust fund package forwarded for assessment, or a determination has been made by an RO to not assert due to collectibility. IRM 5.7.4.9(1) (11/2015). The amount offered by an entity to compromise unpaid trust fund liabilities will represent what can be collected from that entity. If the Service enters into a compromise for a portion of the trust fund tax liability, the remainder of the trust fund taxes may still be collected from a responsible person pursuant to Section 6672 of the Internal Revenue Code and Treas. Reg.§ 301.7122-1(e)(5). IRM 5.7.4.9(2) (11/2015).

g)

H. Counsel's Role in the Compromise Process—Review of Proposed Acceptances Generally

1. Offers to compromise a civil case in which the unpaid amount of tax assessed (including penalties and interest) is $50,000.00 or more require the legal opinion

of the General Counsel for the Treasury or his delegate. I.R.C. § 7122(b). The authority to render this opinion has been delegated to the Chief Counsel and redelegated to Division Counsel (SB/SE) and Area Counsel. See CCDM 33.3.2.1(3).

Counsel's review of proposed acceptances has two separate and distinct components: (1) certification that all of the legal requirements for compromise have been met; and (2) review of the proposed compromise for consistent application of the Service's acceptance policies. CCDM 33.3.2.2(2).

2. Review for Legal Requirements. The primary purpose of Counsel review is certifying that the legal requirements for compromise have been met. These requirements have been met if: (1) a basis for compromise under the Treasury regulations has been established; and (2) the documentation requirements of section 7122(b) have been satisfied. CCDM 33.3.2.2(2)(a).

3. Review for Adherence to Acceptance Policies. If the legal requirements for compromise have been met, Counsel then reviews the proposed acceptance for consistent application of the Service's policies regarding whether the proposed compromise amount is acceptable. CCDM 33.3.2.2(2)(b).

Once Counsel has determined that all of the legal requirements for compromise have been met, Counsel will sign the Form 7249, Offer Acceptance Report. The signed Form 7249 constitutes the opinion of Counsel required by section 7122(b), and it will be placed on file for public inspection.

Note: Even if Counsel finds that a proposed acceptance is not in keeping with the Service's acceptance policy, it is not justified in withholding an opinion if all of the legal requirements for compromise have been met. Rather, Counsel should advise the Service of its concerns by separate memorandum. If Counsel recognizes that a proposed acceptance deviates from the Service's acceptance policy, but concurs in the Service's determination that such deviation is warranted under the facts of the case, those views should also be conveyed to the Service by separate memorandum. In either event, the views of Counsel, as set forth in the separate memorandum, will be reviewed by the official with authority to compromise prior to making the acceptance final. If Counsel is contemplating issuing an opinion that an offer should not be accepted, the offer group should be contacted on an informal basis to explore the possibility of reaching a consensus on the issues causing Counsel to question the propriety of accepting the offer.

4. Counsel Reliance on Service's Determinations. In making each of the foregoing determinations, Counsel must rely upon factual determinations made by the Service. CCDM 33.3.2.2(3). These determinations should ordinarily not be reexamined by Counsel unless patently erroneous. Asset valuations and necessary expense determinations are largely matters of administrative discretion and judgment and should not be questioned by Counsel.

5. Issues Not Related to Basis for Compromise or Acceptance Standards. Occasionally, although a basis for compromise may be established and a proposed acceptance may be in keeping with the Service's acceptance standards, Counsel may have reservations about whether the offer should be accepted because of policy or other nonlegal concerns. As with all advice rendered by Counsel, it is proper to raise these concerns with the appropriate Service official, whether informally or by memorandum. However, such concerns are not grounds for withholding an opinion that the legal requirements for compromise have been established.

6. Documentation Requirements of I.R.C. § 7122(b). Section 7122(b) requires that the opinion of Counsel be placed in the file and contain the reasons for compromise as well as a statement of the amount of tax assessed, amount of interest, additional amount, addition to tax, or assessable penalty imposed by law on the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise. Counsel should review the Form 7249, Offer Acceptance Report, to see that this information has been included. Form 7249 will serve two purposes. First, it will meet the file requirement of section 7122(b). Second, it will meet the public inspection requirements for accepted offers imposed by President Truman's Executive Order 10386, which created the right for public inspection. In Rev. Rul. 117, 1953-1 C.B. 498, Treasury articulated procedures for public inspection. See also, Treas. Reg. § 601.702 (providing that a copy of Form 7249 will be available for one year after acceptance of the offer).

I. Counsel's Role in the Compromise Process—Review of Proposed Acceptances Based on Type of Offer

As discussed in (H) above, Counsel reviews proposed acceptances to determine (1) that the legal requirements for compromise have been met and (2) that the Service's policies regarding whether the proposed compromise amount is acceptable have been consistently applied. The analysis carried out by Counsel varies depending upon the type of offer at issue.

1. Review of offers based on doubt as to liability

a) Legal basis for compromise. 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. CCDM 33.3.2.3.1. Doubt as to liability does not exist where the liability has been established by a final court decision or judgment concerning the existence or amount of the liability. Treas. Reg. § 301.7122-1(b)(1).

b) Acceptance policy. In reviewing the proposed acceptance of doubt as to liability offers for consistent application of the Service's policies regarding whether the proposed compromise amount is acceptable, Counsel should refer to the expected hazards in litigating the case. CCDM 33.3.2.3.1(2). The evaluation of litigating hazards is not an exact science. Ordinarily, an amount will be considered acceptable under the Service's policies if it is within a reasonable range of the predicted result in litigation.

2. Doubt as to Collectibility Offers

a) Legal basis for compromise. Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the liability. Treas. Reg. § 301.7122-1(b)(2).

b) General acceptance policy. Where doubt as to collectibility has been established, an offer is generally considered acceptable if it closely approximates the amount that could reasonably be collected by other means, including the Service's administrative and judicial collection powers. See IRM 1.2.14.1.17, Policy Statement 5-100. "The ultimate goal is a compromise which is in the best interest of both the taxpayer and the Service." IRM 1.2.14.1.17(4). In reviewing the proposed acceptance of doubt as to collectibility offers for consistent application of the Service's policies regarding whether the proposed compromise amount is acceptable, Counsel should determine whether the four components of collectibility (net equity in assets, present and future income, amounts collectible from third parties, and amounts available to the taxpayer but beyond the reach of the Service) have been considered; whether issues with regard to lien priority have been properly determined; and whether fraudulent conveyances and/or transferee liability issues have been properly resolved. CCDM 33.3.2.3.2(2).

c) "Special Circumstances" cases. The Service's policies and procedures recognize that it may be appropriate in some cases for the Service to accept an offer of less than the total reasonable collection potential of a case. These are known as "special circumstances" cases. The Service anticipates acceptance of less than reasonable collection potential in cases where, despite the proper application of the Service's allowable expense standards and asset valuation rules, the taxpayer could not pay the full reasonable collection potential without suffering economic hardship. See IRM 5.8.4.2. Economic hardship is defined as the inability to meet reasonable basic living expenses. See Treas. Reg. § 301.6343-1(b)(4)(i). Economic hardship does not include mere inconvenience or the inability to maintain a luxurious or affluent standard of living. Under the Service's procedures, the amount accepted should reflect what could reasonably be collected less the amount a taxpayer must retain to avoid the economic

hardship. The Service will also accept an offer due to special circumstances where the reasonable collection potential is less than the liability but there are public policy/equity factors which justify accepting the offer for an amount less than the reasonable collection potential.

3. Offers Based on the Promotion of Effective Tax Administration. Treasury regulations issued in recent years have expanded the Service's authority to compromise beyond the traditional bases of doubt as to liability and doubt as to collectibility. See Treas. Reg. § 301.7122-1(b)(3). However, the Service may not enter into a compromise to promote effective tax administration where doing so would undermine compliance with the tax laws. Id.

a) Economic Hardship

(1) Legal basis for compromise. The Service is authorized to compromise with individuals when it determines that a liability could be collected in full, but to do so would cause economic hardship within the meaning of Treas. Reg. § 301.6343-1. Treas. Reg. § 301.7122-1(b)(3)(i). Economic hardship is defined as the inability to meet reasonable basic living expenses. *See* Treas. Reg. § 301.6343-1(b)(4). Economic hardship does not include mere inconveniences or the inability to maintain a luxurious or affluent standard of living. If, even after deferring to the Service's valuation and expense determinations, Counsel concludes that the liability could be collected in full without causing economic hardship, as defined under the regulations, the basis for compromise is not established. CCDM 33.3.2.3.3(2). In establishing this basis for compromise, the possible effect of compromise on future compliance with the tax laws must be considered. CCDM 33.3.2.3.3(2).

(2) Acceptance policy. Under the Service's procedures, the amount accepted should reflect what could reasonably be collected less the amount a taxpayer must retain to avoid the economic hardship. See IRM 5.8.11.2.1. The determination to accept a particular amount must be based on the taxpayer's particular facts and circumstances, and must be explained and documented clearly. The decision to accept a particular amount will necessarily involve judgment on the part of the offer specialist and the official delegated the authority to make the final acceptance decision. CCDM 33.3.2.3.3(2)(a).

b) Public Policy or Equity

(1) Legal basis for compromise. If there are no grounds for compromise on collectibility, liability, or economic hardship grounds, the

Service may compromise to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability. Treas. Reg. § 301.7122-1(b)(3)(ii); CCDM 33.3.2.3.3(3). As used in this regulation, equity refers to the equitable rules, maxims, and case law developed in the chancery courts; these courts were separate and distinct from courts of law. The party seeking equitable relief had the burden of showing that equitable rules, as applied to his set of facts, qualified him for equitable relief.

a. This basis is established only when exceptional circumstances exist such that collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner. This basis is not established by vague assertions that the imposition of a tax liability, interest, and/or penalties is unfair.

b. This authority to compromise should not be used as a method to disregard or circumvent established limits to relief granted elsewhere in the Code, such as interest abatement. See IRM 5.8.11.2.2.1(7). In establishing this basis for compromise, the Service must consider the possible effect of compromise on future compliance with the tax laws. CCDM 33.3.2.3.3(3).

(2) Acceptance policy. An adequate compromise amount will be determined based on what is considered fair and equitable under the particular facts and circumstances. CCDM 33.3.2.3.3(3)(a). The offer acceptance recommendation should contain a detailed explanation as to how the Service determined that the amount offered was adequate and is a fair and equitable resolution of the case. See IRM 5.8.11.5.

J. Miscellaneous Legal Issues Relating to Compromises

1. Introduction. Although Counsel is most frequently involved in the compromise program through its review of proposed acceptances, other legal issues relating to the formation, validity, and interpretation of compromises often arise in CDP Tax Court cases in which Appeals rejected the taxpayers' offers.

2. Role of Contract Law. Courts have often held that a compromise is a contract, subject to the general rules governing contracts. See Trout v. Comm'r, 131 T.C. 239 (2008); Robinette v. Comm'r, 439 F.3d 455 (8th Cir. 2006); Roberts v. United States, 242 F.3d 1065 (Fed. Cir. 2001); United States v. Feinberg, 372 F.2d 352 (3d Cir. 1967); United States v. Lane, 303 F.2d 1 (5th Cir. 1962). But general principles of contract law do not abrogate the statutory or regulatory requirements governing the compromise of internal revenue taxes. See Bowling

v. United States, 510 F.2d 112, 113 (5th Cir. 1975); Moskowitz v. United States, 285 F.2d 451, 453 (Ct. Cl. 1961). Wherever possible, the Service will rely on statutory or regulatory provisions rather than contract principles.

3. Proper Parties to Sign and Submit Offers. An offer in compromise must be signed by the persons legally authorized to act for the taxpayer, such as:

a) Husband and wife if jointly offering to compromise a joint liability;

b) Authorized corporate officer for a corporate taxpayer;

c) Generally, one of the general partners in a partnership, if under state law a general partner binds other partners. ;

d) Holder of a valid power of attorney - Form 2848.

4. Proper Parties to Withdraw Offers in Compromise. An offer in compromise may be withdrawn by the proponent at any time prior to its acceptance. Treas. Reg. § 301.7122-1(d)(3). Although the proponent may be someone other than the taxpayer whose tax liability is being compromised, the proponent must be the person who submitted the offer in compromise and cannot simply be the one who advanced the funds accompanying the offer in compromise. Ralston Steel Corp. v. United States, 340 F.2d 663 (Ct. Cl. 1965), cert. denied, 381 U.S. 950 (1965).

5. Offers in Compromise in Docketed Tax Court Cases. Doubt as to collectibility is not a factor in the determination of a deficiency in a Tax Court case. If an offer in compromise based upon collectibility is submitted by a petitioner while the petitioner's case is pending in the Tax Court, a stipulation of the full amount of the deficiencies and penalties (those determined in the statutory notice of deficiency or those redetermined on the merits by agreement of the parties) should be obtained from the petitioner. The reason for requiring the stipulation of the full amount, as determined or redetermined in such cases, is to protect the Service's ability to collect additional amounts pursuant to a collateral agreement in the event the financial status of the petitioner should change. Also, the Service could seek collection of the full liability if the petitioner defaults on the payments. The decision document should either be filed or held in escrow by the Area Counsel attorney pending approval of the offer. See CCDM 35.8.6.2.1(4). The letter accepting the offer in compromise should not be sent to the petitioner until the amounts specified in the stipulation have been assessed. See CCDM 35.8.6.2.1(5).

6. Doubt as to Liability Offers in CDP Proceedings. If a taxpayer received a statutory notice of deficiency or otherwise had a prior opportunity to dispute the tax liability, the taxpayer may not raise at a CDP hearing an offer in compromise based on doubt as to liability. See I.R.C. § 6330(c)(2)(B); Kindred v. Comm'r, 454 F.3d 688 (7th Cir. 2006); Hajiyani v. Comm'r, T.C. Memo. 2005-198.

VI. INSTALLMENT AGREEMENTS - I.R.C. § 6159

A. Principles of an installment agreement

1. The Service has the authority to enter into written agreements with any taxpayer providing for the payment of any tax in installment payments if doing so will facilitate full or partial collection of the taxpayer's liability. I.R.C. § 6159(a). In certain circumstances the Service is required to enter into an installment agreement, as discussed in (B) below.

2. The generally applicable user fee before January 1, 2014, was $105. From January 1, 2014 through December 31, 2016, it was $120; however, the user fee of $52 when the taxpayer paid via direct debit from a bank account was unchanged. Also, the user fee of $43, regardless of the method of payment, for a low-income taxpayer remained unchanged from January 1, 2014 through December 31, 2016. Prior to January 1, 2014, the user fee was $45 for restructuring or reinstating an installment agreement. From January 1, 2014 through December 31, 2016, the user fee increased to $50. Treas. Reg. §§ 300.1, 300.2.

Beginning January 1, 2017, new user fees took effect. The fee for entering into an installment agreement on or after January 1, 2017, is $225. A reduced fee applies in the following situations:

(a) The fee is $107 when the taxpayer pays by way of a direct debit from the taxpayer's bank account for installment agreements entered into on or after January 1, 2017;
(b) The fee is $149 for entering into online payment agreements on or after January 1, 2017, except that the fee is $31 when the taxpayer pays by way of a direct debit from the taxpayer's bank account; and
(c) Notwithstanding the type of installment agreement and method of payment, the fee is $43 if the taxpayer is a low-income taxpayer, that is, an individual who falls at or below 250 percent of the dollar criteria established by the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511), or such other measure that is adopted by the Secretary, except that the fee is $31 when the taxpayer pays by way of a direct debit from the taxpayer's bank account with respect to online payment agreements entered into on or after January 1, 2017.
(d) New user fees also exist for restructuring or reinstating an installment agreement. The fee on or after January 1, 2017, is $89.

If the taxpayer is a low-income taxpayer, then the fee for restructuring or reinstating an installment agreement on or after January 1, 2017 is $43.

3. Installment agreements differ from offers in compromise in that installment agreements only provide for a means by which the taxes are to be paid. They do not finally settle either the determination of the correct amount of the tax for a period or the liability for the payment of such taxes. Interest and penalties also keep running even when an installment agreement is in place.

4. A request for an installment agreement can be made orally or in writing, but the actual agreement must be in writing.

5. Generally, a request for an installment agreement should include information sufficient to identify the taxpayer and the tax liability to be covered by the agreement, along with an offer to make monthly or periodic payments of a specific amount.

6. The Service may disregard any portion of a request to enter into an installment agreement that is based on a position that the Service has identified as frivolous or that reflects a desire to delay or impede the administration of Federal tax laws. I.R.C. § 7122(f). The Service also shall impose a $5,000 penalty on any person who submits such a request. I.R.C. § 6702(b)(1). These rules apply to installment agreements requested after the Secretary first prescribes a list of frivolous positions under I.R.C. § 6702(c). The Secretary first published a prescribed list in Notice 2007-30, 2007-14 I.R.B. 883, issued on March 15, 2007. The Secretary modified the list in Notice 2010-33, 2010-17 I.R.B. 609, issued on April 7, 2010.

7. As a policy matter, the IRS accepts streamlined installment agreements, which do not require collection information statements. IRM 5.14.5. A streamlined installment agreement may be accepted when the aggregate unpaid balance of assessment is $50,000 or less, and the liability can be full paid within the earlier of 72 months or the CSED.

B. Guaranteed Installment Agreements.

The Service must accept a taxpayer's request for an installment agreement for the payment of income taxes, if:

1. The aggregate amount of such liability (determined without regard to interest, penalties, additions to the tax, and additional amounts) does not exceed $10,000;

2. The taxpayer (and if such liability relates to a joint return, the taxpayer's spouse) has not, during any of the preceding five taxable years:

a) failed to file any required income tax return;

b) failed to pay any tax required to be shown on such return; or

c) entered into an installment agreement for the payment of any income taxes;

3. The Service determines that the taxpayer is financially unable to pay the liability in full when due (and the taxpayer submits such information the Service may require to make such determination);

4. The agreement requires full payment of such liability within three years; and

5. The taxpayer agrees to comply with the provisions of the Code for the period that the installment agreement is in effect.

I.R.C. § 6159(c).

C. Partial Payment Installment Agreements.

The Service may enter into installment agreements that provide for less than full payment of a tax liability. I.R.C. § 6159(a). The Service must review each partial payment installment agreement at least once every two years. I.R.C. § 6159(d). Congress provided the Service with the authority to enter into partial payment installment agreements in section 843 of the American Jobs Creation Act of 2004, effective for agreements entered into on or after October 22, 2004.

D. Statute of Limitations

1. A taxpayer and the Service can agree to an extension of the statute of limitations for collection only in limited circumstances. One such circumstance is when the extension was agreed to "at the time [an] installment agreement was entered into[.]" I.R.C. § 6502(a)(2).

2. Extension of the collection statute is accomplished by way of a waiver of the collection statute by the taxpayer.

a) Any waiver signed on or before December 31, 1999 is ineffective to extend the collection statute expiration date beyond December 31, 2002, unless it was executed in connection with an installment agreement. See uncodified section 3461(c)(2) of the IRS Restructuring and Reform Act of 1998, P.L. 105-206, 112 Stat. 685, 763-64; see also I.R.C. § 6501(c)(4).

It is the Service's policy to obtain collection statute extensions only in conjunction with partial payment installment agreements and only in certain situations. See IRM 5.14.2.2(1).

3. Section 6502 does not limit the length of time allowed for a statute extension for installment agreements. However, it is the Service's policy that the length of extension of the collection statute must be based on the time it will take to make payments and cannot exceed five years plus up to one year to account for changes in the agreement. IRM 5.14.2.1.3(3), 5.14.2.2(8). Such extensions require the approval of a defined level of management. IRM 5.14.2.2(17).

4. Waivers obtained in conjunction with installment agreements will expire 90 days following the end of the extension that was agreed to by the taxpayer. See IRM 5.14.2.2.2(1).

E. Modification or Termination of Installment Agreements.

1. An installment agreement remains in effect for the term specified in the agreement.

2. The Service may terminate any installment agreement if:

a) the taxpayer provided inaccurate or incomplete information to the Service prior to the date the agreement was entered into; or

b) the Secretary believes that collection of any tax covered by the agreement is in jeopardy.

I.R.C. § 6159(b)(2).

3. The Service may alter, modify, or terminate an installment agreement if the taxpayer fails:

a) to pay any installment on time,

b) to pay any other tax liability at the time it is due, or

c) to provide any financial condition updates that the Service requests.

I.R.C. § 6159(b)(4).

4. The Service may also alter, modify, or terminate an installment agreement if it determines that the financial condition of the taxpayer has "significantly" changed. I.R.C. § 6159(b)(3). The Service can grant a taxpayer's own request that an installment agreement be modified if the Service determines that the

taxpayer's financial condition has significantly changed. Treas. Reg. § 301.6159-1(e)(3).

5. Before it alters, modifies, or terminates an installment agreement, the Service must give the taxpayer notice of the proposed action, unless the Service believes that collection of any tax to which the installment agreement relates is in jeopardy. I.R.C. § 6159(b)(5). The notice must include the reasons for the proposed action and must be provided no later than thirty days prior to the date the action is to be taken. For rights to appeal of these decisions, see (H) below.

F. Prohibition on Levy and Suspension of Statute of Limitations

1. No levy may be made during:

   a) the period that a taxpayer's request for an installment agreement for payment of the unpaid tax at issue in the levy is pending with the Service;

   b) the 30 days after the Service rejects the taxpayer's request for an installment agreement;

   c) the period that an installment agreement for the payment of the unpaid tax at issue in the levy is in effect;

   d) the 30 days following the Service's termination of an installment agreement, and

   e) the period that a timely-filed appeal of a rejection or termination decision on the installment agreement is pending.

I.R.C. § 6331(k)(2).

2. The statute of limitations on collection is generally suspended for the period that the Service is prohibited from levying on the taxpayer's property. See I.R.C. § 6331(k)(3)(B), (i)(5); Treas. Reg. § 301.6159-1(g). The statute of limitations on collection is not suspended while an installment agreement is actually in effect. I.R.C. § 6331(k)(2)(C), (k)(3)(B), and (i)(5); Treas. Reg. § 301.6159-1(g).

Note: For installment agreements in effect for any period between December 21, 2000, and March 9, 2002, the statute of limitations continued to run even though levy was prohibited. This is because the Community Renewal Tax Relief Act of 2000 (effective December 21, 2000) mistakenly removed the suspension of the collection statute from the Code. This was corrected by the Job Creation and Worker Assistance Act of 2002.

3. During the period that levy is prohibited due to a pending installment agreement, the Service is also prohibited from commencing a proceeding in court to collect the tax to which the offer for an installment agreement relates. I.R.C. § 6331(k)(3)(A), (i)(4). However, the Service can make a counterclaim in any refund suit or join the taxpayer in any case brought by another taxpayer also liable for the tax. See Treas. Reg. § 301.6331-4(b)(2).

G. Administrative Review of Rejected Installment Agreements

1. Before informing a taxpayer that a proposed installment agreement has been rejected, the Service must carry out an independent administrative review of the rejection. See I.R.C. § 7122(e)(1); IRM 5.14.9.7.

2. Administrative review of proposed rejections is carried out by the Service's Independent Administrative Reviewer. IRM 5.14.9.7(3).

H. Appeal Rights

1. Appeal of Rejected Requests for Installment Agreements. A taxpayer may appeal to the IRS Office of Appeals any rejection of a request to enter into an installment agreement. I.R.C. § 7122(e)(2); see IRM 5.14.9.8. A taxpayer may also appeal the modification or termination of his IA. Treas. Reg. § 301.6159-1(e)(5); see IRM 5.14.11.

2. Appeal of Terminated Installment Agreements. The Service must carry out an independent administrative review of terminations of installment agreements if a taxpayer requests such a review. See I.R.C. § 6159(e); Treas. Reg. § 301.6159-1(e)(5).. This review also takes place in the IRS Office of Appeals. See IRM 5.14.9.8.

I. FAST Act, Public Law No. 114-94 (Dec. 4, 2015)

1. The Fixing America's Surface Transportation ("FAST") Act made several amendments to the Internal Revenue Code, including references to offers in compromise and installment agreements. First, new section 7345(a) provides, that if the Secretary of Treasury receives certification by the Commissioner of Internal Revenue that an individual has a seriously delinquent tax debt, the Secretary shall transmit such certification to the Secretary of State for action with respect to denial, revocation, or limitation of a passport pursuant to section 32101 of the FAST Act.

2. In new section 7345(b)(1), the phrase "seriously delinquent tax debt" means an unpaid, legally enforceable Federal tax liability of an individual —(A) which

has been assessed, (B) which is greater than $50,000, and (C) with respect to which—(i) a notice of lien has been filed pursuant to section 6323 and the administrative rights under section 6320 with respect to such filing have been exhausted or have lapsed, or (ii) a levy is made pursuant to section 6331.

3. In new section 7345(b)(2), the phrase "seriously delinquent debt" shall not include—(A) a debt that is being paid in a timely manner pursuant to an agreement to which the individual is party under section 6159 (i.e. an installment agreement) or section 7122 (i.e. an offer in compromise), and (B) a debt with respect to which collection is suspended with respect to the individual—(i) because a due process hearing under section 6330 is requested or pending, or (ii) because an election under sections 6015(b) or 6015(c) is made or relief under section 6015(f) is requested.

4. New section 7345(c)(1) provides for a reversal of certification: in the case of an individual with respect to whom the Commissioner makes a certification under new section 7345(a), the Commissioner shall notify the Secretary of Treasury (and the Secretary shall subsequently notify the Secretary of State) if such certification is found to be erroneous or if the debt with respect to such certification is fully satisfied or ceases to be a seriously delinquent tax debt by reason of new section 7345(b)(2).

5. New section 7345(c)(2)(A) provides, that in the case of a debt that has been fully satisfied or has become legally unenforceable, such notification shall be made not later than the date required for issuing the certificate of release of lien with respect to such debt under section 6325(a).

6. New section 7345(c)(2)(B) provides, that in the case of an individual who makes an election under sections 6015(b) or 6015(c), or requests equitable relief under section 6015(f), such notification shall be made not later than 30 days after such election or request.

7. New section 7345(c)(2)(C) provides, that in the case of an installment agreement under section 6159 or an offer-in-compromise under section 7122, such notification shall be made not later than 30 days after such agreement is entered into or such offer is accepted by the Secretary.

8. New section 7345(c)(2)(D) provides, that in the case of an erroneous certification, such notification shall be made as soon as practicable after such finding.

9. New section 7345(d) provides that the Commissioner shall contemporaneously notify an individual of any certification under new section 7345(a), or any reversal of certification under new section 7345(c), with respect to such individual. Such notice shall include a description in simple and nontechnical terms of the right to bring a civil action under new section 7345(e).

10. New section 7345(e)(1) provides for a judicial review of certification: after the Commissioner notifies an individual under new section 7345(d), the taxpayer may bring a civil action against the United States in a district court of the United States or the Tax Court to determine whether the certification was erroneous or whether the Commissioner has failed to reverse the certification.

11. New section 7345(e)(2) provides that, if the court determines that such certification was erroneous, then the court may order the Secretary to notify the Secretary of State that such certification was erroneous.

J. Bipartisan Budget Act of 2018, Public Law No. 115-124 (2/9/2018)

1. New section 6159(f)(1) limits the amount of a user fee for an installment agreement to the fee amounts existing on the date of enactment of the Bipartisan Budget Act of 2018.

2. section 6159(f)(2)(A) provides that if the taxpayer has an adjusted gross income which does not exceed 250 percent of the applicable poverty level and the taxpayer has agreed to make installment agreement payments by electronic payment through a debit instrument, no user fee shall be imposed. New section 6159(f)(2)(B) provides that if the taxpayer is unable to make electronic payments under an installment agreement through a debit instrument, the IRS "shall, upon completion of the installment agreement, pay the taxpayer an amount equal to any such fees imposed."

2018 GL-1 Instruction Assigned to Melinda Fisher

Previous Instruction: Brooke S. Laurie, Melinda K. Fisher, Beth A. Nunnink, Michael R. Fiore, Vivian N. Rodriguez, Laurence ("Larry") K. Williams, Lauren B. Epstein, and William F. Conroy