



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE SIGNIFICANT SERVICE CENTER ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL,
AREA 5, SALT LAKE CITY

FROM: Associate Chief Counsel
CC:PA

SUBJECT: Significant Service Center Advice

This Significant Service Center Advice responds to your request of October 16, 2000, for guidance on a question posed by the Ogden Service Center.

ISSUE

If the Internal Revenue Service accepts an offer in compromise, should a service center abate assessment of the compromised tax liability?

CONCLUSION

No, the service center should not abate the assessment. Notwithstanding the offer in compromise, the statute of limitations on collection of the tax liability will run from the date the tax liability was assessed.

FACTS

According to your memorandum, the local service center has sought guidance on offers in compromise and the statute of limitations for collection. Specifically, the service center is concerned with the following situation. A taxpayer receives a refund of an overpayment shown on the taxpayer's return. Later, the service center selects the return for audit and assesses additional amounts. After the service center makes the additional assessment, the taxpayer submits an offer in compromise, which is accepted. In response, the service center enters on the taxpayer's account a transaction code for an abatement of the additional liability, or a transaction code clearing the assessed debit. If the taxpayer fails to meet the

conditions of the offer in compromise, the service center reassesses the additional amount if that amount was abated, or reverses the transaction code clearing the debit. In some cases, the amount placed back on the account after default is treated as a new assessment giving rise to a new statute of limitations for collection that runs from the new assessment date rather than the original assessment date.

DISCUSSION

Under I.R.C. § 7122, the Service may compromise any civil case not referred to the Department of Justice for prosecution or defense. Grounds for compromise are doubt as to liability, doubt as to collectibility, and the promotion of effective tax administration. See Temp. Treas. Reg. § 301.7122-1T.

Whatever the ground for compromise, an offer in compromise is an agreement between a taxpayer and the Service that resolves the taxpayer's tax liability. Not until all the terms in the agreement have been fulfilled does the Service have authority to extinguish the taxpayer's tax liability. See Finen v. Commissioner, 41 T.C. 557, 560-61 (1964); Robbins Tire & Rubber Co. v. Commissioner, 52 T.C. 420, 435 (1969). When a taxpayer submits an offer in compromise, the taxpayer acknowledges that the taxpayer's liability does not end at the moment the Service accepts the offer in compromise; among the terms the taxpayer agrees to by submitting Form 656, "Offer in Compromise," is condition (j), which provides:

I/we understand that I/we remain responsible for the full amount of the tax liability, unless and until the IRS accepts the offer in writing and I/we have met all the terms and conditions of the offer. The IRS will not remove the original amount of the tax liability from its records until I/we have met all the terms of the offer.

Accordingly, pursuant to the plain language of the accepted offer in compromise, it is improper for a service center to treat a compromised tax liability as discharged until the Service has determined that all the terms of the offer have been fulfilled.

If the service center concludes that the terms of the offer have been met, should it abate the underlying tax liability? In answering this question, it is important to bear in mind that an abatement extinguishes an assessment, and is proper only if the assessment it eradicates is not. See Hopper v. Government of the Virgin Islands, 550 F.2d 844, 847 n.3 (3d Cir. 1977). Moreover, the term "abatement" should be used only to describe an action taken in accord with I.R.C. § 6404(a). Under section 6404(a), an abatement may be made only when an assessment is

(1) excessive in amount; (2) untimely; or (3) erroneous or illegal.¹ An offer in compromise does not establish that an assessed tax liability is excessive in amount; it merely reflects that the parties have agreed to resolve that liability for less than its full amount, *provided* certain conditions specified in the offer are satisfied. An offer in compromise similarly is no statement about the timeliness of an assessment. Finally, an offer in compromise does not establish that the assessed tax liability was erroneous or illegally assessed, even if the offer is predicated on doubt as to liability; such doubt is not tantamount to actual error or illegality. Under no circumstances, therefore, should a service center abate an assessment in response to an offer in compromise.

In contrast to an abatement made as the result of a substantive reconsideration of a taxpayer's liability (an abatement that may not be reversed), or an abatement made as the result of inadvertent clerical error (such as an error in inputting data) (an abatement that can be reversed), an abatement made in response to an offer in compromise does not qualify as a valid abatement under I.R.C. § 6404. That illegality renders the abatement void *ab initio*. See Bugge v. United States, 99 F.3d 740, 745-46 (5th Cir. 1996). If a service center has abated an assessment in response to an offer in compromise and the taxpayer fails to meet the terms of the compromise agreement, the service center should reinstate the assessment as of the date the original assessment was made; the service center should not make a new assessment. See id. The applicable limitations period under I.R.C. § 6502 for collection will run from the original date of the assessment.

In the future, some other method of accounting for an accepted offer in compromise, and adjusting a taxpayer's account as the offer terms are met, should be used.

Please call if you have further questions.

By: RICHARD G. GOLDMAN
Chief, Branch 3,
Administrative Provisions and
Judicial Practice

¹ I.R.C. § 6404(a) states the general rule for abatements. Other subsections of I.R.C. § 6404 state rules for abatement in specific circumstances, such as where small tax balances are involved (I.R.C. § 6404(c)). We have no information that the offers in compromise that concern the service center present any basis for invoking these specialized abatement rules, so we confine our analysis to abatement under the general rule.