



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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MEMORANDUM FOR NORTH CENTRAL DISTRICT COUNSEL

FROM: Alan C. Levine  
Chief, Branch 1 (General Litigation ) CC:EL:GL:Br1

SUBJECT: Processing Offers-in-Compromise During or After Collection  
Due Process Proceedings

This responds to your March 27, 2000, memorandum requesting advice on the above-cited subject. This document is not to be cited as precedent.

You have requested our assistance in formulating procedures for the Collection Division for working offer-in-compromise cases during the time in which the Office of Appeals ("Appeals") has jurisdiction over a Collection Due Process ("CDP") proceeding. You have submitted proposed procedures for pre-review by this office.

The specific factual scenario is as follows: a taxpayer is involved in a CDP proceeding with Appeals. He or she submits an offer-in-compromise with respect to the tax years at issue in the CDP proceeding. The offer is submitted to the Collection Division, however, rather than to Appeals, either during the pendency of the proceeding or at some point after a determination has been made by Appeals, but where Appeals still retains jurisdiction over that determination. 1/

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1/ I.R.C. § 6330(d) provides that within 30 days of an Appeals determination in a CDP hearing, a taxpayer may seek judicial review of that determination. Pursuant to section 6330(d)(2), Appeals retains jurisdiction with respect to any determination made under section 6330, including any subsequent hearings requested by the person who requested the original hearing on issues regarding collection actions taken or proposed with respect to such determination, and (after the person has exhausted all administrative remedies) a change in circumstances with respect to such person which affects such determination.

We agree with your proposed procedures to the extent that they acknowledge that, as Appeals has jurisdiction over the case for the time periods at issue, Appeals must be contacted and informed of the proposed offer and that the Collection Division may not unilaterally take any action with respect to the proposed offer. We think that your proposed procedures should be clarified, however, to the extent that they suggest that it may be appropriate for an offer to be processed by the Collection Division separately from the CDP proceeding.

Once a CDP proceeding is pending with Appeals, there should not be a separate evaluation of an offer-in-compromise by the Collection Division. If a taxpayer approaches a Revenue Officer with a proposed offer while a CDP proceeding is pending, the offer should be referred back to Appeals for consideration in conjunction with that proceeding. Pursuant to I.R.C. § 6330(c), a taxpayer should raise at a CDP hearing any issue relating to the unpaid tax or proposed levy. This includes any offers of collection alternatives such as offers-in-compromise. I.R.C. § 6330(c)(2)(A)(iii). The consideration of an offer-in-compromise, therefore, should be a part of Appeals' comprehensive review of the proposed collection action and its alternatives.

Similarly, if Appeals has issued its determination, but retains jurisdiction over that determination pursuant to section 6330(d)(2), a proposed offer made to a Revenue Officer should be referred to Appeals. Appeals may reconsider its original determination at that time.

We have the following specific comments on your proposed procedures. Number 2 states that the Collection Division may be able to "work the offer" while the CDP hearing is pending, if Appeals has no objections. We agree with numbers 2(a), 2(b) and 2(c). 2/ Number 2(d), however, provides that either the taxpayer or Appeals can request that the offer not be processed during the CDP period. An offer should not be evaluated by the Collection Division separately from the CDP context and consideration of the offer should not be postponed until after Appeals relinquishes jurisdiction over the matter. Appeals should consider the offer as a possible collection alternative as a part of the CDP process. The taxpayer cannot be allowed to make offers of some collection alternatives to Appeals and other collection alternatives to the Collection Division during the CDP process. All offers must be made to Appeals, either directly or referred by the Collection Division to Appeals.

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2/ Number 2(a) provides that IDRS and AOIC controls cannot be established on the taxpayer's account during the CDP process because Appeals has jurisdiction over the case. Number 2(b) provides that payment of any deposits made with the offer cannot be posted on IDRS. Number 2(c) provides that any final determination regarding acceptance, rejection, return, or withdrawal of the offer-in-compromise must be done after the proposed action is approved by Appeals. Collection cannot unilaterally do any of these things.

In addition, number 3 indicates that where a proposed offer is submitted after a Notice of Final Determination has been sent, but Appeals still retains jurisdiction over that determination, the Revenue Officer should hold onto the file until Appeals no longer has jurisdiction. As previously discussed, however, if an offer is submitted during this time period, that offer should be referred to Appeals. Appeals may then wish to reconsider its prior determination, pursuant to section 6330(d)(2).

Finally, in drafting your procedures, we suggest that you keep in mind the ex parte procedures, which will impact communications between Appeals and other Internal Revenue Service ("Service") employees, including communications with Collection Division employees in conjunction with a CDP hearing. Pursuant to section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 98"), the Service is required to develop a plan to prohibit ex parte communications between Appeals and other Service employees that appear to compromise the independence of Appeals Officers. This prohibition will not take effect until a final Revenue Procedure describing these ex parte procedures is finalized. A proposed Revenue Procedure has been issued by Notice 99-50, 1999-40 I.R.B. 444 (October 4, 1999). A final Revenue Procedure is currently undergoing the review process. Accordingly, we suggest that your procedures make some reference to the future restrictions upon ex parte communications.

If you have any further questions, please call 202-622-3610.