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INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ASSOCIATE AREA COUNSEL (SB/SE), AREA 1, BOSTON

FROM: Lawrence H. Schattner
Chief, Branch 2 (Collection, Bankruptcy & Summonses)

SUBJECT: Offer in Compromise -

This Chief Counsel Advice responds to your memorandum dated March 14, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent. This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUE:

Where a husband and wife compromise a joint and several income tax liability, does violation of the future compliance provisions of the compromise agreement by one spouse affect the other spouse's right to the continued benefits of the compromise agreement?

CONCLUSION:

No. Upon violation of the future compliance provision by one spouse, the compromise can be terminated only with respect to the non-compliant spouse. The compromise continues to be binding with respect to the spouse who remains in compliance with its terms.

BACKGROUND:

The taxpayer and her ex-husband reached a compromise with the Service for their 1990 and 1991 tax liabilities. Following payment of the agreed upon compromise amount, the taxpayer met her obligations under the compromise, including the obligation to comply with all of the filing and payment provisions of the Internal Revenue Code for five years after acceptance. The taxpayer's ex-husband, however, did not remain in compliance and, as a result, the compromise was terminated by the Service.

Following termination of the compromise, the taxpayer filed a request for relief from joint and several liability under the equitable relief procedures of section 6015(f). That request was denied. The taxpayer subsequently submitted the offer in compromise which gave rise to this request. The taxpayer offered a nominal sum in compromise of her liability for the years 1990 and 1991. The offer proposes compromise based on “effective tax administration,”¹ on the theory that it would be inequitable to hold her accountable for a liability resulting from her ex-husband’s non-compliance.

Your request for advice asks whether the standard compromise agreement, Form 656, can be altered prior to acceptance of this compromise. Specifically, you ask whether the standard language waiving refunds for years up to and including the year of acceptance can be stricken from the form. See Form 656, Offer in Compromise, Item 8(g) (Rev. 1-2000). However, having reviewed the facts as you have presented them, we have concluded that the taxpayer was relieved of liability for the years in question upon completion of the terms of the compromise, notwithstanding the non-compliance by her ex-husband. Therefore, we recommend that the compromise at issue be returned to the taxpayer with the explanation that she has no liability to be compromised for those years.²

LAW & ANALYSIS:

Acceptance of an offer in compromise by the Service conclusively settles the liability of the taxpayer or taxpayers specified in the offer. Temp. Treas. Reg. § 301.7122-

¹ Temporary regulations issued July 19, 1999, expanded the Service’s authority to compromise beyond the traditional bases of doubt as to collectibility or doubt as to liability. See Temp. Treas. Reg. § 301.7122-1T. Where there are no grounds for compromise on collectibility or liability grounds, a compromise may be entered into to promote effective tax administration, where: (1) collection of the full liability would create economic hardship within the meaning of section 301.6343-1 of the Treasury Regulations; or (2) exceptional circumstances exist such that collection of the full liability would be detrimental to voluntary compliance by taxpayers. Temp. Treas. Reg. § 301.7122-1T(b)(4). No such compromise may be entered into where it would undermine future compliance with the tax laws. Id.

² With regard to whether a provision can be struck from the standard compromise agreement, the Service has a firm policy against the consideration of compromises where the pre-printed terms of the Form 656 have been altered. See IRM 5.8.3.3(6). Local deviation from processability criteria is not permitted without prior written approval from the Office of Compliance Policy, SB/SE, in the National Office. See IRM 5.8.3.3.1(1). In any event, whether a certain term must be included in a compromise is a policy matter, rather than a legal one. We recommend that the local offer group be directed through appropriate channels to their National Office contact for guidance on whether the terms of the Form 656 are subject to local variation.

1T(d)(5). Following acceptance, neither the Service nor a taxpayer may reopen the case except where false information was submitted, the taxpayer's ability to pay was concealed, or there was a mutual mistake of material fact sufficient to set aside the compromise agreement. See id. at (d)(5)(i)-(iii). Thus, if the taxpayer has complied with her obligations under the compromise agreement, the years in question have been conclusively resolved and the taxpayer is no longer liable for any unpaid balance.

The Service apparently concluded that the future compliance provision of the compromise was violated. That provision reads, in part: "I/we will comply with all provisions of the Internal Revenue Code relating to filing my/our returns and paying my/our required taxes for 5 years or until the offered amount is paid in full, whichever is longer." Form 656, Item 8(d). The compromise was terminated upon the failure of the taxpayer's ex-husband to comply with this provision. The question, then, is whether the non-compliance by the taxpayer's ex-husband constituted breach of the agreement by the taxpayer. As is explained below, we do not believe that it did. We have concluded, therefore, that both the Service and the taxpayer remain bound by the prior compromise agreement.

Agreements to compromise federal tax liabilities have generally been interpreted by the courts by applying contract principles. See United States v. Feinberg, 372 F.2d 352 (3d Cir. 1967); United States v. Lane, 303 F.2d 1 (5th Cir. 1962). Where parties jointly agree to be bound to a contract or other legally operative document, there is a general presumption that they incur a single, jointly held, obligation. See 17A Am Jur 2d, Contracts § 430. However, whether an obligation is joint, joint and several, or several must ultimately be determined by reference to the intent of the parties, as evidenced by the language of the agreement and the subject matter to which it relates. See id. at § 427. The term at issue in the compromise incorporated into the agreement the filing and payment requirements of the Internal Revenue Code. Those requirements are not presumed to be joint and several as a general matter. There is no requirement that parties who filed jointly in the past continue to do so, nor that married taxpayers file jointly at all. See I.R.C. § 6013(a) ("A husband and wife may make a single return jointly.") (emphasis added). Only if taxpayers choose to file a joint return is the obligation to pay joint and several. See I.R.C. § 6013(d)(3).

It would not be reasonable to assume that the Service and the taxpayer, when making continued compliance with the tax laws a condition of the compromise, intended to alter or expand her compliance obligations. Thus, we conclude that the compliance provision of the compromise agreement was several. The taxpayer and her ex-husband were each individually required to comply with the tax laws, just as they would have been in the absence of a compromise agreement. The taxpayer met her obligation to remain in compliance, therefore the Service is bound by the terms of the compromise and the taxpayer has no remaining liability for the taxes specified in the compromise agreement.

The IRS Restructuring and Reform Act of 1998 (RRA 1998) contains a non-Code provision supporting this conclusion. The Act required that the Secretary of the Treasury prepare a statement that would “provide notice to taxpayers that in the case of a compromise terminated due to the actions of 1 spouse or former spouse, the Internal Revenue Service will, upon application, reinstate such compromise with the spouse or former spouse who remains in compliance with such compromise.” RRA 1998, P.L. 105-206, § 3462(d)(2), 112 Stat. 685, 765-66 (1998). This requirement of notice does not appear to be limited to compromises made after the enactment of the statute. Rather, it appears Congress believed compromises terminated for this reason should be reinstated for the benefit of the compliant spouse even where the compromise was made prior to RRA 1998's enactment.

We hope that this response has been helpful. If you have any questions or need further assistance, please contact the attorney assigned to this matter at (202) 622-3620.