



OFFICE OF  
CHIEF COUNSEL

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

JAN 19 1999

MEMORANDUM FOR VAL OVESON  
NATIONAL TAXPAYER ADVOCATE

FROM:  ACTING COUNSEL FOR THE TAXPAYER ADVOCATE

SUBJECT: COUNSEL REVIEW OF LIEN/LEVY AND OFFER IN  
COMPROMISE REVIEW PROCEDURES

This is in response to your e-mail dated November 27, 1998 requesting assistance in the interpretation of RRA98. Three separate issues were raised in a memorandum dated November 19, 1998 from the Arkansas - Oklahoma District Taxpayer Advocate. Attached are three legal opinions addressing these issues. Two issues involve mandated procedural changes (review of liens/levies and review of offers in compromise) by the Collection Division; the third involves the statute of limitations on barred refunds. The statute of limitation issue has been previously addressed. With respect to the two procedural change issues, Counsel has reviewed the proposed procedures and determined that they are legally sufficient to meet the statutory requirements. You also asked that we comment on the impact of the Collection interpretation, or what it should be. The changes as drafted should prevent lien/levy/seizure abuses of the past and give taxpayers a greater chance for acceptance of an offer in compromise at the Collection Division level. However, these are interim procedures and until they have been in effect for a reasonable period and documentation is available we cannot be certain that we have been successful in this reform. As these are interim procedures, if the theoretical concerns in fact materialize, changes can be effectuated if the problems are caused by the procedures rather than the failure to comply with the procedures. In fact, concerns that the procedures will not be followed indicate that they do have a likelihood of success.

**Issue 1: Section 3421- Approval process for liens, levies and seizures.**

Concern: Is the signing off by an employee's group manager certifying that the action is appropriate sufficient to meet the statutory requirement that "generally" a revenue officer must secure prior approval? The Arkansas-Oklahoma District

PMTA : 00252

Taxpayer Advocate indicates concerns that there was an implication in the procedures that this was a "cursory" review and there is no additional review/protection being performed.

Response: By memorandum dated December 23, 1998, General Litigation Branch 1 reviewed the approval process for liens, levies and seizures. It was determined that the process was legally sufficient. There is some discretion about when there was to be a review allowed by statute and it appears to have been properly exercised. It was also noted that new procedures and standards were set forth in the memorandum and that there were subsequent instructions concerning how to evidence the approval. It is Counsel's position that the procedures as written are adequate to comply with the statute. There is some suspicion by local representatives that collection employees will not follow the procedures. If this occurs, it is not the fault of the procedures. To the extent such instances can be documented, they should be surfaced for appropriate action.

**Issue 2 Refunds Barred by Statute** - this matter has previously been addressed.

**Issue 3 - Section 3462 - Independent Review required of rejected offers in compromise and installment agreements.**

Concerns: 1) That the placement of the reviewer within the same function undermines the independence of the review; and 2) that there is no ability to appeal offers returned as unprocessable

Response: By memorandum dated January 4, 1999, General Litigation Branch 2 addressed the issues of the review of rejected offers in compromise.

1) The process is legally sufficient. Again there are concerns raised relating to whether employees will properly perform the duties assigned to them. No specific documentation was submitted for such concerns. Absent some specific documentation of an actual problem to be addressed, we do not see the need to change the procedures. The procedures are proposed or temporary. Comments on these proposals by the field advocates who are receiving expressions of concern would be helpful in making your decision on what should be done. However, to the extent some comments are made, their effectiveness would be strengthened by well-documented instances of inappropriate results. There should also be some consideration given to whether such problems are with the procedures or with those implementing them. These are very distinct issues that would need different remedies.

2) With respect to unprocessable offers, new procedures are being developed that should greatly narrow this category and provide relief. If there are

suggestions for improvement they should be sent to the appropriate Collection Division officials.

**Conclusion**

The procedures meet the statutory requirements. The specific concerns raised by the Arkansas/Oklahoma advocate dealt with the good faith implementation and compliance with the procedures rather than the procedures themselves. These are apparently management issues that, if they exist, could be remedied without changing the procedures. A lack of good faith compliance with the procedures may not be solved by the procedures. It may be more appropriately remedied by directly addressing the noncompliant behavior.

Attachments: As stated.