

DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE OFFICE OF CHIEF
COUNSEL

ASSOCIATE CHIEF COUNSEL GENERAL LEGAL SERVICES

950 L'ENFANT PLAZA, S.W., 2ND FLOOR

WASHINGTON, D.C. 20024-2123

Telephone: (202) 283-7900

Facsimile: (202) 283-7979

[December 17, 2002]

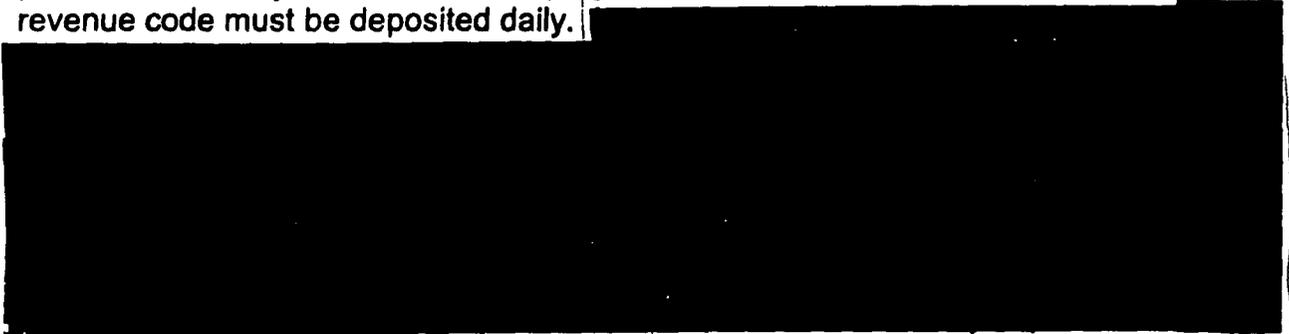
CC:GLS:EGG:Pembroke
GLS-132377-02

MEMORANDUM FOR TODD W. GRAMS
CHIEF FINANCIAL OFFICER

FROM: Mark S. Kaizen [/s/SWE]
Associate Chief Counsel (GLS)

SUBJECT: Revised Draft Deposit Policy

This is in response to a follow-up request from your office concerning our November 22, 2002 comments (copy attached) on a draft CFO policy announcement. The policy announcement addressed when amounts received by the Service must be deposited given, *inter alia*, the requirements of I.R.C. § 7809(a). Specifically, I.R.C. § 7809(a) provides that, subject to certain exceptions, amounts collected under the internal revenue code must be deposited daily.



DP

As explained below, we believe that sums received as offers in compromise may be treated as exempt from 7809(a)'s daily deposit requirement until such time as the offer is accepted by the Service.

Section 7809(a) states:

Except as provided in subsections (b) and (c) . . . , the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary as internal revenue collections, by the officer of employee receiving or collecting the same, without any abatement or deduction . . .

Section 7809(b) states:

(B) DEPOSIT FUNDS. – In accordance with instructions of the Secretary, there shall be deposited with the Treasury of the United States in a *deposit fund account* –

(1) SUMS OFFERED IN COMPROMISE.– Sums offered in compromise under the provisions of section 7122; . . .

Upon the acceptance of such offer in compromise . . . , the amount so accepted shall be withdrawn from such deposit fund account and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer, the Secretary shall refund to the maker of such offer the amount thereof.

(Emphasis added.)

As we noted in our November 22 comments, I.R.C. § 7809(a) includes the following requirements: (1) the amount deposited must be the "gross amount"; (2) the deposit must be made "daily"; (3) the amount must be deposited as "internal revenue collections"; and (4) there cannot be any abatement or deduction to the amount deposited. While the language of that section suggests that amounts offered under section 7809(b) would be exempt from all those requirements (until such time as they are accepted and become internal revenue collections), it is not clear whether exemption from section 7809(a) covers all of that section's requirements including the daily deposit one. The legislative history indicates that the purpose of section 7809(b) was to avoid the immediate deposit of sums offered in compromise into the general fund such that a refund would have to be made even if the offer was not accepted. 65 Cong. Rec. at 8,099 (May 8, 1924). The history is silent as to whether the deposit of the sum offered in compromise must be made daily into the deposit fund pending rejection of the offer and return of the sum or acceptance and transfer to the general fund. Given the lack of legislative history indicating that the daily deposit requirement applies to not-yet-accepted offers, we believe that a reasonable interpretation of sections 7809(a) and 7809(b) is that the offer need not be deposited in a deposit fund account daily and that the daily deposit requirement is not triggered until the offer is accepted and the sum becomes an internal revenue collection.

As to when the offer must be deposited into a deposit fund account, section 7809 is silent and the legislative history does not suggest a time for deposit. Further, while 31 U.S.C. § 3302 addresses the deposit of funds into the general fund or as miscellaneous receipts, it does not cover amounts held in deposit fund accounts. Given that there is specific statutory language directing the placement of sums offered in compromise into a deposit fund account, we do not believe that the Service is required to deposit such sums under the timing requirements for receipts in general established under section 3302. Likewise, while Volume 1, Part 6, Chapter 8000 of the Treasury Financial Manual (TFM) sets forth timing requirements for depositing receipts, section 7809 is not

noted as an authority for those provisions, and the Secretary has not issued deposit requirements based specifically on section 7809. Rather, the Secretary has issued the TFM deposit requirements pursuant to section 3302 and other provisions. See TFM Vol. 1, Part 6, Section 8015 (Authority).

Therefore, we believe that the time for depositing sums offered in compromise into a deposit fund is not established by any statutory or regulatory requirement, but is a matter of fiscal prudence over which the Service had discretion. [REDACTED]

DP

If you have any questions regarding this matter or if we can be of further assistance, please contact Christine Pembroke of this office at (202)283-7935.

Attachment