

Office of Chief Counsel
Internal Revenue Service
memorandum

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date: September 30, 2008

to: Thomas B. Moore
Analyst- HQ Collection Policy (OIC)

from: Joseph Conley
Senior Technician Reviewer, Branch 5
Procedure & Administration

subject: Possible CSED Expiration

ISSUES

- 1) Whether the lack of a partnership name on a Form 656 requires the Service to treat an offer in compromise as being submitted individually and not on behalf of the partnership. No.
- 2) Whether an offer that compromised a partnership's employment tax liabilities served to extend the collection statute expiration date for those liabilities. Yes.
- 3) Whether an offer in compromise may be accepted with respect to a partnership's liabilities under the hardship criteria of Effective Tax Administration. No.

BACKGROUND

Taxpayers, husband and wife, submitted an offer in compromise on Form 656 to compromise their individual income tax liabilities as well as certain partnership liabilities related solely to husband. The Form 656 indicated that the partnership's liabilities stemmed from husband's partnership and included the employer identification number of the partnership in Item 3 – Employer Identification Number (*included in offer*). The Service required the taxpayers to split the offer in two because wife was not liable for husband's partnership liabilities. The taxpayers complied, submitting an amended Form 656 with respect to husband's partnership liabilities.

On husband's amended Form 656 with respect to the partnership's liabilities, husband indicated that the offer was submitted under doubt as to collectibility (DATC) and effective tax administration (ETA). The amended Form 656 included the taxpayer identification number for the partnership in Item 4 – Other Employer Identification

Numbers (*not included in offer*). The amended Form 656 did not indicate the name of the partnership. In Item 9 — Explanation of Circumstances and Item 10 — Source of Funds, husband's amended Form 656 provides "AS STATED IN ORIGINAL OFFER."

The partnership's liabilities are for the employment taxes owed by husband's partnership, in which husband and his son-in-law were the general partners. The partnership is now defunct. The son-in-law has not cooperated with the Service, and his collection potential could not be determined.

The special circumstances for which husband and wife submitted their offers in compromise included substantial outstanding medical bills and judgments filed against them. While the taxpayers had substantial equity in their home, they would have had difficulty accessing that equity because of their age and health.

Both the OIC for the jointly owed liabilities and the OIC for the partnership's liabilities were rejected by an offer specialist. The taxpayers appealed the rejection, and the offers were forwarded to Appeals for additional review. In a memorandum recommending acceptance of the offer, the Appeals Officer indicates that "the taxpayer's offer to compromise his derivative liability for the partnership's liabilities is accepted to compromise the partnership liabilities." Husband's amended OIC was then accepted to compromise the partnership's liabilities under the hardship criteria of Effective Tax Administration.

DISCUSSION

1) Whether the lack of a partnership name on a Form 656 requires the Service to treat the offer as being submitted individually and not on behalf of the partnership.

A partnership's employment tax liabilities arise when the partnership fails to pay certain taxes as required by the Internal Revenue Code. IRC §§ 3403, 3102(b), 3111, 3301. This liability is a single liability under the Code, assessed once against the partnership and owed by the partnership itself. See United States v. Galletti, 541 U.S. 114 (2004). The Service can collect the unpaid liability from individual general partners based on state laws that make general partners jointly and severally liable for the debts of the partnership. See, e.g., Remington v. United States, 210 F.3d 281, 283 (5th Cir. 2000) ("The partnership is the primary obligor and its partners are jointly and severally liable on its debts."); Ballard v. United States, 17 F.3d 116, 119 (5th Cir. 1994); Thornton Auction Service, Inc. v. United States, 791 F.2d 635, 637-38 (8th Cir. 1986).

That the liabilities of the partnership can be collected from the partners individually does not alter the singular nature of employment tax liabilities under the Code. There is no individual liability for a taxpayer to compromise, and the Service's procedures only allow for compromise of the entire partnership liability and not the derivative share of that liability by the individual general partners. IRM 5.8.4.13.4(2) ("No offer should be accepted to compromise only one partner's individual liability for the partnership debt.").

Notwithstanding these procedures, you have asked whether the Service is required to treat the offer as submitted individually, and not on behalf of the partnership, where the offer does not include the partnership's name. Every partner is an authorized agent of the partnership in carrying out the business of the partnership. See, e.g., S.C. Code Ann. § 33-41-310(1) (1990). Thus, a general partner has the authority to bind the partnership to a compromise with the Service.

A partner acting in an individual capacity, however, will not necessarily bind the partnership. The Service has—in the past—accepted offers to compromise only an individual partner's derivative share of the partnership's employment tax liability. In these cases, the agreements and extrinsic circumstances showed a clear intent that the compromise only related to the partners' personal liabilities and that the partners were not acting as agents of the partnership. These compromises also included collateral agreements which clarified that the underlying partnership liabilities were not extinguished by the compromises.

As we understand the facts, husband's OIC and amended OIC evidence an intent to compromise the employment tax liabilities of the partnership itself, and not simply his derivative share. The original offer references both the partnership's name and employer identification number. While the amended offer does not identify the partnership by name, it continues to reference the employer identification number and refers the Service back to the original offer for the explanation of circumstances. Finally, we note that there is no language on the face of the OIC to suggest that husband was trying to compromise only his derivative share of the partnership's liability, that he was not acting as an agent of the partnership, or that his OIC was not intended to affect the Service's ability to collect from the remaining partner.

We conclude there is nothing that requires the Service to treat husband's offer in compromise as having been submitted individually simply because it did not include the partnership's name. This is consistent with the long standing policy of the Service to compromise a partnership's employment tax liabilities only at the partnership level.

2) Whether an offer that compromises a partnership's liability served to extend the collection statute expiration date for the partnership's liability.

The Code creates a single employment tax liability for which a partnership acting as employer is liable. Galletti, 541 U.S. 114. In Galletti, the Court held that the partnership was the taxpayer and that an assessment against the partnership served to extend the statute of limitations for collection for the partnership as well as the individual partners. 541 U.S. at 123 ("The consequences of the assessment—in this case the extension of the statute of limitations for collection of the debt—attach to the tax debt without reference to the special circumstances of the secondarily liable parties.").

Under section 6503, the period of collection is suspended in certain circumstances where collection against the taxpayer is prohibited. For instance, the bankruptcy of a partnership will serve to extend the collection statute for the period the Service is

prevented from collecting against the partnership by the automatic stay in bankruptcy. IRC 6503(h); United States v. Wright, 57 F.3d 561, 564 (7th Cir. 1995). Similarly, under section 6331(k), the Service is prohibited from collecting a tax by levy against the taxpayer while an offer in compromise from the taxpayer is under consideration. The collection statute expiration date is then suspended for the period that the offer in compromise is under consideration and 30 days thereafter. Section 6331(i)(5).

As discussed above, we believe husband's OIC and amended OIC evidence an intent to compromise the entire partnership liability and not simply his derivative share—that is husband's OIC was on behalf of the partnership as taxpayer. Accordingly, under section 6331(i)(5), we believe that husband's OIC served to suspend the CSED for the partnership's liabilities while under consideration.

3) Whether an offer in compromise may be accepted with respect to a partnership's liabilities under the hardship criteria of Effective Tax Administration.

IRM 5.8.11.1(4) states that the "Economic hardship standard of § 301.6343-1 specifically applies only to individuals." The Note to IRM 5.8.11.2.1 explains, "Because economic hardship is defined as the inability to meet reasonable basic living expenses, it applies only to individuals (including sole proprietorship entities). Compromise on economic hardship grounds is not available to corporations, partnerships, or other non-individual entities." Accordingly, an offer in compromise should not be accepted for a partnership's liabilities on the basis of the economic hardship criteria of Effective Tax Administration or Doubt as to Collectibility with Special Circumstances.

If you have any questions concerning this memorandum, please contact Procedure & Administration, Branch 5, at (202) 622-3620.

cc: Gloria Orozco
OIC Program Manager