Part III
Administrative, Procedural, and Miscellaneous

26 CFR 601.203: Offers in Compromise
(Also Part I, §§ 7122; 301.7122-1)

Rev. Proc 2003-71

SECTION 1. PURPOSE

The purpose of this revenue procedure is to explain the procedures applicable to the submission and processing of offers to compromise a tax liability under section 7122 of the Internal Revenue Code. These procedures reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685, 764).

SECTION 2. BACKGROUND

.01 Section 7122 permits the Secretary of the Treasury or his delegate to compromise any civil or criminal liability arising under the internal revenue laws before the case is referred to the Department of Justice for prosecution or defense.

.02 The Secretary has developed guidelines and procedures for the submission and evaluation of offers to compromise under section 7122. These guidelines can be found in § 301.7122-1 of the Regulations on Procedure and Administration, the Internal Revenue Manual, and various forms and publications issued by the Internal Revenue Service (Service). This revenue procedure supplements and clarifies the procedures identified in § 301.7122-1.

.03 This revenue procedure includes provisions relating to the offer in compromise application fee, required under § 300.3 of the Regulations on User Fees and effective November 1, 2003.

SECTION 3. SCOPE

This revenue procedure applies to all offers to compromise a civil or criminal liability under section 7122 submitted to the Service, except for those offers submitted directly to the Office of Appeals. This revenue procedure does not apply to offers to compromise a tax liability after a case involving a civil or criminal liability has been referred to the Department of Justice for prosecution or defense.

SECTION 4. SUBMITTING AN OFFER TO COMPROMISE

.01 An offer to compromise a tax liability must be submitted in writing on the Service's Form 656, Offer in Compromise. None of the standard terms may be stricken or altered, and the form must be signed under penalty of perjury. The offer should include all liabilities to be covered by the compromise, the legal grounds for compromise, the amount the taxpayer proposes to pay, and the payment terms. Payment terms include the amounts and due dates of the payments. The offer should also contain any other information required by Form 656. The Service occasionally revises Form 656 and may require offers to be submitted on the most recent version of the form. The most recent version of the form and instructions are available on the Service's website at www.irs.gov.

.02 An offer to compromise a tax liability should set forth the legal grounds for compromise and should provide enough information for the Service to determine whether the offer fits within its acceptance policies.

(1) Doubt as to liability. Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. Doubt as to liability does not exist where the liability has

been established by a final court decision or judgment concerning the existence of the liability.

An offer to compromise based on doubt as to liability generally will be considered acceptable if it reasonably reflects the amount the Service would expect to collect through litigation. This analysis includes consideration of the hazards of litigation that would be involved if the liability were litigated. The evaluation of the hazards of litigation is not an exact science and is within the discretion of the Service.

(2) Doubt as to collectibility. Doubt as to collectibility exists in any case where the taxpayer's assets and income cannot satisfy the full amount of the liability.

An offer to compromise based on doubt as to collectibility generally will be considered acceptable if it is unlikely that the tax can be collected in full and the offer reasonably reflects the amount the Service could collect through other means, including administrative and judicial collection remedies. See Policy Statement P-5-100. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the Service will take into account the taxpayer's reasonable basic living expenses. In some cases, the Service may accept an offer of less than the total reasonable collection potential of a case if there are special circumstances.

(3) Promotion of effective tax administration.

(a) The Service may compromise to promote effective tax administration where it determines that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses. See § 301.6343-1(d). No compromise may be entered into on this basis if compromise of the liability would undermine compliance by taxpayers with the tax laws.

An offer to compromise based on economic hardship generally will be considered acceptable when, even though the tax could be collected in full, the amount offered reflects the amount the Service can collect without causing the taxpayer economic hardship. The determination to accept a particular amount will be based on the taxpayer's individual facts and circumstances.

(b) If there are no other grounds for compromise, the Service may compromise to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability. Compromise will be justified only where, due to exceptional circumstances, collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify compromise even though a similarly situated taxpayer may have paid his liability in full. No compromise may be entered into on this basis if compromise of the liability would undermine compliance by taxpayers with the tax laws.

An offer to compromise based on compelling public policy or equity considerations generally will be considered acceptable if it reflects what is fair and equitable under the particular facts and circumstances of the case.

.03 The offer should include all information necessary to verify the grounds for compromise. Except for offers to compromise based solely on doubt as to liability, this includes financial information provided in a manner approved by the Service. Individual or self-employed taxpayers must submit a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, together with any attachments or other documentation required by the Service. Corporate or other business taxpayers must submit a Form 433-B, Collection Information Statement for Businesses, together with any attachments or other documentation required by the Service. The Service may require the corporate officers or individual partners of a business taxpayer to complete a Form 433-A.

.04 An offer to compromise a tax liability should be mailed to the appropriate address listed on Form 656. The Service may, in its discretion, receive offers to compromise in other manners. Simply because the Service has received an offer does not mean that it has accepted the offer for processing such that the offer is considered pending within the meaning of section 6331(k)(1). Accepting an offer for processing is addressed in Section 5.01 of this revenue procedure.

.05 If a deposit is submitted with the offer to compromise and the taxpayer authorizes application of a deposit to tax liabilities, it will be credited to the taxpayer's account as of the day the deposit is first received.

SECTION 5. WHEN AN OFFER BECOMES PENDING AND RETURN OF OFFERS

.01 Section 6331(k)(1) generally prohibits the Service from making a levy on a taxpayer's property or rights to property while an offer to compromise a liability is pending with the Service, for 30 days after the rejection of an offer to compromise, or while an appeal of a rejection is pending. The statute of limitations on collection is suspended while levy is prohibited. An offer to compromise becomes pending when it is accepted for processing. The Service accepts an offer to compromise for processing when it determines that: the offer is submitted on the proper version of Form 656 and Form 433-A or B, as appropriate; the taxpayer is not in bankruptcy; the taxpayer has complied with all filing and payment requirements listed in the instructions to Form 656; the taxpayer has enclosed the application fee, if required; and the offer meets any other minimum requirements established by the Service. A determination that the offer meets these minimum requirements means that the offer is processable.

.02 A determination is made to accept an offer to compromise for processing when a Service official with delegated authority to accept an offer for processing signs the Form 656. The date the Service official signs the Form 656 is recorded on the Service's computers. As of this date, levy is prohibited unless the Service determines that collection of the liability is in jeopardy.

.03 If the Service determines that an offer to compromise a liability does not meet the minimum requirements the Service has established for a processable offer, the offer to compromise is not processable and may be returned to the taxpayer. Because the offer to compromise was never accepted for processing, it was never pending and levy was never prohibited.

.04 If an offer to compromise accepted for processing does not contain sufficient information to permit the Service to evaluate whether the offer should be accepted, the Service will request that the taxpayer provide the needed additional information. These requests for information are described in Section 6 below. If the taxpayer does not submit the additional information that the Service has requested within a reasonable time period after such a request, the Service may return the offer to the taxpayer. The Service also may return the offer after it has been accepted for processing if:

(1) The Service determines that the offer was submitted solely to delay collection;

(2) The taxpayer fails to file a return or pay a liability;

(3) The taxpayer files for bankruptcy;

(4) The offer is no longer processable; or

(5) The offer was accepted for processing in error.

When an offer is returned under this Section 5.04, the Service will not refund the application fee submitted with the offer unless the offer was accepted for processing in error.

.05 If a determination is made to return the offer to compromise as described in Sections 5.03 and 5.04, the return of the offer does not constitute a rejection. The taxpayer is not entitled to appeal the matter to Appeals under the provisions of § 301.7122-1(f)(5). If the Service initiates collection action following a return of an offer to compromise, the taxpayer may be able to appeal the collection action under section 6320, section 6330, or under the Collection Appeals Program.

.06 An offer to compromise is considered to be returned on the day the Service mails, or personally delivers, a written letter to the taxpayer informing the taxpayer of the decision to return the offer. An offer returned following acceptance for processing is deemed pending only for the period between the date the offer is accepted for processing and the date the offer is returned. The Service may levy to collect the liability that was the subject of the offer anytime after it returns the offer to the taxpayer.

SECTION 6. CASE BUILDING, INVESTIGATION, AND EVALUATION

.01 Once the Service accepts an offer to compromise for processing, it begins to gather the basic information necessary to begin evaluating the offer. During this initial processing, the Service may contact the taxpayer to secure information or documentation that was incorrect or omitted from the offer documents.

.02 After all of the basic information has been obtained from the taxpayer, the Service evaluates the information and determines whether the taxpayer's offer is acceptable. In the course of evaluating the offer to compromise, the Service may request additional information or documentation from the taxpayer.

.03 The decision whether and when to accept an offer to compromise a liability is within the discretion of the Service. In keeping with Policy Statement P-5-100, an offer will only be accepted if it is determined to be in the best interest of both the taxpayer and the Service. In addition to the criteria discussed in Section 4.02, the Service may take into account public policy and tax administration concerns in determining whether an offer to compromise is acceptable.

.04 For all offers to compromise, except for those based solely on doubt as to liability, the Service verifies the taxpayer's income and assets according to the Service's policies and procedures. Verification allows the Service to determine whether or not the taxpayer can fully pay the liability and, if not, to determine the reasonable collection potential of the liability.

(1) The Service uses a variety of sources to verify the taxpayer's valuation of the taxpayer's property. The Service relies on internal sources, such as its computer databases or other records, public and electronic sources, such as state motor vehicle records and credit bureau reports, and taxpayer supplied documentation.

(2) Section 7122 requires the Service to prescribe and publish guidelines to ensure that taxpayers entering into a compromise have an adequate means to provide for basic living expenses. The amount of basic living expenses will be determined based on an evaluation of the individual facts and circumstances presented by the taxpayer's case. The Service maintains a schedule of national and local allowances to account for the basic living expenses of taxpayers seeking to compromise. To determine whether an offer is adequate, the Service uses these schedules to analyze the income and expenses of the taxpayer to determine the monthly income available to pay the liability. These schedules are available in the Financial Analysis Handbook, IRM 5.15, and on the Service's website at www.irs.gov. The schedules are not applied when doing so would leave the taxpayer without adequate means to provide for basic living expenses.

(3) For purposes of evaluating an offer to compromise, the Service allows expenses only to the extent it determines they are necessary for the health and welfare of the taxpayer or the taxpayer's family or are necessary for the production of income.

SECTION 7. WITHDRAWING AN OFFER TO COMPROMISE

.01 The taxpayer may withdraw an offer to compromise a liability anytime prior to acceptance of the offer. An offer that has been withdrawn is no longer pending and the Service may levy to collect the liability that was the subject of the offer. When an offer is withdrawn the Service will not refund the application fee submitted with the offer.

.02 The taxpayer may withdraw an offer to compromise by delivery of written notification of the withdrawal in person, by mail, or by fax. An offer assigned to Centralized Offer in Compromise Units, however, may not be withdrawn by personal delivery, because documents cannot be personally delivered to these units. A taxpayer may also request withdrawal of an offer telephonically. A notice of intent to withdraw an offer should be directed to the Service office assigned to the case.

(1) If the taxpayer withdraws an offer to compromise by personal delivery, the offer will be considered withdrawn when written notification of the withdrawal is received by the Service.

(2) If the taxpayer withdraws an offer to compromise by mailing written notification of the withdrawal via U.S. certified mail, the offer will be considered withdrawn on the date the Service receives the certified mail.

(3) In all other cases, including withdrawal by non-certified mail, fax, or phone, the offer will be considered withdrawn on the date the Service mails, or personally delivers, a written letter to the taxpayer acknowledging the withdrawal.

SECTION 8. ACCEPTING AN OFFER TO COMPROMISE

.01 An offer to compromise has not been accepted until the Service issues written notification of acceptance to the taxpayer. Acceptance is effective as of the date on the acceptance letter.

.02 Acceptance of an offer to compromise will conclusively settle the liability of the taxpayer specified in the offer. Compromise with one taxpayer does not extinguish the liability of any person not named in the offer who is also liable for the tax to which the offer relates. The Service may take action to collect from any person not named in the offer.

SECTION 9. REJECTING AN OFFER TO COMPROMISE

.01 An offer to compromise has not been rejected until the Service issues written notification of rejection to the taxpayer. Section 7122(d) requires the Service to conduct an independent administrative review before the rejection of an offer to compromise is communicated to the taxpayer. The Service reviews each case to determine if the proposed rejection is reasonable based on the facts and circumstances of the case. Rejection is effective as of the date on the rejection letter. When an offer is rejected the Service will not refund the application fee submitted with the offer.

.02 The taxpayer may appeal the rejection of an offer to compromise to Appeals. The taxpayer must timely file the appeal with the Service office that rejected the offer. An appeal is timely filed if it is delivered to the Service or postmarked within thirty days from the date of the letter of rejection.

.03 Pursuant to section 6331, the Service may not make a levy on the taxpayer's property or rights to property for thirty days following the rejection of an offer to compromise or while an appeal of a rejection is pending.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 96-38 is obsoleted.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective August 21, 2003, the date this revenue procedure was announced by news release, except that the provisions relating to the offer in compromise application fee are not effective for offers submitted prior to November 1, 2003.

SECTION 12. DRAFTING INFORMATION

The principal author of this revenue procedure is Sheara L. Krvaric of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division. For further information regarding this revenue procedure contact Branch 2 of Collection, Bankruptcy & Summonses on (202) 622-3620 (not a toll free call).