



TAXPAYERS DEFENSE INSTITUTE
AN ASSOCIATION OF TAX PROFESSIONALS IN
DEFENSE OF TAXPAYERS' RIGHTS

Dan Pilla's E-Bulletin

Dear TDI Member:

Code section 7122(f) contains a provision that states an Offer in Compromise “shall be deemed accepted” if it is not specifically rejected within 24 months of being submitted. This provision operates to prevent the IRS from setting on OICs indefinitely without ruling on them one way or another. The specific statute in question reads as follows:

Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer. For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken into account in determining the expiration of the 24-month period.

Since this provision was added to the law, the IRS has adopted procedures to guide the agency in applying this law. The IRS just updated those procedures. The update is found in SBSE Memorandum (SBSE-05-0710-036), issued July 22, 2010. You need to know about these procedures. Following this bulletin is the full text of the memo. Please review it and keep it as part of your OIC research file.

Dan Pilla
Executive Director

IRS SBSE Memorandum (SBSE-05-0710-036) on Reissuance of Offer in Compromise Mandatory Acceptance Guidance
July 22, 2010
Control Number: SBSE-05-0710-036
Expiration Date: July 22, 2011
Impacted: IRM 5.8.10
MEMORANDUM FOR CHIEF, APPEALS
DIRECTOR, EXAMINATION
DIRECTORS, COLLECTION AREA OPERATIONS
DIRECTOR, CAMPUS COMPLIANCE OPERATIONS
(BROOKHAVEN AND MEMPHIS)
FROM:

Frederick W. Schindler /s/Frederick Schindler

Director, Collection Policy

SUBJECT:

Reissuance of Interim Guidance for Offer in Compromise Mandatory Acceptance

The purpose of this memorandum is to reissue interim guidance dated August 4, 2009, with control number SB/SE-05-0809-019 titled, Interim Guidance for Offer in Compromise Mandatory Acceptance, on whether an offer in compromise (OIC) will be deemed an automatic acceptance under Internal Revenue Code (IRC) 7122(f). It also issues interim guidance on how to process OICs that are deemed accepted. Please ensure this information is distributed to all affected employees.

On May 17, 2006, the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) was enacted. TIPRA created IRC 7122(f), which applies to all OICs received on or after July 16, 2006. Under the new law, an OIC will be deemed accepted if the IRS does not make a determination regarding whether to accept the OIC within two years. The two year period begins on the date the offer is received by the IRS (IRS received date). The postmark date is irrelevant in determining when an OIC is received. If a liability included in the OIC is disputed in a court proceeding, the two year period will not run during the period the liability is in litigation. In addition, the two year period will not run during the period a rejected offer is in Appeals.

Under the deemed acceptance provisions, an OIC is deemed accepted if it is still with the IRS after two years and the IRS has made no determination with regard to the OIC.

An OIC will not be deemed to be accepted pursuant to section 7122(f), if within the 24 month period, the OIC is:

- rejected by the IRS
- returned by the IRS to the taxpayer as not processable or no longer processable
- withdrawn by the taxpayer
- deemed withdrawn under section 7122(c)(1)(B)(ii) because the taxpayer failed to make the second or later installment due on a periodic payment OIC.

Expedited processing should take place if an OIC was received subsequent to July 16, 2006, and over 18 months have expired since the IRS received date.

If 24 months have expired since the IRS received date, the offer examiner or offer specialist should conduct a thorough review of the OIC file to determine if the provisions of IRC 7122(f) apply. This review should include (at a minimum):

- Review the Form 656 to determine the IRS received date. If the IRS received date is prior to July 16, 2006, the OIC is pre-TIPRA and the 24 month mandatory acceptance period does not apply.
- For a TIPRA OIC, determine if 24 months have elapsed since the IRS receipt date. If 24 months from the IRS received date have not elapsed, the OIC is not an automatic acceptance.
- Determine if a decision letter was issued to the taxpayer within 24 months of the IRS received date. If a decision letter was issued within 24 months of the IRS received date, then the OIC is not an automatic acceptance. Decision letters include rejection, return, termination, withdrawal and/or acceptance letters.
- Determine if the tax liability listed in the OIC was disputed in court or was in Appeals during the 24 month period following the IRS received date. The length of time the period was disputed in a judicial proceeding or in Appeals should not be included in the calculation of the 24 month TIPRA determination. If, after the revised calculation, 24 months have not elapsed, then the OIC is not a mandatory acceptance. If a total of 24 months have expired even after subtracting the time in litigation and any time a rejected offer was in Appeals, the OIC will be deemed a mandatory acceptance.

Note: If there is any question about whether the 24 month period has expired, refer the case to IRS Counsel for review.

If the 24 month period has expired, the offer examiner or offer specialist who is currently assigned the OIC, or group manager if the OIC is not assigned, will enter a statement in the AOIC history and ICS history, if applicable, addressing the reason(s) the 24 month period expired. If the OIC is not on AOIC, a history statement will be entered in the system of record, i.e., ICS, AMS, etc. The statement should include any unusual or mitigating circumstances. The group manager or department manager will review the AOIC history, summary statement, and the ICS history as well as any other relevant information to determine if further administrative action is warranted and if disciplinary action is appropriate.

The group or department manager will prepare a memorandum to the territory manager or operations manager detailing the reason(s) the 24 month period expired without the IRS making a decision on the OIC, why further administrative action is or is not warranted, and include any proposed disciplinary actions, if appropriate. The memorandum will also include the following information:

1. IRS received date
2. COIC site of original receipt

3. Date assigned to and received by field area (if applicable)
4. Date received by offer examiner or offer specialist who is currently assigned the OIC investigation
5. Date and type of any proposed recommendations made by an offer examiner or offer specialist.
6. Dates of discussion between manager and employee relative to the 24 month TIPRA issue beginning 18 months after the OIC was received by the IRS
7. Any mitigating circumstances

The territory or operations manager will review the memorandum and forward a copy of the memorandum to the area or service center director along with a cover memorandum outlining any recommended disciplinary action. After confirming that the IRS did not make a determination with regard to the OIC within 24 months of receipt, the taxpayer must be issued an acceptance letter. The attached letter will be signed by the current level of authority delegated permission to sign an OIC acceptance letter and sent to the taxpayer. Delegation Order Number 5-1 provides the level of authority for approving all OIC dispositions. A copy of the memorandum detailing why the 24 month period expired and a copy of the acceptance letter will be mailed to the National OIC Program Manager. The OIC file will be processed in accordance with IRM 5.8.8, Acceptance Processing. Since the acceptance is not under Doubt as to Collectibility or Doubt as to Liability, AOIC will be updated to classify the basis of compromise as "A" Alternative Basis for compromise. Use the date the 24 month period expired as the acceptance date on AOIC and the date of the acceptance letter.

These procedures will be incorporated into IRM 5.8.10, Special Case Processing. If you have any questions, please feel free to contact me, or a member of your staff may contact Diana Estey. Territory and COIC personnel should direct any questions, through their management staff, to the appropriate Area contact.

Attachment

cc:

Chief Counsel National Taxpayer Advocate

www.IRS.gov

Attachment and Exhibit 10-1

Date:

Person to Contact:

Telephone Number:

Employee Number:

Taxpayer ID#:

Offer Number:

Salutation:

We have accepted your offer in compromise signed and dated by you on <insert date>. The date of the acceptance is the date of this letter and our acceptance is subject to the terms and conditions on the enclosed Form 656, Offer in Compromise.

Your offer was accepted under IRC 7122(f) because we did not make a determination within 24 months of receiving your offer.

Please note that the terms and conditions of the offer require you to file and pay all required taxes for five tax years or the period of time payments are being made on the offer, whichever is longer. This will begin on the date shown in the upper right hand corner of this letter.

Additionally, please remember that the conditions of the offer include the provision that as additional consideration for the offer, we will retain any refunds or credits that you may be entitled to receive for <insert tax year> or for earlier tax years. This includes refunds you received in <insert year> for any overpayments you made toward tax year <insert year> or toward earlier tax years. If a Notice of Federal Tax Lien has been filed, it will be released when the offer amount is paid in full.

If you are required to make any payments under this agreement, make your check or money order payable to the United States Treasury and send it to:

Internal Revenue Service

P.O. Box 24015

Fresno, California 93779

All other correspondence should be directed to: Internal Revenue Service

P.O. Box 9006

Holtsville, NY 11742-9006

You must promptly notify the Internal Revenue Service of any change in your address or marital status. This will ensure we have the proper address to advise you of the status of your offer.

If you have submitted a joint offer with your spouse or former spouse and you personally are meeting or have met all the conditions of your offer agreement, but your spouse or former spouse fails to adhere to the conditions of the offer agreement, your offer agreement will not be defaulted.

If you fail to meet any of the terms and conditions of the offer, the Internal Revenue Service will issue a notice to default the agreement. If the offer is defaulted, the original tax including all penalties and interest will be due. Payments made while your offer was pending or in effect will not be refunded. After issuance of the notice the Internal Revenue Service may:

- Immediately file suit to collect the entire unpaid balance of the offer
- Immediately file suit to collect an amount equal to the original amount of the tax liability as liquidating damages, minus any payments already received under the terms of this offer.
- Disregard the amount of the offer and apply all amounts already paid under the offer against the original amount of the tax liability.
- File suit or levy to collect the original amount of the tax liability

If you have any questions, please contact the person whose name and telephone number is shown in the upper right hand corner of this letter.

Sincerely,

Enclosure: Form 656, Offer in Compromise