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Tax Regs in Plain English

IRS Restructuring and Reform Act of 1998

3462 - Offers-in-Compromise

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Section 3462

A. Provision covered: R.R.A. § 3462. Offers-In-Compromise. I.R.C. §§ 6159, 6331, and 7122

B. Background: Section 7122 of the Internal Revenue Code generally provides that the Service may compromise any case arising under the internal revenue laws, prior to referring that case to the Department of Justice for defense or prosecution. Current regulations provide two bases for compromise: doubt as to collectibility and doubt as to liability. The internal revenue manual provides guidance for determining an adequate doubt as to collectibility offer. Congress believes that the Service should be more flexible in working with taxpayers who are sincerely trying to satisfy their tax obligations and, thus, the Service should make it easier for taxpayers to enter into offers-in-compromise. The tax writing committees have indicated that taxpayer compliance is enhanced by the ability to compromise and to make payments via an installment agreement.

C. Change(s): The following changes have been made with regard to the offer in compromise procedures:

1. The applicability of the allowable expense procedures will be determined on the facts and circumstances of each taxpayer's case.
2. Offers from low income taxpayers cannot be rejected solely on the basis of the amount of the offer.

3. Taxpayers will no longer be required to waive the statute of limitations on collection.
4. Regulations will be expanded to provide additional bases for compromise, other than doubt as to liability and doubt as to collectibility.
5. Compromise of a joint liability that is defaulted because of the actions of one spouse, can be reinstated as to the nondefaulting spouse, upon application.
6. Additional notices/instructions must be provided for taxpayers explaining their rights and the obligations of the Service with respect to offers in compromise. This section makes the following changes applicable to installment agreements:
 1. The Service cannot levy on the property of a taxpayer with a pending installment agreement, during the 30 days following the rejection of the taxpayer's request for an installment agreement, during any time the rejection of such agreement is being appealed, during any period for which an installment agreement is in effect, and during the 30 days after the termination of the agreement and while such termination is being appealed.

D. Impact

This provision expands the authority for the Service to accept offers in compromise. The current offer in compromise program will, thus, be substantially revised with the drafting of the new regulations. In the interim, however, most of the changes are directed at providing greater consideration to the taxpayer in resolving collection issues through compromise. For example, all the facts and circumstances of the taxpayer's condition must be considered in determining the applicability of the allowable expense procedures. Because the offer in compromise program will be administered with more flexibility, offer receipts will likely increase.

A more substantial impact of this provision regards installment agreements. The new prohibition on levy on pending agreements may cause some initial problems until procedures are developed for early identification of requests for installment agreements and enforced collection actions regarding those cases which can be frozen until some determination is made regarding the agreement. Because installment agreements are generated and received in a number of different ways and number in the millions, it will take a concerted effort on the part of several different functions to ensure that collection actions are timely suspended when a request for an installment agreement is received.

E. Necessary Actions

1. Actions/Procedures
 - a. Notice/instructions to the field regarding deviations from allowable expense standards. Determinations of when to deviate will be in the discretion of the offer examiner/RO/group manager. Procedures will be forthcoming.
 - b. Determination of what is a "low income" taxpayer and creation of supplemental procedures based on that designation.
 - c. Define what is a "pending" installment agreement and create procedures/transaction codes to ensure that levies are not issued while such

agreements are pending.

- d. Modify Form 656 to eliminate statutory waiver provisions; to provide for severability in the event of default by jointly liable taxpayers with joint offers.
- e. Preparation of statement regarding the rights of taxpayers and the obligations of the Service in the offer in compromise process; and an instruction to taxpayers with offers of the advantage of notifying the Service of any change in address or marital status.
- f. Define/clarify "independent administrative review" for purposes of proposed offer in compromise and installment agreement rejections.
- g. Draft regulations providing additional bases for the compromise of individual income tax liabilities, which include considerations such as equity, hardship, and public policy.

2. Things we CAN do

The Service can continue to use current Form 656 for offers in compromise until the form can be modified. However, the waiver provided in the current form will expire as of December 31, 2002. If the ten year collection statute is still open on that date for the liabilities contained in the offer agreement, the offer agreement may remain viable. For offers entered into after December 31, 1999, or pending on that date, the statute will be suspended because of the Service's inability to collect by levy. [For taxpayers who submit offers between the date of enactment and December 31, 2002, where the CSED for the periods contained in the offer expire on or before December 31, 2002, collection action must stop as of that date.]

An addendum to Form 656 should be created that provides for severability of a joint offer after the payments required under the offer are satisfied, so that in the event of a default relating to the compliance provisions, the compromise will only default as to the noncompliant party. The addendum will be in use until Form 656 can be modified. Because the Service can no longer condition the acceptance of an installment agreement on the taxpayer's waiver of the right to receive a state income tax refund, any language on an installment agreement form authorizing the Service to levy on state income tax refunds as a condition of the agreement should be eliminated.

3. Things we CAN'T do

The Service cannot levy on state income tax refunds while an installment agreement is pending, for 30 days after rejection, or any time the rejection is being considered by Appeals or while an accepted agreement is in effect. A taxpayer requesting an installment agreement may agree to a levy on a state income tax refund, but the acceptance of the installment agreement cannot be conditioned on the taxpayer agreeing to a levy on the state tax refund.

F. Other Special Comments: None.

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