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*In the*  
**United States Court of Appeals**  
*for the*  
**District of Columbia Circuit**

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Case No. 11-1298

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STEPHEN J. JOHNSON,

*Petitioner-Appellant,*

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE,

*Respondent-Appellee.*

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ON APPEAL FROM THE UNITED STATES TAX COURT,  
INTERNAL REVENUE SERVICE

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**BRIEF FOR APPELLANT**

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JULY 3, 2012

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Certificate as to Parties, Rulings and Related Cases

(A) Parties and Amici.

The following is a list of all parties, intervenors and amici who have appeared before the United States Tax Court or in this Court:

Stephen J. Johnson,  
Appellant

Commissioner of Internal Revenue, Appellee

(B) Ruling Under Review.

The ruling under review is the decision of the United States Tax Court in Stephen J. Johnson, Petitioner v. Commissioner of Internal Revenue, Respondent dated June 3, 2011, Judge David Gustafson, 136 T.C. No. 23, Docket No. 11556-09L.

(C) Related Cases.

The case on review was not previously before this Court, or any court other than the United States Tax Court. There are no related cases.

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IRS Memorandum (SBSE-05-0512-041), Interim Guidance on Offer in Compromise Definition under IRM 5.8.5, May 21, 2012; IRS News Release (IR-2012-53) on Expansion of Fresh Start Initiative to Offer More Flexible OIC Terms, May 21, 2012; Internal Revenue Manual Section 5.8.5, Financial Analysis, Attachment 1, “Income-Producing Assets”, May 21, 2012. ....19

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## **GLOSSARY**

IRM

Internal Revenue Manual

OIC

Offer in Compromise

RCP

Reasonable Collection Potential

## **JURISDICTIONAL STATEMENT**

The United States Tax Court obtained jurisdiction in this case pursuant to 26 U.S.C. §6330, which provides for Tax Court review of the determination of the Commissioner in a collection due process proceeding.

The United States Court of Appeals obtained jurisdiction in this case pursuant to 26 U.S.C. § 7482, which provides that the Court of Appeals shall have jurisdiction to review the decisions of the United States Tax Court.

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

The issue presented for review is whether the United States Tax Court erred in holding that the Commissioner did not abuse his discretion in rejecting the taxpayer's offer in compromise.

## **STATUTES AND REGULATIONS**

Internal Revenue Code section 6330(c)(3)(C) provides that the IRS Appeals Officer shall take into consideration:

(c) whether any proposed collection action balances the need for efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

Internal Revenue Manual section 5.8.5.5 (09-23-2008), Dissipation of Assets, provides in part as follows:

3. Inclusion of the value of dissipated assets must clearly be justified in the case and documented.....

4. When the taxpayer can show that the funds have been spent to provide for necessary living expenses, these amounts should not be included in the reasonable collection potential (RCP) calculation. (Emphasis in original).

6. The value of dissipated assets should not automatically be included in the calculation of RCP. Each particular case must be evaluated on its own merit... Please see attached Addendum.

### **STATEMENT OF THE CASE**

This collection due process tax case involves the issue of whether the Internal Revenue Service, having promulgated standards for evaluating offers in compromise, is free to disregard those standards in a particular case. The appellee Commissioner of Internal Revenue has adopted standards in its Internal Revenue Manual (IRM) for the weight, if any, to be given to “dissipated assets” in determining a taxpayer’s reasonable collection potential (RCP). The IRM specifies that dissipated assets should be taken into account only in unusual circumstances, and should not be taken into account when the taxpayer has been required to use the assets to provide for reasonable living expenses for himself and his dependents. Yet the Commissioner disregarded his own IRM standards in

processing the appellant taxpayer Stephen J. Johnson's offer in compromise (OIC). The determination of the Commissioner was upheld by the Tax Court. This Court should hold that the disregard of his own procedural standards by the Commissioner was an abuse of discretion and order that the OIC of the taxpayer which was rejected by the Commissioner be accepted.

There are no factual issues in this Collection Due Process case. The case was submitted to the Tax Court fully stipulated pursuant to Tax Court Rule 122, and the Tax Court so found the facts. The stipulations of the parties, with accompanying exhibits, were incorporated by reference by the Tax Court in its decision. The only issue is whether, as a matter of law, the Commissioner was wrong to refuse to accept the taxpayer's offer in compromise. The seven hundred page record is full of material regarding the taxpayer's income, expenses, assets, liabilities, family situation and life circumstances. The Congress and the Commissioner have adopted rules for evaluating offers to settle tax obligations under all the facts and circumstances. The difficulty is that, over the course of a seven year review, when a reasonable solution was finally arrived upon and recommended for acceptance by the Commissioner's settlement officer, the settlement was then rejected by the Commissioner. The taxpayer's financial situation continued to deteriorate. Given the administrative history of this

extraordinary case, this Court should reverse the Tax Court and order the Commissioner to accept the taxpayer's OIC and bring this matter to a conclusion.

### **STATEMENT OF FACTS**

Citations herein are to the Joint Stipulation of Facts which was incorporated by reference in the Tax Court decision. This case arises out of the taxpayer's tax years 1999 and 2000. In those years, the taxpayer realized unusual capital gains from selling stock to fund a divorce agreement. Joint Stip., Par.3. He made a payment of \$1,250,000 to his former spouse pursuant to the separation agreement. Around this time he also left his employment with a bank and started his own company, Asiawerks. Asiawerks ultimately failed. The taxpayer's financial situation continued to deteriorate. In 2004, the taxpayer made an offer in compromise with respect to tax years 1999 and 2000. Over the next six years, up until the time of the filing of the petition in this case, the taxpayer provided financial information to the Commissioner and made offers to the Commissioner based upon the taxpayer's ability to pay. There were numerous occasions over the years when it appeared that a settlement was in place, only to be subsequently rejected by the Commissioner. Joint Stip., Par. 25; Exhibit 15-J. Due to the fact that he was no longer employed by the bank and his own company was not successful, the taxpayer supported himself and his dependents with Native American tribal income, loans from family and friends, sale of his home, and

investment distributions. When he was able, he made repayments of loans to family and friends. Joint Stip., Par. 64; Exhibit 37-J.

In response to an IRS Notice of Intent to Levy, the taxpayer filed the within request for collection due process hearing and an amended offer in compromise with the IRS Office of Appeals. Joint Stip., Par. 12; Exhibit 5-J. After many months of interaction with Mr. Hunt of the IRS Washington Appeals Office, the taxpayer's revised offer in compromise was recommended for acceptance by Mr. Hunt. In his report, Mr. Hunt specifically notes that he is exercising his discretion not to include assets which petitioner no longer has ("dissipated assets") in the determination of reasonable collection potential, out of fairness to the taxpayer. Joint Stip., Par. 54; Exhibit 32-J; Joint Stip., Par. 76; Exhibit 41-J. This case should have been settled at that time. Nevertheless, Mr. Hunt was reassigned to a management position, and the case was reassigned to another settlement officer. The offer which had been recommended for acceptance by Mr. Hunt was rejected and a larger amount was demanded. When petitioner could not meet this increased demand, a notice of determination was issued by the Commissioner upholding the notice of intent to levy. The taxpayer subsequently filed his petition with the Tax Court and alleged that the notice of determination failed to set forth how reasonable collection potential was determined. The Commissioner filed a motion with the Tax Court to remand the case to the IRS Appeals Office for further

explanation of how RCP was determined, and the Tax Court ordered the remand to IRS Appeals.

At the subsequent Appeals Hearing in Baltimore, the Commissioner's Appeals Officer insisted that RCP must include assets which the taxpayer once had but no longer had. The taxpayer provided the Appeals Officer with the relevant sections of the IRM, which state that dissipated assets are to be taken into account in determining RCP only in unusual circumstances and not when the funds are needed to support the taxpayer and his dependents. Joint Stip., Par. 100; Exhibit 57-J. Nevertheless, the Appeals Officer rejected the taxpayer's revised OIC and issued a supplemental notice of determination based in large part upon including dissipated assets in RCP. Thus the case went back to the Tax Court, which had retained jurisdiction. The extensive administrative record was made the subject of the Joint Stipulation of Facts filed with the Tax Court. The case was submitted to the Tax Court for decision, subject to briefing. The Tax Court upheld the determination of the Commissioner. The taxpayer filed a timely appeal to this Court.

### **SUMMARY OF ARGUMENT**

The Congress has provided the Commissioner with the authority to compromise tax claims. 26 U.S.C. § 7122. The authority is discretionary. The Commissioner has promulgated regulations and instructions for processing offers

in compromise. 26 C.F.R. §§ 301.7122-0, et seq. The Commissioner has also, in his Internal Revenue Manual, set forth standards to be followed in evaluating offers in compromise and determining reasonable collection potential (RCP). IRM 5.8.5.5 (09-23-2008). The regulations and instructions provide that a taxpayer is to submit a statement of income, expenses, and assets and liabilities in connection with the offer. The IRM specifically addresses the weight, if any, to be given to “dissipated assets” in determining RCP. The term “dissipated assets” refers to assets which the taxpayer had at one time but no longer has. The IRM provides that dissipated assets are to be taken into account in determining RCP only in unusual circumstances. The IRM further provides that dissipated assets are not to be taken account of in determining RCP if such assets were needed by the taxpayer to provide support for himself and his family. The IRM provides standards that are to be followed by IRS personnel in administering the Internal Revenue Code. The IRM is made widely available to provide guidance to taxpayers, along with the Internal Revenue Code and Regulations.

The Internal Revenue Code provides that at such time as the IRS intends to levy to collect a tax obligation, it must first give notice to the taxpayer of the IRS intent to levy and advise the taxpayer of his right to a collection due process hearing. The CDP hearing is conducted at IRS Appeals by a hearing officer with no prior connection to the case. The statutory purpose of the CDP hearing is to

insure that all collection alternatives are considered, including an offer in compromise, and that the IRS collection activities are “no more intrusive than necessary”. Upon conclusion of the CDP hearing, the hearing officer is to issue a notice of determination. The CDP notice of determination is subject to review by the Tax Court. 26 U.S.C. §6330.

With 26 U.S.C. §6320 and §6330, Congress created a new right for taxpayers to have administrative and judicial review of proposed IRS tax collection actions. The Congress thus enacted the right to a “Collection Due Process Hearing”. The very name of the newly-created right makes clear that its purpose and intent is to insure “due process” in collection actions. The statute specifies the various procedural steps the IRS must take, thus assuring procedural due process. The statute also specifies that the taxpayer has the right to propose various collection alternatives, including an offer in compromise, and that IRS collection actions shall be “no more intrusive than necessary”. Thus, the Congress included the requirement of substantive due process, which means fundamental fairness, in the requirement for a “Collection Due Process Hearing”.

The Congress gave the United States Tax Court the jurisdiction to review the determination of the IRS Appeals Office at the Collection Due Process Hearing. The Tax Court has the jurisdiction to review whether the proposed collection action, in the face of the taxpayer’s proposed collection alternatives, meets the

procedural requirements of procedural due process and the fundamental fairness requirements of substantive due process. The structure and content of the statute makes clear that Congress has empowered the United States Tax Court to take a fresh look at the proposed collection action, under all the facts and circumstances, to determine whether the outcome is fundamentally fair.

The IRS Internal Manual Revenue Manual rules on “dissipated assets” also reflect a fundamental fairness test by specifying that dissipated assets should not be taken into account in determining the taxpayer’s reasonable collection potential except in unusual circumstances. This is because of the inherent unfairness of requiring the taxpayer to pay the IRS money which the taxpayer no longer has.

The Commissioner failed to apply his own published standards in processing the taxpayer’s offer in compromise. The Commissioner failed to take account of the taxpayer’s financial condition. Most important, the Commissioner did not take account of his own published rules on “dissipated assets” when he made his determination of the taxpayer’s reasonable collection potential. The Tax Court erred in upholding the Commissioner’s determination.

## STANDARD OF REVIEW

Where, as here, the amount of the underlying tax liability is not in dispute, the standard of review for the Court of Appeals review of the Commissioner's disposition of the taxpayer's offer in compromise following a collection due process hearing is for abuse of discretion. The Court of Appeals review of the Tax Court decision is de novo. See Murphy v. Commissioner, 469 F.3d 27,32 (1<sup>st</sup> Cir. 2006); H.R. Rep No. 105-599, at 266 (1998).

## ARGUMENT

The authority given by Congress to the Commissioner to compromise tax claims is an act of legislative grace. As with deductions generally, the Congress is not required to provide such relief. Having enacted a tax deduction, or a provision for offers in compromise, the Congress has authorized the Secretary of the Treasury and the Commissioner to enact rules and regulations to administer the tax law. Rules and regulations, once enacted, must be applied according to their terms to all taxpayers in the same manner. There are instances in which the Secretary and the Commissioner, although authorized by the Congress to enact rules and regulations, have not done so. But in those instances in which authority to promulgate rules and regulations is exercised, such rules and regulations must be applied according to their terms. Otherwise they must be amended or withdrawn.

In the case before the Court, the key rule at issue is the Internal Revenue Manual provision on dissipated assets. IRS could have promulgated a rule to the effect that all assets which the taxpayer owned previously and no longer owns must be taken account of in determining reasonable collection potential. That is not the rule that IRS adopted. Instead, IRS adopted the rule that dissipated assets are to be taken account of only in unusual circumstances and that such assets are not to be taken account of when they have been used to provide for the reasonable living expenses of the taxpayer and his dependents. IRM 5.8.5.5 (09-23-2008).

As the Joint Stipulation of Facts shows, the administrative record in this case is extensive. There are almost seven hundred pages of exhibits, which consist for the most part of financial information provided by the taxpayer over the years in support of his offer in compromise. A review of the entire record leads to the reasonable conclusion that this is a taxpayer who left a good job with a bank and took a chance by starting his own company which did not work out. He had some Native American tribal income. He borrowed money from family and friends. He sold a residence and also received some investment distributions. He did not accumulate wealth. He went through a first divorce and paid his first wife \$1,250,000 in settlement. He remarried and subsequently went through a second divorce and has obligations to support his second wife and young child. When he

had money, he spent it to live and to support his family and to try to make a living. That is what the administrative record shows.

Yet the Commissioner (except for Settlement Officer Hunt) has insisted upon counting assets which the taxpayer spent (“dissipated assets”) in order to live. The Commissioner in this case, as upheld by the Tax Court, has applied the IRM provisions on dissipated assets not as they are written, but rather as they might have been written if a harsher approach had been taken. Having adopted a standard to apply in this situation, the Commissioner is not free to disregard his own standard. That he has done so is a fundamental defect in his application of the internal revenue laws, regulations and rules in his processing of this case. This Court should remind the Commissioner that he is not free to disregard his own duly promulgated rules and standards. The collection due process statutory framework, including the provision for Tax Court and Court of Appeals review, is designed to provide such protection against arbitrary administrative action. This Court should reverse the Tax Court and order that petitioner’s offer in compromise be accepted by the Commissioner.

When the Court in this case reviews the actions of the IRS Appeals Office in petitioner’s Collection Due Process appeal, as upheld by the Tax Court, it is clear that the Commissioner’s actions fail the Congressional requirement of fundamental fairness and that the Commissioner’s actions were “more intrusive than necessary”.

FIRST: The length of the administrative proceeding was inherently burdensome and unfair. The taxpayer's first offer in compromise with respect to tax years 1999 and 2000 was filed with the Commissioner in 2004. We are now in the ninth year of this administrative proceeding. Over this nine year period, the taxpayer has continuously provided the Commissioner with information about the taxpayer's income, expenses, assets, liabilities, family situation and employment situation. He has separately and timely filed his tax returns and foreign account information returns so that the Commissioner is certainly aware of what assets the tax- payer had and how they changed. Over time the taxpayer's circumstances changed, and the information provided by him reflects those changes. As a result of the years this matter has consumed, the stipulated evidence before the Tax Court and this Court runs to nearly seven hundred pages. The taxpayer respectfully suggests that a review of each of those pages indicates a careful effort by the taxpayer to be responsive. The fact that this administrative proceeding has continued for nine years is a strong indicator that a reasonable solution should have been arrived at by now to prevent the Commissioner's collection actions from being "more intrusive than necessary" and thus fundamentally unfair.

SECOND: The taxpayer's offer in compromise has been accepted by IRS four times over seven years, only to have IRS back away from each settlement.

The taxpayer had reason to believe on four separate occasions that, based upon

information provided by him, his offer in compromise had been accepted by the Commissioner: first by the IRS in Puerto Rico; second (again) by IRS in Puerto Rico; third by the Manhattan Appeals Office; and fourth, by the Washington Appeals Office. Joint Stip., Par. 25; Exhibit 15-J. Each time what appeared to be a settlement was subsequently rejected by the Commissioner. To arrive at the agreement with the Washington Appeals Office, represented by Settlement Officer Hunt, the taxpayer provided Mr. Hunt with information and worked with him on a continuous basis for twelve months to arrive at the \$400,000 settlement. Joint Stip., Par. 69, 70; Exhibit 39-J; Joint Stip., Par. 74, 75; Exhibit 40-J; Joint Stip., Par. 76; Exhibit 41-J. Mr. Hunt was unfailingly courteous and careful and became thoroughly familiar with the case. Yet even the settlement with Mr. Hunt was subsequently backed away from by the Commissioner. Mr. Hunt was transferred to another position. This administrative course of conduct, over a period of years, was “more intrusive than necessary” and denied the taxpayer the fundamental fairness that Congress sought to protect in Collection Due Process proceedings.

The Tax Court held (pg. 21, et seq.) that the Commissioner did not abuse his discretion when he declined to accept the taxpayer’s December 24, 2008 OIC, which had been recommended for acceptance by Settlement Officer Hunt. The Tax Court based its holding on the fact that several months later the taxpayer was no longer able to meet the requirements of his \$400,000 offer. The Tax Court

erred in not determining that it was an abuse of discretion for the Commissioner not to accept the \$400,000 offer, based upon the taxpayer's RCP at the time such offer was made. Months later, as the taxpayer's financial condition continued to deteriorate and he was forced to spend funds which were on hand when the \$400,000 offer was made, he was required to amend his offer downward. It is unfair to hold that failure to accept the \$400,000 offer was reasonable merely because with the passage of time such offer became unworkable.

The Tax Court erred in holding that the Commissioner did not abuse his discretion in backing away from the acceptance of the \$400,000 offer, on the ground that Mr. Hunt did not have authority to bind the Commissioner. The taxpayer concedes that Mr. Hunt did not have authority to bind the Commissioner. It is the taxpayer's position that under the facts of this case, it was wrong for the Commissioner not to go forward with the \$400,000 OIC, when the taxpayer was in a position to pay such amount, to bring this matter to a conclusion. The Commissioner's failure to do so was "more intrusive than necessary" in contravention of 26 U.S.C. §6330(c)(3)(C).

THIRD: After the Tax Court's remand of this case to the IRS Appeals Office, the Commissioner failed to take due account of the prior administrative record. After the Commissioner backed away from the resolution of this case which Settlement Officer Hunt had recommended, the Commissioner issued a

notice of determination that failed to state how reasonable collection potential had been determined by the IRS Appeals Office. Accordingly, upon motion by the Commissioner, this case was remanded by the Tax Court to the Baltimore Appeals Office. As a review of the record shows, the Baltimore Appeals Office thereupon requested extensive financial information which was already part of the administrative file. This duplicative request clearly was an IRS action that was “more intrusive than necessary” and fundamentally unfair. The second notice of determination was issued in disregard of materials in the administrative file which showed that the taxpayer’s expenses exceeded his income, that Asiawerks did not have value, and statements from his investment assets. See, e.g., Joint Stip., Par. 12; Exhibit 5-J; Joint Stip., Par. 22; Exhibit 8-J; Joint Stip., Par. 61; Exhibit 34-J; Joint Stip., Par. 92(a); Exhibit 45-J. Thus, the Commissioner’s second notice of determination does not have more substantive merit than his prior notice of determination, which was the occasion for the Tax Court’s remand of the case to IRS Appeals.

FOURTH: The Commissioner’s inclusion of “dissipated assets” in the taxpayer’s reasonable collection potential was wrong and unfair. This is the heart of this case. When the taxpayer agreed with Settlement Officer Hunt of the Washington Appeals Office to a revised offer in compromise in the amount of \$400,000, the funds were on hand to make payment. Mr. Hunt recommended

acceptance. This case should have been over at that time. But the Commissioner overruled Mr. Hunt, transferred him to another position, assigned the case to a new settlement officer, and ultimately rejected the settlement Mr. Hunt had approved. Subsequently the taxpayer, whose company was failing, who was going through his second divorce with a family to support, and who was trying to make it through the Great Recession, was required to use funds on hand to live. Following remand of this case the Commissioner's Appeals Office, the Commissioner ultimately rejected the taxpayer's offer in compromise largely upon the ground that it did not include funds which were no longer there ("dissipated assets"). This action by the Commissioner is the basic unfairness in this case, which Congress intended to alleviate by authorizing the Tax Court to review administrative denial of the substantive due process requirement of fundamental fairness.

Indeed, the Internal Revenue Manual rules on "dissipated assets" make clear that such assets should be included in reasonable collection potential only in unusual cases. IRM 5.8.5.5 (09-23-2008). It is a harsh thing to do to require a person to pay money he does not have. In light of the taxpayer's seven year history of providing information to and cooperating with the Commissioner, including the timely filing of all tax returns and foreign account information returns, and especially in light of the taxpayer's offer to use the assets at issue to fund the agreement approved by Mr. Hunt, it is fundamentally unfair for the

Commissioner to include such assets in a subsequent demand when the prior offer has been rejected and the assets have then been spent for living expenses.

The Tax Court erred in holding that the Commissioner did not abuse his discretion in including “dissipated assets” in the taxpayer’s RCP. The Commissioner based his determination on the position that the Taxpayer had not provided sufficient information that the assets as issue were used by the taxpayer for reasonable living expenses. The stipulated facts and documents in this case, however, which are found as facts by the Tax Court and incorporated by reference in its decision, include financial information which shows that the taxpayer’s expenses exceeded his income and that the expenses of Asiawerks exceeded its income. See, e.g., Joint Stip., Par. 12; Exhibit 5-J; Joint Stip., Par. 22; Exhibit 8-J; Joint Stip., Par. 61; Exhibit 34-J; Joint Stip., Par. 92(a); Exhibit 45-J. Further, the stipulated record includes statements by the taxpayer that he needed to use available funds to meet living expenses and to attempt to keep Asiawerks afloat so that it would be able to pay him a salary and benefits. Joint Stip., Par. 51; Exhibit 30-J; Joint Stip., Par. 64, Exhibit 37-J. The Commissioner abused his discretion by not giving weight to the statements of the taxpayer, and the Tax Court erred by upholding the Commissioner’s disregard of the taxpayer’s statements.

Further, the Commissioner has recently announced a clarification of his policy with respect to dissipated assets. In light of economic hardship brought on

by the Great Recession, dissipated assets are to be included in the RCP only in cases where it is shown that such assets were not used for reasonable living expenses, including expenses required for the production of income. IRS Memorandum (SBSE-05-0512-041), Interim Guidance on Offer in Compromise Definition under IRM 5.8.5, May 21, 2012; IRS News Release (IR-2012-53) on Expansion of Fresh Start Initiative to Offer More Flexible OIC Terms, May 21, 2012; Internal Revenue Manual Section 5.8.5, Financial Analysis, Attachment 1, “Income-Producing Assets”, May 21, 2012.

FIFTH: The Commissioner’s refusal to take account of the taxpayer’s monthly payment of the mortgage on his mother’s home was wrong. The record in this case includes extensive documentation with respect to loans incurred by the taxpayer’s mother to obtain funds to help her son. Joint Stip., Par. 36; Exhibit 20-J; Joint Stip., Par. 66; Exhibit 38-J. As a matter of love and duty, the taxpayer made \$3,000 monthly payments on this mortgage. Yet the Commissioner refused to allow this expense in determining the taxpayer’s income and expenses. By contrast, when the Commissioner had arrived at the settlement with the taxpayer that would have resolved this case, the Commissioner (through Settlement Officer Hunt) allowed the taxpayer the expense of the mortgage put on his mother’s home. This \$3,000 monthly expense is the only material difference between the taxpayer and the Commissioner in determining the taxpayer’s income and expenses. The

right and fair thing for the Commissioner to do was to allow as an expense this vital monthly payment the taxpayer made to help his mother keep her home.

The Tax Court erred in upholding the Commissioner's decision not to allow payment by the taxpayer of \$3,000 per month on his mother's mortgage, on the ground that the taxpayer had not shown that the loan proceeds were used by him for necessary expenses. The Commissioner, as upheld by the Tax Court, refused to give weight to statements by the taxpayer which have been stipulated to and included as findings of fact in the Tax Court decision.

The Commissioner's discretion in processing the taxpayer's request for a collection alternative, under the Collection Due Process statute and regulations, is not unlimited. The Commissioner's exercise of his discretion must be reasonable. In the recent decision of Salahuddin v. Commissioner, T.C. Memo. 2012-141, May 17, 2012, the Tax Court held that there was a genuine issue of material fact as to whether the Commissioner abused his discretion when the IRS Appeals Office, having advised the taxpayers that their submission was "sufficient", then terminated the Collection Due Process hearing and rejected the taxpayer's proposal for an installment agreement. Similarly, this Court should hold that the Commissioner abused his discretion when, having advised the taxpayer that his submission was "sufficient", the Commissioner did not move forward to implement the submission.

## CONCLUSION

The action by the Commissioner in denying the taxpayer's offer in compromise, under the facts of this case and the applicable legal standards, was a denial of the fundamental fairness which the Tax Court has been empowered by the Congress to protect in this Collection Due Process Appeal. Petitioner respectfully requests that this Court reverse the Tax Court and order that the taxpayer's offer in compromise be accepted by the Commissioner.

Respectfully submitted,

DATED: July 3, 2012

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**CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)**

- 1) This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5,310 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
- 2) This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14-Point font.

DATED: July 3, 2012

/s/ Babcock MacLean

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**United States Court of Appeals  
for the District of Columbia Circuit  
CERTIFICATE OF SERVICE**

JOHNSON V. COMMISSIONER OF INTERNAL REVENUE SERVICE,  
No. 11-1298

I, Elissa Matias, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by ROBINSON, BROG, LEINWAND, GREENE GENOVESE & GLUCK, P.C., Attorneys for Appellants to print this document. I am an employee of Counsel Press.

On **July 3, 2012**, Counsel for Appellant has authorized me to electronically file the foregoing **Brief for Appellant** with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

Anthony T. Sheehan, Esq.  
United States Department of Justice  
Tax Division, Appellate Section  
PO Box 502  
Washington, DC 20044

Unless otherwise noted, 8 paper copies have been filed with the Court on the same date via Express Mail.

July 3, 2012

/s/ Elissa Matias  
Elissa Matias  
Counsel Press

# ADDENDUM

## ADDENDUM

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IRS Memorandum (SBSE-05-0512-041), Interim Guidance on Offer in Compromise Definition under IRM 5.8.5, May 21, 2012; IRS News Release (IR-2012-53) on Expansion of Fresh Start Initiative to Offer More Flexible OIC Terms, May 21, 2012; Internal Revenue Manual Section 5.8.5, Financial Analysis, Attachment 1, “Income-Producing Assets”, May 21, 2012. ....	
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## COLLECTION—LIEN FOR TAXES

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which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

## Amendments

- 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, §1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

[Sec. 6314(c)]

## (c) CROSS REFERENCES.—

(1) For receipt required to be furnished by employer to employee with respect to employment taxes, see section 6051.

(2) For receipt of discharge of fiduciary from personal liability, see section 2204.

## Amendments

- 1970, Excise, Estate, and Gift Tax Adjustment Act

of 1970 (P.L. 91-614)

P.L. 91-614, §101(d)(2):

Amended Code Sec. 6314(c)(2) by substituting "fiduciary" for "executor." Effective 1-1-71.

[Sec. 6315]

## SEC. 6315. PAYMENTS OF ESTIMATED INCOME TAX.

Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year.

[Sec. 6316]

## SEC. 6316. PAYMENT BY FOREIGN CURRENCY.

The Secretary is authorized in his discretion to allow payment of taxes in the currency of a foreign country under such circumstances and subject to such conditions as the Secretary may by regulations prescribe.

## Amendments

- 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, §1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

[Sec. 6317]

## SEC. 6317. PAYMENTS OF FEDERAL UNEMPLOYMENT TAX FOR CALENDAR QUARTER.

Payment of Federal unemployment tax for a calendar quarter or other period within a calendar year pursuant to section 6157 shall be considered payment on account of the tax imposed by chapter 23 of such calendar year.

## Amendments

- 1988, Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647)

P.L. 100-647, §7106(c)(3)(A)-(B):

Amended Code Sec. 6317 by striking out "or tax imposed by section 3321" following the phrase "Payment of Federal unemployment tax", and by striking out "and [or] 23A, as the case may be," following the phrase "by chapter 23". Effective for remuneration paid after 12-31-88.

- 1983, Railroad Retirement Solvency Act of 1983 (P.L. 98-76)

P.L. 98-76, §231(b)(2)(B):

Amended Code Sec. 6317. Effective for remuneration paid after 6-30-86. Prior to amendment, Code Sec. 6317 read as follows:

Payment of Federal unemployment tax for a calendar quarter or other period within a calendar year pursuant to section 6157 shall be considered payment on account of the tax imposed by chapter 23 of such calendar year.

- 1969 (P.L. 91-53)

P.L. 91-53, §2(c):

Added Code Sec. 6317. Effective for calendar years beginning after 12-31-69.

## Subchapter C—Lien for Taxes

Part I. Due process for liens.

Part II. Liens.

## PART I—DUE PROCESS FOR LIENS

Sec. 6320. Notice and opportunity for hearing upon filing of notice of lien.

[Sec. 6320]

SEC. 6320. NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN.

[Sec. 6320(a)]

## (a) REQUIREMENT OF NOTICE.—

(1) IN GENERAL.—The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.

Internal Revenue Code

Sec. 6320(a)(1)

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## COLLECTION—LIEN FOR TAXES

- (2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—
- (A) given in person;
  - (B) left at the dwelling or usual place of business of such person; or
  - (C) sent by certified or registered mail to such person's last known address,
- not more than 5 business days after the day of the filing of the notice of lien.
- (3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—
- (A) the amount of unpaid tax;
  - (B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2);
  - (C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals; and
  - (D) the provisions of this title and procedures relating to the release of liens on property.

## [Sec. 6320(b)]

## (b) RIGHT TO FAIR HEARING.—

(1) IN GENERAL.—If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.

(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.

(4) COORDINATION WITH SECTION 6330.—To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.

## Amendments

• 2006, Tax Relief and Health Care Act of 2006 (P.L. 109-432)

P.L. 109-432, Division A, § 407(c)(1):

Amended Code Sec. 6320(b)(1) by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection

(a)(3)(B) and states the grounds for the requested hearing". Effective for submissions made and issues raised after the date on which the Secretary first prescribes a list under Code Sec. 6702(c), as amended by Act Sec. 407(a).

## [Sec. 6320(c)]

(c) CONDUCT OF HEARING; REVIEW; SUSPENSIONS.—For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), (e), and (g) of section 6330 shall apply.

## Amendments

• 2006, Tax Relief and Health Care Act of 2006 (P.L. 109-432)

P.L. 109-432, Division A, § 407(c)(2):

Amended Code Sec. 6320(c) by striking "and (e)" and inserting "(e), and (g)". Effective for submissions made and issues raised after the date on which the Secretary first prescribes a list under Code Sec. 6702(c), as amended by Act Sec. 407(a).

• 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3401(a):

Amended subchapter C of chapter 64 by inserting a new Code Sec. 6320. Effective for collection actions initiated after the date which is 180 days after 7-22-98.

## PART II—LIENS

- Sec. 6321. Lien for taxes.
- Sec. 6322. Period of lien.
- Sec. 6323. Validity and priority against certain persons.
- Sec. 6324. Special liens for estate and gift taxes.
- Sec. 6324A. Special lien for estate tax deferred under section 6166.
- Sec. 6324B. Special lien for additional estate tax attributable to farm, etc., valuation.
- Sec. 6325. Release of lien or discharge of property.
- Sec. 6326. Administrative appeal of liens.
- Sec. 6327. Cross references.

## [Sec. 6321]

## SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

## Amendments

• 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3421, provides:

ACT SEC. 3421. APPROVAL PROCESS FOR LIENS, LEVIES, AND SEIZURES.

(a) IN GENERAL.—The Commissioner of Internal Revenue shall develop and implement procedures under which—

(1) a determination by an employee to file a notice of lien or levy with respect to, or to levy or seize, any property or right to property would, where appropriate, be required to

Sec. 6320(a)(2)

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## COLLECTION—SEIZURE OF PROPERTY

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that date. Prior to amendment, paragraphs (2) through (5) provided:

(2) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (11 U.S.C. 35).

(3) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57(j) of the Bankruptcy Act, as amended (11 U.S.C. 93).

(4) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67(b) and (c) of that act, as amended (11 U.S.C. 107).

(5) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added by the act of June 22, 1938 (11 U.S.C. 1080)."

• 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, §1906(a)(20)(A):

Struck out "52 Stat. 851," before "11 U.S.C. 35" in Code Sec. 6326(2). Effective 2-1-77.

P.L. 94-455, §1906(a)(20)(B):

Struck out "52 Stat. 867," before "11 U.S.C. 93" in Code Sec. 6326(3). Effective 2-1-77.

P.L. 94-455, §1906(a)(20)(C):

Struck out "52 Stat. 876-877," before "11 U.S.C. 107" in Code Sec. 6326(4). Effective 2-1-77.

P.L. 94-455, §1906(a)(20)(D):

Struck out "52 Stat. 938," before "11 U.S.C. 1080" in Code Sec. 6326(5). Effective 2-1-77.

## Subchapter D—Seizure of Property for Collection of Taxes

Part I. Due process for collections.

Part II. Levy.

## PART I—DUE PROCESS FOR COLLECTIONS

Sec. 6330. Notice and opportunity for hearing before levy.

[Sec. 6330]

## SEC. 6330. NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.

[Sec. 6330(a)]

## (a) REQUIREMENT OF NOTICE BEFORE LEVY.—

(1) IN GENERAL.—No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail, return receipt requested, to such person's last known address,

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

(i) the provisions of this title relating to levy and sale of property;

(ii) the procedures applicable to the levy and sale of property under this title;

(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

[Sec. 6330(b)]

## (b) RIGHT TO FAIR HEARING.—

(1) IN GENERAL.—If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.

(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

Internal Revenue Code

Sec. 6330(b)(3)

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## COLLECTION—SEIZURE OF PROPERTY

## Amendments

- 2006, Tax Relief and Health Care Act of 2006 (P.L. 109-432)

P.L. 109-432, Division A, § 407(b)(3):

Amended Code Sec. 6330(b)(1) by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection

(a)(3)(B) and states the grounds for the requested hearing". Effective for submissions made and issues raised after the date on which the Secretary first prescribes a list under Code Sec. 6702(c), as amended by Act Sec. 407(a).

## [Sec. 6330(c)]

(c) MATTERS CONSIDERED AT HEARING.—In the case of any hearing conducted under this section—

(1) REQUIREMENT OF INVESTIGATION.—The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

(2) ISSUES AT HEARING.—

(A) IN GENERAL.—The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

- (i) appropriate spousal defenses;
- (ii) challenges to the appropriateness of collection actions; and
- (iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(B) UNDERLYING LIABILITY.—The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

(3) BASIS FOR THE DETERMINATION.—The determination by an appeals officer under this subsection shall take into consideration—

(A) the verification presented under paragraph (1);

(B) the issues raised under paragraph (2); and

(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

(4) CERTAIN ISSUES PRECLUDED.—An issue may not be raised at the hearing if—

(A)(i) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and

(ii) the person seeking to raise the issue participated meaningfully in such hearing or proceeding; or

(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).

This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

## Amendments

- 2006, Tax Relief and Health Care Act of 2006 (P.L. 109-432)

P.L. 109-432, Division A, § 407(b)(2)(A)-(D):

Amended Code Sec. 6330(c)(4) by striking "(A)" and inserting "(A)(i)"; by striking "(B)" and inserting "(ii)"; by striking the period at the end of the first sentence [of sub-

paragraph (A)(ii), as so redesignated] and inserting "; or"; and by inserting after subparagraph (A)(ii) (as so redesignated) a new subparagraph (B). Effective for submissions made and issues raised after the date on which the Secretary first prescribes a list under Code Sec. 6702(c), as amended by Act Sec. 407(a).

## [Sec. 6330(d)]

(d) PROCEEDING AFTER HEARING.—

(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

(2) JURISDICTION RETAINED AT IRS OFFICE OF APPEALS.—The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

(A) collection actions taken or proposed with respect to such determination; and

(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

## Amendments

- 2006, Pension Protection Act of 2006 (P.L. 109-280)

P.L. 109-280, § 855(a):

Amended Code Sec. 6330(d)(1). Effective for determinations made after the date which is 60 days after 8-17-2006. Prior to amendment, Code Sec. 6330(d)(1) read as follows:

(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination—

(A) to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter); or

(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

## Sec. 6330(c)

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- 2000, Community Renewal Tax Relief Act of 2000 (P.L. 106-554)

P.L. 106-554, §313(d):

Amended Code Sec. 6330(d)(1)(A) by striking "to hear" and inserting "with respect to". Effective as if included in

the provision of P.L. 105-206 to which it relates [effective for collection actions initiated after 1-18-99.—CCH].

## [Sec. 6330(e)]

## (e) SUSPENSION OF COLLECTIONS AND STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.

(2) LEVY UPON APPEAL.—Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

## Amendments

- 2000, Community Renewal Tax Relief Act of 2000 (P.L. 106-554)

P.L. 106-554, §313(b)(2)(A):

Amended Code Sec. 6330(e)(1) by adding at the end the last two sentences. Effective 12-21-2000.

## [Sec. 6330(f)]

## (f) EXCEPTIONS.—If—

(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy,

(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund,

(3) the Secretary has served a disqualified employment tax levy, or

(4) the Secretary has served a Federal contractor levy,

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

## Amendments

- 2010, Creating Small Business Jobs Act of 2010 (P.L. 111-240)

P.L. 111-240, §2104(a):

Amended Code Sec. 6330(f) by striking "or" at the end of paragraph (2), by inserting "or" at the end of paragraph (3), and by inserting after paragraph (3) a new paragraph (4). Effective for levies issued after 9-27-2010.

P.L. 111-240, §2104(c):

Amended the heading of Code Sec. 6330(f) by striking "JEOPARDY AND STATE REFUND COLLECTION" and inserting "EXCEPTIONS". Effective for levies issued after 9-27-2010.

- 2007, Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28)

P.L. 110-28, §8243(a)(1)-(3):

Amended Code Sec. 6330(f) by striking "; or" at the end of paragraph (1) and inserting a comma, by adding "or" at the

end of paragraph (2), and by inserting after paragraph (2) a new paragraph (3). Effective for levies served on or after the date that is 120 days after 5-25-2007.

- 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, §3401(b):

Amended subchapter D of chapter 64 by inserting a new Code Sec. 6330. Effective for collection actions initiated after the date which is 180 days after 7-22-98.

## [Sec. 6330(g)]

(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

## Amendments

- 2006, Tax Relief and Health Care Act of 2006 (P.L. 109-432)

P.L. 109-432, Division A, §407(b)(1):

Amended Code Sec. 6330 by adding at the end a new subsection (g). Effective for submissions made and issues

raised after the date on which the Secretary first prescribes a list under Code Sec. 6702(c), as amended by Act Sec. 407(a).

Internal Revenue Code

Sec. 6330(g)

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## COLLECTION—SEIZURE OF PROPERTY

## [Sec. 6330(h)]

(h) DEFINITIONS RELATED TO EXCEPTIONS.—For purposes of subsection (f)—

(1) DISQUALIFIED EMPLOYMENT TAX LEVY.—A disqualified employment tax levy is any levy in connection with the collection of employment taxes for any taxable period if the person subject to the levy (or any predecessor thereof) requested a hearing under this section with respect to unpaid employment taxes arising in the most recent 2-year period before the beginning of the taxable period with respect to which the levy is served. For purposes of the preceding sentence, the term “employment taxes” means any taxes under chapter 21, 22, 23, or 24.

(2) FEDERAL CONTRACTOR LEVY.—A Federal contractor levy is any levy if the person whose property is subject to the levy (or any predecessor thereof) is a Federal contractor.

## Amendments

• 2010, Creating Small Business Jobs Act of 2010 (P.L. 111-240)

P.L. 111-240, § 2104(b)(1)-(2):

Amended Code Sec. 6330(h) by striking all that precedes “any levy in connection with the collection” and by inserting

“(h) DEFINITIONS RELATED TO EXCEPTIONS.—For purposes of subsection (f)—”

“(1) DISQUALIFIED EMPLOYMENT TAX LEVY.—A disqualified employment tax levy is”

and by adding at the end a new paragraph (2). Effective for levies issued after 9-27-2010. Prior to being stricken, all that

preceded “any levy in connection with the collection” read as follows:

(h) DISQUALIFIED EMPLOYMENT TAX LEVY.—For purposes of subsection (f), a disqualified employment tax levy is

• 2007, Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28)

P.L. 110-28, § 8243(b):

Amended Code Sec. 6330 by adding at the end a new subsection (h). Effective for levies served on or after the date that is 120 days after 5-25-2007.

## PART II—LEVY

Sec. 6331.	Levy and distraint.
Sec. 6332.	Surrender of property subject to levy.
Sec. 6333.	Production of books.
Sec. 6334.	Property exempt from levy.
Sec. 6335.	Sale of seized property.
Sec. 6336.	Sale of perishable goods.
Sec. 6337.	Redemption of property.
Sec. 6338.	Certificate of sale; deed of real property.
Sec. 6339.	Legal effect of certificate of sale of personal property and deed of real property.
Sec. 6340.	Records of sale.
Sec. 6341.	Expense of levy and sale.
Sec. 6342.	Application of proceeds of levy.
Sec. 6343.	Authority to release levy and return property.
Sec. 6344.	Cross references.

## [Sec. 6331]

## SEC. 6331. LEVY AND DISTRAINT.

## [Sec. 6331(a)]

(a) AUTHORITY OF SECRETARY.—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

## Amendments

• 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3421, provides:

SEC. 3421. APPROVAL PROCESS FOR LIENS, LEVIES, AND SEIZURES.

(a) IN GENERAL.—The Commissioner of Internal Revenue shall develop and implement procedures under which—

(1) a determination by an employee to file a notice of lien or levy with respect to, or to levy or seize, any property or right to property would, where appropriate, be required to

be reviewed by a supervisor of the employee before the action was taken; and

(2) appropriate disciplinary action would be taken against the employee or supervisor where the procedures under paragraph (1) were not followed.

(b) REVIEW PROCESS.—The review process under subsection (a)(1) may include a certification that the employee has—

(1) reviewed the taxpayer's information;

(2) verified that a balance is due; and

(3) affirmed that the action proposed to be taken is appropriate given the taxpayer's circumstances, considering the

## Sec. 6330(h)

amount due a property:

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## CLOSING AGREEMENTS, COMPROMISES

- 1965, Excise Tax Reduction Act of 1965 (P.L. 89-44)

P.L. 89-44, § 802(b)(3):

Amended Code Sec. 7103(d) by deleting a semicolon at the end of subparagraph (3)(E) and inserting a period in lieu thereof and by deleting subparagraph (3)(F). Effective

7-1-65. Prior to amendment, Code Sec. 7103(d)(3)(F) read as follows:

"(F) section 4101, relating to a producer or importer of gasoline or a manufacturer or producer of lubricating oils subject to tax under chapter 32."

## [Sec. 7103(e)—Repealed]

## Amendments

- 1972 (P.L. 92-310)

P.L. 92-310, § 230(c):

Repealed Code Sec. 7103(e). Effective 6-6-72. Prior to repeal, Code Sec. 7103(e) read as follows:

(e) PERSONNEL BONDS.

(1) For bonds of internal revenue personnel to insure faithful performance of duties, see section 7803(c).

(2) For jurisdiction of United States district courts, concurrently with the courts of the several States, in an action on

the official bond of any internal revenue officer or employee, see section 7402(d).

(3) For bonds of postmasters to whom stamps have been furnished under section 6802(1), see section 6803(a)(1).

(4) For bonds in cases coming within the provisions of section 6802(2) or (3), relating to stamps furnished a designated depository of the United States or State agent, see section 6803(b)(1).

## CHAPTER 74—CLOSING AGREEMENTS AND COMPROMISES

Sec. 7121.	Closing agreements.
Sec. 7122.	Compromises.
Sec. 7123.	Appeals dispute resolution procedures.
Sec. 7124.	Cross references.

## [Sec. 7121]

## SEC. 7121. CLOSING AGREEMENTS.

## [Sec. 7121(a)]

(a) AUTHORIZATION.—The Secretary is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

## Amendments

- 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

## [Sec. 7121(b)]

(b) FINALITY.—If such agreement is approved by the Secretary (within such time as may be stated in such agreement, or later agreed to) such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

## Amendments

- 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

## [Sec. 7122]

## SEC. 7122. COMPROMISES.

## [Sec. 7122(a)]

(a) AUTHORIZATION.—The Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.

## Amendments

- 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

## Sec. 7103(e)—Repealed

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## CLOSING AGREEMENTS, COMPROMISES

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## [Sec. 7122(b)]

(b) RECORD.—Whenever a compromise is made by the Secretary in any case, there shall be placed on file in the office of the Secretary the opinion of the General Counsel for the Department of the Treasury or his delegate, with his reasons therefor, with a statement of—

(1) The amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

Notwithstanding the foregoing provisions of this subsection, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than \$50,000. However, such compromise shall be subject to continuing quality review by the Secretary.

## Amendments

• 1996, Taxpayer Bill of Rights 2 (P.L. 104-168)

P.L. 104-168, § 503(a):

Amended Code Sec. 7122(b) by striking “\$500.” and inserting “\$50,000.” However, such compromise shall be subject to continuing quality review by the Secretary. Effective 7-30-96.

• 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting “Secretary” for “Secretary or his delegate” each place it appeared. Effective 2-1-77.

## [Sec. 7122(c)]

(c) RULES FOR SUBMISSION OF OFFERS-IN-COMPROMISE.—

(1) PARTIAL PAYMENT REQUIRED WITH SUBMISSION.—

(A) LUMP-SUM OFFERS.—

(i) IN GENERAL.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of the amount of such offer.

(ii) LUMP-SUM OFFER-IN-COMPROMISE.—For purposes of this section, the term “lump-sum offer-in-compromise” means any offer of payments made in 5 or fewer installments.

(B) PERIODIC PAYMENT OFFERS.—

(i) IN GENERAL.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment.

(ii) FAILURE TO MAKE INSTALLMENT DURING PENDENCY OF OFFER.—Any failure to make an installment (other than the first installment) due under such offer-in-compromise during the period such offer is being evaluated by the Secretary may be treated by the Secretary as a withdrawal of such offer-in-compromise.

(2) RULES OF APPLICATION.—

(A) USE OF PAYMENT.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

(B) APPLICATION OF USER FEE.—In the case of any assessed tax or other amounts imposed under this title with respect to such tax which is the subject of an offer-in-compromise to which this subsection applies, such tax or other amounts shall be reduced by any user fee imposed under this title with respect to such offer-in-compromise.

(C) WAIVER AUTHORITY.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).

## Amendments

• 2006, Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222)

P.L. 109-222; § 509(a):

Amended Code Sec. 7122 by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by

inserting after subsection (b) a new subsection (c). Effective for offers-in-compromise submitted on and after the date which is 60 days after 5-17-2006.

## [Sec. 7122(d)]

(d) STANDARDS FOR EVALUATION OF OFFERS.—

(1) IN GENERAL.—The Secretary shall prescribe guidelines for officers and employees of the Internal Revenue Service to determine whether an offer-in-compromise is adequate and should be accepted to resolve a dispute.

(2) ALLOWANCES FOR BASIC LIVING EXPENSES.—

(A) IN GENERAL.—In prescribing guidelines under paragraph (1), the Secretary shall develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses.

(B) USE OF SCHEDULES.—The guidelines shall provide that officers and employees of the Internal Revenue Service shall determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules published under subparagraph (A) is appropriate

Internal Revenue Code

Sec. 7122(d)(2)(B)

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## CLOSING AGREEMENTS, COMPROMISES

and shall not use the schedules to the extent such use would result in the taxpayer not having adequate means to provide for basic living expenses.

(3) SPECIAL RULES RELATING TO TREATMENT OF OFFERS.—The guidelines under paragraph (1) shall provide that—

(A) an officer or employee of the Internal Revenue Service shall not reject an offer-in-compromise from a low-income taxpayer solely on the basis of the amount of the offer,

(B) in the case of an offer-in-compromise which relates only to issues of liability of the taxpayer—

(i) such offer shall not be rejected solely because the Secretary is unable to locate the taxpayer's return or return information for verification of such liability; and

(ii) the taxpayer shall not be required to provide a financial statement, and

(C) any offer-in-compromise which does not meet the requirements of subparagraph (A)(i) or (B)(i), as the case may be, of subsection (c)(1) may be returned to the taxpayer as unprocessable.

## Amendments

• 2006, Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222)

P.L. 109-222, § 509(a):

Amended Code Sec. 7122 by redesignating subsection (c) as subsection (d). Effective for offers-in-compromise submitted on and after the date which is 60 days after 5-17-2006.

P.L. 109-222, § 509(b)(1):

Amended Code Sec. 7122(d)(3), as redesignated by Act Sec. 509(a), by striking “; and” at the end of subparagraph

(A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end a new subparagraph (C). Effective for offers-in-compromise submitted on and after the date which is 60 days after 5-17-2006.

• 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3462(a):

Amended Code Sec. 7122 by adding at the end a new subsection (c). Effective for proposed offers-in-compromise and installment agreements submitted after 7-22-98.

## [Sec. 7122(e)]

(e) ADMINISTRATIVE REVIEW.—The Secretary shall establish procedures—

(1) for an independent administrative review of any rejection of a proposed offer-in-compromise or installment agreement made by a taxpayer under this section or section 6159 before such rejection is communicated to the taxpayer; and

(2) which allow a taxpayer to appeal any rejection of such offer or agreement to the Internal Revenue Service Office of Appeals.

## Amendments

• 2006, Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222)

P.L. 109-222, § 509(a):

Amended Code Sec. 7122 by redesignating subsection (d) as subsection (e). Effective for offers-in-compromise submitted on and after the date which is 60 days after 5-17-2006.

• 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3462(c)(1):

Amended Code Sec. 7122, as amended by Act Sec. 3462(a), by adding at the end a new subsection (d). Effective for proposed offers-in-compromise and installment agreements submitted after 7-22-98.

P.L. 105-206, § 3462(d)(1)-(3), provides:

(d) PREPARATION OF STATEMENT RELATING TO OFFERS-IN-COMPROMISE.—The Secretary of the Treasury shall prepare a state-

ment which sets forth in simple, non-technical terms the rights of a taxpayer and the obligations of the Internal Revenue Service relating to offers-in-compromise. Such statement shall—

(1) advise taxpayers who have entered into a compromise of the advantages of promptly notifying the Internal Revenue Service of any change of address or marital status;

(2) provide notice to taxpayers that in the case of a compromise terminated due to the actions of one spouse or former spouse, the Internal Revenue Service will, upon application, reinstate such compromise with the spouse or former spouse who remains in compliance with such compromise; and

(3) provide notice to the taxpayer that the taxpayer may appeal the rejection of an offer-in-compromise to the Internal Revenue Service Office of Appeals.

## [Sec. 7122(f)]

(f) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—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.

## Amendments

• 2006, Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222)

P.L. 109-222, § 509(b)(2):

Amended Code Sec. 7122, as amended by Act Sec. 509(a), by adding at the end a new subsection (f). Effective for

offers-in-compromise submitted on and after the date which is 60 days after 5-17-2006.

## [Sec. 7122(f)(g)]

(f)(g) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of

Sec. 7122(d)(3)

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section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

## Amendments

- 2006, Tax Relief and Health Care Act of 2006 (P.L. 109-432)

P.L. 109-432, Division A, § 407(d):

Amended Code Sec. 7122 by adding at the end a new subsection (f)(g). Effective for submissions made and is-

sues raised after the date on which the Secretary first prescribes a list under Code Sec. 6702(c), as amended by Act Sec. 407(a).

## [Sec. 7123]

## SEC. 7123. APPEALS DISPUTE RESOLUTION PROCEDURES.

## [Sec. 7123(a)]

(a) EARLY REFERRAL TO APPEALS PROCEDURES.—The Secretary shall prescribe procedures by which any taxpayer may request early referral of 1 or more unresolved issues from the examination or collection division to the Internal Revenue Service Office of Appeals.

## [Sec. 7123(b)]

## (b) ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.—

(1) MEDIATION.—The Secretary shall prescribe procedures under which a taxpayer or the Internal Revenue Service Office of Appeals may request non-binding mediation on any issue unresolved at the conclusion of—

(A) appeals procedures; or

(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

(2) ARBITRATION.—The Secretary shall establish a pilot program under which a taxpayer and the Internal Revenue Service Office of Appeals may jointly request binding arbitration on any issue unresolved at the conclusion of—

(A) appeals procedures; or

(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

## Amendments

- 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3465(a)(1):

Amended chapter 74 by redesignating Code Sec. 7123 as Code Sec. 7124 and by inserting after Code Sec. 7122 a new Code Sec. 7123. Effective 7-22-98.

P.L. 105-206, § 3465(b)-(c), provides:

(b) APPEALS OFFICERS IN EACH STATE.—The Commissioner of Internal Revenue shall ensure that an appeals officer is regularly available within each State.

(c) APPEALS VIDEOCONFERENCING ALTERNATIVE FOR RURAL AREAS.—The Commissioner of Internal Revenue shall consider the use of the videoconferencing of appeals conferences between appeals officers and taxpayers seeking appeals in rural or remote areas.

## [Sec. 7124]

## SEC. 7124. CROSS REFERENCES.

For criminal penalties for concealment of property, false statement, or falsifying and destroying records, in connection with any closing agreement, compromise, or offer of compromise, see section 7206.

## Amendments

- 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3465(a)(1):

Amended chapter 74 by redesignating Code Sec. 7123 as Code Sec. 7124. Effective 7-22-98.

- 1982 (P.L. 97-258)

P.L. 97-258, § 3(f)(12):

Amended Code Sec. 7123 by striking out "(a) CRIMINAL PENALTIES[.]" in subsection (a), and by striking out subsec-

tion (b). Effective 9-13-82. Prior to being stricken, subsection (b) read as follows:

"(b) COMPROMISES AFTER JUDGMENT.—

For compromises after judgment, see R.S. 3469 (31 U.S.C. 194)."

## CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

SUBCHAPTER A.	Crimes.
SUBCHAPTER B.	Other offenses.
SUBCHAPTER C.	Forfeitures.
SUBCHAPTER D.	Miscellaneous penalty and forfeiture provisions.

Internal Revenue Code

Sec. 7124

## COURT REVIEW OF TAX COURT DECISIONS

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## [Sec. 7481(c)]

## (c) JURISDICTION OVER INTEREST DETERMINATIONS.—

(1) IN GENERAL.—Notwithstanding subsection (a), if, within 1 year after the date the decision of the Tax Court becomes final under subsection (a) in a case to which this subsection applies, the taxpayer files a motion in the Tax Court for a redetermination of the amount of interest involved, then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest or the Secretary has made an underpayment of such interest and the amount thereof.

(2) CASES TO WHICH THIS SUBSECTION APPLIES.—This subsection shall apply where—

(A)(i) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title, and

(ii) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

(B) the Tax Court finds under section 6512(b) that the taxpayer has made an overpayment.

(3) SPECIAL RULES.—If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest or that the Secretary has made an underpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining interest, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court.

## Amendments

## • 1997, Taxpayer Relief Act of 1997 (P.L. 105-34)

P.L. 105-34, §1452(a):

Amended Code Sec. 7481(c). Effective 8-5-97. Prior to amendment, Code Sec. 7481(c) read as follows:

(c) JURISDICTION OVER INTEREST DETERMINATIONS.—Notwithstanding subsection (a), if—

(1) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title,

(2) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

(3) within 1 year after the date the decision of the Tax Court becomes final under subsection (a), the taxpayer files a petition in the Tax Court for a determination that the amount of interest claimed by the Secretary exceeds the amount of interest imposed by this title,

then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest and the amount of any such overpayment. If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining the interest due, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court.

## • 1988, Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647)

P.L. 100-647, §6246(a):

Amended Code Sec. 7481 by adding at the end thereof new subsection (c). Effective for assessments of deficiencies redetermined by the Tax Court made after 11-10-88.

## [Sec. 7481(d)]

(d) DECISIONS RELATING TO ESTATE TAX EXTENDED UNDER SECTION 6166.—If with respect to a decedent's estate subject to a decision of the Tax Court—

(1) the time for payment of an amount of tax imposed by chapter 11 is extended under section 6166, and

(2) there is treated as an administrative expense under section 2053 either—

(A) any amount of interest which a decedent's estate pays on any portion of the tax imposed by section 2001 on such estate for which the time of payment is extended under section 6166, or

(B) interest on any estate, succession, legacy, or inheritance tax imposed by a State on such estate during the period of the extension of time for payment under section 6166,

then, upon a motion by the petitioner in such case in which such time for payment of tax has been extended under section 6166, the Tax Court may reopen the case solely to modify the Court's decision to reflect such estate's entitlement to a deduction for such administration expenses under section 2053 and may hold further trial solely with respect to the claim for such deduction if, within the discretion of the Tax Court, such a hearing is deemed necessary. An order of the Tax Court disposing of a motion under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

## Amendments

## • 1988, Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647)

P.L. 100-647, §6247(a):

Amended Code Sec. 7481, as amended, by adding at the end thereof new subsection (d). Effective with respect to Tax Court cases for which the decision is not final on 11-10-88.

## [Sec. 7482]

## SEC. 7482. COURTS OF REVIEW.

## [Sec. 7482(a)]

## (a) JURISDICTION.—

(1) IN GENERAL.—The United States Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have exclusive jurisdiction to review the decisions of the

Internal Revenue Code

Sec. 7482(a)(1)

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## COURT REVIEW OF TAX COURT DECISIONS

Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

## (2) INTERLOCUTORY ORDERS.—

(A) IN GENERAL.—When any judge of the Tax Court includes in an interlocutory order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals may, in its discretion, permit an appeal to be taken from such order, if application is made to it within 10 days after the entry of such order. Neither the application for nor the granting of an appeal under this paragraph shall stay proceedings in the Tax Court, unless a stay is ordered by a judge of the Tax Court or by the United States Court of Appeals which has jurisdiction of the appeal or a judge of that court.

(B) ORDER TREATED AS TAX COURT DECISION.—For purposes of subsections (b) and (c), an order described in this paragraph shall be treated as a decision of the Tax Court.

(C) VENUE FOR REVIEW OF SUBSEQUENT PROCEEDING.—If a United States Court of Appeals permits an appeal to be taken from an order described in subparagraph (A), except as provided in subsection (b)(2), any subsequent review of the decision of the Tax Court in the proceeding shall be made by such Court of Appeals.

(3) CERTAIN ORDERS ENTERED UNDER SECTION 6213(a).—An order of the Tax Court which is entered under authority of section 6213(a) and which resolves a proceeding to restrain assessment or collection shall be treated as a decision of the Tax Court for purposes of this section and shall be subject to the same review by the United States Court of Appeals as a similar order of a district court.

## Amendments

• 1988, Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647)

P.L. 100-647, §6243(b):

Amended Code Sec. 7482(a) by adding at the end thereof new paragraph (3). Effective for orders entered after 11-10-88.

• 1986, Tax Reform Act of 1986 (P.L. 99-514)

P.L. 99-514, §1558(a):

Amended Code Sec. 7482(a) by adding at the end thereof new paragraph (2). Effective for any order of the Tax Court entered after 10-22-86.

P.L. 99-514, §1558(b):

Amended Code Sec. 7482(a) (as in effect before the amendment made by Act Sec. 1558(a)) by moving the text

below the subsection heading and 2 ems to the right (so that the left margin of such text is aligned with the left margin of the paragraph (2) added by Act Sec. 1558(a)) and by inserting before such text "(1) In General.—". Effective for any order of the Tax Court entered after 10-22-86.

• 1982, Federal Courts Improvement Act of 1982 (P.L. 97-164)

P.L. 97-164, §154:

Amended Code Sec. 7482(a) by inserting "(other than the United States Court of Appeals for the Federal Circuit)" after "United States Court of Appeals". For an explanation of the effect of this change on pending cases, see the historical comment for P.L. 97-164, Act Sec. 403, following Code Sec. 6110(i). Effective 10-1-82.

## [Sec. 7482(b)]

## (b) VENUE.—

(1) IN GENERAL.—Except as otherwise provided in paragraphs (2) and (3), such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

(A) in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner,

(B) in the case of a corporation seeking redetermination of tax liability, the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any judicial circuit, then the office to which was made the return of the tax in respect of which the liability arises,

(C) in the case of a person seeking a declaratory decision under section 7476, the principal place of business, or principal office or agency of the employer,

(D) in the case of an organization seeking a declaratory decision under section 7428, the principal office or agency of the organization,

(E) in the case of a petition under section 6226, 6228(a), 6247, or 6252, the principal place of business of the partnership, or

(F) in the case of a petition under section 6234(c)—

(i) the legal residence of the petitioner if the petitioner is not a corporation, and

(ii) the place or office applicable under subparagraph (B) if the petitioner is a corporation.

If for any reason no subparagraph of the preceding sentence applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court or as of the time the petition seeking a declaratory decision under section 7428 or 7476 or the petition under section 6226, 6228(a), or 6234(c) was filed with the Tax Court.

Sec. 7482(a)(2)

## COURT REVIEW OF TAX COURT DECISIONS

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(2) By AGREEMENT.—Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary and the taxpayer by stipulation in writing.

(3) DECLARATORY JUDGMENT ACTIONS RELATING TO STATUS OF CERTAIN GOVERNMENTAL OBLIGATIONS.—In the case of any decision of the Tax Court in a proceeding under section 7478, such decision may only be reviewed by the Court of Appeals for the District of Columbia.

## Amendments

## • 1997, Taxpayer Relief Act of 1997 (P.L. 105-34)

## P.L. 105-34, § 1222(b)(3):

Amended Code Sec. 7482(b)(1)(E) by striking "or 6228(a)" and inserting ", 6228(a), 6247, or 6252". Effective for partnership tax years beginning after 12-31-97 [effective date changed by P.L. 105-206, § 6012(e)].

## P.L. 105-34, § 1239(d)(1):

Amended Code Sec. 7482(b)(1) by striking "or" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", or", and by inserting after subparagraph (E) a new subparagraph (F). Effective for partnership tax years ending after 8-5-97.

## P.L. 105-34, § 1239(d)(2):

Amended Code Sec. 7482(b)(1) by striking "or 6228(a)" in the last sentence and inserting ", 6228(a), or 6234(c)". Effective for partnership tax years ending after 8-5-97.

## • 1986, Tax Reform Act of 1986 (P.L. 99-514)

## P.L. 99-514, § 1810(g)(2):

Amended Code Sec. 7482(b)(1) by striking out "section 7428, 7476 or 7477" and inserting in lieu thereof "section 7428 or 7476". Effective as if included in the provision of P.L. 98-369 to which it relates.

## P.L. 99-514, § 1899A(60):

Amended Code Sec. 7482(b)(1)(E) by striking out "partnership," and inserting in lieu thereof "partnership." Effective 10-22-86.

## • 1984, Deficit Reduction Act of 1984 (P.L. 98-369)

## P.L. 98-369, § 131(e)(2)(A):

Amended Code Sec. 7482(b)(1) by striking out subparagraph (D) and by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively. Effective for transfers or exchanges after 12-31-84, in tax years ending after such date. Special rules appear in Act Sec. 131(g)(2) and (3) following Code Sec. 367. Prior to amendment, subparagraph (D) read as follows:

(D) in the case of a person seeking a declaratory judgment under section 7477, the legal residence of such person if such person is not a corporation, or the principal place of business or principal office or agency of such person if such person is a corporation.

## • 1982, Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248)

## P.L. 97-248, § 402(c)(15):

Amended Code Sec. 7482(b) by striking out "or" at the end of paragraph (D), by striking out the period at the end of subparagraph (E) and inserting ", or", by adding a new subparagraph (F), and by inserting ", or the petition under section 6226 or 6228(a)," after "or 7477". Effective for partnership tax years beginning after 9-3-82 and also to partnership tax years ending after that date if the partnership, each partner, and each indirect partner requests such application and the Secretary or his delegate consents to such application.

## • 1978, Revenue Act of 1978 (P.L. 95-600)

## P.L. 95-600, § 336(c)(1)(A), (B):

Amended Code Sec. 7482(b)(1) by striking out "provided in paragraph (2)" and inserting in lieu thereof "provided in paragraphs (2) and (3)", and added Code Sec. 7482(b)(3). Effective for requests for determinations made after 12-31-78.

## • 1976, Tax Reform Act of 1976 (P.L. 94-455)

## P.L. 94-455, § 1042(d)(2)(A):

Amended Code Sec. 7482(b)(1) by striking out "or" at the end of subparagraph (B), by substituting ", or" for the period at the end of subparagraph (C), and by adding a new

subparagraph (D). For the effective date, see Act Sec. 1042(e)(1), below.

## P.L. 94-455, § 1042(e)(1), provides:

(1) The amendments made by this section (other than by subsection (d)) shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date. The amendments made by subsection (d) shall apply with respect to pleadings filed with the Tax Court after the date of the enactment of this Act [October 4, 1976] but only with respect to transfers beginning after October 9, 1975.

## P.L. 94-455, § 1306(b)(4):

Amended Code Sec. 7482(b) by striking out "or" at the end of subparagraph (C), by substituting ", or" for the period at the end of subparagraph (D), and by adding Sec. 7482(b)(1)(E).

## P.L. 94-455, § 1306(b)(5):

Amended the last sentence of Code Sec. 7482(b)(1). Prior to amendment, the last sentence of Sec. 7482(b)(1) read as follows:

If for any reason subparagraph (A), (B) and (C) do not apply, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court or as of the time the petition seeking a declaratory decision under section 7476 was filed with the Tax Court.

## P.L. 94-455, § 1306(c), provides:

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after the date of the enactment of this Act [October 4, 1976] but only with respect to determinations (or requests for determinations) made after January 1, 1976.

## P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

## • 1974, Employee Retirement Income Security Act of 1974 (P.L. 93-406)

## P.L. 93-406, § 1041(b)(3):

Amended Code Sec. 7482(b)(1). Effective to pleadings filed after 9-2-75. Prior to amendment, Code Sec. 7482(b)(1) read as follows:

"(b) Venue.—

"(1) In general.—Except as otherwise provided in paragraph (2), such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

"(A) in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner,

"(B) in the case of a corporation seeking redetermination of tax liability, the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any judicial circuit, then the office to which was made the return of the tax in respect of which the liability arises.

If for any reason neither subparagraph (A) nor (B) applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court."

Internal Revenue Code

Sec. 7482(b)(3)

## 5052

## COURT REVIEW OF TAX COURT DECISIONS

- 1966 (P.L. 89-713)

P.L. 89-713, §3(c):

Amended Code Sec. 7482(b)(1). Effective as to all decisions of the Tax Court entered after 11-2-66. Prior to amendment, Sec. 7482(b)(1) read as follows:

"(1) In general.—Except as provided in paragraph (2), such decisions may be reviewed by the United States Court

of Appeals for the circuit in which is located the office to which was made the return of the tax in respect of which the liability arises, or, if no return was made, then by the United States Court of Appeals for the District of Columbia."

[Sec. 7482(c)]

(c) POWERS.—

(1) TO AFFIRM, MODIFY, OR REVERSE.—Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

(2) TO MAKE RULES.—Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2072 of title 28 of the United States Code.

(3) TO REQUIRE ADDITIONAL SECURITY.—Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

(4) TO IMPOSE PENALTIES.—The United States Court of Appeals and the Supreme Court shall have the power to require the taxpayer to pay to the United States a penalty in any case where the decision of the Tax Court is affirmed and it appears that the appeal was instituted or maintained primarily for delay or that the taxpayer's position in the appeal is frivolous or groundless.

Amendments

- 1989, Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239)

P.L. 101-239, §7731(b):

Amended Code Sec. 7482(c)(4). Effective for positions taken after 12-31-89, in proceedings which are pending on, or commenced after such date. Prior to amendment, Code Sec. 7482(c)(4) read as follows:

(4) TO IMPOSE DAMAGES.—The United States Court of Appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the notice of appeal was filed merely for delay.

- 1969, Tax Reform Act of 1969 (P.L. 91-172)

P.L. 91-172, §960(h)(2):

Amended Code Sec. 7482(c)(2) by substituting the phrase "section 2072" for the phrase "section 2074" and by deleting the second sentence, which read as follows: "Until such rules become effective the rules adopted under authority of section 1141(c)(2) of the Internal Revenue Code of 1939 shall remain in effect." (See amendatory note under Code Sec. 7483, below.) Also amended Code Sec. 7482(c)(4) by substituting the phrase "notice of appeal" for the word "petition." Effective 1-29-70.

[Sec. 7483]

SEC. 7483. NOTICE OF APPEAL.

Review of a decision of the Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.

Amendments

- 1969, Tax Reform Act of 1969 (P.L. 91-172)

P.L. 91-172, §959(a):

Amended Code Sec. 7483. Effective 1-29-70. However, in the case of any decision of the Tax Court entered before January 29, 1970, the United States Courts of Appeal shall have jurisdiction to hear an appeal from such decision, if such appeal was filed within the time prescribed by Rule 13(a) of the Federal Rules of Appellate Procedure or by section 7483 of the Internal Revenue Code of 1954, as in effect at the time the decision of the Tax Court was entered. Prior to amendment, Sec. 7483 read as follows:

SEC. 7483. PETITION FOR REVIEW.

The decision of the Tax Court may be reviewed by a United States Court of Appeals as provided in section 7482 if a petition for such review is filed by either the Secretary (or his delegate) or the taxpayer within 3 months after the decision is rendered. If, however, a petition for such review is so filed by one party to the proceeding, a petition for review of the decision of the Tax Court may be filed by any other party to the proceeding within 4 months after such decision is rendered.

[Sec. 7484]

SEC. 7484. CHANGE OF INCUMBENT IN OFFICE.

When the incumbent of the office of Secretary changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court.

Amendments

- 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, §1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

Sec. 7482(c)

## COMPROMISES—§ 7122 [¶ 41,110]

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*Conference Agreement.*—The conference agreement follows the Senate amendment, with the following additions. First, the provision suspending collection by levy while an offer-in-compromise is pending is also expanded to apply while an installment agreement is pending.

Second, the provision authorizes the Secretary to prescribe guidelines for the IRS to determine whether an offer-in-compromise is adequate and should be accepted to resolve a dispute. Accordingly, the conferees expect that the present regulations will be expanded so as to permit the IRS, in certain circumstances, to consider additional factors (i.e., factors other than doubt as to liability or collectibility) in determining whether to compromise the income tax liabilities of individual taxpayers. For example, the conferees anticipate that the IRS will take into account factors such as equity, hardship, and public policy where a compromise of an individual taxpayer's income tax liability would promote effective tax administration. The conferees anticipate that, among other situations, the IRS may utilize this new authority to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability. The conferees believe that the

ability to compromise tax liability and to make payments of tax liability by installment enhances taxpayer compliance. In addition, the conferees believe that the IRS should be flexible in finding ways to work with taxpayers who are sincerely trying to meet their obligations and remain in the tax system. Accordingly, the conferees believe that the IRS should make it easier for taxpayers to enter into offer-in-compromise agreements, and should do more to educate the taxpaying public about the availability of such agreements. —Conference Committee Report (H.R. CONF. REP. NO. 105-599).

**Committee Report on P.L. 104-168 (Taxpayer Bill of Rights 2 (1996))**

.18 *Offers-in-compromise.*—The bill increases from \$500 to \$50,000 the amount requiring a written opinion from Office of Chief Counsel. Compromises below the \$50,000 threshold must be subject to continuing quality review by the IRS.

*Effective Date.*—The provision is effective on the date of enactment.—House Committee Report.

.20 Committee Report on 1954 Code Sec. 7122 was reproduced at 564 CCH ¶ 5694.20.

✓  
• **Regulations**

[¶ 41,110B] § 301.7122-0. **Table of contents.**—This section lists the major captions that appear in the regulations under § 301.7122-1.

§ 301.7122-1. *Compromises.*

- (a) In general.
- (b) Grounds for compromise.
- (c) Special rules for the evaluation of offers to compromise.
- (d) Procedures for submission and consideration of offers.
- (e) Acceptance of an offer to compromise a tax liability.
- (f) Rejection of an offer to compromise.
- (g) Effect of offer to compromise on collection activity
- (h) Deposits.
- (i) Statute of limitations.
- (j) Inspection with respect to accepted offers to compromise.
- (k) Effective date.

[Reg. § 301.7122-0.]

.01 **Historical Comment:** Adopted 7/18/2002 by T.D. 9007.

• **Regulations**

➤➤➤ **Caution:** Reg. § 301.7122-1 does not reflect recent law changes. For details, see ¶ 41,111.01.

[¶ 41,111] § 301.7122-1. **Compromises.**—In general.—(1) If the Secretary determines that there are grounds for compromise under this section, the Secretary may, at the Secretary's discretion, compromise any civil or criminal liability arising under the internal revenue laws prior to reference of a case involving such a liability to the Department of Justice for prosecution or defense.

(2) An agreement to compromise may relate to a civil or criminal liability for taxes, interest, or penalties. Unless the terms of the offer and acceptance expressly provide otherwise, acceptance of an offer to compromise a civil liability does not remit a criminal

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➡➡➡ *Caution: Reg. § 301.7122-1 does not reflect recent law changes. For details, see ¶ 41,111.01.*

liability, nor does acceptance of an offer to compromise a criminal liability remit a civil liability.

(b) *Grounds for compromise.*—(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 or amount of the liability. See paragraph (f)(4) of this section for special rules applicable to rejection of offers in cases where the Internal Revenue Service (IRS) is unable to locate the taxpayer's return or return information to verify the liability.

(2) *Doubt as to collectibility.*—Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the liability.

(3) *Promote effective tax administration.*—(i) A compromise may be entered into to promote effective tax administration when the Secretary determines that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship within the meaning of § 301.6343-1.

(ii) If there are no grounds for compromise under paragraphs (b)(1), (2), or (3)(i) of this section, the IRS 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. A taxpayer proposing compromise under this paragraph (b)(3)(ii) will be expected to demonstrate circumstances that justify compromise even though a similarly situated taxpayer may have paid his liability in full.

(iii) No compromise to promote effective tax administration may be entered into if compromise of the liability would undermine compliance by taxpayers with the tax laws.

(c) *Special rules for evaluating offers to compromise.*—(1) *In general.*—Once a basis for compromise under paragraph (b) of this section has been identified, the decision to accept or reject an offer to compromise, as well as the terms and conditions agreed to, is left to the discretion of the Secretary. The determination whether to accept or reject an offer to compromise will be based upon consideration of all the facts and circumstances, including whether the circumstances of a particular case warrant acceptance of an amount that might not otherwise be acceptable under the Secretary's policies and procedures.

(2) *Doubt as to collectibility.*—(i) *Allowable Expenses.*—A determination of doubt as to collectibility will include a determination of ability to pay. In determining ability to pay, the Secretary will permit taxpayers to retain sufficient funds to pay basic living expenses. The determination of the amount of such basic living expenses will be founded upon an evaluation of the individual facts and circumstances presented by the taxpayer's case. To guide this determination, guidelines published by the Secretary on national and local living expense standards will be taken into account.

(ii) *Nonliable spouses.*—(A) *In general.*—Where a taxpayer is offering to compromise a liability for which the taxpayer's spouse has no liability, the assets and income of the nonliable spouse will not be considered in determining the amount of an adequate offer. The assets and income of a nonliable spouse may be considered, however, to the extent property has been transferred by the taxpayer to the nonliable spouse under circumstances that would permit the IRS to effect collection of the taxpayer's liability from such property (e.g., property that was conveyed in fraud of creditors), property has been transferred by the taxpayer to the nonliable spouse for the purpose of removing the

¶ 41,111 Reg. § 301.7122-1(b)(1)

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»→ *Caution: Reg. § 301.7122-1 does not reflect recent law changes. For details, see ¶ 41,111.01.*

property from consideration by the IRS in evaluating the compromise, or as provided in paragraph (c)(2)(ii)(B) of this section. The IRS also may request information regarding the assets and income of the nonliable spouse for the purpose of verifying the amount of and responsibility for expenses claimed by the taxpayer.

(B) *Exception.*—Where collection of the taxpayer's liability from the assets and income of the nonliable spouse is permitted by applicable state law (e.g., under state community property laws), the assets and income of the nonliable spouse will be considered in determining the amount of an adequate offer except to the extent that the taxpayer and the nonliable spouse demonstrate that collection of such assets and income would have a material and adverse impact on the standard of living of the taxpayer, the nonliable spouse, and their dependents.

(3) *Compromises to promote effective tax administration.*—(i) Factors supporting (but not conclusive of) a determination that collection would cause economic hardship within the meaning of paragraph (b)(3)(i) of this section include, but are not limited to—

(A) Taxpayer is incapable of earning a living because of a long term illness, medical condition, or disability, and it is reasonably foreseeable that taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;

(B) Although taxpayer has certain monthly income, that income is exhausted each month in providing for the care of dependents with no other means of support; and

(C) Although taxpayer has certain assets, the taxpayer is unable to borrow against the equity in those assets and liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses.

(ii) Factors supporting (but not conclusive of) a determination that compromise would undermine compliance within the meaning of paragraph (b)(3)(iii) of this section include, but are not limited to—

(A) Taxpayer has a history of noncompliance with the filing and payment requirements of the Internal Revenue Code;

(B) Taxpayer has taken deliberate actions to avoid the payment of taxes; and

(C) Taxpayer has encouraged others to refuse to comply with the tax laws.

(iii) The following examples illustrate the types of cases that may be compromised by the Secretary, at the Secretary's discretion, under the economic hardship provisions of paragraph (b)(3)(i) of this section:

*Example 1.* The taxpayer has assets sufficient to satisfy the tax liability. The taxpayer provides full time care and assistance to her dependent child, who has a serious long-term illness. It is expected that the taxpayer will need to use the equity in his assets to provide for adequate basic living expenses and medical care for his child. The taxpayer's overall compliance history does not weigh against compromise.

*Example 2.* The taxpayer is retired and his only income is from a pension. The taxpayer's only asset is a retirement account, and the funds in the account are sufficient to satisfy the liability. Liquidation of the retirement account would leave the taxpayer without an adequate means to provide for basic living expenses. The taxpayer's overall compliance history does not weigh against compromise.

*Example 3.* The taxpayer is disabled and lives on a fixed income that will not, after allowance of basic living expenses, permit full payment of his liability under an installment agreement. The taxpayer also owns a modest house that has been specially equipped to accommodate his disability. The taxpayer's equity in the house is sufficient to

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➡ *Caution: Reg. §301.7122-1 does not reflect recent law changes. For details, see ¶41,111.01.*

permit payment of the liability he owes. However, because of his disability and limited earning potential, the taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayer's home has been specially equipped to accommodate his disability, forced sale of the taxpayer's residence would create severe adverse consequences for the taxpayer. The taxpayer's overall compliance history does not weigh against compromise.

(iv) The following examples illustrate the types of cases that may be compromised by the Secretary, at the Secretary's discretion, under the public policy and equity provisions of paragraph (b)(3)(ii) of this section:

*Example 1.* In October of 1986, the taxpayer developed a serious illness that resulted in almost continuous hospitalizations for a number of years. The taxpayer's medical condition was such that during this period the taxpayer was unable to manage any of his financial affairs. The taxpayer has not filed tax returns since that time. The taxpayer's health has now improved and he has promptly begun to attend to his tax affairs. He discovers that the IRS prepared a substitute for return for the 1986 tax year on the basis of information returns it had received and had assessed a tax deficiency. When the taxpayer discovered the liability, with penalties and interest, the tax bill is more than three times the original tax liability. The taxpayer's overall compliance history does not weigh against compromise.

*Example 2.* The taxpayer is a salaried sales manager at a department store who has been able to place \$2,000 in a tax-deductible IRA account for each of the last two years. The taxpayer learns that he can earn a higher rate of interest on his IRA savings by moving those savings from a money management account to a certificate of deposit at a different financial institution. Prior to transferring his savings, the taxpayer submits an e-mail inquiry to the IRS at its Web Page, requesting information about the steps he must take to preserve the tax benefits he has enjoyed and to avoid penalties. The IRS responds in an answering e-mail that the taxpayer may withdraw his IRA savings from his neighborhood bank, but he must redeposit those savings in a new IRA account within 90 days. The taxpayer withdraws the funds and redeposits them in a new IRA account 63 days later. Upon audit, the taxpayer learns that he has been misinformed about the required rollover period and that he is liable for additional taxes, penalties and additions to tax for not having redeposited the amount within 60 days. Had it not been for the erroneous advice that is reflected in the taxpayer's retained copy of the IRS e-mail response to his inquiry, the taxpayer would have redeposited the amount within the required 60-day period. The taxpayer's overall compliance history does not weigh against compromise.

(d) *Procedures for submission and consideration of offers.*—(1) *In general.*—An offer to compromise a tax liability pursuant to section 7122 must be submitted according to the procedures, and in the form and manner, prescribed by the Secretary. An offer to compromise a tax liability must be made in writing, must be signed by the taxpayer under penalty of perjury, and must contain all of the information prescribed or requested by the Secretary. However, taxpayers submitting offers to compromise liabilities solely on the basis of doubt as to liability will not be required to provide financial statements.

(2) *When offers become pending and return of offers.*—An offer to compromise becomes pending when it is accepted for processing. The IRS may not accept for processing any offer to compromise a liability following reference of a case involving such liability to the Attorney General for prosecution or defense. If an offer accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the offer should be accepted, the IRS will request that the taxpayer provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may return the offer to the taxpayer. The IRS may also return an offer to compromise a tax liability if it

**¶41,111 Reg. §301.7122-1(c)(3)(iv)**

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➤➤➤ *Caution: Reg. § 301.7122-1 does not reflect recent law changes. For details, see ¶ 41,111.01.*

determines that the offer was submitted solely to delay collection or was otherwise nonprocessable. 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 IRS returns the offer to the taxpayer. See paragraphs (f)(5)(ii) and (g)(4) of this section for rules regarding the effect of such returns of offers.

(3) *Withdrawal.*—An offer to compromise a tax liability may be withdrawn by the taxpayer or the taxpayer's representative at any time prior to the IRS' acceptance of the offer to compromise. An offer will be considered withdrawn upon the IRS' receipt of written notification of the withdrawal of the offer either by personal delivery or certified mail, or upon issuance of a letter by the IRS confirming the taxpayer's intent to withdraw the offer.

(e) *Acceptance of an offer to compromise a tax liability.*—(1) An offer to compromise has not been accepted until the IRS issues a written notification of acceptance to the taxpayer or the taxpayer's representative.

(2) As additional consideration for the acceptance of an offer to compromise, the IRS may request that taxpayer enter into any collateral agreement or post any security which is deemed necessary for the protection of the interests of the United States.

(3) Offers may be accepted when they provide for payment of compromised amounts in one or more equal or unequal installments.

(4) If the final payment on an accepted offer to compromise is contingent upon the immediate and simultaneous release of a tax lien in whole or in part, such payment must be made in accordance with the forms, instructions, or procedures prescribed by the Secretary.

(5) 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, nor prevent the IRS from taking action to collect from, any person not named in the offer who is also liable for the tax to which the compromise relates. Neither the taxpayer nor the Government will, following acceptance of an offer to compromise, be permitted to reopen the case except in instances where—

(i) False information or documents are supplied in conjunction with the offer;

(ii) The ability to pay or the assets of the taxpayer are concealed; or

(iii) A mutual mistake of material fact sufficient to cause the offer agreement to be reformed or set aside is discovered.

(6) *Opinion of Chief Counsel.*—Except as otherwise provided in this paragraph (e)(6), if an offer to compromise is accepted, there will be placed on file the opinion of the Chief Counsel for the IRS with respect to such compromise, along with the reasons therefor. However, no such opinion will be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than \$50,000. Also placed on file will be a statement of—

(i) The amount of tax assessed;

(ii) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and

(iii) The amount actually paid in accordance with the terms of the compromise.

(f) *Rejection of an offer to compromise.*—(1) An offer to compromise has not been rejected until the IRS issues a written notice to the taxpayer or his representative, advising of the rejection, the reason(s) for rejection, and the right to an appeal.

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➤➤➤ **Caution:** Reg. § 301.7122-1 does not reflect recent law changes. For details, see ¶ 41,111.01.

(2) The IRS may not notify a taxpayer or taxpayer's representative of the rejection of an offer to compromise until an independent administrative review of the proposed rejection is completed.

(3) No offer to compromise may be rejected solely on the basis of the amount of the offer without evaluating that offer under the provisions of this section and the Secretary's policies and procedures regarding the compromise of cases.

(4) *Offers based upon doubt as to liability.*—Offers submitted on the basis of doubt as to liability cannot be rejected solely because the IRS is unable to locate the taxpayer's return or return information for verification of the liability.

(5) *Appeal of rejection of an offer to compromise.*—(i) *In general.*—The taxpayer may administratively appeal a rejection of an offer to compromise to the IRS Office of Appeals (Appeals) if, within the 30-day period commencing the day after the date on the letter of rejection, the taxpayer requests such an administrative review in the manner provided by the Secretary.

(ii) *Offer to compromise returned following a determination that the offer was nonprocessable, a failure by the taxpayer to provide requested information, or a determination that the offer was submitted for purposes of delay.*—Where a determination is made to return offer documents because the offer to compromise was nonprocessable, because the taxpayer failed to provide requested information, or because the IRS determined that the offer to compromise was submitted solely for purposes of delay under paragraph (d)(2) of this section, the return of the offer does not constitute a rejection of the offer for purposes of this provision and does not entitle the taxpayer to appeal the matter to Appeals under the provisions of this paragraph (f)(5). However, if the offer is returned because the taxpayer failed to provide requested financial information, the offer will not be returned until a managerial review of the proposed return is completed.

(g) *Effect of offer to compromise on collection activity.*—(1) *In general.*—The IRS will not levy against the property or rights to property of a taxpayer who submits an offer to compromise, to collect the liability that is the subject of the offer, during the period the offer is pending, for 30 days immediately following the rejection of the offer, and for any period when a timely filed appeal from the rejection is being considered by Appeals.

(2) *Revised offers submitted following rejection.*—If, following the rejection of an offer to compromise, the taxpayer makes a good faith revision of that offer and submits the revised offer within 30 days after the date of rejection, the IRS will not levy to collect from the taxpayer the liability that is the subject of the revised offer to compromise while that revised offer is pending.

(3) *Jeopardy.*—The IRS may levy to collect the liability that is the subject of an offer to compromise during the period the IRS is evaluating whether that offer will be accepted if it determines that collection of the liability is in jeopardy.

(4) *Offers to compromise determined by IRS to be nonprocessable or submitted solely for purposes of delay.*—If the IRS determines, under paragraph (d)(2) of this section, that a pending offer did not contain sufficient information to permit evaluation of whether the offer should be accepted, that the offer was submitted solely to delay collection, or that the offer was otherwise nonprocessable, then the IRS may levy to collect the liability that is the subject of that offer at any time after it returns the offer to the taxpayer.

(5) *Offsets under section 6402.*—Notwithstanding the evaluation and processing of an offer to compromise, the IRS may, in accordance with section 6402, credit any overpayments made by the taxpayer against a liability that is the subject of an offer to

¶ 41,111 Reg. § 301.7122-1(f)(2)

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➡➡➡ **Caution:** Reg. §301.7122-1 does not reflect recent law changes. For details, see ¶41,111.01.

compromise and may offset such overpayments against other liabilities owed by the taxpayer to the extent authorized by section 6402.

(6) *Proceedings in court.*—Except as otherwise provided in this paragraph (g)(6), the IRS will not refer a case to the Department of Justice for the commencement of a proceeding in court, against a person named in a pending offer to compromise, if levy to collect the liability is prohibited by paragraph (g)(1) of this section. Without regard to whether a person is named in a pending offer to compromise, however, the IRS may authorize the Department of Justice to file a counterclaim or third-party complaint in a refund action or to join that person in any other proceeding in which liability for the tax that is the subject of the pending offer to compromise may be established or disputed, including a suit against the United States under 28 U.S.C. 2410. In addition, the United States may file a claim in any bankruptcy proceeding or insolvency action brought by or against such person.

(h) *Deposits.*—Sums submitted with an offer to compromise a liability or during the pendency of an offer to compromise are considered deposits and will not be applied to the liability until the offer is accepted unless the taxpayer provides written authorization for application of the payments. If an offer to compromise is withdrawn, is determined to be nonprocessable, or is submitted solely for purposes of delay and returned to the taxpayer, any amount tendered with the offer, including all installments paid on the offer, will be refunded without interest. If an offer is rejected, any amount tendered with the offer, including all installments paid on the offer, will be refunded, without interest, after the conclusion of any review sought by the taxpayer with Appeals. Refund will not be required if the taxpayer has agreed in writing that amounts tendered pursuant to the offer may be applied to the liability for which the offer was submitted.

(i) *Statute of limitations.*—(1) *Suspension of the statute of limitations on collection.*—The statute of limitations on collection will be suspended while levy is prohibited under paragraph (g)(1) of this section.

(2) *Extension of the statute of limitations on assessment.*—For any offer to compromise, the IRS may require, where appropriate, the extension of the statute of limitations on assessment. However, in any case where waiver of the running of the statutory period of limitations on assessment is sought, the taxpayer must be notified of the right to refuse to extend the period of limitations or to limit the extension to particular issues or particular periods of time.

(j) *Inspection with respect to accepted offers to compromise.*—For provisions relating to the inspection of returns and accepted offers to compromise, see section 6103(k)(1).

(k) *Effective date.*—This section applies to offers to compromise pending on or submitted on or after July 18, 2002. [Reg. § 301.7122-1.]

.01 *Historical Comment:* Adopted 7/18/2002 by T.D. 9007. [Reg. § 301.7122-1 does not reflect P.L. 109-222 (2006). See ¶41,130.0245.]

• **Regulations**

➡➡➡ **Caution:** Reg. §300.3 does not reflect recent law changes. For details, see ¶41,120.01.

[¶41,120] §300.3. **Offer to compromise fee.**—(a) *Applicability.*—This section applies to the processing of offers to compromise tax liabilities pursuant to §301.7122-1 of this chapter. Except as provided in this section, this fee applies to all offers to compromise accepted for processing.

(b) *Fee.*—(1) The fee for processing an offer to compromise is \$150.00, except that no fee will be charged if an offer is—

2012(17) CCH—Standard Federal Tax Reports

Reg. §300.3(b)(1) ¶41,120

**69,434****COMPROMISES—§ 7122 [¶ 41,110]**

➔ **Caution:** Reg. § 300.3 does not reflect recent law changes. For details, see ¶ 41,120.01.

(i) Based solely on doubt as to liability as defined in § 301.7122-1(b)(1) of this chapter; or

(ii) Made by a low income taxpayer, that is, an individual who falls at or below the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511) or such other measure that is adopted by the Secretary.

(2) The fee will be applied against the amount of the offer, unless the taxpayer requests that it be refunded, if the offer is—

(i) Accepted to promote effective tax administration pursuant to § 301.7122-1(b)(3) of this chapter; or

(ii) Accepted based on doubt as to collectibility and a determination that collection of an amount greater than the amount offered would create economic hardship within the meaning of § 301.6343-1 of this chapter.

(3) Except as otherwise provided in this paragraph (b), the fee will not be refunded to the taxpayer if the offer is accepted, rejected, withdrawn, or returned as nonprocessable after acceptance for processing.

(4) No additional fee will be charged if a taxpayer resubmits an offer the Secretary determines to have been rejected in error or returned in error after acceptance for processing.

(c) *Person liable for the fee.*—The person liable for the processing fee is the taxpayer whose tax liabilities are the subject of the offer.

(d) *Effective/applicability date.*—This section is applicable beginning November 1, 2003. [Reg. § 300.3.]

.01 **Historical Comment:** Proposed 11/6/2002. Adopted 8/14/2003 by T.D. 9086. Amended 9/28/2010 by T.D. 9503. [Reg. § 300.3 does not reflect P.L. 109-222 (2006). See ¶ 41,130.024 and ¶ 41,130.0245.]

**[¶ 41,130]****Compromises**• • **CCH Explanation****Table of Contents**

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**¶ 41,130 Reg. § 300.3(b)(1)(i)**

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## Internal Revenue Manual - 5.8.5 Financial Analysis

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- For specialized machinery and equipment suitable for only certain applications, consult a trade association guide, secure an appraisal from a knowledgeable and impartial dealer, or contact the manufacturer.
  - When the property is unique or difficult to value and no other resource will meet the need, follow local procedure to request the services of an IRS valuation engineer.
  - Consider asking the taxpayer to secure an appraisal from a qualified business appraiser.
3. There is a statutory exemption from levy that applies to an individual taxpayer's tools used in a trade or business. This exemption for tools of the trade generally does not apply to automobiles. The levy exemption amount is updated on an annual basis.

**5.8.5.4.14 (09-23-2008)****Business as a Going Concern**

1. Evaluation of a business as a going concern, is sometimes necessary when determining RCP of an operating business owned individually or by a corporation, partnership, or LLC. This analysis recognizes that a business may be worth more than the sum of its parts, when sold as a going concern.
2. To determine the value of a business as a going concern consider the value of assets, future income, and intangible assets such as:
  - Ability or reputation of a professional
  - Established customer base
  - Prominent location
  - Well known trade name, trademark, or telephone number
  - Possession of government licenses, copyrights, or patents

Generally, the difference between what an ongoing business would realize if sold on the open market as a going concern and the traditional RCP analysis is attributable to the value of these intangibles.

3. Request the assistance of an IRS valuation engineer when a difficult or complex valuation is necessary.
4. When determining RCP for an individual taxpayer who has an interest in a business entity, flexibility should be used with consideration given to the taxpayer's control over the business.

**5.8.5.5 (09-23-2008)****Dissipation of Assets**

1. During an offer investigation it may be discovered that assets (liquid or non liquid) have been sold, gifted, transferred, or spent on non-priority items or debts and are no longer available to pay the tax liability. This section discusses treatment of the value of these assets when considering an OIC.

**Note:**

The scope of an offer investigation should not be expanded beyond the requirements defined in IRM 5.8.5.4, for the sole purpose of attempting to locate dissipated assets.

2. Once it is determined that a specific asset has been dissipated, the investigation should address whether the value of the asset, or a portion of the value, should be included in an acceptable offer

amount.

3. Inclusion of the value of dissipated assets must clearly be justified in the case file and documented on the ICS or AOIC history, as appropriate. A determination that assets were dissipated should include an analysis of the following facts:

- When the asset(s) were dissipated in relation to the offer submission.
- When the asset(s) were dissipated in relation to the liability.
- How the asset was transferred.
- If the taxpayer realized any funds from the transfer of assets.
- How any funds realized from the disposition of assets were used.
- The value of the assets and the taxpayer's interest in those assets.

4. When the taxpayer can show that funds have been spent to provide for necessary living expenses, these amounts should *not* be included in the reasonable collection potential (RCP) calculation.

**Example:**

(1) Dissolving an IRA account to pay for necessary living expenses during unemployment; (2) Using bank accounts to pay for medical expenses; (3) Disposing of an asset and using the funds to purchase another asset that is included in the offer evaluation.

5. If the investigation clearly reveals that assets have been dissipated with a disregard of the outstanding tax liability, consider including the value in the RCP calculation.

**Example:**

Dissipated Assets that may result in an increase to the RCP calculation:

- Dissolving an IRA account to pay unsecured credit card debt
  - Sale of real estate and "gifting" the funds from the sale to family members.
  - A recent refinancing of equity in property and using the funds to pay unsecured debt.
6. The value of dissipated assets should not automatically be included in the calculation of the RCP. Each particular case must be evaluated on its own merit, and meeting the facts stated in paragraph (3) above.
7. If the tax liability did not exist prior to the transfer or the transfer occurred prior to the taxable event giving rise to the tax liability, generally, a taxpayer cannot be said to have dissipated the assets in disregard of the outstanding tax liability.

**Example:**

If a taxpayer withdraws funds from an IRA to invest in a business opportunity but does not have any tax liability prior to the withdrawal, the funds were not dissipated.

8. If the taxpayer does not provide information showing the disposition of funds from transferred assets, consider including all of these amounts in an acceptable offer amount.

**5.8.5.6 (09-23-2008)**

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- For specialized machinery and equipment suitable for only certain applications, consult a trade association guide, secure an appraisal from a knowledgeable and impartial dealer, or contact the manufacturer.
- When the property is unique or difficult to value and no other resource will meet the need, follow local procedure to request the services of an IRS valuation engineer.
- Consider asking the taxpayer to secure an appraisal from a qualified business appraiser.

**Note:**

Business appraisals should only be requested when the cost of the appraisal is justified by the complexity of the business activity and where there is a market for similar businesses in the taxpayer's location.

3. There is a statutory exemption from levy that applies to an individual taxpayer's tools used in a trade or business, which will be allowed in addition to any encumbrance that has priority over the NFTL. This exemption for tools of the trade generally does not apply to automobiles. The levy exemption amount is updated on an annual basis.

**5.8.5.15 (10-22-2010)****Business as a Going Concern**

1. Evaluation of a business as a going concern is sometimes necessary when determining RCP of an operating business owned individually or by a corporation, partnership, or LLC. This analysis recognizes that a business may be worth more than the sum of its parts, when sold as a going concern.
2. To determine the value of a business as a going concern consider the value of assets, future income, and intangible assets such as:
  - Ability or reputation of a professional.
  - Established customer base.
  - Prominent location.
  - Well known trade name, trademark, or telephone number.
  - Possession of government licenses, copy rights, or patents.

Generally, the difference between what an ongoing business would realize if sold on the open market as a going concern and the traditional RCP analysis is attributable to the value of these intangibles.

3. Request the assistance of an IRS valuation engineer when a difficult or complex valuation is necessary.
4. When determining the equity to include in RCP for an individual taxpayer who has an interest in a business entity, consideration should be given to the taxpayer's control over the business.
5. The justification for the value used should be clearly documented in the case history.

**5.8.5.16 (10-22-2010)****Dissipation of Assets**

1. The value of dissipated assets should not automatically be included in the calculation of the RCP. Each particular case must be evaluated on its own merit. This section discusses treatment of the value of these assets when considering an OIC.
2. During an offer investigation it may be discovered that assets (liquid or non liquid) have been sold, gifted, transferred, or spent on non-priority items or debts and are no longer available to pay the tax liability.

**Note:**

The scope of an offer investigation should not be expanded beyond the requirements defined in IRM 5.8.5.4, for the sole purpose of attempting to locate dissipated assets.

3. Once it is determined that a specific asset has been dissipated, the investigation should address whether the value of the asset, or a portion of the value, should be included in an acceptable offer amount.
4. Inclusion of the value of dissipated assets must clearly be justified in the case file and documented on the ICS or AOIC history, as appropriate. A determination that assets were dissipated should include an analysis of the following facts:
  - When the asset(s) were dissipated in relation to the offer submission. Absent unique circumstances, the value of assets dissipated more than 5 years prior to the offer submission will not be included in the RCP.
  - \* When the assets were used by the taxpayer to pay for existing on-going business operating expenses, the funds should not be considered to be a dissipated asset.
  - When the asset(s) were dissipated in relation to the liability.
  - How the asset was transferred.
  - If the taxpayer realized any funds from the transfer of assets.
  - How any funds realized from the disposition of assets were used.
  - The value of the assets and the taxpayer's interest in those assets.
5. When it can be shown through internal research or substantiation provided by the taxpayer that the funds were needed to provide for necessary living expenses, these amounts should not be included in the RCP calculation. \*

**Example:**

(1) Dissolving an IRA during unemployment. Review of available internal sources verified the taxpayer's income was insufficient to meet necessary living expenses. In this case, do not include the funds up the amount needed to meet allowable expenses in the RCP calculation.

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**Example:**

(2) Substantial amount withdrawn from bank accounts. Taxpayer provided supporting documentation that funds were used to pay for medical expenses. This amount will not be included in the RCP calculation.

**Example:**

(3) Disposing of an asset and using the funds to purchase another asset that is included in the offer evaluation. Do not include the calculation as a dissipated asset.

6. If the tax liability did not exist prior to the transfer or the transfer occurred prior to the taxable event giving rise to the tax liability, generally, a taxpayer cannot be said to have dissipated the assets in disregard of the outstanding tax liability.

**Example:**

If a taxpayer withdraws funds from an IRA to invest in a business opportunity but does not have any tax liability prior to the withdrawal, the funds were not dissipated.

7. If the investigation clearly reveals that assets have been dissipated with a disregard of the outstanding tax liability, consider including the value in the RCP calculation.

**Example:**

(1) Dissipated Assets that may result in an increase to the RCP calculation are dissolving an IRA account or refinancing equity in property to pay for a child's wedding or vacation, and sale of real estate and gifting the funds from the sale to family members.

**Example:**

(2) If taxpayer refinanced their home and used a portion of the funds to pay for living expenses or medical costs, only the portion of the funds that were not used for necessary living expenses should be considered for inclusion as a dissipated asset when calculating the RCP.

**Example:**

(3) The taxpayer had a prior OIC rejected based upon equity in assets. The taxpayer subsequently secured a second mortgage on his residence and submitted a new offer. The taxpayer used a portion of the second mortgage loan to pay unsecured debts and was not able to account where the rest of the loan proceeds were applied. Consider including the amount of the second mortgage loan as part of the RCP, unless exceptional circumstances exist.

8. If the taxpayer does not provide information showing the disposition of funds from transferred assets, consider including all of these amounts in an acceptable offer amount. Prior to including the dissipated asset in the RCP, the taxpayer should be contacted (preferably by telephone) and afforded the opportunity to explain or verify the dissipation of the asset.
9. If during the investigation it is determined the assets were deliberately dissipated in anticipation of the tax liability or the filing of the OIC, consideration should be given to rejecting the offer under public policy criteria. These instances should be rare.
10. The case history must be clearly documented with the basis for your decision regarding the dissipated asset.

#### 5.8.5.17 (10-22-2010) Retired Debt

1. Retired debt is an expected change in necessary or allowable expenses. The necessary/allowable expenses may decrease, which would change the taxpayer's ability to pay.

**Example:**

Required child support payments may stop before the future income period ends. It is expected that these retired payments would increase the taxpayer's ability to pay.

2. Inclusion of retired debt should not be automatically included in the calculation of the RCP. The OE/OS should use judgment in determining whether inclusion of the retired debt is appropriate based on the facts of the case, such as special circumstances or ETA situations.
3. When retiring a vehicle the meets the requirements defined in IRM 5.8.5.20.3(5), the \$200 payment should be allowed through the period future income is calculated.
4. The case histories must be documented to support the inclusion or exclusion of the retired debt.

#### 5.8.5.18 (10-22-2010) Future Income

1. Future income is defined as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, expenses, for a specific number of months into the future. See IRM 5.8.5.23(2) table for calculation.
2. As a general rule, the taxpayer's current income should be used in the analysis of future ability to pay.

**Note:**

This may include situations where the taxpayer's income is recently reduced based on a change in occupation or employment status.

3. Consideration should be given to the taxpayer's overall general situation including such facts as age, health, marital status, number and age of dependents, level of education or occupational training, and work experience.
4. Situations that may warrant placing a different value on future income than current or past income indicates are discussed in the table below. Additionally, securing a future income collateral agreement based on the taxpayer's earnings potential may be appropriate and are discussed in more detail in IRM 5.8.5.19 and IRM 5.8.6, Collateral Agreements.

If...	Then...
Income will increase or decrease or current necessary expenses will increase or decrease	Adjust the amount or number of payments to what is expected during the appropriate number of months.
A taxpayer is temporarily or recently unemployed or underemployed	Use the level of income expected if the taxpayer were fully employed and if the potential for employment is imminent. Each case should be looked on its own merit, including consideration of

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Source: TaxCore: News Archive > 2012 > May > 05/22/2012 > TaxCore® - IRS Documents > Audit Technique Guidelines > IRS Memorandum (SBSE-05-0512-041), Interim Guidance on Offer in Compromise Definition Under IRM 5.8.5

✓ **IRS Memorandum (SBSE-05-0512-041), Interim Guidance on Offer in Compromise Definition Under IRM 5.8.5**

May 21, 2012

Control Number: SBSE-05-0512-041

Expiration: May 21, 2013 Impacted: IRM 5.8.5

MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS

(CALIFORNIA, GULF STATES, AND SOUTH ATLANTIC)

DIRECTORS, CAMPUS COMPLIANCE OPERATIONS

(BROOKHAVEN AND MEMPHIS)

FROM: Scott D. Reisher /s/ **Scott D. Reisher**

Director, Collection Policy

SUBJECT: Interim Guidance Memorandum for Offer in Compromise

Defined in IRM 5.8.5, *Financial Analysis*

The purpose of this memorandum is to provide expanded guidance to IRM 5.8.5. Significant changes in this memorandum include defining equity in an on-going business, evaluation of money in bank accounts, reducing the equity in a vehicle, dissipated assets, retired debt, student loans, allowance for delinquent state and local income tax liabilities, and the future income multiplier. The attached updates will be incorporated in the next revision of Internal Revenue Manual (IRM) 5.8.5, *Financial Analysis*, and are effective May 21, 2012.

This memorandum supersedes Interim Guidance Memorandums SBSE-05-0212-010, *Offer in Compromise Streamline Offer Processes for Field Offer Specialists*, and SBSE-05-0511-026, *Centralized Offer in Compromise Streamline Offer Processes*. However, the expectation is that you will continue to:

- Rely on internal record checks to determine ownership and equity in real and personal property, including motor vehicles,
- Use the telephone as your primary form of contact,
- Accept oral testimony, unless the information provided appears to be questionable, and
- Use the quick notes, when appropriate.

If you have any questions, please contact me, or a member of your staff may contact Diane Morris, Senior Program Analyst. COIC personnel should direct any questions through the appropriate management chain.

Attachments: (1)

cc: Chief, Appeals

Director, Field Collection

Director, Campus Compliance Services

Director, Filing and Payment Compliance

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Assistant Division Counsel, SBSE

National Taxpayer Advocate

[www.irs.gov](http://www.irs.gov)

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Source: TaxCore: News Archive > 2012 > May > 05/22/2012 > TaxCore® - IRS Documents > News Releases > IRS News Release (IR-2012-53) on Expansion of Fresh Start Initiative to Offer More Flexible OIC Terms

## **IRS News Release (IR-2012-53) on Expansion of Fresh Start Initiative to Offer More Flexible OIC Terms**

**Media Relations Office Washington, D.C. Media Contact: 202.622.4000**

www.IRS.gov/newsroom Public Contact: 800.829.1040

### **IRS Announces More Flexible Offer-in-Compromise Terms to Help a Greater Number of Struggling Taxpayers Make a Fresh Start**

IR-2012-53, May 21, 2012

WASHINGTON — The Internal Revenue Service today announced another expansion of its "Fresh Start" initiative by offering more flexible terms to its Offer in Compromise (OIC) program that will enable some of the most financially distressed taxpayers clear up their tax problems and in many cases more quickly than in the past.

"This phase of Fresh Start will assist some taxpayers who have faced the most financial hardship in recent years," said IRS Commissioner Doug Shulman. "It is part of our multiyear effort to help taxpayers who are struggling to make ends meet."

Today's announcement focuses on the financial analysis used to determine which taxpayers qualify for an OIC. This announcement also enables some taxpayers to resolve their tax problems in as little as two years compared to four or five years in the past.

In certain circumstances, the changes announced today include:

- Revising the calculation for the taxpayer's future income.
- Allowing taxpayers to repay their student loans.
- Allowing taxpayers to pay state and local delinquent taxes.
- Expanding the Allowable Living Expense allowance category and amount.

In general, an OIC is an agreement between a taxpayer and the IRS that settles the taxpayer's tax liabilities for less than the full amount owed. An OIC is generally not accepted if the IRS believes the liability can be paid in full as a lump sum or a through payment agreement. The IRS looks at the taxpayer's income and assets to make a determination of the taxpayer's reasonable collection potential. OICs are subject to acceptance on legal requirements.

The IRS recognizes that many taxpayers are still struggling to pay their bills so the agency has been working to put in place common-sense changes to the OIC program to more closely reflect real-world situations.

When the IRS calculates a taxpayer's reasonable collection potential, it will now look at only one year of future income for offers paid in five or fewer months, down from four years; and two years of future income for offers paid in six to 24 months, down from five years. All offers must be fully paid within 24 months of the date the offer is accepted. The Form 656-B, Offer in Compromise Booklet, and Form 656, Offer in Compromise, has been revised to reflect the changes.

Other changes to the program include narrowed parameters and clarification of when a dissipated asset will be included in the calculation of reasonable collection potential. In addition, equity in income producing assets generally will not be included in the calculation of reasonable collection potential for on-going businesses.

### **Allowable Living Expenses**

The Allowable Living Expense standards are used in cases requiring financial analysis to determine a

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taxpayer's ability to pay. The standard allowances provide consistency and fairness in collection determinations by incorporating average expenditures for basic necessities for citizens in similar geographic areas. These standards are used when evaluating installment agreement and offer in compromise requests.

The National Standard miscellaneous allowance has been expanded to include additional items. Taxpayers can use the miscellaneous allowance for expenses such as credit card payments and bank fees and charges.

Guidance has also been clarified to allow payments for loans guaranteed by the federal government for the taxpayer's post-high school education. In addition, payments for delinquent state and local taxes may be allowed based on percentage basis of tax owed to the state and IRS.

This is another in a series of steps to help struggling taxpayers under the Fresh Start initiative.

In 2008, IRS announced lien relief for taxpayers trying to refinance or sell a home. The IRS added new flexibility for taxpayers facing payment or collection problems in 2009. The IRS made changes to lien policies in 2011 and expanded the threshold for small businesses to resolve tax issues through installment agreements. And, earlier this year, the IRS increased the threshold for a streamlined installment agreement allowing individual taxpayers to set up an installment agreement without providing a significant amount of financial information.

Contact us at <http://www.bna.com/contact/index.html> or call 1-800-372-1033

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Source: TaxCore: News Archive > 2012 > May > 05/22/2012 > TaxCore® - IRS Documents > Audit Technique Guidelines > Internal Revenue Manual Section 5.8.5, Financial Analysis, Attachment 1, 'Income-Producing Assets'

### **Internal Revenue Manual Section 5.8.5, Financial Analysis, Attachment 1, 'Income-Producing Assets'**

#### **IRM 5.8.5.5.1, Income-Producing Assets**

(3) As a general rule, equity in income producing assets will not be added to the RCP of a viable, ongoing business unless it is determined the assets are not critical to business operations. The following examples provide guidance in evaluating equity and income produced by assets.

Example (1) A business depends on a machine to manufacture parts and cannot operate without this machine. The equity is \$100,000. The machine produces net income of \$5,000 monthly. The RCP should include the income produced by the machine, but not the equity. Equity in this machine will generally not be included in the RCP because the machine is needed to produce the income, and is essential to the ability of the business to continue to operate.

Note: It is in the government's best interest to work with this taxpayer to maintain business operations, particularly in a bad economy.

Example (2) The same business in the prior example, but the business can continue to operate without the machine, i.e. the equipment is not used in the process of generating the key product of the business. The machine generates only \$500 net monthly income. Consider including the equity in the RCP and remove \$500 from the business income.

Example (3) A trucking company has ten trucks. Eight are fully encumbered and two trucks have no encumbrances and \$30,000 in equity. The two trucks combined generate net income of \$12,000 per year. Add the net income from the trucks to the RCP and do not add the equity.

Example (4) The same trucks described in the previous example generate only \$1000 per year in net income, but have \$30,000 in equity. If the business can successfully operate without the two trucks, consider removing the income from the RCP and including the equity in the RCP.

Example (5) A real estate salesman has a vehicle with \$30,000 in equity. The vehicle is used to transport clients and assists in the production of income. The taxpayer's net monthly disposable income is \$3000. The equity in the vehicle generally will not be included in the RCP.

Example (6) The same salesman in the previous example only has net monthly disposable income of \$500 per month. Consider including the equity in the vehicle, yet allow for the impact the loss of the vehicle may have on the taxpayer's income.

(4) When considering equity in income producing assets and the effect on income streams and expenses, you must exercise sound judgment consistent with the unique facts of each case.

(5) Each case must be thoroughly documented regarding equity decisions in income producing property.

#### **IRM 5.8.5.6, Cash**

(1) Use the amount listed on the Form 433-A (OIC) for the amount of cash in the taxpayer's bank accounts. Reduce the total amount listed by \$1,000. If the total amount listed on the Form 433-A (OIC) is over \$1,000 and you have reason to believe the money will be used to pay for the taxpayer's monthly allowable living expenses, do not include it on the AET. Document the AOIC or ICS history with the findings.

(2) Review checking account statements over a reasonable period of time, generally three months for wage earners and six months for in-business taxpayers. Look for any unusual activity, such as deposits in excess of reported income, withdrawals, transfers, or checks for expenses not reflected on the CIS. The OE/OS should discuss these inconsistencies, if appropriate, with the taxpayer.

**Example:** The taxpayer lists \$10,000 on Form 433-A (OIC) The taxpayer's allowable living expenses are \$3,000. Include \$6,000 (\$10,000 less \$1,000 less \$3000) as an asset value on the AET.

**Example:** The taxpayer lists \$3,000 on the Form 433-A (OIC) and his allowable living expenses are \$2,700. Do not include any amount on the AET since the \$300 difference is less than \$1000.

(3) Review savings account statements over a reasonable period of time, generally three months.

- If the account has little withdrawal activity, use the ending balance on the latest statement, less \$1,000, if not previously applied to other accounts, as the asset value for the AET.
- If it is apparent that the account is used for paying monthly living expenses, treat it as a checking account and follow the instructions in paragraphs (1) and (2) above to determine its value.

(4) If analysis of the bank statement reveals large amounts of recently expended funds, see IRM 5.8.5.6 below for a full discussion of the treatment of dissipated assets.

(5) If the taxpayer offers the balances of accounts (for example, certificate of deposit, savings bonds, etc.) to fund the offer, allow for any penalty for early withdrawal and the expected current year tax consequence.

#### **IRM 5.8.5.11, Motor Vehicles, Airplanes, and Boats**

(2) Exclude \$3,450 per car from the *net* equity valuation of vehicles owned by the taxpayer(s) and used for work, the production of income, and/or the welfare of the taxpayer's family, up to two cars per household.

#### **IRM 5.8.5.16, Dissipation of Assets**

(1) Inclusion of dissipated assets in the calculation of the reasonable collection potential (RCP) is no longer applicable except in situations where it can be shown the taxpayer has sold, transferred, encumbered or otherwise disposed of assets in an attempt to avoid the payment of the tax liability or used the assets or proceeds (other than wages, salary, or other income) for other than the payment of items necessary for the production of income or the health and welfare of the taxpayer or their family, after the tax has been assessed or within six months prior to the tax assessment.

(2) Generally, a three year timeframe will be used to determine if it is appropriate to include a dissipated asset in RCP. Include the year of submission as a complete year in the calculation. For example, if the offer is submitted in 2012, any asset dissipated prior to 2010 should not be included.

- If the tax liability did not exist prior to the transfer or the transfer occurred prior to the taxable event giving rise to the tax liability, generally, a taxpayer cannot be said to have dissipated the assets in disregard of the outstanding tax liability.
- If a taxpayer withdraws funds from an IRA to invest in a business opportunity but does not have any tax liability prior to the withdrawal, the funds were not dissipated.

(3) If it is determined inclusion of a dissipated asset is appropriate and the taxpayer is unwilling or unable to include the value of the dissipated asset in the offer amount, the offer should be rejected as not in the government's best interest.

NOTE: Even if the transfer and/or sale took place more than three years prior to the offer submission, it may be appropriate to include the asset in the calculation of RCP if the asset transfer and/or sale occurred either within six months prior to or within six months after the assessment of the tax liability. In these instances, a determination on whether the funds were used for health/welfare of the family or production of income would be appropriate.

(4) See below for examples of the types of situations where it may be appropriate to include, or not include, the value of an asset in the calculation of RCP. The examples provided are not meant to be all inclusive as each case must be evaluated on its own merit.

(5) Examples of situations in which the value of an asset *should* be included in RCP include, but are not limited to:

Note: Each of the examples in paragraph (5) occurred within three years prior to the offer submission or during the offer investigation, and the taxpayer dissipated the assets after incurring the tax liability or within six months prior to the tax assessment.

- The taxpayer dissolved an IRA or other investment account to pay for specific non-priority items, i.e. child's wedding, child's university tuition, extravagant vacation, etc.
- The taxpayer refinanced their house and used the funds to pay off credit card and non-secured

debt. The credit cards were NOT used for payment of necessary living expenses and/or the production of income.

- The taxpayer inherited funds and used the funds for non-priority items (other than health/welfare of the family or production of income).
- The taxpayer closed bank/investment accounts and will not disclose how the funds were spent or if any funds remain.
- A taxpayer filed a CAP to avoid the filing of a NFTL and insisted the lien would impair his credit and his ability to successfully operate his business. After the non-filing was granted, the taxpayer fully encumbered his assets, used the funds for non-priority items (items not necessary for the production of income or the health and welfare of the taxpayer and/or their family) and then submitted an OIC.
- The taxpayer sold real estate and gifted the funds from the sale to family members.

(6) Situations may occur in which the transfer happened over 3 years prior to the offer submission, yet because of the timing of the transfer (within six months prior to or six months after the tax assessment), the inclusion of the asset in RCP may be appropriate.

Example: The taxpayer filed tax returns for five years (2001 - 2005) in February of 2007, which were assessed in March 2007. In January of 2007, the taxpayer transferred real property to a family member for no consideration. An offer was submitted in January 2012. In this instance, since the transfer was within six months of the tax assessments, it may be appropriate to include the value of the real property in RCP.

(7) Examples of situations in which the value of an asset *should NOT* be included in RCP, include but are not limited to:

- When it can be shown through internal research or substantiation provided by the taxpayer that the funds were needed to provide for necessary living expenses, these amounts should not be included in the RCP calculation.
- Dissolving an IRA during unemployment or underemployment. Review of available internal sources verified the taxpayer's income was insufficient to meet necessary living expenses. In this case, do not include the funds up to the amount needed to meet allowable expenses in the RCP calculation.
- Substantial amount withdrawn from bank accounts. Taxpayer provided supporting documentation that funds were used to pay for medical or other necessary living expenses. This amount will not be included in the RCP calculation.
- Disposing of an asset and using the funds to purchase another asset that is included in the offer evaluation. Do not include the value of the asset disposed of as a dissipated asset.

(8) Prior to including the dissipated asset in the RCP, the taxpayer should be contacted by telephone and afforded the opportunity to explain or verify the dissipation of the asset.

(9) The case history must be clearly documented with the basis for your decision regarding the dissipated asset.

#### **IRM 5.8.5.17, Retired Debt**

(3) Do not retire the first \$400 of a loan on a vehicle (limited to one vehicle for a single taxpayer and two vehicles for a joint offer)

**Example:** If the taxpayer has a car payment of \$750 per month and the maximum standard is \$450, \$50 would be retired beginning the date the loan is paid.

#### **IRM 5.8.5.20.3, Transportation Expenses**

(5) When the taxpayer owns a vehicle that is six years or older or has reported mileage of 75,000 miles or more, allow an additional operating expenses of \$200 or more per vehicle. The additional operating expense will be allowed on any vehicle meeting the criteria, up to two cars per household.

**Example:** The taxpayer who has a 1998 Chevrolet Cavalier with 50,000 miles will be allowed the standard of \$231 per month plus \$200 per month operating expenses for a total operating expense of \$431 per month.

#### **IRM 5.8.5.20.4, Other Expenses**

(3) Minimum payments on student loans guaranteed by the federal government will be allowed for the taxpayer's post-high school education. Proof of payment must be provided. If student loans are owed,

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but no payments are being made, do not allow them, unless the non-payment is due to circumstances of financial hardship, e.g. unemployment, medical expenses, etc.

(7) When a taxpayer owes both delinquent federal and state or local taxes, and does not have the ability to full pay the liabilities, monthly payments to state taxing authorities may be allowed in certain circumstances.

a) Determine the disposable income on a Collection Information Statement (CIS), Forms 433-A (OIC or 433-B (OIC). Do not include any amount that is being paid for outstanding state or local tax liabilities in the calculation of the future income value component (FIV) of the reasonable collection potential (RCP). FIV is the difference between gross income and allowable living expenses.

Calculate the dollar amounts for IRS and state or local payments based on the total liability owed to each agency (including penalties and interest to date).

Example: The taxpayer owes the state \$20,000 and owes the IRS \$100,000, a total of \$120,000 (\$20,000/\$120,000 = 17%; \$100,000/\$120,000 = 83%). The taxpayer has disposable income of \$300 per month. A monthly payment to the state taxing authority of \$51 may be allowed until the debt is retired. See the If/Then table below for examples.

- Seventeen percent (17%) of \$300 = \$51
- Eighty-three percent (83%) of \$300 = \$249

b) To determine allowable payments for delinquent state or local tax debts follow the procedures below:

If...	And...	Then...
(1) The taxpayer does not have an existing agreement for payment of the delinquent state or local tax debts,	Provides a complete CIS and verification of state or local tax debts,	Follow procedures in paragraph (a) above to establish the calculated percentage amount that will be determined as the allowable monthly payment for delinquent state or local taxes.
(2) The taxpayer has an existing agreement for delinquent state or local tax debts, which was established <b>after</b> the earliest IRS date of assessment,	The payment amount on the state or local agreement is <b>less</b> than the calculated percentage amount,	The monthly amount due on the existing state or local agreement will be listed as the allowable delinquent state or local tax payment. Example: The calculation based on the example in paragraph (a) above shows the taxpayer should pay \$51 but the State agreement is for \$50. Allow the State agreed payment of \$50. The payment to IRS will be increased by the amount allowed for the monthly state or local payment with the state or local liability is scheduled to be full paid.
(3) The taxpayer has an existing agreement for delinquent state or local tax debts, which was established <b>after</b> the earliest IRS date of assessment,	The payment amount on the agreement is <b>more</b> than the calculated percentage amount,	The amount allowed as the delinquent state or local tax payment will be the calculated percentage amount. Advise the taxpayer that he/she can use the amount IRS allows for Miscellaneous expenses under National Standards to pay the additional amount due for the delinquent state or local tax payment. Example: The calculation based on the example in paragraph (a) above shows the taxpayer should pay \$51 but the State agreement is for \$52. Allow the calculated payment of \$51. The payment to

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(4) The taxpayer has an existing agreement for delinquent state or local tax debts, which was established prior to the IRS earliest date of assessment	The payment is not greater than the taxpayer's net disposable income	IRS will be increased by the amount allowed for the monthly state or local payment when the state or local liability is scheduled to be full paid. Allow the state or local tax agreement.
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**IRM 5.8.5.23, Calculation of Future Income**

(2) Future income is defined as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, for a specific number of months into the future. The number of months used depends on the payment terms of the offer.

**If...****Then...**

The offer will be paid in 5 or fewer installments in 5 months or less Use the realizable value of assets plus the amount that could be collected in 12 months.

The offer will be paid in more than 5 installments or more than 5 months up to a maximum of 24 months Use the realizable value of assets plus the amount that could be collected in 24 months.

**Note:** The deferred payment option which allows payment over the life of the statute is no longer available. With implementation of the multipliers, the maximum number of months for a deferred payment cannot exceed 24 months.

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