

1513-0054

26 U.S.C.

§ 7122. Compromises

(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.

(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.

(c) 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 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; and

(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.

(d) 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.

Sec. 70.482 Offers in compromise of liabilities (other than forfeiture) under 26 U.S.C.

(a) In general. The appropriate TTB officer may compromise any civil or criminal liability arising under the provisions of 26 U.S.C. enforced and administered by TTB prior to reference of a case involving such liability to the Department of Justice for prosecution or defense. (For compromise of forfeiture liability, see Sec. 70.484 of this part.) Any such liability may be compromised only upon one or both of the following two grounds:

- (1) Doubt as to liability; or
- (2) Doubt as to collectibility.

No such liability will be compromised if the liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the Government to collect the amounts owing with respect to such liability.

(b) Scope of compromise agreement. A compromise agreement may relate to civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision of 26 U.S.C., or a related statute, and then only if such violation was not deliberately committed with an intent to defraud.

(c) Effect of compromise agreement. A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the Government shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of falsification or concealment of assets by the taxpayer, or mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside. However, acceptance of an offer in compromise of a civil liability does not remit a criminal liability, nor does acceptance of an offer in compromise of a criminal liability remit a civil liability.

(d) Procedure with respect to offers in compromise--(1) Submission of offers. (i) Offers in compromise under this section shall be submitted on TTB Form 5640.1, along with any additional information required by the officer authorized to accept or reject the offer. If the offer in compromise is based on inability to pay, the proponent must submit any financial statement required by such officer.

(ii) The offer should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. When final action has

been taken, the proponent is notified of the acceptance or rejection of the offer.

(2) Stay of collection. The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred if the interests of the United States will not be jeopardized thereby.

(3) Acceptance. An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the United States. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(4) Withdrawal or rejection. An offer in compromise may be withdrawn by the proponent at any time prior to its acceptance. In the event an offer is rejected, the proponent shall be promptly notified in writing. Frivolous offers or offers submitted for the purpose of delaying the collection of tax liabilities shall be immediately rejected. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer, including all installments paid, shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted.

(e) Record. Except as otherwise provided in this paragraph, if an offer in compromise is accepted, there shall be placed on file the opinion of counsel for the Bureau with respect to such compromise, with the reason therefor, and including 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.

However, no such opinion shall be required with respect to the offer in 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.

(f) Requirement with respect to statute of limitations. No offer in compromise shall be accepted unless the taxpayer waives the running of the statutory period of limitations on both or either assessment or

collection of the tax liability involved for the period during which the offer is pending, or the period during which any installment remains unpaid, and for one year thereafter.

(g) Inspection with respect to accepted offers in compromise. For provisions relating to the inspection of returns and accepted offers in compromise, see 26 U.S.C. 6103(k)(l).

(26 U.S.C. 7122)

(Approved by the Office of Management and Budget under control number 1512-0472)

[T.D. ATF-301, 55 FR 47655, Nov. 14, 1990, as amended by T.D. ATF-331, 57 FR 40329, Sept. 3, 1992; T.D. ATF-450, 66 FR 29029, May 29, 2001]