



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

33.3.2

AUGUST 6, 2019

## EFFECTIVE DATE

(08-06-2019)

## PURPOSE

- (1) This transmits revised CCDM 33.3.2, Other Legal Advice, Offers in Compromise.

## MATERIAL CHANGES

- (1) CCDM 33.3.2.4 is amended to give guidance regarding collectability settlements in appealed CDP cases being handled by the Department of Justice, to update the authority for the Department of Justice's authority to compromise cases, and to make some minor editorial changes.

## EFFECT ON OTHER DOCUMENTS

CCDM 33.3.2 dated October 5, 2015, is superseded.

## AUDIENCE

Chief Counsel

Kathryn A. Zuba  
Associate Chief Counsel  
(Procedure & Administration)



---

33.3.2  
Offers in Compromise

## **Table of Contents**

- 33.3.2.1 Authority to Compromise
- 33.3.2.2 Offers in Compromise and the Role of Counsel
- 33.3.2.3 Review of Proposed Offers in Compromise
  - 33.3.2.3.1 Review of Doubt as To Liability Offers
  - 33.3.2.3.2 Review of Doubt as to Collectibility Offers
  - 33.3.2.3.3 Review of Effective Tax Administration Offers
- 33.3.2.4 Offers in Cases Handled by the Department of Justice
- 33.3.2.5 Offers in Docketed Tax Court Cases
- 33.3.2.6 Other Matters for Counsel Assistance



33.3.2.1  
(11-04-2010)  
**Authority to  
Compromise**

- (1) IRC § 7122 authorizes the Secretary to compromise any civil or criminal case arising under the internal revenue laws prior to referral to the Department of Justice (DOJ) for prosecution or defense. Internal Revenue *Form 656*, Offer in Compromise, is the required form for an offer.
- (2) Offers proposing to compromise any civil case in which the unpaid amount of tax assessed (including penalties and interest) is \$50,000.00 or more, require the legal opinion of Counsel. IRC § 7122(b).
- (3) The General Counsel for the Treasury has delegated the functions relative to the legal review of offers in compromise to the Chief Counsel of the Service. *General Counsel Order No. 4* (revised). The Chief Counsel has redelegated this authority to Division Counsel (Small Business/Self-Employed) (SB/SE). Associate Area Counsel (SB/SE) offices should consult with either Division Counsel (Large Business and International) (LB&I) or Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities) (TEGE) when they receive for review a proposed acceptance of a doubt as to liability or effective tax administration offer submitted by an LB&I or TEGE taxpayer. For more information on coordinating cases or issues, including with Associate offices, see *CCDM 31.1.4*, Coordination and Reconciliation of Disputes.

33.3.2.2  
(10-05-2015)  
**Offers in Compromise  
and the Role of Counsel**

- (1) As reflected in Policy Statement P-5-100, compromise is a viable collection tool. It is the Service's policy to encourage the use of this tool where appropriate. Correspondingly, Counsel will support the Commissioner's offer in compromise policy and will assist the Service by providing the legal opinion required by IRC § 7122(b) and by rendering assistance with legal and policy issues that the Service may encounter in the processing and evaluation of offers.
  - (2) Counsel's review of proposed acceptances has two separate and distinct components: (1) certification that all of the legal requirements for compromise have been met, and (2) review of the proposed compromise for consistent application of the Service's acceptance policies.
    - a. *Legal Basis for Compromise.* Certifying that the legal requirements for compromise have been met is the primary purpose of Counsel review. These requirements have been met if a basis for compromise under the Treasury regulations has been established and the documentation requirements of section 7122(b) have been satisfied.
    - b. *Policy Regarding Acceptance of Amount Offered.* If the legal requirements for compromise have been met, Counsel then reviews the proposed acceptance for consistent application of the Service's policies regarding whether the proposed compromise amount is acceptable. The views of Counsel should be set forth in a separate memorandum, which will be reviewed by the official with authority to compromise prior to making the acceptance final.
- Note:** A finding by Counsel that a proposed acceptance is not in keeping with Service policy is not a justification for withholding an opinion if all of the legal requirements for compromise have been met.
- (3) In making each of the foregoing determinations, Counsel must rely upon factual determinations made by the Service. These determinations should ordinarily not be reexamined by Counsel unless patently erroneous. Asset

valuations and necessary expense determinations are largely matters of administrative discretion and judgment and should not be questioned by Counsel.

- (4) When referring an offer in compromise to Counsel for legal review, the appropriate Service or Appeals personnel will prepare and forward all the necessary documents. These documents include the taxpayer's offer (Form 656) and financial statements; *Form 7249*, Offer Acceptance Report; the Offer in Compromise Recommendation Report and supporting documentation, including an account transcript and the acceptance letter. The referral should point out any court activity (*e.g.* bankruptcy) and any related liabilities (*e.g.*, TFRP assessment against a responsible officer). Counsel should review the transcript to ensure that no litigation code has been posted or is pending. If there is any litigation code posted or pending, Counsel should determine based on the closing code and other information, whether acceptance of the offer is appropriate and whether Department of Justice approval is necessary.
- (5) Once Counsel has completed its review, a form transmittal memorandum may be used to return the signed and conformed Offer Acceptance Report and compromise file to the referring office. The initialed copy of the transmittal memorandum and a copy of the Offer Acceptance Report should be retained by Counsel. Division Counsel has the discretion to determine the length of time these documents should be retained.

#### 33.3.2.3 (08-11-2004)

##### **Review of Proposed Offers in Compromise**

- (1) This subsection describes the standards for review of offers in compromise

#### 33.3.2.3.1 (08-11-2004)

##### **Review of Doubt as To Liability Offers**

- (1) *Legal Basis for Compromise.* 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 concerning the existence or amount of the liability.
- (2) *Policy Regarding Acceptance of Amount Offered.* The determination of the amount accepted to resolve a doubt as to liability case should be made by reference to the expected hazards in litigating the case. The evaluation of litigating hazards is not an exact science. Ordinarily, an amount should be considered acceptable under the Service's policies if it is within a reasonable range of the predicted result in litigation.

#### 33.3.2.3.2 (11-04-2010)

##### **Review of Doubt as to Collectibility Offers**

- (1) *Legal Basis for Compromise.* Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the assessed liability.
- (2) *Policy Regarding Acceptance of Amount Offered.* Where doubt as to collectibility has been established, an offer is generally considered acceptable if it closely approximates the amount that could reasonably be collected by other means, including the Service's administrative and judicial collection powers. See Policy Statement P-5-100. No asset should be eliminated from consideration or valued at zero simply because the Service would be unlikely to seize the asset. See *IRM 5.8.5*, Financial Analysis. In evaluating a proposed acceptance, Counsel's review should include a determination of:

1. Whether the four components of collectibility (net equity in assets, present and future income, amounts collectible from third parties, and amounts available to the taxpayer but beyond the reach of the Service) have been considered;
  2. Whether issues with regard to lien priority have been properly determined; and
  3. Whether fraudulent conveyances and/or transferee liability issues have been properly resolved.
- (3) *Financial Analysis.* The Service's policies and procedures establish accepted methods for valuing assets, as well as rules regarding the portion of assets to be included in reasonable collection potential. Counsel should not question asset valuations and future income calculations that fall within the parameters established in these policies and procedures.
- (4) *Special Circumstances.* The Service's policies and procedures recognize that it may be appropriate in some cases for the Service to accept an offer of less than the total reasonable collection potential of a case. These are known as "special circumstances" cases. The Service anticipates acceptance of less than reasonable collection potential in cases where, despite the proper application of the Service's allowable expense standards and asset valuation rules, the taxpayer could not pay the full reasonable collection potential without suffering economic hardship. See *IRM 5.8.4*, Investigation. Economic hardship is defined as the inability to meet reasonable basic living expenses. See *Treas. Reg. § 301.6443-1(b)(4)*. Economic hardship does not include mere inconvenience or the inability to maintain a luxurious or affluent standard of living. Under the Service's procedures, the amount accepted should reflect what could reasonably be collected less the amount a taxpayer must retain to avoid economic hardship. See *IRM 5.8.11*, Effective Tax Administration.

33.3.2.3.3  
(11-04-2010)  
**Review of Effective Tax  
Administration Offers**

- (1) In general, where there are no grounds for compromise on collectibility or liability grounds, a compromise may be entered into to promote effective tax administration, where
- a. Collection of the full liability would create economic hardship within the meaning of *Treas. Reg. § 301.6343-1*; or
  - b. Where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability. *Treas. Reg. § 301.7122-1(b)(3)*.

**Note:** No such compromise may be entered into, however, where it would undermine compliance with the tax laws. *Id.*

- (2) *Review of offers based on effective tax administration where collection of the tax liability in full would create economic hardship—Legal Basis for Compromise.* The Service is authorized to compromise with individuals when it determines that a liability could be collected in full, but to do so would cause economic hardship. Economic hardship is defined as the inability to meet reasonable basic living expenses. See *Treas. Reg. § 301.6343-1(b)(4)*. Economic hardship does not include mere inconveniences or the inability to maintain a luxurious or affluent standard of living. If, even after deferring to the Service's valuation and expense determinations, Counsel concludes that the liability could be collected in full without causing economic hardship, as defined under the regulations, the basis for compromise is not established. In establishing

this basis for compromise, the possible effect of compromise on future compliance with the tax laws must be considered.

- a. *Policy Regarding Acceptance of Amount Offered.* Under the Service's procedures, the amount accepted should reflect what could reasonably be collected less the amount a taxpayer must retain to avoid the economic hardship. See *IRM 5.8.11, Effective Tax Administration*. The determination to accept a particular amount must be based on the taxpayer's particular facts and circumstances, and must be explained and documented clearly. See *IRM 5.8.11*. The decision to accept a particular amount will necessarily involve judgment on the part of the offer specialist and the official delegated the authority to make the final acceptance decision.
- (3) *Review of offers based on effective tax administration where there is compelling public policy or equitable considerations—Legal Basis for Compromise.* The Service may compromise a case when it is determined that, although there is no doubt as to collectibility or liability, and collection in full would not cause economic hardship, 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 to compromise on this basis will be expected to demonstrate that circumstances justify compromise even though a similarly situated taxpayer may have paid his liability in full. For an example of a case that may be compromised on this basis, see *Treas. Reg. § 301.7122-1(c)(3)(iii)*. This basis is not established if the offer file contains only vague assertions that the imposition of a tax liability, or of interest and penalties, is unfair. The authority to compromise should not be used as a method to disregard or circumvent established limits to relief granted elsewhere in the Code, such as interest abatement. See *IRM 5.8.11, Effective Tax Administration*. In establishing this basis for compromise, the possible effect of compromise on future compliance with tax laws must be considered.
- a. *Policy Regarding Acceptance of Amount Offered.* An offer to compromise based on effective tax administration when there is compelling public policy or equity considerations will generally be considered acceptable if it reflects what is fair and equitable under the particular facts and circumstances of the case. The offer acceptance recommendation should contain a detailed explanation as to how the Service determined that the amount offered was adequate and is a fair and equitable resolution of the case. See *IRM 5.8.11, Effective Tax Administration*.

33.3.2.4  
(08-06-2019)  
**Offers in Cases Handled  
by the Department of  
Justice**

- (1) After a case is referred to the Department of Justice (DOJ), only the Attorney General or his delegate may compromise the case. The Attorney General has the authority to settle the case referred to DOJ, any pending related Tax Court case involving the same or related years of the same taxpayer, or related years of the same taxpayer or of a related taxpayer which may be pending administratively, if the related matters are germane to the DOJ case. See *The Attorney General's Role as Chief Litigator for the United States*, 6 Op. O.L.C. 47, 59 - 60 (1982). DOJ may propose a settlement based on the taxpayer's inability to pay. The scope of the Attorney General's authority and the procedures for settlement of cases being handled by DOJ are more fully explained



at *CCDM 34.8.2, Settlement Procedures*. All compromises are referred to the Service for approval as to nonsuit years or taxpayers not in suit, and to Counsel for matters in suit.

- (2) In connection with a pending case, the DOJ will refer all settlement offers based on the taxpayer's inability to pay to SB/SE Collection (through Counsel) for an investigation of the taxpayer's financial condition, including a recommendation as to whether the offer should be accepted or rejected. Field Counsel will need to coordinate with the appropriate SB/SE personnel, and should advise them that the request is being worked to aid the DOJ's consideration of the offer. See *CCDM 34.8.1.1(7)* and *34.8.1.1.1* for procedures and policies regarding collectability-based settlement offers in DOJ cases.
- (3) In all cases where a referral has been made to the DOJ and the United States has obtained a judgment for the liabilities, the authority to compromise is thereafter with the Attorney General. See *The Attorney General's Role as Chief Litigator for the United States*, 6 Op. O.L.C. 47, 59 - 60 (1982). The Service cannot compromise under section 7122 amounts that have been reduced to judgment. If a taxpayer makes an offer to compromise based on an inability to pay, the final decision as to whether the offer is acceptable must be made by the DOJ. If the Service has compromised taxes not realizing judgment has been entered, the case should be forwarded to the DOJ with a request that the compromise be affirmed.
- (4) For Tax Court cases that have been referred to the DOJ for appeal, the referral terminates after the appellate litigation concludes and the case has been returned to the Service. After the case has been returned to the Service, consent from the DOJ is unnecessary before the Service enters into a compromise regarding the liabilities involved in the appeal.
- (5) For CDP cases referred to the DOJ for appeal, Counsel disfavors settlements based on a taxpayer's inability to pay. If Appeals did not abuse its discretion in making its determination, the DOJ should be asked to defend the determination and to not consider offers based on collectability absent special circumstances. Special circumstances include an adverse change in a taxpayer's circumstances after the CDP hearing that likely would have changed Appeals' determination had the change occurred before the hearing. General considerations for collectability settlements submitted during a CDP case are set forth in *CCDM 35.5.2.19, Settlement of Docketed Collection Due Process Cases*.
- (6) If Counsel receives an offer in compromise for review and there is an open criminal investigation pending for any of the years included in the offer in compromise, the reviewing attorney must coordinate with the appropriate field office of Division Counsel/Associate Chief Counsel (Criminal Tax) to ensure none of the years included in the offer in compromise have been referred to the DOJ for prosecution. If none of the years included in the offer in compromise have been referred for prosecution, Counsel may approve the offer. See *CCDM 33.3.2.2, Offers in Compromise and the Role of Counsel*. If any of the years included in the offer in compromise have been referred for prosecution, Counsel must coordinate with the DOJ to consider the years that are under their jurisdiction.

33.3.2.5  
(08-11-2004)  
**Offers in Docketed Tax  
Court Cases**

- (1) If a taxpayer makes an offer in compromise after a Tax Court case has been docketed and Field Counsel decides to consider the offer, the procedures set forth in CCDM 34.5, Settlement Procedures, should be followed.

33.3.2.6  
(08-11-2004)  
**Other Matters for  
Counsel Assistance**

- (1) The Office of Chief Counsel is charged with the responsibility for reviewing and approving proposed rescission letters. The rescission letter will be prepared by the appropriate Service personnel and should be sent to SB/SE Field counsel for review. The rescission letter must be approved by someone with the same approval authority as the person who accepted the offer. Rescission matters received by Counsel should be opened on CASE-GL using POSTF as a category and adding the issue code for offers in compromise from the Uniform Issue List.
- (2) In the course of processing any compromise case, the office handling the case may need legal assistance. In such instances, the Associate Area Counsel will furnish the necessary legal assistance. These requests should be opened on CASE-GL using POSTF as category and adding the issue code for offers in compromise from the Uniform Issue List.