



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR DISTRICT COUNSEL, ARKANSAS-OKLAHOMA DISTRICT

FROM: Kathryn A. Zuba
Chief, Branch 2 (General Litigation)

SUBJECT: Rejection of Offer in Compromise

This memorandum responds to your request for advice dated February 17, 2000.
This document may not be cited as precedent by taxpayers.

LEGEND:

Year A
Year B
Year C
Year D

ISSUE:

Whether the Commissioner may reject a taxpayer's offer in compromise on the basis that a professional corporation wholly-owned by the taxpayer has failed to come into compliance with the filing and payment requirements of the Internal Revenue Code.

CONCLUSION:

The decision to compromise a case under section 7122 of the Internal Revenue Code is discretionary on the part of the Commissioner. Rejecting a taxpayer's offer of compromise because entities within the control of the taxpayer are not in compliance with the filing and payment requirements of the Code is a permissible exercise of that discretion.

BACKGROUND:

The taxpayer submitted an offer in compromise for Year A, Year B, and Year C income taxes, Form 941 employment taxes for the first, second, and third quarters of Year C, and a trust fund recovery penalty for the second quarter of Year B. The revenue officer assigned to the case recommended rejection of the offer on the

grounds that the taxpayer's solely-owned professional corporation has not paid its employment taxes for the third quarter of Year D, nor made any tax deposits for the fourth quarter of Year D.

The Service has a policy of requiring current compliance with the tax laws before it will consider a taxpayer's offer to compromise. All tax returns must be filed before an offer is considered "processable." See IRM 5.8, Offer in Compromise Handbook, Section 3.3(4). In addition, taxpayers with employment tax responsibilities must demonstrate current compliance with the tax laws by timely filing all returns and timely depositing taxes for two consecutive quarters. Id.

The district follows the Service procedure of returning offers to taxpayers as "not processable" if the foregoing compliance requirements have not been met. In addition, the district has adopted a practice of not accepting an offer from a taxpayer if that taxpayer is the sole shareholder of a corporate entity which is not in compliance with its separate filing and payment requirements under the Code. Pursuant to a request from the district, you have asked our views on whether the Service can condition the acceptance of an offer from an individual taxpayer on current compliance by a corporation owned by that individual.

DISCUSSION:

The Secretary's authority to compromise tax cases is contained in section 7122 of the Code, which states: "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." I.R.C. § 7122(a) (emphasis added). Treasury regulations issued pursuant to that section likewise state: "The Secretary may exercise his discretion to compromise an civil or criminal liability arising under the internal revenue laws" Treas. Reg. § 301.7122-1T(a)(1). The Secretary's authority to compromise is, thus, discretionary.

The Secretary has delegated his compromise authority to the Commissioner, and the Commissioner has redelegated that authority to various officials within the Service. See Delegation Order No. 11. An implicit part of this delegation of authority is the responsibility to exercise sound judgment and discretion when deciding whether a taxpayer's compromise proposal should be accepted. Although the Service's general policy is to accept offers which reasonably reflect what the Service could expect to collect by other means, the "ultimate goal" of the compromise program is reaching agreements which are "in the best interest of both the taxpayer and the Service." Policy Statement P-5-100. Thus, acceptance of such an offer still requires a judgment that compromise is the best resolution of the case and will advance the overall goals of the compromise program. The Commissioner's policy goes on to make clear that realizing the reasonable collection potential in specific cases is just one of the objectives to be achieved by an effective offer in compromise program: "Acceptance of an adequate offer will

also result in creating for the taxpayer an expectation of and a fresh start toward compliance with all future filing and payment requirements.” Id.

Consistent with these policy goals, the Service has adopted a policy of requiring that all past delinquencies be included in a compromise agreement, and that all delinquent returns be filed prior to consideration of an offer. See Form 656, Offer in Compromise (Rev. 1-2000). Coming into current compliance is the first step toward the “fresh start” that all parties are hoping can be achieved. The Service expects taxpayers to demonstrate that they are now ready and able to meet their continuing obligations to file returns and pay taxes.

The facts you have provided indicate that the taxpayer is the sole shareholder of a corporation with outstanding tax obligations. The district is apparently equating non-compliance by this corporation with non-compliance by the taxpayer herself. We assume that the district has made a determination that the taxpayer exercises a degree of control over the corporate entity such that she has the power and ability to either bring the corporation into compliance or demonstrate that no deposits or returns are required. The district has implicitly concluded that full compliance by the taxpayer includes meeting the obligations of the corporate entity which she has established for use as a vehicle for conducting her business affairs. We conclude that rejection in this case is a reasonable exercise of the discretion and judgment the district is charged with exercising in its administration of the compromise program.

You are correct that Collection’s current offer in compromise procedures do not clearly state that rejection is permissible in this case. However, the appropriate question is not whether rejection is permissible, but whether acceptance is mandatory. Although the Service has made a concerted effort to achieve a degree of uniformity in the evaluation of offers, the acceptance decision remains discretionary. The Service’s procedures do not create the presumption that all offers will be accepted, nor do they presume rejection as the likely conclusion. Rather, each proposed compromise should be evaluated and considered on its own merits, and accepted or rejected as dictated by the facts and circumstances of the particular case.

We will inform the Office of Special Procedures that this issue has arisen so that they can advise the field as they deem appropriate. If you have any questions or we can be of further assistance, please contact the attorney assigned to this case at (202) 622-3620.

cc. Assistant Regional Counsel (GL), Midstates Region