DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ASSOCIATE AREA COUNSEL (SBSE)

FROM: Kathryn A. Zuba
Chief, Branch 2 (Collection, Bankruptcy & Summonses)

SUBJECT: Advisory Opinion–Rejection of Offers in Compromise

This memorandum responds to a request for advice from your office received by email on December 27, 2000. You have asked us for our assistance in addressing a request by a taxpayer's representative concerning whether the Service may reject an offer in compromise when a taxpayer's non-liable spouse with whom he shares living expenses refuses to provide her personal financial information. This document is not to be cited as precedent.

ISSUE

Whether the Service may consider in rejecting a taxpayer's offer in compromise that the taxpayer's non-liable spouse with whom he shares living expenses has submitted an affidavit stating that the taxpayer's entire income is used for their housing and utilities and that she pays the remainder, but has refused to provide her financial information.

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 in compromise, in part because the taxpayer's non-liable spouse refuses to supply financial information which the Service has determined may be needed to evaluate the expenses claimed by the taxpayer, is a permissible exercise of that discretion.

BACKGROUND

The taxpayer at issue has submitted an offer to compromise taxes assessed against him. The taxpayer is currently unemployed, but receives a small payment from his work with the Air Force Reserves. The taxpayer is married and lives with his spouse, but she is not liable for any of the taxes at issue. Pursuant to IRM 5.8.5.6(3), the Service requested financial information from the taxpayer and the non-liable spouse.

The taxpayer submitted a collection information statement which contained information on his current income and living expenses, but the spouse refused to do so. Instead, she submitted a document entitled “certification,” which she has signed under penalty of perjury. In this document she states that whenever the taxpayer is employed, he pays his entire income to her for use toward their household expenses. She further states that the taxpayer’s income is not sufficient to provide their housing and utility expenses, so she contributes the remainder from her income. She has also provided a handwritten letter stating that she had no part in her husband’s tax difficulties, they maintain separate bank accounts, and she does not “feel . . . responsibility” to help him pay his tax liabilities. The Service has rejected the taxpayer’s offer, and it is currently pending before Appeals.

The Service has received a letter from the taxpayer’s counsel setting forth his belief that because the Service cannot collect from the non-liable spouse’s assets, and because she has provided a statement under penalty of perjury that all of the taxpayer’s income is put toward their living expenses, the Service may not reject his offer on the basis of her refusal to provide personal financial information.

DISCUSSION

The Secretary’s authority to compromise tax cases comes from section 7122 of the Internal Revenue 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 pertaining to that section likewise state: “The Secretary may exercise his discretion to compromise any civil or criminal liability arising under the internal revenue laws . . . .“ Treas. Reg. § 301.7122-1T(a)(1). Thus, the Secretary’s authority to compromise is discretionary.

The Secretary has delegated this authority to the Commissioner, who has then delegated it to various officials throughout the Service. See Delegation Order No. 11. Implicit with this delegation of authority is the responsibility to exercise sound judgment and discretion when determining whether the Service should accept a taxpayer’s proposed offer in compromise. 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 to reach 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. Policy Statement P-5-100 further states that the Service will accept an offer when it is unlikely that the tax liability can be collected in full, and the amount offered "reasonably reflects collection potential."

Consistent with these goals, the Service follows a procedure set forth in IRM 5.8.5.6 requesting financial information from non-liable individuals with whom the taxpayer shares living expenses. IRM 5.8.5.6(3) instructs the Service to request the non-liable person's financial information in order to determine the actual household income and expenses, verify the percentage of the taxpayer's portion of the shared expenses, and allocate the expenses to the taxpayer based upon his percentage of income.

In this case, the taxpayer supplied a collection information statement listing his living expenses and his income from past employment. Although his spouse has stated under penalty of perjury that they share expenses and that she essentially pays all their current expenses due to his unemployment, without her financial information, the Service may encounter difficulty verifying the percentage of the taxpayer's portion of their shared expenses and allocating the expenses between them.

You are correct that current procedures do not clearly state that rejection is permissible for this reason. However, neither is acceptance of an offer mandatory where a non-liable spouse refuses to submit any specific financial information and the Service makes the determination that this information is necessary to evaluate the adequacy of the expenses claimed by the taxpayer. Although the Service has made a concerted effort to achieve a degree of uniformity in evaluating offers, as reflected in the IRM, the acceptance decision remains discretionary. The Service's procedure of requesting the non-liable spouse's financial information is not inconsistent with the regulations, and such information may be necessary in order to exercise that discretion. The Service's offer in compromise procedures do not create a presumption that all offers will be accepted, nor do they presume rejection. Rather, each offer in compromise should be evaluated and considered on its own merits, and accepted or rejected as dictated by the facts and circumstances present in the case. Thus, after considering the financial information provided by the taxpayer and the sworn statement provided by the non-liable spouse, the facts and circumstances may lead the Service to conclude that the offer is not in the best interest of the Service, and thus, it may exercise its discretion to reject the offer.

If you have any further questions, please contact the attorney assigned to this matter at (202) 622-3620.