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

OFFICE OF
CHIEF COUNSEL

March 28, 2002

Number: **200220026**
Release Date: 5/17/2002

CC:PA:CBS:Br2
GL-129835-01
UILC: 17.32.00-00
9999.98-00

MEMORANDUM FOR ASSOCIATE AREA COUNSEL, SB/SE:7 (SACRAMENTO)

FROM: Michael L. Gompertz, Senior Technician Reviewer, Branch 2 (Collection, Bankruptcy & Summonses)

SUBJECT: Advisory Opinion–Offer in compromise on behalf of minor child

This memorandum responds to a request for advice. You have asked us to review your memorandum to an SB/SE Group Manager discussing the circumstances under which a minor or his or her parent may sign and submit an offer in compromise of the minor's tax liability. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent. This writing may contain privileged information.

ISSUES

1. Is a minor child legally bound by a compromise agreement that the child enters into with the Internal Revenue Service under section 7122 of the Internal Revenue Code?

2. Is a minor child legally bound by a compromise agreement signed on behalf of the child by a parent or by the legal guardian of the child's property?

3. May a parent compromise the parent's liability under section 6201(c) of the Internal Revenue Code? Would such a compromise have any effect on the child's liability?

CONCLUSIONS

1. Under generally applicable state law, minors may repudiate, avoid, or disaffirm their contracts. Thus, a section 7122 compromise would not legally bind a minor and we recommend that the Service not enter into compromises with minors.

2. In general, a minor child would have the right to repudiate, avoid, or disasffirm a compromise signed on behalf of the minor child by a parent or other person, including the legal guardian of the minor's property. A parent's or other person's status as legal guardian of a minor's property does not include the capacity to compromise the minor's tax liability. If, however, a state court specifically

authorizes a parent or other person to compromise the minor's tax liability, then the compromise could not be repudiated, avoided, or disaffirmed.

3. If the tax liability at issue is attributable to services of the minor, the parent is personally liable for the tax under I.R.C. § 6201(c) if the child does not pay the tax. A parent may execute a compromise with respect to the parent's liability; however, the compromise would not impact the child's tax liability.

DISCUSSION

Issue 1

The Service's authority to enter into compromises with taxpayers comes from I.R.C § 7122 which provides, "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." 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.

The regulations pertaining to section 7122 set forth the permissible grounds for offers in compromise, including doubt as to liability, doubt as to collectability, and the promotion of effective tax administration. The regulations further provide that a taxpayer's offer is not accepted "until the IRS issues a written notification of acceptance to the taxpayer." Treas. Reg. § 301.7122-1T(d)(1). As a general rule, acceptance of an offer in compromise will conclusively settle the liability of the taxpayer specified in the offer, and under § 301.7122-1T(d)(5), neither the taxpayer nor the Government will be permitted to reopen the case unless the taxpayer supplied false information or documents to support the offer, the taxpayer has concealed assets, or a "mutual mistake of material fact sufficient to cause the offer agreement to be reformed or set aside is discovered." Further, any offer in compromise is strictly construed according to requirements set out in section 7122 and the regulations. See Botany Worsted Mills v. United States, 278 U.S. 282 (1929); Klein v. Commissioner, 899 F.2d 1149 (11th Cir. 1990); Bowling v. United States, 510 F.2d 112 (5th Cir. 1975).

Section 7122 of the Code and the regulations thereunder govern the formation and legal effect of offers in compromise. Also, generally applicable principles of contract law may provide guidance on issues not addressed by section 7122 and the regulations thereunder. See United States v. Feinberg, 372 F.2d 352 (3d Cir. 1965); United States v. Lane, 303 F.2d 1 (5th Cir. 1962). In recognition of this concern, the Service requires the taxpayer to submit a Form 656 setting forth the essential terms of payment including the tax liabilities covered, and the taxpayer's obligations, including the amount and the time in which the taxpayer has to pay.

We agree with your conclusion that a court may set aside a compromise if the court were to conclude that a party to the compromise lacked the ability to knowingly consent to its terms. Section 12 of the Restatement (second) of Contracts provides, “No one can be bound by contract who has not legal capacity to incur at least voidable contractual duties.” The restatement further provides that a natural person manifesting consent has full legal capacity unless he is under a guardianship, an infant, mentally ill, or intoxicated. With certain exceptions, minors have the power of repudiating or disaffirming most contractual obligations. See Farnsworth on Contracts, § 4.4 (2d Ed. 2000). Under California law, a person under the age of eighteen is a minor. Cal. Fam. Code § 6500.

Neither the Internal Revenue Code nor the Treasury Regulations address a minor’s capacity to compromise a tax liability. Nor are we aware of any case law under I.R.C. § 7122 addressing the capacity of a minor to compromise a tax liability. Thus, a court would most likely look to state law to resolve this issue.

As you note, Cal. Fam. Code § 6700 provides that a minor may contract in the same manner as an adult, subject to the power to disaffirm the contract under Cal. Fam. Code § 6710. Section 6701 provides, however, that a minor cannot give a delegation of power, make a contract relating to real property or an interest therein, or make a contract relating to personal property not in the minor’s immediate possession or control. Thus, contracts relating to these transactions are void and need no disaffirmance. See Deason v. Jones, 45 P.2d 1025 (Cal. App. 1935); Tracy v. Gaudin, 285 P. 720 (Cal. App. 1930).

Section 6710 provides, “a contract of a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards.” An exception is set out in Section 6712, which provides that a reasonable contract for “necessaries” may not be disaffirmed on the basis of minority. Although the California statute does not list the items which are “necessaries,” they are unlikely to include a compromise of federal taxes. The term “necessaries” is narrowly interpreted and generally refers to items of support necessary for human life such as food, clothing, lodging, and medical services.

Thus, under California law, a minor entering into a compromise with the Service would retain a unilateral right to disaffirm the compromise prior to or within a reasonable time after reaching the age of majority. This principle would also apply under the laws of most other states. A compromise agreement with a minor would not serve the Service’s policy goal of conclusively settling the tax liability. Thus, we recommend that the Service not enter into compromises with minors. This is consistent with the principle that the Service has broad discretion in deciding whether to accept or reject an offer in compromise and may reject an offer if it determines that compromise is not in the Government’s best interest. See Policy Statement P-5-100 (“The ultimate goal is a compromise which is in the best interest of both the taxpayer and the Service.”).

Issue 2

You raise the issue of whether a parent or other person has the authority to compromise a minor's taxes on his or her behalf. Because section 7122 and the regulations thereunder are silent on this issue, courts would most likely seek guidance from state statutes and generally applicable principles of common law, which Congress presumably intended to apply to offers in compromise.

We are not aware of any generally applicable principle of state law under which a minor child has the power to appoint another person to execute an offer in compromise on the child's behalf. Further, Cal. Fam. Code § 6701(a) provides that a minor may not give a delegation of power, and case law interprets any attempt to do so by a minor to be void. See Morgan v. Morgan, 34 Cal. Rptr. 82 (Cal. App. 1963) (holding a minor's attempt to appoint an agent to endorse checks was void). Similarly, the appointment of an agent to enter into a compromise would also be void. See also, Infants, 43 C.J.S. § 111 (West 1978) (indicating that under state law a minor cannot absolutely bind himself by the appointment of an agent or attorney; the acts of the agent or attorney under such an appointment are generally voidable by the minor and may be absolutely void). Accordingly, we agree with your conclusion that a parent could not enter into a compromise of a child's tax liability with the Service on the basis of a Form 2848 power of attorney. If, however, a court specifically authorizes the parent or other person to enter into a compromise of a minor child's tax liability, then the parent or other person would by reason of this authorization have the authority to execute the compromise agreement on the child's behalf.

We conclude that a minor child is not absolutely bound by a compromise signed by a parent or other person on the minor's behalf. For this reason, we recommend that the Service not enter into such compromises. Our conclusion that the minor is not absolutely bound applies even if the parent or other person has been appointed legal guardian of the minor's property. A compromise settles the personal liability of the taxpayer in addition to affecting the Service's ability to collect the tax liability from the taxpayer's assets. Therefore, a parent or other person would not have the legal capacity to enter into a compromise on behalf of a child merely because the parent or other person has legal authority to control or dispose of the child's property. The parent's or other person's acts in entering into a compromise on the minor's behalf would most likely be voidable by the minor or, alternatively, these acts may be absolutely void as noted above. In the context of closing agreements, I.R.M. 8.13.1.2.9.1, states that a closing agreement with a minor should be signed by the legal guardian of the minor's property. We note, however, that the I.R.M. does not address the minor's right to disaffirm, void, or repudiate agreements with the Service.

Issue 3

Section 6201(c) of the Code provides that any income tax assessed against a child for income under section 73 attributable to services of the child is "considered as having also been properly assessed against the parent" if the tax is not paid. Under section 6201(c), the parent has a tax liability separate from that of the child. The parent could enter into a compromise of the parent's liability under section 6201(c), but this would have no impact on child's liability. A compromise binds "the taxpayer specified in the offer" under Treas. Reg. § 301.7122-1T(d)(5) and has no effect on a party not named in the offer (in this situation, the minor child).

Accordingly, we recommend you amend your memorandum to address these concerns. If you have any further questions, please contact the attorney assigned to this matter at (202) 622-3620.