



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR SBSE ASSOCIATE AREA COUNSEL (ST. PAUL)

FROM: ALAN C. LEVINE
Chief, Branch 1 (Collection, Bankruptcy & Summonses)
CC:PA:CBS:Br1

SUBJECT: Processing of Offers in Compromise During Collection Due
Process Proceedings

This responds to your November 2, 2000, memorandum requesting advice on the above-cited subject. This document is not to be cited as precedent.

The purpose of this memorandum is to provide further clarification of a position first set forth in a June 16, 2000, memorandum for your office on the above-cited topic. ^{1/} The position taken in the June 16, 2000, memorandum was that once a Collection Due Process ("CDP") proceeding was pending in the Office of Appeals ("Appeals"), a Revenue Officer should not separately evaluate an offer in compromise submitted by a taxpayer. Rather, the offer should be referred to Appeals for consideration in conjunction with the CDP proceeding.

In a recent request for advice you have received from your local Territory Manager, it was suggested that this position was inconsistent with prior advice from the National Office indicating that a Revenue Officer should continue to work a collection case (including consideration of an offer) after the taxpayer has requested a CDP hearing, as long as the taxpayer is willing to attempt to reach a resolution with the Revenue Officer. If a satisfactory resolution is reached, the taxpayer may withdraw the CDP hearing request.

^{1/} The June 16, 2000, memorandum was subsequently modified by an August 24, 2000, memorandum for your office, with respect to an issue not relevant to the present discussion.

Our position is consistent with this advice. We concluded that a Revenue Officer should not be independently evaluating an offer submitted by a taxpayer whose CDP case is “pending” in Appeals. By “pending”, we meant that the case file had been transferred to Appeals for Appeals to conduct the CDP hearing. After a taxpayer has requested a CDP hearing, but before the case has been transferred to Appeals, a Revenue Officer can and should attempt to work with a taxpayer to resolve his or her case. If a case can be resolved prior to Appeals consideration, it expedites the process for the taxpayer. If a taxpayer submits an offer to a Revenue Officer after the case file has been forwarded to Appeals for a CDP hearing, however, the offer should be referred to Appeals for consideration as a part of the CDP process.

Specific procedures for coordination of CDP cases with Appeals may be found in IRM 5.1.9.3.6, currently undergoing review by this office. These procedures provide that once a taxpayer submits a written request for a CDP hearing, the Revenue Officer should generally attempt to contact the taxpayer and resolve the issue. If the taxpayer is willing to cooperate, the Revenue Officer should attempt to reach a resolution within 45 days after receipt of the taxpayer’s CDP request. If the issue is not resolved within 45 days, but the taxpayer is willing to continue to negotiate an agreement with the Revenue Officer, and a manager concurs that resolution is likely in the near term, the Revenue Officer may continue to attempt to resolve the case with the taxpayer for up to 90 days after receipt of the taxpayer’s CDP request. If the issue is resolved, the taxpayer may withdraw in writing the request for a CDP hearing. If the issue is not resolved, or the issue is resolved but the taxpayer is unwilling to withdraw the CDP hearing request, the Revenue Officer should forward the case to Appeals.

As a final note, communications between Revenue Officers and Appeals employees with respect to CDP cases will be subject to the new ex parte requirements, which were referenced in the June 16, 2000, memorandum. Section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-296, 112 Stat. 685, requires the Internal Revenue Service (“Service”) to develop a plan to prohibit ex parte communications between Appeals officers and other Service employees that appear to compromise the independence of Appeals officers. Guidance concerning the ex parte provisions, including their applicability in CDP proceedings, has now been finalized in Rev. Proc. 2000-43, 2000-43 I.R.B. 404.

If you have any further questions, please call 202-622-3610.