



Search IRS Site for:

Search Forms and Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 1 Overview

This is an unannotated copy of the Internal Revenue Manual in PDF format. Most of it is irrelevant and boring. However, in this haystack of boredom, there are some real jewels. This printed out manual is a good study tool when used with my book Offer Secrets Revealed. In my book I have annotated (underlined, highlighted and written-in notes) to emphasize the important parts of this material. This is the official guide for IRS employees who are involved in the offer in compromise process.

DON'T GET DISCOURAGED.**OFFER SECRETS REVEALED WILL GIVE YOU THE INFORMATION YOU NEED AND SAVE YOU TIME AND MONEY**

Contents

- [5.8.1 Overview](#)
 - [5.8.1.1 Introduction](#)
 - [5.8.1.1.1 Definition](#)
 - [5.8.1.1.2 Authority](#)
 - [5.8.1.1.3 Policy](#)
 - [5.8.1.1.4 Objectives](#)
 - [5.8.1.1.5 Process](#)
 - [5.8.1.2 Liabilities to be Compromised](#)
 - [5.8.1.2.1 Taxes, Penalties and Interest Constitute One Liability](#)
 - [5.8.1.2.2 Unassessed Liability](#)
 - [5.8.1.2.3 Expired Liability](#)
 - [5.8.1.2.4 Non-Tax Liability](#)
 - [5.8.1.3 Form 656, Offer in Compromise](#)
 - [5.8.1.3.1 Name and Address of Taxpayer](#)
 - [5.8.1.3.2 Total Liability](#)
 - [5.8.1.3.3 Basis for Compromise](#)
 - [5.8.1.3.4 Amount Offered](#)
 - [5.8.1.3.5 Payment Terms](#)
 - [5.8.1.3.6 Standard Conditions](#)
 - [5.8.1.3.7 Explanation of Circumstances](#)
 - [5.8.1.3.8 Signatures](#)
 - [5.8.1.4 Interest on the Compromise Amount](#)
- [Exhibit 5.8.1-1 Offer in Compromise Process Flowchart](#)

This Manual is 119 pages long. You may find it easier to view it on your computer and print out only those sections that interest you.

5.8.1.1 (11-30-2001) Introduction

1. The government, like other creditors, encounters situations where an account receivable cannot be collected in full or there is a legitimate dispute as to what is owed. It is an accepted business practice to resolve these issues through negotiation and compromise.
2. This handbook provides procedures for collection employees to follow when considering a taxpayer's proposal to compromise.

5.8.1.1.1 (11-30-2001)

Definition

1. An Offer in Compromise is an agreement between a taxpayer and the government that settles a tax liability for payment of less than the full amount owed.

5.8.1.1.2 (11-30-2001)

Authority

1. The Secretary of the Treasury is granted broad authority to compromise tax liabilities in IRC Section 7122.
2. The Commissioner of Internal Revenue, in temporary and proposed regulations 26 CFR Section 301.7122-1T approved by the secretary, is authorized to compromise a liability on any one of three grounds; doubt as to collectibility, doubt as to liability, or to promote effective tax administration.
3. Delegation Order No. 11 in IRM 1.2 redelegates the commissioner's authority to compromise.

5.8.1.1.3 (11-30-2001)

Policy

1. In Policy Statement P-5-100, the commissioner instructs that an offer in compromise will be accepted when it is unlikely the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An offer in compromise is a legitimate alternative to reporting a case currently not collectible.
2. Offers will not be accepted if the liability can be paid in full under installment agreement guidelines. If, however, special circumstances exist such that collection in full would create an economic hardship or be detrimental to voluntary compliance the offer may be accepted on the basis of effective tax administration. Other factors, such as the legitimate threat of bankruptcy may result in an offer being accepted.

5.8.1.1.4 (02-04-2000)

Objectives

1. The objectives of the offer in compromise program are:
 - o Effect collection of what can reasonably be collected at the earliest possible time and at the least cost to the government.
 - o Achieve a resolution that is in the best interest of both the individual taxpayer and the government.
 - o Provide the taxpayer a fresh start toward future voluntarily compliance with all filing and payment requirements.
 - o Secure collection of revenue that may not be collected through any other means.

5.8.1.1.5 (11-30-2001)

Process

1. An overview of investigation process is illustrated with a flowchart in **Exhibit 1-1** .

5.8.1.2 (11-30-2001)

Liabilities to be Compromised

1. Offers accepted based on doubt as to collectibility or effective tax administration must include all unpaid tax liabilities and periods that the individual taxpayer is liable for.
Example: If a taxpayer who submits an offer to compromise income tax liabilities is also liable for business liabilities for a sole-proprietorship, both the income tax liabilities and the business liabilities must be included in an accepted offer.
2. Offers accepted based on doubt as to liability should only include the tax years or periods that have a liability issue. Other tax periods that the taxpayer entity is liable for should not be included in the offer.

5.8.1.2.1 (11-30-2001)

Taxes, Penalties and Interest Constitute One Liability

1. A compromise is effective for the entire assessed liability for taxes, penalties and interest for the years or periods covered by the offer. All questions of tax liability for the years or periods covered by the agreement are conclusively settled. Neither the taxpayer nor the government can reopen a compromised tax year or period unless there was falsification of information or documents, concealment of ability to pay and/or assets, or a mutual mistake of a material fact which would be sufficient to set aside or reform a contract.

5.8.1.2.2 (11-30-2001)

Unassessed Liability

1. Taxpayers may submit, and we will consider, an offer to compromise taxes due on tax returns which have been filed but have not yet been assessed. However, before the offer can be accepted, the taxes must be assessed.

5.8.1.2.3 (11-30-2001)

Expired Liability

1. A compromise will not be accepted on any tax liability which has become unenforceable by reason of lapse of time.
2. If a taxpayer desires to make a voluntary payment on a liability for which the statutory period for collection has expired, they should provide a signed statement that they have been advised collection of the tax is barred. Attach the statement to the payment posting document and process the payment through normal remittance processing procedures. Do not treat these payments as offer payments.

5.8.1.2.4 (11-30-2001)

Non-Tax Liability

1. IRC Section 6305 charges the Secretary of the Treasury to assess and collect certain child support obligations on behalf of the Secretary of Health and Human Services. These liabilities are identified on the non-master file with a master file tax code of 59.
2. The Secretary of the Treasury is not authorized to compromise these liabilities. However, the individual may seek a legal, equitable or administrative action in a state court or before a state agency to determine the correct liability or to recover an amount collected under this section.

5.8.1.3 (02-04-2000)

Form 656, Offer in Compromise

1. Taxpayers who wish to propose an offer in compromise must submit Form 656, Offer in Compromise. The form is printed in a booklet with instructions. Two copies of the form may be separated from the booklet by removing the center pages from the staples. Computer generated or photocopied versions of Form 656 are also acceptable provided they contain the following statement: "I/we affirm that this form is a verbatim duplicate of the official Form 656, and I/we agree to be bound by all terms and conditions set forth in the official Form 656."
2. For offers based on doubt as to collectibility or effective tax administration, a statement of the taxpayer's current financial condition is also required. Individual or self-employed taxpayers must submit Form 433-A, Collection Information Statement for Individuals. Corporations or other business taxpayers must submit Form 433-B, Collection Information Statement for Businesses. Taxpayers who submit an offer for individual tax liabilities who also have interest in an ongoing business may also be required to submit Form 433-B for the business. Taxpayer corporations or partnerships must submit Form 433-B and each corporate shareholder, director, and officer or individual partner may also be required to provide Form 433-A.
3. For offers based on doubt as to liability, no financial statement is required, however, the taxpayer must include a written statement explaining why the liability is incorrect. The statement must address the validity of the actual assessment(s) or a portion of the assessment(s).
4. In conjunction with an acceptance letter, Form 656 constitutes a legal contract between the government and the taxpayer.

5.8.1.3.1 (02-04-2000)

Name and Address of Taxpayer

1. The full name, address, Social Security Number, and/or Employer Identification Number of the taxpayer must be entered on Form 656.
 - A. Two or more taxpayers who jointly owe the same liability may submit a joint offer in compromise on one form showing each name, address and taxpayer identification number. However, separate offer forms, one for each person, should be submitted when:
 - Spouses are living separately or divorced.
 - One taxpayer asserts he or she is not liable for all or a portion of a joint assessment.
 - One or more taxpayer(s) wish to allocate responsibility for payment of the compromise amount.
 - The taxpayers have elected separate or proportionate liability subsequent to the filing of their joint return.
 - B. If a taxpayer is solely responsible for a liability (e.g., employment taxes) and jointly responsible for another liability (e.g., income taxes) and only the one person is submitting the offer, only one Form 656 is required, showing all of the liabilities. Also see Section 6 for information concerning co-obligor agreements.
 - C. Taxpayers who submit a joint offer for joint tax liabilities and also owe other liabilities, either solely or jointly with other persons, must submit separate offers, one for each separate entity. Usually, one Form 656 is submitted for the sole liability and a separate Form 656 is submitted for the joint liabilities. If any of the situations described in paragraph a) above apply, the Service may require that separate Forms 656 be submitted by each individual, showing the liabilities owed by that individual.

5.8.1.3.2 (02-04-2000)

Total Liability

1. Each separate tax period and type of tax must be indicated on Form 656. For Trust Fund Recovery Penalty (TFRP) assessments only the last quarterly period, as indicated by the assessment, needs to be shown. If an offer is accepted that includes TFRP assessments, the acceptance file must include information that identifies the BMF periods that are included in the TFRP assessment.
2. A taxpayer may submit an offer that does not include all outstanding liabilities. Prior to accepting the offer Form 656 must be amended to include all outstanding tax liabilities.
3. An offer submitted under Doubt as to Liability should be accepted for only the tax periods that are in doubt.

5.8.1.3.3 (02-04-2000) Basis for Compromise

1. Taxpayers must indicate one or more bases upon which they propose to compromise; doubt as to collectibility, doubt as to liability or to promote effective tax administration.

5.8.1.3.4 (02-04-2000) Amount Offered

1. The total amount of money offered must be indicated. The amount offered may not include money already paid, expected future refunds, or funds attached by levy.

5.8.1.3.5 (11-30-2001) Payment Terms

1. Taxpayers are expected to pay the entire amount offered in as short a time as possible.
2. The amounts and due dates of payments must be specifically described.

EXAMPLE:

\$20,000: \$2,000 paid within 90 days from notice of acceptance; and, \$250 on the 15th day of each month, beginning on the first month after acceptance.

3. There are three (3) types of payment terms that the Service and the taxpayer may agree to
 - A. **Cash** -- must be paid within 90 days or less from notice of acceptance
 - B. **Short Term Deferred** -- must be paid in more than 90 days but within two years (24 months) or less from notice of acceptance
 - C. **Deferred Payment** -- must be paid within the time remaining on the statutory period for collection

NOTE:

See Section 5 for a discussion of calculating the amount required from future income for each of the three payment options.

5.8.1.3.6 (11-30-2001) Standard Conditions

1. Taxpayers must agree to all the standard conditions of the contract as they are printed on the form.
2. Offers accepted under Doubt as to Liability or Effective Tax Administration based on Detriment to Voluntary Compliance are not subject to the waiver of refund condition. See Section 11 discussing Detriment to Voluntary Compliance offers.

5.8.1.3.7 (11-30-2001) Explanation of Circumstances

1. Taxpayers may use the designated space on Form 656 to explain why they are submitting the offer or they may attach a separate statement.
2. If special circumstances exist, the taxpayer must explain their situation.

5.8.1.3.8 (11-30-2001)

Signatures

1. Each taxpayer who is a party to an offer should personally sign the Form 656 and collection information statements. When unusual circumstances prevent a taxpayer from doing so, an authorized power of attorney may sign for the taxpayer. Include in the case file a copy of the properly executed Form 2848, Power of Attorney and Declaration of Representative or CFINQ print as verification of the representative's authority.
2. In the case of joint offers in compromise, all parties, or their designated representative as indicated in paragraph (1), must sign Form 656 to ensure the provisions of the contract bind all parties.
3. In the case of a taxpayer corporation, the corporate name should be entered on the first signature line and the signature, name and title of the authorized officer on the second line.
4. An offer submitted by the fiduciary of an estate of a deceased taxpayer will be binding on the taxpayer's estate to the extent that it would be binding on a taxpayer who submits an offer on their own behalf. Include in the case file a copy of the fiduciary's appointment document.
5. If an offer is submitted on behalf of a deceased taxpayer, when there is no estate or fiduciary, the individual who signs the offer must have authority. This authority can be designated by a will appointing that individual as the executor or by written authorization from the probate court.

5.8.1.4 (02-04-2000)

Interest on the Compromise Amount

1. For all offers accepted after December 31, 1999 interest on the compromise amount is also compromised.
2. Prior to accepting an offer that was pending on January 1, 2000, secure an amended offer on the new Form 656 (rev. 1-2000 or later). Ensure that both the amended Form 656 and the acceptance letter indicate the correct terms.

NOTE:

Retain the first Form 656 in the case file as the waiver provisions on that form remain in effect.

3. For all offers accepted before January 1, 2000, on Form 656 revisions prior to 1-2000, interest continues to accrue until the compromise amount is paid in full.

[Exhibit 5.8.1-1 \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont.\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 3\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 4\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 5\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 6\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 7\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 8\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 9\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 10\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 11\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

[Exhibit 5.8.1-1 \(Cont. 12\) \(08-07-2000\)](#)

[Offer in Compromise Process Flowchart](#)

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in (02-04-2000)
Compromise Sec. 1 Overview

[IRS Privacy and Security Policy](#) | [Contact Us](#)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 2 Offer Receipts

Contents

- [5.8.2 Offer Receipts](#)
 - [5.8.2.1 Overview](#)
 - [5.8.2.2 Tax Cases Controlled by Department of Justice](#)
 - [5.8.2.3 Functional Responsibilities](#)
 - [5.8.2.3.1 Collection Role](#)
 - [5.8.2.3.2 Examination Role](#)
 - [5.8.2.3.3 Appeals Role](#)
 - [5.8.2.3.4 Counsel Role](#)
 - [5.8.2.3.5 Taxpayer Advocate Role](#)
 - [5.8.2.4 Centralized Offer in Compromise](#)
 - [5.8.2.4.1 Sending Offers to COIC](#)
 - [5.8.2.4.2 Receiving Offers from COIC](#)
 - [5.8.2.5 Initial Processing](#)
 - [5.8.2.6 Deposits](#)
 - [5.8.2.7 Interoffice Transfers](#)
 - [5.8.2.8 Powers of Attorney](#)
 - [5.8.2.9 Emergency Processing](#)
 - [5.8.2.10 Imminent Collection Statute Expiration Dates](#)

5.8.2.1 (11-01-2000) Overview

1. Upon receipt of a taxpayer's proposal to compromise, we must first determine who will investigate the offer. This chapter describes who has responsibility for different types of offers and how to assign the case.

5.8.2.2 (11-01-2000) Tax Cases Controlled by Department of Justice

1. The Internal Revenue Service does not have the authority to accept, and will not consider, an offer in compromise when:
 - A. Questions concerning the amount of the taxpayer's liability or the collection of a liability for all or part of the periods the taxpayer owes is in litigation.
 - B. The federal tax liability for all or part of the periods the taxpayer owes has been reduced to a judgment.
 - C. The Internal Revenue Service has a civil or criminal prosecution pending against the taxpayer in the Department of Justice or United States Attorney's Office.
 - D. Acceptance by the Internal Revenue Service is dependent upon the Department of Justice accepting a related offer or settlement.
2. If there is any indication that one or more of the above conditions may exist, contact your Area Counsel for guidance.
3. The Department of Justice may ask us to send an offer in compromise directly to them for inclusion in pending litigation. However, for doubt as to collectibility offers, they usually request that we conduct an investigation of the taxpayer's financial condition and make a recommendation as to whether the offer should be accepted or rejected. Coordinate with Area Counsel to determine if the request should be worked as a courtesy investigation or if we have jurisdiction to process the offer.

5.8.2.3 (11-30-2001) Functional Responsibilities

5.8.2.3.1 (11-01-2000) Collection Role

1. Revenue officer offer in compromise specialists are responsible for the following:
 - o All offers in compromise based on doubt as to collectibility, including proposed liabilities still subject to settlement negotiations in Examination or Appeals.
 - o All offers to compromise Trust Fund Recovery Penalty and Personal Liability for Excise Tax regardless of the basis unless the original assessment was determined in Appeals.
 - o All offers based on effective tax administration.

5.8.2.3.2 (11-30-2001) Examination Role

1. Revenue agents are responsible for:
 - o All offers in compromise based solely on doubt as to liability, including employment tax examination assessments but excluding Trust Fund Recovery Penalty and Personal Liability of Excise Tax.
 - o Providing a recommendation on offers based on effective tax administration with detriment to voluntary compliance issues, when requested.
 - o Making a determination on innocent spouse issues.

5.8.2.3.3 (11-30-2001) Appeals Role

1. Appeals settlement officers are responsible for:
 - o Offers where the taxpayer has appealed a rejection by compliance employees.
 - o Offers where all or part of the liability is pending or was determined in Appeals.
 - o Offers submitted by the taxpayer as an alternate resolution during a Collection Due Process (CDP) or Equivalent Hearing (EH).
2. Appeals will not accept jurisdiction over an offer in compromise if they have no authority to determine the type of tax that is proposed to be compromised **Example:** Alcohol, Tobacco and Firearms taxes.

5.8.2.3.4 (11-30-2001) Counsel Role

1. Counsel attorneys are responsible for:
 - o Providing an opinion on offers recommended for acceptance when the total liability, including additions, penalty and interest is \$50,000 or greater.
 - o Providing, when requested, a legal opinion for all other decisions concerning offers in compromise.

5.8.2.3.5 (11-30-2001) Taxpayer Advocate Role

1. Taxpayer Advocates are responsible for:
 - o Securing information to respond to taxpayer, congressional, or head of office inquiries.
 - o Requesting priority consideration for case decisions when the taxpayer has been identified by the Local, Area or National Taxpayer Advocate as meeting significant hardship criteria. Refer to IRM 13.1.7, Taxpayer Advocate Case Procedures.
 - o Providing an independent review of the case and ensuring that the IRS employee making the substantive determination has all of the necessary information to make an informed decision.

NOTE:

A Taxpayer Advocate cannot issue a Taxpayer Assistance Order requiring that the Service accept a specific offer or requiring that a certain value be adopted for an asset or an expense item.

2.

5.8.2.4 (11-30-2001) Centralized Offer in Compromise

1. Centralized Offer in Compromise (COIC) has responsibility for the initial processing for all offers submitted under doubt as to collectibility and effective tax administration.
2. COIC operates in both the Memphis Service Center and the Brookhaven Service Center.
3. COIC is responsible making the initial processability determination for all offers received and for completing the perfection process, case building and the initial investigation for all offers that meet the following criteria:
 - o Individual taxpayers that are wage earners or self-employed individuals without employees,
 - o Taxpayer's that operate a sole proprietorship and don't have any employees.

5.8.2.4.1 (11-30-2001) Sending Offers to COIC

1. All initial offer receipts that are filed based on doubt as to collectibility or effective tax administration must be sent to the appropriate COIC sight for processing.
2. The receiving office is responsible for the following actions:
 - o Date stamp the Form 656 with the received date
 - o Determine which COIC location is responsible for the offer based on the taxpayer's address.
 - o Forward Form 656 and all documents submitted with the Form 656 to COIC using a Form 3210.
3. COIC operates out of two Service Centers sights located in Memphis and in Brookhaven. The sight responsible for specific offer receipts is based on the taxpayer's current location.
 - A. If the taxpayer resides in Alaska, Alabama, Arizona, California, Colorado, Hawaii, Idaho, Kentucky, Louisiana, Mississippi, Montana, Nevada, new Mexico, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin or Wyoming

the offer will be processed by the Memphis COIC Unit.

- B. If the taxpayer resides in Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, West Virginia or if they have a foreign address the offer will be processed by Brookhaven COIC Unit.
4. Offers received with remittances must be sent to COIC using overnight delivery within 24 hours of receipt. COIC is responsible for ensuring timely processing of these remittances, as defined in Section 2.5.
5. Offers received under the basis of doubt as to liability and offers received from Appeals during a CDP Hearing will not be sent to COIC for processing. Other offer receipts may be retained in the local office for processing when local expertise is necessary to make a determination on the offer submission or when other local functions are involved in the taxpayer's case, such as the Taxpayer Advocate's office.

5.8.2.4.2 (11-30-2001)

Receiving Offers from COIC

1. Once the COIC Units have completed the initial processing and perfection procedures, as defined in Section 3, they will send offer files to the Area Office for assignment on all offers submitted by a corporation, a partnership or a sole-proprietorship with employees.
2. COIC Units will initiate an investigation for all other offers received. If COIC is able to make a determination on the taxpayer's reasonable collection potential the offer investigation will be concluded by the COIC Unit. If the COIC Unit is unable to make a determination, based on issues identified during the investigation, the offer investigation will be transferred to the Area Office for assignment.
3. All offers sent to the Area Office for investigation will be sent through a central point designated by the Area Office for receipt and assignment to the appropriate Offer Group for investigation. Within 5 business days of receipt of an offer investigation from COIC Unit:
 - o Acknowledge receipt of offer files using Form 3210 acknowledgment document.
 - o Acknowledge receipt of offer files on AOIC.
 - o Determine the destination of the offer assignment and re-assign the offer to the appropriate offer group on AOIC.
 - o Send the offer file to the appropriate group manager for assignment.

5.8.2.5 (11-01-2000)

Initial Processing

1. On the same day an offer is received:
 - A. Date stamp the form as received in the IRS Received Date Stamp block of Form 656.
 - B. Review the Form 656 and research IDRS to determine which office has responsibility for the offer:

If responsibility lies with...	Then...
Department of Justice	Contact Area Counsel to determine the status of the pending bankruptcy or litigation. Get their opinion as to whether we have jurisdiction to process the offer. If the Department of Justice requests, send the offer directly to them and do not open a record on Automated Offer In Compromise (AOIC).
Examination	Send the offer directly to the OIC Coordinator in Technical Support. Do not open a record on Automated Offer In Compromise (AOIC).
Appeals	Open a record on AOIC, determine processability and reassign to Appeals. (This does not apply to offers submitted during a collection due process hearing (CDP). See Section 4 for treatment of CDP Offers from Appeals.)

5.8.2.6 (11-30-2001)

Deposits

1. Deposits are not required. A deposit will not be requested unless there is substantial doubt that the funds will still be available in the event the offer is accepted.
2. Offers submitted with a deposit require an immediate processability determination. If the offer is processable, forward the remittance for deposit in the Special Deposit Fund 4710 account, within 48 hours of receipt. If the offer is not processable, return the remittance to the taxpayer along with the Form 656 and other documents. The office making the processability determination is responsible for processing initial offer deposits received with an initial Form 656.
3. A deposit received while the offer is pending must be forwarded for deposit in the Special Deposit Fund within 48 hours of receipt.
4. The employee making the processability determination, or receiving a subsequent offer payment, will:
 - A. Generate Form 2515 from AOIC and attach the remittance.
 - B. If the offer remittance is an initial offer deposit submitted with a newly processable Form 656, indicate this by writing "Initial Offer Deposit" in red on the top right side of Form 2515.
 - C. Use Form 3210 to transmit and control receipt of remittances. Form 3210 must contain the following information:
 - The offer number that relates to the remittance,
 - The offer taxpayer Tin,
 - The taxpayer's name, and
 - The amount of the remittance being processed.
 - D. Send remittances and Form 3210 via overnight delivery to the Teller Unit at the Service Center that services the area where the originating office is located. Follow procedures outlined in IRM 5.4.1.5, Document Transmittal procedures, for processing and control of remittances to the Service Center.

5.8.2.7 (11-01-2000)

Interoffice Transfers

1. Offer cases will be assigned to the office responsible for investigations where the taxpayer resides:

If ...	Then...
The taxpayer resides in another geographic location	<ol style="list-style-type: none"> 1. Open a record on AOIC. 2. Determine if the offer is processable. 3. For not processable offers, return the offer to the taxpayer as not processable. 4. For processable offers, mail the Form 656 with the paper case file to the correct office. 5. If a deposit is attached leave it with the paper case file but, use overnight delivery. 6. Send the taxpayer a letter advising them of the address of the receiving office. 7. Transfer the Offer to the correct office on AOIC..
The authorized representative is in another general location from where the taxpayer resides	Transfer the case to the office where the taxpayer resides.
The taxpayer relocates while the offer is pending	<ol style="list-style-type: none"> 1. Update AOIC and IDRS with the new address. 2. If the investigation is substantially done and there is no change in the taxpayer's ability to pay as a result of the relocation, do not transfer the case. Go ahead and work it to completion. 3. Otherwise, conduct a real and personal property check and document the results before transferring the case to the office where the taxpayer relocated. 4. Send the taxpayer a transfer letter indicating the address of the receiving office and transfer the offer on AOIC. <p>NOTE: If there is a deposit, contact Compliance Services and request they also transfer the deposit.</p>

5.8.2.8 (11-30-2001) Powers of Attorney

1. Taxpayers who wish to be represented must submit a properly executed Form 2848, Power of Attorney and Declaration of Representative. Input the representative's information on AOIC and retain a copy of the form in the paper case file. Forward the original for recording on the Centralized Authorization File (CAF).
2. Send all original correspondence to the taxpayer and provide a copy to the representative unless the taxpayer has indicated otherwise by checking any item on line 7 of Form 2848.
3. Unenrolled return preparers may accompany taxpayers to meetings, provide information that relates to the offer investigation and receive and provide information that relates to how a return was prepared. They are not authorized to represent taxpayers or sign documents relating to offers in compromise.

5.8.2.9 (11-01-2000) Emergency Processing

1. In some extreme situations, a taxpayer may request emergency processing of an offer. For example:
 - o A contract or business agreement requires the taxpayer, as a condition of the contract or agreement, to resolve a tax liability by a specific date.
 - o Availability of the money to fund the offer is limited to a certain time.
 - o A terminal illness may affect the ability to complete the payment terms.
2. Indicate such a request by marking the top margin the first page of Form 656 - "Emergency Processing Requested."
3. Make every effort to close the offer within 90 days of receipt. However, if the taxpayer does not timely provide all the financial information requested or the offer cannot be completed in 90 days, advise the taxpayer that additional time is required.

5.8.2.10 (11-30-2001)

Imminent Collection Statute Expiration Dates

1. Effective 12/21/2000, the statutory period for collection is no longer suspended while an offer in compromise is pending.
2. During an offer investigation, an imminent Collection Statute Expiration Date (CSED) is defined as expiring within a 12 month period.
3. During initial processing offers with imminent CSED periods must be identified for offers that are processable. See Section 3 for a full discussion on calculating the valid CSED for offer periods.

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in Compromise Sec. 2 Offer Receipts (11-30-2001)

[IRS Privacy and Security Policy](#) | [Contact Us](#)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 3 Processability

Contents

- [5.8.3 Processability](#)
 - [5.8.3.1 Overview](#)
 - [5.8.3.2 Determining Processability](#)
 - [5.8.3.2.1 Not Processable](#)
 - [5.8.3.2.2 Processable But, Needs Perfecting](#)
 - [5.8.3.3 Imminent Collection Statute Expiration Date Periods](#)
 - [5.8.3.4 Withholding Collection](#)
 - [5.8.3.5 Offers Submitted Solely to Delay Collection](#)
 - [5.8.3.5.1 Solely to Delay Collection Determinations](#)
 - [5.8.3.5.2 Examples and Discussion](#)
 - [5.8.3.5.3 Procedures for Return of offers submitted Solely to Delay Collection](#)
 - [5.8.3.6 Procedures](#)
 - [5.8.3.7 Extension of the Statutory Period for Collection](#)
- [Exhibit 5.8.3-1 Statute Computations for Offers That Were Submitted After December 31, 1999](#)
- [Exhibit 5.8.3-2 Statute Computations for Offers That Were Pending on January 1, 2000](#)
- [Exhibit 5.8.3-3 Statute Computations for Offers That Were Closed Prior to January 1, 2000](#)

5.8.3.1 (02-04-2000) Overview

1. All offer receipts are reviewed to determine if they are processable. Offers are returned as not processable when specific compliance issues are not met and/or when a taxpayer is in bankruptcy.
2. No more than two attempts will be made to work with taxpayers to perfect an offer submission when certain other defects exist. It is not necessary to make more than two requests for information.
3. While an offer in compromise is pending, the law prohibits collection by levy unless collection is in jeopardy.
4. The collection statute expiration date is not suspended while an offer in compromise is pending.

5.8.3.2 (02-04-2000) Determining Processability

1. Each new receipt will fall into one of three categories:
 - A. **Not processable** -- The taxpayer is not in compliance with specific criteria or is in bankruptcy
 - B. **Processable But, Needs Perfecting** -- Items on the forms are omitted or must be corrected
 - C. **Processable** -- All the forms are complete and accurate enough that we can begin the investigation
2. A determination of these criteria is required within 14 days of receipt of an offer in compromise. This will ensure that collection activity is withheld. If an offer deposit is submitted with the offer in compromise, this determination is required within 48 hours of receipt to ensure timely processing of remittances.

5.8.3.2.1 (11-30-2001) Not Processable

1. An offer is not processable **only** if one or both of these two criteria is present:
 - A. **Taxpayer Not in Compliance** -- All tax returns for which the taxpayer has a filing requirement must be filed. Refer to Policy Statement P-5-133. In-business taxpayers must have timely filed and timely deposited all employment taxes for two quarters preceding the offer submission. They must have also timely paid all federal tax deposits due in the quarter in which the offer is submitted.
 - B. **Taxpayer in Bankruptcy** -- An offer will not be considered during a bankruptcy proceeding. Once a bankruptcy is discharged or dismissed an offer can be considered.

CAUTION:

- Deviation from the not processable criteria above may result in a violation of the taxpayer's appeal rights. Therefore, local offices may not deviate without written authorization from the Director, Compliance Policy.
2. To determine if a taxpayer has unfiled tax returns, which they are required to file, research of the Master File is necessary. A delinquency check notification or taxpayer delinquency investigation (TDI) does not have to exist to determine that a taxpayer has unfiled delinquent returns.
 3. When a delinquent return was recently filed and has not yet posted to IDRS, a copy of the return is sufficient verification of compliance.
 4. Estimated tax payments do not have to be current for the offer to be processable. This compliance issue is addressed during the offer investigation.
 5. Deviation from the not processable criteria listed above may not be made without written authorization from the Headquarters Office. An offer must never be returned solely because of the cost of an investigation may exceed the amount offered.
 6. A determination that a specific tax return meets the criteria for "not liable, little or no tax due" as discussed in Policy Statement P-5-133, does not apply for offers in compromise.

5.8.3.2.2 (11-30-2001) Processable But, Needs Perfecting

1. When offers are received with items omitted or incorrect, the offer will be considered processable. Communication with the taxpayer and/or authorized representative is necessary, to perfect the offer while the offer is pending.
2. The following errors should be corrected before beginning the investigation:
 - The taxpayer's name, address or TIN is missing or incorrect and cannot be determined from IDRS or other documents submitted with the offer.
 - No amount of money is offered.
 - No tax liability is assessed or pending.
 - Required Collection Information Statements, Form 433-A and/or Form 433-B, are missing.
3. The following errors should be corrected during the investigation, if an offer acceptance is recommended:
 - The Form 656 is an obsolete version or not a verbatim duplicate.
 - The taxpayer's name, address or TIN is missing or incorrect but, we can determine the correct information from IDRS or other documents submitted with the offer. Input the correct information on AOIC.
 - Liabilities are included on a joint offer that one of the taxpayer's does not owe. Input the one offer on AOIC with all the periods shown.
 - An amount of money is offered, but the payment terms are not specified.
 - The taxpayer's or the taxpayer proponent's signature is missing.
 - Form 433-A or 433-B is incomplete.
 - Pre-printed terms of Form 656 are altered or deleted.
 - The basis for compromise is not indicated, but the basis can be determined by reviewing the package, allowing the investigation to begin.
 - Periods of tax are included for which no amount is due.
 - A period with an amount due is missing but, we can determine all the periods of tax due from IDRS or other documents submitted with the offer. Input all the periods with an amount due on AOIC.
4. When an offer is received with balance due periods missing from Form 656 and we can determine the balance due periods from IDRS or other documents submitted with the offer, add the missing period(s) to the AOIC MFT screen. Do not add the missing periods to the Form 656 unless contact is made with the taxpayer to discuss the missing periods and to receive verbal authority from the taxpayer to include the missing periods on Form 656.
 - A. Contact may be made on the telephone or by using the Combo Letter on AOIC to request the inclusion of the missing period(s) on an amended Form 656.
 - B. If the taxpayer agrees to the missing periods being added to the offer over the telephone, the file must document that the conversation took place and that the taxpayer gave verbal permission to include the missing periods. The missing periods can then be entered on Form 656. The offer cannot be accepted until the taxpayer signs an amended Form 656 including the missing periods.
5. When an error must be corrected before we continue with the investigation, communicate with the taxpayer and/or their representative to request the necessary corrections. The combo letter on AOIC is designed for this purpose. Allow at least 14 days for the taxpayer to make the necessary corrections. If there is no response to the first request, send a follow-up letter and allow an additional 14 days for response. If there is no response to the second request letter, return the offer to the taxpayer as not perfected. Follow-up is required within 14 days of the missed deadline. No more than two requests for information necessary to perfect the offer document will be made. A return for failure to perfect an offer does not require a Form 1271. The taxpayer has no appeal rights when the offer is closed as a return.

NOTE:

You may either correctly prepare an amended offer and send it to the taxpayer for signature or send a blank form with instructions to correctly prepare an amended offer. If you send any original document back for pen and ink changes, retain a copy in the file.

5.8.3.3 (11-30-2001)**Imminent Collection Statute Expiration Date Periods**

1. When an offer is processable, all imminent CSED periods must be identified so that a determination can be made whether the offer investigation should be handled expeditiously.
2. IDRS research is necessary to identify imminent CSED periods. Collection statute expiration dates reflected on IDRS can not be relied on to be totally accurate. A manual review of modules with potential imminent collection statute expiration dates is necessary to ensure that all imminent CSED periods are properly identified.
3. To determine if offers with imminent CSED periods require priority treatment, the overall effect of the potential expiration of the collection statute needs to be analyzed. Compare the amount of the tax liability at risk on the short statute period(s) with the amount of the remaining liability, the amount offered and the financial statement submitted.
4. Factors that should be considered in making a determination include:
 - o Total balance due on imminent CSED period(s)
 - o Total balance due on periods without imminent CSEDs
 - o Amount of the offer
 - o Terms of the offer
 - o Time remaining on CSED periods
 - o Reasonable Collection Potential
5. Judgement should be used to determine if providing priority treatment is warranted.
6. The group manager will indicate concurrence with the decision to expedite an investigation due to imminent CSED consideration or with the decision that a case does not warrant priority treatment. The group manager will make an entry in the case history to document concurrence.

5.8.3.4 (11-30-2001) **Withholding Collection**

1. Installment agreements remain in effect while the offer is pending.
2. For offers submitted after December 31, 1999, collection by levy on property owned by the offer taxpayer is prohibited while the offer is pending unless collection is in jeopardy.
3. The term "jeopardy" means the same as when used in jeopardy levy or jeopardy assessment situations. See IRM 5.11.3 and Policy Statement P-4-88. Collection is not in jeopardy just because we have discovered an asset that was previously undisclosed.
4. Upon receiving information that a jeopardy levy has been approved, immediately close the offer in compromise as a return. Do not submit the file for independent administrative review. The taxpayer has no appeal rights for the return of the offer. (Although, the taxpayer does have appeal rights for the jeopardy levy.)
5. The prohibition on levy does not require release of a levy that was issued and served prior to the offer submission. The taxpayer's circumstances should be considered when making a determination to release a levy or keep it in place while the offer is pending.
6. The prohibition on levy while an offer is pending does not extend to filing notices of federal tax lien. See Section 4.7 for a discussion of filing notice of federal tax lien while an offer is pending.

5.8.3.5 (11-30-2001) **Offers Submitted Solely to Delay Collection**

1. When it is determined that an offer is submitted "solely to delay" collection, the offer can be returned to the taxpayer without further consideration.
2. The offer group manager has delegated authority to approve returns based on solely to delay collection.
3. The term "solely to delay collection" means an offer that was submitted for the sole purpose of avoiding or delaying collection activity.
4. An offer is considered as acting to delay collection activity, unless doubt as to liability or special circumstances exist, when:
 - A. An offer is re-submitted after a return or rejection where the new offer is essentially the same as the prior returned or rejected offer or, the new offer fails to address problems or defects of which the taxpayer was previously advised during the prior offer investigation,
 - B. An offer is re-submitted after a prior offer has been accepted and the prior offer has been defaulted, or
 - C. A collection determination has been made and the offer is clearly submitted to avoid a specific enforcement action.
5. An offer is not considered submitted "solely to delay collection" just because there is an imminent CSED issue or because an offer has been investigated and rejected, and the taxpayer exercises their appeal rights.

5.8.3.5.1 (11-30-2001)

Solely to Delay Collection Determinations

1. When a taxpayer resubmits an offer that is not "materially" different from a previous offer that was considered and either rejected with appeal rights or returned, the offer may be returned as solely to delay collection. If the re-submission reflects an amount that is substantially similar to, the same, or less than the prior offer, it is not considered materially different, unless the taxpayer's financial situation has changed or the taxpayer has indicated special circumstances that were not previously considered.
 - A. When the amount reflected on the re-submission is substantially similar to, or less than the prior offer, it is not considered materially different, unless:
 - The taxpayer's financial situation has changed, or
 - The taxpayer has raised special circumstances that were not considered during the prior offer investigation.
 - B. A change in the taxpayer's financial situation may include: (not all inclusive)
 - A change in employment and/or income,
 - A change in marital status effecting future ability to pay or ownership of assets,
 - The loss of an asset that was included in the original offer investigation,
 - A change in circumstances that would effect allowable expenses and future ability to pay.
2. When the Service has accepted an offer in compromise and the taxpayer subsequently defaults on the offer agreement and then files a new offer within one year of the default, the offer may be returned as solely to delay collection unless the new offer indicates any of the following:
 - The current offer submission reflects potential special circumstances,
 - The default condition has been resolved, or
 - The re-submission is materially different from the prior accepted and defaulted offer. See paragraph (1) for a discussion of "materially" different.
3. In some situations it may be determined that an offer is submitted as solely to delay collection when no prior offer has been submitted. When a collection employee has determined that the next action necessary is to enforce collection against a specific asset through levy or seizure, but the taxpayer files an offer to delay this enforcement activity the offer may be returned as "solely to delay collection" if all of the following elements exist:
 - The taxpayer's equity in assets and/or monthly ability to pay, based on income and expense analysis, has clearly been determined,
 - The taxpayer has a clear and present ability to pay substantially more than the offer amount,
 - The taxpayer has been informed of the collection determination and proposed enforcement action prior to submitting the offer,

- o The offer submitted reflects an amount substantially less than what could be collected through the specific planned enforcement action, and,
- o Special Circumstances do not exist.

NOTE:

A determination that an offer is submitted solely for the purpose of delaying collection should be apparent to an impartial observer. There must be a clear indication that the offer meets the criteria defined in the section.

5.8.3.5.2 (11-30-2001) Examples and Discussion

1. The following are examples of offers considered submitted "solely to delay collection" based on re-submission after a prior rejection or return:

Example 1: A taxpayer re-submits an OIC that was rejected because the amount offered was \$10,000 below the reasonable collection potential. The original amount offered was \$10,000. The current amount offered is \$10,100. There is no change in financial condition, nor are special circumstances evident.

Example 2: A taxpayer submits an OIC for \$3,000 to be paid within 90 days of acceptance. A prior offer was submitted for \$10,000 to be paid within 90 days. The investigation of the initial offer submission resulted in the offer being rejected with appeal rights. During that offer investigation it was determined that a piece of property was transferred to a non-liable spouse for no consideration and that a clear transferee issue exists. The value placed on the transferee was \$30,000, and was included in reasonable collection potential. The taxpayer failed to request a timely appeal on the rejected offer. The investigation has failed to surface any special circumstances on the account.

Example 3: During initial processing of an offer in compromise, AOIC indicates there have been three offers submitted by the taxpayer over the past 18 months. All three were returned for failure to provide requested CIS information. The closed return file indicates the taxpayer was asked to provide a financial statement for a closely held corporation, which the taxpayer is president of and owns 75% of the interest in. A Form 433-B for this corporation was requested during the offer investigation. The offer specialist clearly documented in the file the taxpayer's position and interest in this corporation. The request was clear and specific and the taxpayer refused to provide this information claiming the IRS has no right to place a value on his corporation when determining his ability to pay on personal tax liabilities. The newly submitted offer package does not include a Form 433-B for the corporation and the Form 433-A indicates the same corporation is the taxpayer's current employer.

Example 4: An offer is submitted for \$30,000 payable within 90 days of acceptance. Research of AOIC indicates this is a second submission. A prior offer was submitted for \$20,000 payable within 90 days of acceptance. The original offer was rejected with appeal rights, the taxpayer filed a timely appeal, and Appeals sustained the rejection. A review of the prior offer file indicates the taxpayer has the ability to full pay the outstanding liability through an installment agreement. The total liability is for \$40,000. A review of the financial information indicates the taxpayer still has the ability to full pay the liability, based on monthly payment ability, within the remaining CSED period. The original offer was submitted 18 months ago and there have been no monthly payments made towards the liability during this period. There is no change indicated on the financial statement, except the taxpayer has a new employer. The taxpayer's income has remained the same. There are no special circumstances indicated.

2. The following are examples of offers considered "solely to delay collection" based on re-submission after a prior default within the past year:

Example 1: The taxpayer had an offer accepted 18 months ago for \$20,000 to be paid within 90 days of acceptance. The taxpayer paid \$5,000 within 120 days of acceptance and has failed to pay the balance of offer funds. The offer was defaulted for failure to meet the terms of the offer. A new offer is now submitted for \$10,000 to be paid within 90 days of acceptance. Financial statements submitted with the new offer show no decrease in ability to pay and special circumstances were not cited and/or are not evident.

Example 2: The taxpayer had an offer accepted for \$10,000 paid within 90 days of acceptance. Subsequent to the acceptance the taxpayer incurred 2 additional years of income tax liabilities. The offer was defaulted because the taxpayer did not resolve the two additional liabilities. A new offer has been submitted for \$5,000, that includes the

prior offer periods and the two new periods. There are no special circumstances.

3. The following are examples of offers considered "solely to delay collection" based on a prior collection analysis and determination of ability to pay:

Example 1: Taxpayer owes \$500,000. An offer is submitted for \$15,000. The CIS, as submitted by the taxpayer, indicates the taxpayer has recently been fired from his job where he had been earning \$200,000 a year. CIS also reflects a personal residence with a FMV of \$1.5 million and outstanding mortgage of \$750,000 leaving equity of \$750,000; and a piece of property owned free and clear valued at \$60,000; and a large boat with a value of \$140,000 which is unencumbered. Final demand has been made and a collection employee has indicated to the taxpayer that a NFTL will be filed and possible enforcement action if the taxpayer does not full pay the liability. The investigation has shown that there are no special circumstances to be considered.

Example 2: Taxpayers owe joint 1040 liability for 1997 of \$139,854. Offer submitted for \$250.00. Both taxpayers are self-employed: Husband is a painter and wife is a real estate sales person. They have no future income potential. They own a vacant lot valued at \$14,700, a personal residence valued at \$177,500, six automobiles and two horse trailers valued at \$20,775. Their total RCP is \$127,191 based on equity in the assets listed above. The balance due period has been in active collection inventory, before the offer submission. The collection employee has advised the taxpayer to secure a loan on their equity or levy action would be initiated. Taxpayer has refused to pay more than the proposed \$250 and has submitted the offer instead of making payment to their tax liability. The investigation has shown that there are no special circumstances to be considered.

Example 3: Taxpayer owes \$32,000 and submits an offer for \$100. RCP is based on monthly ability to pay of \$400. Earliest CSED's are 12/20/2003, which is where the majority of the liability is assessed. Taxpayer has been advised of the CIS analysis and monthly ability to pay, but he submitted the offer for \$100. His reason is that he wants his tax liability "forgiven" and all he wants to pay is \$100. The investigation has shown that there are no special circumstances to be considered.

5.8.3.5.3 (11-30-2001)

Procedures for Return of offers submitted Solely to Delay Collection

1. The determination that an offer was submitted solely to delay collection may be made immediately after the offer is determined processable, or at any time during the offer investigation that the facts support the determination.
2. The determination that an offer is submitted after a prior reject or default can be determined by reviewing records on AOIC and by reviewing IDRS transactions:

If ...	Then...
AOIC indicates that prior offer records exist	Determine the type of disposition used to close the prior offer submissions.
AOIC indicates the prior offer submission was rejected with appeal rights	The re-submission requires review to determine if it was submitted solely to delay collection.
AOIC indicates the prior offer record was accepted	Review the AOIC history screen and IDRS transactions to determine if the prior offer was defaulted within the past year.
The prior offer was defaulted within the past year	The re-submission requires review to determine if it was submitted solely to delay collection.

- To determine if the re-submission is materially different from the prior rejected or defaulted offer:

- A. Request the prior offer closed file from the appropriate office.
 - Previously rejected offer closed files are located in the office where the offer was concluded.
 - Previously defaulted offer files are maintained in the Service Center OIC Unit that services the office where the offer was concluded.
- B. Compare the information contained in the original offer file with the re-submitted offer package to determine if the offer was submitted solely to delay collection

- When an offer employee believes that an offer was submitted solely to delay collection, they will complete Form 657, Revenue Officer Report and submit it to their group manager. If the group manager concurs, it will be closed immediately as a return. Forward a copy of the Form 657 to the appropriate revenue officer group manager to inform why the offer was not investigated and that the balance due accounts are being referred for appropriate collection activity. Coordinate with the revenue officer group manager to be certain no levy is issued until after the return letter is sent.
- When a revenue officer believes that an offer is submitted solely to delay collection, they will complete a Form 657, Revenue Officer Report, and submit it to their group manager. If the revenue officer group manager concurs, they will forward the Form 657 to the offer group manager. If the offer group manager concurs, they will close the offer as a return. Coordinate with the revenue officer group manager to be certain no levy is issued until after the return letter is sent.
- When the investigating employee determines an offer was submitted solely to delay collection, regardless of the status of the balance due periods prior to the offer submission, the periods should be placed into the appropriate collection status to ensure that the necessary collection actions are initiated. If the balance due accounts were in status 26 prior to the offer submission, the balance due accounts should be re-assigned to the field for assignment. If the balance due periods were not in status 26 prior to the offer submission, discuss the case with the field group manager to determine if assignment to the field is appropriate. If the field group manager does not assign the case into inventory, the balance due periods should be placed into ACS status. These accounts should not be allowed to systemically proceed to notice status.
- Form 657 serves to establish coordination between field group and offer group and to provide case documentation regarding these determinations, and to ensure collection action is not pursued until the return is approved.
- For cases that have issues pending in other functions, also forward a copy of Form 657 and coordinate with them to ensure they are aware collection has resumed.
- Offers that are returned based on re-submission after a prior reject, return or defaulted offer are **not** subject to independent administrative review. Offers that are returned based on a determined that the offer was submitted solely to delay an enforcement action **are subject to independent administrative review** .

5.8.3.6 (11-30-2001) Procedures

1. An offer is considered pending when a delegated IRS official signs and dates Form 656 in the appropriate section. This signature is the official offer pending date. This date must match with the pending date entered on AOIC and with the transaction code 480 date when it posts to IDRS.
2. Review the Form 656 and other documents the taxpayer submitted and research IDRS to determine:

If the offer...	Then...
Is processable	<ol style="list-style-type: none"> 1. Sign Form 656 as pending, 2. Add to AOIC as a "Y" "Processable", 3. Complete MFT and Terms screens on AOIC. All information on the MFT screen must be completed. 4. Send a combo letter acknowledging receipt of the offer. <p>NOTE: The date the Form 656 is signed as pending and the date the combo letter is mailed should be the same date.</p>

Is not processable	<ol style="list-style-type: none"> 1. Do not sign the Form 656 as pending.. 2. Add to AOIC as a "N" "Not Processable". 3. Send return letter, enclose the original F-656, any offer deposit sent with the offer, and any other documents the taxpayer provided. 4. AOIC will not generate the input of TC 480 and the periods will remain in their prior status. 5. Close the offer on AOIC as a return.
Is processable but, needs perfecting prior to an investigation.	<ol style="list-style-type: none"> 1. Sign the Form 656 as pending. 2. Add to AOIC as a "Y" "Processable". 3. Input the date the Form 656 is signed on AOIC. 4. Complete MFT and Terms screens on AOIC. 5. Send combo letter for items that need perfecting prior to an investigation and a follow-up letter, if necessary. 6. AOIC will systemically input TC 480 and status 71.
Is not perfected	<ol style="list-style-type: none"> 1. Generate a return letter on AOIC. 2. Close offer on AOIC as a return. 3. Send the return letter with the original F-656. 4. AOIC will systemically input TC 481 and accounts will go to status 58/22.
Is processable but needs perfection prior to acceptance, or is processable and does not need to be perfected	<ol style="list-style-type: none"> 1. Sign the Form 656, as pending. 2. Add to AOIC as "Y" "Processable". 3. Complete MFT and Terms screens on AOIC. 4. AOIC will systemically input TC 480 and status 71. 5. Send Combo letter acknowledging receipt of the offer. 6. Identify imminent CSED periods. 7. Assign the case to the investigating employee.
Is submitted solely to delay collection or collection is in jeopardy	<ol style="list-style-type: none"> 1. Generate a return letter on AOIC. 2. Send a return letter, use the appropriate standard paragraph with the original F-656. 3. Close the offer on AOIC as a return. 4. AOIC will systemically input TC 481 and accounts will go to status 58/22.
Imminent CSED periods are included in the offer	Determine if expeditious handling of the offer investigation is warranted. (See Section 3.3)
The accounts are in status 60 or status 53	<ol style="list-style-type: none"> 1. Remove the "Y" on each tax period on the MFT screen so the accounts remain in status 60 or 53. 2. AOIC will systemically input TC 480.
The taxpayer defaults the installment agreement	<ol style="list-style-type: none"> 1. After the accounts go to status 64 indicating the default notice has been sent, place a "Y" on each tax period on the MFT screen. 2. AOIC will systemically input status 71.

5.8.3.7 (11-30-2001)

Extension of the Statutory Period for Collection

- For offers pending prior to 1/1/2000, the taxpayer executed a waiver of the statutory period for collection, extending the collection statute for the period the offer was under consideration and for an additional one year. For offers accepted prior to 1/1/2000 this waiver of the statutory period for collection also includes the period of time the terms of an accepted offer in compromise are still in effect.

NOTE:

RRA 98 imposed a limitation for offers subject to the waiver of collection statute. The waiver cannot extend the CSED beyond either 12/31/2002, or the original CSED, whichever is later.

- For offers submitted or pending after 12/31/1999, the statutory period for collection is suspended, by operation of law, while the offer is pending, for 30 days following rejection of an offer, and for the period the rejection is being considered in Appeals. This suspension of the collection statute is effective through 12/20/2000.
- For offers pending prior to 1/1/2000 that were still pending on or after 1/1/2000, the collection statute is extended by both the waiver period (see paragraph (1)) and by the suspension period (see paragraph (2)).

NOTE:

The limitation on the waiver of collection statute applies to these offer periods.

- The Community Renewal Tax Relief Act of 2000 was signed into law on 12/21/2000. This act eliminated the suspension of the statutory period for collection, effective on the day of enactment (12/21/2000).
- Both the waiver of the statutory period for collection and the suspension of the statutory period for collection apply only to the individuals included in the offer submission.
- For income tax liabilities, identify which taxpayer the suspension of the statutory period for collection applies to by marking the appropriate code "P" primary, "S" secondary, "B" both, in red ink on the far right side of the date line in Item 10. Example: If the primary (P) taxpayer submits an offer that includes joint liability periods, the statutory period for collection is not suspended or waived for the secondary (S) taxpayer included on the tax assessment.
- To determine what period the Collection Statute Expiration Date (CSED) is extended:

If...	And...	Then...
The offer was submitted after December 31, 1999	Accepted prior to 12/21/2000	The CSED is extended for the period the offer was pending. Upon acceptance, the statute begins running again.
The offer was submitted after December 31, 1999	Accepted after 12/20/2000	The CSED is extended for the period the offer was pending through 12/20/2000. On 12/21/2000 the CSED begins running again.
The offer was submitted after 12/31/1999	Rejected, taxpayer does not appeal	The CSED is extended for the period the offer was pending plus 30 days while the taxpayer is granted appeal rights. The CSED begins running again the date the 30 days expires of on 12/21/2000, whichever is earlier.
The offer was submitted after 12/31/1999	Rejection sustained in appeals	The CSED is extended for the period the offer was pending plus the period while Appeals considers the rejection. The CSED begins running again on 12/21/2000 or on the date Appeals closes the offer, whichever is earlier.

The offer was pending prior to January 1, 2000	Accepted prior to 1/1/2000	The CSED is extended by the waiver period which is the time the offer was pending plus one extra year plus the time the offer terms are pending, This period of extension is limited to 12/31/2002 or the original CSED, whichever is later.
The offer was pending prior to 1/1/2000	Accepted after 12/31/1999 but prior to 12/21/2000	The CSED is extended for the waiver period, from pending date thru 12/31/1999 + 1 year, except this extension is limited to 12/31/2002 or the original CSED, + the suspension period while the offer was pending from 1/1/2000 to the date of acceptance. Upon acceptance the CSED begins running again.
The offer was pending prior to 1/1/2000	Accepted after 12/20/2000	The CSED is extended for the waiver period (during the period the offer was pending + 1 year), limited to 12/31/2002 or the original CSED + the suspension period from 1/1/2000 through 12/20/2002. The CSED begins running again on 12/21/2000.
Multiple offers were submitted prior to 1/1/2000	Multiple rejections	The CSED is extended for the period each offer was pending plus only one extra year.
The offer was submitted prior to 1/1/2000 and was still pending after 1/1/2000	Original CSED was beyond December 31, 2002	The CSED is only extended by the suspension period while the offer was pending after 1/1/2000 with no extension for the waiver period prior to 1/1/2000 because the CSED was already beyond December 31, 2002.

- Collection statute expiration dates can be extended by various other actions on a tax period, such as the filing of bankruptcy, execution of a Form 900 Waiver, or other types of litigation. Rules extending the CSED under such conditions must be applied, as appropriate. If necessary consult the appropriate function to determine the effect of these extensions on the calculation of current CSED.

Exhibit 5.8.3-1 (11-30-2001)

Statute Computations for Offers That Were Submitted After December 31, 1999

Example 1, Acceptance.	
1. CSED in effect before the offer was proposed	May 15, 2004
2. Date the Form 656 is accepted for processing	May 15, 2000
3. Date the offer is accepted	October 15, 2000
4. Time the offer was pending	

17 days to May 31, 2000 30 days to June 30, 2000 31 days to July 31, 2000 31 days to August 31, 2000 30 days to September 30, 2000 14 days to October 14, 2000 153 days total	
5. The new CSED is	October 15, 2004
prior CSED May 15, 2004 16 days to May 31, 2004 30 days to June 30, 2004 31 days to July 31, 2004 31 days to August 31, 2004 30 days to September 30, 2004 15 days to October 15, 2004 153 days total	
6. When the offer was proposed, we had four years remaining on the CSED to collect the tax. Upon acceptance, we still have the same amount of time to collect the offer amount.	

Exhibit 5.8.3-1 (11-30-2001)**Statute Computations for Offers That Were Submitted After December 31, 1999**

Example 2, Rejection Taxpayer Does Not Exercise Appeal Rights.	
1. CSED in effect before the offer was proposed	May 15, 2004
2. Date the Form 656 is accepted for processing	May 15, 2000
3. Date the offer is rejected with appeal rights	October 15, 2000
4. Date the 30-day appeal rights expire	November 14, 2000
5. Time the offer was pending	
17 days to May 31, 2000 30 days to June 30, 2000 31 days to July 31, 2000 31 days to August 31, 2000 30 days to September 30, 2000 31 days to October 31, 2000 14 days to November 14, 2000 183 days total	
6. The new CSED is	November 15, 2004
prior CSED May 15, 2004 16 days to May 31, 2004 30 days to June 30, 2004 31 days to July 31, 2004 31 days to August 31, 2004 30 days to September 30, 2004 31 days to October 31, 2004 15 days to November 15, 2004 183 days total	
7. When the offer was proposed, we had four years remaining on the CSED to collect the tax. Upon rejection and after the 30 days to allow for appeal rights, we still have the same amount of time to collect the tax.	

Exhibit 5.8.3-1 (11-30-2001)
Statute Computations for Offers That Were Submitted After December 31, 1999

Example 3, Rejection Sustained by Appeals.	
1. CSED in effect before the offer was proposed	May 15, 2004
2. Date the Form 656 is accepted for processing	May 15, 2000
3. Date the offer was rejected with appeal rights	October 15, 2000
4. Date Appeals sustained the rejection	December 15, 2000
5. Time the offer was pending	
17 days to May 31, 2000 30 days to June 30, 2000 31 days to July 31, 2000 31 days to August 31, 2000 30 days to September 30, 2000 31 days to October 31, 2000 30 days to November 31, 2000 14 days to December 14, 2000 214 days total	
6. The new CSED is	December 15, 2004
prior CSED May 15, 2004 16 days to May 31, 2004 30 days to June 30, 2004 31 days to July 31, 2004 31 days to August 31, 2004 30 days to September 30, 2004 31 days to October 31, 2004 30 days to November 30, 2004 15 days to December 15, 2004 214 days total	
7. When the offer was proposed, we had four years remaining on the CSED to collect the tax. Upon rejection and after Appeals sustains the rejection, we still have the same amount of time to collect the tax.	

Exhibit 5.8.3-2 (11-30-2001)
Statute Computations for Offers That Were Pending on January 1, 2000

Example 1, Acceptance.	
1. CSED in effect before the offer was proposed	October 1, 2000
2. Date the Form 656 waiver is signed	October 1, 1999
3. Date the offer is accepted	January 16, 2000
4. Time the offer was pending	
31 days to October 31, 1999 30 days to November 30, 1999 31 days to December 31, 1999 92 days total thru December 31, 1999 15 days to January 15, 2000 15 days total after December 31, 1999	
5. The new CSED is	January 16, 2002

prior CSED October 1, 2000
 30 days to October 31, 2000
 30 days to November 30, 2000
 31 days to December 31, 2000
 1 days to January 1, 2001
 92 days total
 1 extra year for the extension to January 1, 2002

15 days to January 16, 2002
 15 days total

6. When the offer was proposed, we had one year remaining on the CSED to collect the tax. Upon acceptance, we still have the same amount of time to collect the offer amount plus another one year for the extension provided by the Form 656 waiver. The CSED is not extended for the time allowed for the payment terms or the terms of a collateral agreement because it was accepted after 12/31/1999.

Exhibit 5.8.3-2 (11-30-2001)

Statute Computations for Offers That Were Pending on January 1, 2000

Example 2, Acceptance Form 656 Waiver Extension is Limited by Section 3461 of RRA 98 to December 31, 2002

1. CSED in effect before the offer was proposed	October 1, 2001
2. Date the Form 656 waiver is signed	October 1, 1999
3. Date the offer is accepted	January 16, 2000
4. Time the offer was pending	
<p>31 days to October 31, 1999 30 days to November 30, 1999 31 days to December 31, 1999 92 days total thru December 31, 1999</p> <p>15 days to January 15, 2000 15 days total after December 31, 1999</p>	
5. The new CSED is	January 16, 2003
<p>prior CSED October 1, 2001 30 days to October 31, 2001 30 days to November 30, 2001 31 days to December 31, 2001 1 day to January 1, 2002 92 days total 1 extra year for the extension to January 1, 2003</p> <p>15 days to January 16, 2003 15 days total</p>	
<p>6. When the offer was proposed, we had two years remaining on the CSED to collect the tax. Upon acceptance, we still have the same amount of time to collect the offer amount plus another one year for the extension provided by the Form 656 waiver, except the waiver is limited by Section 3461 of RRA 98 to December 31, 2002.</p>	

Exhibit 5.8.3-2 (11-30-2001)
Statute Computations for Offers That Were Pending on January 1, 2000

Example 3, Acceptance Form 656 Waiver Extension is Limited by Section 3461 of RRA 98 to the Pending Time

- | | |
|---|------------------|
| 1. CSED in effect before the offer was proposed | October 1, 2005 |
| 2. Date the Form 656 waiver is signed | October 1, 1999 |
| 3. Date the offer is accepted | January 16, 2000 |
| 4. Time the offer was pending | |

31 days to October 31, 1999
 30 days to November 30, 1999
 31 days to December 31, 1999
 92 days total thru December 31, 1999

15 days to January 15, 2000
 15 days total after December 31, 1999

- | | |
|--------------------|------------------|
| 5. The new CSED is | October 16, 2005 |
|--------------------|------------------|

prior CSED October 1, 2005
 30 days to October 31, 2005
 30 days to November 30, 2005
 31 days to December 31, 2005
 1 day to January 1, 2006
 92 days total
 no extra year for the extension

15 days to January 16, 2006
 15 days total

6. When the offer was proposed, we had six years remaining on the CSED to collect the tax. The waiver of CSED and the suspension of CSED, for the pending offer time prior to 1/1/2000 are limited by Section 3461 of RRA 98. The limitation is to 12/31/2002 or the original CSED, whichever is later. In this example the original CSED is 10/1/2005. The CSED is suspended by the time the offer was pending from 1/1/2000 until acceptance.

Exhibit 5.8.3-2 (11-30-2001)
Statute Computations for Offers That Were Pending on January 1, 2000

Example 4, Rejection Form 656 Waiver Extension is Limited by Section 3461 of RRA 98 to December 31, 2002.	
1. CSED in effect before the offer was proposed	October 1, 2001
2. Date the Form 656 waiver is signed	October 1, 1999
3. Date the offer is rejected	January 16, 2000
4. Date the 30-day appeal rights expire	February 14, 2000
5. Time the offer was pending	
31 days to October 31, 1999 30 days to November 30, 1999 31 days to December 31, 1999 92 days total thru December 31, 1999 31 days to January 31, 2000 14 days to February 14, 2000 45 days total after December 31, 1999	
6. The new CSED is	February 15, 2003

prior CSED October 1, 2001
 30 days to October 31, 2001
 30 days to November 30, 2001
 31 days to December 31, 2001
 1 day to January 1, 2002
 92 days total
 1 year extra for the extension to January 1, 2003
 is limited to December 31, 2002

30 days to January 31, 2003
 15 days to February 15, 2003
 45 days total

7. When the offer was proposed, we had two years remaining on the CSED to collect the tax. Upon rejection and after the 30 days to allow for appeal rights, we still have the same amount of time to collect the tax plus another one year for the extension provided by the Form 656 waiver, except the extra year is limited by Section 3461 of RRA 98 to December 31, 2002.

Exhibit 5.8.3-3 (11-30-2001)

Statute Computations for Offers That Were Closed Prior to January 1, 2000

Example 1, Acceptance.

1. CSED in effect before the offer was proposed	October 1, 1999
2. Date the Form 656 waiver is signed	October 1, 1998
3. Date the offer is accepted	January 16, 1999
4. Time the offer was pending	
31 days to October 31, 1998 30 days to November 30, 1998 31 days to December 31, 1998 15 days to January 15, 1999 107 days total	
5. Payment terms are 2 years; date the last payment is due	January 15, 2001
6. Assuming the payments are made timely, the new CSED is	December 31, 2002
prior CSED October 1, 1999 30 days to October 31, 1999 30 days to November 30, 1999 31 days to December 31, 1999 16 days to January 16, 2000 107 days total	
2 years extra for the payment terms to January 16, 2002	
1 year extra for the extension to January 16, 2003	
7. When the offer was proposed, we had one year remaining on the CSED to collect the tax. Upon acceptance, we still have the same amount of time to collect the offer amount plus two years for the payment terms, plus another one year for the extension provided by the Form 656 waiver, except the extensions are limited by Section 3461 of RRA 98 to December 31, 2002.	

Exhibit 5.8.3-3 (11-30-2001)
Statute Computations for Offers That Were Closed Prior to January 1, 2000

Example 2, Rejection.	
1. CSED in effect before the offer was proposed	October 1, 1999
2. Date the Form 656 waiver is signed	October 1, 1998
3. Date the offer is rejected	January 16, 1999
4. Time the offer was pending	
31 days to October 31, 1998 30 days to November 30, 1998 31 days to December 31, 1998 15 days to January 15, 1999 107 days total	
5. The new CSED is	January 16, 2001
prior CSED October 1, 1999 30 days to October 31, 1999 30 days to November 30, 1999 31 days to December 31, 1999 16 days to January 16, 2000 107 days total	
1 year extra for the extension to January 16, 2001	
6. When the offer was proposed, we had one year remaining on the CSED to collect the tax. Upon rejection, we still have the same amount of time to collect the tax plus another one year for the extension provided by the Form 656 waiver. But, we do not get another 30 days for the time when we waited for the taxpayer to exercise their appeal rights.	

Exhibit 5.8.3-3 (11-30-2001)
Statute Computations for Offers That Were Closed Prior to January 1, 2000

Example 3, Multiple Rejections.	
1. CSED in effect before the offer was proposed	July 15, 1995
2. Date the Form 656 waiver is signed	April 8, 1993
3. Date the offer is rejected	July 3, 1993
4. Time the first offer was pending	
23 days to April 30, 1993 31 days to May 31, 1993 30 days to June 30, 1993 2 days to July 2, 1993 86 days total	
5. The first extension on the CSED goes to	October 9, 1996
prior CSED July 15, 1995 16 days to July 31, 1995 31 days to August 31, 1995 30 days to September 30, 1995 9 days to October 9, 1995 86 days total	
1 year extra for the extension to October 9, 1996	

6. Date the Form 656 waiver is signed on the second offer	September 6, 1993
7. Date the second offer is rejected	January 3, 1994
8. Time the second offer was pending	
25 days to September 30, 1993 31 days to October 31, 1993 30 days to November 30, 1993 31 days to December 31, 1993 2 days to January 2, 1994 119 days total	
9. The new CSED is	February 2, 1997
prior CSED October 9, 1996 22 days to October 31, 1996 30 days to November 30, 1996 31 days to December 31, 1996 31 days to January 31, 1997 2 days to February 2, 1997 119 days total	
No extra year for the second extension	
10. When the offer was proposed, we had two years three months and seven days remaining on the CSED to collect the tax. Upon both rejections, we have the same amount of time to collect the tax plus only one year for the extension provided by the Form 656 waivers. We do not get another 60 days for the two times when we waited for the taxpayer to exercise their appeal rights.	

Exhibit 5.8.3-3 (11-30-2001)**Statute Computations for Offers That Were Closed Prior to January 1, 2000**

Example 4, Rejection with Multiple Waivers.	
1. Assessment date	November 15, 1994
2. CSED	November 15, 2004
3. Form 900 extends the CSED to (not in conjunction with an installment agreement)	December 31, 2006
4. Date the Form 656 waiver is signed	May 3, 1999
5. Date the offer is rejected	September 3, 1999
6. Time the offer was pending	
29 days to May 31, 1999 30 days to June 30, 1999 31 days to July 31, 1999 31 days to August 31, 1999 2 days to September 2, 1999 123 days total	
7. The new CSED would have been	May 3, 2008
prior CSED December 31, 2006 31 days to January 31, 2007 28 days to February 28, 2007 31 days to March 31, 2007 30 days to April 30, 2007 3 days to May 3, 2007 123 days total 1 year extra for the extension would be May 3, 2008	

8. Actual CSED is still

November 15, 2004

9. Both a prior Form 900 and the Form 656 extensions are barred by Section 3461 of RRA 98 because they would have extended the CSED beyond December 31, 2002. But, the original CSED is still in effect beyond December 31, 2002. We do not get an extension of the CSED for the time when the offer was pending.

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in Compromise Sec. 3 Processability (11-30-2001)

[IRS Privacy and Security Policy](#) | [Contact Us](#)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 4 Investigation

Contents

- [5.8.4 Investigation](#)
 - [5.8.4.1 Overview](#)
 - [5.8.4.2 Initial Contact and Follow-up Action Time Frames](#)
 - [5.8.4.3 Returning the Offer](#)
 - [5.8.4.4 Doubt as to Liability](#)
 - [5.8.4.5 Doubt as to Collectibility](#)
 - [5.8.4.5.1 Components of Collectibility](#)
 - [5.8.4.5.2 Source of Offer Funds](#)
 - [5.8.4.6 Special Circumstances](#)
 - [5.8.4.7 Notice of Federal Tax Lien Filing](#)
 - [5.8.4.8 Discharge and Subordination Requests](#)
 - [5.8.4.9 Coordination With Other Compliance Activities](#)
 - [5.8.4.9.1 Combination Offers](#)
 - [5.8.4.9.2 Open Examinations, Under-reporter Cases, Amended or Duplicate Filed Returns](#)
 - [5.8.4.9.3 Innocent Spouse Claims](#)
 - [5.8.4.9.4 Partners Involved in a TEFRA Proceeding](#)
 - [5.8.4.9.5 Cases Pending in Appeals](#)
 - [5.8.4.9.6 Offer Referral from Appeals](#)
 - [5.8.4.9.7 Open Criminal Investigations](#)
 - [5.8.4.10 Procedures for Certain Types of Taxpayers and Tax Liabilities](#)
 - [5.8.4.10.1 Streamlined Investigations](#)
 - [5.8.4.10.2 In-business Taxpayers](#)
 - [5.8.4.10.3 Corporate Trust Fund Liabilities](#)
 - [5.8.4.10.4 Excise Tax Liabilities](#)
 - [5.8.4.10.5 Partnership Liabilities](#)
 - [5.8.4.10.6 Child Support Obligation Liabilities](#)
 - [5.8.4.11 Negotiation](#)
 - [5.8.4.12 Amending Form 656](#)
- [Exhibit 5.8.4-1 Asset/Equity Table \(AET\)](#)

- [Exhibit 5.8.4-2 Income/Expense Table \(IET\)](#)
- [Exhibit 5.8.4-3 Offer in Compromise Recommendation Report](#)

5.8.4.1 (11-30-2001)

Overview

1. Besides analyzing the taxpayer's financial condition, which is covered in the next chapter, there are a number of other factors that must be considered for a complete investigation. This chapter provides instructions to the investigating employee for timely progress in the investigation and what to do if the taxpayer falls out of compliance or fails to cooperate with the investigation. Parameters are established for considering each possible basis for compromise. Also, some types of taxpayers or liabilities pose unique complications and coordination must be made with other compliance activities affecting the accounts.

5.8.4.2 (11-30-2001)

Initial Contact and Follow-up Action Time Frames

1. Investigating employees are required to make contact with the taxpayer or their representative within 45 days from the assignment of an offer investigation. This contact may be accomplished with correspondence, a telephone conversation, an office visit or a field visit. Letters available on AOIC, such as the combo letter or a document request letter (L-2844) are appropriate for initial contact when they request an action of the taxpayer.
 - A. Use of the AOIC Combo letter for the sole purpose of acknowledging receipt of the offer in compromise does **not** meet the initial contact requirement.
 - B. Use of the AOIC Combo letter to request perfection of the offer submission and/or to request specific items necessary to verify the taxpayer's financial statement is considered initial contact.
 - C. If correspondence is the method of initial contact, the correspondence must contain the name, phone number and badge number of the investigating employee.
2. During the first conversation with a taxpayer or their representative, verify they have received Pub 1 and Pub 594. If the first conversation is with a representative, verification of the taxpayer's receipt of Pub 1 and Pub 594 must be addressed. Answer any questions the taxpayer and the representative may have to ensure they understand the taxpayer rights. These actions must be documented in the offer case history.
3. Throughout the investigation follow-up actions are required within 15 days of the taxpayer missing a deadline. Follow-up actions should be reasonable, based on the facts of the case. Generally, multiple requests for information are not required.

Examples of possible follow-up actions are:

 - Recommending the case for closure when the taxpayer has clearly failed to provide requested documents or information,
 - Personal contact when the taxpayer has made an attempt to comply with requested information, but the provided information is incomplete or unclear, or
 - Sending a follow-up letter when the investigation reveals unusual circumstances, such as illness, that may prevent the taxpayer from complying with a request or when requested information is extensive or complicated and it is reasonable to believe additional time is necessary.
4. Reasonable requests for additional time to provide requested information that are initiated by the taxpayer or authorized representative should be granted.

5.8.4.3 (11-30-2001)

Returning the Offer

1. During an offer investigation there are several situations that may result in an offer being returned to the taxpayer. An offer closed as a return is not subject to Appeal Rights.
2. If the taxpayer fails to remain in compliance with the filing of required tax returns or if an in-business taxpayer fails to make required federal tax deposits during an offer investigation, the offer may be closed as a return. A return for non-compliance is not subject to independent administrative review. The investigating employee has the authority to return an offer for these compliance issues.
3. An offer will be returned when a taxpayer files for bankruptcy during a pending offer investigation. Independent administrative review is not required for these returns.
4. Should a taxpayer fail to perfect offer documents necessary to process the offer for acceptance, the offer may be closed as a return. A return for failure to perfect an offer is not subject to independent administrative review. The investigating employee has the authority to return an offer for non-perfection.
5. Should a taxpayer fail to honor a reasonable request for information necessary to complete a full investigation, the offer may be closed as a return. A return for failure to provide requested financial information is subject to review by the Independent Administrative Reviewer. Approval authority for this type of return is the Offer Group Manager.
6. If the taxpayer fails to make required estimated tax payments during an offer investigation, the offer may be closed as a return. The offer file must contain documentation establishing non-compliance with estimated tax payment requirements:
 - A. Documentation establishing that the taxpayer is required to make estimated tax payments, includes current taxable income, amount of estimated tax payments due, and, the amount of estimated tax payments which are unpaid.
 - B. The taxpayer must have been advised of these determinations and must have been given the opportunity to become compliant with required estimated tax payments.
 - C. A return for failure to make estimated tax payments is not subject to independent administrative review.
7. Section 3 of this IRM defines offers that are submitted solely to delay collection. If the investigating employee determines that an offer was submitted solely to delay collection, during the offer investigation, the offer may be returned. Offers returned as solely to delay collection require group manager approval.
8. Offers that are returned during the offer investigation because the taxpayer has failed to comply with requests that are reasonable in nature do **not** require multiple requests of the taxpayer. Requests for an extension of time to comply with specific requests, that are reasonable based on the information requested, should be granted.
9. When an offer is returned for multiple reasons, the return letter should include all reasons for the return. If any of the reasons for returning the offer requires independent administrative review or a higher level of approval, the offer must be processed with these levels of review and approval.

5.8.4.4 (11-30-2001) **Doubt as to Liability**

1. For offers based on doubt as to liability of a Trust Fund Recovery Penalty or Personal Liability for Excise Tax, the decision to accept or reject rests primarily on a reconsideration of whether the person assessed was responsible for and willfully failed to pay over the subject tax.

NOTE:

When the liability was determined in Appeals, transfer any doubt as to liability offer to Appeals.

2. The taxpayer must offer some amount of money. An offer for zero dollars on this basis, like any other basis, is not acceptable and is subject to perfection requirements.
3. Secure the assessment file and review the information available to determine what evidence supports the assessment. Consider any information or document the taxpayer now has that was not previously considered. Refer to IRM 5.7 Trust Fund Compliance Handbook a discussion of the factors and evidence that support an assessment of this liability:

If...	Then...
No new information is available and the TFRP file supports the original assessment.	Reject the offer.
Another amount of liability is determined and the taxpayer agrees	Submit a Form 3870 to correct the assessment and secure a withdrawal of the offer. Or, recommend acceptance of the offer for the correct amount.
Another amount of liability is determined and the taxpayer still does not agree	Submit a Form 3870 to correct the assessment and recommend rejection of the offer.
The taxpayer is not liable	Abate the assessment in full and secure a withdrawal of the offer.

5.8.4.5 (11-30-2001)

Doubt as to Collectibility

- For doubt as to collectibility offers, the decision to accept or reject primarily rests on whether the amount offered reasonably reflects collection potential (RCP). RCP is defined as that amount that can legally and practically be collected from all available means, both administrative and judicial. Chapter 5 of this handbook describes in detail how to analyze the taxpayer's financial condition.
- Full consideration must also be given to the taxpayer's overall general situation including such facts as age, health, marital status, number and age of dependents, highest education or occupational training and work experience.

5.8.4.5.1 (11-01-2000)

Components of Collectibility

- The four components of collectibility are:

Component	Definition
Assets	The amount collectible from the taxpayer's net realizable equity in assets.
Future income	The amount collectible from the taxpayer's expected future income after necessary living expenses. a) For cash offers, it is the amount that is collectible over the next 48 months. b) For short term deferred offers, it is the amount collectible over the next 60 months, and c) For deferred payment offers, it is the amount that is collectible over the life of the collection statute.
Amount collectible from third parties	For example, the amount potentially recoverable by asserting a Trust Fund Recovery Penalty, assessing a transferee liability or filing a nominee or alter ego lien.
Assets or income that is available to the taxpayer but, beyond the reach of the government	For example, net realizable equity in assets outside the country, or in property held as tenants by the entirety with a not liable spouse, or the value of interest in a business entity.

5.8.4.5.2 (11-30-2001) **Source of Offer Funds**

1. Taxpayers are expected to disclose the source of their offer funds so that we are assured, in the event of an acceptance, that the funds will be available.
2. It is common for offer funds to come from a third party, especially for cash offer terms and short term deferred offer terms. Merely making a deposit of the funds is not sufficient because we must also be assured the funds are not coming from hidden assets or illegal activity.
3. When requesting disclosure of third party sources of offer funds do not unnecessarily inquire into the private finances of third parties.

5.8.4.6 (11-30-2001) **Special Circumstances**

1. To verify a taxpayer's special circumstances:
 - A. Factors establishing special circumstances under doubt as to collectibility are the same as those for economic hardship under effective tax administration. See Chapter 11 for a list (not all inclusive) of those factors.
 - B. Request documentation of the taxpayer's situation. Exercise sound judgement in determining the degree of verification necessary. For example, verification of a health problem that impacts on the taxpayer's ability to pay could be a doctor's letter; proof of retirement or unemployment could be a document showing payments from a retirement account or separation letter, etc.
 - C. When special circumstances are allowed, the amount accepted will always be less than reasonable collection potential. In the recommendation report , explain clearly the rationale for acceptance of the amount offered. The documentation must include why some or all of the equity in certain assets must be retained by the taxpayer to avoid a hardship, where the money to pay the offer amount is coming from, and any other pertinent information that indicates how the amount was determined to be acceptable.

5.8.4.7 (11-01-2000) **Notice of Federal Tax Lien Filing**

1. Regardless of the amount of the liability, make a Notice of Federal Tax Lien (NFTL) filing determination. The case file should clearly document the lien determination. If the lien determination is not to file a federal tax lien the case file should document the reason.
2. Prior to actually filing a NFTL, attempt personal contact with the taxpayer.
3. In the event a NFTL is filed and the taxpayer exercises their Collection Due Process rights, it is not necessary to delay processing the offer to wait for the outcome of the appeals hearing.

5.8.4.8 (11-01-2000) **Discharge and Subordination Requests**

1. The government is bound by the payment terms of an accepted offer in compromise. We cannot require payment of the offer amount in different terms than agreed to in the contract.
2. Requests for discharge or subordination received while an offer is pending are to be handled as follows:

If...	Then...
The discharge or subordination request is approved	Advise the taxpayer proceeds from the discharge or subordination will be deposited towards the offer. If their offer is not accepted, the proceeds will be applied to the tax liability. Before delivering the discharge or subordination, require the taxpayer to execute a Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability. In the signature block have them write the word "irrevocable". Retain the signed Form 3040 in the offer case file for use in the event the offer is returned, withdrawn or rejected.

- Requests for discharge or subordination received after an offer has been accepted but before all the payment terms have been met are to be handled as follows:

If...	Then...
The taxpayer does not intend to apply the proceeds received from the discharge or subordination to the offer amount	Deny the discharge or subordination request.
The taxpayer does intend to apply the proceeds toward the offer amount	Investigate the discharge or subordination and coordinate with Technical Support to apply the proceeds to the offer amount.

5.8.4.9 (11-30-2001)

Coordination With Other Compliance Activities

1. During the offer investigation we must be aware of and coordinate with the activities of other compliance employees.

5.8.4.9.1 (11-01-2000)

Combination Offers

1. Taxpayers may submit an offer based on doubt as to collectibility, doubt as to liability, effective tax administration or any combination of the three. During the offer investigation we will consider all bases the taxpayer indicates. However, we will determine only one basis for acceptance.
2. Collection will determine doubt as to collectibility first.
3. When there is doubt as to collectibility or doubt as to liability, effective tax administration does not apply.
4. Examination must determine doubt as to liability, when the offer submission includes the basis of doubt as to liability, before Collection can consider effective tax administration.
5. Collection will maintain controls on AOIC while coordinating with Examination. Instructions for coordinating with Examination are as follows:

If...	Then...
Collection determines to accept based on doubt as to collectibility	Accept the OIC using normal procedures. Do not send any information to Examination. It is not necessary to amend the offer to remove the reference to doubt as to liability.
Collection cannot determine reasonable collection potential because the taxpayer fails to provide requested information	Return the OIC using normal procedures. Do not send any information to Examination.
The taxpayer chooses to withdraw the doubt as to liability issue only	Secure an amended Form 656 removing the reference to doubt as to liability. Do not send any information to Examination.

<p>The taxpayer chooses to withdraw the doubt as to collectibility issue only</p>	<ol style="list-style-type: none"> 1. Secure an amended Form 656 removing the reference to doubt as to collectibility and close the offer record on AOIC as a withdrawal. 2. Input a history notation on AOIC that the offer is being sent to Examination to consider doubt as to liability. 3. Send the offer file with the amended Form 656 to Examination for consideration. <p>NOTE: Coordinate with Examination to ensure TC 480 is input indicating a jurisdiction code of 2 (Examination) immediately after the TC 482 posts to the offer periods.</p>
<p>While working doubt as to collectibility, Collection determines reasonable collection potential is greater than the amount due but there are special circumstances</p>	<p>Consider effective tax administration. It is not necessary to amend the Form 656 to show effective tax administration.</p>
<p>Collection determines that an effective tax administration could be accepted, but the taxpayer has also filed the offer under doubt as to liability</p>	<p>Send a memorandum to Examination through management channels to request an expedite investigation of the doubt as to liability issues. Attach a copy of Form 656 and any pertinent documents from the collection file.</p>
<p>While working an effective tax administration issue, Collection determines that reasonable collection potential is less than the amount due</p>	<p>Also consider the doubt as to collectibility issue including any special circumstances. It is not necessary to amend the Form 656 to show doubt as to collectibility or remove a reference to doubt as to liability or effective tax administration.</p>
<p>Collection recommends rejection based on doubt as to collectibility or effective tax administration but we need Examination's input on doubt as to liability or detriment to voluntary compliance issues</p>	<ol style="list-style-type: none"> 1. Write up a narrative report recommending rejection and forward for independent administrative review. 2. Upon the independent administrative reviewer's concurrence, issue a letter to the taxpayer advising of the reasons we are recommending rejection and that their case is forwarded to Examination to consider the doubt as to liability issue. The transfer letter on AOIC can be used for this purpose. 3. On AOIC, assign the record to 7000. 4. Send a memorandum to Examination through management channels to request an expedite investigation of the doubt as to liability or detriment to voluntary compliance issues. Attach a copy of Form 656 and any pertinent documents from the collection file.
<p>Examination determines a different amount of liability and will make an account adjustment rather than accept the offer</p>	<ol style="list-style-type: none"> 1. In their response to the memorandum, they will provide a copy of the audit change report. 2. Input TC 483 to temporarily release the -Y Freeze allowing the change to post. Then, re-input TC 480 with the prior effective date. 3. Reconsider doubt as to collectibility and/or effective tax administration issues.
<p>Examination determines to accept the offer on the basis of doubt as to liability</p>	<ol style="list-style-type: none"> 1. In their response to the memorandum they will provide copies of the acceptance report and acceptance letter. 2. Add a history entry on AOIC stating the case was accepted by Examination and close the record as accepted.

Examination determines to reject the offer on the basis of doubt as to liability	<ol style="list-style-type: none"> 1. Examination's rejection letter serves to grant the taxpayer's appeal rights on both the doubt as to collectibility and the doubt as to liability issues. 2. In their response to the memorandum they will provide copies of the rejection report and rejection letter and advise if the taxpayer has appealed the rejection. 3. Close the record as rejected - taxpayer did not exercise appeal rights or reassign the offer to appeals as appropriate.
Examination secures a withdrawal of the doubt as to liability issue or a withdrawal of the entire offer	<ol style="list-style-type: none"> 1. In their response to the memorandum they will provide the amended Form 656 or copies of the withdrawal report and withdrawal letter. 2. Reject the offer on doubt as to collectibility or close the record as withdrawn.
Examination recommends acceptance or rejection based on detriment to voluntary compliance	<ol style="list-style-type: none"> 1. In their response to our memorandum, they will advise us of the reasons. 2. For acceptances, close the OIC using normal procedures. 3. For rejections, in the open paragraph on the AOIC rejection letter describe all the reasons for rejection including Examination's. 4. For appeals, secure the audit work papers and original return from Examination before transferring the file to Appeals.

5.8.4.9.2 (11-01-2000)

Open Examinations, Under-reporter Cases, Amended or Duplicate Filed Returns

1. Review IDRS command codes, TXMODA, IMFOL, BMFOL or AMDIS to identify open or potential audits, open under-reporter cases, and amended duplicate filed returns not yet assessed. If any potential liabilities are identified, contact the employee assigned to coordinate a resolution of all the issues.

If...	Then...
<ul style="list-style-type: none"> ● An open under-reporter case exists (TC 922 without a CP 2000 process code or TC 290 or 291), ● An amended or duplicate return is identified by the presence of a TC 976 or 977 without a subsequent tax increase or decrease, or ● An open audit (includes innocent spouse claim) is identified by a Freeze code -L and/or an AMDIS record 	<p>Contact the employee assigned and determine how to best resolve the issue. The issue could be resolved by:</p> <ul style="list-style-type: none"> ● Expediting the examination case processing and assessment of the liability so it can be included in the offer. In order to expedite the examination assessment, advise the taxpayer of the audit increase and coordinate with the examination employee to secure the taxpayer's signature on the proposed audit reports. TC 483 will have to be input to temporarily release the -Y Freeze allowing the account adjustment to post. Input TC 470 with no CC in order to freeze notices. After Examination's adjustment posts, re-input TC 480 with the prior effective date and continue working the offer. ● Surveying (closing) the open audit or under-reporter case without additional examination. ● The taxpayer could withdraw the offer and resubmit it at the close of the pending examination.

The taxpayer does not agree to the proposed audit adjustment

Attempt to secure a withdrawal from the taxpayer and advise the taxpayer to resubmit the offer when the pending examination issue is concluded. If the taxpayer refuses, then the offer must be rejected with appeal rights. When soliciting a withdrawal letter from the taxpayer, the taxpayer must be advised that the prohibition on levy will end and that the periods will be placed back into the collection process, once the withdrawal is acknowledged.

NOTE:

Do not submit the offer for acceptance until all the potential assessments are resolved.

- In order to be sure that no additional liability has arisen during the investigation, double check these command codes just before submitting an acceptance recommendation for approval.

CAUTION:

The filing of an offer does not suspend the running of the 90 day period set forth in a deficiency notice.

5.8.4.9.3 (11-01-2000) **Innocent Spouse Claims**

1. When one spouse files an innocent spouse claim and the other spouse submits an offer in compromise, follow the procedures in the preceding section for coordinating open examinations.
2. When the same taxpayer simultaneously files an innocent spouse claim and an offer in compromise:
 - A. Attempt a withdrawal of the offer and forward the innocent spouse claim to Examination.
 - B. If the taxpayer does not withdraw the offer, attempt to have the taxpayer amend the doubt as to collectibility offer to a doubt as to liability offer and forward the offer and the claim to Examination.
 - C. If the taxpayer does not withdraw or amend the offer, forward the innocent spouse claim to Examination and suspend the offer investigation pending disposition of the claim.

5.8.4.9.4 (11-30-2001) **Partners Involved in a TEFRA Proceeding**

1. When an offer in compromise based on doubt as to collectibility is received from a partner associated with a Tax Equity and Fiscal Responsibility Act (TEFRA) proceeding, the service is not in a position to compromise with the partner until the litigation is settled.
2. If the taxpayer making the offer has accepted a settlement with the Service, the offer can be processed even if the litigation is continuing with other partners. If it is unclear whether the litigation has been finally resolved with respect to the taxpayer making the offer, contact Area Counsel for guidance.
3. Research IDRS command code AMDIS to identify:

If...	Then...
The Partnership Investor Control File (PICF) code on AMDIS is a five (5), it indicates that an investor with at least one open TEFRA key case linkage exists.	<ol style="list-style-type: none"> 1. Advise the taxpayer that we cannot consider an offer in compromise until all TEFRA partnership issues have been resolved. 2. Attempt to secure a withdrawal letter. If the taxpayer refuses, then the case must be rejected with appeal rights.
The PICF code is seven (7), it indicates the TEFRA case is closed. .	<ol style="list-style-type: none"> 1. Verify with Examination that the assessment was made. 2. Include the assessment in the offer.

5.8.4.9.5 (11-01-2000) Cases Pending in Appeals

1. When an offer in compromise based on doubt as to liability is pending in Appeals, they may forward a courtesy investigation to request an offer in compromise specialist determine the potential of collecting the disputed liability.
2. When an offer in compromise based on doubt as to liability, including Trust Fund Recovery Penalty (TFRP) or Personal Liability for Excise Tax, is received and the liability was determined in Appeals or any other issue is pending in Appeals, transfer the offer in compromise to Appeals.
3. If an offer based only on doubt as to collectibility is received and there is any open case pending in Appeals:
 - A. Postpone the investigation.
 - B. Notify Appeals and inquire whether there is any objection to continuing with the offer.
 - C. Appeals will respond within 30 days.
 - D. Appeals will communicate any objection by memorandum:

If...	Then...
Appeals has no objection	Complete the investigation.
The offer is acceptable	<ol style="list-style-type: none"> 1. Notify Appeals and request assessment of the liability. TC 483 may have to be input to temporarily release the -Y Freeze allowing the account adjustment to post. Input TC 470 with no CC in order to freeze notices. After the adjustment posts, re-input TC 480 with the prior effective date. 2. Include the additional liability in the offer and process for acceptance.
The offer is rejected	Notify Appeals.

5.8.4.9.6 (11-30-2001) Offer Referral from Appeals

1. During a Collection Due Process (CDP) or an Equivalent Hearing assigned to Appeals, an offer in compromise may be submitted by the taxpayer, as an alternative resolution. Appeals will retain jurisdiction over these cases, however, the determination of an acceptable offer amount may require input from Compliance.
2. Appeals will complete the initial processing and perfection requirements on offers submitted during a CDP or an Equivalent Hearing. Appeals will also complete and initial request for documentation from the taxpayer to verify the Collection Information Statement(s) (CIS), prior to requesting input from Compliance.
3. Once Appeals has completed the initial processing, perfection of the offer submission and secured documentation from the taxpayer to verify the CIS, they will send an Appeals Referral Investigation (ARI) to Compliance. The ARI from Appeals may request either a CIS analysis or an Offer in Compromise recommendation. An ARI requesting CIS analysis will be assigned to a Revenue Officer in the field office covering the taxpayer's location. An ARI from Appeals requesting an Offer in Compromise recommendation will be assigned to the Offer in Compromise Group to investigate the Offer in Compromise. The ARI requesting an Offer in Compromise recommendation will be received from Appeals with the following information provided:

- o Perfected Form 656,
 - o Required Collection Information Statements,
 - o Documents provided by the taxpayer to verify the CIS, and,
 - o Appeal Referral Investigation request on Form 2209, Other Investigation, or Form 10467,
4. An ARI from Appeals requesting an offer recommendation will be assigned to an investigating employee to complete the investigation, using normal assignment procedures. These will be controlled in inventory as an Other Investigation. (OI). Do not add the offer to AOIC as an open offer investigation. Appeals will be responsible for the input of transaction code 480. The open transaction code 520 will suspend the collection statute expiration date for all periods included on the Form 656.

NOTE:

Request for expeditious treatment of an ARI from Appeals will be based on local discussion and agreement.

5. The investigating employee will complete the offer investigation based on the procedures in IRM 5.8. If additional documentation is necessary to verify the CIS information during the investigation, the investigating employee should request the information.
6. Once the offer investigation has resulted in a determination:

If...	Then...
<p>The offer can be recommended for acceptance,</p>	<p>1. Secure an amended Form 656, if appropriate, 2. Add the offer to AOIC using the pending date on the original Form 656, 3. Complete the necessary closing reports to process an acceptance recommendation, 4. Process through normal approval authorities, 5. Once approved, mail the acceptance letter and close the offer on AOIC, as an acceptance, 6. Close the ARI back to Appeals with a copy of the Acceptance Letter, Form 7249, and closing reports.</p> <p>NOTE: Appeals will conclude the CDP file with the taxpayer regarding the disposition of the CDP or Equivalent Hearing.</p>
<p>The offer cannot be recommended for acceptance</p>	<p>1. Do not add the offer to AOIC or prepare Form 1271. 2. Complete a recommendation report discussing the facts of the investigation and the reasonable collection potential. Include IET and AET with the Recommendation Report. 3. Discuss the reasonable collection potential computation with the taxpayer and advise the taxpayer that Appeals retains jurisdiction and will make the final determination. 4. Close the ARI and send the Recommendation Report to Appeals with the original offer documents and verification. Independent Administrative Review is not required.</p>
<p>The taxpayer agrees with the results of the investigation, but cannot increase their offer.</p>	<p>Follow steps 1 through 4 above. Do not solicit a withdrawal from the taxpayer.</p>

The taxpayer has failed to provide requested verification necessary to make a determination

1. Do not add these offers to AOIC or prepare Form 1271.
2. Close the ARI back to Appeals recommending that the offer be returned for failure to provide requested CIS verification. Include a closing narrative discussing the information requested, the deadline given, and the reason the requested information is necessary to make a determination. Independent Administrative Review is not required.

- When the Appeals Referral Investigation is returned to Appeals recommending return of the offer or rejection of the offer, all original documents must be returned with the closed ARI file.
- Transmit closed ARI files to Appeals using Form 3210.

5.8.4.9.7 (11-01-2000)

Open Criminal Investigations

1. Open criminal investigations are indicated by an unreversed TC 914 or TC 916. Before making any contact with taxpayers or their representatives follow the procedures in IRM 5.1.5 and coordinate with the special agent assigned.

5.8.4.10 (11-30-2001)

Procedures for Certain Types of Taxpayers and Tax Liabilities

1. Certain types of taxpayers or liabilities require unique considerations.

5.8.4.10.1 (11-01-2000)

Streamlined Investigations

1. In order to qualify for streamlined processing, a taxpayer must meet the following criteria:
 - A. The liability must be for personal income tax, penalty assessment, or employment tax owed by out-of-business sole proprietorship only.
 - B. The aggregate liability, including accrued penalty and interest, must be \$50,000 or less
 - C. Taxpayers must be wage earners or self-employed with no present employment tax responsibility, and
 - D. Real property ownership is limited to a personal residence.
2. Generally, streamlined offers do not require as much verification as regular offers. When issuing the document request letter do not send out a blanket request. Tailor your request to each taxpayer's specific situation. The taxpayer should only be asked to provide information that is not available on IDRS or from locator services. Generally, request copies of no more than three months pays stubs (current stub with year to date figures is permissible) and no more than three months bank statements. If the CIS indicates a home mortgage or car loan, only request evidence of the precise balance due. Verification of housing and utility expense is only necessary to justify a deviation from the local standard.
3. While awaiting the reply, research IDRS and other internal locator sources such as state motor vehicle and county real estate records available in the office.
4. Field calls should not be made to evaluate streamlined offers. When internal and external locator sources are not available or the desired verification cannot be determined from researching them, request the taxpayer provide appropriate documentation, i.e., appraisals, photographs of assets, comparable sales, etc.
5. In the event complex issues arise for example, transferee, nominee or alter ego issues, determine if the offer should be excluded from streamlined processing.
6. Upon receipt of the response to the document request, analyze all information received to verify the taxpayer's financial condition. Complete an Asset/Equity Table (AET) and Income/Expense Table (IET) (**Exhibits 4-1 and 4-2**) to calculate the required reasonable collection potential. If any further information is needed, contact the taxpayer by telephone or send a follow-up letter.
7. Full credit bureau reports are required for all streamlined offer investigations prior to acceptance, as a source of financial statement verification.

8. If the offer is acceptable:
 - A. Complete the Offer in Compromise Recommendation Report (**Exhibit 4-3**) or Form 658, Offer Recommendation Sheet available as a macro on ICS. Attach the AET and IET. Occasions should be rare when a more detailed narrative report is required to adequately justify the recommendation.
 - B. Prepare Form 7249 and the acceptance letter, then submit the file for approval.
9. If the offer must be increased:
 - A. Contact the taxpayer by telephone and advise them of the amount you are willing to recommend for acceptance. Attempt to negotiate an increase in the offer amount. Review your calculations and if requested, provide a copy of the AET and IET.
 - B. If you are unable to contact the taxpayer by telephone, send a letter to request the offer be increased. Enclose the AET, IET and an amended Form 656 for the taxpayer's signature. On AOIC, the Additional Information Letter (L-2844) has an open paragraph that may be used for this purpose. Set a reasonable deadline for the taxpayer to return the amended offer. Explain the independent administrative review and appeal process.
 - C. If the taxpayer cannot or will not increase the offer to the requested amount, recommend rejection.

5.8.4.10.2 (11-30-2001) **In-business Taxpayers**

1. When an offer is accepted from an operating business, they are relieved of a significant operating expense. The effect is to grant the delinquent taxpayer an economic advantage over their competitors who are in tax compliance. As a part of an interest based negotiation, recovery of the unpaid tax amount is a significant issue. The actual decision, just like with other types of taxpayers, is based on the prospects of future compliance and reasonable collection potential.

5.8.4.10.3 (11-01-2000) **Corporate Trust Fund Liabilities**

1. When an offer is accepted from an employer to compromise trust fund taxes, the Service may not be able to collect a related TFRP assessment. Therefore, it is the Service's policy that the amount offered to compromise a corporate employment tax liability must include, in addition to what can be collected directly from the corporation, an amount equal to what can be collected from the all the responsible persons, up to the TFRP amount.
2. While investigating an offer from a corporation involving employment taxes also:
 - A. Determine if the TFRP has been assessed.
 - B. If the TFRP investigation has not been done, follow locally established guidelines to complete it. Actual assessment of the TFRP may be held in abeyance pending the outcome of the offer investigation.
 - C. Verify ASEs and protect them if expiration is imminent.
 - D. Secure a Collection Information Statement from each responsible person.

CAUTION:

The assessment waiver on a corporation's Form 656 does not extend the statute of limitations for assessing the TFRP against a responsible person.

3. When a cash offer is accepted from a corporation, notify the employee assigned a related TFRP balance due account. Advise them to initiate a Form 3870 requesting abatement of the TFRP.
4. When a deferred payment offer is accepted from a corporation:

And the TFRP accounts are in...	Then...
The same Customer Account Services center as the corporate offer and the responsible person has no other delinquencies	<ol style="list-style-type: none"> 1. Prepare a Form 3870 to request abatement of the TFRP but do not process it. Instead, annotate in red on the Form 3870 "TFRP accounts assigned to 8500" . Attach the TFRP TDAs or ICS transcript and mail the package to Compliance Services (8500). They will hold the 3870 and process it after all the offer payments are made. 2. Reassign the TFRP accounts to 8500.
The same Customer Account Services center as the corporate offer and the responsible person has other delinquencies	Prepare Form 3870 to request abatement of the TFRP and mail it to Compliance Services but, do not reassign the accounts to 8500. Instead, annotate in red on the Form 3870, "Open Control Base" with literal "Corp. OIC Pen" .
Another Compliance Area supported by the same Customer Account Services center and the responsible person has no other delinquencies	<ol style="list-style-type: none"> 1. Request transfer of the TFRP accounts from the other Compliance Area office. Prepare Form 3870 to request abatement of the TFRP but do not process it. Instead, annotate in red on the Form 3870 "TFRP accounts assigned to 8500" . Attach the TFRP TDAs or ICS transcript and mail the package to Compliance Services (8500). They will hold the 3870 and process it after all the offer payments are made. 2. Reassign the TFRP accounts to 8500.
Another Compliance Area supported by a different Customer Account Services center and the responsible person has other delinquencies	Prepare the Form 3870 and mail it to Compliance Services but, do not reassign the accounts to 8500. Instead, annotate in red on the Form 3870, "Open Control Base" with literal "Corp. OIC Pen" .

- When an offer is accepted from a corporation based in part on our ability to collect the trust fund from a responsible person, but no Trust Fund Recovery Penalty is assessed:

- As a condition of the offer acceptance, secure Form 2751, Proposed Assessment of Trust Fund Recovery Penalty, and Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty from each responsible person.
- Extend the ASER to a date two (2) years beyond the anticipated completion date of all terms and conditions of the offer; the applicable compliance provision; and any related collateral agreement.

CAUTION:

Insure the responsible person is advised of their IRC Section 6501(c)(4)(B) rights to: (1) refuse to extend the statute, (2) limit the extension to particular issues, (3) limit the extension to a particular period of time. If the person refuses to extend the statute a decision must be made to either: (1) accept the offer without protecting the Service's ability to later assess the penalty, (2) assess the penalty and include the additional liability in the offer, or (3) reject the offer.

- Forward Forms 2750, 2751 and the complete TFRP investigation file to Compliance Services with the accepted offer file. Should the offer default, this file will be returned to the Compliance Area office for processing and assessment of the TFRP.

NOTE:

Not required for any responsible person who makes a designated payment of the trust fund amount to the corporate liability or when a non-assertion decision has been made because the TFRP could not be collected from that person.

- In the situation where the amount offered by a corporation combined with the payments already made on related TFRP assessments exceeds the total employment tax liability of the corporation for the same tax periods:

- A. Have the responsible persons sign an irrevocable request to transfer their payments on the TFRP accounts to the related corporate liability.
- B. Complete and process Forms 3870 to accomplish the credit transfers.
- C. Secure full payment of the balance due from the corporation.
- D. Secure a withdrawal of the offer in compromise.

5.8.4.10.4 (11-01-2000) Excise Tax Liabilities

1. The procedure for compromising a Personal Liability for Excise Tax (PLET) assessed under IRC Section 4103 is similar to that for TFRP except for one major difference. When the PLET is actually assessed at the time we accept an offer from the business, we may still collect from the responsible person any amount not actually paid by the business. Therefore, do not request abatement of the PLET just because the business's liability has been compromised.
2. When an offer in compromise is accepted from a business and no PLET has been assessed, there remains no basis for assertion of the PLET. Therefore, it is the Service's policy that the amount offered to compromise a business's excise tax liability must include, in addition to what can be collected directly from the business, an amount equal to what can be assessed against the responsible persons.
3. While investigating an offer to compromise excise tax subject to PLET, also:
 - A. Determine if the PLET has been assessed.
 - B. If no PLET investigation has been done, follow locally established guidelines to complete it. Actual assessment of the PLET may be held in abeyance pending the outcome of the offer investigation.
 - C. Verify ASEDs and protect them if expiration is imminent.
 - D. Secure a Collection Information Statement from each responsible person.

CAUTION:

The assessment waiver on Form 656 does not extend the statute of limitations for assessing the PLET against a responsible person.

4. Should an accepted offer default however, there is once again a basis to assert the PLET. For this reason, when an offer is accepted from a business based in part on our ability to collect the excise tax from responsible persons but, no PLET is assessed:
 - A. As a condition of acceptance, secure Form 9490, Waiver Extending Statutory Period for Assessment of Personal Liability for Excise Tax from each responsible person.
 - B. Extend the assessment statute two (2) years beyond the anticipated completion date of all terms and conditions of the offer; including the applicable compliance provision; and any related collateral agreements.

CAUTION:

Insure the responsible person is advised of their IRC Section 6501(c)(4)(B) rights to: (1) refuse to extend the statute, (2) limit the extension to particular issues, (3) limit the extension to a particular period of time. If the person refuses to extend the statute a decision must be made to either: (1) accept the offer without protecting the Service's ability to later assess the penalty, (2) assess the penalty and include the additional liability in the offer, or (3) reject the offer.

- C. Forward Forms 9490 to Compliance Services with the accepted offer file. Should the offer default, this file will be returned to the Compliance Area office for processing and assessment of the PLET.

NOTE:

Not required for any responsible person who makes a designated payment of the excise tax or when a non-assertion decision has been made because the excise tax could not be collected from that person.

5.8.4.10.5 (11-30-2001) Partnership Liabilities

1. Partnership employment tax liabilities are not joint and several like two spouses who file a joint return. Federal law does not provide an ability to assess the individual partners separately like responsible persons may be assessed a TFRP. Our ability to collect from individual partners is grounded in state law.
2. When a partnership liability is compromised for any general partner, our ability to collect from all the other general partners may be affected. Therefore, the amount offered to compromise a partnership tax liability should include, in addition to what can be collected from the partnership entity itself, an amount equal to what can be collected from each of the general partners.
3. Secure Collection Information Statements and investigate the reasonable collection potential of the partnership and all the general partners.
4. Generally an offer in compromise will not be accepted from a general partner on a partnership liability when the reasonable collection potential of all general partners cannot be determined. An offer may be accepted on the basis of doubt as to collectibility with special circumstances or effective tax administration when the investigation determines that a hardship exists. Factors supporting a determination of special circumstances under doubt as to collectibility are the same as for economic hardship under effective tax administration (ETA). See Chapter 11 of this handbook for a list (not all-inclusive) of these factors.
5. When it is not possible to secure Collection information Statements from any of the general partners because they cannot be located or because they refuse to cooperate or join in the offer, the offer may still be accepted, if the investigation is able to establish that there is no collection potential from the non-participating partner(s).
 - A. Secure as much information on the non-participating partner(s), as possible from internal and external sources:

If...	Then...
The investigation reveals that the non-participating partner(s) are unlocatable,	Determine if it is in the interest of the government to accept the offer from the participating partner(s), based on a determination that the non-participating partner(s) accounts are uncollectible based on unable to locate.
Internal and external sources reveal that there are no assets or collection ability from the non-participating partner(s),	Determine if it is in the interest of the government to accept the offer from the participating partner(s), based on a determination that the non-participating partner(s) accounts are uncollectible.
The investigation reveals assets are owned by the non-participating partner(s), or that they have an ability to pay,	The offer cannot be accepted on the partnership liabilities unless it is determined that special circumstances exist.
The investigation does not provide enough information to determine collectibility from the non-participating partners,	The offer cannot be accepted on the partnership liabilities unless it is determined that special circumstances exist.

5.8.4.10.6 (11-30-2001) Child Support Obligation Liabilities

1. While the Internal Revenue Service is charged with collecting certain child support obligations, we do not have the authority to compromise them. These accounts are identified on the Non-Master File with an MFT code of 59.
2. If a taxpayer proposes a compromise that includes a child support liability, request they amend their offer to leave this period off of the Offer. If the offer is acceptable, the Service can compromise the liabilities that are not child support obligations.
3. If the taxpayer refuses to remove the child support liability from the offer, complete the investigation. Regardless of whether the amount offered reflects reasonable collection potential, reject the offer with appeal rights. On the AOIC rejection letter select any of the standard paragraphs that apply but select at least the paragraph which says, "We do not consider it in the government's best interest to do so" , and using the open paragraph also write, "We do not have authority to compromise child support obligations."

5.8.4.11 (11-01-2000)

Negotiation

1. A flexible negotiation position should be taken so that all opportunities for compromise are explored. Factors subject to negotiation include not only the amount to be paid but also:
 - o Value of assets
 - o Priority of competing lien interests
 - o Future earning potential
 - o Length of the payment terms
 - o Collateral agreements
 - o Effect of special circumstances

CAUTION:

Allowable payment terms must be within the limits of the amount due and the time remaining on the collection statute for each period of tax.

2. In the event an offer is not an acceptable resolution of the delinquency, solicit a withdrawal of the offer and direct the negotiation toward another resolution such as:
 - A. Immediate full payment
 - B. Full payment over time through an installment agreement
 - C. A partial payment
 - D. Report Currently Not Collectible
 - E. Assigning the case to a revenue officer

5.8.4.12 (11-01-2000)

Amending Form 656

1. In the event of successful negotiations, the taxpayer will need to amend their initial Form 656 to reflect the new terms agreed upon. To properly amend the offer:

If...	Then...
Changes are made in the amount or terms of payment, periods or type of tax	<ol style="list-style-type: none"> 1. Complete a new Form 656 2. Write "Amended" in the top margin of the first page 3. Secure new signatures from the taxpayer and the authorized IRS official.

An amended Form 656 is received	<p>1. Do not change the original AOIC record of:</p> <ul style="list-style-type: none"> ● Waiver date, ● IRS received date, or ● Area office received date <p>NOTE:</p> <p>Making any of the above changes will cause an error on the OIC Activity Report.</p> <p>2. Add any new tax periods on the amended offer to the MFT Screen.</p> <p>3. Only for the new periods, input the date the amended offer is signed by the authorized IRS official.</p>
The taxpayer submits an amended offer after a collateral agreement has been secured	change the collateral agreement to conform with the amended offer.

NOTE:

Use the latest revision of Form 656 for all amended offers. Retain the initial Form 656 in the file because, it documents the offer pending date.

[Exhibit 5.8.4-1 \(11-01-2000\)](#)
[Asset/Equity Table \(AET\)](#)

[Exhibit 5.8.4-2 \(11-01-2000\)](#)
[Income/Expense Table \(IET\)](#)

[Exhibit 5.8.4-3 \(11-01-2000\)](#)
[Offer in Compromise Recommendation Report](#)

[Exhibit 5.8.4-3 \(Cont.\) \(11-01-2000\)](#)
[Offer in Compromise Recommendation Report](#)

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in Compromise Sec. 4 Investigation (11-01-2000)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 5 Financial Analysis

Contents

- [5.8.5 Financial Analysis](#)
 - [5.8.5.1 Overview](#)
 - [5.8.5.2 Verification](#)
 - [5.8.5.2.1 Internal Sources](#)
 - [5.8.5.2.2 Taxpayer Submitted Documents](#)
 - [5.8.5.3 Equity in Assets](#)
 - [5.8.5.3.1 Net Realizable Equity](#)
 - [5.8.5.3.2 Jointly Held Assets](#)
 - [5.8.5.3.3 Income-Producing Assets](#)
 - [5.8.5.3.4 Assets Held By Others as Transferees, Nominees or Alter Egos](#)
 - [5.8.5.3.5 Cash](#)
 - [5.8.5.3.6 Securities](#)
 - [5.8.5.3.7 Life Insurance](#)
 - [5.8.5.3.8 Retirement or Profit Sharing Plans](#)
 - [5.8.5.3.9 Furniture, Fixtures, and Personal Effects](#)
 - [5.8.5.3.10 Motor Vehicles, Airplanes and Boats](#)
 - [5.8.5.3.11 Real Estate](#)
 - [5.8.5.3.12 Accounts and Notes Receivable](#)
 - [5.8.5.3.13 Inventory, Machinery and Equipment](#)
 - [5.8.5.3.14 Business as a Going Concern](#)
 - [5.8.5.4 Future Income](#)
 - [5.8.5.4.1 Allowable Expenses](#)
 - [5.8.5.4.2 Conditional Expenses](#)
 - [5.8.5.4.3 Shared Expenses](#)
 - [5.8.5.4.4 Calculation for Payment Terms](#)
- [Exhibit 5.8.5-1 Deferred Payments Limited by Short Statute](#)
- [Exhibit 5.8.5-2 Deferred Payments Limited by Small Amount Due](#)

- [Exhibit 5.8.5-3 Deferred Payments Limited by Application of Payment From Equity in Assets](#)

5.8.5.1 (11-01-2000) Overview

1. This chapter provides instructions for analyzing the taxpayer's financial condition to determine reasonable collection potential (RCP).

5.8.5.2 (11-30-2001) Verification

1. A thorough verification of the taxpayers' Collection Information Statement (CIS) involves reviewing information available from internal sources and requesting that the taxpayer provide additional information or documents that are necessary to determine reasonable collection potential. See Section 4 for special rules that apply to streamlined offers.
2. Collection issues that have been previously addressed during a balance due investigation by field personnel will not be re-examined unless there is convincing evidence that such reinvestigation is absolutely necessary. It is expected that the results of a previous collection investigation will be used and only supplemented when necessary to make a determination on an offer in compromise. Investigative actions that are less than 12 months old may be used to evaluate the offer in compromise.

Example: If a Revenue Officer has completed a full CIS analysis including verification of assets, income and expenses and has made a determination of Fair Market Value of assets, equity in assets and monthly ability to pay, this information should not be reinvestigated. The Offer Examiner should use the Revenue Officer's determinations to calculate reasonable collection potential. If the balance due case file does not provide documentation to indicate the source of the offer amount, the taxpayer will be contacted to determine the source of the offer funds

5.8.5.2.1 (11-30-2001) Internal Sources

1. Verify as much of the financial statement as possible through internal sources.
2. When internal locator services are not available, or indicate a discrepancy, request the taxpayer provide reasonable information necessary to support their financial statement.
3. A full credit report is required on all cases with a total liability, including accrued penalty and interest, greater than \$100,000. For all other offer investigations, consider securing a full credit report, as additional verification of the taxpayer's financial situation.
4. Regardless of the amount of the liability consider the following:

Internal Sources	Review
ENMOD and INOLES	Identify cross reference TINs for related business activity not declared on the CIS.
SUMRY, IMFOL and BMFOL	Verify full compliance.
RTVUE (IMF) or copy of the last filed income tax return	<ul style="list-style-type: none"> ● Compare the amount of reported income to that declared on the CIS. ● Identify past sources of income: <ul style="list-style-type: none"> Schedule B -- interest and dividends Schedule C -- self-employment income Schedule D -- capital gains or losses Schedule E -- rental or other investment income, net operating loss deduction Schedule F -- farm income
IRPTRO and/or copy of older year income tax returns	<ul style="list-style-type: none"> ● Compare real estate tax and mortgage interest deductions to the amounts declared on the CIS. Higher amounts may indicate present or past real property ownership not declared on the CIS. Lower amounts may indicate property has been recently sold or transferred. ● Identify accounts not reported on CIS, such as certificates of deposit, investment accounts. ● Verify sources of income, such as employers, bank accounts, retirement accounts. ● Identify recently dissipated assets.
BRTVUE (BMF) or copy of last filed income tax return	<ul style="list-style-type: none"> ● Compare the amount of reported income to that declared on the CIS. ● Compare the value of assets and the amount of reported depreciation to the asset values declared on the CIS.
State Motor Vehicle Records	<p>Identify motor vehicles registered to the taxpayer but not declared on the CIS.</p> <p>REMINDER: Also check for ownership in business names.</p>
Real Estate Records	<ul style="list-style-type: none"> ● Identify real property titled to the taxpayer but not declared on the CIS. ● Identify property held by transferee, nominee or alter ego. <p>REMINDER: Also check for ownership in business names.</p>
Credit Bureau Report	<ul style="list-style-type: none"> ● Identify past residences and employers. ● Verify competing lien holders, balances due and payment history. ● Identify property not listed on CIS.

5.8.5.2.2 (11-30-2001)

Taxpayer Submitted Documents

1. Collection information statements submitted with a proposal to compromise should reflect information no older than the prior six months. If during the processing of the offer, the financial information becomes older than 12 months, contact the taxpayer to update the information. If the taxpayer's situation has significantly changed, secure a new CIS.
2. Request appropriate documentation from the chart below to verify the CIS. Do not make a blanket request for information. Tailor your request to each taxpayer's specific situation. Do not require the taxpayer to provide information that is available from internal sources.

Taxpayer Documentation	Review
Wage Earner -- wage statements for the prior three month's. A statement with current year-to-date figures is also acceptable	<ul style="list-style-type: none"> • Compare average earnings to the income declared on the CIS. • Verify adequate tax withholding. • Identify payroll deductions to ensure the expense is necessary and not claimed again on the CIS. • Identify deductions to savings accounts, credit union accounts or retirement accounts.
Self-employed -- proof of gross income (invoices, accounts receivable, commission statements, etc.) for the prior three months	<ul style="list-style-type: none"> • Compare average earnings to the income declared on the CIS. • Identify deductions to ensure the expense is necessary and not claimed again on the CIS.
Bank statements for last three months	Compare deposit amounts to income reported on tax return and CIS.
Cancelled checks and credit card statements for the last three months	<ul style="list-style-type: none"> • Verify amount and frequency of declared expenses. • Identify unnecessary expenses.
Retirement account statements and brochures, brokerage account statements, securities or other investments	Identify the type, conditions for withdrawal and current market value.
Life insurance policies	<ul style="list-style-type: none"> • Identify the type, conditions for borrowing or cancellation and the current loan and cash values. • Verify the amount of required premiums and whether they are being paid.
Motor vehicle purchase or lease contracts, statements from the lender indicating the pay off amount	Verify equity and monthly payment expense.
Real estate warranty deeds, mortgage deeds, HUD closing statements, statements from the lender indicating the pay off amount	Identify the type of ownership, amount of equity and monthly payment expense.
Homeowners or renters insurance policies and riders.	<ul style="list-style-type: none"> • Compare the insured value to the value declared on the CIS. • Identify high value personal items such as jewelry, antiques or artwork.
Financial statements recently provided to lending institutions or others	Compare the financial information submitted to others with that declared on the CIS.
Divorce court orders	Verify disposition of assets in the property settlement

Court orders for child support and proof of payment	Verify responsibility for child support and that the payments are actually being made.
---	--

5.8.5.3 (11-01-2000) Equity in Assets

1. Proper asset valuation is essential to determine reasonable collection potential.
2. Field calls may be made to locate or personally observe the condition of assets.
3. Assets will not be eliminated or valued at zero dollars simply because we may choose not to take enforcement action against the asset, even though the net result is rejection of the offer and reporting the case currently not collectible.

5.8.5.3.1 (11-01-2000) Net Realizable Equity

1. For the purposes of an offer in compromise, assets are valued at Net Realizable Equity (NRE). Net realizable equity is defined as Quick Sale Value (QSV) less amounts owed to secured lien holders with priority over the federal tax lien.
2. Quick sale value is defined as an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the seller to sell in a short period of time, usually 90 days or less. Generally, QSV is an amount less than fair market value (FMV) but greater than forced sale value (FSV). FSV is defined as no less than 75% of FMV.
3. Normally, QSV is calculated at 80% of FMV. A higher or lower percentage may be appropriate depending on the type of asset and current market conditions.
4. When a particular asset has been or will be sold in order to fund the offer, do not make a reduction for quick sale value. Instead, verify the actual sale price for fair market value. A reduction may be made for the costs of the sale and the expected current year tax consequence.

5.8.5.3.2 (11-01-2000) Jointly Held Assets

1. When taxpayers submit separate offers but own assets jointly with others, allocate equity in the assets equally between the owners. However:

If...	Then...
The joint owners demonstrate their interest in the property is not equally divided	Allocate the equity based on each owner's contribution to the value of the asset.
The joint owners have joint and individual tax liabilities included in the offer investigation	Apply the equity first to the joint liability and then to the individual liability.

- See the section below entitled Real Estate for a discussion of assets held as tenancies by the entirety.

5.8.5.3.3 (11-30-2001) Income-Producing Assets

1. When determining the reasonable collection potential for an offer that includes business assets, an analysis is necessary to determine if certain assets are essential for the production of income. When it is determined that an asset or a portion of an asset is necessary for the production of income, it may be appropriate to adjust the income or expense calculation for that taxpayer to account for the loss of income stream if the asset were either liquidated or used as collateral to secure a loan to fund the offer.
2. When valuing income-producing assets:

If...	Then...
There is no equity in the assets	There is no adjustment necessary to the income stream.
There is equity and no available income stream (ie. profit) produced by those assets	There is no adjustment necessary to income stream.
There are both, equity in assets that are determined to be necessary for the production of income and available income stream produced by those assets	Compare the value of the income stream produced by the income producing asset(s) to the equity that is available. Determine if an adjustment to income or expenses is appropriate.
An asset used in the production of income will be liquidated to help fund an offer	Consider adjusting the income to account for the loss of the asset.
A taxpayer borrows against an asset that is necessary for the production of income, and devotes the proceeds to the payment of the offer	Consider the effect that loan will have on future expenses and the future income stream.
The taxpayer is either unable or unwilling to secure a loan on the equity in income producing assets	Compare the equity in the assets with the income produced by those assets. Determine if an adjustment to income stream is appropriate to account for the potential loss of the assets.

- These considerations should be fully documented in the case history. For example:

If...	Then...
A self-employed construction tradesman sells a truck, which he used to haul materials, and devotes the proceeds to the offer	Consider allowing the expected cost of delivery services as a business expense.
Instead of selling the truck, the tradesman borrows against it and devotes the proceeds to the offer	Consider allowing the loan repayment as a business expense.
A loan cannot be secured and loss of the truck would create an economic hardship	When special circumstances warrant acceptance of less than reasonable collection potential, document them and recommend acceptance to the authorized official in Delegation Order 11.
An outside salesman drives a luxury car when all that is necessary is a moderate value sedan	The equity should be included in the offer. Consider allowing only a portion of the loan repayment that would be required to purchase a moderate value replacement vehicle.
The same luxury car, but no ability to make installment payments for purchase of a moderate value replacement vehicle	The equity should be included in the offer. When special circumstances warrant acceptance of less than reasonable collection potential, document them and recommend acceptance to the authorized official in Delegation Order 11. Determine the acceptable amount of a special circumstances offer by allowing the taxpayer to retain only enough equity to purchase a moderate value replacement vehicle.
A business owns a vacation property, which is used for annual board meetings.	The equity should be included in the offer. Do not allow any loan repayment.

5.8.5.3.4 (11-30-2001)

Assets Held By Others as Transferees, Nominees or Alter Egos

1. A critical part of the financial analysis is to determine what degree of control the taxpayer has over assets and income in the possession of others. This is especially true when the offer will be funded by a third party.
2. When these issues arise, apply the principles in the Legal Reference Guide for Revenue Officers or request a counsel opinion.
3. It is not necessary to actually seek or obtain any specific legal remedy in order to address these issues in an offer in compromise.

5.8.5.3.5 (11-30-2001)

Cash

1. Cash assets include currency, balances in bank accounts and funds on deposit for the offer in compromise.
2. Determine the taxpayer's interest in bank accounts by ascertaining the manner in which they are held and applying the principles described in the Legal Reference Guide for Revenue Officers.
3. For checking accounts review bank statements over a reasonable period of time, normally three months. Because checking accounts typically have fluctuations in account balances it is necessary to determine the amount that is available in these accounts to be paid towards the offer amount.
 - A. Determine the average deposits and withdrawals.
 - B. Determine the average difference between deposits and withdrawals.
 - C. Determine if the taxpayer has an account balance that is clearly held in the bank account and not necessary to cover outstanding checks.
 - D. Generally the difference between average deposits and withdrawals is the amount available to the taxpayer to pay towards the offer amount and is considered the equity to be included in reasonable collection potential. This amount may be increased by any account balance that is not necessary to cover outstanding withdrawals.
 - E. If analysis of the bank statements and/or discussions with the taxpayer reveal that an adjustment to the balance is appropriate based on unusual expenses that are necessary for the production of income or the health and welfare of the taxpayer, consider adjusting the balance. The case file should clearly document these determinations.
 - F. If analysis of the bank statement reveals recently dissipated funds, see Section 10.2 for a full discussion of the treatment of dissipated assets.
4. For savings accounts determine the average ending balance in each savings account over a reasonable period of time, normally three months.
 - A. If the account has little activity use the average ending balance to determine equity.
 - B. If the savings account has frequent deposits and withdrawals used to pay necessary living expenses, value the account the same as for a checking account, as discussed in paragraph (3) above.
 - C. If the account has deposits with little or no withdrawal activity, determine the account balance based on the last statement reviewed to determine equity.
5. If the taxpayer will use balances in accounts to fund the offer, allow for any penalty for early withdrawal and the expected current year tax consequence.
6. Verify whether deposits in escrow or trust accounts are actually held for the benefit of others.
7. For funds on deposit with the offer in compromise, allow as an encumbrance any amount borrowed under the provision that, if the offer is not accepted, it must be repaid.

5.8.5.3.6 (11-30-2001)

Securities

1. Financial securities are considered an asset and their value should be determined and included in reasonable collection potential for an offer in compromise.
2. When the taxpayer will liquidate the investment to fund the offer, allow any penalty for early withdrawal and the current year tax consequence.
3. To determine the value of publicly traded stock, research a daily paper or inquire with a broker for the current market price. Then, allow for the estimated costs of the sale to arrive at QSV.
4. To determine the value of closely held stock that is either not traded publicly or for which there is no established market, consider the following methods of valuing the company and assign a proportion of the company's value to the taxpayer's stock:
 - o Secure and verify a Collection Information Statement.
 - o Review recent year's annual report to stockholders.
 - o Review recent year's corporate income tax returns.
 - o Request an appraisal of the business as a going concern by a qualified and impartial appraiser.
5. When a taxpayer holds only a negligible or token interest, has made no investment and exercises no control over the corporate affairs, it is permissible to assign the stock no value.

5.8.5.3.7 (11-01-2000)

Life Insurance

1. Life insurance as an investment is not considered necessary. However, reasonable premiums for term life policies may be allowed as a necessary expense.
2. When determining the value in a taxpayer's insurance policy, consider:

If...	Then...
The taxpayer will retain or sell the policy to help fund the offer	Equity is the cash surrender value.
The taxpayer will borrow on the policy to help fund the offer	Equity is the cash loan value less any prior policy loans or automatic premium loans required to keep the contract in force.

5.8.5.3.8 (11-30-2001)

Retirement or Profit Sharing Plans

1. Funds held in a retirement or profit sharing plan are considered an asset and must be valued for offer purposes.
2. Contributions to voluntary retirement plans are not a necessary expense. Review of the retirement plan document is generally necessary to determine the taxpayer's benefits and options under the plan.
3. When determining the value of a taxpayer's pension and profit sharing plans consider:

If...	And...	Then...
The account is an Individual Retirement Account (IRA), 401(k) or Keogh Account	The taxpayer is not retired or close to retirement	Equity is the cash value less any expense for liquidating the account and early withdrawal penalty.
The account is an Individual Retirement Account (IRA), 401(k) or Keogh Account	The taxpayer is retired or close to retirement	Equity is the cash value less any expense for liquidating the account and early withdrawal penalty, or consider the plan as income, if the income from the plan is necessary to provide for necessary living expenses.

Contribution to a retirement plan is required as a condition of employment	The taxpayer is able to withdraw funds from the account	Equity is the amount the taxpayer can withdraw less any expense associated with the withdrawal
Contribution to an employer's plan is required as a condition of employment	The taxpayer is unable to withdraw funds from the account but is permitted to borrow on the plan	Equity is the available loan value.
The plan may not be borrowed on or liquidated until separation from employment	The taxpayer is retired, eligible to retire or close to retirement	Equity is the cash value less any expense for liquidating the account and early withdrawal penalty, or consider the plan as income, if the income from the plan is necessary to provide for necessary living expenses.
The plan may not be borrowed on or liquidated until separation from employment	The taxpayer is not eligible to retire until after the period for which we are calculating future income	The plan has no equity.
The plan includes a stock option	The taxpayer is eligible to take the option	Equity is the value of the stock at current market price less any expense to exercise the option.

- When the taxpayer will liquidate the retirement plan to fund the offer, allow any penalty for early withdrawal and the current year tax consequence.

5.8.5.3.9 (11-01-2000)

Furniture, Fixtures, and Personal Effects

1. The taxpayer's declared value of household goods is usually acceptable unless there are articles of extraordinary value such as; antiques, artwork, jewelry, or collector's items. Exercise discretion in determining whether the assets warrant personal inspection.
2. There is a statutory exemption from levy that applies to the taxpayer's furniture and personal effects and an exemption that applies to the value of tools used in a trade or business. These separate exemption amounts are updated on an annual basis. The levy exemption for tools of the trade does not apply to corporate entities, but only to individual business taxpayers.
3. When determining the value consider the following::

If...	Then...
The taxpayer qualifies as head of household, single, or married	Grant a reduction in the value of personal effects for the levy exemption amount.
The property is owned jointly with any person who is not liable for the tax	Determine the value of the taxpayer's proportionate share of property before allowing the levy exemption.
Some of the furniture or fixtures are used in a business	They are not personal effects, but they may qualify for the levy exemption as tools of a trade.

5.8.5.3.10 (11-30-2001)

Motor Vehicles, Airplanes and Boats

1. Motor Vehicles, airplanes and boats are considered assets. Equity in these type of vehicles must be determined and included in reasonable collection potential. The general rule for determining net realizable equity, as discussed in Section 5.3.1, applies when determining equity in these vehicles.
2. Generally, it is not necessary to personally inspect automobiles used for personal transportation since their value is easily determined by consulting trade association guides. If these values are in dispute, secure an appraisal from a knowledgeable and impartial dealer or adjust the value based on the condition of the vehicle. Adjustments to value based on condition should be documented in the case file.
3. Unusual assets such as airplanes and boats may require an appraisal to determine FMV, unless the items can be located in a trade association guide. The case file should document how these values were arrived at.
4. When these assets are used for business purposes they may be considered income producing assets. See Section 3.3 for a full discussion of treatment of income producing assets.

5.8.5.3.11 (11-01-2000)

Real Estate

1. Equity in real estate is included in calculating the taxpayer's reasonable collection potential and in an acceptable offer amount.
2. When determining equity in real estate, Fair Market Value (FMV) of the property must be established. FMV is defined as the price a willing buyer will pay for the property, based on the property's current condition and use. The following methods may be used to establish FMV:
 - o Recent purchase price or an existing contract to sell
 - o Recent appraisals
 - o Real estate tax assessment
 - o Market comparables
 - o Homeowners insurance replacement cost
 - o Drive by
3. Once the FMV of real estate is established, a determination regarding reduction of value for offer purposes must be made. Procedures outlining reduction to QSV are discussed in Section 5.3.1. If the value of real estate is reduced beyond 80% or if FMV is not reduced to QSV, the case file should document the basis for the value used.
4. For real estate and other related property held as tenancies by the entirety when the tax is owed by only one spouse, the taxpayer's portion is usually 50% of the property's net realizable equity. When the equity is not equally divided a lesser percentage may be allocated but in no case less than 20% of the net equity:

If...	Then...
The taxpayer has provided substantially all of the purchase price or mortgage payments	Equity is no less than 50%.
Both spouses have contributed equally to the purchase price or mortgage payments	Equity is 50%.
Both spouses have contributed equally to the purchase price or mortgage payments and the not liable spouse is willing to contribute their equity in order to fund the offer in compromise	The taxpayer's equity is no more than 50%. However, the not liable spouse's equity may be used as a third party source of funds.
The not liable spouse has provided substantially all of the purchase price or mortgage payments or the not liable spouse refuses to commit the property for sale or for collateral on a loan to help fund the offer	Equity may be reduced to no less than 20%.

5.8.5.3.12 (11-01-2000)

Accounts and Notes Receivable

1. Accounts and notes receivable are considered assets unless a determination is made to treat them as income stream when they are required for the production of income. When it is determined that liquidation of a receivable would be detrimental to the continued operation of an otherwise profitable business, it may be treated as future income.
2. To determine the value of accounts receivable:
 - A. Consider discounting the value of accounts that will take longer than 90 days to pay.
 - B. Consider discounting the value of accounts for the possibility that they may be bad debts. Do not eliminate or place a zero value on any account that is less than 90 days old.
 - C. When the receivables have been sold at a discount or pledged as collateral on a loan, apply the provisions of IRC 6323(c) to determine the lien priority of commercial transactions and financing agreements.
 - D. Examine closely accounts of significant value that the taxpayer is not pursuing collection of or, that are receivable from officers, stockholders or relatives.
3. To determine the value of a note receivable, consider the possibility that it may be a bad debt and the value of any collateral pledged to guarantee the debt.

5.8.5.3.13 (11-01-2000)

Inventory, Machinery and Equipment

1. Inventory, machinery and equipment may be considered income producing assets. See Section 3.3 Income-Producing Assets when it is determined that liquidation of a these assets would be detrimental to the continued operation of an otherwise profitable business.
2. To determine the value of business assets:
 - o For assets commonly used in many applications such as automobiles and trucks, the value may be easily determined by consulting trade association guides.
 - o For specialized machinery and equipment suitable for only certain applications, consult a trade association guide, secure an appraisal from an knowledgeable and impartial dealer, or contact the manufacturer.
 - o For especially difficult valuation problems where no other resource will meet the need, follow local procedure to request the services of an IRS valuation engineer.
 - o Consider the possibility and cost of adapting the asset to other uses.
 - o Consider the cost of dismantling and transporting machinery and equipment.

5.8.5.3.14 (11-30-2001)

Business as a Going Concern

1. Evaluation of a business as a going concern is necessary when determining reasonable collection potential for the business as the offer taxpayer and when determining reasonable collection potential for an individual taxpayer who owns a business.
2. Business ownership is generally considered an asset that requires analysis to determine the value and the taxpayer's equity. To include the value of a business in the reasonable collection potential of an individual taxpayer, the taxpayer's interest in the business and control of the business must be determined.
3. To determine the value of a business as a going concern consider the value of assets, future income, and:
 - o Intangible assets such as:
 - good will
 - ability or reputation of a professional
 - established customer base
 - prominent location
 - well known trade name, trademark or telephone number
 - possession of government licenses, copyrights or patents
 - o Changes in market demand for the product or service
 - o Competition from other providers of the same product or service

- Necessity to fund capital improvements or expansion
 - Obligations to lenders
 - Obligations to other owners not liable for the tax
4. When determining reasonable collection potential for an individual taxpayer that has an interest in a business entity, flexibility should be used with consideration given to the taxpayer's control over the business.
 5. Request the assistance of a valuation engineer when a difficult or complex valuation is necessary.

5.8.5.4 (11-01-2000)

Future Income

1. Future income is defined as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, for a specific number of months into the future. The number of months used depends on the payment terms of the offer.
 - A. For cash offers -- project for the next 48 months.
 - B. For short term deferred offers -- project for the next 60 months
 - C. For deferred payment offers -- project for the number of months remaining on the statutory period for collection.
2. Detailed instructions for calculating the future income is contained in Section 5.4.4.
3. Consider the taxpayer's overall general situation including such facts as; age, health, marital status, number and age of dependents, highest education or occupational training and work experience.
4. Some situations may warrant placing a different value on future income than current or past income indicates:

If...	Then...
Income will increase or decrease, or current necessary expenses will increase or decrease	Adjust the amount or number of payments to what is expected during the appropriate number of months.
A taxpayer is temporarily unemployed or underemployed	Use the level of income expected if the taxpayer were fully employed.
A taxpayer has a sporadic employment history or fluctuating income	Average earnings over several prior years.
A taxpayer is elderly, in poor health, or both and the ability to continue working is questionable	Adjust the amount or number of payments to what is expected during the appropriate number of months.
A taxpayer will file a petition for liquidating bankruptcy	Consider reducing the value of future income. The total value of future income should not be reduced to an amount less than what could be paid towards non-dischargeable periods, or what could be recovered through bankruptcy. When considering a reduction in future income also consider the intangible value to the taxpayer of avoiding bankruptcy.

5.8.5.4.1 (11-01-2000)

Allowable Expenses

1. Allowable expenses are defined in IRM 5.15, Financial Analysis Handbook as those that are necessary for the production of income or for the health and welfare of the taxpayer's family. It also contains national and local standard expense amounts designed to provide accuracy and consistency in determining a taxpayer's basic living expenses. The standards are updated periodically based upon Bureau of Labor Statistics and Census Bureau information.
2. National and local expense standards are guidelines. If it is determined a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation. Require the taxpayer to provide reasonable substantiation and document the case file..

EXAMPLE:

A taxpayer with physical disabilities or an unusually large family requires a housing cost that is not anticipated by the local standard. Require the taxpayer to provide copies of mortgage or rent payments, utility bills and maintenance costs to verify the necessary amount.

3. Generally, the total number of persons allowed for national standard expenses should be the same as those allowed as dependents on the taxpayer's current year income tax return. There may be reasonable exceptions. Fully document the reasons for any exceptions.

EXAMPLE:

Foster children or children for whom adoption is pending.

4. A deviation from the local standard is not allowed merely because it is inconvenient for the taxpayer to dispose of excessively valued assets. Taxpayers are expected to make life-style choices that will facilitate collection of the delinquent tax.

5.8.5.4.2 (11-30-2001) Conditional Expenses

1. Conditional expenses are defined in IRM 5.15, Financial Analysis Handbook as those that may be allowed when the tax will be paid in full by an installment agreement. For offers in compromise, the full amount of tax will not be collected. Therefore, the rules for conditional expenses are different.
2. The one year rule which allows time for a taxpayer to adjust current expenses to meet the terms of an installment agreement is not allowed for offers in compromise.
3. The purchase of discretionary investments is not allowed.

EXAMPLE:

Payroll savings plans, purchase of whole life policies, mutual funds or voluntary retirement plan contributions.

4. Repayment of loans incurred to fund the offer and secured by the taxpayers' assets are allowed when those assets are of reasonable value and necessary to provide for the health and welfare of the taxpayer's family. The same rule applies whether the equity is paid to tax before the offer is submitted or will be paid upon acceptance of the offer. See Section 5.3.3 above entitled Income-Producing Assets to determine when to allow repayment of loans on those assets to fund the offer.
5. Repayment of student loans secured by the federal government is allowed only for the taxpayer's higher education. If student loans are owed but no payments are being made, do not allow them.
6. Education expense is allowed only for the taxpayer and only if required as a condition of present employment. Expenses for dependents to attend colleges, universities or private schools are not allowed unless the dependents have special needs that cannot be met by public schools.
7. Child support payments for natural children or legally adopted dependents may be allowed, based on the taxpayer's situation, when they are not court ordered. Regardless of whether they are court ordered, if no child support payments are being made, do not allow them.
8. Repayment of delinquent state or local tax liabilities is not allowed as a necessary expense unless the state or local government's lien has priority in the taxpayer's income stream. Generally, the United States will have a superior claim to future wages, even where the state or local government's lien arose first. However, state or local taxing authorities may have priority in fixed payment streams such as annuities. Consult with area counsel if necessary to determine lien priorities.
9. Charitable contributions are not allowed.

5.8.5.4.3 (11-01-2000) Shared Expenses

1. This situation can come about in one of two ways:
 - A. Separate offers are submitted by two or more persons who owe joint liabilities and/or separate liabilities and who share the same household.
 - B. An offer is submitted by a taxpayer who shares living expenses with a not liable person.
2. Generally, the assets and income of a not liable person are excluded from our computation of the taxpayer's ability to pay. One notable exception is community property states. Follow the community property laws in these states to determine what assets and income of the otherwise not liable spouse are subject to collection of the tax.
3. Regardless of whether community property laws apply, secure sufficient information concerning the not liable person to determine the taxpayer's proportionate share of the total household income and expenses. Review the entire household's information and:
 - A. Determine the total actual household income and expense.
 - B. Determine what percentage of the total household income the taxpayer contributes.
 - C. Determine necessary and allowable expense amounts using the rules in this chapter and IRM 5.15, Financial Analysis Handbook.
 - D. Determine which expenses are shared and which expenses are the sole responsibility of the taxpayer.
 - E. Apply the taxpayer's percentage of income to the shared expenses.
 - F. Verify the taxpayer actually contributes at least this amount to the total household expense.
 - G. Do not allow the taxpayer any amount paid toward a not liable person's discretionary expenses.
4. When the taxpayer indicates income is not commingled and responsibility for specific expenses is divided between the cohabitants, allow the expenses assigned to the taxpayer or apply the taxpayer's percentage of income to the total expenses, whichever is less.

5.8.5.4.4 (11-01-2000) Calculation for Payment Terms

1. Generally, the amount to be collected from future income is calculated by taking the projected gross monthly income less allowable expenses and multiplying the difference times the number of months remaining on the statutory period for collection.
2. For those taxpayers who agree to shorter payment terms, fewer months of future income is required:

Payment Type	Payment Terms	Number of Months Future Income Required
Cash	Within 90 days	48
Short term Deferred	Within 2 years	60
Deferred Payment	Within time remaining on the statute	Number of months remaining on the statute

- For cash and short term deferred offers, when there are less the 48 or 60 months remaining on the statutory period for collection, use the number of months remaining.
- For deferred payment offers, there are three possibilities for payment:
 - A. Payment of an amount equal to the net realizable equity in assets within 90 days and payment of future income by monthly installments over the time remaining on the statutory period for collection, or
 - B. Payment of a portion of the net realizable equity in assets within 90 days and payment of the balance of the equity in assets and future income by monthly installments over the time remaining on the statutory period for collection, or
 - C. Payment of the entire compromise amount by monthly installments over the time

remaining on the statutory period for collection.

NOTE:

A third party source of funds may be required to make the portion of the monthly payment that is greater than we determined the taxpayer can afford from future income.

- To determine the amount collectible from future income through the life of the statutory period for collection:
 - A. Subtract allowable expenses from monthly income to determine the monthly installment amount.
 - B. Determine the valid CSED for each tax period included in the offer.
 - C. Sort the tax periods by earliest CSED.
 - D. For each tax period, determine the number of months remaining on the statutory period for collection. Begin with the day the offer was signed in as processable and end on the Collection Statute Expiration Date (CSED). Round partial months down to the nearest whole month. Do not add time for any extension of the CSED resulting from the offer under consideration.
 - E. For each tax period, determine the number of installments that may be applied before running out of dollars due. Round partial payments down to the nearest whole payment.
 - F. Calculate the number of installments applied to each period. For succeeding periods, do not count months on the CSED that were used for applying installments to prior periods.

CAUTION:

If the allowed payment terms call for the first installment to begin later than 30 days from acceptance, there will be one less month available to apply payments.

 - G. Add the number of installments applied to all the periods and multiply sum times the monthly installment amount to arrive at the total amount collectible from future income. For examples of situations where the amount that may be applied to a period is limited, see **Exhibits 5-1 to 5-3**.

Exhibit 5.8.5-1 (11-30-2001)

Deferred Payments Limited by Short Statute

For example, the taxpayer has accrued the following tax liability:

Exhibit 5.8.5-1 (11-30-2001)

Deferred Payments Limited by Short Statute

MFT-Period	CSED	Liability
30-9312	07/20/2005	\$29,000
30-9412	07/20/2005	\$61,000
30-9512	09/27/2006	\$ 8,900
30-9612	09/20/2007	\$ 7,400

The offer was determined processable on May 31, 1999. The taxpayer has no equity in assets and can pay \$300 per month.

Exhibit 5.8.5-1 (11-30-2001)
Deferred Payments Limited by Short Statute

MFT-Period	Months on the statute	Installments Due	Installments Applied
30-9312	73	96	73
30-9412	73	203	0
30-9512	87	29	14
30-9612	99	24	12
Total			99

The amount collectible from future income is: \$300 times 99 months = \$29,700.

Exhibit 5.8.5-2 (11-30-2001)
Deferred Payments Limited by Small Amount Due

For example the taxpayer accrued the following liability:

Exhibit 5.8.5-2 (11-30-2001)
**Deferred Payments Limited by Small
Amount Due**

MFT-Period	CSED	Liability
30-8912	07/20/2000	\$100,000
30-9512	09/27/2006	\$ 1,200
30-9612	09/20/2007	\$ 600

The offer was determined processable on May 31, 1999. The taxpayer has no equity in assets and can pay \$300 per month.

Exhibit 5.8.5-2 (11-30-2001)
Deferred Payments Limited by Small Amount Due

MFT-Period	Months on the statute	Installments Due	Installments Applied
30-8912	13	333	13
30-9512	87	4	4
30-9612	99	2	2
Total			19

The amount collectible from future income is \$300 times 19 months = \$5,700.

Exhibit 5.8.5-3 (11-30-2001)
Deferred Payments Limited by Application of Payment From Equity in Assets

For example the taxpayer accrued the following liability:

Exhibit 5.8.5-3 (11-30-2001)
**Deferred Payments Limited by
Application of Payment From Equity
in Assets**

MFT-Period	CSED	Liability
30-8912	07/20/2000	\$30,000
30-9512	09/27/2006	\$ 1,200
30-9612	09/20/2007	\$ 600

The offer was determined processable on May 31, 1999. The taxpayer has \$30,000 equity in assets which he will pay within 90 days and can pay \$300 per month which he will begin paying within 30 days.

Exhibit 5.8.5-3 (11-30-2001)

Deferred Payments Limited by Application of Payment From Equity in Assets

MFT-Period	Months on the statute	Installments Due	Installments Applied
30-8912	13	0	0
30-9512	87	4	4
30-9612	99	2	2
Total			6

After applying the \$30,000 payment for the equity in assets, the amount collectible from future income is \$300 times 6 months = \$1,800. Reasonable collection potential is \$31,800.

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in Compromise Sec. 5 Financial Analysis (11-01-2000)

[IRS Privacy and Security Policy](#) | [Contact Us](#)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 6 Collateral Agreements

Contents

- [5.8.6 Collateral Agreements](#)
 - [5.8.6.1 Overview](#)
 - [5.8.6.2 Co-obligor Agreements](#)
 - [5.8.6.3 Other Collateral Agreements](#)
 - [5.8.6.3.1 Future Income](#)
 - [5.8.6.3.2 Adjusted Basis of Specific Assets](#)
 - [5.8.6.3.3 Waiver of Losses](#)
 - [5.8.6.3.3.1 Net Operating Loss](#)
 - [5.8.6.3.3.2 Capital Loss](#)
 - [5.8.6.3.3.3 Passive Loss](#)
 - [5.8.6.4 Multiple Agreements](#)
 - [5.8.6.5 Waiver of Refunds](#)
- [Exhibit 5.8.6-1 Co-obligor Agreement Common Law States Pattern Letter P-229 \(Rev. 6-90\)](#)
- [Exhibit 5.8.6-2 Co-obligor Agreement Other States Pattern Letter P-230 \(Rev. 6-90\)](#)
- [Exhibit 5.8.6-3 Collateral Agreement - Modification of Waiver Provisions of Compromise Agreement](#)

5.8.6.1 (02-04-2000) Overview

1. A collateral agreement enables the government to collect funds in addition to the amount actually secured via the offer or to add additional terms not included in the standard Form 656 agreement, thereby recouping part or all of the difference between the amount of the offer or additional terms of the offer and the liability compromised.

5.8.6.2 (11-30-2001) Co-obligor Agreements

1. When a compromise is accepted from one party to a joint liability, the other party is not released from their several liability. Secure a co-obligor agreement from the maker of an offer in compromise to preserve the government's right to collect from the other party.

NOTE:

Trust Fund Recovery Penalty assessments are not joint liability assessments and do not require a co-obligor agreement.

If...	Then...
The taxpayer lives in a state where acceptance of an offer in compromise from one party to a joint assessment also releases the other party	Secure the common law co-obligor agreement. (See Exhibit 6-1)
The taxpayer lives in a state where the right is expressly reserved to proceed against the other taxpayer who is not a party to the compromise	Secure the non-common law co-obligor agreement. (See Exhibit 6-2)
The taxpayer lives in a state where acceptance of an offer in compromise from one party to a joint assessment also releases the other party up to the amount of their proportionate share of the liability	There is no co-obligor agreement available for this case. An acceptable offer should include the reasonable collection potential of all the obligors. When it is impossible to investigate all the obligors, there is a risk that the full collection potential will not be collected. Such an offer must meet the criteria for acceptance on the basis of doubt as to collectibility with special circumstances or effective tax administration.
Both parties have submitted separate offers which are recommended for acceptance	If appropriate, the parties may submit a joint offer to eliminate the need for co-obligor agreements. Otherwise, secure a co-obligor agreement from each taxpayer.

- A co-obligor agreement is not warranted in the following instances:
 - A. In a proportionate liability state, when the offer amount is equal to or exceeds the not compromising taxpayer's proportionate liability.
 - B. No possibility exists for collecting from the other obligors.
 - C. Under state law, no specific reservation of collection rights is required to protect the ability to collect from co-obligors.

5.8.6.3 (02-04-2000) Other Collateral Agreements

1. Other collateral agreements may be appropriate in rare circumstances. Because all other collateral agreements must be monitored for compliance, they should only be secured when a significant recovery is anticipated. Securing a collateral agreement should be the exception and not the rule.
2. Do **not** use a collateral agreements to accept an offer amount less than the taxpayer's financial condition indicates.
3. In lieu of a collateral agreement, the taxpayer may increase the amount of the offer equivalent to what the government could reasonably expect to recover from the collateral agreement.
4. A collateral agreement may be appropriate in the following situations:

If the taxpayer...	Then consider securing a...
Anticipates a substantial increase in future income	Future income collateral agreement.
Is compromising the income tax liability of a defunct professional corporation	Future income collateral agreement from the professional to collect from future individual income.
Has real or personal property with a basis or book value significantly greater than the current fair market value	Collateral agreement to reduce the basis of the asset.
has net operating losses or capital losses arising from prior years available for deduction in future years	A collateral agreement to waive the loss.
Is seeking to compromise a Trust Fund Recovery Penalty and qualifies to take a capital loss benefit from the defunct corporation on his Form 1040	A collateral agreement from the individual taxpayer to waive the capital loss.

5.8.6.3.1 (11-30-2001)

Future Income

1. Future income collateral agreements for both individuals and corporations are appropriate when the investigation reveals that a substantial increase in the taxpayer's future income is expected.
2. The period of time a future income collateral agreement should be secured for will be determined by the investigation based on the terms of the offer in compromise and the taxpayer's financial situation. Generally the period of time the agreement covers should coincide with the future compliance provision timeframes:
 - A. If the offer terms are for cash payment (paid within 90 days of acceptance) the future income collateral agreement should generally run for a five year period,
 - B. If the offer terms are based on deferred payments calculated through the collection statute periods, the future income collateral should generally run through the last full year before the statutory period for collection expires.
 - C. The offer file should document the time frames for the collateral and the facts used to make this determination.
3. Use Form 2261 for individual taxpayers or Form 2261-A for corporate taxpayers. The beginning year is the year following acceptance of the offer. The ending year is the last year that the collateral agreement will be in effect for. The beginning dollar amount should be consistent with amount of annual income used in determining reasonable collection potential.
4. Offers in compromise with future income collateral agreements must be approved by the second level manager. The territory manager will indicate their approval by signing Form 7249 and the acceptance letter. The Form 2261 may be signed by the authorized official in Delegation Order 42.
5. Do **not** secure a future income collateral agreement:
 - o to collect future income that should be included in the offer amount.
 - o merely on unfounded speculation about an increase in income.
 - o to cover statistically improbable events such as lottery winnings.
 - o to attempt collection from a potential inheritance.

EXAMPLE:

Do not secure a future income collateral agreement when the investigation reveals that the taxpayer is the only child of wealthy parents, and the surviving parent is well advanced in years and in poor health.

6. Future income collateral agreements must be monitored annually for the life of the agreement. Consider the cost of monitoring and the difficulty in tracing income structured through other entities when deciding whether such an agreement is warranted.

5.8.6.3.2 (02-04-2000) Adjusted Basis of Specific Assets

1. The initial basis of an asset is equal to the cost of acquiring it. Adjustments to the basis are made each year for the cost of improvements and accumulated depreciation. When an asset is sold the basis is used to determine the amount of capital gain to be taxed.
2. A collateral agreement may be used to reduce the basis after accumulated depreciation, or book value, of a specific asset to the current fair market value. This will have two effects. It will limit the amount of depreciation deductions allowed in future years and it will ensure that the proper amount of capital gain is taxed if the asset is later sold for a higher price than we used to determine reasonable collection potential.
3. Use Form 2261-B. The beginning year is the year after the last filed tax return. Insert the year of the last filed tax return in the phrase "for all taxable years beginning after ____". Specifically describe each asset. Set the amount of the basis at fair market value consistent with the value used to determine reasonable collection potential.
4. Do **not** reduce the value of an asset to zero or below its current value merely to inflate the amount of capital gain tax on a future sale.
5. Adjusted basis collateral agreements must be monitored annually until the asset is ultimately disposed of. Consider the cost to monitor the agreement and the difficulty in tracing the sale or exchange of the property when deciding whether such an agreement is warranted.

5.8.6.3.3 (11-30-2001) Waiver of Losses

1. Use Form 2261-C. The beginning year is the next year after the last filed tax return. Insert the year of the last filed tax return in the phrase "for all taxable years beginning after ____". Waive net operating losses and capital losses arising from all years prior to and including the last filed tax return.
2. Do **not** prohibit the deduction of losses that arise in years after the offer is accepted.
3. The waiver of investment credits is obsolete.
4. Waiver of losses collateral agreements must be monitored annually until all the losses are extinguished, potentially for decades. Consider the cost to monitor the agreement and potential for recovery of future tax liabilities when deciding whether such an agreement is warranted.
5. A waiver of losses collateral agreement may be secured to partially waive a loss, if the facts of the case support this determination.

5.8.6.3.3.1 (02-04-2000) Net Operating Loss

1. Net Operating Loss is a loss incurred when expenses exceed the income of a business.
 - o The taxpayer must declare the loss on his/her tax return the year in which the loss is incurred.
 - o The loss will be declared on a Schedule E and may be offset against any "other income" on the tax return.

NOTE:

Not all income qualifies to be offset.

- o Generally, losses may be carried back no more than three years and forward no more than twelve years or until all the loss is offset against taxable income.
 - o If the taxpayer wishes to carry the loss forward the taxpayer must elect to do so in the tax year the loss was incurred.
 - o If the taxpayer has not taken the loss on the tax return for the year in which the loss occurred and the statute of limitations for assessment has passed for that tax year, the taxpayer is no longer entitled to the loss.
2. When the taxpayer has claimed a Net Operating Loss (NOL), determine and verify the exact origin and amount of the loss. If a taxpayer has been associated with more than one business there may be multiple losses.

When...	Then...
Calculating the remainder of the NOL	Locate the "other income" line on the Form 1040. This is where the loss will show up and should be labeled as Net Operating Loss.
	1. Determine the original loss amount claimed on the tax return.
	2. Subtract any carry backs (Up to three years back from the tax year the NOL was established.)
	3. Subtract amounts claimed on subsequent tax returns since the NOL was established.

5.8.6.3.3.2 (02-04-2000)

Capital Loss

1. Capital Loss is one in which the taxpayer experiences a loss associated with such investments as land, stock, paid in capital, or loans from shareholders. The type loss is:
 - o Found on a Schedule D.
 - o Only offset against income or capital gain in the year in which it is incurred and the remainder carried forward at a limit of \$3,000.00 per year against other income or;
 - o Offset against a capital gain in total

EXAMPLE:
A taxpayer has a \$100,000 loss and a \$40,000 gain. The taxpayer may offset \$40,000 against the gain and an additional \$3,000 against other income leaving \$57,000 loss that can be carried forward in future years.

 - o Individuals may deduct \$3,000 each year until the loss is extinguished with no limit on the number of years. Corporations are limited to 10 future years.
2. When the taxpayer claims a capital loss, determine and verify the exact origin and amount of the loss.

If...	Then...
The loss is derived from personal investment	The investment can be either loans to the corporation or the individual's capital investment in the corporation.
	<ul style="list-style-type: none"> • Verify loans through copies of checks or general journal entries that establish the loan and track repayment. • Verify capital investment through canceled checks or other documents which support the amount of the original loan.
Determining the remaining amount of the loss once you have determined the origin	Trace the loss forward through the tax return copy or RTVUE.

5.8.6.3.3.3 (02-04-2000)

Passive Loss

1. Passive Activity Loss is one that involves the conduct of any trade or business in which the taxpayer does not materially participate. **This loss should not be confused with net operating loss.**
 - o Any rental activity is a passive activity even if the taxpayer does materially participate.
 - o Losses from a passive activity generally cannot be deducted from other types of income (e.g., wages, interest, or dividends).
 - o The amount of the taxpayer's allowable loss is subject to the "at-risk" rules. Generally, losses are limited to the amount of the taxpayer's cash contribution, adjusted basis of other property which contributes to the activity and amounts borrowed for use in the activity if the taxpayer has personal liability for the borrowed amounts.

NOTE:

Refer to the current [Masters Tax Guide](#) for additional information.

2. Because passive losses are not deducted from earned income, waiving them may have little or no effect. One option is to reduce the basis of the property to zero so that the taxpayer cannot carry the loss over to the tax year in which the property is sold and receive benefit of the loss against a capital gain at that time.

5.8.6.4 (02-04-2000) Multiple Agreements

1. When related taxpayers submit more than one offer to compromise different tax liabilities secure only one collateral agreement. Describe on the collateral agreement all the offers to which it relates.
2. When more than one type of collateral agreement is secured for the same offer in compromise, the terms of all the agreements may be incorporated into one Form 2261 or Form 2261-A. Type in the appropriate language borrowed from Forms 2261-B or 2261-C.

Type of Agreement...	Statement...
Adjusted Basis of Assets	"For the purpose of computing income taxes of the taxpayer for all years beginning after _____, the basis for certain assets, under existing law for computing depreciation and the gain or loss upon sale, exchange or other disposition shall be as follows: Name of asset _____ Dollar amount _____ That in no event shall the basis set forth above be in excess of the basis that would otherwise be allowable for tax purposes, except for this agreement."
Waiver of Net Operating Loss	"For the purpose of computing income taxes of the taxpayer for all years beginning after _____, Any net operating losses sustained for the years before _____ shall not be claimed as net operating loss deductions under the provisions of Section 172 of the Internal Revenue Code.
Waiver of Capital Losses	"For the purpose of computing income taxes of the taxpayer for all years beginning after _____, Any net capital losses sustained for the years before _____ shall not be claimed as carryovers or carrybacks under the provisions of Section 172 of the Internal Revenue Code.

- If there is insufficient space on the form to insert all the necessary paragraphs simply type the paragraph numbers followed by "See Attached" and fasten a separate sheet containing the added provisions.

5.8.6.5 (11-30-2001) Waiver of Refunds

1. Form 656 contains a term which waives refunds and overpayments for all tax years through the year the offer in compromise is accepted. This waiver is a standard term, which cannot be altered on Form 656.
2. When accepting an offer based on doubt as to liability or under the basis of effective tax administration based on detriment to voluntary compliance, this waiver of refunds is not applicable.
3. In order to remove the waiver of refund provision for these type of offers, both the taxpayer and the investigating employee must sign an agreement and include this agreement with the accepted offer in compromise. See **Exhibit 5.8.6-3**.

Exhibit 5.8.6-1 (02-04-2000)

Co-obligor Agreement Common Law States Pattern Letter P-229 (Rev. 6-90)

Collateral Agreement--Taxpayer Involved in Joint Assessment

(For Use in States Where Common Law Rule Applies)

To: Commissioner of Internal Revenue:

I submitted an offer dated (date) in the amount of \$(amount) to compromise unpaid (Kind of tax) tax, plus statutory additions, for the tax period(s) (date(s)).

The purpose of this letter is to amend that offer by adding the following provisions:

The (a) liability, which is the subject of this proposed agreement, is the joint and individual responsibility of myself and my co-obligor(s). I agree to pay the United States \$(amount). The United States agrees, in turn, not to:

(1) sue the undersigned or the difference between the amount of the offer in compromise and the amount of the liability, or

(2) collect the difference from assets of the undersigned by levy or any other means.

If this proposal is accepted, it does not mean that the liability or any part of the liability is settled for myself or the co-obligor(s). The United States still reserves all its rights to collect the liability from the co-obligors.

Taxpayer's Signature

Date

Exhibit 5.8.6-2 (02-04-2000)

Co-obligor Agreement Other States Pattern Letter P-230 (Rev. 6-90)

Collateral Agreement -- Taxpayer Involved in Joint Assessment

(For Use in States Where Statutes Expressly Reserve Right to Proceed Against Co-obligor)

To: Commissioner of Internal Revenue

I submitted an offer dated (date) in the amount of \$(amount), to compromise unpaid (kind of tax) tax, plus statutory additions, for the tax periods (dates).

The purpose of this letter is to amend and clarify that offer by adding the following provision:

Although the liability sought to be compromised is the joint and individual liability of myself and my co-obligors, I am submitting this offer to compromise my individual liability only. If this offer is accepted, it does not release or discharge my co-obligor(s) from liability. The United States still reserves all rights of collection against co-obligors.

Taxpayer's Signature

Date

Exhibit 5.8.6-3 (11-30-2001)**Collateral Agreement - Modification of Waiver Provisions of Compromise Agreement**

Collateral Agreement -- Modification of Waiver Provisions of Compromise Agreement
(For Use when offer is being accepted under Detriment to Voluntary Compliance only)

To: Commissioner of Internal Revenue

I submitted an offer dated (date) in the amount of \$(amount), to compromise unpaid (kind of tax) tax, plus statutory additions, for the tax periods (dates).

The purpose of this letter is to modify that offer by stating that Items 8(g) and (h) of the agreement, Form 656, governing refunds and overpayments, will not apply to this offer. Acceptance of this offer will in no way alter my rights to refunds of overpayment or my ability to designate an overpayment to estimated tax payments for the following year:

Taxpayer's Signature

Date

Exhibit 5.8.6-3 (11-30-2001)**Collateral Agreement - Modification of Waiver Provisions of
Compromise Agreement**

I accept this modification on behalf of the Internal Revenue Service:

Exhibit 5.8.6-3 (11-30-2001)**Collateral Agreement - Modification
of Waiver Provisions of
Compromise Agreement**

Signature of delegated official -- Date

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in (11-30-2001)
Compromise Sec. 6 Collateral Agreements



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 7 Return, Terminate, Withdraw and Reject Processing

Contents

- [5.8.7 Return, Terminate, Withdraw and Reject Processing](#)
 - [5.8.7.1 Overview](#)
 - [5.8.7.2 Return](#)
 - [5.8.7.2.1 Returns for Failure to Provide CIS Information](#)
 - [5.8.7.2.2 Returns for Non-compliance with Required Estimated Tax Payments](#)
 - [5.8.7.3 Terminate](#)
 - [5.8.7.4 Withdraw](#)
 - [5.8.7.4.1 Alternative Resolutions](#)
 - [5.8.7.5 Reject](#)
 - [5.8.7.6 Rejection Appealed](#)
 - [5.8.7.7 Public Policy Rejection](#)
 - [5.8.7.8 Authorization to Apply Deposit](#)
 - [5.8.7.9 Closed File Retention](#)

5.8.7.1 (02-04-2000) Overview

1. When a taxpayer's offer is not accepted, certain actions are required depending on the type of disposition. This chapter defines the types of disposition other than acceptance and describes the actions to be taken:

If...	Then...
The taxpayer is not in full compliance or is in bankruptcy	Return the offer as not processable.
The taxpayer fails to correct certain errors on the Form 656	Return the offer as not perfected.
An offer is submitted solely to delay collection or collection is in jeopardy	Return the offer.
The taxpayer fails to provide reasonable information or falls out of compliance	Return the offer.
The taxpayer fails to make required estimated tax payments	Return the offer.
Files bankruptcy during the offer investigation	Return the offer.
The taxpayer dies while the offer is pending	Terminate the offer.
The offer is not acceptable and the taxpayer disagrees	Reject the offer.
The taxpayer agrees to an alternate resolution and withdraws their offer	Acknowledge the taxpayer's withdrawal.

5.8.7.2 (11-30-2001)

Return

1. See Section 3 for instructions to return an offer when it is not processable or not perfected or submitted solely to delay collection or when collection is in jeopardy.
2. An offer may also be returned during the investigation when the taxpayer fails to remain current with filing of tax returns, fails to make timely federal tax deposits for employment taxes, fails to make required current estimated tax payments or files bankruptcy. A return for these reasons, during the offer investigation, does not require independent administrative review.
3. There is no appeal right for an offer closed as a return.
4. Closing the AOIC record as a return will automatically generate the posting of TC 481 for all periods entered on AOIC.
5. Return of an offer for other reasons may be appropriate during an offer investigation. A full discussion of return for solely to delay collection is in Section 3.
6. When an offer is returned for multiple reasons that include failure to perfect an offer document, failure to file required tax returns or failure to remain current with federal tax deposits and the failure to provide requested financial verification, the return letter should include all reasons for the return. If any of the reasons for returning the offer requires independent administrative review, the offer must be processed for IARI.

5.8.7.2.1 (11-30-2001)

Returns for Failure to Provide CIS Information

1. During the offer investigation an offer may be returned when the taxpayer fails to provide reasonable information that is necessary to determine the adequacy of the offer. A return for this reason requires independent administrative review and managerial approval.
2. The case history or documents in the file must clearly document the specific information that was requested from the taxpayer, that a specific due date was given to provide the information, and that the taxpayer has been advised of the consequences for failing to provide it.
3. To return an offer:
 - o Write a brief narrative describing the information that was not provided and why it is essential to making a decision on the offer.
 - o Update the MFT screen on AOIC with the current balance of tax, penalty and interest.
 - o Complete Form 1271 and attach the narrative.
 - o Complete the return letter
 - o Submit the file to the group manager for review and approval

- o Forward the file for independent administrative review.
- o After approval, date and stamp the original Form 656 "returned" , date the return letter and send both to the taxpayer. The return letter must explain why the offer is being returned. The date of the return letter is the effective date of the closure. A copy of the returned Form 656 must be retained in the closed offer file.

5.8.7.2.2 (11-30-2001)

Returns for Non-compliance with Required Estimated Tax Payments

1. During an offer investigation an offer may be returned when the investigation reveals the taxpayer is not in compliance with current estimated tax payments. A return for this reason requires the group manager's approval.
2. The offer file must clearly document the following actions prior to returning an offer for this reason:
 - A. A determination that the taxpayer has sufficient taxable income to require a tax payment.
 - B. An analysis of the amount of tax that will be due on taxable income.
 - C. Documentation of the amount of estimated tax payments which are currently due, that are currently paid, and that are currently past due.
3. The case history or documents in the file must clearly document communication with the taxpayer or authorized representative regarding the non-compliance with required estimated tax payments that includes an attempt to bring the taxpayer into current compliance. This communication must include a request that the taxpayer make required estimated tax payments, a specific date given to comply, and consequences for failing to make required payments.
4. Requests for compliance with required estimated tax payments should be reasonable, based on the taxpayer's situation.
5. Returns for non-compliance with current required estimated tax payments are not subject to independent administrative review.
6. To return an offer:
 - o Write a brief narrative outlining the non-compliance elements.
 - o Complete Form 1271 and attach the narrative.
 - o Submit the file for group manager approval.
 - o After approval, date and stamp the original Form 656 "returned", date the return letter and send both to the taxpayer. The return letter must explain why the offer is being returned. The date of the return letter is the effective date of the closure. A copy of the returned Form 656 must be retained in the closed offer file.

5.8.7.3 (11-30-2001)

Terminate

1. If the taxpayer dies during the course of the investigation the proposed offer will be terminated.
2. To terminate an offer:
 - o Secure a copy of the death certificate or otherwise determine the date and place of death.
 - o Request the input of TC 540 on IDRS.
 - o Form 1271 is not required.
 - o Date and stamp the original Form 656 "returned" , sign and date the termination letter and send both to the taxpayer's address. The date of the termination letter is the effective date of the closure. Retain a copy of the returned Form 656 in the case file.
3. There is no independent administrative review and no appeal right for this type of closure. Group manager approval is not required.
4. Closing the AOIC record as a termination automatically generate the posting of TC 481 for all periods entered on AOIC.

5.8.7.4 (11-30-2001)**Withdraw**

1. When the offer is not recommended for acceptance, provide the taxpayer an opportunity to withdraw the offer and enter into an alternate resolution of the delinquency.
2. When soliciting the withdrawal of an offer the taxpayer and/or authorized representative **must be advised that withdrawing the offer forfeits any appeal rights** on that offer.
3. The withdrawal of an offer in compromise must be in writing and signed by the offer taxpayer(s) or their authorized representative. The withdrawal from the taxpayer must include the following elements:
 - o The taxpayer's name,
 - o The date of the offer,
 - o A clear statement that the taxpayer wishes to "withdraw" their offer,
 - o A statement that withdrawing the offer forfeits any right to appeal, and
 - o A statement addressing the disposition of any offer deposit on file.

NOTE:

Managers should ensure that withdrawals are not secured merely to avoid a complete investigation or to deny taxpayers access to Appeals.

4. To withdraw an offer:
 - o Write a brief narrative describing the reason for the withdrawal and indicating any alternate resolution or whether the accounts should be returned to collection status.
 - o Update the MFT screen on AOIC with the current amount of tax, penalty and interest.
 - o Complete Form 1271 and attach the narrative.
 - o Submit the file for approval to the group manager.
 - o Once the withdrawal is approved, date and send the taxpayer a "withdrawal" letter acknowledging the withdrawal. The date of the withdrawal letter is the effective day of the closure.

EXCEPTION:

Where the taxpayer provides written notification of withdrawal either (a) in person, or (b) by certified mail, the date the letter is received will be the effective date of withdrawal.

5. There is no independent administrative review or appeal right for this type of closure.
6. Closing the AOIC record as a withdrawal automatically generates the posting of TC 482 for all periods included on AOIC.

5.8.7.4.1 (11-30-2001)**Alternative Resolutions**

1. When a taxpayer withdraws their offer because they agree to an alternative resolution, based on their ability to pay, the investigating employee should take the necessary actions to conclude the alternate resolution.
2. Examples of alternate resolutions that should be concluded are:
 - o Securing payment or providing a specific deadline for the taxpayer to submit payment
 - o Reporting an account as uncollectible
 - o Securing an installment agreement
3. The following are actions that may be required to conclude the alternate resolution:

If...	Then...
The taxpayer agrees to full pay the tax liability	<ol style="list-style-type: none"> 1. Set a deadline for the taxpayer to submit payment 2. Upon receipt of the payment, process the remittance, as required.
The resolution is an installment agreement	<ol style="list-style-type: none"> 1. Complete the necessary documents, and secure the taxpayer's signature on Form 433-D. 2. Process the installment agreement for approval. 3. Upon approval the following actions must be taken to allow the input of an installment agreement to IDRS: <ul style="list-style-type: none"> • Request the manual input of TC 483 (This will remove the freeze code from IDRS and allow the installment agreement to be input) • Request the input of an IDRS STAUP to freeze IDRS notices while the installment agreement is being processed. (The number of cycles necessary will depend on the normal timeframe for input of installment agreements in the office where the agreement is being processed)
The resolution is to report the accounts as uncollectible	Complete the required documentation to report and account uncollectible and submit for approval

- IRM actions required to complete alternative collection resolutions should be followed. This includes making the appropriate determination to file a notice of federal tax lien.

5.8.7.5 (11-30-2001)

Reject

1. When, after a complete investigation, the facts do not support acceptance and the taxpayer will not agree to an alternate resolution of the delinquency, inform the taxpayer that you cannot recommend acceptance. Explain your computation of reasonable collection potential and, if requested, provide a copy of your financial analysis. Advise that the recommendation to reject the offer is subject to managerial approval and an independent administrative review. When the offer is rejected, they will be notified formally in writing and the letter will explain how they may exercise their appeal rights.
2. Offers based on doubt as to collectibility are generally rejected on the basis that we can collect more than the amount offered. For an exception, see the section below on public policy rejections.
3. To recommend the rejection of an offer:
 - A. Complete an Offer in Compromise Recommendation Report summarizing the facts of the investigation (**See Section 4, Exhibit 4 - 3**). In the conclusion of the recommendation report include a summary of the following facts:
 - The basis upon which the taxpayer proposes to compromise
 - The amount of reasonable collection potential
 - The attempts to negotiate an alternate resolution
 - The amount the taxpayer agrees to pay
 - The key issues in disagreement, and
 - Discussion of Special Circumstances
 - B. Complete Income Expense Table (IET) and Asset Equity Table (AET) indicating reasonable collection potential. Any unusual issues or items contained in these tables should be explained.
 - C. In the rare situation where relevant facts of a confidential nature should not be disclosed, do not state those facts in the recommendation report. Instead, state them in a supplemental memorandum for the record and include it in the case file.
 - D. Update the MFT screen on AOIC with the current amount of tax, penalty and interest.
 - E. Complete Form 1271 and attach the Offer in Compromise Recommendation Report, AET and IET.
 - F. Generate the rejection letter using the standard paragraph that states we are

rejecting the offer because we can collect more than the amount offered. The rejection letter must include a copy of the AET and IET showing the calculations of reasonable collection potential and a narrative communicating to the taxpayer the reasons the offer is being rejected. The narrative can be incorporated into the body of the rejection letter or as an attachment to rejection letter. The narrative should include the following elements:

- The amount and terms of an acceptable offer or the alternative resolution, based on reasonable collection potential
 - A discussion of special circumstances considered during the investigation
 - Any other issues that are relevant to the offer being rejected
- G. Submit the offer file for managerial review and approval.
- H. After managerial approval, submit the offer file for independent administrative review.
4. Upon the independent administrative reviewer's concurrence, enclose a copy of the narrative report, the AET and the IET, and date and mail the rejection letter.
 5. The rejected offer file must be suspended to allow the taxpayer an opportunity to request an appeal. The time frame allowed for requesting an appeal is 30 days from the date of the rejection letter. An additional 15 day tolerance period is provided to allow time for appeal requests to be received and associated with the offer file. This 15 day tolerance period ensures that levy action is not resumed when a timely appeal has been requested.
 6. Suspend the file for 45 days to allow the taxpayer 30 days to appeal the rejected offer and an additional 15 day tolerance period prior to closing the offer.
 7. If no protest letter is received by the 45th day, close the offer record as a rejection on AOIC. When closing the offer on AOIC input the day of the actual rejection letter.
 8. Closing the AOIC record as a rejection automatically generates the posting of TC 481 for all periods included on AOIC.

5.8.7.6 (02-04-2000) **Rejection Appealed**

1. When a taxpayer replies to the rejection letter by requesting an appeal, review the request to ensure that the taxpayer followed the instructions:

If...	Then...
A taxpayer responds timely to an appeal, and the information in the protest letter is insufficient to adequately process the appeal	Advise the taxpayer of the required information and allow 15 days to perfect the request.
New information is submitted	Review the new information to reconsider the taxpayer's offer.
The evaluation leads to a different conclusion	Complete the offer without sending it to Appeals.
The evaluation does not change the conclusion	Assign the case to 9000 and send the file to Appeals.

- When Appeals sustains the rejection or accepts the offer or an amended offer they will provide copies of the case documents so we can close the record on AOIC.

5.8.7.7 (02-04-2000) **Public Policy Rejection**

1. Policy Statement P-5-89 establishes that offers may be rejected on the basis of public policy if acceptance might in any way be detrimental to the interest of the government even though it is shown conclusively the amount offered is greater that could be collected by any other means.
2. A decision to reject an offer for public policy should be extremely rare and based on:
 - A. A clear and convincing case that public reaction to the acceptance would be so negative that future voluntary compliance by the public would be diminished.
 - B. Suspicion that the financial benefits of a criminal activity are concealed or the criminal activity is continuing.
3. An offer will not be rejected for public policy grounds solely because:
 - A. It would generate considerable public interest, some of it critical.
 - B. A taxpayer was criminally prosecuted for a tax or non-tax violation.
4. Include in the rejection narrative a discussion of the specific public policy issues.
5. See Delegation Order 11 for the authorized official to reject offers based on public policy.

5.8.7.8 (02-04-2000)

Authorization to Apply Deposit

1. If a deposit was submitted with the offer, request the taxpayer to authorize application of the deposit to the outstanding liability.
2. If the taxpayer agrees, complete and secure the taxpayer's signature on Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability. A letter signed by the taxpayer including the same information may be used in lieu of Form 3040. Forward the original Form 3040 or letter to Compliance Services for processing. The date the offer deposit was initially received is the interest effective date of the payment. If the taxpayer does not authorize application of the deposit, it **will** be refunded to the taxpayer.

5.8.7.9 (02-04-2000)

Closed File Retention

1. The current and two prior calendar year closed files are to be retained in the Area office per IRM 1.15.2.21-1, Records Control Schedule for the Servicewide Collection Function. After that time, retire the files to the Federal Record Center.
2. Returned case files will contain only the following:
 - A. Copy of the closing letter to the taxpayer
 - B. Copy of initial and amended Forms 656
 - C. Copy of Form 2848, if applicable
 - D. Completed and signed Form 1271
 - E. Narrative report
 - F. Copy of the Collection Information Statements
 - G. Complete case history sheets
 - H. Any other significant information such as correspondence, and
 - I. Copy of Form 5942, Reviewer's Report from the independent administrative review, if applicable
3. Terminated, rejected and withdrawn case files will contain only the following:
 - A. Copy of the closing letter to the taxpayer
 - B. Original Form 656 and original amended Forms 656
 - C. Copy of Form 2848, if applicable
 - D. Completed and signed Form 1271
 - E. Narrative report
 - F. Original Collection Information Statement(s) with supporting verification and documentation
 - G. Complete case history sheets
 - H. Any other significant information such as correspondence, and
 - I. Form 5942, Reviewer's Report from the independent administrative review, if applicable

**Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in
Compromise Sec. 7 Return, Terminate,
Withdraw and Reject Processing**

(02-04-2000)

[IRS Privacy and Security Policy](#) | [Contact Us](#)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 8 Acceptance Processing

Contents

- [5.8.8 Acceptance Processing](#)
 - [5.8.8.1 Overview](#)
 - [5.8.8.2 Recommendation](#)
 - [5.8.8.3 Form 7249, Offer Acceptance Report](#)
 - [5.8.8.4 Legal Opinion of Counsel](#)
 - [5.8.8.5 Approval](#)
 - [5.8.8.6 Final Processing](#)
 - [5.8.8.7 Public Inspection File](#)
 - [5.8.8.8 Accepted Offer File](#)
- [Exhibit 5.8.8-1 Redacted MFTRAX](#)

5.8.8.1 (11-01-2000) Overview

1. The determination to accept an offer in compromise is based on sound decisions relating to analysis of the individual taxpayer's facts and circumstances and financial situation. Documentation supporting this decision and proper approval levels are required to complete the acceptance. This section describes the process for accepting an offer in compromise.

5.8.8.2 (11-30-2001) Recommendation

1. To recommend acceptance the investigating employee will:
 - A. Complete a report summarizing the facts of the investigation to support the recommendation. The Offer in Compromise Recommendation Report contained in Section 4 may be used for this purpose. The report should contain the following facts at a minimum:
 - The taxpayer's personal information such as age, health, dependents, education and occupation
 - The cause of the delinquency and state of current compliance
 - The amount of reasonable collection potential and reasonable detail as to how it was calculated. The AET and IET contained in Section 4 will generally be used for this purpose.
 - Whether or not special circumstances exist and how they affected the amount agreed upon
 - Negotiations resulting in the acceptable offer amount
 - A conclusion
 - B. In the rare situation where relevant facts of a confidential nature exist that should not be included in the recommendation report, complete a supplemental memorandum for the record and include it in the case file. Do not include information already discussed in the offer recommendation report.
 - C. Follow the instructions in the next section to complete Form 7249, Offer Acceptance Report.
 - D. Generate an acceptance letter and attach copies of Form 656 and all collateral agreements.
 - E. Assemble the rest of the file to include:
 - Complete history sheets
 - Collection Information Statements
 - Verification from internal and external sources
 - Results of public record checks
 - Supporting documentation provided by the taxpayer
 - Correspondence
 - Form 2848, Power of Attorney and Declaration of Representative
 - F. Submit the file for management approval.
2. Where one taxpayer, or related taxpayers, such as a husband and wife, partners, or a group of consolidated corporations, file several offers to compromise separate assessments, and the collectibility of the liabilities arises from the principal source:
 - A. Prepare a separate Form 7249 for each offer.
 - B. One acceptance narrative may be used if it addresses the collection potential of all the related entities. Attach a copy of the offer recommendation report to each Form 7249.
 - C. Consider the sum of the balances due on each individual offer to determine whether counsel review is necessary and which official has authority to accept the offers.
3. When the accepted offer includes a TFRP assessment, Form 656 and Form 7249 will reflect the TFRP period based on the last quarterly period, as indicated by the assessment. The file must contain information indicating what periods these assessments include. Generally an IDRS print of command code UNCLR under the taxpayer's SSN will provide this information and should be included with the closing documents.

5.8.8.3 (11-01-2000)

Form 7249, Offer Acceptance Report

1. To complete the Form 7249, Offer Acceptance Report:
 - A. Request MFTRAX as close to the acceptance date as possible without delaying acceptance. The accrual date on Form 7249 or the MFTRAX should be close to but does not have to match the offer acceptance date. For non-master file periods included in the offer secure a NMF transcript.
 - B. Black out, or redact, all tax return information on the MFTRAX not to be disclosed to the public (See **Exhibit 8-1**) :
 - Name and SSN of a co-obligor spouse if they are not a party to the compromise
 - Number of exemptions
 - Filing status
 - Adjusted gross income
 - Taxable income
 - Principal Industry Activity Code
 - Transaction codes which neither debits or credits a money amount
 - Transaction codes and explanations dealing with fraud, negligence penalties, or criminal investigations but, not the date and amount of the transaction.
 - C. Update the AOIC main screen with any new address information for the taxpayer or representative.
 - D. Update AOIC main screen to indicate the correct basis for compromise and to indicate the existence of special circumstances when applicable.
 - E. Update the MFT screen on AOIC with the current amounts due so Form 7249 will reflect the same accrual date and amounts as the transcripts:
 - For accounts on the masterfile use the accrual date and amounts from MFTRAX.
 - If any modules have restricted penalty or interest, research IDRS command code COMPAD and/or COMPAF to determine the accrued amounts and make a pen and ink update to the MFTRAX transcripts.
CAUTION:
Do not use command code INTST as a substitute for MFTRAX or COMPA because it does not meet the IRC Section 7122(b) requirement to state tax, penalty, and interest as separate items in the public inspection file.
 - MFTRAX is not available for Non-Master File accounts. Use an Automated Non-Master File (ANMF) transcript and, if necessary, update it with information from command code COMPAD and/or COMPAF.

REMINDER:
Only assessed tax liabilities may be compromised. If a potential liability is not yet assessed, do not submit the offer for acceptance until all the potential assessments are resolved.
 - F. Generate and print Form 7249 on AOIC
 - Describe any special instructions to the service center for application of the offer payments. For example, to apply them to the joint liability periods only after all the sole liability periods are paid in full.
 - For deferred payment offers that will extend for the life of the collection statute, if a lien refile is desired, request a follow up for the beginning date of the refile period. Compliance Services will monitor the offer for this date and notify the Compliance Area office to refile the liens

5.8.8.4 (11-30-2001) Legal Opinion of Counsel

1. Counsel is required to review offers with total liability amounts of \$50,000 or more. The purpose of counsel's review is to determine whether the offer legally meets the standards of doubt as to liability, doubt as to collectibility or the promotion of effective tax administration. Counsel reviews both whether the offer meets the legal requirements for compromise, and whether the offer conforms to the Service's policy and procedures.
2. Counsel's signature on the Form 7249 constitutes the legal opinion required by IRC 7122(b). By signing the form, Counsel is certifying that all of the legal requirements for compromise have been met. If Counsel does not sign the form, the case cannot be compromised unless any legal issues are resolved.
3. Counsel's signature does not necessarily indicate concurrence with the acceptance decision, but only that there are no legal barriers to compromise. In some cases, Counsel may determine that the compromise is legally permissible, but raises concerns of a policy or other non-legal nature. In such cases, the Form 7249 will be signed and any other issues will be communicated by separate memorandum.
4. It is not required that Counsel concur in the acceptance decision in order for a compromise to go forward. However, the accepting official will review and consider any opinion from Counsel prior to making the acceptance final. Where major policy concerns have been raised, it is appropriate to document the case history indicating that the accepting official fully considered the issues before accepting the offer.

5.8.8.5 (11-01-2000)

Approval

1. Delegation Order No. 11 in IRM 1.2, Handbook of Delegation Orders provides the level of authority for approving all offer in compromise dispositions.
2. The recommending employee and the accepting official must sign form 7249. The intermediate manager(s) may sign Form 7249 as reviewer(s). The accepting official must sign the acceptance letter.
3. Each manager should conduct his or her own thorough review of the offer.

If the offer involves liabilities...	Then Form 7249...
Of \$50,000 or more including interest, additional amount, addition to the tax, assessable penalty	Must not be signed by the accepting official until the required legal opinion is obtained from area counsel.
Under \$50,000	May be signed as soon as it is concluded that the offer is acceptable.

- During consideration of an offer in compromise from Federal employees determine if public policy implications exist based on the sensitivity of the employee's position or areas of responsibility. Offers from federal civil service retirees are considered under normal procedures. Offer acceptances for employees of the Internal Revenue Service require the approval of the Territory Manager.

5.8.8.6 (11-01-2000)

Final Processing

1. On the same day (or as soon as possible) the approving official accepts an offer by signing the Form 7249 and acceptance letter, complete the following:
 - A. Date the signed original acceptance letter. Enclose a copy of Form 656 and copies of any collateral agreement(s) and mail to the taxpayer.
 - B. Close the AOIC record.
 - C. Place a copy of Form 7249, together with the redacted transcripts in the public inspection file.
 - D. Place the signed original Form 7249 and a copy of the acceptance letter in the accepted offer file.

5.8.8.7 (11-30-2001)

Public Inspection File

1. Public inspection of certain information regarding all offers in compromise accepted under Section 7122 of the Internal Revenue Code is authorized by Section 6103(k)(1) of the Internal Revenue Code.
2. A separate file of accepted offer in compromise records will be maintained for this purpose and made available to the public for a period of one year. The public inspection file will be maintained in a location designated by the Area Office.
3. The file will contain for each accepted offer, a copy of the Form 7249, Offer Acceptance Report, the redacted MFTRAX or ANMF transcript and nothing else.
4. The office that has accepted the offer in compromise will be responsible for providing all required documents, as soon as possible after acceptance for inclusion in the public inspection file.

5.8.8.8 (11-01-2000) Accepted Offer File

1. Before sending the closed offer file to Compliance Services discard all extraneous documents such as outdated IDRS prints. Separate and send any Bal Dues and related Bal Due file documents to the collection closed file.
2. The use of labeled dividers is encouraged. If the labeled dividers are not available, the file should be put in order as described below:

On the left side of the file:

- o Original Form 656 and any original amended Form 656. Put the last amended Form 656 on top.
- o Any original Form 2261 series collateral agreement.
- o Original Form 7249.
- o A copy of the signed and dated acceptance letter.

On the right side of the file:

- o The entire case history with the most current date on top.
- o Any Form 5942, Special Procedures Review, from the independent review.
- o Collection Information Statements and verifying documentation.
- o Correspondence with the most recent document on top
- o A copy of any Form 2848, Power of Attorney and Declaration of Representative.

NOTE:

For unusually large cases where all the documents will not fit in one folder, a second folder may be used.

Exhibit 5.8.8-1 (11-30-2001) Redacted MFTRAX

Example of a MFTRAX where the taxpayer spouse is not a party to the compromise:

[Exhibit 5.8.8-1 \(11-30-2001\) Redacted MFTRAX](#)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 9 Possible Actions on Accepted Offers

Contents

- [5.8.9 Possible Actions on Accepted Offers](#)
 - [5.8.9.1 Overview](#)
 - [5.8.9.2 Rescission of Accepted Offers](#)
 - [5.8.9.2.1 Rescission Procedures](#)
 - [5.8.9.3 Compromise of a Compromise](#)
 - [5.8.9.3.1 Authority to Compromise Under a Compromise Contract](#)
 - [5.8.9.3.2 Receipt and Processing](#)
 - [5.8.9.3.3 Consideration of Proposal](#)
 - [5.8.9.3.4 Processing Completed Investigations](#)
 - [5.8.9.4 Potential Default Cases](#)
 - [5.8.9.5 Overlooked Periods](#)
 - [Exhibit 5.8.9-1 Pattern Letter 1603\(P\)](#)
 - [Exhibit 5.8.9-2 Pattern Letter 1604\(P\)](#)
 - [Exhibit 5.8.9-3 Pattern Letter 1607\(P\)](#)
 - [Exhibit 5.8.9-4 Default Letter](#)

5.8.9.1 (02-04-2000) Overview

1. During the time an accepted offer is monitored, a determination to terminate or rescind an existing compromise agreement may have to be made. A determination whether to compromise on an existing accepted offer may also be considered. This chapter addresses the situations which lead to the need for such decisions to be made and the procedures to follow.

5.8.9.2 (02-04-2000) Rescission of Accepted Offers

1. A compromise is a contract which is binding and conclusive on both the government and the proponent, and precludes further inquiry into the matters to which it relates unless fraud or mutual mistake is identified.
2. An offer may be rescinded or set aside when there was a mutual mistake as to a material fact or a false representation was made by one party about a material fact.
3. A "mutual mistake" is an erroneous belief held by both parties about the facts as they exist at the time the contract was entered into. The law in existence at the time of the making of the contract is part of the total state of facts at the time. The parties' mutual mistake with respect to the law, as found in statute, regulations, judicial decisions, or elsewhere, may render the compromise subject to rescission.
4. The mere fact that both parties are mistaken with respect to the same basic assumption about an existing fact, does not, of itself, provide reason for the affected party to void the contract. Rescission is only appropriate where a mistake of both parties has such a material affect on the agreed exchange of performance as to upset the very basis of the offer in compromise.
5. To constitute fraud or false representation, the following must be present:
 - A. It must appear that the representations as to material facts were false.
 - B. The maker knew the facts to be false.
 - C. The facts were made for the purpose of inducing, and did induce the other party to make the contract; and that the latter had the right to rely on them, and did rely on them, thereby sustaining injury.
6. If the offer was accepted by Appeals, the offer should be sent to the appropriate Appeals office to make the determination that the offer should be rescinded.

5.8.9.2.1 (02-04-2000) **Rescission Procedures**

1. Rescind an offer in the following manner:
 1. Prepare a letter to the taxpayer identifying the offer in compromise, by the day it was accepted, and advising that the acceptance of the offer is rescinded and the acceptance letter is revoked.
 2. Include in the letter the grounds for rescission in general terms with a demand for payment of the unpaid tax liability.
 3. All rescission determinations will be reviewed by counsel before a rescission letter is forwarded to the taxpayer.
 4. The letter will be signed by the same approval level that accepted the offer.

5.8.9.3 (02-04-2000) **Compromise of a Compromise**

1. In cases where the taxpayer is unable to pay the balance of an accepted offer and/or the balance of the contingent liability under the terms of a collateral agreement, the Service has the option to:
 - A. Temporarily adjust the terms of the offer,
 - B. Formally compromise the existing compromise, or
 - C. Exercise the default provisions of the offer.

5.8.9.3.1 (02-04-2000) **Authority to Compromise Under a Compromise Contract**

1. IRC Section 7122 authorizes the Commissioner to accept an offer in compromise of an accepted offer in compromise.
2. A proposal to compromise the balance of an accepted offer must rest on doubt as to collectibility.

5.8.9.3.2 (02-04-2000) **Receipt and Processing**

1. The office of jurisdiction which initially accepted the offer will consider the taxpayer's proposal.
2. No offer form (such as Form 656) is prescribed for use in submitting such a proposal. The proposal should be made in letter form. Upon receipt of the proposal, add a history entry to AOIC indicating that an offer on the offer has been received and notify the Service Center that the offer should not be defaulted until the results of the investigation are known. (For ICS, create an OI or CIP to control the taxpayer's proposal. When closing, be sure to note the results in the AOIC history).
3. The total amount offered to satisfy the balance due under a compromise contract must be full paid after notice of acceptance of the proposal is received by the taxpayer. The taxpayer may:
 - A. Enclose full payment of the proposed amount with the proposal.
 - B. Pay part of the proposed amount as a deposit and pay the balance when notice of acceptance is received.
 - C. Full pay the proposed amount within 10 days of when notice of acceptance is received.
4. The proposal letter should be addressed to the Commissioner of Internal Revenue Service and contain the following information:
 - A. Name, address, and TIN of the taxpayer.
 - B. The amount proposed and the terms of payment within the limitations discussed in (3) above.
 - C. The date of acceptance of the original offer
 - D. The waiver of any and all claims to amounts due from the United States up to the time of acceptance, to the extent of the difference between the amount offered and the amount of the claim covered by the offer.
 - E. The compliance agreement will remain in effect from the date the original offer was accepted. This is only applicable to Form 656 revisions of 2-92, and thereafter.
 - F. Exhibit 9-1 provides an example of a proposal letter.
5. The taxpayer must submit a financial statement.

5.8.9.3.3 (02-04-2000) **Consideration of Proposal**

1. The consideration of such a proposal will be made by the office of jurisdiction which originally accepted the taxpayer's offer. Acceptance will depend on:
 - A. whether it is in the best interest of the Government.
 - B. consideration of the same factors utilized when considering the merits of an offer submitted on a Form 656.
2. The information required to support the proposal should fit the case such as:
 - o Copy of taxpayer's most recent income tax return or CC RTVUE/BRTVU print
 - o Estimate of the remaining liability under the terms of the future income collateral agreement, if applicable
 - o Reasons why request is being made to compromise the existing agreement
 - o Full compliance check
 - o Statement of current financial condition
 - o Description of future prospects and any other information which might have a bearing upon the acceptability of the offer
 - o Estimated and projected amount of future income over the period covered by the remaining terms of the original offer in compromise agreement.
3. Compare the amount of the taxpayer's offer and the amount which is anticipated to be recouped under the remaining terms of the original offer in compromise agreement.

5.8.9.3.4 (02-04-2000) **Processing Completed Investigations**

1. When the investigation is complete, forward the taxpayer's proposal, investigative report, and memorandum containing a complete statement of the facts in the case and the recommendation to the delegated official.
2. Prepare an acceptance or denial letter. (See Exhibits 9-2 and 9-3)

If...	Then...
The taxpayer's proposal is acceptable	The procedures for acceptance of original offers will be followed which includes a legal opinion as set forth in Chapter 8.
The offer is accepted	The acceptance file will contain the following: <ul style="list-style-type: none"> • Copy of Acceptance Letter • Taxpayer's proposal • Memorandum supporting the compromise of a compromise • Work papers and financial information • Original acceptance recommendation, if available.
The proposal is not acceptable	Forward to the delegated official for approval and signature. Include: <ul style="list-style-type: none"> • Denial Letter (return without appeals) • Taxpayer's proposal • Memorandum supporting the examiner's recommendation • Offer case file <p>NOTE:</p> <p>No appeal rights are granted to the taxpayer. However, if the offer was originally accepted by Appeals, the revenue officer should discuss the case with Appeals for concurrence before returning the offer to the taxpayer.</p>

- AOIC history must be updated with the results of the investigation. If the proposal is accepted, include in the AOIC history the amount of the accepted proposal and the terms for payment.
- Final processing of accepted or denied proposals will be conducted following the guidelines for original offers.

5.8.9.4 (11-30-2001) Potential Default Cases

1. An offer can reach a potential default status in one of two ways:
 - A. The taxpayer failed to make timely payment of the amount due based on the terms of the offer or a related collateral agreement;
 - B. The taxpayer has not adhered to the compliance provisions of the offer contract.

NOTE:

Offers accepted after December 31, 1999 contain a clause relating to the severability of joint offer periods when a joint Form 656 is accepted. The severability clause will be applied to all joint offers, including those accepted prior to 1/1/2000.
2. Offer Units at the Service Center have responsibility and authority to make determinations on the majority of potential offer default cases. IRM 21.9 provides procedures for the Service Center employees on potential offer default cases.
3. The local collection office may receive a potential default case either through a Balance Due and/or a Delinquent Return assignment with a literal "OIC" displayed on the hardcopy TDA/TDI or through an Other Investigation issued by the Service Center OIC Unit on default cases beyond their scope of responsibility.
4. An attempt will be made to secure compliance. Any remittance received will be forwarded with the related offer case information, to the service center. Cash payments will be converted to bank draft or money orders.
5. If compliance is not immediately secured, the offer will be evaluated in light of all information submitted by the service center and a decision will be made whether to terminate the offer or to consider temporary adjustment of its terms.

If...	Then...
The taxpayer can pay the potential defaulted amount in 6 months or less	The revenue officer can grant an extension of time to pay for no longer than 6 months . Future deferred payments must be made on time.
The taxpayer requires longer than 6 months to pay	The request will be analyzed and a decision made based on the taxpayer's financial condition <ul style="list-style-type: none"> - this decision cannot result in the taxpayer paying less than the amount accepted. - if granted, the letter must be signed by a group manager.
The payment default is caused by the death of the taxpayer	The revenue officer will determine if the estate can and will pay the balance of the offered amount.
It appears that the estate has sufficient funds to pay but the funds have not been dispersed	A letter signed by an approving official will be sent to the estate outlining the terms of payment.
A bond has been filed or other security obtained for payment of the offer	Consideration should be given to collecting from that source.
The investigation reveals that extreme hardship or other special circumstances exist that result in a decision that default is not in the best interest of the government	Consider following IRM 5.8.9.3, Compromise of a Compromise.

- When the investigation is completed all reports and recommendations will be returned to the service center. If the offer is to be defaulted, the revenue officer must prepare a default letter for signature by the delegated official (See Exhibit 9-4). If the offer was originally accepted by Appeals, the file will be referred to the appropriate Appeals Office for review and issuance of the termination letter.

5.8.9.5 (02-04-2000) Overlooked Periods

1. Occasionally, additional periods or years are discovered subsequent to the acceptance of an offer. When such liabilities are discovered, the offer agreement may be modified to include the additional period(s) as long as both the Service and the taxpayer are in agreement. The tax must have been assessed prior to the issuance of the notice of acceptance. Such modification would not require a determination of "mutual mistake of material fact."
2. Secure the original offer file. Have the taxpayer add the omitted period(s) to the original offer. Make a pen and ink change to Form 7249 adding the additional period(s). The appropriate officials must then initial the recommended changes to Form 7249.

Exhibit 5.8.9-1 (02-04-2000) Pattern Letter 1603(P)

Proposal letter to compromise balance due on offer in compromise and/or to compromise future income collateral agreement contingent liability. The bolded information is to be added for a collateral agreement.

Commissioner of Internal Revenue
Washington, DC 20224

On [enter date from upper right corner of acceptance letter] you accepted [my/our] offer in compromise **and the related Form [2261, Collateral Agreement, Future Income - Individual; or 2261-A, Collateral Agreement, Future Income-Corporation]** . [I/we] agreed to pay \$[enter amount from Form 656, Offer in Compromise; if you amended Form 656, you must take this information from the latest amendment] to compromise the tax liability(s) listed below:

[List type(s) of tax and period(s) from Form 656 or the latest amendment, if applicable.]

Instead of future payments specified in Form [2261; or 2261-A], [I/we] propose to pay [enter amount you are offering to pay] in full settlement of the original offer **and the collateral agreement . [Also select one of the following sentences to describe how you will pay the amount you entered in the previous sentence:**

[I/we] have enclosed full payment of the proposed amount.

[I/we] will make full payment of the proposed amount when you notify [me/us] that you have accepted [my/our] proposal.

[I/we] have enclosed \$[enter amount you are sending with this letter] and will pay the balance when you notify [me/us] that you have accepted [my/our] proposal.]

[If your original offer was submitted on a Form 656, Offer in Compromise, with a revision date of February, 1992, or later, please insert the following sentence:

[I/we] agree to file and pay all taxes as required by the Internal Revenue Code for five years from [enter the date from the upper right corner of the acceptance letter.

[I/we] agree to waive any and all claims to overpayments of tax or other liabilities, including interest on those payments, that I may be entitled to receive under the Internal Revenue Code. This waiver is limited to overpayments which haven't already been refunded to me for any years or tax periods which end before or during the year you accept this proposal.

[I/we] have enclosed a letter with this proposal which contains the detailed reasons for submitting this offer and a completed financial statement showing [my/our] current financial condition.

[Enter your signature and today's date.

Each person who is submitting this proposal must sign here.]

Enclosure:

**Exhibit 5.8.9-2 (02-04-2000)
Pattern Letter 1604(P)**

Acceptance letter for proposal to compromise balance due on offer in compromise and/or collateral agreement. The bolded information is to be added for a collateral agreement.

Date: Social Security or Employer

Identification Number:

Salutation Person to Contact:

Telephone Number:

We accept your proposal to pay \$---- to settle the remaining liability under the offer in compromise accepted on Enter Date **and/or the related collateral agreement.**

Since you have paid the amount proposed, you do not need to take further action. (or: Since you enclosed \$---- with your proposal, please send the balance of \$---- by Enter Date) (or: Since payment was to be made on notice of acceptance of your proposal, please send \$---- by Enter Date .)

Your check or money order should be made payable to the United States Treasury and sent to (service center address Attn.: Collection Offer Unit).

If you receive a refund that you specifically waived under the terms of your proposal, please return it promptly to the service center, to the attention of the Offer Unit.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

(Signature and title)

**Exhibit 5.8.9-3 (02-04-2000)
Pattern Letter 1607(P)**

Denial of proposal to compromise balance due on offer in compromise and/ or collateral agreement. The bolded information should be added for a collateral agreement.

Salutation

We are sorry, but we cannot accept your proposal dated ---- to compromise the remaining liability under the offer in compromise accepted on Enter Date**(and/or related collateral agreement)**.

(Explain reasons)

We must, therefore, ask you to comply with the terms of the offer in compromise including any collateral agreement. If you have any questions, please contact (name, Internal Revenue Service Center, address, telephone number).

Sincerely yours,

(Signature and title)

**Exhibit 5.8.9-4 (02-04-2000)
Default Letter**

Failure to Comply with the terms of an accepted offer in compromise and/or related collateral agreement. The bolded information should be added for a collateral agreement.

Salutation:

This refers to our letter of [date], accepting your offer of \$[amount], in compromise of your [kind of tax] tax liability, plus statutory additions, for [years or tax periods]. Your offer included your agreement to the default provisions, waiver of refunds, payment of interest, and other terms provided on the Form 656.

Also included was a related collateral agreement(s) you submitted as additional consideration for acceptance of your offer.

Under the terms of your offer, \$[amount] was to be paid as follows:
[Quote terms of payment shown on Form 656]

The collateral agreement(s) provide that you must file annual income statements and pay graduated percentages of annual income for the years [date] through [date].

Our records show that you did not comply with the terms of the offer **and collateral agreement(s)** [specify reason for non-compliance], therefore your offer in compromise is declared in default and the agreement to compromise the original liability is terminated. All payments on the offer and collateral agreement(s) will be applied to the original liability.

Please contact [name, address, and telephone number] if you have any questions and to discuss payment of the remaining amount of the original liability.

Sincerely yours,

[signature and title]

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in Compromise Sec. 9 Possible Actions on Accepted Offers (02-04-2000)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 9 Possible Actions on Accepted Offers

Contents

- [5.8.9 Possible Actions on Accepted Offers](#)
 - [5.8.9.1 Overview](#)
 - [5.8.9.2 Rescission of Accepted Offers](#)
 - [5.8.9.2.1 Rescission Procedures](#)
 - [5.8.9.3 Compromise of a Compromise](#)
 - [5.8.9.3.1 Authority to Compromise Under a Compromise Contract](#)
 - [5.8.9.3.2 Receipt and Processing](#)
 - [5.8.9.3.3 Consideration of Proposal](#)
 - [5.8.9.3.4 Processing Completed Investigations](#)
 - [5.8.9.4 Potential Default Cases](#)
 - [5.8.9.5 Overlooked Periods](#)
 - [Exhibit 5.8.9-1 Pattern Letter 1603\(P\)](#)
 - [Exhibit 5.8.9-2 Pattern Letter 1604\(P\)](#)
 - [Exhibit 5.8.9-3 Pattern Letter 1607\(P\)](#)
 - [Exhibit 5.8.9-4 Default Letter](#)

5.8.9.1 (02-04-2000) Overview

1. During the time an accepted offer is monitored, a determination to terminate or rescind an existing compromise agreement may have to be made. A determination whether to compromise on an existing accepted offer may also be considered. This chapter addresses the situations which lead to the need for such decisions to be made and the procedures to follow.

5.8.9.2 (02-04-2000) Rescission of Accepted Offers

1. A compromise is a contract which is binding and conclusive on both the government and the proponent, and precludes further inquiry into the matters to which it relates unless fraud or mutual mistake is identified.
2. An offer may be rescinded or set aside when there was a mutual mistake as to a material fact or a false representation was made by one party about a material fact.
3. A "mutual mistake" is an erroneous belief held by both parties about the facts as they exist at the time the contract was entered into. The law in existence at the time of the making of the contract is part of the total state of facts at the time. The parties' mutual mistake with respect to the law, as found in statute, regulations, judicial decisions, or elsewhere, may render the compromise subject to rescission.
4. The mere fact that both parties are mistaken with respect to the same basic assumption about an existing fact, does not, of itself, provide reason for the affected party to void the contract. Rescission is only appropriate where a mistake of both parties has such a material affect on the agreed exchange of performance as to upset the very basis of the offer in compromise.
5. To constitute fraud or false representation, the following must be present:
 - A. It must appear that the representations as to material facts were false.
 - B. The maker knew the facts to be false.
 - C. The facts were made for the purpose of inducing, and did induce the other party to make the contract; and that the latter had the right to rely on them, and did rely on them, thereby sustaining injury.
6. If the offer was accepted by Appeals, the offer should be sent to the appropriate Appeals office to make the determination that the offer should be rescinded.

5.8.9.2.1 (02-04-2000) **Rescission Procedures**

1. Rescind an offer in the following manner:
 1. Prepare a letter to the taxpayer identifying the offer in compromise, by the day it was accepted, and advising that the acceptance of the offer is rescinded and the acceptance letter is revoked.
 2. Include in the letter the grounds for rescission in general terms with a demand for payment of the unpaid tax liability.
 3. All rescission determinations will be reviewed by counsel before a rescission letter is forwarded to the taxpayer.
 4. The letter will be signed by the same approval level that accepted the offer.

5.8.9.3 (02-04-2000) **Compromise of a Compromise**

1. In cases where the taxpayer is unable to pay the balance of an accepted offer and/or the balance of the contingent liability under the terms of a collateral agreement, the Service has the option to:
 - A. Temporarily adjust the terms of the offer,
 - B. Formally compromise the existing compromise, or
 - C. Exercise the default provisions of the offer.

5.8.9.3.1 (02-04-2000) **Authority to Compromise Under a Compromise Contract**

1. IRC Section 7122 authorizes the Commissioner to accept an offer in compromise of an accepted offer in compromise.
2. A proposal to compromise the balance of an accepted offer must rest on doubt as to collectibility.

5.8.9.3.2 (02-04-2000) **Receipt and Processing**

1. The office of jurisdiction which initially accepted the offer will consider the taxpayer's proposal.
2. No offer form (such as Form 656) is prescribed for use in submitting such a proposal. The proposal should be made in letter form. Upon receipt of the proposal, add a history entry to AOIC indicating that an offer on the offer has been received and notify the Service Center that the offer should not be defaulted until the results of the investigation are known. (For ICS, create an OI or CIP to control the taxpayer's proposal. When closing, be sure to note the results in the AOIC history).
3. The total amount offered to satisfy the balance due under a compromise contract must be full paid after notice of acceptance of the proposal is received by the taxpayer. The taxpayer may:
 - A. Enclose full payment of the proposed amount with the proposal.
 - B. Pay part of the proposed amount as a deposit and pay the balance when notice of acceptance is received.
 - C. Full pay the proposed amount within 10 days of when notice of acceptance is received.
4. The proposal letter should be addressed to the Commissioner of Internal Revenue Service and contain the following information:
 - A. Name, address, and TIN of the taxpayer.
 - B. The amount proposed and the terms of payment within the limitations discussed in (3) above.
 - C. The date of acceptance of the original offer
 - D. The waiver of any and all claims to amounts due from the United States up to the time of acceptance, to the extent of the difference between the amount offered and the amount of the claim covered by the offer.
 - E. The compliance agreement will remain in effect from the date the original offer was accepted. This is only applicable to Form 656 revisions of 2-92, and thereafter.
 - F. Exhibit 9-1 provides an example of a proposal letter.
5. The taxpayer must submit a financial statement.

5.8.9.3.3 (02-04-2000)

Consideration of Proposal

1. The consideration of such a proposal will be made by the office of jurisdiction which originally accepted the taxpayer's offer. Acceptance will depend on:
 - A. whether it is in the best interest of the Government.
 - B. consideration of the same factors utilized when considering the merits of an offer submitted on a Form 656.
2. The information required to support the proposal should fit the case such as:
 - o Copy of taxpayer's most recent income tax return or CC RTVUE/BRTVU print
 - o Estimate of the remaining liability under the terms of the future income collateral agreement, if applicable
 - o Reasons why request is being made to compromise the existing agreement
 - o Full compliance check
 - o Statement of current financial condition
 - o Description of future prospects and any other information which might have a bearing upon the acceptability of the offer
 - o Estimated and projected amount of future income over the period covered by the remaining terms of the original offer in compromise agreement.
3. Compare the amount of the taxpayer's offer and the amount which is anticipated to be recouped under the remaining terms of the original offer in compromise agreement.

5.8.9.3.4 (02-04-2000)

Processing Completed Investigations

1. When the investigation is complete, forward the taxpayer's proposal, investigative report, and memorandum containing a complete statement of the facts in the case and the recommendation to the delegated official.
2. Prepare an acceptance or denial letter. (See Exhibits 9-2 and 9-3)

If...	Then...
The taxpayer's proposal is acceptable	The procedures for acceptance of original offers will be followed which includes a legal opinion as set forth in Chapter 8.
The offer is accepted	The acceptance file will contain the following: <ul style="list-style-type: none"> ● Copy of Acceptance Letter ● Taxpayer's proposal ● Memorandum supporting the compromise of a compromise ● Work papers and financial information ● Original acceptance recommendation, if available.
The proposal is not acceptable	Forward to the delegated official for approval and signature. Include: <ul style="list-style-type: none"> ● Denial Letter (return without appeals) ● Taxpayer's proposal ● Memorandum supporting the examiner's recommendation ● Offer case file <p>NOTE:</p> <p>No appeal rights are granted to the taxpayer. However, if the offer was originally accepted by Appeals, the revenue officer should discuss the case with Appeals for concurrence before returning the offer to the taxpayer.</p>

- AOIC history must be updated with the results of the investigation. If the proposal is accepted, include in the AOIC history the amount of the accepted proposal and the terms for payment.
- Final processing of accepted or denied proposals will be conducted following the guidelines for original offers.

5.8.9.4 (11-30-2001) **Potential Default Cases**

1. An offer can reach a potential default status in one of two ways:
 - A. The taxpayer failed to make timely payment of the amount due based on the terms of the offer or a related collateral agreement;
 - B. The taxpayer has not adhered to the compliance provisions of the offer contract.

NOTE:

Offers accepted after December 31, 1999 contain a clause relating to the severability of joint offer periods when a joint Form 656 is accepted. The severability clause will be applied to all joint offers, including those accepted prior to 1/1/2000.

2. Offer Units at the Service Center have responsibility and authority to make determinations on the majority of potential offer default cases. IRM 21.9 provides procedures for the Service Center employees on potential offer default cases.
3. The local collection office may receive a potential default case either through a Balance Due and/or a Delinquent Return assignment with a literal "OIC" displayed on the hardcopy TDA/TDI or through an Other Investigation issued by the Service Center OIC Unit on default cases beyond their scope of responsibility.
4. An attempt will be made to secure compliance. Any remittance received will be forwarded with the related offer case information, to the service center. Cash payments will be converted to bank draft or money orders.
5. If compliance is not immediately secured, the offer will be evaluated in light of all information submitted by the service center and a decision will be made whether to terminate the offer or to consider temporary adjustment of its terms.

If...	Then...
The taxpayer can pay the potential defaulted amount in 6 months or less	The revenue officer can grant an extension of time to pay for no longer than 6 months . Future deferred payments must be made on time.
The taxpayer requires longer than 6 months to pay	The request will be analyzed and a decision made based on the taxpayer's financial condition <ul style="list-style-type: none"> - this decision cannot result in the taxpayer paying less than the amount accepted. - if granted, the letter must be signed by a group manager.
The payment default is caused by the death of the taxpayer	The revenue officer will determine if the estate can and will pay the balance of the offered amount.
It appears that the estate has sufficient funds to pay but the funds have not been dispersed	A letter signed by an approving official will be sent to the estate outlining the terms of payment.
A bond has been filed or other security obtained for payment of the offer	Consideration should be given to collecting from that source.
The investigation reveals that extreme hardship or other special circumstances exist that result in a decision that default is not in the best interest of the government	Consider following IRM 5.8.9.3, Compromise of a Compromise.

- When the investigation is completed all reports and recommendations will be returned to the service center. If the offer is to be defaulted, the revenue officer must prepare a default letter for signature by the delegated official (See Exhibit 9-4). If the offer was originally accepted by Appeals, the file will be referred to the appropriate Appeals Office for review and issuance of the termination letter.

5.8.9.5 (02-04-2000) Overlooked Periods

1. Occasionally, additional periods or years are discovered subsequent to the acceptance of an offer. When such liabilities are discovered, the offer agreement may be modified to include the additional period(s) as long as both the Service and the taxpayer are in agreement. The tax must have been assessed prior to the issuance of the notice of acceptance. Such modification would not require a determination of "mutual mistake of material fact."
2. Secure the original offer file. Have the taxpayer add the omitted period(s) to the original offer. Make a pen and ink change to Form 7249 adding the additional period(s). The appropriate officials must then initial the recommended changes to Form 7249.

Exhibit 5.8.9-1 (02-04-2000) Pattern Letter 1603(P)

Proposal letter to compromise balance due on offer in compromise and/or to compromise future income collateral agreement contingent liability. The bolded information is to be added for a collateral agreement.

Commissioner of Internal Revenue
Washington, DC 20224

On [enter date from upper right corner of acceptance letter] you accepted [my/our] offer in compromise **and the related Form [2261, Collateral Agreement, Future Income - Individual; or 2261-A, Collateral Agreement, Future Income-Corporation]** . [I/we] agreed to pay \$[enter amount from Form 656, Offer in Compromise; if you amended Form 656, you must take this information from the latest amendment] to compromise the tax liability(s) listed below:

[List type(s) of tax and period(s) from Form 656 or the latest amendment, if applicable.]

Instead of future payments specified in Form [2261; or 2261-A], [I/we] propose to pay [enter amount you are offering to pay] in full settlement of the original offer **and the collateral agreement . [Also select one of the following sentences to describe how you will pay the amount you entered in the previous sentence:**

[I/we] have enclosed full payment of the proposed amount.

[I/we] will make full payment of the proposed amount when you notify [me/us] that you have accepted [my/our] proposal.

[I/we] have enclosed \$[enter amount you are sending with this letter] and will pay the balance when you notify [me/us] that you have accepted [my/our] proposal.]

[If your original offer was submitted on a Form 656, Offer in Compromise, with a revision date of February, 1992, or later, please insert the following sentence:

[I/we] agree to file and pay all taxes as required by the Internal Revenue Code for five years from [enter the date from the upper right corner of the acceptance letter.

[I/we] agree to waive any and all claims to overpayments of tax or other liabilities, including interest on those payments, that I may be entitled to receive under the Internal Revenue Code. This waiver is limited to overpayments which haven't already been refunded to me for any years or tax periods which end before or during the year you accept this proposal.

[I/we] have enclosed a letter with this proposal which contains the detailed reasons for submitting this offer and a completed financial statement showing [my/our] current financial condition.

[Enter your signature and today's date.

Each person who is submitting this proposal must sign here.]

Enclosure:

**Exhibit 5.8.9-2 (02-04-2000)
Pattern Letter 1604(P)**

Acceptance letter for proposal to compromise balance due on offer in compromise and/or collateral agreement. The bolded information is to be added for a collateral agreement.

Date: Social Security or Employer

Identification Number:

Salutation Person to Contact:

Telephone Number:

We accept your proposal to pay \$---- to settle the remaining liability under the offer in compromise accepted on Enter Date **and/or the related collateral agreement**.

Since you have paid the amount proposed, you do not need to take further action. (or: Since you enclosed \$---- with your proposal, please send the balance of \$---- by Enter Date) (or: Since payment was to be made on notice of acceptance of your proposal, please send \$---- by Enter Date .)

Your check or money order should be made payable to the United States Treasury and sent to (service center address Attn.: Collection Offer Unit).

If you receive a refund that you specifically waived under the terms of your proposal, please return it promptly to the service center, to the attention of the Offer Unit.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

(Signature and title)

**Exhibit 5.8.9-3 (02-04-2000)
Pattern Letter 1607(P)**

Denial of proposal to compromise balance due on offer in compromise and/ or collateral agreement. The bolded information should be added for a collateral agreement.

Salutation

We are sorry, but we cannot accept your proposal dated ---- to compromise the remaining liability under the offer in compromise accepted on Enter Date**(and/or related collateral agreement)**.

(Explain reasons)

We must, therefore, ask you to comply with the terms of the offer in compromise including any collateral agreement. If you have any questions, please contact (name, Internal Revenue Service Center, address, telephone number).

Sincerely yours,

(Signature and title)

**Exhibit 5.8.9-4 (02-04-2000)
Default Letter**

Failure to Comply with the terms of an accepted offer in compromise and/or related collateral agreement. The bolded information should be added for a collateral agreement.

Salutation:

This refers to our letter of [date], accepting your offer of \$[amount], in compromise of your [kind of tax] tax liability, plus statutory additions, for [years or tax periods]. Your offer included your agreement to the default provisions, waiver of refunds, payment of interest, and other terms provided on the Form 656.

Also included was a related collateral agreement(s) you submitted as additional consideration for acceptance of your offer.

Under the terms of your offer, \$[amount] was to be paid as follows:
[Quote terms of payment shown on Form 656]

The collateral agreement(s) provide that you must file annual income statements and pay graduated percentages of annual income for the years [date] through [date].

Our records show that you did not comply with the terms of the offer **and collateral agreement(s)** [specify reason for non-compliance], therefore your offer in compromise is declared in default and the agreement to compromise the original liability is terminated. All payments on the offer and collateral agreement(s) will be applied to the original liability.

Please contact [name, address, and telephone number] if you have any questions and to discuss payment of the remaining amount of the original liability.

Sincerely yours,

[signature and title]

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in Compromise Sec. 9 Possible Actions on Accepted Offers (02-04-2000)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 11 Effective Tax Administration

Contents

- [5.8.11 Effective Tax Administration](#)
 - [5.8.11.1 Overview](#)
 - [5.8.11.2 Legal Basis for Effective Tax Administration Offer](#)
 - [5.8.11.2.1 Economic Hardship](#)
 - [5.8.11.2.2 Detriment to Voluntary Compliance](#)
 - [5.8.11.2.3 Compromise Would Not Undermine Compliance with Tax Laws](#)
 - [5.8.11.3 Initial Processing of Effective Tax Administration Offers](#)
 - [5.8.11.4 Evaluation of Offers](#)
 - [5.8.11.4.1 Financial Statement Analysis](#)
 - [5.8.11.4.2 Determining an Acceptable Offer Amount](#)
 - [5.8.11.5 Documentation and Verification](#)
 - [5.8.11.6 Final Processing](#)
 - [5.8.11.6.1 Rejection/Return/Withdrawal Processing](#)
 - [5.8.11.6.2 Acceptance Processing](#)

5.8.11.1 (11-01-2000) Overview

1. Subsequent to the Internal Revenue Service Restructuring and Reform Act of 1998, the Service was given authority to compromise cases involving issues such as equity, hardship and public policy. The Service may now compromise under three separate bases, Doubt as to Liability, Doubt as to Collectibility and to Promote Effective Tax Administration.
2. A compromise to Promote Effective Tax Administration will be evaluated based on the offer taxpayer's circumstances that involve equity and/or hardship issues.
3. The effective tax administration basis for compromise applies only when the service has established that doubt as to liability and doubt as to collectibility do not exist.
4. Taxpayers who meet the requirements for doubt as to collectibility, but who have special circumstances must meet the same criteria as defined for effective tax administration hardship offers.

5.8.11.2 (11-01-2000)

Legal Basis for Effective Tax Administration Offer

1. Prior to accepting an offer under effective tax administration, the service must establish that the liabilities are valid and that the taxpayer can full pay the tax liabilities.
 - A. The liabilities will be considered accurate unless the taxpayer raises issues to question the validity of the assessment(s) or the investigating employee establishes that the liabilities are in question.
 - B. If the taxpayer's reasonable collection potential indicates an ability to full pay the liability, and doubt as to liability does not exist, effective tax administration may be a valid basis for compromise.
2. In reaching these determinations:

If...	Then...
The Service determines that there is doubt as to the amount of the liability the taxpayer owes	Taxpayer is not eligible for effective tax administration offer. The offer is considered based on doubt as to liability.
The Service determines that the taxpayer's equity in assets and future income do not exceed the amount of the tax liability	Taxpayer is not eligible for effective tax administration offer. The offer is considered based on doubt as to collectibility. However, hardship factors may result in a doubt as to collectibility offer with special circumstances using the same hardship factors as for ETA.
The Service determines the taxpayer is not eligible for compromise based on doubt as to liability or doubt as to collectibility and taxpayer has exceptional circumstances that merit consideration of the offer	Taxpayer is eligible for consideration under effective tax administration.

- When there are no grounds to compromise the liability under doubt as to collectibility or doubt as to liability criteria and compromise of the liability would not undermine compliance with tax laws a compromise may be entered into when:

- A. Collection of the full liability would create an economic hardship, or
- B. Collection of the full liability would be detrimental to voluntary compliance.

- Before we can consider a compromise based on economic hardship or detriment to voluntary compliance considerations, three factors must exist:

- A. A liability has been or will be assessed against taxpayers before acceptance of the offer.
- B. The net equity in assets plus future income must be greater than the amount owed, and
- C. A special circumstance exists that warrants consideration of the offer, even though the assets and future income are sufficient to fully satisfy the tax liability. Factors supporting a determination of special circumstances under doubt as to collectibility are the same as economic hardship factors under effective tax administration.

5.8.11.2.1 (11-30-2001) Economic Hardship

1. When it has been determined that the taxpayer has an ability to pay the liability an offer may be accepted if, due to special circumstances, collection of the full amount would create an economic hardship.
2. Economic Hardship is defined as an inability to meet reasonable basic living expenses. The amount necessary for basic living expenses must be determined based on the taxpayer's unique circumstances. Basic living needs do not include the maintenance of an affluent or luxurious standard of living.
3. Factors supporting a determination of economic hardship include, but are not limited to:
 1. Long term illness, medical condition, or disability that renders the taxpayer incapable of earning a living;
 2. Liquidation of assets to pay the liability would render the taxpayer unable to meet basic living expenses; and
 3. Taxpayer is unable to borrow against the equity in assets and sale of the assets would have sufficient adverse consequences such that enforced collection is unlikely.

NOTE:

"Sufficient adverse consequences" means that a financial hardship would be created if the asset were sold. Adverse consequences must be of a current and specific nature, not based on speculation or anticipation of future events or future financial hardship.

4. The following examples illustrate cases that may be compromised under economic hardship:

Example 1: The taxpayer has assets sufficient to satisfy the tax liability. Taxpayer provides full time care and assistance to her dependent child, who has a serious long-term illness. It is expected that the taxpayer will need to use the equity in her assets to provide for adequate basic living expenses and medical care for her child. Taxpayer's overall compliance history does not weigh against compromise.

Example 2: Taxpayer is retired and his only income is from a pension. The taxpayer's only asset is a retirement account and the funds in the account are sufficient to satisfy the liability. Liquidation of the retirement account would leave the taxpayer without an adequate means to provide for basic living expenses. Taxpayer's overall compliance history does not weigh against compliance.

Example 3: Taxpayer is disabled and lives on a fixed income that will not, after allowance of adequate basic living expenses, permit full payment of his liability under an installment agreement. Taxpayer also owns a modest house that has been specially equipped to accommodate his disability. Taxpayer's equity in the house is sufficient to permit payment of the liability he owes. However, because of his disability and limited earning potential, taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayer's home has been specially equipped to accommodate his disability, forced sale of the taxpayer's residence would create severe adverse consequences for the taxpayer, making such a sale unlikely. Taxpayer's overall compliance history does not weigh against compliance.

Example 4: Taxpayer is a business that despite the adoption of a wide

array of precautions, including the employment of outside auditors, suffered an embezzlement loss. Although the taxpayer reviewed and signed employment tax returns and signed checks for payment of all employment tax liabilities, the embezzling employee successfully intercepted these checks and diverted the funds. At the time taxpayer discovers the diversions, taxpayer promptly contacts the IRS and begins proceedings to obtain recovery from either the employee or the auditor. While taxpayer has accounts receivables that will satisfy the tax delinquencies, taxpayer would be unable to remain in business if the IRS seized those receivables. Further, while taxpayer will continue to generate some profit if permitted to remain in business, those profits would not be sufficient to pay the accrued liability prior to the time collection of the liabilities became barred by the statute of limitations. Taxpayer's overall compliance history does not weigh against compromise.

5. The existence of ETA hardship criteria does not mean an offer must be accepted. An acceptable offer amount must still be determined based on full financial analysis, and negotiation. When hardship criteria exists and the taxpayer's offer amount does not equal or exceed the amount determined to be acceptable, the offer cannot be recommended for acceptance, but should be rejected with appeal rights.

5.8.11.2.2 (11-30-2001)

Detriment to Voluntary Compliance

1. An offer may be accepted to promote effective tax administration when exceptional circumstances exist such that collection of the full liability would be detrimental to voluntary compliance. Collection is detrimental to voluntary compliance where it would likely have an adverse effect on compliance by other members of the taxpaying public. As the examples in paragraph (5), below, illustrate, the Service anticipates using this authority when collection would be so unfair or inequitable that other taxpayers would lose confidence in the system and therefore refuse to comply. Because the Service assumes that Congress imposes tax liabilities only where it determines it is fair to do so, compromise on these grounds will be rare.
2. Compromise because collection would be detrimental to voluntary compliance is not authorized based solely on a taxpayer's belief that a provision of the tax law is itself unfair. Where a taxpayer is clearly liable for taxes due to operation of law, a finding that the law is unfair would undermine the will of Congress.

Example: Taxpayer argues that collection would be detrimental to voluntary compliance because the liability resulted from discharge of indebtedness rather than from wages. Because Congress has clearly stated that a discharge of indebtedness results in taxable income to the taxpayer, see IRC 61(a)(12), it would not promote effective tax administration to compromise on these grounds.

3. The Service will not compromise on the grounds that collection would be detrimental to voluntary compliance based solely on the argument that the liability was caused by the acts of a party beyond the control of the Service, including the taxpayer, the taxpayer's partner, or the taxpayer's representative or agent. Note, however, that if the actions of a third party cause doubt as to collectibility or cause a situation in which collection in full would cause economic hardship, compromise on those grounds may be explored.
4. Section 6404(c) grants the Service the discretion to abate interest attributable to certain errors and delays by the Service. It would not promote effective tax administration to compromise based solely on the fact that no relief was available under that section. Again, where interest has accrued to the point that there is doubt as to collectibility or collection would cause economic hardship, compromise on those grounds may be explored.
5. The following examples illustrate cases that may be compromised under detriment to voluntary compliance (not all inclusive):

Example 1: In October 1986, the taxpayer developed a serious illness

that resulted in almost continuous hospitalization for a number of years. The taxpayer's medical condition was such that during this period, the taxpayer was unable to manage any of his financial affairs. The taxpayer has not filed tax returns since that time. The taxpayer's health has now improved and he has promptly begun to attend to his tax affairs. He discovers that the IRS prepared a substitute for return for the 1986 tax on the basis of information returns it had received and had assessed a tax deficiency. When the taxpayer discovered the liability, with penalties and interest, the tax bill is more than three times the original tax liability. Taxpayer's overall compliance history does not weigh against compromise.

Example 2: Taxpayer is a salaried sales manager at a department store who has been able to place \$2000 in a tax-deductible IRA account of each of the last two years. Taxpayer learns that he can earn a higher rate of interest on his IRA savings by moving those savings from a money management account to a certificate of deposit at a different financial institution. Prior to transferring his savings, taxpayer submits an E-mail inquiry to the IRS at its Web Page, requesting information about the steps he must take to preserve the tax benefits he has enjoyed and to avoid penalties. The IRS responds in an answering E-mail that the taxpayer may withdraw his IRS savings from his neighborhood bank, but he must redeposit those savings in a new IRA account within 90 days. Taxpayer withdraws the funds and redeposits them in a new account 63 days later. Upon audit, taxpayer learns that he has been misinformed about the required rollover period and that he is liable for additional taxes, penalties and additions to tax for not having made the redeposit within 60 days. Had it not been for the erroneous advise that is reflected in the taxpayer's retained copy of the IRS E-mail response to his inquiry, taxpayer would have made the deposit within the required 60 days period. Taxpayer's overall compliance history does not weigh against compromise.

6. Generally, the Service would expect that a taxpayer in example 1 would offer an amount at least equal to the amount of the assessed tax, exclusive of penalty and interest. However, in some cases equity and fairness would warrant acceptance of some lesser amount.
7. A determination of an acceptable offer amount for detriment to voluntary compliance offers is based on the equity and fairness issues regardless of the taxpayer's financial situation.

5.8.11.2.3 (11-01-2000)

Compromise Would Not Undermine Compliance with Tax Laws

1. The determination to compromise with a taxpayer under the basis of effective tax administration must include consideration of the taxpayer's overall record of compliance with the tax laws.
2. Consideration of the taxpayer's overall history of compliance is a legal requirement for all ETA offers, prior to determining if the offer is acceptable.
3. The taxpayer's overall compliance history should be weighed against the economic hardship or the inequity in determining whether the taxpayer's case is appropriate for compromise.
4. The factors that should be evaluated in determining the taxpayer's overall compliance history are (not all inclusive):
 1. Compliance with the filing and payment requirements of the Internal Revenue Code;
 2. Deliberate actions to avoid the payment of taxes, and
 3. Encouraging others to refuse to comply with the tax laws.
5. Additional factors such as the cause of the delinquency, length of non-compliance, and efforts to resolve non-compliance should also be considered. Generally, a review of the

last 3-5 years of compliance should be completed.

5.8.11.3 (11-30-2001)

Initial Processing of Effective Tax Administration Offers

1. Offers submitted under the basis of effective tax administration will be completed by Collection Offer Groups or the Centralized OIC Units.
2. Taxpayers seeking a compromise under effective tax administration (ETA) will submit Form 656, Offer in Compromise, selecting ETA in Item 6. Item 9 of Form 656 should be completed to explain why the Service should consider the offer under effective tax administration. Taxpayers may submit an attached statement explaining their circumstances.
3. Like all other offers in compromise, the Service will only consider an effective tax administration offer when taxpayers have filed all required tax returns and are not in bankruptcy. In business taxpayers must have timely filed and timely deposited their quarterly federal taxes for the two preceding quarters and paid all federal tax deposits while the offer is pending.

NOTE:

Follow IRM 5.8, Section 3, Processability Determination, for initial processing of offers.

4. Elements necessary to perfect an offer also apply to ETA offers. The requirement to submit complete financial statements for ETA offers is the same as for doubt as to collectibility offers.

NOTE:

Follow IRM 5.8, Section 3 for procedures on perfecting offers.

5. Effective tax administration offers are initially added to AOIC as doubt as to collectibility offers. Once the offer investigation reveals that the offer will be considered as an ETA offer, AOIC must be updated to reflect the correct basis for compromise. Refer to Section 11.7 for a full discussion of requirements to update AOIC prior to final processing of ETA and doubt as to collectibility with special circumstances offers.

5.8.11.4 (11-01-2000)

Evaluation of Offers

1. Effective tax administration offers cannot be considered if the taxpayer qualifies for doubt as to collectibility or doubt as to liability.

NOTE:

Follow IRM 5.8 Section 4, Evaluation of Offers, for doubt as to collectibility issues and determining reasonable collection potential.

2. If the assets and future income do not exceed the tax liability and special circumstances exist, the taxpayer's offer must be considered under doubt as to collectibility with special circumstances.
3. If the taxpayer submits an offer based on doubt as to collectibility but you determine collection potential exceeds the liability and there are special circumstances, consider the offer on the basis of effective tax administration.
4. The taxpayer must be notified of the correct basis for compromise, based on their situation. It is not necessary to secure an amended Form 656.
 - A. If the offer is rejected, the narrative should describe the considerations for both bases.
 - B. If the offer is accepted the offer report must reflect the basis upon which the offer is accepted.

5.8.11.4.1 (11-30-2001)

Financial Statement Analysis

1. Offers submitted under effective tax administration require the same full financial analysis as doubt as to collectibility offers in order to determine reasonable collection potential and to determine an acceptable offer amount. Procedures for financial analysis are contained in Section 5.
2. Once reasonable collection potential is completed a determination can be made if the taxpayer qualifies as a potential effective tax administration offer or as a doubt as to collectibility offer.
3. If the taxpayer's assets and future income exceed the tax liability, the taxpayer's offer can be considered under the effective tax administration basis.

5.8.11.4.2 (11-30-2001)

Determining an Acceptable Offer Amount

1. An acceptable offer amount, based on economic hardship, is determined by analyzing the financial information and the hardship that would be created if certain assets, or a portion of certain assets, were used to pay the liability. For example, the taxpayer has \$100,000 liability and a reasonable collection potential \$125,000. To avoid economic hardship, it is determined that the taxpayer will need \$75,000. The remaining \$50,000 should be considered in determining an acceptable offer amount.
2. In offers based on detriment to voluntary compliance, the Service would expect the taxpayer to offer an amount that is fair and equitable under the circumstances.
3. Generally, the Cash option (90 days) for payment of the offer amount will apply to ETA offers. If the circumstances indicate that additional time is needed to pay the offered amount, the short term or deferred payment options may be used.

5.8.11.5 (11-01-2000)

Documentation and Verification

1. To verify the taxpayer's special circumstances and support a basis of Effective Tax Administration:
 - A. Request documentation of the taxpayer's situation. Exercise sound judgement in determining the degree of verification necessary. For example, verification of a health problem could be a doctor's letter; proof of retirement or unemployment could be a document showing payments from a retirement account or separation letter, etc.
 - B. When special circumstances are found to exist, the amount offered will be less than reasonable collection potential. For Effective Tax Administration, reasonable collection potential is always greater than the full liability. In the report narrative, explain clearly the rationale for acceptance of the amount offered. The documentation must include why some or all of the equity in certain assets is not being offered, where the money to pay the offer amount is coming from, and any other pertinent information that indicates how the amount offered was determined to be acceptable.

5.8.11.6 (11-30-2001)

Final Processing

1. Prior to final processing AOIC must be updated to indicate the correct basis that the offer is being closed under. This will ensure that final closing reports, generated from AOIC, reflect the correct basis. The approval levels indicated on closing reports and letters must be consistent with the basis for closure.
2. The following is a guide to these determinations:

If...	And...	Then...
The offer was submitted under effective tax administration	An economic hardship has been determined to exist, but the RCP is less than the balance due	<ol style="list-style-type: none"> 1. Update AOIC offer screen to indicate a "Y" under special circumstances. 2. Generate closing reports with the proper approving official for doubt as to collectibility with special circumstances.
The offer was submitted under doubt as to collectibility	An economic hardship has been determined to exist, but the RCP is greater than the balance due	<ol style="list-style-type: none"> 1. Update AOIC offer screen to indicate "A" under offer type. 2. Update AOIC offer screen to indicate a "Y" under special circumstances. 3. Generate closing reports with the proper approving official for effective tax administration offers..
The offer was submitted under effective tax administration	The offer is being recommended for acceptance under doubt as to collectibility with the offer exceeding the RCP	<ol style="list-style-type: none"> 1. AOIC offer screen does not require updating for special circumstances. The type of offer on AOIC should reflect "C" for doubt as to collectibility. <p>Generate closing reports with the proper approving official for doubt as to collectibility without special circumstances.</p>
The offer was submitted under doubt as to collectibility with item 9 of Form 656 completed with circumstances that do not meet any of the elements that define hardship criteria.	The offer cannot be recommended for acceptance under doubt as to collectibility.	Generate closing reports with the proper approving official for doubt as to collectibility without special circumstances.
The offer was submitted under ETA with item 9 of Form 656 completed with circumstances that do not meet ETA criteria.	The taxpayer does not qualify for ETA because the RCP is less than the liability and the offer cannot be recommended for acceptance under doubt as to collectibility with special circumstances.	<ol style="list-style-type: none"> 1. Update AOIC offer screen to indicate a "Y" under special circumstances. 2. Generate closing reports with the proper approving official for doubt as to collectibility with special circumstances.
The offer was submitted under ETA with item 9 of Form 656 completed with circumstances that the investigation reveals do not meet ETA criteria	The offer cannot be recommended for acceptance but RCP does exceed the liability	<ol style="list-style-type: none"> 1. Update AOIC offer screen to indicate "A" under offer type. 2. Update AOIC offer screen to indicate a "Y" under special circumstances. 3. Generate closing reports with the proper approving official for effective tax administration offers..

The offer was submitted under ETA	The special circumstances do meet hardship criteria and the RCP exceeds the tax liability, however, the offer cannot be recommended for acceptance.	<ol style="list-style-type: none"> 1. Update AOIC offer screen to indicate "A" under offer type. 2. Update AOIC offer screen to indicate a "Y" under special circumstances. 3. Generate closing reports with the proper approving official for effective tax administration offers..
The offer was submitted doubt as to collectibility with special circumstances	The special circumstances do meet hardship criteria and the RCP is less than the tax liability, however, the offer cannot be recommended for acceptance.	<ol style="list-style-type: none"> 1. Update AOIC offer screen to indicate a "Y" under special circumstances. 2. Generate closing reports with the proper approving official for doubt as to collectibility with special circumstances.

5.8.11.6.1 (11-30-2001)

Rejection/Return/Withdrawal Processing

1. The procedures in IRM 5.8, Section 7, discussing rejections, withdrawals and returns should be followed when processing rejected, withdrawn or returned offers.
2. Section 12 provides instructions for independent administrative review of returned and rejected offers.
3. See Delegation Order 11 for the official with delegated authority based on effective tax administration. The delegated official's signature is required on Form 1271 and the closing letter.

5.8.11.6.2 (11-01-2000)

Acceptance Processing

1. The procedures in IRM 5.8, Section 8, Acceptance Processing, should be followed when processing accepted offers.
2. Area Counsel's opinion is required on offers where the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is \$50,000 or more.
3. See Delegation Order 11 for the official with delegated authority to accept offers based on effective tax administration. The delegated official's signature is required on Form 7249 and the acceptance letter.

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in Compromise Sec. 11 Effective Tax Administration (11-01-2000)



Search IRS Site for:

Search Forms and
Publications for:

[Search Help](#)

contents

[Individuals](#)
[Businesses](#)
[Charities & Non-Profits](#)
[Government Entities](#)
[Tax Professionals](#)
[Retirement Plans](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where To File](#)
[Contact My Local Office](#)
[Frequently Asked Questions](#)
[Taxpayer Advocate](#)

[Home](#) > [Internal Revenue Manual](#)

Internal Revenue Manual

Part 5 Collecting Process

Chapter 8 Offer in Compromise

Section 12 Independent Administrative Review

Contents

- [5.8.12 Independent Administrative Review](#)
 - [5.8.12.1 Overview](#)
 - [5.8.12.2 Role of the Independent Administrative Reviewer](#)
 - [5.8.12.3 Rejections](#)
 - [5.8.12.3.1 Financial Analysis](#)
 - [5.8.12.3.2 Negotiation](#)
 - [5.8.12.4 Returns](#)
 - [5.8.12.4.1 Returns for Failure to Provide Requested Financial Information](#)
 - [5.8.12.4.2 Return for Offers Submitted Solely to Delay Enforcement Action](#)
 - [5.8.12.5 Independent Review Process](#)
 - [5.8.12.5.1 Rejections and Returns Sustained by the IAR](#)
 - [5.8.12.5.2 Rejections and Returns Not Sustained by the IAR](#)

5.8.12.1 (11-30-2001) Overview

1. IRC Section 7122(d)(1) requires the Service to conduct an independent administrative review of all proposed offer in compromise rejections and for proposed returns of offers when the return includes failure to provide financial information. The review will be conducted prior to the rejection or the return being communicated to the taxpayer.
2. The Independent Administrative Reviewer (IAR) is responsible for conducting this review. The IAR cannot report to the manager with direct approval authority for offer in compromise acceptances, rejections, returns or withdrawals

5.8.12.2 (11-30-2001) Role of the Independent Administrative Reviewer

1. The IAR is responsible for reviewing each case to determine if the proposed rejection or return is reasonable based on the taxpayer's facts and circumstances and the offer examiner's analysis of the taxpayer's financial information.
2. The review should include an examination of the case file and case history to ensure the investigation was thorough, accurate and complete and to ensure the IRM procedures have been followed. The case history should include the following actions during the offer investigation
 - o Financial Analysis, including the determination of reasonable collection potential,
 - o Attempts to communicate with the taxpayer or authorized representative
 - o Attempts to negotiate, and
 - o Consideration of special circumstances, when appropriate.
3. IAR review should consider whether the taxpayer's rights have been observed during the offer investigation and during communication and discussions with the taxpayer or authorized representative. These considerations should be based on issues that would impact on the recommended rejection or return.

5.8.12.3 (11-30-2001) **Rejections**

1. The independent administrative review should ensure that all of the facts and circumstances of the case were considered during the investigation and that the decision to reject the offer is reasonable, based on the case analysis.
2. The following items must be present in each case file:
 - A. Form 656
 - B. Form 1271
 - C. Rejection Letter
 - D. Offer Recommendation Report
 - E. Asset/Equity Table (AET)
 - F. Income/Expense Table (IET)
 - G. Rejection Narrative
 - H. Collection Information Statements (CIS)
 - I. Case History
 - J. Supporting Documents
3. The Reject with Appeal Rights letter should be present in the case file. The letter must include as attachments, a copy of the AET and the IET. The rejection letter must also include a rejection narrative, as discussed in Section 7. This narrative may be incorporated into the rejection letter by using the open paragraph on AOIC or it may be a separate attachment to the rejection letter.
4. The case file should indicate an attempt to communicate the results of the offer investigation with the taxpayer or authorized representative, prior to recommending the rejection.

5.8.12.3.1 (11-30-2001) **Financial Analysis**

1. Section 5 discusses procedures for analyzing financial information to determine reasonable collection potential.
2. The offer case file should contain enough information to support the reasonable collection potential based on financial analysis.
3. Asset values and equity determinations must be accurate and supported by the facts of the case. The file should contain the basis for asset values. Each asset should be reflected on the Asset/Equity Table (AET). Any unusual circumstances should be explained on the AET or in the case history.
4. Income and expense analysis should be fully documented in the case file. The Income/Expense Table (IET) should reflect information that is supported by the case documentation. Any unusual expenses should be fully explained on the IET or in the case history. The determination of income should be consistent with the facts of the taxpayer's situation. If this calculation is based on average income or other considerations, the file must document these determinations.
5. Calculations of future income should be accurately reflected in the RCP calculation

based on the terms of the offer proposal and discussions with the taxpayer.

6. The IAR must also consider if the taxpayer's facts and circumstances were considered during the investigation. If the file indicates any circumstances that could impact either future earning potential or allowable expenses, the file should document this information and the determinations relating to the taxpayers circumstances.
7. If the case file indicates issues are raised that meet either ETA criteria or doubt as to collectibility with special circumstance criteria, as defined in Section 11, the case file must address these issues and discuss the determinations made.

5.8.12.3.2 (11-30-2001)

Negotiation

1. The independent administrative reviewer should consider if negotiations with the taxpayer or authorized representative have been attempted and if negotiations are reasonable based on the facts of the case. Some of the issues to consider during negotiation are as follows:
 - o Terms of payment
 - o Potential special circumstances that would effect an acceptable offer amount
 - o Valuation of property based on unique situations, such as condition, location, or other documentation provided by the taxpayer
 - o Consideration of a collateral agreement
2. The case file should document these discussions and any specific issues that are in dispute.

5.8.12.4 (11-30-2001)

Returns

1. Independent administrative review is required prior to communicating the return to the taxpayer on all returns that include the taxpayer's failure to provide financial information and for offers returned as solely to delay collection based on a determination the offer was submitted to hinder a planned enforcement action.
2. The following items must be present in each case file:
 - A. Form 656
 - B. Form 1271
 - C. Return Letter
 - D. Case History
 - E. Case Summary
3. The Form 1271 should be in the file and signed by the recommending employee and by the authorized approving individual, prior to submission for IAR.
4. The return letter should contain the authorized officials name, as the approving official, but the letter does not have to be signed by the approving official prior to submission for IAR. The return letter should also be reviewed to ensure the correct reason(s) for return are included in the letter.

5.8.12.4.1 (11-30-2001)

Returns for Failure to Provide Requested Financial Information

1. Section 7.2.1 provides required procedures for returns for failure to provide CIS information. The IAR should ensure that these procedures have been followed during the review of the proposed return:
 - A. The taxpayer was provided with a clear request to provide the information,
 - B. The information requested is necessary to determine the taxpayer's ability to pay, and is not available through internal sources,
 - C. The taxpayer was given a specific deadline to provide the information,
 - D. The taxpayer was given a reasonable amount of time to respond,
 - E. Consequences of failing to comply with the request for information were communicated,
 - F. Reasonable requests for an extension of time to provide the information have been granted, and,
 - G. The requested information has not been provided, as requested.

5.8.12.4.2 (11-30-2001)

Return for Offers Submitted Solely to Delay Enforcement Action

1. Section 3.5 provides required procedures to return offers that are submitted solely to delay collection. This section contains three criteria under which a solely to delay determination can exist. IAR is required when the solely to delay collection return is based on a planned enforcement action. IAR review is **not** required when the solely to delay collection return is based on the re-submission of a previously rejected, returned or terminated offer.
2. The following elements must be addressed in the case file for this type of return:
 - A. The taxpayer's equity in assets and/or monthly ability to pay has been determined,
 - B. The taxpayer has a clear and present ability to pay substantially more than the offer amount reflects,
 - C. The taxpayer has been informed of the collection determination and proposed enforcement action prior to submitting the offer,
 - D. The offer submitted reflects an amount substantially less than what could be collected through the specific planned enforcement action, and,
 - E. Special Circumstances do not exist.

5.8.12.5 (11-30-2001)

Independent Review Process

1. Prior to the proposed return or rejection being submitted to the IAR, the authorized approving official must have reviewed the file and signed Form 1271 indicating their concurrence with the proposed disposition.
2. Once the approving official has signed the Form 1271, the offer must be re-assigned to the IAR on AOIC. The file is then forwarded to the IAR for review using a Form 3210, Document Transmittal.
3. Upon receipt of the file by the IAR, AOIC should be updated to reflect the individual independent reviewer's assignment number.
4. Once the offer is reviewed by the IAR, AOIC must be updated to reflect the results of the review.

5.8.12.5.1 (11-30-2001)

Rejections and Returns Sustained by the IAR

1. If the proposed rejection or return of the offer is sustained by the IAR, the reviewer will:
 - A. Update the IAR Main Screen on AOIC indicating the appropriate disposition,
 - B. Sign Form 1271, as the reviewer, indicating their concurrence with the proposed disposition, and,
 - C. Return the case file to the originator using a Form 3210, Document Transmittal.

5.8.12.5.2 (11-30-2001)**Rejections and Returns Not Sustained by the IAR**

1. If the proposed rejection or return is not sustained by the IAR, the reviewer will:
 - A. Update the IAR Main Screen on AOIC indicating the appropriate IAR disposition,
 - B. Prepare Form 5942, Reviewers Report, indicating an explanation of why the determination was not sustained and indicating additional actions necessary by the investigating employee,
 - C. Route the Form 5942 and the offer case file to the Technical Support Group Manager for approval.
2. After the Technical Support Group Manager approves the Form 5942, the case will be routed as follows:
 - o The Original Form 5942 and the offer file will be returned to the recommending employee's Group Manager.
 - o A copy of the Form 5942 will be sent to the recommending employee's Territory Manager.
 - o A copy of the Form 5942 will be retained by the IAR.
3. The following procedures describe necessary actions once the offer file is received by the originating office:

If...	And...	Then...
Reconsideration of the offer based on recommendations from the IAR results in additional case actions.	The additional case actions result in a determination to recommend rejection or return of the offer	Update the case file with the additional case actions and any new information and re-submit to the IAR for a second review.
Reconsideration of the offer based on recommendations from the IAR results in additional case actions	The additional case actions result in a determination to recommend acceptance of the offer.	Process the acceptance recommendation following procedures defined in Section 8.
The investigating employee determines that the return or rejection is the correct action without further action, after reviewing the Form 4952.	The Offer Group Manager concurs with the investigating employee's determination,	The offer file will be returned to the IAR for reconsideration.
After a second review by the IAR, the rejection or return cannot be sustained	The Technical Support Group Manager concurs with this determination	<p>The decision will be raised to the second level manager for resolution.</p> <ul style="list-style-type: none"> • The Technical Support Group Manager will forward a memorandum to the Technical Support Manager with an explanation of why the rejection or return cannot be sustained. • A copy of the memorandum will be forwarded to the Offer Territory Manager. • The Technical Support Manager and the Territory Manager will discuss the issues to reach a resolution.

If no resolution is agreed to between the Technical Support Manager and the Territory Manager

The final decision will be made by the Territory Manager or the Area Director for rejections based on public policy.

- The Territory Manager will document the decision and forward the case file to the offer Group Manager.

- A copy of this decision will be forwarded to the offer Technical Support Manager and to the Technical Support Group Manager.

- The original Form 5942, and any other documentation regarding second level management involvement and decisions must be retained in the offer case file as a record of actions taken during the IAR process.

Internal Revenue Manual Part 5 Collecting Process Chap. 8 Offer in Compromise Sec. 12 Independent Administrative Review (11-30-2001)

[IRS Privacy and Security Policy](#) | [Contact Us](#)