

provided in the regulations in subchapter E of this chapter (Alcohol, Tobacco, and Other Excise Taxes).

### Closing Agreements and Compromises

#### § 301.7121-1 Closing agreements.

(a) *In general.* The Commissioner may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of such an agreement.

(b) *Scope of closing agreement—(1) In general.* A closing agreement may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of closing agreements relating to the tax liability for a single period.

(2) *Taxable periods ended prior to date of closing agreement.* Closing agreements with respect to taxable periods ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to one or more separate items affecting the tax liability of the taxpayer, as, for example, the amount of gross income, deduction for losses, depreciation, depletion, the year in which an item of income is to be included in gross income, the year in which an item of loss is to be deducted, or the value of property on a specific date. A closing agreement may also be entered into for the purpose of allowing a deficiency dividend deduction under section 547. In addition, a closing agreement constitutes a determination as defined by section 1313.

(3) *Taxable periods ending subsequent to date of closing agreement.* Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or

more separate items affecting the tax liability of the taxpayer.

(4) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

*Example.* A owns 500 shares of stock in the XYZ Corporation which he purchased prior to March 1, 1913. A is considering selling 200 shares of such stock but is uncertain as to the basis of the stock for the purpose of computing gain. Either prior or subsequent to the sale, a closing agreement may be entered into determining the market value of such stock as of March 1, 1913, which represents the basis for determining gain if it exceeds the adjusted basis otherwise determined as of such date. Not only may the closing agreement determine the basis for computing gain on the sale of the 200 shares of stock, but such an agreement may also determine the basis (unless or until the law is changed to require the use of some other factor to determine basis) of the remaining 300 shares of stock upon which gain will be computed in a subsequent sale.

(c) *Finality.* A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement shall so recite.

(d) *Procedure with respect to closing agreements—(1) Submission of request.* A request for a closing agreement which relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is docketed in the Tax Court of

the United States. All closing agreements shall be executed on forms prescribed by the Internal Revenue Service. The procedure with respect to requests for closing agreements shall be under such rules as may be prescribed from time to time by the Commissioner in accordance with the regulations under this section.

(2) *Collection, credit, or refund.* Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law.

**§301.7122-1 Compromises.**

(a) *In general.* Except with respect to certain criminal liabilities arising under the internal revenue laws relating to narcotics, smoking opium, and marihuana, the Commissioner may compromise any civil or criminal liability arising under the internal revenue laws prior to reference of a case involving such liability to the Department of Justice for prosecution or defense. Any such liability may be compromised only upon one or both of the following two grounds:

- (1) Doubt as to liability; or
- (2) Doubt as to collectibility.

No such liability will be compromised if the liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the Government to collect the amounts owing with respect to such liability.

(b) *Scope of compromise agreement.* A compromise agreement may relate to a civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision of the Code, or a related statute, and then only if such violation was not deliberately committed with an intent to defraud.

(c) *Effect of compromise agreement.* A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific pen-

alties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the Government shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of (1) falsification or concealment of assets by the taxpayer, or (2) mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside. However, acceptance of an offer in compromise of a civil liability does not remit a criminal liability, nor does acceptance of an offer in compromise of a criminal liability remit a civil liability.

(d) *Procedure with respect to offers in compromise—(1) Submission of offers.*

Offers in compromise shall be submitted on forms prescribed by the Internal Revenue Service which may be obtained from district directors of internal revenue, and should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(2) *Stay of collection.* The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred if the interests of the United States shall not be jeopardized thereby.

(3) *Acceptance.* An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the United States.

(4) *Withdrawal or rejection.* An offer in compromise may be withdrawn by the