

Internal Revenue Service, Treasury

§ 301.7122-1T

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.

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[T.D. 8829, 64 FR 39024, July 21, 1999; 64 FR 56246, Oct. 18, 1999]

§ 301.7122-1T **Compromises (temporary).**

(a) *In general.* (1) The Secretary may exercise his discretion to compromise any civil or criminal liability arising under the internal revenue laws prior to reference of a case involving such a liability to the Department of Justice for prosecution or defense.

(2) An agreement to compromise may relate to a civil or criminal liability for taxes, interest, or penalties. Unless the terms of the offer and acceptance expressly provide otherwise, acceptance of an offer to compromise a civil liability does not remit a criminal liability, nor does acceptance of an offer to compromise a criminal liability remit a civil liability.

(b) *Grounds for compromise.* (1) *In general.* The Secretary may compromise a liability on any of the following three grounds.

(2) *Doubt as to liability.* Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. Doubt as to liability does not exist where the liability has been established by a final court decision or judgment concerning the existence or amount of the liability. See § 301.7122(e)(4) for special rules applicable to rejection of offers in cases where the IRS is unable to locate the taxpayer's return or return information to verify the liability.

(3) *Doubt as to collectibility.* (i) *In general.* Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the assessed liability.

(ii) *Allowable expenses.* A determination of doubt as to collectibility will include a determination of ability to pay. In determining ability to pay, the Secretary will permit taxpayers to retain sufficient funds to pay basic living expenses. The determination of the amount of such basic living expenses will be founded upon an evaluation of the individual facts and circumstances presented by the taxpayer's case. To guide this determination, guidelines published by the Secretary on national and local living expense standards will be taken into account.

(iii) *Nonliable spouses.* (A) *In general.* Where a taxpayer is offering to compromise a liability for which the taxpayer's spouse has no liability, the assets and income of the nonliable spouse will not be considered in determining the amount of an adequate offer, except to the extent property has been transferred by the taxpayer to the nonliable spouse under circumstances that would permit the IRS to effect collection of the taxpayer's liability from such property, *e.g.*, property that was conveyed in fraud of creditors, or as provided in paragraph (b)(3)(iii) (B) of this section. The IRS may, however, request information regarding the assets and/or income of the nonliable spouse for the sole purpose of verifying the amount of and responsibility for expenses claimed by the taxpayer.

(B) *Exception.* Where collection of the taxpayer's liability from the assets and/or income of the nonliable spouse is permitted by applicable state law (*e.g.*, under state community property laws), the assets and income of the nonliable spouse will be considered in determining the amount of an adequate offer except to the extent that the taxpayer and the nonliable spouse demonstrate that collection of such assets and income would have a material and adverse impact on the standard of living of the taxpayer, the nonliable spouse, and their dependents.

(4) *Promote effective tax administration.* If there are no grounds for compromise under paragraphs (b)(2) and (3) of this temporary regulation, a compromise may be entered into to promote effective tax administration when—

(i) Collection of the full liability will create economic hardship within the meaning of § 301.6343-1; or

(ii) Regardless of the taxpayer's financial circumstances, exceptional circumstances exist such that collection of the full liability will be detrimental to voluntary compliance by taxpayers; and

(iii) Compromise of the liability will not undermine compliance by taxpayers with the tax laws.

(iv) *Special rules for evaluating offers to promote effective tax administration.* (A) The determination to accept or reject an offer to compromise made on the ground that acceptance would promote effective tax administration within the meaning of this section will be based upon consideration of all the facts and circumstances, including the taxpayer's record of overall compliance with the tax laws.

(B) Factors supporting (but not conclusive of) a determination of economic hardship under paragraph (b)(4)(i) include—

(1) Taxpayer is incapable of earning a living because of a long term illness, medical condition, or disability and it is reasonably foreseeable that taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;

(2) Although taxpayer has certain assets, liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses; and

(3) Although taxpayer has certain assets, the taxpayer is unable to borrow against the equity in those assets and disposition by seizure or sale of the assets would have sufficient adverse consequences such that enforced collection is unlikely.

(C) Factors supporting (but not conclusive of) a determination that compromise would not undermine compliance by taxpayers with the tax laws include—

(1) Taxpayer does not have a history of noncompliance with the filing and payment requirements of the Internal Revenue Code;

(2) Taxpayer has not taken deliberate actions to avoid the payment of taxes; and

(3) Taxpayer has not encouraged others to refuse to comply with the tax laws.

(D) *Examples.* The following examples illustrate cases that may be compromised under the provisions of paragraph (b)(4)(i):

Example 1. 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 compromise.

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 compromise.

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 the employee and the auditor. Taxpayer is unsuccessful in obtaining any recovery from either the employee or the auditor. While taxpayer has accounts receivable that will satisfy the tax delinquencies, taxpayer would be unable to remain in business if those receivables were seized by the IRS.

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 liabilities 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.

(E) The following examples illustrate cases that may be compromised under paragraph (b)(4)(ii):

Example 1. In October of 1986, taxpayer developed a serious illness that resulted in almost continuous hospitalizations 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 year 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 \$2,000 in a tax-deductible IRA account for 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 IRA 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 IRA 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 redeposited the amount within 60 days. Had it not been for the erroneous advice that is reflected in the taxpayer's retained copy of the IRS E-Mail response to his inquiry, taxpayer would have redeposited the amount within the required 60-day period. Taxpayer's overall compliance history does not weigh against compromise.

(c) *Procedures for submission and consideration of offers.* (1) *In general.* An

offer to compromise a tax liability pursuant to section 7122 must be submitted according to the procedures, and in the form and manner, prescribed by the Secretary. An offer to compromise a tax liability must be signed by the taxpayer under penalty of perjury and must contain the information prescribed or requested by the Secretary. However, taxpayers submitting offers to compromise liabilities solely on the basis of doubt as to liability will not be required to provide financial statements.

(2) *When offers become pending and return of offers.* An offer to compromise becomes pending when it is accepted for processing. If an offer accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the offer should be accepted, the IRS will request the taxpayer to provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may return the offer to the taxpayer. The IRS may also return an offer to compromise a tax liability if it determines that the offer was submitted solely to delay collection or was otherwise nonprocessable. An offer returned following acceptance for processing is deemed pending only for the period between the date the offer is accepted for processing and the date the IRS returns the offer to the taxpayer. See paragraphs (e)(5)(ii) and (f)(2)(iv) of this temporary regulation for rules regarding the effect of such returns of offers.

(3) *Withdrawal.* An offer to compromise a tax liability may be withdrawn by the taxpayer or the taxpayer's representative at any time prior to the IRS' acceptance of the offer to compromise. An offer will be considered withdrawn upon the IRS' receipt of written notification of the withdrawal of the offer by personal delivery, or by certified mail, or upon issuance of a letter by the IRS confirming the taxpayer's intent to withdraw the offer.

(d) *Acceptance of an offer to compromise a tax liability.* (1) An offer to compromise has not been accepted until the IRS issues a written notifica-

tion of acceptance to the taxpayer or the taxpayer's representative.

(2) As additional consideration for the acceptance of an offer to compromise, the IRS may request that taxpayer enter into any collateral agreement or post any security which is deemed necessary for the protection of the interests of the United States.

(3) Offers may be accepted when they provide for payment of compromised amounts in one or more equal or unequal installments.

(4) If the final payment on an accepted offer to compromise is contingent upon the immediate and simultaneous release of a tax lien in whole or in part, such payment must be made in accordance with the forms, instructions, or procedures prescribed by the Secretary.

(5) Acceptance of an offer to compromise will conclusively settle the liability of the taxpayer specified in the offer. Neither the taxpayer nor the Government will, following acceptance of an offer to compromise, be permitted to reopen the case except in instances where—

(i) False information or documents are supplied in conjunction with the offer;

(ii) The ability to pay and/or the assets of the taxpayer are concealed; or

(iii) A mutual mistake of material fact sufficient to cause the offer agreement to be reformed or set aside is discovered.

(6) *Opinion of Chief Counsel.* Except as otherwise provided in this paragraph (d)(6), if an offer to compromise is accepted, there will be placed on file the opinion of the Chief Counsel for the IRS with respect to such compromise, along with the reasons therefor. However, no such opinion will be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than \$50,000. Also placed on file will be a statement of—

(i) The amount of tax assessed;

(ii) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and

(iii) The amount actually paid in accordance with the terms of the compromise.

(e) *Rejection of an offer to compromise.*

(1) An offer to compromise has not been rejected until the IRS issues a written notice to the taxpayer or his representative, advising of the rejection, the reason(s) for rejection, and the right to an appeal.

(2) The IRS may not notify a taxpayer or taxpayer's representative of the rejection of an offer to compromise until an independent administrative review of the proposed rejection is completed.

(3) *Low income taxpayers.* No offer to compromise received from a low income taxpayer may be rejected solely on the basis of the amount of the offer without evaluating whether that offer meets the criteria in paragraph (b) of this section. For purposes of this paragraph (e)(3), a low income taxpayer is a taxpayer who falls at or below the dollar criteria established by the poverty guidelines updated annually in the FEDERAL REGISTER by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 or such other measure that is adopted by the Secretary.

(4) *Offers based upon doubt as to liability.* Offers submitted on the basis of doubt as to liability cannot be rejected solely because the IRS is unable to locate the taxpayer's return or return information for verification of the liability.

(5) *Appeal of rejection of an offer in compromise.* (i) *In general.* The taxpayer may administratively appeal a rejection of an offer to compromise to the IRS Office of Appeals (Appeals) if, within the 30-day period commencing the day after the date on the letter of rejection, the taxpayer requests such an administrative review in the manner provided by the Secretary.

(ii) *Offer to compromise returned following a determination that the offer was nonprocessable, a failure by the taxpayer to provide requested information, or a determination that the offer was submitted for purposes of delay.* Where a determination is made to return offer documents because the offer to compromise was nonprocessable, because the tax-

payer failed to provide requested information, or because the IRS determined that the offer to compromise was submitted solely for purposes of delay under paragraph (c)(2) of this section, the return of the offer does not constitute a rejection of the offer for purposes of this provision and does not entitle the taxpayer to appeal the matter to Appeals under the provisions of this paragraph (e)(5). However, if the offer is returned because the taxpayer failed to provide requested financial information, the offer will not be returned until an independent administrative review of the proposed return is completed.

(f) *Effect of offer to compromise on collection activity.* (1) *Offers submitted prior to and not pending on or after December 31, 1999.* For offers to compromise submitted prior to and not pending on or after December 31, 1999, the submission of an offer to compromise will not automatically operate to stay the collection of any liability. Enforcement of collection may, however, be deferred if the interests of the United States will not be jeopardized thereby.

(2) *Offers pending on or made on or after December 31, 1999.* (i) *In general.* For offers pending on or made on or after December 31, 1999, the IRS will not make any levies to collect the liability that is the subject of the compromise during the period the IRS is evaluating whether such offer will be accepted or rejected, for 30 days immediately following the rejection of the offer, and for any period when a timely filed appeal from the rejection is being considered by Appeals.

(ii) *Revised offers submitted following rejection.* If, following the rejection of an offer to compromise pending on or made on or after December 31, 1999, the taxpayer makes a good faith revision of that offer and submits the revised offer within 30 days after the date of rejection, the IRS will not levy to collect the liability that is the subject of the revised offer to compromise while the IRS is evaluating whether to accept or reject the revised offer.

(iii) *Jeopardy.* The IRS may levy to collect the liability that is the subject of an offer to compromise during the period the IRS is evaluating whether

that offer will be accepted if it determines that collection of the liability is in jeopardy.

(iv) *Offers to compromise determined by IRS to be nonprocessable or submitted solely for purposes of delay.* The IRS may levy to collect the liability that is the subject of an offer to compromise at any time after it determines, under paragraph (c)(2) of this section, that a pending offer did not contain sufficient information to permit evaluation of whether the offer should be accepted, that the offer was submitted solely to delay collection, or that the offer was otherwise nonprocessable.

(v) *Offsets under section 6402.* Notwithstanding the evaluation and processing of an offer to compromise, the IRS may, in accordance with section 6402, credit any overpayments made by the taxpayer against a liability that is the subject of an offer to compromise and may offset such overpayments against other liabilities owed by the taxpayer to the extent authorized by section 6402.

(g) *Deposits.* Sums submitted with an offer to compromise a liability or during the pendency of an offer to compromise are considered deposits and will not be applied to the liability until the offer is accepted unless the taxpayer provides written authorization for application of the payments. If an offer to compromise is withdrawn, is determined to be nonprocessable, or is submitted solely for purposes of delay and returned to the taxpayer, any amount tendered with the offer, including all installments paid on the offer, will be refunded without interest. If an offer is rejected, any amount tendered with the offer, including all installments paid on the offer, will be refunded, without interest, after the conclusion of any review sought by the taxpayer with Appeals. Refund will not be required if the taxpayer has agreed in writing that amounts tendered pursuant to the offer may be applied to the liability for which the offer was submitted.

(h) *Statute of limitations.* (1) *Offers submitted prior to and not pending on or after December 31, 1999.* For offers to compromise submitted prior to and not pending on or after December 31, 1999—

(i) If the 10-year period specified in section 6502(a) will expire prior to December 31, 2002, and

(ii) Payments due under the agreement are scheduled to be made after the date upon which the 10-year period specified in section 6502(a) will expire—

no offer will be accepted unless the taxpayer executes a consent to extend the statutory period of limitations on the collection of the liability involved until the date one year subsequent to the date of the last scheduled payment or until December 31, 2002, whichever is earlier.

(2) *Offers pending on or made on or after December 31, 1999.* For offers pending on or made on or after December 31, 1999, the statute of limitations on collection will be suspended while collection is prohibited under paragraph (f)(2) of this section.

(3) For any offer to compromise, the IRS may continue to require, where appropriate, the extension of the statute of limitations on assessment. However, in any case where waiver of the running of the statutory period of limitations on assessment is sought, the taxpayer must be notified of the right to refuse to extend the period of limitations or to limit the extension to particular issues or particular periods of time.

(i) *Inspection with respect to accepted offers to compromise.* For provisions relating to the inspection of returns and accepted offers to compromise, see section 6103(k)(1).

(j) *Effective date.* Except as otherwise provided, this section applies to offers to compromise submitted on or after July 21, 1999, through July 19, 2002.

[T.D. 8829, 64 FR 39024, July 21, 1999]

Crimes, Other Offenses, and Forfeitures

CRIMES

GENERAL PROVISIONS

§ 301.7207-1 Fraudulent returns, statements, or other documents.

Any person who willfully delivers or discloses to any officer or employee of the Internal Revenue Service any list,