



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
January 7, 1999

CC:EL:GL:Br2
GL-510565-98

UILC: 17.34.00-00

Number: **199919008**
Release Date: 5/14/1999

MEMORANDUM FOR DISTRICT COUNSEL, PITTSBURGH, PA

FROM: Joseph W. Clark
Senior Technician Reviewer
Branch 2 (General Litigation)

SUBJECT: CSED Recovery Project - Rescission of Offer in Compromise

This Chief Counsel Advice responds to your memorandum dated November 4, 1998. This document is not to be cited as precedent.

LEGEND:

Taxpayer X =
Date A =
Date B =
Date C =
Date D =
Date E =

ISSUE(S):

1. Whether the taxpayer may rescind an offer in compromise ("offer") which was submitted as a result of alleged harassment or coercion by Internal Revenue Service ("Service") personnel, where the offer in compromise is currently pending and has not been accepted/rejected by the Service.

2. What action should the Service take with regard to the pending offer.

CONCLUSION:

1. The taxpayer may not rescind the offer in the instant case. An offer may be rescinded only after it has been accepted and a contract has been created, and only if the acceptance was made under a mutual mistake as to a material fact, or

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there have been false representations made by one party about a material fact. In the instant case, the offer has not been accepted, and, therefore, the taxpayer may not rescind the offer.

2. The Service should return the offer to the taxpayer as having been submitted in error. Since there was no legal basis for the Service to terminate the taxpayer's installment agreement, the agreement remained valid. Consequently, the Service had no legal basis to levy on the taxpayer's wages while he was under a valid installment agreement. Based on the facts of the instant case, the taxpayer would have had no reason to submit the offer absent levy activity by the Service. Therefore, the offer submitted in this case is considered to have been submitted in error.

FACTS:

The taxpayer had entered into an installment agreement with the Service as a method of paying his outstanding federal tax liabilities. As a condition to entering into the agreement, on Date A, the taxpayer was required to execute a waiver extending the collection statute to December 31, 1998. The taxpayer did, in fact, execute such a waiver. On or about Date B, the Service again requested that the taxpayer execute a waiver to further extend the collection statute beyond December 31, 1998. The taxpayer refused to execute the additional waiver to extend the collection statute.

As a result of the taxpayer's reluctance to sign the second waiver, the Service terminated the taxpayer's installment agreement. On Date C, the Service levied on the taxpayer's wages, resulting in payments of approximately \$400.00 per month. The wage levy continued until March, 1998. On Date D, the taxpayer submitted an offer in compromise, which you have indicated is currently pending in the Pennsylvania District.

The revenue officer reviewing this case has concluded that the sole reason for requesting the second waiver was the imminent expiration of the collection statute. As a result of the taxpayer's refusal to execute the waiver, the installment agreement was terminated and collection action ensued. Your office has correctly concluded that, based on the Service's position in "Enforcement Action" cases in the CSED Recovery Project, the taxpayer is entitled to a return of all funds levied upon and collected after June 21, 1997, under I.R.C. § 6343.

The taxpayer is now seeking to "rescind" the offer in compromise. The taxpayer asserts that the Service's actions, i.e., improperly terminating his installment agreement and taking collection action solely because he refused to execute the second waiver, is tantamount to "harassment." The taxpayer claims that the only reason he submitted an offer in compromise was because he was

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harassed by Service personnel to submit the offer, on the theory that the wage levy would not be sufficient to fully satisfy his tax liabilities.

You have advised that the only evidence of “harassment” by the Service is a reference in a memorandum, dated Date E, from James Conteen, Manager, Group 35, to the Associate Chief, Appeals in Pittsburgh, which states in relevant part as follows:

An Offer in Compromise would be the resolution in the best interest of the taxpayer and the government, and this option was explained and advocated to Taxpayer X on numerous occasions. [Emphasis added]

It appears, based on the facts as presented by your office, that the taxpayer submitted the offer as a result of the wage levy.

LAW AND ANALYSIS

Under I.R.C. § 6159, Agreements for Payment of Tax Liability in Installments, the Service is granted statutory authority to enter into a written installment payment agreement allowing the taxpayer to satisfy a tax liability by making scheduled periodic payments. I.R.C. § 6159(a). An installment payment agreement is effective from the date it is executed by the Service until the date set forth in the agreement, unless sooner terminated for cause by the Service. I.R.C. § 6159(b).

The Service has the right to terminate an installment payment agreement if the taxpayer fails to comply with specific terms of the agreement. I.R.C. §§ 6159(b)(2) - (4). Subsection 6159(b) thus contains the exclusive list of reasons for which an installment payment agreement may be terminated by the Service. Treas. Reg. § 301.6159-1(c). Hence, an installment payment agreement may not be terminated for a reason not authorized by the statute or the underlying regulations. None of the statutory provisions in subsection 6159(b), or any other provision in the statute or the applicable regulations, authorizes an installment agreement to be terminated solely because the taxpayer refuses to extend the collection statute. It is clear in this case that the installment agreement was improperly terminated, and there is no dispute that the monies collected pursuant to the wage levy should be returned, in accordance with the Service’s position on this issue in the CSED Recovery Project.

On Date D, the taxpayer submitted an offer in compromise. The submission of the offer by the taxpayer was, in large part, due to the Service’s levy on his wages. The Service was actively collecting approximately \$400.00 per month as a result of the levy. Upon submission of the offer, the Service ceased active administrative collection action.

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An offer is a contractual agreement between the Service and the taxpayer under which the taxpayer agrees to pay a specified amount in full settlement of assessed tax liabilities, including interest and certain penalties. I.R.C. § 7122(a); Treas. Reg.

§ 301.7122-1(b). The offer is a means by which a taxpayer can have collection activity deferred (provided the interests of the United States are not jeopardized), and can have his tax liability reduced and settled without the need for expensive litigation. For the most part, an offer is desired by a taxpayer who is experiencing financial difficulties. An offer may be withdrawn by the taxpayer at any time prior to its acceptance. Treas. Reg.

§ 301.7122(d)(4). If the taxpayer chooses to withdraw his offer, the amount tendered with the offer will be returned to him. I.R.C. § 7809(b).

An offer in compromise, once accepted, is binding and conclusive on both the government and the taxpayer, and precludes further inquiry into the matters to which it relates.¹ Treas. Reg. § 301.7122-1(c). Once an offer has been accepted by the Service, the taxpayer may no longer withdraw the offer. An accepted offer in compromise may, however, be rescinded under certain circumstances. The offer may be rescinded only if the acceptance was made under a mutual mistake as to a material fact, or there have been false representations made by one party about a material fact. Treas. Reg.

§ 301.7122-1(c).

In the instant case, the offer has not yet been accepted. The taxpayer may withdraw his offer if he no longer wishes to compromise his liabilities, but he may not, however, rescind the offer, for the reasons discussed in the foregoing paragraph.

Although the taxpayer has failed to provide any evidence of harassment by Service personnel, the Service has acknowledged the fact that the termination of the installment agreement was improper in this case. The taxpayer has alleged that had the Service not terminated his installment agreement, he would not have submitted the offer. In this regard, had the offer not been submitted, the collection statute would have expired on December 31, 1998.

The taxpayer's argument may have some validity, in that the Government's actions (in terminating the installment agreement) ultimately caused him to submit the offer. If the installment agreement was still in effect on Date D, the taxpayer would have no reason to submit an offer. If the Service had not taken improper action to terminate the installment agreement, the taxpayer would have most likely

¹ For purposes of this memorandum, it is assumed that the taxpayer signed the offer with his own signature, and that the document was signed without any evidence of duress.

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made his payments under the agreement, until December 31, 1998, when the collection statute was due to expire.² After that date, the taxpayer would have no further obligation to pay the Service, and the Service would not be permitted to take any collection action against the taxpayer. I.R.C. § 6502.

In view of the foregoing, it is recommended that the Service take appropriate action to return the offer to the taxpayer as having been submitted in error. The Service had no legal basis to terminate the taxpayer's installment agreement. I.R.C. § 6159(b). Consequently, the agreement remained in effect. I.R.C. § 6159(b)(1). While the installment agreement was in effect, the Service had no legal basis to levy on the taxpayer's wages. I.R.C. § 6343(a)(1)(C). Based on the facts of the instant case, the taxpayer would have had no reason to submit the offer absent levy activity by the Service. Therefore, the offer submitted in this case is considered to have been submitted in error, and should be returned to the taxpayer.

Returning the offer to the taxpayer as having been submitted in error is equivalent to the taxpayer never having submitted the offer at all. Upon returning the offer, the offer transaction code would be reversed (TC 483) on the Service's records. The result is that the statutory period for collection has not been suspended by the offer. Based on the facts as presented by your office, the statutory period for collection expired on December 31, 1998. In this regard, it is recommended that after the offer has been returned to the taxpayer, your office take appropriate action to abate the remaining liability at issue, as the Government is not permitted to collect a tax liability after expiration of the collection period. I.R.C. § 6502.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

We believe that the statute and case law are clear as to when a party may rescind an accepted offer in compromise. A party may rescind an offer when the acceptance was made under a mutual mistake as to a material fact, or when there have been false representations made by one party about a material fact. Based on the facts as presented in the instant case, there are minimal hazards, if any, if this issue was litigated. However, the taxpayer's argument, that he would not have submitted the offer if the Service had not wrongfully terminated his installment agreement, warrants serious consideration. There is no dispute that the Service improperly terminated the taxpayer's installment agreement in this case. Since the Service had no legal basis, under I.R.C. § 6159(b), to terminate the agreement, the agreement remained valid at the time of the wage levy. Because

² There is no evidence to show that the taxpayer would have likely defaulted on the installment agreement. For purposes of this memorandum, it is presumed that, had the Service not terminated the installment agreement, the taxpayer would have continued his payments under the agreement.

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the installment agreement was still effective and valid at the time, the wage levy was improper, under the provisions of I.R.C. § 6343(a)(1)(C). Further, the taxpayer was not obligated to execute the second waiver to extend the collection statute, and, in fact, he did not. Without the second waiver, the collection statute was due to expire on December 31, 1998. Ironically, although the Service was not able to extend the collection statute through the second waiver, the statute was extended by the taxpayer's submission of the offer. [REDACTED]

[REDACTED]. Consequently, although the taxpayer may not rescind the offer in this case, the Service should return the offer to the taxpayer as having been submitted in error, and any remaining liability at issue should be abated.

If you have any further questions, please call the branch telephone number.