



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS

FROM: Frederick W. Schindler /s/ Frederick W. Schindler  
Director, Collection Policy

SUBJECT: Interim Guidance for Corporate Trust Fund Offers in  
Compromise

The purpose of this memorandum is to provide interim guidance regarding offers in compromise (OIC) submitted by corporations or any other entity with unpaid trust fund liabilities where assertion of the trust fund recovery penalty is applicable. These procedures are effective for OICs filed with the Service after February 4, 2008.

These procedures establish that the trust fund recovery penalty must be assessed or paid before the IRS will consider an OIC seeking to compromise any tax liability with trust fund taxes subject to the assertion of the trust fund recovery penalty. In addition, the requirement to include the reasonable collection potential (RCP) of the responsible party(ies) in the calculation of the offer in compromise RCP has been eliminated. These procedures will apply to both in-business and out of business entities.

Procedures attached to this memorandum will be included in the next revision of Internal Revenue Manual (IRM) 5.8 Offer in Compromise. Please disseminate this information to all offer specialists, independent administrative reviewers, revenue officers and all managers with employees in these positions.

If you have any questions, please contact me, or a member of your staff may contact Diana Estey.

Attachment

cc: National Chief, Appeals  
Chief Counsel  
National Taxpayer Advocate  
[www.irs.gov](http://www.irs.gov)

## Corporate Trust Fund Procedures<sup>1</sup>

For offers in compromise involving a corporation, the amount acceptable to compromise a corporate employment tax liability will represent what can be collected from the corporation without looking to the responsible person(s). If the Service enters into a compromise with an employer for a portion of the trust fund tax liability, the remainder of the trust fund taxes may still be collected from a responsible person by assessing a trust fund recovery penalty (TFRP) pursuant to Section 6672 of the Internal Revenue Code. Thus, the corporate reasonable collection potential (RCP) will no longer include the RCP of the responsible person(s).

For offers involving corporations, the trust fund portion of the tax liabilities must be paid, the trust fund package forwarded for assessment or the TFRP **assessed** against all responsible persons, before the Service will investigate an offer.

If the TFRP has not been assessed against all responsible persons, revenue officers have two options when they negotiate with the corporate principals:

1. If the corporation wishes to file an offer, all responsible persons must first agree to the **assessment** of the TFRP. The revenue officer must secure basic documentary evidence per LEM 5.7 to support assertion of the TFRP. In addition, generally all responsible persons must sign Form 2751, Proposed Assessment of Trust Fund Recovery Penalty.

Note: The signing of the Form 2751 does not preclude the responsible person from challenging the assessment by paying a divisible portion of the tax<sup>2</sup> filing a refund claim and, if unsuccessful, a refund suit.

If extenuating circumstances are present which prevent the assessment of the TFRP against all responsible persons, the revenue officer, after consulting with a manager, may consider processing the OIC without the assessment of all potential responsible persons. For example, if a potential responsible person cannot be located, the revenue officer may allow the corporate OIC to be considered if the Government's interests are sufficiently protected if the other responsible persons have agreed to the assessment of the TFRP.

2. Alternatively, the responsible person(s) can personally full pay the trust fund amount on behalf of the corporation. IRM 5.7.4.4 contains instructions when a responsible person chooses to pay on behalf of the corporation.

Failure of the responsible persons to satisfy either option will result in a "solely to delay" determination if the corporation files an offer. See IRM 5.8.3.19.

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<sup>1</sup> For the purposes of this memo the use of the term corporate or corporation also applies to any entity in which assertion of the trust fund recovery penalty is applicable

<sup>2</sup> The responsible person must pay the amount equivalent to the withholding tax of one employee for one taxable period in order to establish refund suit jurisdiction

Offers submitted on corporate accounts in Status 26 before assessment of the TFRP, but subsequent to the corporate principals being advised that an offer will not be processed unless the TFRP has been assessed or the trust funds paid, will be returned as "solely to delay" collection. The assigned revenue officer will retain the balance due case, and annotate this on Form 657. The offer will be returned by COIC without input of ST 71 in accordance with the Form 657.

**Note:** If the liabilities are not currently in status 26 and/or the responsible individuals had not been previously advised that an offer will not be investigated unless the TFRP has been assessed or the trust funds paid, the offer specialist will retain the offer and issue another investigation (OI) to the field.

Only the amount that can be collected from the corporation (including dissipated assets) will be considered in the RCP calculation of an acceptable corporate offer. The Service will pursue collection of the TFRP (unless the trust fund portion has been full paid) assessed against the responsible persons.

A taxpayer may designate TIPRA payments (pre-acceptance) to a specific liability including trust fund liabilities. Once the offer has been accepted, the taxpayer no longer has the right to designate payments and post-acceptance payments will be applied in the government's best interest. Pre-acceptance payments designated to trust fund must be posted using designated payment code (DPC) 02.

During initial analysis of an offer received from a corporation involving unpaid trust fund tax, the Offer Specialist must determine the Assessment Statute Expiration Date (ASED) of each period and take immediate steps to protect the statute if expiration is imminent.

The following actions should be taken based on the facts of the case:

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|---|---|--|
| <p>If...<br/>The account is in status 26 and the taxpayer has been previously advised that an offer will not be considered until the trust fund is paid or assessed</p> | <p>Then the Offer Specialist will ...<br/>Return the offer as solely to delay collection</p>  | <p>Then the RO will...<br/>Retain the balance due case and complete the trust fund investigation</p> |
| <p>Trust fund tax is due and the corporate account is not assigned to an RO when the offer is submitted and the TFRP has not been assessed.</p>                         | <p>Generate an outgoing OI (coded 100) to the appropriate field group to conduct the TFRP investigation. Coordinate with the RO to ensure the TFRP is assessed or trust fund portion fully paid by the responsible person(s).<br/>Note: a formal appeal of the proposed TFRP will result in return of the offer as "solely to delay"</p>  | <p>Complete the TFRP investigation.<br/><br/>OI should be completed within 90 days.</p>              |
| <p>The ASED has expired without any TFRP assessment</p>   | <p>Annotate the expiration in the case history and continue processing the offer determining only the corporation's RCP. Determine if the ASED expired after the offer was received. If the ASED expired after the offer was received, prepare an expired statute notification and submit to your manager for processing. See 5.7.3.8</p> |  |

When the Service accepts an offer from a corporation to compromise trust fund taxes, the offer payments may not satisfy the entire trust fund portion of the tax liability due to the manner in which accepted offer payments are applied. Therefore, any related TFRP assessments will remain open for collection.

Offer payments (other than partial payments made under TIPRA in conjunction with proposed offers) are applied in the best interest of the government, and any open trust fund portions are paid last.