



FROM THE DESK OF MORGAN D. KING Aug. 10 2007

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AUGUST 1 2007

CALIFORNIA STREAMLINES OFFER-IN-COMPROMISE PROCESS

Single application now available from three tax agencies

Continuing their efforts to make more services accessible and convenient for more taxpayers, California's three tax agencies have simplified the Offer In Compromise application process.

The Board of Equalization (BOE), Employment Development Department (EDD) and Franchise Tax Board (FTB) have developed a single form, the DE 999CA, Multi-Agency Form for Offer in Compromise, that individuals can use for any of the state's tax agencies.

"This is a great example of government working together to be more efficient for Californians," said State Controller and FTB Chair Steve Westly. "Taxpayers experiencing financial hardship will now have some reprieve in resolving their tax issues."

Taxpayers may apply for an Offer in Compromise when they are unable to pay their full tax liabilities to the state, under certain circumstances. The program allows taxpayers to negotiate a reduced amount of their non-disputed tax liabilities. The state will consider an Offer In Compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential.

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"Submitting one form greatly eases the burden on our taxpayers. In the past, taxpayers had to fill out three forms that often totaled one dozen pages or more," said Board of Equalization Chair and FTB Member John Chiang. Chiang added, "This system epitomizes the continuing effort by the BOE, EDD, and FTB to provide user-friendly services to Californians."

"This streamlined process is the result of our strong interagency partnerships, and it supports our common goals to simplify and facilitate the resolution of tax matters for California taxpayers," said EDD Director Patrick Henning.

The individual agencies must still negotiate each offer in compromise separately for their respective taxes. For example, only the FTB can negotiate a state income tax liability where the Board of Equalization can only negotiate a sales or use tax liability.

The form is available online at the California Tax Service Center (www.taxes.ca.gov), as well as at each of the three tax departments' Websites (BOE www.boe.ca.gov, EDD www.edd.ca.gov, FTB www.ftb.ca.gov).

REVISED IRS INNOCENT-SPOUSE FORM NOW AVAILABLE

WASHINGTON — The Internal Revenue Service today announced a redesigned Form 8857, Request for Innocent Spouse Relief, that will help reduce follow up questions and reduce the burden on taxpayers.

The form will ask more questions initially, but collecting critical information early in the process will mean faster processing of the request. The new design will eliminate an estimated 30,000 follow-up letters annually. The result will be a reduced burden and quicker answer for taxpayers and less cost for the government.

The form was revised based on suggestions from an IRS process improvement team led by the Office of Taxpayer Burden Reduction.

When a taxpayer files a joint return, both spouses are jointly and individually responsible for the tax. Innocent Spouse relief provides an opportunity for a spouse to be relieved from the joint debt under certain circumstances. If one taxpayer believes that only his or her spouse or former spouse who should be responsible for the tax, the taxpayer can request relief from the tax liability.

The redesigned form also will be easier to understand and to complete and will help educate taxpayers about the process. Previously, the questionnaire was separate from the form. A line-by-line analysis also resulted in a reduction in the number of questions asked of taxpayers.

See Tax Information for Innocent Spouses on the IRS Web site for more.

REVISED FORM <http://www.irs.gov/pub/irs-pdf/f8857.pdf>

OTHER NEWS

IRS REPORTS ON 2006 PROGRAM TO INCREASE VOLUNTARY COMPLIANCE

COLLECTION TAX GAP IS \$290 billion

IR-2007-137, Aug. 2, 2007

WASHINGTON — The Treasury Department and the Internal Revenue Service (IRS) released today an IRS report addressing the agency's implementation of the 2006 strategy to improve voluntary compliance with federal tax laws. A copy of the report is attached.

The IRS report, *Reducing the Federal Tax Gap: A Report on Improving Voluntary Compliance*, details steps currently being taken by the IRS, as well as those under development, to address key elements of the "tax gap." The report builds on the seven components of the *Comprehensive Strategy for Reducing the Tax Gap*, which the Treasury Department released in September 2006. Those components are:

- * Reducing Opportunities for Evasion
- * Making a Multi-Year Commitment to Research
- * Continuing Improvements in Information Technology
- * Improving Compliance Activities
- * Enhancing Taxpayer Service
- * Reforming and Simplifying the Tax Law
- * Coordinating with Partners and Stakeholders

In each of these areas, the report sets out compliance objectives and initiatives, along with targeted completion dates, that the IRS is implementing to improve tax compliance over the next several years.

From the report:

"The overall compliance rate achieved under the United States revenue system is quite high. For the 2001 tax year, the IRS estimates that, after factoring in late payments and recoveries from IRS enforcement activities, over 86 percent of tax liabilities were collected. Nevertheless, an unacceptably large amount of the tax that should be paid every year is not, such that compliant taxpayers bear a disproportionate share of the revenue burden, and giving rise to the "tax gap." The gross tax gap was estimated to be \$345 billion in 2001. After enforcement efforts and late payments, this amount was reduced to a net tax gap of approximately \$290 billion."

More story - <http://www.irs.gov/irs/article/0,,id=172790,00.html>

MORE OICs TO BE ACCEPTED?

NATIONAL TAXPAYER ADVOCATE RELEASES REPORT ON PENDING ISSUES AND CHALLENGES

IR-2007-131, July 19, 2007

WASHINGTON — National Taxpayer Advocate Nina E. Olson today delivered a report to Congress that identifies the priority issues the Office of the Taxpayer Advocate will address in the coming fiscal year. Among the key areas of focus will be improving taxpayer services, ensuring that taxpayer rights are protected in the IRS's private debt collection initiative, and making the IRS's offer-in-compromise program more accessible for taxpayers who are unable to pay their tax debts in full.

The report also addresses the challenges the IRS is facing because of pressure to close the tax gap quickly. The tax gap represents the difference between the amount of tax owed and the amount of tax collected. "For fiscal year 2008, both the IRS and the Taxpayer Advocate Service (TAS) face similar challenges," Olson wrote. "The IRS is under scrutiny for its efforts to close the tax gap, while TAS is struggling to address taxpayer difficulties that arise as a result of these very efforts."

From the Report:

"Legislation enacted in 2006 requires taxpayers who submit "lump sum" offers to make a down payment of 20 percent of the amount of the offer with the submission. To determine the impact of this requirement on bona fide offers, TAS reviewed a sample of 414 offers that the IRS accepted prior to the enactment of the down-payment requirement. In about 70 percent of those cases, the taxpayer did not have access to sufficient liquid funds to make the required down payment. The National Taxpayer Advocate will work with the IRS and the Treasury Department to try to improve the accessibility of the offer program."

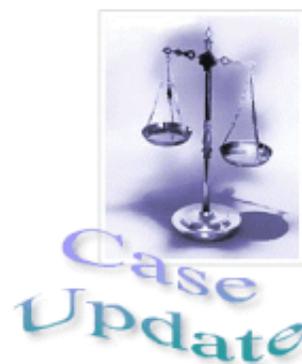
FOR MORE STORY - <http://www.irs.gov/newsroom/article/0,,id=172415,00.html>

HELD: OFFER-IN-COMPROMISE DOES NOT STOP IRS RIGHT TO LEVY MADE PRIOR TO DATE THE OFFER WAS ACCEPTED FOR CONSIDERATION

For purposes of construing section 6331(k)(1)(A)'s general prohibition on levies made during the pendency of an offer in compromise, Congress has directed us to apply "[r]ules similar to the rules of . . . paragraph[] (3) . . . of subsection (i)." 26 U.S.C. § 6331(k)(3)(A).

The cross-referenced provision — section 6331(i)(3) — in turn contains a "rule" that states: "This subsection [subsection (i)(1), which generally prohibits levies from being made during the pendency of certain refund proceedings] shall not apply to . . . any levy which was first made before the date that the applicable proceeding under this subsection commenced." 26 U.S.C. § 6331(i)(3)(B)(ii).

By analogy, then, a rule "similar to" the rule contained in section 6331(i)(3)(B)(ii) would state: "This subsection [subsection (k)(1)(A), which generally prohibits levies from



being made during the pendency of an offer-in-compromise] shall not apply to . . . any levy which was first made before the date that the offer in compromise became pending."

The upshot of the rule Congress has told us to apply in situations like this is that the IRS is not prohibited from levying on a taxpayer's property during the pendency of the taxpayer's offer in compromise, so long as the levy was "first made" before the date on which the offer in compromise became pending. Applying that rule to this case, we conclude that the IRS did not violate the general prohibition on levy set forth in section 6331(k)(1)(A). We therefore reject Mr. Ryals' claim to the contrary and hold that the statute of limitations was properly suspended during the pendency of his second offer in compromise.

U.S. v. Ryals, 480 F.3d 1101 (11th Cir., 2007)

HELD: COURT CAN REVIEW DUE-PROCESS HEARING FOR ABUSE OF DISCRETION and TAXPAYER CANNOT DELAY COLLECTION WITH ENDLESS EXTENSIONS

1998, Congress established the CDP hearing process to temper "any harshness caused by allowing the IRS to levy on property without any provision for advance hearing." Olsen v. United States, 414 F.3d 144, 150 (1st Cir.2005). The hearing is informal: no face-to-face meetings are necessary and there is no requirement that the proceedings be transcribed or recorded. See Living Care Alternatives of Utica, Inc. v. United States, 411 F.3d 621, 624 (6th Cir.2005). During the hearing, a taxpayer may raise "any relevant issue relating to the unpaid tax or the proposed levy, including . . . offers of collection alternatives, which may include an offer-in-compromise." 26 U.S.C. § 6330(c)(2)(A).

To proceed with a levy after a CDP hearing, the IRS must verify that it has met all the requirements to move forward with a levy, reject the taxpayer's defenses and proposed collection alternatives, and determine that the "proposed collection action balances the need for efficient collection of taxes with the legitimate concern of the person that any collection be no more intrusive than necessary." Id. § 6330(c)(3). An aggrieved taxpayer may appeal to the Tax Court. Id. § 6330(d)(1) (as amended by Pub.L. No. 109-281, § 855(a)).²

It is apparent that the appeals officer did not conclude the hearing because of an unyielding determination to end the matter quickly, but rather because she reasonably believed that there was little hope that Murphy would timely provide the required information. Were we to find an abuse of discretion on this record, we would transform CDP hearings from a shield against invasive government conduct into a taxpayer's tool to delay the timely collection of delinquent tax liabilities by seeking endless extensions. We will not do so.

Murphy v. Commissioner of Internal Revenue, 469 F.3d 27 (1st Cir., 2006)



HELD: TAXPAYER MAY MAKE OFFER-IN-COMPROMISE AT DUE-PROCESS HEARING

Before a levy may be made on any property or right to property, a taxpayer is entitled to notice of intent to levy and notice of the right to a fair hearing before an impartial officer of the Appeals Office. Secs. 6330(a) and (b), 6331(d). If the taxpayer requests a hearing, he may raise in that hearing any relevant issue relating to the unpaid tax or the proposed levy, including challenges to the appropriateness of the collection action and "offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise". Sec. 6330(c)(2)(A). A determination is then made which takes into consideration those issues, the verification that the requirements of applicable law and administrative procedures have been met, and "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary". Sec. 6330(c)(3)(C).

Crisan v. Commissioner of Internal Revenue, No. 11953-02L (U.S.T.C. 11/17/2003) (U.S.T.C., 2003)

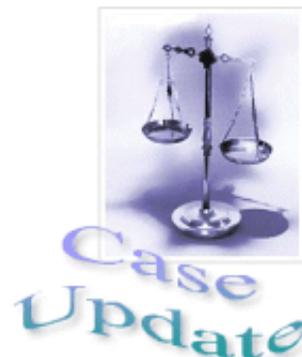


HELD: TAXPAYER MAY RAISE ANY RELEVANT ISSUE AT DUE-PROCESS HEARING and APPEALS OFFICER MAY BE PROHIBITED FROM CONTACT WITH OTHER IRS EMPLOYEES

At the hearing, the person may raise any relevant issue relating to the unpaid tax or the proposed levy, including appropriate spousal defenses, challenges to the appropriateness of collection actions, and collection alternatives. Sec. 6330(c)(2)(A). The person may challenge the existence or amount of the underlying tax liability, however, only if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability. Sec. 6330(c)(2)(B).¹² In the instant case, petitioner does not contest the underlying tax liability, and, consequently, we review the Appeals officer's determination for abuse of discretion. *Goza v. Commissioner*, 114 T.C. 176, 181-182 (2000); *Sego v. Commissioner*, 114 T.C. 604, 610 (2000).

Petitioner contends, inter alia, that Settlement Officer O'Shea and Appeals Officer Kaplan did not conduct the administrative review in good faith, as evidenced by the ex parte communication between Settlement Officer O'Shea and Advisor Gordon on January 30, 2002.

The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, sec. 1001(a), 112 Stat. 689, directed the Commissioner of Internal Revenue to develop a plan to prohibit ex parte communications between Appeals officers and other employees of the Internal



Revenue Service that appear to compromise the independence of the Appeals officers:

The Commissioner of the Internal Revenue shall develop and implement a plan to reorganize the Internal Revenue Service. The plan shall * * * (4) ensure an independent appeals function within the Internal Revenue Service, including the prohibition in the plan of ex parte communications between appeals officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the appeals officers.

Rev. Proc. 2000-43, 2000-2 C.B. 404, provides that an Appeals officer may not engage in ex parte discussions of the strengths and weaknesses of the issues of a case that would appear to compromise the Appeals officer's independence and must give the taxpayer an opportunity to participate in any discussions concerning matters that are not ministerial, administrative, or procedural in nature. Rev. Proc. 2000-43, sec. 3, Q&A-6, 2000-2 C.B. at 406.

Drake v. Commissioner of Internal Revenue, 125 T.C. No. 9 (U.S.T.C. 10/12/2005), 125 T.C. No. 9 (U.S.T.C., 2005)

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