

#23 MODIFY THE REQUIREMENT THAT THE OFFICE OF CHIEF COUNSEL REVIEW CERTAIN OFFERS IN COMPROMISE

Present Law

IRC § 7122 authorizes the Secretary to enter into an agreement with a taxpayer that settles the taxpayer's tax liabilities for less than the full amount owed, as long as the liabilities have not been referred to the Department of Justice. Such an agreement is known as an "offer in compromise" (OIC). Treas. Reg. § 301.7122-1(b) provides that the IRS may compromise liabilities to the extent there is doubt as to liability, doubt as to collectability, or to promote effective tax administration. The regulations further define these terms and provide instances when compromise is appropriate.

IRC § 7122(b) requires the Treasury Department's General Counsel review and provide an opinion in support of accepted OICs in all criminal cases and in civil cases where the unpaid amount of tax assessed (including any interest, additional amount, addition to tax, or assessable penalty) is \$50,000 or more. This authority is exercised by the IRS Office of Chief Counsel.

Reasons for Change

The IRS receives tens of thousands of OICs every year and has established a specialized unit for each type of OIC. Each unit is responsible for processing only that particular type of OIC, and the unit verifies that the legal, as well as IRS policy, requirements for compromise are met prior to proposing acceptance of the OIC.

The requirement that the Office of Chief Counsel review and provide an opinion for every criminal OIC and civil OIC where the unpaid amount of tax assessed is \$50,000 or more burdens taxpayers by significantly delaying OIC processing decisions. Delays in OIC processing may impede a taxpayer's ability to make other financial decisions while waiting for a response and may even jeopardize the taxpayer's ability to pay the amount offered if his financial circumstances change. The counsel review requirement is also burdensome for the IRS, requiring that Office of Chief Counsel employees learn the facts of each case and write supporting opinions. This work is oftentimes duplicative of the work the IRS has already performed in processing the OIC.

The National Taxpayer Advocate believes the OIC process would be improved if the blanket requirement for counsel review of all OICs in civil cases where the unpaid tax assessed is \$50,000 or more is repealed and replaced with language authorizing the Secretary to require counsel review in cases that present significant legal issues.

Recommendation

Amend IRC § 7122(b) to repeal the requirement that counsel review all OICs in civil cases where the unpaid amount of tax assessed (including any interest, additional amount, addition to tax, or assessable penalty) is \$50,000 or more and replace it with language authorizing the Secretary to require counsel review of OICs in cases that he determines present significant legal issues.¹⁰¹

¹⁰¹ For language that is generally consistent with this recommendation, see S. 1578, 114th Cong., § 403 (2015), S. 882, 108th Cong., § 104 (2003) and H.R. 1528, 108th Cong., § 304 (2004).