

#17 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 describe instances when compromise is appropriate.

IRC § 7122(b) requires the Treasury Department's General Counsel to review and provide an opinion in support of accepted OICs in all criminal cases and in all civil cases where the unpaid amount of tax assessed (including any interest, additional amount, addition to tax, and 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 OIC applications every year and must verify that the legal and IRS policy requirements for compromise are met prior to proposing acceptance. Requiring Office of Chief Counsel employees to learn the facts of every criminal OIC and civil OIC where the unpaid amount of tax assessed is \$50,000 or more and to write supporting opinions, creates significant delays in OIC processing and is often duplicative of work the IRS has already performed. It also requires a significant commitment of legal resources on the part of the IRS.

In addition, delays in OIC processing may impede a taxpayer's ability to make other financial decisions while awaiting a response and may even jeopardize the taxpayer's ability to pay the amount offered if his financial circumstances change.

The National Taxpayer Advocate believes the OIC process would be improved if the indiscriminate requirement for counsel review of all OICs in civil cases where the unpaid tax assessed is \$50,000 or more is repealed and replaced with language authorizing the Secretary to require counsel review in cases that present significant legal issues.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.⁸³

83 For legislative language generally consistent with this recommendation, see Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. § 303 (2017); Taxpayer Bill of Rights Enhancement Act of 2015, S. 1578, 114th Cong. § 403 (2015); Tax Administration Good Government Act, S. 882, 108th Cong. § 104 (2003); Tax Administration Good Government Act, H.R. 1528, 108th Cong. § 304 (2004).