

Appealing the Denied Offer

- Amanda Evans, EA, Green & Sklarz LLC, Moderator
- Leighanne Lafrenz Nickle, Lafrenz Nickle CPA, Inc.
- Beverly L. Winstead, Esq., Law Office of Beverly Winstead

Service-wide Policy Statements: *Policy Statement 5-100, Offers will be accepted*

Policy Statement P-5-100 explains the objective of the OIC as a collection tool.

The Statement states, in part:

The Service will accept 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. An offer in compromise is a legitimate alternative to declaring a case currently not collectible or to a protracted installment agreement. The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the government.

Part 8. Appeals, Chapter 23. Offer in Compromise

Appeals has jurisdiction to make decisions on OIC cases in the following circumstances:

1. Offers appealed after being rejected by Collection or Examination.
2. Offers submitted as an alternative to the proposed collection action in a CDP or equivalent hearing (EH) case.

IRM 5.8 is the primary resource for working OIC cases. However, while following the general OIC procedures found in IRM 5.8, appeals will exercise independent judgment concerning the disputed valuations and business decisions made by Collection. Appeals will also make independent determinations regarding offers based upon DATL.

Appeals is not a fact finder

- The practitioner should narrow the focus of consideration to the specific issues for which the offer was rejected. Use Form 13711 (note, form is not mandatory) and address the disagreed item(s), reason(s) for the disagreement, and provide any supporting documentation, as appropriate.
- Appeals should not ask for supplemental information unless it pertains to an issue under appeal (or raised by the taxpayer after the appeal was made).
- Appeals Technical Employee's (ATE) finding cannot raise the value of income or an asset to an amount that is higher than what was determined by Collection, unless the taxpayer provided such information to Appeals. Therefore, the matter should not be pursued by the ATE if the finding would increase the value of income or an asset or reduce an expense item that **is not in dispute**.

New Information

In evaluating the offer, appeals employees will not attempt to identify and value any additional assets. In addition, Appeals employees should not revise the value of an asset to an amount that is higher than previously determined by Collection.

In collection issue cases, the taxpayer may submit new information while the case is in Appeals. Any new information should be considered, particularly if it pertains to an issue disputed at the time of rejection. New information pertaining to an issue that was not in dispute at the time of rejection may also be considered if voluntarily provided by the taxpayer. See *IRM 8.23.3.4.1.3* for guidance on information that should generally be referred to Collection for an initial review.

Note:

A taxpayer may voluntarily reveal a new asset, additional income or other matter to Appeals. Appeals will not investigate the matter but, if more than a face value review is needed, the new issue may be forwarded to Collection via an ARI for initial review, investigation and valuation decision. The filing of a tax return that becomes due while the protest is under review by Appeals does not constitute a voluntary admission by the taxpayer of additional assets or income.

Requests for Supplemental Information by Appeals

Appeals may request supplemental information, if needed, **for an issue under appeal.**

The requests for supplemental information are subject to the following:

- A) The supplemental information being sought pertains to a specific issue that is in dispute between the taxpayer and Collection, or
- B) The supplemental information pertains to an issue that was raised by the taxpayer after the appeal was made, and
- C) The ATE's finding cannot raise the value of income or an asset to an amount that is higher than what was determined by Collection, unless the taxpayer provided such information to Appeals. Therefore, the matter should not be pursued by the ATE if the finding would increase the value of income or an asset or reduce an expense item that is not in dispute.

Note: See IRM 8.23.3.4.1.1 for exceptions.

COIC Response

Internal Revenue Service
Centralized OIC
PO Box 9011 Stop 682
Holtsville, NY 11742

Person to Contact:
Mr. Employee
Employee #:1000XXXXXX
Phone#: (866)611-6191 EXT.
3366 08:00am-03:30pm Mon-Fri

Taxpayer ID#:***-**-XXXX
Offer Number:1001XXXXXX

Taxpayer Name
Taxpayer Address
City, CT Zip

Dear Mr. Taxpayer,

We have investigated your offer dated 11/28/2016 in the amount of \$13,238.00.

We are rejecting the offer for the following reason(s):

The amount offered is less than your reasonable collection potential. Copies of worksheets showing our calculations are enclosed for your review.

Based on the financial information you submitted, we have determined you can pay the amount due in full.

COIC Asset Analysis

Joe and Mary

INCOME/EXPENSE TABLE					
	Actual		Expenses	Claimed	Allowed
Income					
Wages (yourself)	\$ 7,500		Food, Clothing and Misc	\$ 1,993	\$ 1,993
Wages (spouse)	\$ 5,000		Housing & utilities	\$ 3,097	\$ 3,097
Interest - Dividends	\$ -		Vehicle Ownership	\$ 400	\$ 400
Net Business Income	\$ -		Vehicle Operating Costs	\$ 596	\$ 596
Net Rental Income	\$ -		Public Transportation	\$ -	\$ -
Distributions	\$ -		Health Insurance	\$ 695	\$ 695
Pension/Soc Sec (taxpayer)	\$ -		Out of Pocket HealthCare	\$ 437	\$ 437
Pension/Soc Sec (spouse)	\$ -		Court ordered pmts	\$ -	\$ -
Social Security (taxpayer)	\$ -		Child/Dep Care	\$ 375	\$ -
Social Security (spouse)	\$ -		Life Insurance	\$ 300	\$ 300
Child Support	\$ -		Current Year Taxes	\$ 3,125	\$ 3,125
Alimony	\$ -		Secured Debts	\$ 175	\$ 175
Other Income	\$ -		Delinquent State Taxes	\$ 500	\$ -
	\$ -		Other - Union Dues	\$ 318	\$ -
	\$ -		Total Living Expenses	\$12,011	\$ 10,818
Total	\$ 12,500		Net Difference	\$ 489	\$ 1,682
Net difference = \$1,682	Months 120		Amount that could be paid = \$201,840		

COIC Asset Analysis

TAXPAYER'S NAME		EIN/TIN		XXX-XX-XXXX	
ASSET/EQUITY TABLE (AET)					
ASSETS	Fair market Value	Quick Sale Reduction Percentage	Quick Sale Value	Encumbrances or Exemptions	Net Realizable Equity
1. Cash/Bank Accounts	\$ 1,750			\$ 1,750	\$ -
2. Offer Deposit					
3. Loan Value Life Insurance					
4. Pensions / IRA/401(k)					
5. Real Estate	\$ 480,000	20%	\$ 384,000	\$ 382,000	\$ 2,000
6. Furniture/Personal Effects					
7. Vehicles	\$ 12,000	20%	\$ 9,600	\$ 3,450	\$ 6,150
8. Accounts Receivable					
9. Tools and/or Equipment					
Other					
Honda	\$ 4,500	20%	\$ 3,600	\$ 3,450	\$ 150
Asset/Equity					\$ 8,300
Future Income					\$ 201,840
TOTAL MINIMUM VALUE					\$ 210,140

The Appeal

We send a letter disagreeing with the items we believe the COIC got wrong. For example, the issues may be narrowed down as follows:

- ▶ Dependent care
- ▶ The delinquent state taxes
- ▶ The union dues
- ▶ The loan from mom for rep fees

The Appeal - IRM 5.15.1.11(3)

- ▶ Child Care (Summer Day Camp): must be necessary to allow both parents to work and the amount paid must be reasonable
- ▶ Delinquent State Taxes: allowed when the taxpayer provides financial information that they cannot full-pay the state, provides verification of the state debt and payment plan. Allocated if IRS is in priority position.
- ▶ Loan from Mom: For a necessary expense - Accounting and Legal Fees. Must be for representation before the IRS, are necessary and are reasonable.
- ▶ Union Dues (Involuntary Deductions): Allowed if it's a requirement of the job (e.g., union dues, uniforms, work shoes, etc)

The Appeal

- ▶ They have reviewed our Appeal
- ▶ The “hearing” is a phone call
- ▶ Appeals Officer concludes the following:
 1. Agree to dependent/child care
 2. Agree with delinquent state taxes
 3. Agree the union dues are necessary
 4. Loan to mom – will agree to 48 month repayment, not 24

Adjusted RCP Analysis from Appeals

Expenses	Actual	Allowable
Food, Clothing and Misc	\$ 1,500	\$ 1,993
Housing & utilities	\$ 4,525	\$ 3,097
Vehicle Ownership	\$ -	\$ 400
Vehicle Operating Costs	\$ 1,000	\$ 596
Public Transportation	\$ -	\$ -
Health Insurance	\$ 695	\$ 695
Out of Pocket HealthCare	\$ 200	\$ 437
Court ordered pmts	\$ -	\$ -
Child/Dep Care	\$ 375	\$ 375
Life Insurance	\$ -	\$ 300
Current Year Taxes	\$ 3,125	\$ 3,125
Secured Debts	\$ 175	\$ 175
Delinquent State Taxes	\$ 500	\$ 65
Other - Union Dues	\$ 318	\$ 224
Total Living Expenses	\$ 12,413	\$ 11,482
Net Difference	\$ 87	\$ 1,018

Adjusted RCP Analysis from Appeals

- ▶ OIC:
- ▶ Income: \$12,500
- ▶ Allowable Expenses: \$11,482
- ▶ Future Income: $\$1,018 \times 12 = \$12,216$
- ▶ Assets: \$2,150 (House and Accord)
- ▶ **RCP: is now \$14,366, not \$13,238!**

So what happens now?

- ▶ If TP does not agree, OIC is rejected. IF at CDP have tax court rights. If not OIC is over
- ▶ If TP agrees, then we need to do an addendum
- ▶ New OIC is \$14,366
- ▶ 20% should have been \$2,874
- ▶ Was \$2,648
- ▶ Sign Addendum agreeing to higher amount and pay in the difference of \$226 (\$2,874 - \$2,648)

The Addendum – Form 14640

Part 2. Revised Offer in Compromise Payment—Lump Sum Cash Offer Terms

Lump sum cash offer of \$ 14,366 with \$ 2,648 paid with the offer and \$ 226 paid with any amended Form 656 and/or this addendum. The remaining balance of \$ 11,492 to be paid as follows:

- A. \$ 11,492 payable within 5 month after acceptance
 - B. \$ payable within months after acceptance
 - C. \$ payable within months after acceptance
 - D. \$ payable within months after acceptance
 - E. \$ payable within months after acceptance
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Note

- ▶ The Offer is not yet accepted
- ▶ Its being submitted for management approval
- ▶ Management could still deny it, so make the client aware of this
- ▶ In practice, I have only had one get kicked back and we negotiated around the denial

CASE SCENARIOS

#1- Ms. B is a 65 yr old taxpayer who we filed an Effective Tax Administration (ETA) offer. She has sufficient equity in her home to pay the IRS in full. The OIC examiner rejected her offer saying that she had the full ability to pay. The client wanted us to pursue the denial of the offer.

On appeal, we argued that she needed the equity in her home to move to a safer neighborhood because she was currently being harassed by neighbors because she was transgender. We provided IRS documented proof of the conflicts that occurred in her neighborhood. We also provided proof of a stroke she recently suffered due to the harassment.

We won the appeal.

#2- Ms. G is a 65 yr old taxpayer who we filed a Doubt to Collectability with special circumstances OIC. She has sufficient equity in her home to pay the IRS in full. The OIC examiner rejected her offer saying that she had the full ability to pay. The client wanted us to pursue the denial of the offer.

On appeal, we argued that she needed the equity in her home and cash in bank to care for her adult son who had Aspergers and she needed it to fund her retirement. Prior to filing the OIC her husband died and she received life insurance proceeds of \$200,000. She gambled a lot of the proceeds away.

We lost the appeal.

Note

IRC 7122(b) requires an opinion from Chief Counsel on all offers recommended for acceptance in which the unpaid liability (including tax, penalties and interest) is \$50,000 or more. Counsel's review of a proposed acceptance has two separate and distinct components:

- ▶ Certification that the legal requirements for compromise were met.
- ▶ Review of the proposed compromise for consistent application of the Service's acceptance policies.

Offer Acceptance

Dear Mr. :

We accepted your offer in compromise signed and dated by you on 12/03/2014 and as modified by an addendum dated 02/01/2017. The date of acceptance is the date of this letter and our acceptance is subject to the terms and conditions on the enclosed Form 656, *Offer in Compromise*.

Please note that the conditions of the offer require you to file and pay all required taxes for five tax years, beginning from the date of this letter.

If you are required to make payments under this agreement, make your check or money order payable to the United States Treasury and send it to:

IRS - OIC
P.O. Box 24015
Fresno, CA 93779

You must promptly notify the IRS of any change in your address or marital status. That way we'll have the correct address to advise you of your offer status.

If you submitted a joint offer with your spouse or former spouse and you personally are meeting or have met all the conditions of your offer agreement, but your spouse or former spouse fails to adhere to the conditions of the offer agreement, your offer agreement will not be defaulted.

If you fail to meet any of the terms and conditions of the offer, the IRS will issue a notice to default the agreement. If the offer defaults, the original tax including all penalties and interest will be due. After issuance of the notice the IRS may:

COIC Monitoring Letter (Sample)

TAXPAYER NAME
Street Address
City, State Zip

Your accepted Offer in Compromise is now assigned to the Collection Operation in the Monitoring Offer in Compromise Department (MOIC). As a tax examiner in MOIC, I have been designated to monitor the compliance provisions of your accepted Offer in Compromise.

The payment terms for your offer are:

Lump sum cash offer of \$6,371.00 with \$0.00 paid with the offer. The remaining balance of \$6,371.00 to be paid as follows: \$0.00 payable within 1 month after acceptance, \$0.00 payable within 2 months after acceptance, \$0.00 payable within 3 months after acceptance, \$0.00 payable within 4 months after acceptance and \$6,371.00 payable within 5 months after acceptance. After making all the payments, you must still comply with all of the other contract provisions contained in Section 7, Terms, Conditions, and Legal Agreement of Form 656.

Make your check or money order payable to the United States Treasury and send it to:

INTERNAL REVENUE SERVICE
ATTN: OIC

Terms Met after Final Payment

Offer Number: 1001xxxxxx

Taxpayer Name
Taxpayer Address
_____, CT Zip

Dear Mr. _____,

Thank you for your payment. You have met the payment provisions for your Offer in Compromise contract. Please remember that we will apply any overpayments from the year we accepted your Offer in Compromise to the tax periods specified in your offer contract.

REMINDER: Compliance is an important part of your Offer in Compromise contract. You must file and pay your taxes timely for five years following the date we accepted the offer or during an extended installment offer payment period, whichever is later. If you don't comply, we will terminate your offer and reinstate the original amount of your liability, less payments made.

We are processing your lien release and it should be effective within 30 days.

If the client Defaults...

OFFER NUMBER: 1001XXXXXX

NAME
STREET
CITY, STATE, ZIP

Dear Mr. Client,

NOTICE OF INTENT TO DEFAULT OFFER

When we accepted your Offer in Compromise, you agreed to file all tax returns and pay all taxes on time for the five years following the date we accepted your offer or until you pay the offered amount in full, whichever is later.

Our records show that there is an outstanding balance due for the period(s) listed below. You need to pay \$2,218.79 within 30 days from the date of this letter to prevent termination of your Offer In Compromise. If you cannot full pay within 30 days, please call the number shown at the top of this letter to determine if you qualify for extension to pay. If eligible, you may request an extension to pay up to 120 days.

Form 1040 for tax year 2018

It is important that you comply with the terms of the agreement. If you don't comply with the above request, we will terminate your offer and will reinstate the original amount of your liability, less any offer payments you made.

Questions?



Panelist Contact Information

Amanda Evans
Green & Sklarz LLC
aevans@gs-lawfirm.com
Tel: (203) 285-8545

Leighanne Lafrenz Nickle
Lafrenz Nickle CPA, Inc
leighanne@lafrenznicklecpa.com
Tel: (909) 489-6773

Beverly L. Winstead
Law Office of Beverly Winstead
beverly@irshelpattorneys.com
Tel: (301) 306-1234