



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ASSOCIATE AREA COUNSEL (SB/SE)
AREA 2 (NEWARK)

FROM: Kathryn A. Zuba
Chief, Branch 2 (Collection, Bankruptcy & Summonses)

SUBJECT: Reinstatement of Terminated Offer in Compromise

This memorandum responds to your request for advice dated July 6, 2000. This document is not to be cited as precedent.

The facts relevant to your inquiry, as we understand them, are as follows. The Service accepted an offer in compromise from the taxpayers in 1995. The offer in compromise contained the standard language in which the taxpayers promised to comply with all provisions of the Internal Revenue Code relating to the filing of returns and payment of taxes for five years following the acceptance of the offer. See Form 656, Offer in Compromise, Item 8(d).

In March of , the Office of Appeals became aware that the taxpayers have not paid the tax reported as due on their income tax return. Without coordinating the case with the Collection function, the Office of Appeals sent to the taxpayers a 30-day termination letter. The letter informed the taxpayers that by failing to pay their taxes, the taxpayers defaulted on their offer in compromise and that unless the taxpayers cured the default by , their offer in compromise would be terminated and the compromised liability reinstated. The taxpayers did not pay their taxes by , and the Office of Appeals sent them a letter informing them of the termination of their offer in compromise.

Approximately at the same time and without knowledge that the case was referred to Appeals, the delinquency (TDA) was also assigned to a Revenue Officer (RO). On , and before the RO took any action on the TDA, the taxpayer husband called the RO to resolve the delinquency. The taxpayer was referred to the RO by another person in the Service. The taxpayer informed the RO that he needed until , to pay his liability.

Subsequently, the RO and the taxpayer exchanged a number of messages and had several conversations regarding the taxpayers' ability to secure a loan to full pay the tax. Although the RO was aware that the Service had previously accepted an offer in

compromise from the taxpayers, he was unaware of the pending termination letter that was issued by the Office of Appeals.

On _____ the taxpayer contacted the RO to inform him that he has received a letter from the Office of Appeals stating that the taxpayers' offer was terminated. As a result, the RO contacted the Office of Appeals. The Office of Appeals agreed to allow the taxpayers until _____ to cure the default of their offer. The taxpayers full paid their _____ liability on _____. On _____, the taxpayers' case was referred to the office of the taxpayer advocate to determine the status of the taxpayers' offer in compromise.

LAW & ANALYSIS:

A compromise agreement is generally recognized as a contract. See United States v. Feinberg, 372 F.2d 352 (3d Cir. 1967); United States v. Lane, 303 F.2d 1 (5th Cir. 1962). As such, compromise agreements are subject to judicial interpretation using generally accepted contract principles.

Upon breach of a contract, the non-breaching party may cease performance and sue for damages or seek other remedies allowed by law. See Stone Forest Indus., Inc. v. United States, 973 F.2d 1548, 1550 (Fed. Cir. 1992). In the offer in compromise context, the offer agreement provides the Service's rights and remedies in case of a default by the taxpayer. Form 656, Offer in Compromise, provides that upon breach by the taxpayer, the Service may, without notice to the taxpayer, take action to collect either the unpaid compromise amount or the full amount of the underlying liability. See Form 656, Item 8(o).

Although no notice is required before the Service takes action on a defaulted offer,¹ the Service generally provides the taxpayer with a notice and an opportunity to cure the default before the offer is terminated. See generally IRM 5.8. The Collection function has the responsibility of making termination recommendations on defaulted offers in compromise. IRM 8.13.2.5.4(2). Generally, a defaulted offer is assigned to a Revenue Office either as a TDA or a TDI, with an OIC designation. IRM 5.8.9.4. The RO has broad authority to attempt to secure compliance from the taxpayer. For example, the RO can give the taxpayer up to 6 month to pay a delinquent liability.


After the delinquency investigation is completed, the RO makes a recommendation regarding the offer in compromise. If the offer is to be terminated, the RO must prepare a termination letter for the signature of an authorized Service's official. IRM 5.8.9.4. In a case of an offer originally accepted by the Office of Appeals, the RO's recommendation along with the case file is transferred to Appeals for review and the

¹ See United States v. Feinberg, 372 F.2d 352, 358 (3d Cir. 1967) (stating that government is not required to issue "warning shot" before taking action on defaulted compromise agreements).

issuance of the termination letter. IRM 5.8.9.4(5); IRM 8.13.2.5.4. Once an offer in compromise is terminated, however, it may not be reinstated.²

LITIGATING HAZARDS & OTHER CONSIDERATIONS:

In the instant case, the Office of Appeals sent the termination letter to the taxpayers informing them that their offer was terminated on or about



As always, we hope this advice is helpful. If you have any questions or concerns, please contact the attorney assigned to this matter at 202-622-3620.

² Reinstatement essentially forms a new agreement between the taxpayer and the Service. As such, it must be executed in accordance with the accepted principles of contract law and comply with I.R.C. § 7122 and the underlying Treasury regulations.