MAKING A DEAL WITH THE IRS: A LOOK AT THE OFFER IN COMPROMISE PROGRAM

Presented By

RENESHA N. FOUNTAIN

CHAMBERLAIN, HRDLICKA, WHITE, WILLIAMS & AUGHTRY, P.C.

1200 Smith Street, Ste. 1400
Houston, Texas 77002
Telephone: (713) 658-2517

Email: Renesha.fountain@chamberlainlaw.com

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I. **INTRODUCTION.** There are innumerable ways in which practitioners might find themselves representing a client without the means to pay the IRS in full on demand. Over the years, I have represented numerous clients including individuals, large corporations, small businesses and estates with respect to various tax issues with the IRS. In some cases, clients have shown up at my office after they have ignored multiple notices, and the IRS has levied their wages, bank accounts or other property or threatened to shut down their businesses. In many instances, the clients have not filed all required tax returns or made estimated tax payments or federal tax deposits. This outline provides an overview of one of the collection alternatives available to clients to satisfy their debts- the Offer in Compromise.[1]

II. **RELIEF FOR INABILITY TO PAY.** Assuming your client cannot immediately pay the full amount of an asserted tax liability, there are avenues of relief available to ameliorate the problem which can result in: (i) reducing or eliminating the liability through an offer in compromise; (ii) temporarily delaying collection; (iii) paying the liability in monthly installments; or (iv) discharging the liability in bankruptcy. This outline only covers the Offer in Compromise process.

A. **Submit an Offer in Compromise Based on Doubt as to Liability or Collectibility.** Taxpayers who are unable to pay their liability in a lump sum or through an installment agreement and have exhausted all other payment options may pursue an Offer in Compromise with the IRS. Under the Offer in Compromise program, it is possible for a taxpayer to compromise a tax liability by offering a smaller amount than is actually assessed and outstanding. Internal Revenue Code ("IRC") § 7122(a); Treas. Reg. § 301.7122-1.

1. **Types of Offers**. There are three types of Offers: (1) Offer in Compromise based on doubt as to liability; (2) Offer in Compromise based on doubt as to collectibility; and (3) Offer in Compromise based on effective tax administration.

a. **Doubt as to Liability**. Doubt exists as to whether or not the assessed tax liability is correct. A taxpayer is not required to

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1 This outline makes use of materials I prepared and presented at Chamberlain, Hrdlicka, White, Williams & Aughtry, P.C.'s 40th (2017) and 42nd (2019) Annual Tax and Business Planning Seminars.

provide a Form 433-A or Form 433-B to the IRS when he submits an Offer based solely on doubt as to liability. Also, taxpayers filing this type of Offer are not required to pay the application fee. Taxpayers file this type of Offer by submitting a Form 656-L to the IRS.

b. **Doubt as to Collectibility**. Doubt exists as to whether the taxpayer has sufficient assets or income to pay the entire liability within the statutory period for collection. Taxpayers filing Offers based on doubt as to collectibility are required to submit the Form 433-A (OIC) and/or Form 433-B (OIC) to the IRS. Taxpayers file this type of Offer by submitting a Form 656 to the IRS.

c. **Effective Tax Administration**. There is no doubt that the tax liability is correct and no doubt that the IRS could collect the full amount of the tax due within the statutory period for collection but an exceptional circumstance exists that permits the IRS to accept an amount less than the total balance due. A taxpayer must show that the collection of the tax would create an economic hardship or would be unfair and inequitable. Taxpayers filing Offers based on effective tax administration are required to submit the Form 433-A (OIC) and/or Form 433-B (OIC) to the IRS. Taxpayers file this type of Offer by submitting a Form 656 to the IRS.

2. **General Information**. Once a compromise agreement has been entered into between a taxpayer and the IRS for a period, neither party may reopen the case other than for reason of a falsification or concealment of assets, or a mutual mistake of material facts sufficient to cause a contract to be reformed or set aside. Treas. Reg. § 301.7122-1(e)(5).

a. **Liabilities Must Be Assessed.** An offer does not affect liabilities that are not assessed. If a return has not been filed for a period, one should be prepared and submitted. If a substitute for return has been prepared by the IRS, pursuant to the authority of IRC § 6020(b), it should be reviewed to make sure that all income is included. In any event, before an offer can be accepted, the taxes must be assessed. Internal Revenue Manual ("IRM") § 5.8.1.9.1.

b. **How Many Offers Should You Submit?** One offer should be submitted covering all the outstanding tax liabilities of a taxpayer for all periods. An offer to compromise the joint return liabilities of spouses may be submitted in one offer. However, if there are some liabilities that are separate liabilities of one spouse and other liabilities that are joint, and both spouses are making the offer, then one offer should be filed for the joint liabilities and another offer for the separate liabilities.

c. **Offer Pending**. An offer in compromise is considered to be pending starting with the date the IRS accepts the offer for processing. IRC § 6331(k)(1).

d. **Acceptance.** An offer in compromise is considered accepted or rejected only when the IRS notifies the taxpayer in writing. Treas. Reg. § 301.7122-1(e)(1) and 1(f)(1). If the IRS fails to reject or return an Offer within 24 months after receiving such Offer, the Offer is deemed accepted by the IRS. IRC § 7122(f).

3. **Certain Collection Actions Suspended**. Unless collection of the tax is in jeopardy, levies are prohibited while an offer in compromise is pending and for 30 days after the offer is rejected. IRC § 6331(k)(1)(A) and (B).

4. **Statute of Limitations.** The statute of limitations on collection (IRC § 6502) is suspended while the offer is pending (for the period during which the IRS is prohibited from making a levy). IRC § 6331(i)(5); Treas. Reg. § 301.7122-1(i).

5. **Taxpayers Have Right to Appeal Denial of Offer in Compromise.** Under IRC § 7122(e), a taxpayer may appeal a rejected offer, unless the offer was submitted solely for purposes of delay, requested information was not provided, or the offer was not in processable form. Treas. Reg. § 301.7122-1(f)(5)(ii).

a. **Review by Collection Manager**. The IRS must provide an independent administrative review of any rejection of an offer in compromise before the rejection is communicated to the taxpayer. IRC § 7122(e).

b. **Appeal to Office of Appeals.** A taxpayer must be allowed to appeal any rejection of an offer in compromise to the Office of Appeals. IRC § 7122(e)(2); Treas. Reg. § 301.7122-1(f)(5)(i).

6. **Conditions Applicable to Offers in Compromise Based on Doubt as to Collectibility.** By submitting an offer in compromise, a taxpayer must agree to the conditions set out in Section 7 of the Form 656, some of which are set out below. The application fee for an Offer in Compromise is $186. Taxpayers below certain income levels may qualify for waiver of the application fee. Taxpayers meeting the low income thresholds are not required to make the 20% down-payment for the lump sum cash offer, the first installment of the periodic payment offer or the installment payments during the period the IRS is evaluating the Offer.

a. **Compliance.** If a taxpayer is not in compliance, the Offer is still processable. However, the IRS will contact the taxpayer and give him a reasonable amount of time to comply with the tax laws. If

the taxpayer fails to comply, the IRS will return the Offer to the taxpayer. IRM § 5.8.4.6.

b. **The IRS Can Apply Payments as it Chooses.** Unless the taxpayer designates how to apply the required payments under the Offer, the IRS has a right to apply payments made under the terms of the Offer in the best interest of the Government.

c. **Compliance Required for Five Years.** The taxpayer agrees to comply with the provisions of the Internal Revenue Code relating to the filing of returns and payment of taxes for five years from the date of acceptance of the Offer.

d. **IRS Will Keep Payments and Credits Received Prior to Offer.** The IRS will keep all payments and credits made or received prior to submission of the Offer and may keep proceeds from a levy served prior to submission of the offer but not yet received by the IRS.

e. **The IRS Will Keep Refunds Through Year of Acceptance.** The IRS will keep any refund, including interest on an overpayment of tax or other liability, for tax periods extending through the calendar year that the IRS accepts the Offer, and such overpayments may not be applied to estimated tax payments for the following year.

f. **Taxpayer Must Return Any Refund.** Any refund received after submission of the offer must be returned to the IRS. The IRS will not remove the original amount of the tax liability from its records until all the terms of the Offer have been met.

g. **Once Offer Accepted, Liability Cannot be Contested.** Once the IRS accepts the Offer in writing, the taxpayer may not contest, in court or otherwise, the amount of the tax liability.

h. **IRS Will Collect if Offer Defaults.** If the taxpayer fails to meet any of the terms and conditions of the Offer and the Offer defaults, then the IRS may file suit to collect the entire unpaid balance of the Offer, file suit to collect an amount equal to the original amount of the tax liability as liquidated damages, minus any payment received under the terms of the Offer, revoke the Certificate of Release of Federal Tax Lien and file a new Notice of Federal Tax Lien.

7. **Payment Options.** There are two options to pay the offered amount. IRM § 5.8.2.3.

a. **Lump Sum Cash Offer**. A taxpayer is required to pay 20% of the amount offered when the Form 656 is filed and pay the remaining balance in five or fewer installments upon written notice of acceptance. If the taxpayer will pay the offer amount in 5 months or less, the offer amount should include the realizable value of assets plus the amount the IRS could collect over 12 months.

b. **Periodic Payment Offer**. A taxpayer is required to make a payment in the amount of the proposed monthly payment when the Form 656 is filed and continue to make monthly payments while the IRS is evaluating the Offer. The offer amount must be paid within 24 months of the date the offer is submitted. The offer amount should include the realizable value of assets plus the amount the IRS could collect over 24 months.

c. **Application Fee and Payments Under Offer**. The application fee and any payments made under the Offer are not refundable.

8. **Determining Amount of Offer Based on Doubt as to Collectibility.** Except in very unusual circumstances, an offer must equal the amount of the "realizable value" of the taxpayer's assets, plus an amount based on the taxpayer's future income stream. IRM § 5.8.4.3.1. In community property states, even if a taxpayer is offering to compromise a liability for which the taxpayer's spouse has no liability, the assets and income of the non-liable spouse will be considered where collection from the non-liable spouse is permitted by applicable state law. IRM § 25.18.4.17(3). An exception is provided if the taxpayer demonstrates that collection from such assets and income would have a material and adverse impact on the standard of living of the taxpayer, the non-liable spouse, and their dependents. Treas. Reg. § 301.7122-1(c)(2)(ii)(B).

a. **Determining Value of Assets.** Other than excluded assets, a taxpayer must value all assets, personal, business and held for investment. The value used for this process is quick sale value ("QSV") which is generally calculated at 80% of fair market value. IRM § 5.15.1.21. After the quick sale value is determined, the amount owed to any prior lien creditor is subtracted. The result is the "realizable value" of the asset. If there is negative equity in one asset, it may not be netted against the equity in another asset. Assets on which the IRS cannot levy are excluded from the determination. IRC § 6334(a). Therefore, individuals may exclude the value of the following:

- $9,540 (2019) and $9,690 (2020) of the value of furniture and personal effects (other than vehicles). *See* Revenue Procedure ("Rev. Proc.") 2019-44, Section 3.49, 2019-47 IRB and IRM § 5.15.1.29.

- $4,770 (2019) and $4,850 (2020) of the value of trade or business tools. *See* Rev. Proc. 2019-44, Section 3.49, 2019-47 IRB and IRM § 5.15.1.29.

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b. **<u>Determining Future Income</u>.** The second part of the offer amount is based on the future income stream of the taxpayer(s). This offer amount is computed by (i) multiplying the excess income over "allowable" living expenses by (ii) the appropriate number of months determined by the selected payment option.

c. **<u>National Standards for Personal Expenses</u>.** Uniform national standards apply to the following expenses: housekeeping supplies, apparel and services, personal care products and services, food, and miscellaneous. IRM § 5.15.1.9(1). The allowable expenses increase with the number of people in the family. These amounts increase with inflation and are available on the IRS website.

The IRS has also established national standards for out-of-pocket health care expenses which include medical services, prescription drugs and medical supplies. IRM § 5.15.1.9(5). The out-of-pocket health care expense is permitted over and above the amount the taxpayer pays for health insurance. The allowable amounts are derived from Medical Expenditure Panel Survey data and are average amounts for taxpayers and their dependents under 65 and those individuals 65 and older.

d. **<u>Local Standards for Housing and Utilities</u>.** The amount of allowable expenses varies by county. All local standard amounts can be found on the IRS website.

(1) Taxpayers will be allowed an amount equal to the local standard expense or the amount actually paid, whichever is less.

(2) The housing allowance includes mortgage payments or rent, taxes, fees, maintenance, insurance and utilities. IRM instructions indicate that Revenue Officers will have some discretion as to whether to allow housing expenses in excess of local standards. When deciding whether or not to allow excess housing expenses, the Revenue Officer must consider the following:

- The increased cost of transportation to work and school which would result from moving to lower cost housing; and

- The cost of moving to a new residence. IRM § 5.15.1.10.

e. **Combined Standards for Transportation.** Ownership costs for autos are set by national standards while operating costs are limited by local standards. The ownership costs include monthly loan or lease payments. The operating costs include fuel, insurance, licenses, parking and tolls, maintenance, registrations and inspections. If a taxpayer has a car payment, the allowable transportation expense is the allowable ownership cost plus the allowable operating cost. If a taxpayer has a car but no car payment, the allowable transportation expense is the allowable operating cost only. The IRS may allow expenses for ownership costs and public transportation costs if the expenses are necessary for the health and welfare of the taxpayer or his family or for the production of income. IRM § 5.15.1.10.

f. **Other Necessary Expenses.** In addition to the expenses listed under the national and local standards, certain other expenses may be allowed if they are considered to be necessary for health, welfare or production of income, including the expenses listed below. IRM § 5.15.1.11. To qualify, the following expenses must be substantiated and be reasonable in amount.

(1) Current federal taxes and delinquent state and local taxes;

(2) Court ordered payments, such as alimony and child support;

(3) Child/dependent care, babysitting, nursery, and preschool expenses will be allowed, if reasonable;

(4) Term life insurance;

(5) Secured or legally-perfected debts if necessary for health, welfare or production of income;

(6) Involuntary deductions, including uniforms, work shoes and union dues;

(7) Accounting and legal fees only if they are for representation before the IRS or are necessary for health, welfare or the production of income and are reasonable;

(8) Dependent care for elderly, invalid or disabled persons if there is no alternative to the taxpayer's paying these expenses;

(9) Charitable contributions (if these do not provide for a taxpayer's health and welfare or are not a condition of employment, they will be considered "conditional");

(10) Education (to be necessary, the education must be for a physically or mentally handicapped dependent and such education must not otherwise be provided by public schools; or the education must be a condition of employment); and

(11) Unsecured debts, if necessary for health and welfare or production of income (minimum payments only).

g. **Conditional Expenses.** Some expenses which are not necessary for health, welfare or the production of income may be allowable if the liability plus accruals can be fully paid within six years. IRM § 5.15.1.11 and § 5.15.1.8(10). Such expenses might include:

(1) Accounting and legal fees (other than those relating to tax representation);

(2) Charitable contributions;

(3) Education expenses for private elementary and secondary school, and public and private college;

(4) Housing in excess of the national standard, pool and maid service, housing other than the principal residence;

(5) Life insurance as an investment;

(6) Voluntary retirement payments;

(7) Secured or legally perfected debts that are not considered necessary; and

(8) Transportation not needed for family health and welfare or for the production of income.

B. **Make an Offer Based on Equity, Hardship and Public Policy.** The IRS issued regulations that provided guidance for taxpayers who do not qualify for a compromise based on doubt as to collectibility or liability but who might qualify under the "hardship and equity" standards. The regulations provide special rules for taxpayers who could not otherwise qualify for a compromise but where collection of the full liability would create economic hardship or would undermine public confidence in the administration of the tax laws and will not undermine compliance. These rules are considered to promote effective tax administration. Treas. Reg. § 301.7122-1(b)(3) and (c)(3).

1. **Form 656.** The taxpayer will file an Offer in Compromise based on effective tax administration by submitting a Form 656 to the IRS.

2. **Factors Supporting a Determination of Economic Hardship.** The regulations list three factors that support, but are not conclusive of, a determination of economic hardship. Treas. Reg. § 301.7122-1(c)(3)(i).

a. A taxpayer is incapable of earning a living because of a long term illness, medical condition, or disability and it is reasonably foreseeable that taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;

b. Although a taxpayer has certain monthly income, that income is exhausted each month in providing for the care of dependents with no other means of support; and

c. Although a taxpayer has certain assets, the taxpayer is unable to borrow against the equity in those assets and liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses.

d. **Economic Hardship.** Economic hardship is only applicable to individuals. IRM § 5.8.11.3.1.

3. **Public Policy and Equity.** In cases in which there is no doubt as to liability, no doubt as to collectibility and the IRS could collect the full liability without causing economic hardship, the IRS may still compromise a liability to promote effective tax administration. A taxpayer seeking to compromise a liability on this basis must identify compelling public policy or equity considerations providing a sufficient basis for compromising the liability. The circumstances must be such that compromise is justified even though a similarly situated taxpayer may have paid his liability in full. Before accepting an offer based on equity and public policy considerations, the IRS must conclude that collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner.

The Service is aware that compromise on these grounds raises the issue of disparate treatment of taxpayers who are able to pay the full amount of their liabilities without economic hardship. Some taxpayers will pay less than the full amount owed, while others must pay in full. (Some taxpayers who pay in full also may be in situations similar to that of the taxpayer requesting compromise). Accordingly, a taxpayer must demonstrate that the circumstances of the taxpayer's liability implicate public policy or equity concerns compelling enough to justify cases satisfying this inherent inequity. The cases satisfying the equity and public policy standard are expected to be rare. IRM § 5.8.11.3.2.

a. **List of Compelling Factors**. The following is a list of factors which may be compelling enough to satisfy the equity and public policy standard: (i) a processing error on the part of the IRS caused the taxpayer's liability; (ii) the liability arose after the IRS gave the taxpayer erroneous advice and the taxpayer followed that erroneous advice; (iii) action or inaction on the part of the IRS unreasonably delayed resolution of the taxpayer's case and the taxpayer is not entitled to interest or penalty abatement; (iv) the taxpayer alleges that the tax liability resulted from the criminal or fraudulent act of a third party; (v) clear and convincing evidence exists that rejecting the Offer and pursuing collection by other means would have a significantly negative impact on the taxpayer's community; and (vi) the taxpayer could not comply with the tax laws because he was incapacitated. IRM § 5.8.11.3.2.1.

4. **Factors Supporting a Determination That Compromise Would Undermine Compliance by Taxpayers With the Tax Laws.** Taxpayers who submit an offer in compromise based on either hardship or equity also must show that acceptance of the offer would not undermine compliance of the tax laws by taxpayers (i.e. set a bad example or encourage non-compliance). The following factors support, but are not conclusive of, a determination that the offer would undermine compliance. Treas. Reg. § 301.7122-1(c)(3)(ii).

a. The taxpayer has a history of noncompliance with the filing and payment requirements of the Internal Revenue Code;

b. The taxpayer has taken deliberate actions to avoid the payment of taxes; and

c. Taxpayer has encouraged others to refuse to comply with the tax laws.

III. **STRATEGIES FOR MANAGING THE IRS COLLECTIONS PROCESS.** There are several considerations to bear in mind in recommending whether a client should file an Offer in Compromise or pursue a different collection alternative.

A. **How Much Time Remains on Collection Statute?** The statute of limitations on collection is generally 10 years from assessment. IRC § 6502.

1. The statute of limitations is suspended during the time an offer in compromise is pending.

2. It may make sense to sit tight if the collection statute is about to run.

B. **How Much is the Liability Relative to the Taxpayer's Resources?** If the liability is large relative to the taxpayer's resources, either an offer in compromise or bankruptcy may be appropriate.

C. **Can the Liability Be Paid with Funds from Borrowing against Equity in Assets?**

1. No compromise is available based on doubt as to collectibility if the IRS could collect the amount from known assets of the taxpayer or transferees.

2. If the assets of the taxpayer exceed the liability, the taxpayer should try to arrange a loan secured by assets.

D. **Are There Defenses to the Liabilities?** There may be grounds for waiver of penalties or other defenses that would reduce a liability to a manageable size. An offer in compromise based on doubt as to liability might be appropriate instead of an offer based on doubt as to collectibility. This is especially true if the client has assets or a fairly affluent lifestyle he or she wants to maintain.

E. **Can the Taxpayer Remain in Compliance After Offer is Accepted? Compliance Monitored for Five Years.** By filing an offer in compromise based on doubt as to collectibility, a taxpayer agrees to comply with all provisions of the Internal Revenue Code relating to filing and paying required taxes for five years from the date the IRS accepts the offer in compromise. Noncompliance will vitiate the offer. This condition does not apply to offers based on doubt as to liability.

F. **Does the Taxpayer Require Liens to be Released? Liens Typically Not Necessarily Removed Immediately.** Liens are not automatically released after acceptance of an offer in compromise based on doubt as to collectibility. However, the taxpayer can obtain immediate lien release by paying with certified funds the full amount owed under the accepted Offer. Otherwise, liens will generally not be released until the required payment is made.

IV. CASE DISCUSSION

Moore v. Commissioner, T.C. Memo 2019-129

The taxpayer in this case served as the President and Chief Executive Officer of H.L. Heggstad, Inc. The corporation failed to pay all of its employment taxes with respect to the Forms 941 for the first and fourth quarters of 2003 and the first and second quarters of 2004. In October 2004, the IRS Revenue officer made a jeopardy assessment of the trust fund recovery penalty against the taxpayer for the periods at issue. The Revenue officer later made a nonjeopardy assessment in June 2006 against the taxpayer with respect to the second quarter of 2004. The IRS also found the taxpayer liable for the trust fund recovery penalty relating to a second corporation. In August 2008, the taxpayer's representative submitted a Form 656 Offer in Compromise (based on doubt as to collectibility) to the IRS to settle the trust fund recovery penalty liabilities for periods in 2002, 2003 and 2004. The amount of the Offer was approximately $50,000.00. In March 2010, the taxpayer filed an amended Offer excluding the liability from the second corporation and reducing the Offer amount to $45,000.00. The Form 656 Offer in Compromise included language that taxpayers are required to remain in compliance with respect to their filing and payment obligations for five years from the date of acceptance of an Offer.

In April 2010, the IRS Appeals Office accepted the taxpayer's amended Offer. By December 2011, the taxpayer had satisfied the terms of the accepted Offer, and the IRS sent a letter to the taxpayer advising him of the same. The acceptance letter also contained the language about the five year compliance period, and it stated that noncompliance could lead to a default of the Offer and reinstatement of the original liability.

The taxpayer filed joint income tax returns with his former spouse for the 2010-2012 tax years. The returns reflected small tax balances, which the taxpayers ultimately paid plus penalties and interest. The taxpayer's returns showed a P.O. Box in Sacramento, California as his mailing address although he did not have a P.O. Box in Sacramento.

In December 2012, the IRS mailed a Notice CP2000 proposing changes to the taxpayer's 2010 joint return because of unreported income. The IRS mailed this notice to the taxpayer's last known address, which was the P.O. Box in Sacramento. In May 2013, the IRS mailed a notice of deficiency to the taxpayer at the same P.O. Box. The taxpayer did not receive the notice of deficiency, and thus he did not respond to it. In September 2013, the IRS assessed additional income tax, penalties and interest of $1,704.00 against the taxpayer.

On January 10, 2014, the Appeals Office in Brookhaven, New York sent a letter to the taxpayer (at the Sacramento P.O. Box), informing him that his Offer

had been terminated and the IRS was reinstating the original trust fund liabilities minus the payments he previously made. The reason for the default was the taxpayer's failure to timely pay the income tax liabilities for 2010-2012. The letter also stated that the taxpayer did not contact the IRS or pay the balance by the deadline of January 2, 2014.

The record did not include any correspondence to the taxpayer notifying him of the termination of the Offer, a request that he contact the IRS by a specific date or that he pay the amount owed by a certain date.

In July 2014, the IRS issued a Notice of Federal Tax Lien Filing against the taxpayer with respect to income tax liabilities for 2010 and 2012. The IRS mailed this lien notice to an address on Elder Creek in Sacramento, which was the address the taxpayer used on his 2013 Form 1040. The taxpayer immediately paid the amount due of $1,893.40. A Revenue officer sent a letter dated August 5, 2014, informing the taxpayer that the payment did not fully pay the amount due. On September 2, 2014, the taxpayer sent a check to the IRS for the remaining balance. On October 31, 2014, the IRS mailed a letter to the taxpayer advising him that the Service was in the process of revoking the releases of tax lien related to the trust fund recovery penalties due to his failure to meet the requirements of the accepted Offer.

In December 2015, the IRS mailed a Final Notice of Intent to Levy to the taxpayer reflecting a balance of approximately $751,000.00 for the trust fund liabilities. The taxpayer timely filed a CDP request and contended that he never got a copy of the Notice CP2000 in 2012, the notice of deficiency in 2013 or a letter regarding a default of the Offer. The taxpayer also explained that he satisfied the terms of the accepted Offer and did not materially breach the Offer. Further, the taxpayer asserted that the IRS should reinstate the accepted Offer.

In January 2016, the Settlement officer reviewed the case file, the CDP request and the Integrated Data Retrieval System. Prior to the CDP hearing, the Settlement officer concluded that the taxpayer did not follow the terms of the accepted Offer because he did not timely file his 2010 return or timely pay his 2010, 2011 and 2012 income taxes. In February 2016, the taxpayer's representative had a telephone hearing with the Settlement Officer. The representative argued that any noncompliance by the taxpayer was not a material breach of the Offer, and he asked for an extension of time to submit another Offer with supporting financial information. The Settlement officer refused and concluded that under the Internal Revenue Manual, he was prohibited from reinstating the defaulted Offer. Thus, the Settlement officer sustained the proposed levy action and issued the notice of determination.

The taxpayer timely filed a petition with the Tax Court, and the case was remanded back to the Appeals Office for a supplemental CDP hearing in order for the Settlement officer to consider a new Offer. On October 26, 2017, the

Settlement officer scheduled a hearing for November 15, 2017 and requested that the taxpayer submit a new Form 656 Offer in Compromise along with the required financial statement and associated payments under the Offer. One day before the scheduled CDP hearing, the Settlement officer received a fax from the taxpayer's representative, requesting that the supplemental CDP hearing be reset and that the terminated Offer be reinstated.

Specifically, the taxpayer's representative asserted that termination of the Offer without affording the taxpayer a chance to cure the default constituted an abuse of discretion. The taxpayer's representative also stated that the IRS's use of the P.O. Box as the taxpayer's mailing address was improper. The Settlement officer denied the request to reschedule the hearing because he considered it to be untimely. During the supplemental CDP hearing, which was held by telephone, the taxpayer's representative said the taxpayer was not prepared to file a new Offer. Rather, the taxpayer's representative requested that the terminated Offer be reinstated.

The Settlement officer found that the IRS followed all required procedures by notifying the taxpayer of his noncompliance prior to the default of the Offer. Accordingly, in December 2017, the Settlement officer sent a supplemental notice of determination to the taxpayer, sustaining the proposed levy action.

The Tax Court noted that any noncompliance, no matter how small, is sufficient to default an Offer. However, the Tax Court stated that the taxpayer's breach of the terms of an Offer is not determinative. Instead, the Tax Court must consider whether the Settlement officer abused his discretion by failing to reconsider the default of the Offer. The Tax Court stated that under the Internal Revenue Manual, the IRS should send a default letter to the taxpayer providing an opportunity to remedy the default prior to terminating the Offer.

The Tax Court held that the Settlement officer was required to verify that the IRS met all administrative procedures with respect to the proposed levy. The IRS argued that a default letter was sent to the taxpayer, and the taxpayer was given a chance to cure the default before the Offer was terminated. However, there was no default letter in the administrative record. Although the Tax Court noted that the default occurred because of the taxpayer's actions (i.e., failure to timely comply with the payment of his income tax liabilities and failure to file a change of address form with the IRS), these failures did not excuse the IRS from complying with the administrative procedures for terminating an Offer. The Tax Court also pointed out that the IRS did not revoke the lien releases associated with the Offer until after the taxpayer paid the income tax liabilities, and the Service did not issue the Final Notice of Intent to Levy until more than one year after the taxpayer paid these taxes.

The Tax Court concluded that the Settlement officer did not properly verify that the Brookhaven Appeals Office complied with the administrative

procedures for defaulting an Offer. Therefore, the Tax Court held that the determination to uphold the levy action was an abuse of discretion. Since the Settlement officer did not consider the taxpayer's request to reinstate the Offer in the original or supplemental CDP hearings, the Tax Court remanded the case back to the Appeals Office. The Tax Court indicated that once the case went back to Appeals, the Settlement officer should determine whether the Offer was properly terminated and if not, whether it should be reinstated. The Tax Court also recommended that a different Settlement officer make this determination.

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