

Section 7122.—Compromises

26 CFR 300.3: Offer to compromise fee.

T.D. 9086

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 300

User Fees for Processing Offers to Compromise

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the regulations relating to user fees to provide for the imposition of user fees for the processing of offers to compromise. The charging of user fees implements the Independent Offices Appropriations Act.

EFFECTIVE DATE: **NOVEMBER 1, 2003.**

FOR FURTHER INFORMATION CONTACT: Concerning cost methodology, Eva Williams, 301-492-5395; concerning the regulations, G. William Beard, 202-622-3620 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document amends the regulations relating to user fees to provide for the imposition of user fees for the processing of offers to compromise. The charging of user fees implements the Independent Offices Appropriations Act (IOAA), which is codified at 31 U.S.C. 9701. On November 6, 2002, a notice of proposed rulemaking (REG-103777-02, 2002-2 C.B. 889) was published in the **Federal Register**. Approximately 149 comments were received. A public hearing on the regulations was held on February 13, 2003. The final regulations adopt the rules of the proposed regulations.

Offers to Compromise

Section 7122 of the Internal Revenue Code (Code) gives the IRS the authority to

compromise any civil or criminal case arising under the internal revenue laws, prior to the referral of that case to the Department of Justice. Section 7122 also directs the IRS to prescribe guidelines for officers and employees of the IRS to determine whether an offer to compromise is adequate and should be accepted. Guidelines are contained in §301.7122-1. Pursuant to §301.7122-1(b), an offer may be accepted if there is doubt as to liability, if there is doubt as to collectibility, or if acceptance will promote effective tax administration. Pursuant to §301.7122-1(b)(3), offers may be accepted to promote effective tax administration if either: (1) the IRS determines that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship within the meaning of §301.6343-1, or (2) there are no other grounds for compromise and there are compelling public policy or equity considerations.

When an offer to compromise is received, an initial determination is made as to whether the offer is processable. Currently, an offer is returned as nonprocessable if the taxpayer is in bankruptcy, has not filed required tax returns, or has not submitted the offer to compromise on the proper form. Absent these conditions, the offer is accepted for processing and cannot be rejected without an independent administrative review of the decision to reject and, if the taxpayer chooses to appeal the rejection, independent review by the Office of Appeals. Even though an offer accepted for processing may later be returned to the taxpayer if the taxpayer fails to provide requested information or the IRS determines that the offer was submitted solely to delay collection, such an

offer may not be returned before a managerial review of the proposed return is completed pursuant to §301.7122-1(f)(5)(ii).

Explanation of Provisions

The final regulations establish a \$150 user fee for the processing of certain offers to compromise tax liabilities pursuant to §301.7122-1. The user fee will not apply to offers based solely on doubt as to liability and offers made by low income taxpayers whose incomes are at or below the poverty guidelines set by the Department of Health and Human Services (DHHS), or such other measure the IRS may adopt.

Offers based on doubt as to liability are excepted from the user fee based on the inequity of the IRS charging a fee to compromise an uncertain liability when a compromise is based upon a redetermination or reevaluation of the taxpayer's liability for a tax (and the agreed upon amount may, in fact, provide for the full payment of the amount actually owed).

Offers from low income taxpayers are excepted from the fee in light of section 7122(c)(3)(A), which prohibits the IRS from rejecting an offer from a low income taxpayer solely on the basis of the amount offered. Section 7122(c)(3)(A) literally applies to the rejection of an offer, rather than the return of an offer for failure to pay a user fee. Requiring payment of a user fee from a low income taxpayer would undermine section 7122(c)(3)(A) in cases where the taxpayer does not have the ability to pay the fee. Offers from low income taxpayers are therefore excepted.

Taxpayers with offers that do not fall within the doubt as to liability or low income exceptions will submit the user fee along with the offer to compromise. If the offer is accepted to promote effective tax administration or is accepted based on doubt as to collectibility and a determination that collecting more than the amount offered would create economic hardship within the meaning of §§301.6343-1, the fee will be applied to the amount of the offer or, if the taxpayer requests, refunded to the taxpayer. In other cases, the payment of the fee will be taken into account in determining the acceptable amount of the offer and therefore the taxpayer in total will pay no more than the taxpayer would have paid without the fee. While the fee will not

be refunded if an offer is withdrawn, rejected, or returned as nonprocessable after acceptance for processing, no additional fee will be charged if a taxpayer resubmits an offer the IRS determines to have been rejected or returned in error.

Comments on the Proposed Regulation

Most of the comments on the proposed regulations did not favor the fee. The comments focused on three concerns: the fee would create an additional financial hardship on taxpayers who are already experiencing hardship; the income level for the low income exception to the fee was too low; and the fee should not be imposed until the offer to compromise is administered more effectively and efficiently. For the following reasons, these final regulations follow the proposed regulations without change.

The most frequent concern in the comments was that the fee would cause additional financial hardship for taxpayers who are already experiencing financial hardship. The exception for low income taxpayers, however, excludes those taxpayers most likely to be disadvantaged by the user fee. Further, the imposition of the fee on other taxpayers will not change the net amount paid by the taxpayer to reach a compromise; the fee will be taken into account when considering whether the amount offered is acceptable. Although taxpayers who must pay the fee will not receive a refund if the offer is withdrawn, rejected, or returned after being accepted for processing, the IRS will work closely with taxpayers to perfect incomplete or inadequate offers before returning or rejecting them.

A number of commentators were concerned that the DHHS poverty guidelines used for purposes of the low income exception are too low and recommended that the exception for low income taxpayers should be extended to 250% of the DHHS guidelines. The 250% level corresponds to one of the criteria used for funding low income taxpayer clinics: in order to receive funding pursuant to section 7526 of the Code, 90% of a clinic's clients must fall below 250% of the DHHS poverty level. The commentators pointed to the relationship between section 7526 and offers to compromise. Section 7526 was enacted contemporaneously with section 7122(c)(3),

which prohibits the IRS from rejecting an offer from a low income taxpayer based on the amount of the offer. Commentators argued that imposing a user fee on taxpayers whose incomes are within 250% of the poverty level thwarts the objective of section 7526 to assist such taxpayers.

The DHHS poverty guidelines are retained as the measure of the exception for the low income taxpayer. The 250% criteria in section 7526 only applies for purposes of that section; it does not extend to offers to compromise under section 7122. Had Congress intended to extend the 250% criteria to offers in compromise under section 7122, it could have done so. The DHHS poverty guidelines are a reasonable standard for offers to compromise in light of the fact that the amount of the fee will be reflected in the amount of the offer. Although some taxpayers may not be able to pay the fee because the fee exceeds their collectible assets and income, the DHHS standard will generally cover such taxpayers. Further, the IRS retains the authority under the final regulations to adjust the definition of low income taxpayer. The IRS could, therefore, change the low income standard if, in practice, there are a significant number of taxpayers with incomes above the DHHS standard who are experiencing hardship as a result of the fee.

A number of commentators urged that the fee should not be imposed until inefficiencies and errors in the processing of offers to compromise are eliminated. In the past year, however, the IRS made substantial improvements to its offer in compromise program and is now able to process offers to compromise much more accurately, effectively and efficiently. The IRS acknowledges that further improvements are needed and is taking steps to achieve greater accuracy and efficiency, but the user fee is an integral part of that effort. The user fee should help reduce the number of frivolous offers and the number of offers that are either withdrawn, returned, or rejected because the offeror would not provide adequate information for the IRS to process the offer or would not offer an amount that reflects the taxpayer's ability to pay. Limiting the number of offers that will be withdrawn, returned, or rejected will enable the IRS to direct its resources towards the timely and efficient processing of acceptable offers. In addition, the final regulation was amended to make clear

that no additional fee will be charged if a taxpayer resubmits an offer the IRS determines to have been rejected or returned in error after acceptance for processing.

Authority

The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency (user fees). The charges must be fair and be based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A-25, 58 FR 38142 (July 15, 1993).

The OMB Circular encourages user fees for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for Government-provided services must calculate its full cost of providing those services. In general, the amount of a user fee should recover the cost of providing the special service, unless the Office of Management and Budget grants an exception. Pursuant to the guidelines in the OMB Circular, the IRS calculated its cost of providing services under the offer in compromise program. The IRS determined that the full cost of investigating doubt as to collectibility and effective tax administration offers averages \$471 when streamlined procedures are used to investigate the financial condition of the taxpayer, and \$3,983 when more detailed investigations are used. The IRS estimates that 70% of offers are processed under streamlined procedures. OMB granted an exception to the "full cost" requirement of the OMB Circular.

The Treasury, Postal Service, and General Government Appropriations Act of 1995, Public Law 103-329 (108 Stat. 2382) (the 1995 Appropriations Act) provides that the Secretary may establish new fees for services provided by the IRS where such fees are authorized by another law, such as the IOAA.

The user fees are implemented under the authority of the IOAA, the OMB Circular, and the 1995 Appropriations Act.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity will result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. Pursuant to section 7805(f) of the Code, the preceding notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is G. William Beard, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended as follows:

1. Paragraph (b)(3) is added.
2. Paragraph (c) is revised.

The addition and revision read as follows:

§300.0 *User fees; in general.*

* * * * *

- (b) * * *

(3) Processing an offer to compromise.

(c) *Effective Date.* This part 300 is applicable March 16, 1995, except that the user fee for processing offers to compromise is applicable **NOVEMBER 1, 2003**.

Par. 3. Section 300.3 is added to read as follows:

§300.3 *Offer to compromise fee.*

(a) *Applicability.* This section applies to the processing of offers to compromise tax liabilities pursuant to §301.7122-1 of this chapter. Except as provided in this section, this fee applies to all offers to compromise accepted for processing.

(b) *Fee.* (1) The fee for processing an offer to compromise is \$150.00, except that no fee will be charged if an offer is—

(i) Based solely on doubt as to liability as defined in §301.7122-1(b)(1) of this chapter; or

(ii) Made by a low income taxpayer, that is, an individual who falls at or below the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511) or such other measure that is adopted by the Secretary.

(2) The fee will be applied against the amount of the offer, unless the taxpayer requests that it be refunded, if the offer is—

(i) Accepted to promote effective tax administration pursuant to §301.7122-1(b)(3) of this chapter; or

(ii) Accepted based on doubt as to collectibility and a determination that collection of an amount greater than the amount offered would create economic hardship within the meaning of §301.6343-1 of this chapter.

(3) Except as otherwise provided in this paragraph (b), the fee will not be refunded to the taxpayer if the offer is accepted, rejected, withdrawn, or returned as nonprocessable after acceptance for processing.

(4) No additional fee will be charged if a taxpayer resubmits an offer the Secretary determines to have been rejected in error or returned in error after acceptance for processing.

(c) *Person liable for the fee.* The person liable for the processing fee is the taxpayer whose tax liabilities are the subject of the offer.

Robert E. Wenzel,
*Deputy Commissioner for
Services and Enforcement.*

Approved July 17, 2003.

Pamela F. Olson,
*Assistant Secretary of the
Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on August 14, 2003, 8:45 a.m., and published in the issue of the Federal Register for August 15, 2003, 68 F.R. 48785)
