



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, SPECIALTY, OFFERS, LIENS & ADVISORY

FROM: Kristen E. Bailey */s/ Kristen E. Bailey*
Director, Collection Policy

SUBJECT: Offer in Compromise Filing Compliance and Case Perfection

This memorandum revises Interim Guidance Memorandum SBSE-05-0416-0015, which added filing compliance to the not processable criteria used to determine offers that are returned without investigation. These procedures are effective March 27, 2017.

Currently, Internal Revenue Manual (IRM) 5.8.2.3.1(1) provides guidance relative to determining processability of all offers in compromise (OIC). IRMs 5.8.3.6(1) and 5.8.3.7(1) further provide case building guidance for those offers deemed processable.

This IGM updates the directive to return all payments to the taxpayer if the offer is deemed not processable due to filing non-compliance. These offers and any application fee will be returned to the taxpayer. Any payment submitted in accordance with the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) will be applied to the taxpayer's existing liability(ies). If there are no liabilities on IDRS the application fee and TIPRA payment will be returned since there are no modules on IDRS where the payments may be posted.

Unsigned tax returns received with the offer will be considered as filed for offer purposes and perfected. Make a copy of the tax return for the case file and return the unsigned tax return to the taxpayer with a request for signature and filing.

This guidance will be incorporated into the Internal Revenue Manual within one year of issuance.

You may direct any questions regarding these procedures to Diana Estey, National Offer in Compromise Program Manager, or a member of your staff may contact OIC Analyst, Darlene Kosch-Garone. COIC personnel should direct any questions through the appropriate management chain.

Attachment 1

cc: Director, Headquarters Collection
Director, Field Collection
Office of Chief Counsel
Chief, Appeals
National Taxpayer Advocate
www.irs.gov

5.8.2.3.1

Determining Processability

(1) The COIC sites are responsible for determining offer processability. If an offer is determined to be not processable, then the application fee will be returned to the taxpayer in all cases. However, the TIPRA payment will be applied to the taxpayer's account and not returned to the taxpayer, except in the circumstances stated below:

- **Taxpayer in Bankruptcy** – An offer will not be considered while a taxpayer is in bankruptcy. See IRM 5.8.2.3.2, *Additional Research on Bankruptcy Cases*, below for procedures on conducting additional research on bankruptcy OICs prior to returning the offer as not processable and returning the TIPRA payment to the taxpayer.
- **Taxpayer did not submit the application fee with the offer** – The application fee must be submitted with each Form 656, *Offer in Compromise*, or the low income certification box checked in the applicable section of Form 656.
- **Taxpayer did not submit the required initial payment with the offer** – (1) Lump Sum Cash offers must include 20% of the offered amount or the low income certification box checked in the applicable section of Form 656; (2) Periodic Payment offers must include initial proposed installment payment or the low income certification box checked in the applicable section of Form 656.

Exception: If the taxpayer submits the application fee and a portion (but not all) of the required TIPRA payment (either cash or periodic payment) the offer may be considered a processable offer. Follow IRM 5.8.3 to perfect the offer.

- **Department of Justice** – The IRS may not process any offer to compromise a liability previously referred to the Department of Justice (DOJ) for prosecution or defense. If all liabilities have been referred to DOJ then the offer is not processable. If IRS retains jurisdiction on any tax liabilities then the offer is processable and should be referred to the appropriate field offer group.
- **Unassessed Liabilities** – Offers submitted solely to compromise a tax period or tax year for which (1) there are no liabilities assessed to the taxpayer's account, and (2) IDRS does not indicate a return has been received, will be deemed not processable. Any TIPRA payment included with the offer should be returned to the taxpayer. If IDRS indicates a return has been received, process based on IRM 5.8.2.9, *Offer Submitted Solely for Unassessed Liability(ies)*.
- **No Liabilities** – Offer submitted for which (1) there are no liabilities due on the taxpayer's account, and (2) IDRS does not indicate an Exam or AUR assessment

is being worked, will be deemed not processable. Any TIPRA payment paid with the offer should be returned to the taxpayer.

For example: The taxpayer's refund paid the liability sought to be compromised and no other unpaid liabilities exist on the taxpayer's account.

- **Offer submitted solely for tax period(s) with expired CSED(s)** - An offer will not be considered when the CSED(s) has expired for all liabilities sought to be compromised; as evidenced by a TC 608 on the taxpayer's account. Any TIPRA payment paid with the offer should be returned to the taxpayer.
- **Total amount of payment listed as a deposit and the taxpayer did not check the low income certification box** – Beginning October 25, 2013, for offers where the taxpayer marked the total amount of the payment as a deposit, the entire amount will be considered a deposit and returned to the taxpayer, making the offer not processable for failure to submit the required TIPRA payment. This procedure does not apply if the taxpayer marked the box for Low Income Certification in the applicable section of Form 656.

(2) If an offer is determined to be not processable, the application fee will be returned and the TIPRA payment will be applied to the taxpayer's account and not returned to the taxpayer in the below circumstance:

- **Unfiled Tax Returns** – Offer submitted where IDRS does not indicate a required return has been received will be deemed not processable.

Note: Generally, this will not exceed a 6-year look-back period without managerial approval. Internal research must validate a legal requirement to file the missing return. A Substitute for Return (SFR) assessment on Master File will be considered compliant for the corresponding tax period.

Note: An unsigned tax return received with the offer for the required tax period will be considered as filed for offer purposes. Follow perfection instructions in IRM 5.8.3.6, *Perfecting Field Cases*, and 5.8.3.7, *Perfecting COIC Cases*.

(3) Update AOIC remarks to clearly state the reason for the not processable return.

For example: Offer returned as not processable due to unfiled tax returns for the 2014 and 2015 tax period(s).

5.8.2.9**Offer Submitted Solely for Unassessed Liability(ies)**

- (1) An unassessed liability is a liability where no assessment has been made.
- (2) If an offer is received that is solely for an unassessed liability(ies), COIC will determine processability using the following procedures.

If...	Then...
Research of IDRS indicates the return has been received, but has not posted	1. Continue working the offer 2. Post the payments to the taxpayer account. Request input of a secondary TC 570 with "\$.00" to allow the payment to post to the taxpayers account, before the assessment.
Research of IDRS shows no indication a return has been received and no return was submitted with the offer.	Return the offer per IRM 5.8.2.3.1 (1) above
Research indicates the unassessed liability is being worked in Exam or AUR	1. Request input of a secondary TC 570 with "\$.00" to allow the payment to post to the taxpayers account, before the assessment. 2. Continue with offer processing 3. Refer the offer to the Exam/AUR Coordinator. The Exam/AUR Coordinator should follow procedures outlined in IRM 5.8.4, <i>Investigation</i> .

5.8.3.6**Perfecting Field Cases**

- (1) Certain critical errors in an offer must be corrected in order to perfect the offer and enable the Service to begin the offer investigation. For field cases, the only issues that will be perfected prior to transfer to the field are the following:
- Balance of any TIPRA shortfall due at the time of submission
 - Signature on a required tax return received with the offer unsigned.

Note: If the unsigned tax return is an *original* or a *copy*, and your research provides no evidence the tax return has been filed, make a copy for the case file and return to the taxpayer the *original* or unsigned *copy* of the tax return with a request that: if the tax return was recently filed, provide the date of mailing, or; if

the tax return has not been filed, to electronically file, or sign and file the paper return in the appropriate location. Request the taxpayer provide to OIC the date the return was filed.

- The Form 656, Offer in Compromise, is missing a signature
- The Form 433-A(OIC) and/or 433-B(OIC) is missing or blank
- Requesting required estimated tax payments
- Requesting FTD payments for the current period(s)
- The offered amount is blank or zero, unless terms are present

(2) Document the AOIC history to summarize any perfection issues.

(3) These cases must be flagged while in the hold file waiting for the taxpayer's response.

(4) Upon receipt of the response, the case must be immediately pulled and shipped to the receiving field office.

(5) If the taxpayer fails to perfect the offer, return the offer without further contact.

5.8.3.7

Perfecting COIC Cases

(1) Prior to beginning an OIC investigation, certain critical errors must be corrected to perfect the offer. The Combo letter on the AOIC system is designed to communicate with the taxpayer and/or their representative to request the necessary corrective action. If there is no response to the request letter, the OIC may be returned with no further contact. A return for failure to perfect an offer does not require a Form 1271, *Rejection or Withdrawal Memorandum*. The taxpayer has no appeal rights when the offer is closed as a return. The following errors must be corrected before beginning the investigation:

- The Form 656, *Offer in Compromise* is missing a signature
- Balance of any TIPRA shortfall due at the time of submission
- Signature on a required tax return received with the offer unsigned.

Note: If the unsigned tax return is an original or a copy, and your research provides no evidence the tax return has been filed, make a copy for the case file and return to the taxpayer the original or unsigned copy of the tax return with a request that: if the tax return was recently filed, provide the date of mailing, or; if the tax return has not been filed, to electronically file, or sign and file the paper return in the appropriate location. Request the taxpayer provide to OIC the date the return was filed.

- Form 433-A(OIC) and/or 433-B(OIC) is missing, blank, partially completed, or unsigned

- Requesting required estimated tax payments from self-employed taxpayers
- The offered amount is blank or zero, unless terms are present