



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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MEMORANDUM FOR ABBEY B. GARBER  
ASSOCIATE AREA COUNSEL (SBSE)

FROM: Joseph W. Clark  
Senior Technician Reviewer, Branch 2  
(Collection, Bankruptcy & Summonses)

SUBJECT: Offer in Compromise

This memorandum refers to your request for advice dated December 28, 2000. This document is not to be cited as precedent.

ISSUE:

Whether the Internal Revenue Service can accept an offer in compromise submitted by one of the general partners to compromise his individual, derivative share of the employment tax obligations of the partnership.

CONCLUSION:

The Internal Revenue Service may not accept an offer in compromise submitted by one of the general partners to compromise his individual, derivative share of the employment tax obligations of the partnership. The employment tax obligations of the partnership represent a single liability assessed against the partnership entity. The partnership liability is the only liability subject to compromise, and any compromise of this liability must involve a thorough analysis of the partnership assets and the assets of the other general partners.

FACTS:

The information provided by your office indicates that \_\_\_\_\_ is a general partner of a now defunct partnership. She is indebted to the United States for outstanding federal income tax liabilities (Form 1040), sole proprietorship employment tax liabilities (Form 941) and partnership liabilities. The partnership liabilities represent

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employment tax obligations of the partnership for the first and second quarters of 1993.

submitted an offer in compromise intended to cover her personal income tax and sole proprietorship employment tax liabilities, as well as her portion of the partnership's employment tax obligations. She also signed a co-obligor letter agreeing that the compromise of the outstanding partnership taxes is for her liability only, and that the Service is free to collect the remaining debt from the other general partner(s).

You requested our advice as to whether the government can accept an offer in compromise submitted by the general partner, \_\_\_\_\_, to compromise her individual derivative share of the partnership employment tax liabilities, without also considering the value of the assets of the partnership and the other general partner(s).

#### DISCUSSION:

The Offer in Compromise Handbook, IRM 5.8, addresses the liabilities of a partnership and provides as follows:

The amount that must be offered to compromise a partnership tax liability must include the maximum collection potential for the partnership and all general partners. Secure Collection Information Statements from the partnership and all partners before beginning your analysis.

The Handbook, however, offers no specific guidance with regard to a derivative portion of a partnership's employment tax liabilities.

The partnership's employment tax liabilities arise when the partnership fails to pay certain taxes as required by the Internal Revenue Code. For example, the partnership, as an employer, is required to pay withheld income taxes (I.R.C. § 3403), withheld Federal Insurance Contributions Act (FICA) taxes (I.R.C. § 3102(b)), employer's share of FICA taxes (I.R.C. § 3111), and Federal Unemployment Tax Act (FUTA) taxes (I.R.C. § 3301).<sup>1</sup>

Under Texas state law, the general partners are jointly and severally liable for the partnership's debts and obligations, including its employment tax obligations. See Tex.

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<sup>1</sup> The partnership is considered an "employer" for purposes of income tax withholding, pursuant to I.R.C. § 3401(d). The term "person", referenced in section 3401(d), includes an individual, trust, estate, partnership, association, company, or corporation. I.R.C. § 7701(a)(1). In addition, for purposes of the FICA and FUTA provisions, "employer" is defined the same as in section 3401(d). See Otte v. United States, 419 U.S. 43, 51 (1974).

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Civ. Stat. Ann. Art. 6132b-3.04 (2000). However, there is no provision in the Internal Revenue Code with regard to the general partners' individual liability for these tax obligations. Their liability stems from state law.

It is important to note that although the general partners are jointly and severally liable for the unpaid debts of the partnership under state law, the actual partnership employment tax liability is a single liability, assessed once against the partnership and owed by the partnership itself. State law allows the Service to collect the debt from the general partners, but that ability to collect does not alter the nature of the employment tax liability – it remains a singular debt for which the partnership entity is primarily liable. liability for this debt is not based on the internal revenue laws. The Internal Revenue Code does not provide that the partnership employment tax liabilities are joint and several. Consequently, there is no individual partnership employment tax liability for the general partner to compromise under the Internal Revenue Code.

Under I.R.C. § 7122(a), the Secretary has the authority to compromise any “case arising under the internal revenue laws.” A “case” is defined to be a “civil or criminal liability.” See Temp. Treas. Reg. § 301.7122-1T(a)(1). The liability at issue in this case is that of the partnership. Again, \_\_\_\_\_, as a general partner, does not have an individual liability for partnership employment taxes under the internal revenue laws, only under state law. However, because she is a general partner, she can bind the partnership to a compromise of the partnership liability. See Tex. Civ. Stat. Ann. Art. 6132b-3.02 (2000). The offer in compromise in this case may be considered to be an offer to compromise the partnership liability, submitted by the general partner on behalf of the partnership. If \_\_\_\_\_ makes this offer in her capacity as a general partner, and it is accepted as such, then it is binding, not just on the partner submitting the offer, but also on the partnership, the Government, and all the other partners. See Temp. Treas. Reg. § 301.7122-1T(d)(5).

Accordingly, if the offer in compromise submitted by \_\_\_\_\_ is accepted, it would serve to compromise the partnership liability, and it would be binding on the partnership, all the partners and the Government, as indicated above. A co-obligor agreement would not be effective to preserve the Service's right to proceed against the other general partner(s) for the full amount of the employment tax debt. The other partners would be liable only for the unpaid portion of the compromise reached with \_\_\_\_\_.

In order to protect the government's interest, as part of your analysis of whether or not to accept the offer in compromise, the collection potential of the other partners and the partnership must be considered. Based on the information provided, it is not known if there are other general partners, or the circumstances surrounding the dissolution of the defunct partnership (if there was a dissolution). We recommend that appropriate action be taken to ascertain the value of the other general partners' assets at this time, either for the purpose of assisting \_\_\_\_\_ with a new offer, or for collection

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purposes. Since the offer in compromise submitted by \_\_\_\_\_, in its present form, is not acceptable, the Service may seek to collect the outstanding partnership debt from the other general partners.

In the event that the value of the assets of the partnership and the other general partners is not ascertainable, either because the other partners are uncooperative, their whereabouts are not known, or for some other reason, the Service, of course, is not required to accept an offer in compromise for the partnership liability. The Service may seek to collect the outstanding partnership debt administratively as it deems appropriate.<sup>2</sup>

Another option is that the Service may entertain an offer in compromise submitted by \_\_\_\_\_ that includes only her personal income tax liabilities (Form 1040) and the sole proprietorship employment tax liabilities (Form 941). Since she is not individually liable for the partnership employment tax liabilities under the internal revenue laws, an offer in compromise submitted by her need not include that liability in order to be considered an acceptable offer.<sup>3</sup>

If you have any questions, please contact the attorney assigned to this case at (202) 622-3620.

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<sup>2</sup> In accordance with I.R.C. § 7122, an offer in compromise is a discretionary collection tool, and is used if the Service deems a compromise to be in the best interests of both the taxpayer and the government (Policy Statement P-5-100). In any situation where the Commissioner does not believe that a compromise can be constructed so as to adequately protect the interests of the Government, it is within his discretion to exercise other collection methods.

<sup>3</sup> Normally, an offer in compromise must include all outstanding tax liabilities (under the internal revenue laws) of the individual or entity submitting the offer. IRM 5.8.1.5.1.