

Legislative Recommendation #21**Modify the Requirement That the Office of Chief Counsel Review Certain Offers in Compromise****SUMMARY**

- *Problem:* The IRS Office of Chief Counsel is currently required to review and provide a legal opinion for every accepted offer in compromise (OIC) where the amount of unpaid tax is \$50,000 or more, even though the IRS determines whether to accept an OIC primarily based on an analysis of the taxpayer's financial condition and very few OICs present significant legal issues. This requirement delays OIC processing and diverts Counsel attorneys from performing their core legal work.
- *Solution:* Require Counsel review of OICs only in cases that Counsel determines present significant legal issues.

PRESENT LAW

IRC § 7122 authorizes the Secretary to enter into an agreement with a taxpayer that settles the taxpayer's tax liabilities for less than the full amount owed, provided the taxpayer's case has not been referred to the Department of Justice. Such an agreement is known as an OIC. Treas. Reg. § 301.7122-1(b) provides that the IRS may compromise liabilities to the extent there is doubt as to liability or doubt as to collectibility, or to promote effective tax administration. The regulations further define these terms and describe instances when compromise is appropriate.

IRC § 7122(b) requires the Treasury Department's General Counsel to review and provide an opinion for accepted OICs in all criminal cases and in all civil cases where the amount of unpaid tax assessed (including any interest, additional amount, addition to tax, and assessable penalty) is \$50,000 or more. This authority is exercised by the IRS Office of Chief Counsel.¹

REASONS FOR CHANGE

The IRS receives tens of thousands of OIC applications every year. The overwhelming majority are submitted based on doubt as to collectibility (*i.e.*, the taxpayer says they cannot afford to pay the debt in full). In these cases, the IRS decides whether to accept an OIC primarily by performing a financial analysis that compares the taxpayer's ability to pay (based on income and assets) with the taxpayer's allowable living expenses. Currently, the IRS also must verify that the legal and IRS policy requirements for compromise are met prior to proposing acceptance, even though very few OICs present significant legal issues that require Office of Chief Counsel involvement. The time Counsel employees spend reviewing and learning the facts of every criminal OIC case and every civil OIC case where the amount of unpaid tax assessed is \$50,000 or more creates significant delays in OIC processing and is often duplicative of work the IRS has already performed. It also requires a significant commitment of legal resources on the part of the IRS. The Office of Chief Counsel reports that it spends over six thousand hours each year reviewing OICs.² Taxpayers would be better served if the IRS allocated those resources elsewhere.

¹ See Internal Revenue Manual 8.23.4.3.3, Counsel Review of Acceptance Recommendations (Apr. 7, 2022), https://www.irs.gov/irm/part8/irm_08-023-004.

² Emails from IRS Office of Chief Counsel (June 14, 2024; Nov. 29, 2021; Sept. 1, 2020; and Aug. 9, 2019) (on file with TAS).

In addition, delays in OIC processing may impede a taxpayer's ability to make other financial decisions while awaiting a response and may even jeopardize the taxpayer's ability to pay the amount offered if their financial circumstances deteriorate while the OIC is awaiting Counsel review.

The National Taxpayer Advocate believes the OIC process would be improved if Congress repeals the blanket requirement that Counsel review all OICs in civil cases where the unpaid tax assessed is \$50,000 or more and replace it with language authorizing the Secretary to determine when an opinion of the Treasury Department's General Counsel, or the Counsel's delegate, is required with respect to an OIC.³

RECOMMENDATION

- Amend IRC § 7122(b) to repeal the requirement that Counsel review all OICs in civil cases where the amount of unpaid tax assessed (including any interest, additional amount, addition to tax, or assessable penalty) is \$50,000 or more and replace it with language authorizing the Secretary to determine when an opinion of the Treasury Department's General Counsel, or the Counsel's delegate, is required with respect to an OIC.⁴

3 The Treasury Department has made a similar proposal. See Dep't of the Treasury, *General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals* 177 (Modify the Requirement That General Counsel Review Certain Offers in Compromise), <https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf>.

4 For legislative language generally consistent with this recommendation, see, e.g., Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. § 303 (2017); Taxpayer Bill of Rights Enhancement Act of 2015, S. 1578, 114th Cong. § 403 (2015).