

### Internal Revenue Manual Section 5.8.7.7.1 (10-07-2016)

#### Not in the Best Interest of the Government Rejection

1. An offer rejection may also be based on a determination that acceptance of the specific offer at hand is not in the "best interest of the government" (NIBIG) as discussed in Revenue Procedure 2003-71, SECTION 6.03 which states: "The decision whether and when to accept an offer to compromise a liability is within the discretion of the Service. In keeping with IRM 1.2.14.1.17, *Policy Statement P-5-100*, an offer will only be accepted if it is determined to be in the best interest of both the taxpayer and the Service. In addition to the criteria discussed in Section 4.02, the Service may take into account public policy and tax administration concerns in determining whether an offer to compromise is acceptable" .

Rejections under this provision should not be routine and should be fully supported by the facts outlined in the rejection narrative. Offers rejected under this section require the review and approval of the second level manager; that is, Territory Manager for the field or Operations Manager for COIC.

2. Once a determination is made that a rejection under this basis is appropriate, a calculation of the taxpayer's ability to pay should still be computed. The preliminary asset/equity and income/expense tables as discussed in IRM 5.8.4.7, *Initial Offer Actions*, should be completed and provided to the taxpayer. The extent of additional verification, if required, should be based on the facts of the case. The preliminary tables and the basis for the rejection should be discussed with the taxpayer/representative to allow for submission of additional information for consideration
3. Below are situations that may warrant rejection as not being in the "best interest of the government" (not all inclusive).
  - The taxpayer's offer meets processability criteria however; the taxpayer has an egregious history of past noncompliance, as evidenced by the taxpayer's failure to report all of their income on recent tax years and by failing to pay the tax liability when they had the means to do so.

#### Note:

Future collection potential and the ability to secure a collateral agreement should be considerations prior to recommending an offer for rejection under NIBIG.

#### Example:

An offer in compromise in the amount of \$ 100 is submitted by a taxpayer who has a history of filing frivolous returns. The OIC includes tax assessments which were completed by the IRS under substitute for return procedures. The financial statements submitted with the offer include very little income on which minimal estimate tax payments have been made. Information from internal sources reveals the taxpayer has additional income not being reported on the financial statement. It is not in the Government's interest to investigate an OIC until the taxpayer demonstrates compliance

with filing and payment of the appropriate tax. Referral of the taxpayer should also be considered based on available information.

- The taxpayer's offer meets processability criteria however; it is determined inclusion of a dissipated asset is appropriate and the taxpayer is unwilling or unable to include the value of the dissipated asset in the offer amount. For a discussion on when inclusion of the value of a dissipated asset is appropriate, refer to IRM 5.8.5, *Financial Analysis*.
  - The taxpayer is the primary responsible party for a related entity, i.e. corporation, partnership, etc., that is not in compliance with its filing and/or paying requirements, has not entered into an agreement to resolve the compliance or balances due, or does not have an offer pending.
  - The owner, general partner, or a significant shareholder of the taxpayer is not in compliance with their filing and/or paying requirements, has not entered into an agreement to resolve the compliance or balance due, or does not have an offer pending.
  - An in-business taxpayer compromising employment taxes, where financial analysis indicates the business does not have the ability to fund the offer, remain current with future tax obligations, and meet the business's normal operating expenses.
  - The offer is from an ongoing business that appears to be insolvent, will remain insolvent, even if the offer is accepted, and it appears that the Government's position would be better protected through a formal insolvency proceeding. Refer to IRM 5.8.10.2.2.1, *Consideration of a Potential Bankruptcy Filing on the Calculation of RCP in an OIC Investigation*.
  - The taxpayer does not have the ability to fully pay the liability via an installment agreement, yet based on the evaluation of the taxpayer's financial situation and after consideration of all factors, the offer may be recommended for rejection as not in the government's interest, when the calculated amount potentially received through a PPIA, does not fully pay the liability, yet approximates the outstanding balance. The taxpayer should be provided the opportunity to enter into a PPIA. Refer to IRM 5.8.4.3 (4).
4. In each of the situations listed, a review of the taxpayer's financial situation should be completed prior to a final determination that a rejection under NIBIG is the appropriate course of action.

**Exception:**

In circumstances where the potential for a fraud referral exists, the financial evaluation conducted and verified should be based on the facts and circumstances of the case. Refer to IRM 5.8.4.18, *Potential Fraud Referrals*.

The taxpayer should also be provided the opportunity to withdraw the offer prior to submission of the offer rejection recommendation, advised of the reason(s) the offer is being recommended for rejection under NIBIG criteria, and alternatives available to the taxpayer

If the offer is not withdrawn, the offer examiner/offer specialist should proceed with rejection in accordance with IRM 5.8.7.7.3, *Closing an Offer as a Rejection*. The rejection letter will provide the taxpayer appeal rights in accordance with Treasury Regulation 301.7122-1 (f) (5).