



Part 4. Examining Process

Chapter 18. Exam Offer-In-Compromise

Section 2. Doubt as to Liability Offers

4.18.2 Doubt as to Liability Offers

- 4.18.2.1 [Overview](#)
- 4.18.2.2 [Considering the Liability Issue](#)
- 4.18.2.3 [Jurisdiction—Doubt as to Liability](#)
- 4.18.2.4 [Examination Considerations](#)
- 4.18.2.5 [Determination of Liability](#)
- 4.18.2.6 [Doubt as to Liability Offer Accepted](#)
- 4.18.2.7 [Doubt as to Liability Offer Withdrawn](#)
- 4.18.2.8 [Doubt as to Liability Offer Rejected](#)
- Exhibit 4.18.2-1 [Pattern Letter 673\(P\)](#)
- Exhibit 4.18.2-2 [Pattern Letter 241\(P\)](#)
- Exhibit 4.18.2-3 [Pattern Letter 238\(P\)](#)

4.18.2.1 (12-09-2008) Overview

1. This section provides guidance for examiners in considering doubt as to liability offer in compromise (DATL-OIC) requests.

4.18.2.2 (12-09-2008) Considering the Liability Issue

1. Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. Doubt as to liability does not exist where the liability has been established by a final court decision or judgment concerning the existence or amount of the tax liability.
2. Grounds for compromise may exist when there is legitimate doubt from both the viewpoint of the taxpayer and the IRS. Validity of the DATL-OIC is determined by evaluating the supporting evidence and circumstances. The taxpayer is required to submit documentation and/or other evidence to support his/her DATL-OIC. The evidence available for both parties must be weighed in order to determine the extent of any "doubt".

Note:

The extent of any determination of "doubt" should be in keeping with Policy Statement P-4-117. See IRM 1.2.13.1.34.

3. A DATL-OIC may not be rejected solely because the Service is unable to locate the taxpayer's return or return information. The taxpayer cannot be required to submit a financial statement for a doubt as to liability offer. Also, there is no application fee for a doubt as to liability offer.

4.18.2.3 (12-09-2008) Jurisdiction—Doubt as to Liability

1. The Examination Division has jurisdiction over DATL-OIC except as noted in paragraph 2 below. Examination employees are responsible for preparation of the necessary documents and letters to effect the disposition of the DATL-OIC file by the taxpayer.
2. Collection Division has jurisdiction of doubt as to liability offers involving the Trust Fund Recovery Penalty and Personal Liability for Excise Tax. Liability offers concerning assessments made during bankruptcy proceedings may also fall under the jurisdiction of Collection Division.

4.18.2.4 (12-09-2008) Examination Considerations

1. An DATL-OIC examination should be conducted in a manner similar to an audit reconsideration examinations.
2. The DATL-OIC should be examined and additional documents requested from the taxpayer, if necessary. All conclusions should be documented and all arguments raised by the taxpayer addressed in the workpapers. Form 4318, *Examination Workpaper Index*, or Form 4700, *Examination Workpapers*, is used to summarize the workpapers.
3. Taxpayer contact should generally be made within 30 days from receipt of the DATL-OIC. Offers in process over six months are considered overaged. IRC section 7122 was amended by section 509 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), PL 109-222, effective for offers filed after July 16, 2006. IRC section 7122(f) provides, "Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer. For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken into account in determining the expiration of the 24-month period." Consequently, priority treatment of offers is critical. Notice 2006-68, provides interim guidance under IRC section 7122, as amended for offers filed after July 16, 2006. Taxpayers can rely on guidance in this notice until regulations or other guidance is issued.

Note:

Taxpayers should use Form 656-L, *Offer in Compromise (Doubt as to Liability)*, to submit a DATL-OIC.

4. When considering a DATL-OIC where the assessment was based on substitute for return (SFR) assessments, the return must be reviewed to determine if all the taxpayer's income was included in the assessment if the statute is open. If the DATL-OIC investigation reveals additional income not included in the SFR assessment and the statute is open, the taxpayer will be required to file an amended return to include the additional income.
5. When the Service is notified of the death of a taxpayer who submitted a DATL-OIC that is currently under consideration, the Service can no longer consider the DATL-OIC. If the DATL-OIC under consideration was submitted jointly by a husband and wife, contact with the surviving spouse should be made to determine whether there is a probate proceeding pending. See IRM 5.8.10.4.

4.18.2.5 (12-09-2008) Determination of Liability

1. If the taxpayer's liability changes as a result of the examination determination, a revised examination report (i.e., Form 4549, *Income Tax Examination Changes*), must be prepared. The line for taxable income per return or previously adjusted should be the corrected taxable income from the previous report. This should be verified from a transcript of account.
2. If the revised examination report is based on compromise of the liability based on doubt as to liability, DATL-OIC acceptance procedures should be followed. If it is based on determination of the correct tax liability, DATL-OIC withdrawal procedures should be followed and the excess tax liability abated.

4.18.2.6 (12-09-2008) Doubt as to Liability Offer Accepted

1. Whether the amount offered by the taxpayer is adequate for a DATL-OIC will depend on the degree of doubt established. See IRM 4.18.2.4 above for further explanation.
2. Acceptance of a DATL-OIC requires special processing procedures. IRM 1.2.44.2, Delegation Order No. 5 -1 (formerly Delegation Order No. 11, Rev. 29), *To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Offers in Compromise*, outlines the level of authority needed to approve an OIC. Under IRC 7122(b), if the total liability for an offer is \$50,000 or more Counsel must provide an opinion to ensure that the OIC meets the legal requirements for compromise and conforms to the Service's policy and procedure. See IRM 5.8.8.5.
3. Form 7249, *Offer Acceptance Report*, is completed for accepted offers.
4. If the OIC is accepted, payment will be in accordance with the terms listed on Form 656-L.
5. If the taxpayer cannot full pay the amount agreed upon in the accepted DATL-OIC, consider other payment options such as an installment agreement or advise the taxpayer of his option to file an OIC based on doubt as to collectibility.
6. The completed case is routed via Form 3198, *Special Handling Notice for Examination Case Processing*, to the attention of the Technical Services OIC Coordinator. The Coordinator will review the case, secure approval to issue the acceptance letter, and prepare and process abatement Form 3870, *Request for Adjustment*.

4.18.2.7 (12-09-2008) Doubt as to Liability Offer Withdrawn

1. Where the examiner and taxpayer reach an agreement on the correct tax liability, a "compromise" is not required. In order to process the case as agreed it is necessary for the taxpayer to withdraw the offer.
2. Any adjustments required to correct the outstanding tax liability are accomplished through abatement of the erroneously assessed tax. The following procedures are completed by the examiner:
 - A. Prepare an audit report using Form 4549 if the case is established on Audit Information Management System/Examination Returns Control System (AIMS/ERCS), but do not issue the report to the taxpayer. If the case is not established on AIMS/ERCS use Form 3870 to abate the tax. The report must start with tax as previously determined. Verify this from a transcript of account. Explain the recommendation to the taxpayer, with the caveat that it is subject to review.
 - B. Request that the taxpayer withdraw the DATL-OIC by submitting a written request. An example:

"I hereby withdraw my offer for the tax year (insert year(s)), contingent upon acceptance and processing of a reduction of (\$ amount) in previously assessed tax and penalties, respectively, plus interest."

"I authorize you to apply the (\$ if applicable) deposited with the offer against any outstanding account" (or) "and request that the amount of (\$ amount) deposited with the offer be refunded to me."

In another example, in the case where there is no adjustment to the tax liability and the taxpayer agrees, the written request would state:

"I have been advised that my offer cannot be recommended for acceptance, so I hereby withdraw the offer" (and complete the deposit statement as indicated above).

The written statement provided to the examiner should generally be an original, and not a copy or facsimile.

- C. The taxpayer's signature is always required on the letter of withdrawal. If the offer was filed jointly, signatures of both spouses are required. The taxpayer's representative (per the power of attorney) may authorize withdrawal of the OIC on the taxpayer's behalf.

- D. Prepare Form 1271, *Rejection or Withdrawal Memorandum*. Check the box indicating offer withdrawn. Do not complete the "date of rejection/withdrawal letter" at the top of the form. Attach to Form 1271 a Form 886-A, *Explanation of Items*, that provides a brief (1) Summary, (2) Facts as to Liability, and (3) Conclusion. See sample at IRM 4.18.2.8 paragraph (1)(b).

Note:

Form 4549, Form 886-A and any other supporting workpapers and schedule will be enclosed in the case file. There is no need to attach this detail to Form 1271.

- E. Inform the taxpayer that when the DATL-OIC is withdrawn, this action forfeits any appeal rights and also resumes the running of the statutory period for collection.
F. The completed case is routed via Form 3198 to the Technical Services OIC Coordinator.

3. A taxpayer may agree to a portion of the adjustment and disagree with the remaining liability. This should be treated as a partial agreement and signature solicited on a Form 870, *Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment*. The remaining portion of the disagreed liability is treated as a rejection.

**4.18.2.8 (12-09-2008)
Doubt as to Liability Offer Rejected**

1. If the taxpayer does not agree with the examiner's conclusions and will not or does not withdraw the offer, the following procedures are completed by the examiner:

- A. Prepare a report on Form 4549 to reflect any decrease in tax and penalties (based on the correct tax liability determined by the examiner). Do not issue the report to the taxpayer or solicit a signature. A report is not required if no abatement of tax is recommended. If requested, explain the recommendation to the taxpayer with the caveat that it is subject to review. See IRM 4.18.6.2, *Payments Made with Form 656-L*, regarding refund or application of payment made with Form 656-L.
B. Prepare Form 1271 and check the box indicating rejection. Do not fill in date of rejection letter at the top of the form. Attach to Form 1271 a Form 886-A, *Explanation of Items*, that provides a brief (1) Summary, (2) Facts as to Liability, and (3) Conclusion.

Note:

If a Form 4549 is being issued, Form 886-A and any other supporting workpapers and schedule will be enclosed in the case file. If a Form 4549 is not being issued, Form 1271 was contain sufficient detail to explain why the DATL-OIC is being rejected.

Category	Sample Content
Summary	The taxpayer is seeking to compromise under authority of IRC section 7122, an unpaid liability for income taxes plus statutory additions. The amount of the offer is the total sum of (\$ amount) to be paid in full within ten days of acceptance of the offer. This is the first offer submitted by the taxpayer. The offer is recommended for rejection on the grounds that no legitimate doubt from the viewpoint of both the taxpayer and the IRS that the assessed liability is incorrect.
Facts as to Liability	The liability in this case arose from an examination conducted in 1995. The examination disallowed in full the Sch. A deduction because the deduction does not meet the requirements of IRC section 170. The non-deductible contributions to a fraudulent church has been upheld by a long list of cases (<i>Hall v Comm.</i> , <i>T.C. Memo 1981-143</i> ; <i>Kalgaard v Comm.</i> , <i>T.C. Memo 1984-283</i>).
Conclusion	For the reasons stated above, this offer is recommended for rejection on the grounds that there is no legitimate doubt that the assessed liability is correct.

2. The file is routed via Form 3198 to Technical Services for an independent administrative review. If the OIC-Independent Administrative Reviewer (IAR) agrees with the examiner's determination, they process the file. If the OIC-IAR disagrees, the file is returned to the group via Form 3990, *Reviewers Report*, to communicate the OIC-IAR's observations.
3. If the taxpayer does not agree with the examiner's conclusions, the case is processed as a rejection and any partial abatement (in arriving at the correct tax) is made before the file is forwarded for final processing.
4. The taxpayer has 30 days from the date of the rejection letter to file an appeal request. The OIC-IAR Reviewer in Technical Services issues the rejection letter to the taxpayer. If the taxpayer requests an appeal, the file will be forwarded to the Office of Appeals.

**Exhibit 4.18.2-1 (01-01-2000)
Pattern Letter 673(P)**

Return Address:
Person to Contact:
Employee ID Number:
Telephone Number:
Refer Reply to:
Taxpayer ID Number:
Tax Period:
Type of Tax:
Date:

[Salutation]

We have accepted your offer in compromise signed and dated by you on (date). The date of acceptance is the date of this letter and our acceptance is subject to the terms and conditions on the enclosed Form 656, Offer in Compromise. In addition to the amount you have offered, the Internal Revenue Service will add interest from the date we accept the offer until the date you completely pay the amount offered. For offers accepted on the basis of doubt as to liability, prompt payment of the amount offered is required.

If you fail to meet any of the terms and conditions of the offer, the Internal Revenue Service will issue a notice to default the agreement. After issuance of the notice, the Internal Revenue Service may:

- Immediately file suit to collect the entire unpaid balance of the offer.
- Immediately file suit to collect an amount equal to the original amount of the tax liability as liquidating damages, minus any payments already received under the terms of this offer.
- Disregard the amount of the offer and apply all amounts already paid under the offer against the original amount of the tax liability.
- File suit or levy to collect the original amount of the tax liability, without further notice of any kind.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

[Signature]

[Title]

**Exhibit 4.18.2-2 (01-01-2000)
Pattern Letter 241(P)**

Return Address:
Person to Contact:
Employee ID Number:
Telephone Number:
Refer Reply to:
Taxpayer ID Number:
Tax Period:
Type of Tax:
Date:

[Salutation]

This refers to your offer of \$ __, submitted to compromise your liability for the taxpayer period ending (date).

[Insert reason A, B, C, D or E.]

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

[Signature]

[Title]

Optional Paragraphs:

- A. In your letter dated (date), you requested that your offer be withdrawn and asked that the amount of \$ __ deposited with the offer be refunded to you. The offer is considered withdrawn as of the date of this letter and the amount deposited will be returned to you.
- B. In your letter dated (date), you requested that your offer be withdrawn and asked that the amount of \$ __ be applied to your delinquent tax liability. The offer is considered withdrawn as of the date of this letter and the amount deposited will be applied to your account as requested.
- C. In your letter dated (date), you requested that your offer be withdrawn. The offer is considered withdrawn as of the date of this letter and the amount deposited will be returned to you.
- D. During our meeting of (date), you submitted a written request for the withdrawal of your offer. The offer is considered withdrawn as of that date and the amount deposited will be returned to you.
- E. On (date), you just sent is certified mail a letter requesting your offer be withdrawn. The offer is considered withdrawn as of that date and the amount deposited will be returned to you.

**Exhibit 4.18.2-3 (01-01-2000)
Pattern Letter 238(P)**

Return Address:
Person to Contact:
Employee ID Number:
Telephone Number:
Refer Reply to:
Taxpayer ID Number:
Tax Period:
Type of Tax:
Date:

[Salutation]

We have investigated your offer in the amount of \$ __ to compromise your liability for the period ending (date). We cannot accept your offer and we are rejecting the offer for the following reason(s):

[optional paragraphs A thru D.]

If you accept our decision, please write or call us. We will then ask you to make arrangements to pay the amount of tax, penalties, and interest you owe.

If you do not accept our decision and want a conference with an Appeals Officer, you must let us know that you want to protest. You should request the appeal in writing and direct it to the contact person shown above. **You should request the appeal within 30 days of the date of this letter.** The type of appeal you make depends on the total amount of tax, penalties, and interest you owe. Include any additional information that you want the Appeals Officer to consider. You may still appeal without additional information, but including it will help us to process your request promptly. Follow the instructions below for the type of appeal you may request:

If the amount is:	You should:
\$25,000 or less	Send a letter requesting Appeals consideration. Indicate the changes you do not agree with, and the reasons why you do not agree.
Over \$25,000	File a written protest with the following information:

1. Your name, address, social security number and daytime telephone number;
2. A statement that you want to appeal the IRS findings to the Appeals Office;
3. The date and symbols from the letter, or a copy of the letter showing the proposed changes and findings you do not agree with;
4. The tax periods or years involved (as shown on the letter);

5. A list of the changes you do not agree with and why you do not agree;
6. The facts supporting your position on any issue that you do not agree with;
7. Any law or other authority, if any, on which you are relying;
8. You must sign the letter, stating that it is true, under penalties of perjury as follows:

"Under penalties of perjury, I declare that I have examined the facts stated in this protest, including any accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete."

If your representative prepares and signs the protest for you, he or she may substitute a declaration stating:

1. That he or she submitted the protest and accompanying documents, and
2. Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

You may represent yourself at your appeals conference or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the IRS. Your representative must be qualified to practice before the IRS. If your representative appears without you, he or she must file a power of attorney or tax information authorization with the IRS before receiving or inspecting confidential information. You may use Form 2848, Power of Attorney and Declaration of Representative, or any other properly written power of attorney or authorization for this purpose.

Copies of Form 2848 are available from any IRS office, or can be downloaded from <http://www.irs.gov/>. If you do not file an appeal request within 30 days from the date of this letter, your offer case will be closed. The date of this letter is the legal rejection date of your offer.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

[Signature]

[Title]

Optional Paragraphs

- A. We do not consider it in the government's best interest to do so. [Specific and further explanation should be provided].
- B. We have partially abated the original tax assessment. There is no longer a basis for the Offer in Compromise.
- C. We have abated the original tax assessment in full. There is no longer a basis for the Offer in Compromise.
- D. We cannot accept your offer which is currently under Examination through the Tax Equity and Fiscal Responsibility Act (TEFRA). All partnership issues to which you are a party have not been resolved. When all issues have reached settlement, you may submit another Offer in Compromise.

[More Internal Revenue Manual](#)

© 2012 IRS