

No Relief: A Collection Due Process Hearing Cannot Be Used to Review a Returned Offer in Compromise.

Under Section 6330 of the Internal Revenue Code, taxpayers have the right to a collection due process hearing upon receipt of notice of intent to levy. The same hearing is also available when a tax lien is filed. I.R.C. § 6320. Among the issues that can be addressed at the hearing is a collection alternative, such as an offer in compromise. I.R.C. § 6330(c)(2)(A)(iii).

The tax court recently addressed a novel question: can a taxpayer use a collection due process hearing as a forum to obtain approval of an offer in compromise that was previously returned as nonprocessable? In *Reed v. Commissioner*, 2013 U.S. Tax Ct. LEXIS 27 (Sept. 23, 2013), the tax court said no.

Mr. Reed was a long-time delinquent who did not file a tax return between 1987 and 2001. Eventually, he filed the delinquent returns, but was unable to pay the taxes, penalties and interest. *Id.* at *4. He subsequently submitted two offers in compromise. The first, submitted in 2004, was rejected due to dissipated assets. The second, submitted in 2008, was returned as nonprocessable because the IRS concluded that Mr. Reed was not compliant at the time it was submitted, a point which he disputed. Mr. Reed then made payments consistent with the terms of the offer. *Id.* at *6-*7.

Subsequently, the IRS issued a final notice of intent to levy, and the taxpayer made a timely request for a collection due process hearing. Among the items that the taxpayer sought to raise at the hearing was the 2008 offer in compromise that had been returned to him. The settlement officer refused to do so and sustained the proposed levy.

In addressing the taxpayer's petition, the tax court concluded that the settlement officer properly refused to reopen the 2008 offer. *First*, it concluded that requiring the settlement officer to reopen the 2008 offer would impermissibly expand the authority of the Commissioner to compromise taxes by permitting the evaluation of an offer in compromise based on out-of-date financial information; the court reasoned that section 7122(d)(1) of the Code called for standards to be created for the review of offers in compromise and that the Internal Revenue Manual called for financial data to be no more than six months old. 2013 U.S. Tax Ct. LEXIS 27, slip op. at *13. *Second*, the court concluded that adopting the petitioner's approach would improperly expand administrative and judicial review, since Proc. & Admin. Reg. § 7122(f)(5)(ii) explicitly provides that there is no review available when an offer in compromise is returned. 2013 U.S. Tax Ct. LEXIS 27, slip op. at *14-*15.

This looks like a creative argument on behalf of the taxpayer, but the tax court's reasoning seems to be sound.

Jim Malone is a tax lawyer in Philadelphia. © 2013, MALONE LLC.