

U.S. Senate Committee on Finance

For Immediate Release

Friday, Sept. 3, 2004

Grassley, Baucus Continue Work on Offer-in-compromise Program

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, are continuing their work to make sure the offer-in-compromise program to foster taxpayer compliance works as intended. The text of their latest letter follows.

September 2, 2004

The Honorable John Snow
Secretary
Department of the Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Mr. Secretary:

In the *IRS Restructuring and Reform Act of 1998 (RRA 98)*, Congress recognized the importance of the offer-in-compromise (OIC) program as a common sense approach to foster taxpayer compliance. Accordingly, Congress directed the Secretary of the Treasury and the IRS to be flexible in working with taxpayers who are trying to get back into the system or who are making an honest effort to meet their obligations. To that end, Congress provided the Treasury and the IRS with legislation to make it easier for taxpayers to enter into these agreements.

Unfortunately, we are concerned with the Treasury's and the IRS's continued failure to efficiently and effectively administer the offer-in-compromise (OIC) program. We have heard from many practitioners and interested parties that the IRS is more interested in managing OIC inventory rather than getting to a resolution of tax debt and giving the taxpayer a fresh start. We are also troubled by the apparent failure of the Treasury and the IRS to fully utilize the flexibilities provided in the effective tax administration provision of *RRA 98*. Therefore, we would appreciate a response to the following questions which address various aspects of the IRS's approach to OIC with the goal of inventory management rather than accepting offers.

1. Please provide the offer-in-compromise inventory and cycle time for processing offers for the past ten years.

2. The IRS is expected to use national standards as a guideline when considering a taxpayer's offer-in-compromise. The IRS is also expected to consider a taxpayer's facts and circumstances in determining whether the national standards are an appropriate guideline for a taxpayer. Please explain the current practices used by the IRS in considering an offer-in-compromise.

3. It is our understanding that prior to 2000, the IRS would consider an offer-in-compromise when a bankruptcy proceeding was pending. Why was this practice discontinued? We further understand that recent court proceedings have directed the IRS to consider an offer-in-compromise during a bankruptcy proceeding. What is the current IRS position on this matter?

4. How many offers-in-compromise did the IRS return in fiscal years 2002, 2003, and 2004? What circumstances resulted in their return? How many offers were rejected over the same period? For what reasons were the offers rejected? For accepted offers in fiscal years 2002 and 2003, how much has been collected? For those offers returned or rejected in fiscal years 2002 and 2003, how much has been collected, and by what means, since the return or rejection of the offer? Does the IRS have procedures allowing it to collect information and analyze whether rejected offers should have been accepted (e.g., procedures ensuring that accounts are being worked and information about amounts that have been collected)? If so, please provide.

5. The Chief of Appeals has indicated that 86% of all offers rejected are appealed. Does the IRS have research identifying the number of rejected offers reversed on appeal? If so, please provide. Does the IRS have a system for reviewing the reasons why reversed decisions were not resolved correctly through initial contact with the IRS? If so, please provide. Has the IRS provided feedback to employees so that corrective actions can be taken to promote a reduction in cases going to Appeals?

6. Describe the case quality measures for the field and centralized offers-in-compromise program. Does the IRS conduct a separate customer satisfaction survey of the offers-in-compromise program? If so, please provide detailed information, including the adequacy of the survey sample size.

7. Taxpayers sometimes submit offers based on both doubt as to collectibility (DATC) and doubt as to liability (DATL). It is our understanding that the IRS first processes the DATC component before determining whether the taxpayer actually owes the tax, in whole or in part (DATL). Please explain the IRS rationale for this processing approach.

8. When a DATC offer is submitted, we understand that the IRS first determines whether the taxpayer can full-pay the outstanding liability, based on information provided by the taxpayer on financial statements. Further, we understand that in making this determination, the IRS calculates the ability to pay, in part by computing the monthly installment payment the taxpayer can pay for the remainder of the statutory collection period, plus 5 years. Please explain the IRS's basis for this decision, particularly in light of the IRS's policy statement language that an offer is a viable collection alternative to a protracted installment agreement.

9. We understand that the IRS has recently implemented a user fee for offers. Taxpayers whose offers have initially passed screening for full-pay and initial processibility will be

returned, without appeal rights, and the user fee retained, if they do not respond to an IRS request for additional information. Other taxpayers who have offers returned without appeal rights have their user fee refunded. Why is there a difference in handling of user fees between these two types of returned offers? How many of these taxpayers resubmit offers? What happens when these offers are re-submitted (e.g., are taxpayers required to pay the user fee again)?

10. Please describe the implementation of the conference report language pertaining to effective tax administration (ETA) offers, including the issuance and implementation of Treasury regulation section 301.7122-1(c)(3). What is the process for identifying offers based on equitable considerations and public policy, particularly where the taxpayer does not specifically check the "ETA" box on Form 656? Which employees and/or managers identify these offers? Please provide us with copies of any guidance, training, desk procedures, and check sheets that assist IRS employees in identifying these offers.

11. We understand that a separate group of Revenue Officers (RO) evaluates "non-hardship" ETA offers. How many levels of review does such an offer go through prior to being evaluated by this group? Do ROs in this group discuss these offers with taxpayers or their representatives prior to rejection? If not, please explain. How many "non-hardship" ETA offers were accepted in fiscal years 2002 and 2003 and fiscal year 2004 to date?

12. What factors does the IRS take into consideration in determining whether to accept or reject a non-hardship ETA offer? What is the difference, if any, between the analysis of non-hardship ETA offers and DATC offers raising special circumstances? Are DATC offers raising special circumstances involving equity and public policy also considered by the ETA group?

13. What guidance has the IRS issued to its employees (including training guides, IRM, memoranda, and desk guides for OIC, RO, and Appeals employees) pertaining to the implementation of the provision in the *RR4 98* Conference Report directing the IRS to compromise long-standing cases where penalty and interest have accrued because of delay in determining the tax liability? What is the IRS's position about the interplay between that language and interest abatement under IRC 6404(e)?

14. What guidance has the IRS issued to its employees (including training guides, IRM, memoranda, and desk guides for OIC, RO, and Appeals employees) pertaining to the compromise of liabilities attributable to the Alternative Minimum Tax arising from the exercise of incentive stock options?

Thank you for your consideration and prompt attention to these concerns. We would appreciate your response by September 30, 2004.

Sincerely yours,

Max Baucus
Ranking Member

Charles E. Grassley
Chairman

cc: The Honorable Mark Everson, Commissioner Internal Revenue
Members of the IRS Oversight Board
Ms. Nina Olson, National Taxpayer Advocate
Ms. Pamela Gardiner, Deputy Inspector General for Audit, Treasury Inspector General for Tax
Administration
The Honorable David M. Walker, Comptroller General of the United States
Government Accountability Office