

Note: The TC 482 Action Date will be the date the withdrawal is received if hand-delivered to Appeals or mailed via certified mail. Otherwise, the TC 482 Action Date will be the date of the letter from Appeals acknowledging receipt of the withdrawal. This is important because it is the date that the CSED begins running again on non-CDP or EH periods.

- (6) The following procedures apply for accepted offers:
 - a. Prepare a separate ACM, as necessary, for details on offer that will not be included in Letter 3193 or Letter 3210 attachment,
 - b. Sanitized Transcript Delivery System (TDS) transcripts (for the Public Inspection File),
 - c. Prepare Letter 673, Offer Acceptance Letter,
 - d. Prepare Form 7249 *Offer Acceptance Report*.

8.22.2.4.7.10
(03-11-2009)
Corporate Trust Fund Offers

- (1) Effective February 4, 2008, the following guidance on offers apply to any type of entity with unpaid trust fund tax where assertion of the Trust Fund Recovery Penalty (TFRP) is applicable:

- a. Only the amount representing the reasonable collection potential (RCP) of the corporation is needed to compromise a corporate trust fund liability.

Note: The RCP of the person(s) responsible for the TFRP is no longer needed as part of the corporate trust fund offer

- b. The trust fund portion of the tax liabilities must be paid, the TFRP assessed, or forwarded (by Collection) for assessment before the corporate offer may be evaluated.

Note: IRM 5.8.4.13.2 (Rev. 9/2005) procedures remain in effect for all offers (CDP and non-CDP) received by either Collection or Appeals prior to February 4, 2008.

- (2) When evaluating a corporate offer, if the liabilities are not currently in status 26 and/or there is no indication Collection explained the corporate OIC requirements to the taxpayer that an offer will not be investigated unless the TFRP has been assessed or the trust funds paid, the hearing officer will:

- a. advise the taxpayer that the trust fund balance must be paid or TFRP assessed before a corporate offer involving trust fund tax may be evaluated. Clearly document the discussion in the case activity record.
- b. retain the offer
- c. issue a courtesy investigation (OI) to the appropriate field group to conduct the TFRP investigation

Note: Appeals will not solicit Form 2751's from the responsible officer(s). A complete investigation is necessary to determine ALL responsible officers. Also, Letter 1153 must be issued with the Form 2751 informing the taxpayer of their appeal rights.

- (3) Collection will complete the TFRP investigation within 90 days and return one of the following results to Appeals:
 - a. Proposal Letter 1153 sent to all culpable individuals. No protests filed and assessments in process. ("Completion" includes sending Letter 1153).

- b. Trust Fund full paid. No TFRP investigation required.
 - c. One of the proposed individuals filed a formal protest of proposed TFRP. Offer was submitted "solely to delay"
- (4) Appeals will use the results of Collections TFRP investigation in their decision to proceed with the corporate OIC:
- a. Reject the OIC where the determination was "solely to delay"
 - b. Consider OIC where the trust fund was paid or the assessment is in process
- (5) If Appeals determines that the responsible individual(s) had been previously advised that an offer will not be investigated unless the TFRP has been assessed or the trust funds paid, the hearing officer will:
- a. send OIC to COIC for a processability determination
 - b. determine that OIC submitted "solely to delay" and not accept (i.e., reject) the offer
- (6) The hearing officer will document the "solely to delay" rejection determination in both their case activity record and the Notice of Determination or Decision Letter.
- (7) Use the following table to determine necessary actions when addressing various issues and scenarios concerning a corporate trust fund offer received as part of a CDP/EH case:

If...	Then...
<p>The corporate taxpayer wants to discuss submitting an OIC and has not previously discussed the same with Collection.</p>	<p>a. Fully explain the OIC process making sure to advise the taxpayer that:</p> <ul style="list-style-type: none"> • acceptance of the corporate offer does not preclude IRS from pursuing collection of the TFRP • the corporation must either pay the trust fund portion in full or the TFRP must be assessed, and • an offer submitted without the trust fund portion being paid or TFRP assessed cannot be accepted <p>Note: Try to ascertain if the taxpayer has the ability to fully pay the trust fund amount. If the taxpayer indicates they want to pay the trust fund portion, provide the trust fund computation. If the taxpayer can't pay the trust fund amount, let them know that a TFRP investigation with assessment(s) will be necessary if an offer is submitted.</p>

If...	Then...
<p>The corporate taxpayer wants to pay the trust fund portion before submitting the offer</p>	<p>a. Compute the trust fund balance. b. Give the taxpayer a reasonable amount of time (14-21 calendar days) to both pay the required trust fund portion and submit a complete OIC package. Note: The taxpayer may designate the OIC's up-front TIPRA payment to pay the trust fund portion. The designation must be in writing.</p>
<p>The corporate taxpayer pays the trust fund portion in full</p>	<p>a. Send the complete offer package to the appropriate COIC site for processing. b. Generate Form 3210 and Letters 3820 and 3821 on APGolf and forward the OIC package to COIC per standard procedure. c. Prepare a Form 4844, Request for Terminal Action, for input of ASEDR Definer Code 4 (see IRM 5.7.3.9.1) to reflect full payment of the trust fund tax. Note: ATM approval is needed on Form 4844 per IRM 5.7.3.9.1(2). d. Attach the approved Form 4844 to an encrypted e-mail and send it to one of the following e-mail addresses based on the relative location of your Appeals office: *SBSE CCS GCP EAST1 – includes the North Atlantic, South Atlantic, Central, and Midwest areas *SBSE CCS GCP WEST1 – includes the California and Western areas *SBSE CCS GCP WEST2 – includes the Gulf States areas e. The subject line of the e-mail should look like the following: B 4844 ASEDR; B = BMF; 4844 = Form number</p>
<p>The corporate taxpayer does not/cannot pay the trust fund portion but submits an offer anyway and all responsible persons agree to assessment of the TFRP(s)</p>	<p>a. Send the offer to the appropriate COIC site for processing. b. Generate Form 3210 and Letters 3820 and 3821 on APGolf and forward the OIC package to COIC per standard procedure. Caution: Do not secure a Form 2751. Instead, follow the Appeals Referral or Courtesy Investigation (ARI/OI) procedures listed below for "Trust Fund Investigations"</p>

If...	Then...
<p>The corporate taxpayer submits an offer without first paying the trust fund portion or without all responsible persons agreeing to assessment of the TFRP despite being previously advised of the need to do so by either Collection or Appeals</p>	<p>The offer must still be sent to the appropriate COIC site for processing:</p> <ol style="list-style-type: none"> Generate Form 3210 and Letters 3820 and 3821 on APGolf and forward the OIC package to COIC per standard procedure. If the offer is deemed processable, COIC will simply refer the processed offer back to Appeals per standard procedures. Appeals, however, may use the criteria used by Collection to "return" the offer as a basis to not accept the CDP/EH offer. You must still properly address any other issues raised as part of the CDP/EH case. Make sure the Determination/Decision Letter clearly states that the offer is rejected. This is necessary to properly close out the 24-month TIPRA period.
<p>The corporate taxpayer submits an offer without first paying the trust fund portion or agreeing to assessment of the TFRP and the taxpayer was not advised of such requirement by either Collection or Appeals</p>	<p>The offer must be sent to the appropriate COIC site for processing:</p> <ol style="list-style-type: none"> Generate Form 3210 and Letters 3820 and 3821 on APGolf and forward the complete OIC package to COIC per standard procedures. Do not attempt to secure a Form 2751. Instead, follow the ARI/OI procedures for "Trust Fund Investigations"
<p>Collection completes its investigation, issues Letter 1153 and one or more of the persons against whom the TFRP is proposed files an appeal</p>	<ol style="list-style-type: none"> The offer is considered submitted "solely to delay" collection and Appeals may use Collection's "return" criteria to deny the offer. You must still properly address any other issues raised as part of the CDP/EH case. Make sure the Determination/Decision Letter clearly states that the offer is rejected. This is necessary to properly close out the 24-month TIPRA period.

If...	Then...
Collection completes its investigation and either: <ul style="list-style-type: none"> • Secures the Form 2751 with required LEM 5.7 documentation • Issues Letter 1153 and none of the persons against whom the TFRP is proposed appeals 	Proceed with evaluating the offer because the TFRP assessment(s) is considered pending.
Collection completes its investigation and determines all potentially responsible persons meet the IRM 5.7.5 criteria for non-assertion based upon collectibility	a. Proceed with evaluating the offer because the TFRP assessment(s) are not applicable. b. Document Collection's non-assertion determination(s) in the case activity record.

(8) Appeals will **not** be involved in any aspect of:

- determining who is ultimately responsible for the TFRP
- determining whether the TFRP taxpayer meets IRM 5.7.5 criteria for non-assertion based upon collectibility, or
- securing a signed Form 2751, Proposed Assessment of Trust Fund Recovery Penalty

(9) Why Appeals should **not** ask a willing taxpayer to sign a Form 2751:

- a. A taxpayer who signs the Form 2751 retains the right to challenge the assessment by paying a divisible portion of the tax and filing a Form 843 refund claim and this refund claim comes with appeal rights.
- b. The independence of Appeals (or at least the perception thereof) can be compromised if the signed Form 2751 was originally secured by Appeals, especially if the corporate trust fund CDP offer is rejected.
- c. Appeals' is not generally able to sufficiently determine everyone who must sign a Form 2751 or secure the documentary evidence required under LEM 5.7.
- d. Appeals procedures in IRM 8.25.2.6 provide for securing a Form 2751, but only as part of a hazards of litigation settlement after Collection has completed the TFRP investigation.

(10) The hearing officer may also reject a corporate offer involving trust funds without payment of the trust fund balance or assessment of the TFRP as:

- a. public policy
- b. that acceptance is not in the government's best interest

(11) In "public policy" or "not in the best interest" rejections, RCP is not the issue causing Appeals to deny the offer so Appeals should not request Collection to complete a TFRP investigation when Appeals knows in advance the offer

cannot be accepted. Appeals Team Manager (ATM) concurrence is required before the hearing officer proceeds with closing the CDP offer without first asking Collection to complete the TFRP investigation.

Note: Delegation Order 5-1 must also be followed after the ATM agrees the public policy or the "not in the best interest" rejection is the appropriate basis for the offer's rejection and thus assessment of the TFRP is not needed.

(12) See IRM 5.8.7 for additional information.

8.22.2.4.7.10.1
(03-11-2009)

**Trust Fund Investigation
Courtesy Investigation
Procedures**

- (1) Prepare a Form 2209, Courtesy Investigation, to refer a case to a Collection Field group to complete the necessary TFRP investigation and assessment(s).
- (2) Follow the general ARI/OI procedures. See IRM 8.22.2.2.8, except Collection should complete the ARI/OI within 90 days instead of 45. The additional time is needed because section 6672(b) requires IRS to give the taxpayer 60 days to respond to the Letter 1153.

(3) In the "Remarks" section of the Form 2209 state:

"The taxpayer submitted an offer to compromise trust fund tax. Please complete a TFRP investigation in accordance with the procedures outlined in the January 28, 2008 memorandum from the Director of Collection Policy entitled *Interim Guidance for Corporate Trust Fund Offers in Compromise*. The earliest ASED expires _____."

- (4) Field Revenue Officers are responsible for all aspects of the TFRP, including ASEDs, on the CDP cases that originate from field Collection per IRM 5.1.9.3.7.
- (5) If there are fewer than six (6) month left on the earliest ASED on an offer received on a corporate CDP case originating in ACS, the Revenue Officer must follow the guidance in IRM 5.7.3.7. Prominently highlight the earliest ASED expiration date on the Form 2209.
- (6) Do not attach a copy of the Form 656 or provide details of the offer with the Form 2209. Collection is being asked to conduct a TFRP investigation and has no need for details about the underlying corporate offer.
- (7) Follow up with Collection within 30 days after the expiration of 90 days.
- (8) Because of ex parte concerns, be sure to limit the discussion to the investigation's completion date. Document such contact in the case activity record.
- (9) Once the TFRP investigation is complete, and the results are returned, proceed with evaluating the offer unless one or more of the principals appeals the proposed TFRP assessment. See above "If - Then" chart.
- (10) Collection is fully responsible for all aspects of assessing the TFRP against the responsible person(s). Appeals will not question Collections TFRP investigation results which is considered administrative information.
- (11) Appeals is not required to share the results of the TFRP investigation with the taxpayer under ex parte rules.

8.22.2.4.7.10.2
(03-11-2009)

Trust Fund Computation

- (1) The taxpayer has the option of paying the trust fund portion of the unpaid tax to have the corporate offer evaluated.
- (2) The corporate taxpayer also has the right to designate the OIC payments made prior to the offer being accepted, so there may be instances, such as receipt of a periodic payment offer, where Appeals needs to know the trust fund amount to apply designated payments properly.
- (3) In most instances, Appeals will be able to compute the trust fund amount simply by following the instructions in IRM 5.7.4.3.
- (4) In the cases where computing the trust fund amount is difficult or time-consuming because of multiple periods, numerous payments, TC 290/300 issues, etc., Collection has agreed to provide Appeals with the trust fund computations using the Automated Trust Fund Recovery (ATFR) program.
- (5) Forward an encrypted e-mail containing the corporate taxpayer's name, TIN, and the periods involved to the TPP analyst in charge of the OIC program.
- (6) Generally, the trust fund computation will be e-mailed back to the requestor within 5-7 business days.
- (7) To avoid ex parte concerns, provide the taxpayer with a copy of Collection's trust fund computation.

8.22.2.4.7.11
(03-11-2009)

OIC based upon Public Policy or Equity Considerations

- (1) Review Delegation Order 5-1, which is available at the Appeals OIC Home Page to determine the appropriate approving official.
 - a. If the offer is being accepted or rejected based upon public policy or equity considerations, approval from the Director of Field Operations is required and copies of the CDP ACM and OIC Form 5402 must be e-mailed to the OIC program analyst for Appeals Tax Policy and Procedure. See IRM 8.23.4.

8.22.2.4.8
(12-01-2006)

Requests to Collect from Third Parties

- (1) The Settlement Officer is only required to consider taxpayer assets, not third-party assets, when evaluating a collection alternative. However, it may be appropriate in certain situations, based on the credible evidence presented, to **consider** the extent third party assets are available to pay the liability, and whether withholding levy while third party assets are being liquidated may be a more efficient and less intrusive manner of collection.

Example: Taxpayers H and W are jointly and severally liable for 2000 income taxes. Pursuant to a divorce decree and court order, taxpayer W has assumed liability for the taxes and has property designated to be used to pay the liability. Taxpayer H in his CDP levy proceeding, presents documentation that his former wife has a contract to sell the property for an amount greater than the amount owed by the taxpayer, and that the proceeds will be put into escrow to pay the tax liability.

- (2) The hearing officer may grant the taxpayer a reasonable extension of time to pay based on the credible evidence presented that the assets are in the process of being liquidated and the amount is sufficient to full pay the liability; generally the extension should not exceed 120 days.

Note: The 120-day timeframe should not be confused with the short-term extension of time Collection no longer allows but rather a