

## Internal Revenue Manual Section 5.8.7.7.2 (10-07-2016)

### Public Policy Rejection

1. Policy Statement P-5-89, IRM 1.2.14.1.15, establishes that offers may be rejected on the basis of public policy if acceptance might in any way be detrimental to the interests of fair tax administration, even though it is shown conclusively that the amount offered is greater than could be collected by any other means, provided no ETA issues exist.

**Note:**

This section should not be confused with IRM 5.8.11.2.2, *Public Policy or Equity Grounds*, under ETA offers.

**Note:**

As a matter of policy, offers may not be accepted from any federal agency. If an offer is submitted by a federal agency, it should be rejected under public policy.

2. Offer acceptance reports are open to public inspection in accordance with Internal Revenue Code § 6103(k)(1), so the general public may be aware of any offer acceptance. A decision to reject an offer for public policy reason(s) should be based on the fact that public reaction to the acceptance of the offer could be so negative as to diminish future voluntary compliance by the general public. *Decisions to reject offers for this reason should be rare.*

**Note:**

Once a determination is made that a rejection under this basis is appropriate, a calculation of the taxpayer's ability to pay is still computed. The preliminary asset/equity and income/expense tables should be completed as discussed in IRM 5.8.4.7, *Initial Offer Actions*.

The extent of additional verification requested from the taxpayer 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.

After discussion with the taxpayer/representative, if the decision to reject the offer is appropriate, 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).

3. Below are some examples of situations that may warrant rejection based on a public policy decision.
  - The taxpayer has in the past, and continues to openly encourage others to refuse to comply with the tax laws.
  - Indicators exist showing that the financial benefits of a criminal activity are concealed or the criminal activity is continuing.

**Exception:**

Do not summarily reject, under public policy provisions, offers falling within the parameters of the specific guidance relative to an offer submitted by a taxpayer who is involved in the business of cultivating and selling marijuana, which is located in a state where the activity is permitted by statute, even while that activity remains a violation of federal law. The specific method of calculating an acceptable offer amount includes a determination of allowable expenses in accordance with current income tax law. Refer to IRM 5.8.5, *Financial Analysis* and related applicable guidance memorandum. If the taxpayer is unwilling to submit an acceptable offer based on the calculation involving allowable expenses for income tax purposes, rejection under public policy is appropriate.

- The taxpayer engaged in a pattern of conduct suggesting intentional dissipation of assets which was intended to circumvent the offer investigative process.

**Example:**

The taxpayer, a payroll service provider, has received from its clients payments of employment taxes in the amount of \$10 million. The taxpayer remits to the Service an amount equal to the trust fund portion of the employment taxes and designates the payment for application to the trust fund portion of the tax. The taxpayer pays no more of the employment tax. Meanwhile, the taxpayer dissipates all of its remaining assets, reducing its reasonable collection potential to \$0. The taxpayer then submits an OIC for \$10,000. Because the OIC exceeds reasonable collection potential, the taxpayer would qualify for the OIC on the grounds of doubt as to collectability. Nevertheless, the OIC should be rejected on public policy grounds.

- Fraud or identity theft is present and documented relative to the illegal use of an Individual Tax Identification Number (ITIN). This illegal activity may involve stolen, borrowed or purchased SSNs and there is continued fraudulent activity
4. An offer will not be rejected on public policy grounds solely because:
    - It would generate considerable public interest, some of it critical.
    - A taxpayer was criminally prosecuted for a tax or non-tax violation.
  5. The rejection narrative should discuss the specific public policy issues.
  6. Rejections of this type require the approval of the SB/SE Collection, Territory Managers (2nd level) in the field or SB/SE Compliance Services Operations Managers for COIC. Refer to IRM 1.2.44.2, *Delegation Order 5-1*, for approval authority.