

RULES and REGULATIONS

DEPARTMENT OF JUSTICE

28 CFR Part 0

[**Tax** Division Directive No. **139**]

Redelegation of Authority to Compromise and Close Civil Claims

Monday, March 21, 2011

AGENCY: Department of Justice.

***15212 ACTION:** Final rule.

SUMMARY: This Tax Division directive delegates to a Principal Deputy Assistant Attorney General all of the Assistant Attorney General's authority to compromise and close civil claims, except when such action is opposed by the client agency or agencies. This Tax Division directive further delegates settlement authority of the Chiefs of the Civil Trial Sections, the Court of Federal Claims Section, the Appellate Section, the Office of Review, and the Deputy Assistant Attorneys General, to compromise and close civil claims. In addition, this directive allows discretionary redelegation of limited authority by a Section Chief to his or her Assistant Chiefs and Reviewers. This directive supersedes Directive No. 135.

DATES: Effective Date: March 21, 2011.**FOR FURTHER INFORMATION CONTACT:** Deborah Meland, Tax Division, Department of Justice, Washington, DC 20530, (202) 307-6567.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to [5 U.S.C. 553](#), notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. This regulation is not a significant rule within the meaning of Executive Order 13866, as amended, and therefore was not reviewed by the Office of Management and Budget. This regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act. This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of [5 U.S.C. 801](#) does not apply.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and

functions (Government agencies).

Accordingly, 28 CFR part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE¹. The authority citation for part 0 continues to read as follows:

Authority: [5 U.S.C. 301](#); [28 U.S.C. 509, 510, 515-19](#).

28 CFR Pt. 0, Subpt. Y, App.

2. The Appendix to subpart Y of part 0 is amended by removing **Tax** Division Directive No. 135 and adding in its place **Tax** Division Directive No. **139**, to read as follows:

Appendix to Subpart Y of Part 0—Redelegations of Authority To Compromise and Close Civil Claims

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[**Tax** Division Directive No. **139**]

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly Sections 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is hereby ordered as follows:

Section 1. The Chiefs of the Civil Trial Sections, the Court of Federal Claims Section, and the Appellate Section are authorized to reject offers in compromise, regardless of amount, provided that such action is not opposed by the agency or agencies involved.

***15213** Section 2. Subject to the conditions and limitations set forth in Section 11 hereof, the Chiefs of the Civil Trial Sections and the Court of Federal Claims Section are authorized to:

(A) Accept offers in compromise in, settle administratively, and close (other than by compromise or by entry of judgment), all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$500,000;

(B) Accept offers in compromise in injunction or declaratory judgment suits against the United States in which the principal amount of the related liability, if any, does not exceed \$500,000; and

(C) Accept offers in compromise in all other nonmonetary cases;

provided that such action is not opposed by the agency or agencies involved, and provided further that the proposed compromise or concession is not subject to reference to the Joint Committee on Taxation.

Section 3. The Chiefs of the Civil Trial Sections and the Court of Federal Claims Section are authorized on a case-by-case basis to redelegate in writing to their respective Assistant Section Chiefs or Reviewers the authority delegated to them in Section 1 hereof to reject offers,

and in Section 2 hereof, to accept offers in compromise in, settle administratively, and close (other than by compromise or by entry of judgment), all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$250,000; provided that such redelegation is not made to the attorney-of-record in the case. Redelegations pursuant to this section shall be by memorandum signed by the Section Chief, which shall be placed in the Department of Justice file for the applicable case.

Section 4. Subject to the conditions and limitations set forth in Section 11 hereof, the Chief of the Appellate Section is authorized to:

(A) Accept offers in compromise with reference to litigating hazards of the issue(s) on appeal in all civil cases (other than claims for attorneys' fees, litigation expenses and court costs) in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$500,000;

(B) Accept offers in compromise in injunction [see sec. 2(B)] or declaratory judgment suits against the United States in which the principal amount of the related liability, if any, does not exceed \$500,000;

(C) Accept offers in compromise in, or settle administratively, all civil claims for attorneys' fees, litigation expenses and court costs in which the aggregate amount of the Government's concession on these claims does not exceed \$200,000, and in which the aggregate amount of the Government's concession in the case, exclusive of statutory interest, does not exceed \$500,000; and

(D) Accept offers in compromise in all other nonmonetary cases which do not involve issues concerning collectibility;

provided that (i) such acceptance is not opposed by the agency or agencies involved or the chief of the section in which the case originated, and (ii) the proposed compromise is not subject to reference to the Joint Committee on Taxation.

Section 5. The Chief of the Appellate Section is authorized on a case-by case basis to redelegate in writing to the Appellate Section's Assistant Section Chiefs the authority delegated to the Chief of the Appellate Section in Section 1 hereof to reject offers, and in Section 4 hereof, to:

(A) Accept offers in compromise with reference to litigation hazards of the issue(s) on appeal in all civil cases (other than claims for attorneys' fees, litigation expenses and court costs) in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$250,000; and

(B) Accept offers in compromise in, or settle administratively, all civil claims for attorneys' fees, litigation expenses and court costs in which the aggregate amount of the Government's concession on these claims does not exceed \$100,000, and in which the aggregate amount of the Government's concession in the case, exclusive of statutory interest, does not exceed \$250,000;

provided that such redelegation is not made to the attorney-of-record in the case. The redelegations pursuant to this section shall be by memorandum signed by the Chief of the Appellate Section, which shall be placed in the Department of Justice file for the applicable case.

Section 6. Subject to the conditions and limitations set forth in Section 11 hereof, the Chief of the Office of Review is authorized to:

(A) Accept offers in compromise and settle administratively claims against the United States in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$1,500,000; and

(B) Accept offers in compromise and close (other than by compromise or by entry of judgment), claims by the United States in all civil cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,500,000 or 15 percent of the original claim, whichever is greater;

(C) Accept offers in compromises in all nonmonetary cases; and

(D) Reject offers in compromise or disapprove concessions, regardless of amount;

provided that such action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned, and provided further that the proposed compromise or concession is not subject to reference to the Joint Committee on Taxation.

Section 7. The Chief, Office of Review, is authorized on a case-by-case basis to redelegate in writing to the office's Assistant Section Chief or Reviewer the authority delegated to the Chief, Office of Review in Section 6 hereof to reject offers, and in Section 6 hereof, to accept offers in compromise in, settle administratively, and close (other than by compromise or by entry of judgment), all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$750,000; provided that such redelegation is not made to the attorney-of-record in the case. The redelegations pursuant to this section shall be made by memorandum signed by the Section Chief, which shall be placed in the Department of Justice file for the applicable case.

Section 8. Subject to the conditions and limitations set forth in Section 11 hereof, each of the Deputy Assistant Attorneys General is authorized to:

(A) Accept offers in compromise and settle administratively claims against the United States in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$2,000,000;

(B) Accept offers in compromise and close (other than by compromise or by entry of judgment), claims by the United States in all civil cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed \$2,000,000 or 15 percent of the original claim, whichever is greater;

(C) Accept offers in compromise in all nonmonetary cases; and

(D) Reject offers in compromise or disapprove concessions, regardless of amount;

provided that such action is not opposed by the agency or agencies involved and the proposed compromise or concession is not subject to reference to the Joint Committee on Taxation.

Section 9. In addition to the actions authorized by Section 8 hereof, and subject to the conditions and limitations set forth in Section 10 hereof, a Principal Deputy Assistant Attorney General is authorized to:

(A) Accept offers in compromise and settle administratively claims against the United States in all civil cases, regardless of amount in all cases in which the Joint Committee on Taxation has indicated that it has no adverse criticism of the proposed settlement, provided that such action is not opposed by the agency or agencies involved.

(B) Consistent with, and subject to the limitations of, [28 CFR 0.168](#), and in the absence of an Assistant Attorney General, redelegate authority under this Directive to subordinate division officials and United States Attorneys.

Section 10. Subject to the conditions and limitations set forth in Section 11 hereof, United States Attorneys are authorized to:

(A) Reject offers in compromise of judgments in favor of the United States, regardless of the amount;

(B) Accept offers in compromise of judgments in favor of the United States where the amount of the judgment does not exceed \$300,000; and

(C) Terminate collection activity by his or her office as to judgments in favor of the United States which do not exceed \$300,000 if the United States Attorney concludes that the judgment is uncollectible;

provided that such action has the concurrence in writing of the agency or agencies involved, provided further that this authorization extends only to judgments which have been formally referred to the United States Attorney for collection.

Section 11. The authority redelegated herein shall be subject to the following conditions and limitations;

(A) When, for any reason, the compromise or concession of a particular claim, as a ***15214** practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in Sections 2, 3, 4, 5, 6, 7, 8, 9, and 10 hereof, the case shall be forwarded for review at the appropriate level for the cumulative amount of the affected claims;

(B) When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the United States Attorney involved, or any other considerations, the person otherwise authorized herein to take final action is of the opinion that the proposed disposition should be reviewed at a higher level, the case shall be forwarded for

such review;

(C) If the Department has previously submitted a case to the Joint Committee on Taxation leaving one or more issues unresolved, any subsequent compromise or concession in that case must be submitted to the Joint Committee, whether or not the overpayment exceeds the amount specified in [Section 6405 of the Internal Revenue Code](#);

(D) Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part 0 of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Associate Attorney General, or the Solicitor General;

(E) Authority to approve recommendations that the Government confess error in or to concede cases on appeal is excepted from the foregoing redelegations; and

(F) The Assistant Attorney General, at any time, may withdraw any authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Section 12. With respect to a claim by the United States (also sometimes referred to as a claim on behalf of the United States), the term “offer in compromise” as used in this Directive is any settlement of such a claim, except settlements in which the United States would receive nothing or virtually nothing in exchange for giving up its claim; and the term “to close (other than by compromise or entry of judgment),” refers to a settlement under which the United States would receive nothing, or virtually nothing in exchange for giving up its claim.

Section 13. For a claim against the United States, the term “offer in compromise” as used in this Directive is any settlement of such a claim, except settlements in which the United States would receive nothing, or virtually nothing, in exchange for conceding the claim against it; and the term “settle administratively,” means a settlement in which the United States would receive nothing, or virtually nothing, for conceding the claim against it.

Section 14. This Directive supersedes Tax Division Directive No. 135, which was effective November 21, 2007.

Section 15. This Directive shall become effective on March 21, 2011.

Dated: February 14, 2011.

John A. DiCicco,

Acting Assistant Attorney General.

[FR Doc. 2011-6530 Filed 3-18-11; 8:45 am]

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76 FR 15212-02, 2011 WL 938673 (F.R.)

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