

From the desk of Peter S. Muffoletto, C.P.A.

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Offers in Compromise

An Offer in Compromise (OIC) is a program for taxpayers who cannot pay their tax liabilities in full.

Both the IRS and many state and local taxing authorities have OIC programs

During 2018 the IRS accepted 24,000 offers which amounted to \$261.3 million in settled matters but also rejected 34,000 others offers.

The acceptance rate over the years has increased from 25 percent in 2010 to around 41 percent in 2018.

The IRS is more likely to approve offers that propose the presumed maximum amount of money they can expect to collect within a reasonable time period, in other words the much advertised ten cents on the dollar settlements are rare, and only take place with truly destitute individuals.

The taxing authorities review each situation to determine the maximum amount a taxpayer can afford to pay, and in many cases reject offers that are unreasonable.

A delinquent taxpayer needs to demonstrate one of three things:

- 1) That they cannot pay the full tax debt owed (doubt as to collectability);
- 2) That the tax is not actually owed (doubt as to liability);
- 3) That another unique situation applies where an offer is in the best interest of both your client and the IRS (effective tax administration).

Specific eligibility requirements, require that the taxpayer must:

- Have filed all tax returns up to and including the current year;
- Have received a bill for at least one tax debt included on their offer;

- Make all required estimated tax payments for the current year; and
- Make all required federal tax deposits for the current quarter (if they are a business owner with employees).

The IRS requires full financial disclosure with the OIC which is reported on the Form 433-A (OIC) along with numerous factors including income, expenses, asset equity, lifestyle, age, level of education and Collection Statute Expiration Date.

If the applicant's lifestyle is contradictory to the fact that they cannot pay their taxes it may be a serious obstacle for approval.

If the taxing authority considering an Offer finds this to be the case, an installment agreement maybe the alternative to consider where the total amount due is paid in full over a six year period.

Forms required when filing an OIC are as follows:

- Form 656 (Offer in Compromise) - Required to make the offer.
- Form 433-A (OIC): Collection Information Statement for Wage Earners and Self[1]Employed Individuals - Helps the IRS determine the nature and extent of the financial hardship.
- Form 433-B (OIC): Collection Information Statement for Businesses - This is a form similar to Form 433-A (OIC), but for businesses.

Negotiating the OIC

Should an OIC be rejected the taxpayer has the ability to file an appeal with the IRS via Form 13711 within 30 days of the date of the rejection notice.

Many state and local taxing authorities will not reconsider a rejected OIC for as much as six months to a year from the date of any rejection.

If accepted the appeal will give a taxpayer the opportunity to renegotiate their rejected offer.

To be successful in an appeal it is necessary to justify the new position by referencing documentation and tying it together with court decisions or other pertinent information.

While many who owe taxes that they cannot or are not willing to pay are prone to emphasize an emotional argument, this is rarely an effective approach, and generally will end with a rejected OIC.

Rejected OIC

If an OIC is rejected then other options should be planned for in advance such as an Installment agreement.

Installment agreements are more commonly effective and can be a viable option for taxpayers who cannot pay what they owe immediately.

Taxpayers who owe \$50,000 or less will have 72 months to repay debt or can waive the statute of limitations if it cuts their repayment short.

Taxpayers who owe \$50,000 to \$100,000 have 84 months to pay off their debt.

A payment extension can also be an option if a taxpayer needs additional time to pay off their debt.

The IRS can grant a 120-day extension, however if a taxpayer's account is already being handled by IRS Collections, that extension can only be 60 days.

Currently Not Collectible" (CNC) status

If the circumstances are such that a taxpayer is truly insolvent, and cannot meet their obligations in general, one can apply for a Currently Not Collectible status, but one must be able to prove their complete inability to pay.

As strange as it sounds, this status also applies to taxpayers the IRS cannot locate, or who have died with no heirs.

Once this status is approved, all collection will halt until further notice.

In order to qualify, the person must prove significant financial hardship in accordance with IRS criteria for hardship.

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