

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

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Offers in Compromise

The Offer in Compromise program is designed for taxpayers who cannot pay their tax liabilities in full.

The process is complex, the work intensive, and unfortunately, and OIC must be done correctly the first time as generally those which are incorrect, or incomplete are rejected without much recourse thereafter.

An effective OIC takes skill and understanding of the IRS Collection System.

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

A delinquent taxpayer needs to demonstrate one of three things:

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

When it comes to specific eligibility requirements, the taxpayer must:

- All tax returns must be filed with the IRS;
- The taxpayer must 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.

Many offers come afoul when the applicant's lifestyle is contradictory to the fact that they cannot pay their taxes. This fact alone will be a serious obstacle for approval. Many who owe significant taxes which in many cases was obtained due to the fact that they have not paid their taxes and diverted those funds to their lifestyle believe that they can continue to live in the manner that they have been living without making serious changes. The government is not interested in the various complaints as to why a delinquent taxpayer is living large while not paying their taxes. In many instances the IRS will not consider entertaining an OIC unless the delinquent taxpayer seriously reduces their living costs.

If that is the case an installment agreement maybe the alternative consideration 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-Employed Individuals – this is required by the IRS to determine the nature and extent of the financial hardship – again “living large” is looked upon in very negative terms in relationship to a possible settlement.
- Form 433-B (OIC): Collection Information Statement for Businesses - This form similar to Form 433-A (OIC), but for businesses.

Mistakes to avoid

- **Math errors on Form 433**
 - This form requires a significant amount of complex calculations and it is imperative to be correct in all aspects.

If something is calculated incorrectly the entire OIC process comes to a screeching halt until the mistake is sorted out.

Negotiating the OIC

If an OIC is rejected it is possible to submit an appeal via Form 13711 within 30 days of the date of the rejection notice.

If accepted the appeal will provide the 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.

If all other issues have been exhausted using case law is always appropriate.

While delinquent taxpayers often attempt to emphasize their emotional issues when asking for a settlement this is rarely an effective approach, and generally will end with a rejected OIC. The IRS's position is that unless the circumstances that led to the delinquency, emotional issues have nothing to do with the cold facts of a negotiated settlement. In many instances we have represented clients whose entire position is based upon their emotional issues such as divorce, how paying their taxes will negatively impact their lifestyle, and other factors that the IRS will not consider. An Offer in Compromise is a negotiated deal wherein the errant taxpayer promises to comply with all tax requirements for the following six years and pay the negotiated amount in full either in full payment, or in an installment arrangement. The rules for an OIC are quite strict, and not open to much latitude.

Rejected OIC

If an OIC is rejected, then other options should be planned for in advance.

Installment agreements are one of the other options 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 your client simply 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 can be granted to taxpayers who owe back taxes to the IRS but cannot pay.

This can also be for taxpayers who the IRS cannot locate or who have passed away with no heirs.

Once the Currently Not Collectible status is approved all collection will halt until further notice.

In order to qualify, the person needs to prove significant hardship which is necessarily difficult to obtain.

We here at Muffoletto & Company have extensive background in this arena.

**Should you believe that we can assist you in these matters,
give us a call.**

**We here at Muffoletto & Company believe that the more informed you are in regards
to the rules and regulations that affect you the more we can be of service.**

**Should you have questions relating to any
tax or financial matters call at
(818) 346-2160,**

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