

MAKING A DEAL WITH THE  
IRS: A LOOK AT THE OFFER IN  
COMPROMISE PROGRAM

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UNABLE TO PAY THE IRS?

- Options Available to Taxpayers
  - Offer in Compromise
  - Installment Agreement

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UNABLE TO PAY THE IRS?

- Options Available to Taxpayers
  - Currently Not Collectible Account Status
  - Bankruptcy

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### OFFER IN COMPROMISE

- Three Types
  - Doubt as to liability
  - Doubt as to collectibility
  - Offer based on effective tax administration

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### DOUBT AS TO LIABILITY

- Doubt exists as to whether or not the assessed tax is correct
- Financial statement is not required
- Offer is submitted on Form 656-L
- No application fee

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### DOUBT AS TO COLLECTIBILITY

- Doubt exists as to whether the taxpayer has sufficient assets or income to pay the entire liability
- Taxpayer must submit Form 433-A(OIC) and/or Form 433-B(OIC)
- Offer is submitted on Form 656

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**EFFECTIVE TAX ADMINISTRATION**

- There is no doubt that the tax liability is correct and no doubt that the IRS could collect the full amount of tax due within statutory period of collection

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**EFFECTIVE TAX ADMINISTRATION**

- Exceptional circumstances exist that allow the IRS to accept an amount less than the total balance due

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**EFFECTIVE TAX ADMINISTRATION**

- Taxpayer must show that collection of the tax would create an economic hardship or would be unfair and inequitable
- Taxpayer must submit Form 433-A(OIC) and/or Form 433-B(OIC)
- Offer is submitted on Form 656

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**OFFER IN COMPROMISE**

- Only assessed liabilities may be compromised
- No levy action while Offer is pending and for 30 days after rejection of Offer
- IRS generally files a tax lien

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**OFFER IN COMPROMISE**

- Statute of limitations on collection is suspended while Offer is pending
- If rejected, taxpayer has a right to appeal

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**DOUBT AS TO  
COLLECTIBILITY**

- Application fee is \$186
- Taxpayers below certain income levels may qualify for waiver of the application fee
- Offer is still processable if taxpayer is not in compliance

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**DOUBT AS TO COLLECTIBILITY**

- IRS will contact taxpayer and allow a reasonable amount of time to comply
- Offer Conditions
  - Taxpayer will comply with filing and payment requirements for five years after acceptance

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**DOUBT AS TO COLLECTIBILITY**

- Offer Conditions
  - Once IRS accepts the Offer, Taxpayer cannot contest the amount of the liability
  - IRS will resume collection action in event of a default

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**STREAMLINED OFFER IN COMPROMISE**

- Calculation of Reasonable Collection Potential
  - Consider 1 year of future income for Offers paid in 5 or fewer months
  - Consider 2 years of future income for Offers paid in 6 to 24 months

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**STREAMLINED  
OFFER IN COMPROMISE**

- Offers must be fully paid within 24 months

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**PAYMENT OPTIONS**

- Lump Sum Cash Offer-payable in 5 or fewer installments within 5 months
- Periodic Payment Offer-payable in full from 6 to 24 months

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**LUMP SUM CASH OFFER**

- Taxpayer must submit 20% of the amount offered with the Form 656
- Remaining balance due in five or fewer installments within 5 months upon written acceptance of Offer

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**PERIODIC PAYMENT OFFER**

- Taxpayer is required to submit a payment in the amount of the proposed installment payment with the Form 656 and continue making installment payments while IRS evaluates the Offer

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**PERIODIC PAYMENT OFFER**

- Offer amount includes realizable value of assets plus the amount the IRS could collect over 24 months

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**CALCULATION OF OFFER AMOUNT**

- Determine Value of Assets
  - Generally calculated at quick sale value (80% of fair market value)

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**CALCULATION OF OFFER AMOUNT**

- Determine Future Income
  - Multiply excess income over allowable living expenses by appropriate number of months determined by the selected payment

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**COLLECTION STANDARDS**

- National Standards
  - Food, clothing and miscellaneous
  - Out-of-pocket health care costs
- Local Standards
  - Housing and Utilities

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**COLLECTION STANDARDS**

- Combined National and Local Standards
  - Transportation expense

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### OTHER EXPENSES

- IRS may allow other expenses if they are necessary for the health, welfare or production of income
- IRS may allow conditional expenses if the liability plus accruals can be fully paid in six years

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### EFFECTIVE TAX ADMINISTRATION

- Equity
- Hardship
- Public Policy

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### IS THE OFFER A FEASIBLE OPTION?

- Considerations
  - Time remaining on collection statute
  - Amount of liability relative to taxpayer's resources

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**IS THE OFFER A  
FEASIBLE OPTION?**

- Considerations
  - Can the liability be paid with funds from borrowing against equity in assets?
  - Any defenses to the liability

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**IS THE OFFER A  
FEASIBLE OPTION?**

- Considerations
  - Can your client remain in compliance for five years if an Offer is accepted?
  - Release of liens required

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*Moore v. Commissioner*

- T.C. Memo 2019-129
- Taxpayer had trust fund recovery penalty liabilities and later incurred joint income tax liabilities
- Taxpayer filed an Offer, which was accepted by IRS

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*Moore v. Commissioner*

- Taxpayer later incurred additional liabilities
- Default of Offer in Compromise
  - Noncompliance with terms of Offer
  - IRS procedures with respect to default of Offer by taxpayer

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*Moore v. Commissioner*

- Default of Offer in Compromise
  - What defaults an Offer?
  - Was the taxpayer given a chance to cure the default before termination of the Offer?

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