

Section 9

Offer In Compromise (OIC)

An OIC is an agreement between a taxpayer and the IRS that resolves the taxpayer's tax liability. The IRS has the authority to settle (compromise) federal tax liabilities by accepting less than full payment under certain circumstances.

The Truth About the OIC Program

- An OIC is one of several collection alternatives available to qualified taxpayers who are determined to be unable to satisfy their tax liability in full.
- In most instances, the Service looks to this particular collection alternative only after it has explored all other available payment options.
- Absent any special circumstances, taxpayers who are able to pay their liability via an installment agreement generally will not be considered for an offer.
- The Service resolves less than 1% of its balance due accounts via this collection method.
- The IRS cautions that the OIC program is not a program for everyone with financial problems, and it should not be viewed as an invitation to avoid or delay paying taxes.
- The Service's compliance objective is to ensure that tax returns are filed in a timely manner and that all taxes due are paid as quickly as possible.
- By paying the taxes due in a prompt fashion, taxpayers will reduce the amount of interest and penalty owed.
- By law, the IRS has the authority to collect outstanding federal taxes for ten years from the date of the assessment.
- The statute of limitations for collection is suspended while an offer is pending.

What can a taxpayer do to assist the Service in providing a timely decision on the offer submission?

- 1) Correctly complete and file the appropriate forms. Only the May 2001 revision of [Form 656](#), [Form 433-A](#), and [Form 433-B](#) will be accepted.
- 2) Meet the eligibility requirements:
 - Not a candidate for an installment agreement.
 - Filed all required federal tax returns.
 - Not involved in an open bankruptcy proceeding.
 - If in business, filed and deposited all employment taxes on time for the two quarters prior to filing the offer and are current for the quarter in which the offer was submitted.

- If self-employed, deposited all required estimated tax payments for any unfiled years including the current calendar year.
- 3) Accurately value and submit the appropriate documentation to verify assets, income, and expenses.
- 4) The minimum offer amount must equal or exceed your Reasonable Collection Potential (RCP). The RCP is the total realizable value of your assets plus a portion of your future income. For wage earners and self-employed individuals, complete the worksheet in the [Form 656](#) package.
- 5) Fully document your special circumstances (Form 656 – Item 9). Special circumstances only apply to individuals, not businesses.

Submitting an OIC

- Effective May 1, 2002: Forms 656, 433-A, and 433-B with a revision date of May 2001 must be used.
- The forms bearing the revision date of May 2001 have been shown to be much easier for the Service to evaluate and ultimately will improve the Service's timeliness in handling offer investigations as well as overall customer service.
- Submission of forms with any other revision dates will result in the offer being returned as not processable.
- The Service will include the latest revisions with its return notification. Taxpayers wishing to have their offer reconsidered should resubmit the forms on the correct version.

Reasons to Complete an OIC

- Doubt as to Liability – doubt exists that the assessed tax is correct.
- Doubt as to Collectibility – doubt exists that the taxpayer could ever fully pay the tax liability during the life of the statute plus any extensions allowed by law.
- Effective Tax Administration – there is no doubt the tax is correct, and no doubt the amount owed could be collected, but an exceptional circumstance exists that allows the Service to consider the offer. The taxpayer must demonstrate that collection of the tax would create an economic hardship or would be unfair and inequitable.

Payment Options

- Cash – less than 90 days.
- Short -Term Deferred Payment – more than 90 days, and up to 24 months.
- Deferred Payment – offers with payment terms over the remaining statutory period for collecting the tax.

Reasonable Collection Potential (RCP)

The Service is observing a large upsurge of receipts in which the amount offered is clearly much lower than the RCP illustrated on the taxpayer's financial statement. In a large number of these cases, the financial statement also shows that the taxpayer has a clear ability to satisfy the liability in full, or via an installment agreement, and there are no special circumstances cited by the taxpayer.

- A taxpayer's RCP is defined as the total of the taxpayer's realizable value in real and personal assets, plus a portion of their future income.
- Unless the taxpayer files an offer claiming special circumstances, the offered amount must equal or exceed the reasonable collection potential.
- Realizable value is the asset's quick sale value (amount which could be reasonably expected through the sale of the asset, minus what the taxpayer owes to a secured creditor).
- We generally determine the amount we could collect from your future income by subtracting necessary living expenses from your monthly income over a set number of months. For a cash offer, you must offer what you could pay in monthly payments over 48 months (or the remainder of the 10-year statutory period for collection, whichever is less). For a short-term deferred offer, you must offer what you could pay in monthly payments over 60 months (or the remainder of the statutory period for collection, whichever is less). For a deferred payment offer, you must offer what you could pay in monthly payments during the remaining time we could legally receive payments.

Centralized Offer In Compromise (COIC)

- On July 23, 2001, the Service centralized its offer processing operations at two IRS campuses – Brookhaven and Memphis. On June 12, 2002, the Service implemented enhancement procedures, which outlined the types of cases which will be worked in the centers and which will be investigated by the field offices. The centers will work all offers submitted by wage earners, pensioners, and those on disability regardless of the amount of the liability. The field offices will work all other types of taxpayers (e.g., corporations, partnerships, doubt as to liability, self-employed, and sole proprietors). In addition, the following offers when received in the field will be retained in the field:
 - Any offer that is related to an offer already in "field offer" inventory.
 - Any offer from a taxpayer when field revenue officers are already working the balance due.
- Offer processability determinations will continue to be performed at one of the two campuses according to that taxpayer's state residency.

- Both campuses will be responsible for processability determinations, case development for cases submitted by wage earners, self-employed, and sole proprietors, as well as full investigations on all wage earners, pensioners, and those on disability.
- Process Examiners will make the processability determinations, while Offer Examiners will perform the investigation.

Dispositions of Offers as:

1) Offers that are returned without investigation

A) Non-Processable Offers*

Offers are considered nonprocessable and returned without any investigation in the following circumstances:

- The taxpayer has not filed all required federal tax returns.
- The taxpayer is involved in an open bankruptcy proceeding.
- If in business, the entity has not filed and deposited all employment taxes on time for the two quarters prior to filing the offer, and/or is not current for the quarter in which the offer was submitted.
- The taxpayer has not filed the offer application and financial statements on the forms bearing the revision date of May 2001.
- If self-employed, the taxpayer has not deposited all required estimated tax payments for any unfiled years including the current calendar year.

*This type of disposition does not require an independent administrative review prior to taxpayer notification and does not afford the taxpayer any rights to appeal the decision.

B) Return of a Processable Offer

- 1) The Service issues a written request to the taxpayer to submit financial verification documents which, although outlined on the offer application, were not included at the time the offer was filed, and the taxpayer fails to respond to the request.
- 2) The offer is determined to have been filed solely to delay and/or hinder collection activity in the following specific situations, unless doubt as to liability or special circumstances exist, when:
 - a) An offer is re-submitted after a return or rejection, and the offer is essentially the same as the previously returned or rejected offer, or the new offer fails to address the problems or defects which were cited during the previous offer investigation.
 - b) An offer is re-submitted after a prior offer has been accepted and the prior offer has been defaulted.

- c) A collection determination has been made and the offer is clearly submitted to avoid a specific enforcement action.*
- An offer is not considered submitted solely to delay collection just because a collection statute is about to expire, or because an offer has been investigated and rejected, and the taxpayer exercises his/her appeal rights.
 - The determination that an offer was submitted solely to delay collection may be made at any time after the offer is determined processable or during the offer investigation when the facts support the determination.
- 3) An offer will be returned during the investigation if the taxpayer does not demonstrate compliance with estimated tax payments, and fails, and/or neglects, to make the required estimated tax payment(s).

*Only Option B2) c) requires an independent administrative review prior to the return notification being issued to the taxpayer. The taxpayer is not entitled appeal a return determination.

2. Offers that are rejected

All rejection recommendations must be reviewed by an independent reviewer prior to taxpayer notification. The taxpayer is entitled to appeal all rejection determinations.

- 1) If the financial analysis demonstrates that the taxpayer has an ability to fully pay the liability either from equity in assets, or via installment payments within the remaining time on the collection statute, or a combination of both, the Service will issue a "rejection with options" letter. The letter will provide the taxpayer with an opportunity to withdraw the offer, pay the liability in full, enter into an installment agreement to fully pay the liability via installment payments, and/or present evidence to support the existence of special circumstances that would prevent him/her from paying the debt in full. A decision to reject with appeal rights is adequately justified by the taxpayer's self-disclosed ability to pay in full. The Service will not contact the taxpayer to submit any documents that may not have been attached to the collection information statement.
- 2) If the financial analysis demonstrates that the taxpayer does not have the ability to fully pay the liability, but has not offered his/her reasonable collection potential, the Service will issue a "rejection with options" letter requesting that the taxpayer increase the offer or provide an explanation to support the existence of special circumstances. The taxpayer will also be afforded the option to withdraw the offer and set up an installment agreement.

- 3) If the financial information submitted by the taxpayer when compared with data secured through internal electronic sources indicates a discrepancy, the Service will issue a “rejection with options” letter requesting that the taxpayer explain the discrepancy and/or submit a timely appeal protest. Failure to respond to the letter and/or to submit an adequate response to the discrepancy will cause the offer to be rejected with appeal rights as long as a timely protest is received.

The Independent Administrative Review process was established as a result of the passage of the Restructuring and Reform Act of 1998. It requires that an independent administrative reviewer review all rejection recommendations before the offer examiner communicates the rejection to the taxpayer.

3. Offers that are accepted

- When the Service determines that an acceptance is appropriate, the Service may also request that taxpayer sign an additional agreement requiring him/her to pay a percentage of his/her future earnings, and/or to waive certain present or future tax benefits.
- The taxpayer must pay the offer amount as quickly as possible in accordance with the acceptance agreement.
- As additional consideration beyond the amount that has been accepted, the Service will keep any tax refund, including interest, due as a result of an overpayment of any tax or other liability for the tax period extending through the calendar year that the Service accepts the offer.
- A taxpayer may not designate a refund and/or overpayment to be applied to estimated tax payments for the following year. This condition does not apply if the offer is based on Doubt as to Liability.
- The taxpayer waives any/all rights to contest in court or otherwise, the amount of the tax liability.
- If a Notice of Federal Tax Lien has been filed, the Service will release it at the time the taxpayer has satisfied the payment terms of the offered amount.
- The taxpayer must remain in compliance with filing and payment of all tax returns for a period of five years from the date the offer is accepted. Failure to pay the offer amount on time, and/or to remain in compliance during the five-year period, will result in the offer being declared in default.

Offers that are in Default

- The Service may perform the following actions on defaulted offers:
 - a) Immediately file suit to collect the entire unpaid balance of the offer.
 - b) Immediately file suit to collect an amount equal to the original amount of the tax liability as liquidating damages, minus any payment already received under the terms of this offer.
 - c) Disregard the amount of the offer and apply all amounts already paid under the offer against the original amount of the tax liability.
 - d) File a Notice of Federal Tax Lien on any tax periods not previously covered by a Service lien.
 - e) File suit or levy to collect the original amount of the tax liability, without further notice of any kind.

- The Service will not default your offer agreement when you have filed a joint offer with your spouse or ex-spouse as long as you have kept or are keeping all the terms of the agreement, even if your spouse or ex-spouse violates the future compliance provision.

Offer In Compromise (OIC) – Frequently Asked Questions and Answers

Q.) What is an OIC?

A.) An OIC is an agreement between a taxpayer and the IRS that resolves the taxpayer's tax liability. The IRS has the authority to settle, or compromise, federal tax liabilities by accepting less than full payment under certain circumstances. The IRS may legally compromise for one of the following reasons:

- 1) Doubt as to Liability: Doubt exists that the assessed tax is correct.
- 2) Doubt as to Collectibility: Doubt exists that the taxpayer could ever pay the full amount of tax owed. The minimum offer amount must generally be equal to (or greater than) the taxpayer's RCP. The RCP is defined as the total of the taxpayer's realizable value in real and personal assets, plus their future income.
- 3) Effective Tax Administration: There is no doubt that the tax is correct and no doubt that the amount owed could be collected in full, but exceptional circumstances exist that allow the Service to consider the offer. The taxpayer must demonstrate that collection of the tax would create an economic hardship or would be unfair and inequitable.

Q.) What do I need to know if I want my offer to be reviewed by the Service?

A.) If you are thinking of filing an OIC, you must understand the Service looks at the OIC option only after it has explored all other available payment options. Absent any special circumstances, a taxpayer who is able to pay his/her liability via an installment agreement generally will not be considered for an offer. The use of the offer option is based on an inability to pay, as well as the specific circumstances of the taxpayer. The Service accepts less than 1% of its balance due accounts via this collection method. Listed below are key provisions of the program. Compliance with these provisions will assist the Service in rendering a timely decision on your offer.

- 1) Correctly complete and file the appropriate forms – only the May 2001 revision of Forms [656](#), [433-A](#) and [433-B](#) will be accepted.
- 2) You must meet the eligibility requirements:
 - Not a candidate for an installment agreement.
 - Filed all required federal tax returns.
 - Not involved in an open bankruptcy proceeding.
 - If in business, filed and deposited all employment taxes on time for the two quarters prior to filing the offer and are current for the quarter in which the offer was submitted.
 - If self-employed, deposited all required estimated tax payments for any unfiled years including the current calendar year.
- 3) Accurately value and submit the appropriate documentation to verify assets, income, and expenses.
- 4) The minimum offer amount must equal or exceed your RCP. The RCP is the total realizable value of your assets, plus a portion of your future income. For wage earners and self-employed individuals, complete the worksheet in the Form 656 package.
- 5) Fully document your special circumstances (Form 656, Item 9). Special circumstances only apply to individuals, not businesses.

Q.) Can I settle my taxes by offering pennies on the dollar?

A.) You must offer an amount greater than or equal to the total realizable value of all your assets, plus a portion of your future income. That total is generally your RCP, and not simply an offer of cents on the dollar, or a percentage of the debt. The IRS cautions that the OIC program is not designated to be a program for everyone that owes federal taxes, and it should not be viewed as an invitation to avoid paying taxes.

Q.) What is Reasonable Collection Potential (RCP)?

A.) A taxpayer's RCP is defined as the total of the taxpayer's realizable value in real and personal assets, plus a portion of his/her future income. Unless the taxpayer files an offer claiming effective tax administration, the offered amount must equal or exceed the reasonable collection potential. Realizable value is the asset's quick sale value (amount which could be reasonably expected through quick sale of the asset), minus what the taxpayer owes to a secured creditor.

Future income is generally determined by subtracting necessary living expenses from your monthly income over a set number of months. For a cash offer, you must offer what you could pay in monthly payments over 48 months (or the remainder of the 10-year statutory period for collection, whichever is less). For a short-term deferred offer, you must offer what you could pay in monthly payments over 60 months (or the remainder of the statutory period for collection, whichever is less). For a deferred payment offer, you must offer what you could pay in monthly payments during the remaining time we could legally receive payments.

Q.) What happens if I miscalculate my offer or do not offer an amount equal to my RCP?

A.) The Service will issue a "rejection with options" letter requesting that the taxpayer increase the offer or provide an explanation to support the existence of special circumstances. The taxpayer will also be advised of his/her appeal rights. In instances where the taxpayer fails to increase the offer and/or submits information that would support special circumstances, but does request a timely appeals conference, the offer will be rejected and the case file will be forwarded to Appeals for further consideration.

The Service also reviews offers for indications of fraudulent intent. Submitting an offer with false information or making a false statement to an Offer Examiner or Officer is considered to be an indication of fraudulent intent. Remember, you sign the forms under penalties of perjury.

Q.) What if I do not qualify for an Installment Agreement?

A.) In situations in which an installment agreement is not appropriate due to your individual circumstances, you will be asked to consider filing an OIC. An Offer Examiner will evaluate your offer and may request that you increase your offer amount, and/or provide additional documentation to verify your particular situation. The examiner will return your offer without further investigation if you fail to reply to the request(s), and you will not have the ability to appeal this decision. If you do respond to the Service's request, an Offer Examiner will then make a recommendation to accept or reject your offer. If your offer is rejected, you will be notified in writing and provided an opportunity to appeal this decision.

You must request an appeals conference no later than 30 days from the date in your rejection letter.

If your offer is accepted, you will be expected to comply with the payment terms outlined in the offer, as well as to remain in compliance with all filing and payment requirements for a period of five years or however long the offer payment terms have been established. Failure to comply with the offer payment terms, or remain in compliance with future filing and/or payment requirements, would result in your offer being declared in default.

Q.) I qualify for an Installment Agreement, but I want to submit an OIC.

A.) If you can fully pay your tax liability through an Installment Agreement, it is not likely you will have an acceptable offer. In most instances, your offer will be rejected with options (e.g., withdraw the offer and enter into an installment agreement). You will be afforded the right to appeal the decision. An exception is provided in situations in which a taxpayer can demonstrate that exceptional circumstances exist that would result in economic hardship or could be detrimental to voluntary compliance due to the inequity that it would create if full payment were to be pursued.

Q.) What are the eligibility requirements to file an OIC?

A.) You are eligible for consideration of an OIC based on doubt as to collectibility or effective tax administration if:

- Not a candidate for an installment agreement.
- Filed all required federal tax returns.
- Not involved in an open bankruptcy proceeding.
- If in business, filed and deposited all employment taxes on time for the two quarters prior to filing the offer and are current for the quarter in which the offer was submitted.
- If self-employed, deposited all required estimated tax payments for any unfiled years including the current calendar year.

Q.) What do I need to do first?

A.) You need to obtain [Form 656](#), Offer in Compromise package (revision 5/2001). The package includes information and instructions for completing the form, as well as a worksheet that wage earners and self-employed individuals can use to calculate an offer amount. Also included is [Form 433-A](#), Collection Information Statement (CIS) for Wage Earners and Self-Employed Individuals, and [Form 433-B](#), CIS for Businesses. You are expected to provide reasonable documentation to verify your ability to pay. No financial information is required when the OIC is submitted solely on the basis of doubt as to liability.

Effective May 1, 2002: Forms 656, 433-A, and 433-B with a revision date of May 2001 must be used. The forms bearing the revision date of May 2001 have been shown to be much easier for the Service to evaluate and ultimately will improve the Service's timeliness in handling offer investigations as well as overall customer service. Submission of forms with any other revision dates will result in the offer being returned as not processable. The Service will include the latest revisions with its return notification.

Q.) Are the forms available on-line?

A.) Yes. Form 656, Offer In Compromise, Form 433A, CIS for Individuals, and Form 433-B, CIS for Businesses, can be found at www.irs.gov, or by calling 1-800-TAXFORM. The Web version can be downloaded and printed. Once completed, the taxpayer must mail the forms to the Service for consideration.

Q.) What if I submit an offer on an incorrect revision of Forms 656, 433-A, and 433-B?

A.) The offer will be declared not processable and will be returned to you, along with the correct forms to be completed. Should you want to pursue the offer as a way to satisfy your tax liability, you will have to resubmit the forms on the required May 2001 revision in order to have the offer considered for investigation.

Q.) What if the forms I submit are incomplete and/or supporting documents are missing?

A.) The Brookhaven and Memphis Campuses currently process most incoming offers. They estimate that over half of the offer forms and financial statements require corrections. The Service's "perfection offer stage" requires that a taxpayer be contacted in writing and provided a one-time opportunity to correct the error(s), and/or to provide the appropriate supporting documentation. Failure to correct the error(s), and/or to respond with the required information, results in the offer being returned to the taxpayer without further action by the Service. A taxpayer does not have the right to appeal this decision.

Q.) What are some of the common errors made in submitting an OIC?

A.) The following are errors that require the Service to return the forms to the taxpayer for correction. This correction process causes delays in the processing of offers.

- Forms 656 and CIS not submitted on revision dated May 2001.
- Incorrect valuation of assets.
- Incorrect calculation of reasonable collection potential (e.g., taxpayer's assets plus future ability to pay).
- Altered Form 656.
- Missing or incorrect name, address, or TIN on Form 656.
- No amount offered on Form 656 (exception: doubt as to liability offers).
- No tax liability is shown on Form 656.
- Not all tax liability periods are listed on Form 656.
- Missing financial statements.
- Missing Power of Attorney (Form 2848) when not already on file with the Service.
- Tax periods included where no tax is due.

Q.) What are the allowable expenses for 2002?

A.) The IRS has updated the national and local standards used to determine a taxpayer's ability to pay taxes owed. These updated standards will be effective for all cases where the financial analysis is completed on or after January 1, 2002.

The allowable expense standards that are changing for 2002 include "Housing and Utilities Standards" and the "Transportation Standards – Ownership Costs." All other allowable expense categories, and the National/Alaska/Hawaii Standards, and the Transportation Standards-Operating Costs, will remain the same as last year. Tax practitioners and taxpayers can obtain the updated national and local standards from the IRS Web site at [Collection Financial Standards](#).

The Housing and Utilities Standards are based on the 2000 Census and are adjusted to current costs using the most current average annual Consumer Price Index. For the IRS' allowable expense standards, county Census data is used. As with the Transportation Standards, the Housing and Utilities Standards are based on data for a specific area. Census data provides median costs for each county.

The IRS will soon begin a methodology review to set 2003 allowable expenses. This review will be used to determine allowable expense criteria and will consider any resulting recommendations to improve the process in time for next year's (2003) allowable expense guidelines. Fiscal year 2000 census data will be

available for the 2003 analysis. For more information about allowable expenses, visit the IRS Web site at <http://www.irs.gov/>.

Q.) What do I need to submit to have an Effective Tax Administration offer considered?

A.) To receive consideration on this basis, a taxpayer must submit:

- Form 656 – Offer in Compromise (revision 5/2001).
- Collection Information Statement (Form 433-A and/or Form 433-B, revision 5/2001).
- A detailed written narrative. The narrative must explain the exceptional circumstances and why payment of the tax liability in full would either create an economic hardship or would be unfair and inequitable.

In order to be eligible for further consideration, the taxpayer's CIS (Form 433-A and/or Form 433B – revision 5/2001) must reflect that his/her total assets and future ability to pay exceed his/her total accrued tax liability. The Service will establish that there is no doubt as to liability and no doubt as to collectibility. Hence, an offer filed under Effective Tax Administration can only be considered once the Service determines that the tax liability is correct and collectible in full. As part of its investigation and ultimate determination to accept or reject the offer, the Service will consider the taxpayer's overall history of filing and paying taxes, as well as determine whether acceptance of such an offer would be detrimental to the public's general voluntary compliance.

Q.) How much interest will I pay?

A.) Submitting an offer does not stop the running of interest. However, if the offer is accepted, the terms of the offer will set the amount you have to pay, which may or may not include some payment toward interest. If you make the payment under the terms of the accepted offer, you won't have to pay interest in addition to the offer amount. If your offer is not accepted, however, you will be liable for interest that has accrued while the offer is pending.

Q.) Can I file an OIC to delay collection action?

A.) No. To focus IRS resources on true opportunities for account resolution, the Service has clarified when it is appropriate to return offers clearly intended to delay collection action. The new return criteria were communicated to all field personnel and became effective in August 2001. For purposes of these procedures, the term "solely to delay" collection means an offer that was submitted for the sole purpose of avoiding or delaying collection activity. These procedures now allow the Service to return an offer back to a taxpayer without any further investigation when it is determined that the offer has been filed solely to delay collections. An offer is considered as acting to delay collection activity in

the following three specific situations, unless doubt as to liability or special circumstances exist, when:

- An offer is re-submitted after a return or rejection where the new offer is essentially the same as the prior returned or rejected offer, or the new offer fails to address problems or defects of which the taxpayer was advised during the prior offer investigation.
- An offer is re-submitted after a prior offer has been accepted and subsequently defaulted.
- A collection determination has been made and the offer is clearly submitted to avoid a specific enforcement action.

NOTE: The determination that an offer was submitted solely to delay collection may be made at any time after the offer is determined processable or during the offer investigation when the facts support such a determination.

Q.) What if my offer is accepted?

A.) If your offer is accepted:

- You must pay the offer amount as quickly as possible in accordance with the acceptance agreement.
- As part of the agreement, the IRS will keep any overpayment of any tax or other liability including interest for tax periods extending through the calendar year that the IRS accepted the offer. You may not designate an overpayment to be applied to estimated tax payments for the following year. This does not apply if the offer is based on doubt as to liability.
- You waive your right to contest in court or otherwise, the amount of the tax liability.
- If a Notice of Federal Tax Lien has been filed, the Service will release it when you have satisfied the payment terms of the offer. For an immediate release of a lien, you may submit certified funds with a letter requesting immediate release.
- You must remain in compliance with filing and payment of all of your tax returns for a period of five years from the date your offer is accepted. Failure to pay the offer amount on time, and/or to remain in compliance during the five-year period, will result in your offer being declared in default.

Q.) Are there any additional conditions that might be added?

A.) Yes, when you submit certain offers, the Service may also request that you sign an additional agreement requiring you to pay a percentage of your future earnings, and/or to waive certain present or future tax benefits.

Q.) What happens if I do not meet all the terms of my accepted offer?

A.) The IRS may default the offer and reinstate the entire tax liability, less all payments and credits received including those made on the offer.

Q.) What happens if I do not file my required tax return next year?

A.) Your offer will be defaulted. An offer requires future compliance for a period of five years from the date of acceptance of the offer in compromise. Compliance is timely filing and paying of required taxes and/or returns.

Q.) What happens if I default my offer?

A.) The Service may perform the following actions:

- Immediately file suit to collect the entire unpaid balance of the offer.
- Immediately file suit to collect an amount equal to the original amount of the tax liability as liquidating damages, minus any payment already received under the terms of this offer.
- Disregard the amount of the offer and apply all amounts already paid under the offer against the original amount of the tax liability.
- File a Notice of Federal Tax Lien on any tax periods not previously covered by a Service lien.
- File suit or levy to collect the original amount of the tax liability, without further notice of any kind.

NOTE: If you have filed a joint offer with your spouse or ex-spouse, the Service will not default your offer agreement as long as you have kept or are keeping all the compliance conditions of the agreement, even if your spouse or ex-spouse violates the future compliance provision.

Q.) Are federally funded student loans an allowable expense?

A.) The repayment of a student loan(s) secured by the federal government is allowed as an expense in an offer investigation only if it is to pay for the taxpayer's higher education. If the loans are owed, but it is determined that there have been no payments on same, they will not be considered.

Q.) How are income and expenses considered for a married couple when only one spouse is liable for the liability and has filed an offer?

A.) The assets and income of the non-liable person are excluded in calculating the taxpayer's ability to pay, except in community property states. Regardless of whether the case involves a community property state, the Service will require sufficient information from the non-liable spouse to determine the taxpayer's

proportionate share of the total household income and expenses. In this analysis, the Service determines the following:

- The total household income and expenses.
- Taxpayer's total percentage contribution towards household income.
- Taxpayer's necessary allowable expenses.
- Expenses that are shared and those that are the taxpayer's sole responsibility.
- Apply the taxpayer's percentage of income to the shared expenses.
- Disallow all payments by the taxpayer towards the non-liable spouse if these are considered discretionary expenses.

Q.) How many offers should be filed by a married couple when they have a joint liability and a liability that is only owed by only one spouse?

A.) Two offers, one for the joint liability, and one for the sole liability.

Q.) Is the issue of imminent bankruptcy, or the fact that taxes could be fully dischargeable in bankruptcy, factored in the offer calculations?

A.) In determining the taxpayer's RCP, the Service considers what amount could be collected through bankruptcy, and determines what liability and amount would be discharged. In arriving at an acceptable offer amount, the following issues are considered:

- Is the Service the taxpayer's sole or major creditor?
- Will taxes be discharged in bankruptcy?
- Does the offer amount submitted by the taxpayer equal/exceed what the Service could reasonably expect to recover from bankruptcy?
- Will there be the ability to collect from liabilities that are not dischargeable or from property outside of the bankruptcy (e.g., exempt property)?

The decision should be based on factual information that leads the Service to the belief that bankruptcy is seriously being considered by the taxpayer. If it is indeed determined that the some of the tax liability will be dischargeable, this issue should be factored in arriving at an acceptable offer amount. Under no circumstances would the Service accept less than what would be recoverable from a Chapter 7 bankruptcy unless special circumstances exist. In most Chapter 7 bankruptcies, the amount acceptable for an offer should include the amount that could be reasonably recovered from the bankruptcy, in addition to what can be collected from the taxpayer on non-discharged liabilities or from property outside the bankruptcy.

Note: Last revision date – 06/24/02. If you need the most current information after this date, please contact your local IRS office.