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Offers in Compromise to the IRS

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Research Guides

Offers in Compromise to the IRS

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Guide Index

Home
Primary Sources
Secondary Sources
Additional Assistance
IRS Forms

Home

Introduction

When a taxpayer owes a tax debt to the IRS, there are a variety of ways that the taxpayer can deal with that liability. One option that the taxpayer has is to submit an offer in compromise to the IRS. An offer in compromise asserts that during the statutory period of collection for the taxes at issue (which is ten years from assessment, but is tolled for a variety of reasons) the IRS will not be able to collect the liability from the taxpayer in full. The taxpayer then offers an amount that he or she will be able to pay, which depends on the income and assets of the taxpayer.

Offers in compromise essentially amount to settlement negotiations between the taxpayer and the IRS, and they are often successful and helpful for both the taxpayer and the IRS. The taxpayer does not have to pay the full amount owed and can generally determine the terms by which he or she will pay, and the IRS does not have to engage in laborious collection activities to end up only collecting a portion of the taxpayer's liability.

Scope

This research guide covers offers in compromise for federal income tax liability, governed by § 7122 of the Internal Revenue Code. It details the relevant primary sources that underlie offers in compromise, as well as explanatory secondary sources that clarify the statutes and regulations and provide a more practical point of view. Additionally, this research guide provide links to the forms and instructions necessary for an offer in compromise, and it provides links to associations and interest groups that can provide more assistance with the offer in compromise process.

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About the Author

Alison Makins is 2011 J.D. Candidate at Georgia State University College of Law. Alison's studies in law school focused primarily on federal tax law, and she spent three semesters as a student attorney in the law school's Low-Income Taxpayer Clinic. In 2011, she won the Paul D. Coverdell Clinic Service Award for her work with clients and her success in defending them against the IRS. This bibliography was compiled in April 2011 for Advanced Legal Research, a class taught by Professor Nancy P. Johnson.

Back to Top

Primary Sources

Statutes

26 U.S.C. §7121 - Closing Agreements

This section allows the Secretary of the Treasury to enter into written agreements with taxpayers or their authorized representatives regarding the taxpayer's tax liability for any tax period.

26 U.S.C. §7122 - Compromises

This section allows the Secretary of the Treasury to compromise any civil or criminal case arising under the internal revenue laws. It outlines the various types of offers and provides special allowances for low-income taxpayers and taxpayers contesting their liability.

26 U.S.C. §6343 - Authority to Release Levy and Return Property

This section allows the Secretary of the Treasury to release a levy and cease collection activities against a taxpayer for a variety of reasons, one of those reasons being economic hardship to the taxpayer if the levy continued.

Treasury Regulations

26 C.F.R. §301.7122-1, Treas. Reg. §301.7122-1 - Compromises

This regulation provides additional information regarding the Secretary's ability to compromise a taxpayer's tax liability to the IRS, including:

(a) General information;
(b) Grounds for compromise;
(c) Special rules for evaluating offers in compromise;
(d) Procedures for submission and consideration of offers;
(e) Acceptance of an offer to compromise a tax liability;
(f) Rejection of an offer to compromise;
(g) Effect of offer to compromise on collection activity;
(h) Deposits;
(i) Statute of limitations;
(j) Inspection with respect to accepted offers in compromise; and,
(k) Effective date.

26 C.F.R. §301.6343-1(b)(4), Treas. Reg. §301.6343-1(b)(4) - Conditions Requiring Release, Economic Hardship

This regulation provides additional information regarding the Secretary's ability to release a levy in the case of a taxpayer's economic hardship.

Economic hardship is shown by demonstration that the levy in whole or in part is preventing the taxpayer from paying his or her reasonable basic living expenses.

Section (ii) of this paragraph outlines the information that the Secretary may consider when determining economic hardship. This information is relevant to offers in compromise because it is the same information considered by the Secretary when a taxpayer is submitting an offer in compromise on the grounds of effective tax administration.

Cases

Circuit Court Decisions:

Christopher Cross, Inc. v. U.S., 461 F.3d 610 (5th Cir. 2006)

The decision to accept or reject an offer in compromise is discretionary. The treasury regulations provide guidelines to help revenue officers determine whether an offer should be accepted or rejected, and an offer rejection reasonably based on one of those regulation is not an abuse of discretion.

Bowling v. U.S., 510 F.2d 112 (5th Cir. 1975)

The provisions for compromising tax liability are found in IRC §§7121-7122, and they are exclusive and strictly construed.

U.S. v. Maxwell, 330 F. Supp. 1253 (N.D. Tex. 1971), aff'd, 459 F.2d 22 (5th Cir. 1972)

A deficiency judgment was rendered against both a husband and wife, and offers in compromise were signed by both. The subsequent death of the husband neither revoked the offer nor started the statute of limitations running again.

U.S. v. Lane, 303 F.2d 1 (5th Cir. 1962)

An offer in compromise is a contract and is governed generally by contract law. Following a breach of the offer in compromise, the IRS may reinstate the full tax liability and all tax liens if doing so was part of the offer in compromise contract.

U.S. Tax Court Decisions:

Dalton v. Comm'r, 135 T.C. 393 (2010)

The IRS abused its discretion in rejecting an offer in compromise to settle trust fund liabilities as non-inclusion of trust property is not a valid reason to reject an offer.

Vinatieri v. Comm'r, 133 T.C. 392 (2009)

The decision to pursue a levy after a determination of economic hardship has been established under IRC § 6343 is a clear abuse of discretion.

Trout v. Comm'r, 131 T.C. 239 (2008)

The Tax Court held that the interpretation of offers in compromise should be governed by the federal common law of contracts. The requirements in offers in compromise that the taxpayer remain compliant with all tax laws for five years was an express condition subject to strict performance.

Murphy v. Comm'r, 125 T.C. 301 (2005)

An IRS appeals officer properly refused a taxpayer's offer in compromise when the taxpayer's financial documents showed he had sufficient funds to pay the full liability, when the taxpayer refused to disclose an illness that he claimed impaired his ability to pay, and when he missed numerous deadlines for submitting documents.

Revenue Rulings

Rev. Rul. 73-304, 1973-2 C.B. 42

An allocation to tax, penalty, and interest in the case of an amount paid pursuant to an offer in compromise will be allocated as indicated in the agreement. If no allocation is specified in the agreement, payments received will be applied to tax, penalty, and interest, in that order, beginning with the earliest year at issue.

Rev. Rul. 72-436, 1972-2 C.B. 643

The acceptance of an offer in compromise from one transferee does not compromise the liabilities of the transferor or the other transferees.

Private Letter Rulings

I.R.S. Priv. Ltr. Rul. 200034001 (Aug. 25, 2000)

An unenrolled tax preparer is not authorized to sign an appeal of a rejected offer in compromise on behalf of a taxpayer.

I.R.S. Priv. Ltr. Rul. 199917020 (Apr. 30, 1999)

A nominee may not compromise a tax liability giving rise to a lien. A nominee lien can be extinguished only by satisfying the underlying liability, by either full payment of the liability or compromise of the liability by an individual with the authority to do so.

I.R.S. Priv. Ltr. Rul. 199917004 (Apr. 30, 1999)

If the statute of limitation runs on one Tax Year covered by an offer in compromise prior to the acceptance of the offer, the amount received pursuant to the offer may be kept by the IRS to the extent that it covers the liability for other included years. Any amount exceeding the liability should be considered an overpayment and returned to the taxpayer.

Back to Top

Secondary Sources

Treatises

U.S. Master Tax Guide (2011), 2723, Compromise of Tax and Penalty

This treatise is available through CCH and includes precise and up-to-date explanations of nearly all aspects of taxation. It is updated frequently with new developments in the laws or procedures governing tax law, including new case law. The section regarding compromises is extensive an informative, and it includes information for both individual taxpayers and business taxpayers.

CCH Tax Research Consultant, IRS: 42,000, Compromises

Tax Research Consultant is written by a board of CCH editorial staff and leading tax practitioners, and it gives a more practical view of federal tax laws. The sections include practical examples, sample calculations, notes about tax planning, and other useful features. The section regarding compromises provides a much more practical focus than many other treatises do.

Martin J. Mcmahon, Jr. and Lawrence A. Zelenak, Federal Income Taxation of Individuals, Second Edition, ¶ 48.10 Compromises

This treatise deals primarily with the filing of individual income taxes, but it also includes information regarding what happens when one has an outstanding liability with the IRS. The section on compromises discusses the relevant statutes and compares offers in compromise to the other options available to individual taxpayers when they have a liability to the IRS.

Rabkin & Johnson, Federal Tax Guidebook, § 71.03, Audit of Returns

This section of *Federal Tax Guidebook* explains the entire audit process, starting from the initial assessment, and finishes with options the taxpayer has to mitigate his or her liability, which includes submission of an offer in compromise. It is inclusive in terms of issues and provides a good time line for the audit-to-compromise process.

William D. Elliott, Federal Tax Collections, Liens and Levies, Chapter 22, Offers in Compromise

This treatise deals with the collection process, specifically liens and levies, and the options taxpayers have for dealing with IRS collection. The treatise discusses offers in compromise as a method for stopping liens and levies when the taxpayer is unable to pay the full amount of his or her liability.

Merten's Law of Federal Income Taxation, Chapter 52, Closing Agreements and Compromises

Merten's is a chapter-driven treatise that provides comprehensive information about tax law in general. It provides citations to relevant cases and statutes, and the online version available on Westlaw will link the reader directly to the primary sources cited. The chapter on closing agreements and compromises provides information both on the procedure and the theory of closings and compromises.

RIA Federal Tax Coordinator, Second Edition, ¶ T-9600 Offers in Compromise

The section of *Federal Tax Coordinator* dealing with offers in compromise breaks down the relevant statute piece-by-piece and explains how the statute translates into practice. It also provides information regarding how offers in compromise are processed and analyzed by IRS officers and how the taxpayer can best present his or her case.

American Jurisprudence

1 Am. Jur. 2d Accord and Satisfaction § 42 Federal Government
Any offer in compromise submitted to the Secretary that is not rejected within 24 months will be deemed accepted. If the offer is determined to be frivolous, however, it will be deemed to be never submitted.

35 Am. Jur. 2d Federal Tax Enforcement § 143 Settlement Procedures, Generally
Explanation of the role of an Appeals Officer when a tax matter is in the Appeals division and an offer in compromise has been submitted.

35 Am. Jur. 2d Federal Tax Enforcement §§ 479, 480, 481, 482, 483, 484
Explanation of offers in compromise and the submission requirements.

35 Am. Jur. 2d Federal Tax Enforcement § 1134 Statute of Limitations
Offers in compromise suspend the statute of limitations for levies and other collection activities.

34 Am. Jur. 2d Federal Taxation ¶ 18594 Interest on Tax Compromises
If a settlement agreement specifies how funds should be allocated, the I.R.S. will allocate the funds in that manner.

34 Am. Jur. 2d Federal Taxation ¶ 70179 Appeals Office Mediation
A taxpayer can request mediation to discuss failed attempts at compromise.

24 Am. Jur. 2d Federal Taxation ¶ 70357, 70359, 70361, 70362, 70363, 70365, 70366, 70367, 70368, 70369, 70370, 70371, 70372, 70373, 70629, 71006, 71934
Explanation of offers in compromise, substantively and procedurally.

34 Am. Jur. 2d Federal Taxation ¶ 71945 Hearing before Levy--Collection Due Process (CDP) Hearing
An offer in compromise will not be considered while a CDP proceeding is pending.

Looseleaf Services

CCH Standard Federal Tax Reporter, Compromises--Sec. 7122
Stand. Fed. Tax Rep. (CCH) ¶ 41,130.01

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Internal Revenue Manual

IRM 5.8 - Offers in Compromise

This chapter of the Internal Revenue Manual provides additional information regarding how offers in compromise are evaluated and processed. This chapter provides guidance only--an IRS employee will only be punished for violating the IRM if he or she does so for the purpose of retaliating against or harassing a taxpayer or other employee of the IRS (PL 105-206).

Law Review Articles

Lee G. Knight & Ray A. Knight, Dispute Resolution with the IRS and Taxpayer Bill of Rights 2, 13 Akron Tax J. 27 (1997)

This article describes, in detail, the offer in compromise process and a taxpayer's rights when submitting an offer in compromise.

Marion E. Wynne, Helping Clients with Tax Debts, Ala. Law., Sept. 1999, at 325

This article discusses how attorneys can best assist their clients with tax debts, one of those methods of assistance being the submission of an offer in compromise to settle a client's tax debt.

Larry Heinkel, Eliminating IRS Tax Debts -- Why Bankruptcy May Be Better Than an OIC to Resolve Your Client's Tax Debts, Fla. Bar J., Apr. 2008, at 56

This article explains how offers in compromise work, how income tax debts can be discharged in bankruptcy, and why bankruptcy might be better than than an offer in compromise in some situations.

Martin J. McMahon, Jr., et al., Recent Developments in Federal Income Taxation: The Year 2009, 10 Fla. Tax Rev. 79 (2010)

This article outlines recent tax decisions and issues.

Martin J. McMahon, Jr., et al., Recent Developments in Federal Income Taxation: The Year 2010, 10 Fla. Tax Rev. 565 (2011)

This article outlines recent tax decisions and issues.

Leslie Book, The Collection Due Process Rights: A Misstep or a Step in the Right Direction?, 41 Hous. L. Rev. 1145 (2004)

This article discusses how the collection due process (CDP) procedure affects the collection process and the taxpayer's ability to fight the collection process.

Brian T. Camp, The Failure of Adversarial Process in the Administrative State, 84 Ind. L.J. 57 (2009)

This article describes the history of the CDP procedure and how the CDP procedure negatively affects tax collection.

Aaron H. Sherbin & Stephen M. Feldman, Tax Law: The Taxpayer's Ability to Pay -- Can the IRS Collection Process be Made Consistent?, MI Bar Jnl., Oct. 1995, at 1054

This article describes the factors used by the IRS to determine a taxpayer's ability to pay when the taxpayer submits an offer in compromise, a request for an installment agreement, a request to be deemed currently not collectible, etc.

Danshera Cords, Administrative law and Judicial Review of Tax Collection Decisions, 52 St. Louis L.J. 429 (2008)

This article discusses the narrow field of litigation of tax collection decisions and its effect on the tax collection process. It discusses the relevant rules, new developments, and the pros and cons of the process.

Langdon M. Cooper & John H. Griffing, Help is Available for the Insolvent Taxpayer, S. Carolina Lawyer, March/Apr. 1995, at 21

This article outlines the various options available for taxpayers who simply cannot pay the IRS the amount that they are owed.

Lawrence Zelenak, Cancellation-of-Indebtedness Income and Transactional Accounting, Va. Tax Rev., Fall 2009, at 277

This article analyzes whether the tax liability compromised in an offer in compromise to the IRS is cancellation-of-indebtedness income.

Back to Top

Additional Assistance

Georgia State University Low-Income Taxpayer Clinic

The GSU LITC represents qualifying low-income taxpayers in their disputes with the IRS. They offer assistance for a wide range of issues, including preparing offers in compromise, innocent spouse claims, identity theft claims, Earned Income Tax Credit appeals, and others. The clinic also represents taxpayers in their cases before the U.S. Tax Court.

web: Georgia State University Low-Income Taxpayer Clinic
email: admin@gsulitc.org
phone: 404-413-9230
fax: 404-413-9229

American Bar Association

The ABA's Legal Technology Resource Center has a multitude of helpful resources regarding offers in compromise. The site provides information for practitioners.

web: ABA's Legal Technology Resource Center

HierosGamos

HeirosGamos (HG.org) provides assistance to taxpayers looking for information regarding tax basics, tax associations, and tax attorneys.

web: HG Guide to Tax Law

Internal Revenue Service

The IRS not only promulgates the rules and regulations related to offers in compromise, but they also create and publish the necessary forms and provide valuable assistance as to how to file an offer in compromise.

web: Internal Revenue Service

NOLO

NOLO provides free legal information on a variety of topics. Read the website below for NOLO's information for taxpayers regarding offers in compromise.

web: Using an Offer in Compromise to Settle a Tax Bill

FindLaw

FindLaw is a useful resource for taxpayers who want to learn more about the law. For information regarding offers in compromise, see FindLaw's tax information.

web: FindLaw's Tax Information

Back to Top

IRS Forms

IRS Forms

The IRS website provides all of the necessary forms for submitting an offer in compromise. Below are the links to the PDF versions of the forms.

Form 656: Offer in Compromise, Form Only
Form 656-B: Offer in Compromise, Packet with Instruction
Form 656-L: Offer in Compromise for Doubt as to Liability

Form 433-A: Collection Information Statement for Wage Earners and Self-Employed Individuals
Form 433-B: Collection Information Statement for Businesses

Form 13711: Request for an Appeal of Offer in Compromise

Assistance with Forms

The Form 656-B Packet includes all of the instructions provided by the IRS for the offer in compromise form (Form 656), but a Form 656 must be accompanied by either a Form 433-A or 433-B (a collection statement). The IRS's Publication 1854 explains how to prepare a collection statement for the IRS. When completing the collection statement, it may be helpful to use national or regional standards for some of the amounts, such as the amount spent on transportation expenses or food and clothing. The amounts for these standards can be found on the IRS's web page for Collection Financial Standards.

Back to Top

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