

[Abatements] *i.e.*, Salvation

[Tax Debt Forgiveness found in Fresh Start Initiative & Redemption from "Offer in Compromise"]



New IRS Fresh Start Initiative Helps Taxpayers Who Owe Taxes

IRS Tax Tip 2012-48, March 12, 2012

The Internal Revenue Service has expanded its "Fresh Start" initiative to help struggling taxpayers who owe taxes. The following four tips explain the expanded relief for taxpayers.

1. **Penalty relief** Part of the initiative relieves some unemployed taxpayers from failure-to-pay penalties. Penalties are one of the biggest factors a financially distressed taxpayer faces on a tax bill. The Fresh Start Penalty Relief Initiative gives eligible taxpayers a six-month extension to fully pay 2011 taxes. Interest still applies on the 2011 taxes from April 17, 2012 until the tax is paid, but you won't face failure-to-pay penalties if you pay your tax, interest and any other penalties in full by Oct. 15, 2012.

The penalty relief is available to two categories of taxpayers:

- * Wage earners who have been unemployed at least 30 consecutive days during 2011 or in 2012 up to this year's April 17 tax deadline.
- * Self-employed individuals who experienced a 25 percent or greater reduction in business income in 2011 due to the economy.

To qualify for this penalty relief, your adjusted gross income must not exceed \$200,000 if married filing jointly or \$100,000 if your filing status is single, married filing separately, head of household, or qualifying widower. Your 2011 balance due can not exceed \$50,000.

Taxpayers who qualify need to complete a new Form 1127A to request the 2011 penalty relief. The new form is available on www.irs.gov or by calling 1-800-829-3676 (TAX FORM).

2. **Installment agreements** An installment agreement is a payment option for those who cannot pay their entire tax bill by the due date. The Fresh Start provisions give more taxpayers the ability to use streamlined installment agreements to catch up on back taxes and also more time to pay.

The new threshold for requesting an installment agreement has been raised from \$25,000 to \$50,000. This option requires limited financial information, meaning far less burden to the taxpayer. The maximum term for streamlined installment agreements has been raised to six years from the current five-year maximum.

If your debt is more than \$50,000, you'll still need to supply the IRS with a Collection Information Statement (Form 433-A or Form 433-F). You also can pay your balance down to \$50,000 or less to qualify for this payment option.

With an installment agreement, you'll pay less in penalties, but interest continues to accrue on the outstanding balance. In order to qualify for the new expanded streamlined installment agreement, you must agree to monthly direct debit payments.

You can set up an installment agreement with the IRS through the On-line Payment Agreement (OPA) page at www.irs.gov

3. **Offer in Compromise** Under the first round of Fresh Start in 2011, the IRS expanded the Offer in Compromise (OIC) program to cover a larger group of struggling taxpayers. An Offer in Compromise is an agreement between a taxpayer and the IRS that settles the taxpayer's tax liabilities for less than the full amount owed.

The IRS recognizes many taxpayers are still struggling to pay their bills so the agency has been working on more common-sense changes to the OIC program to more closely reflect real-world situations.

Generally, an offer will not be accepted if the IRS believes that the liability can be paid in

full as a lump sum or through a payment agreement. The IRS looks at the taxpayer's income and assets to make a determination regarding the taxpayer's ability to pay.

4. **More information** A series of eight short videos are available to familiarize taxpayers and practitioners with the IRS collection process. The series "Owe Taxes? Understanding IRS Collection Efforts," is available on the IRS website, www.irs.gov.

The IRS website has a variety of other online resources available to help taxpayers meet their payment obligations.

Links:

[Offer in Compromise](#)

[The What Ifs of an Economic Downturn](#)

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<https://www.irs.gov/uac/New-IRS-Fresh-Start-Initiative-Helps-Taxpayers-Who-Owe-Taxes>

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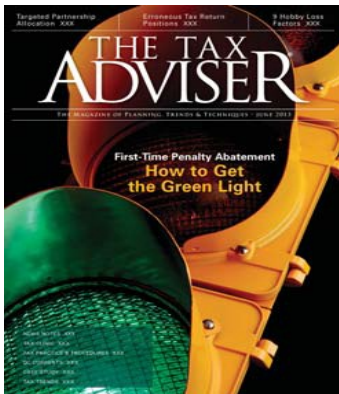
Using the First-Time Penalty Abatement Waiver

Practice & Procedures

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EXECUTIVE SUMMARY



The IRS's first-time abatement penalty waiver (FTA), although introduced 12 years ago, is infrequently used by qualifying taxpayers. An FTA can be obtained for a failure-to-file, failure-to-pay, or failure-to-deposit penalty.

A taxpayer may claim an FTA for only a single tax period. To qualify, taxpayers must not have been assessed any other penalties of a "significant amount" on the same type of tax return within the past three years and must be in compliance with all filing and payment requirements.

IRS personnel use a decision-support software tool called the Reasonable Cause Assistant (RCA) to help determine whether a taxpayer is eligible for an FTA. However, the RCA has been criticized for yielding a high percentage of incorrect determinations of FTA eligibility that IRS personnel generally do not correct.

Through persistence, a practitioner can often persuade the IRS to reverse an initial incorrect determination that a taxpayer does not qualify for an FTA.

It is safe to assume that most taxpayers dislike paying taxes and hate paying IRS penalties, especially when the penalties seem unjust. While penalties can also seem arbitrary to taxpayers, IRS policy is clear and deliberate on their reason for existence: to deter taxpayer noncompliance, not to generate revenue.¹

For that reason, 12 years ago, the IRS created the first-time penalty abatement administrative waiver (FTA),² which allows typically compliant individual and business taxpayers to request abatement, or removal, of certain penalties that the IRS has assessed against them for the first

time. In effect, the IRS rewards typically compliant taxpayers with one-time penalty amnesty, which can save the taxpayer hundreds—sometimes thousands—of dollars. Despite the advantages of this IRS waiver, few taxpayers who qualify for FTA request it, according to a 2012 report by the Treasury Inspector General for Tax Administration (TIGTA).³ According to the report, the problem is twofold: Most taxpayers and tax professionals do not know FTA exists, and IRS representatives often incorrectly disallow an FTA when using the IRS's faulty automated decision tool to make penalty determinations.

In effect, FTA is hidden to most taxpayers and tax practitioners, who may not be aware of how it works, how to request it, or even its existence. This article explores the IRS FTA waiver and explains how to help clients remove certain penalties using it.

Penalties and Abatement

In fiscal 2012, the IRS assessed 37.9 million penalties against taxpayers totaling \$26.8 billion.⁴ Individual, business, and payroll penalties for failure to file, failure to pay, and failure to deposit (the types potentially eligible for FTA) were 74% of all penalties assessed in 2012.⁵ The IRS assesses most of these penalties automatically, regardless of the taxpayer's situation.

Methods for Requesting Penalty Relief

Taxpayers can request relief from failure-to-file, failure-to-pay, and failure-to-deposit penalties in three ways, depending on their situation:

- Before the IRS assesses a penalty, the taxpayer can file a penalty nonassertion request with a paper return to request that the IRS not automatically assess a penalty.
- After the IRS has assessed a penalty, the taxpayer can request penalty abatement, typically by writing a penalty abatement letter or by calling the IRS. Tax professionals can also request abatement using IRS e-services.
- After the taxpayer has paid the penalty, the taxpayer can request a refund using Form 843, *Claim for Refund and Request for Abatement*.⁶ The taxpayer must file the claim within three years of the return due date or filing date, or within two years of the date the penalty was paid.

Reasons to Request Abatement

Generally, relief from penalties falls into four separate categories: reasonable cause, statutory exceptions, administrative waivers, and correction of IRS error. Under the category of administrative waivers, the IRS may formally interpret or clarify a provision to provide administrative relief from a penalty it would otherwise assess. The IRS may address an administrative waiver in either a policy statement, news release, or other formal communication stating that the policy of the IRS is to provide relief from a penalty under specific conditions. The most widely available administrative waiver is FTA.

First-Time Abatement Waiver

In 2001, the IRS established FTA to help administer the abatement of penalties consistently and fairly, reward past compliance, and promote future compliance. This administrative penalty waiver allows a first-time noncompliant taxpayer to request abatement of certain penalties for a

single tax period—one tax year for individual and business income taxes and one quarter for payroll taxes.

According to TIGTA, for tax year 2010, the average individual failure-to-file abatement qualifying under FTA was \$240, and the average failure-to-pay abatement was \$84. However, more than 90% of individuals who qualified for an FTA did not receive the waiver for 2010.⁷ This is likely because taxpayers did not know they could request it. The IRS does not publicize FTA as a relief option on its penalty-related notices or on its website.⁸

The remainder of this article discusses how to determine whether a client qualifies for FTA and how to request it from the IRS.

Penalties Eligible for an FTA

FTA applies only to certain penalties and certain returns filed. First, determine whether FTA applies to the client's situation:

- Individual taxpayers can request an FTA for failure-to-file and failure-to-pay penalties. Estate and gift tax returns do not qualify for FTA waivers.⁹
- Business and payroll taxpayers can request an FTA for failure-to-file, failure-to-pay, and/or failure-to-deposit penalties. The IRS is not explicit in its Internal Revenue Manual (IRM), but in practice, the IRS has granted FTAs for S corporation and partnership late-filing penalties.¹⁰
- For individual and business taxpayers, the estimated tax and accuracy-related penalties cannot be waived under FTA.

Clean Compliance Criteria

If FTA applies to the client's situation, the practitioner must determine whether the client qualifies to receive it, which entails most of the complexity involved in requesting an FTA. To qualify, the client must demonstrate filing and payment compliance and a three-year clean penalty history.

To meet the rule for filing compliance, the client must have filed, or filed a valid extension for, all currently required returns and must not have an outstanding request from the IRS for an unfiled return.¹¹ To meet the payment compliance rule, the client must also have paid, or arranged to pay, any tax due. The client can have an open installment agreement, as long as installment payments are current. According to the IRM, the IRS should give a taxpayer not currently in compliance with these payment requirements an opportunity to comply and thereby qualify for an FTA before the IRS considers whether the penalty can be abated for reasonable cause.¹²

To meet the rule for clean penalty history, the client cannot have had penalties of a “significant”¹³ amount assessed in the prior three years on the same tax return for which the client is requesting abatement. IRS procedures do not publicly define a “significant” amount. In practice, the IRS has considered any penalty amount as significant in its application of the FTA qualification.¹⁴ If the IRS rejects the client's request because of a small penalty assessment, remind the IRS of the “significant” qualification in the IRM.

The client will *not* be disqualified from receiving an FTA based on lack of a clean penalty history if the client:

- Had a penalty assessed more than three tax years prior to the tax return in question.

- Had an estimated tax penalty assessed in the past three years.**15**
- Received reasonable-cause relief from penalties at any point in the past.
- Received an FTA more than three tax years prior to the tax return in question.
- Has penalties on subsequent tax years.**16**

Requesting an FTA

By phone or e-services: A practitioner who determines that the client qualifies for an FTA can request it in several ways. Start with simple methods. If the client’s case does not involve a compliance function, call the IRS Practitioner Priority Service (PPS) line**17** or use the IRS e-services Electronic Account Resolution function.**18** The IRS representatives in Accounts Management have authority to grant an FTA.

When an IRS compliance unit assesses the penalty, requesting an FTA from a PPS representative or by e-services will not work. For example, for a taxpayer under audit or underreporter inquiry or with a case in IRS Collection or Appeals functions, the appropriate compliance unit will address penalties based on the taxpayer’s facts and circumstances. If a compliance unit assesses a penalty, penalty relief must typically be requested directly from that unit.**19**

Keep in mind that there is an unpublished ceiling on the amount in penalties that the IRS will abate under FTA by phone or e-services (referred to as oral statement authority).**20** The IRS redacts the oral statement authority threshold amount in its IRM for tax administration purposes.**21**

For reasonable-cause determinations, in lieu of accepting an oral request, the IRS can require taxpayers to send in documentation to support their claim. The IRS representative can accept “credible information” orally or in writing. The IRS’s automated Reasonable Cause Assistant (see below) prompts the representative to ask for documentation.**22** If the client’s penalties exceed the threshold, the waiver still applies, but IRS procedures require that the FTA request be in writing.**23** In practice, when requesting abatement of penalty amounts in thousands of dollars, be prepared to request an FTA in writing.**24**

In writing: When requesting an FTA in writing, provide any other relevant penalty relief arguments, including reasonable-cause arguments, to increase the client’s chances of having the penalty removed.

If the client has clear reasonable cause for the penalty, present the reasonable-cause argument first and request that the IRS abate the penalty on those grounds. This is a best practice because the client may need to use the FTA waiver for a subsequent year, and abatement due to reasonable cause will not disqualify the client from receiving an FTA.

If the client technically does not qualify for an FTA because of a penalty in the past three years but is otherwise compliant, present this history in conjunction with other arguments to the IRS for penalty abatement. Remind the IRS that although FTA does not apply, the client has a clean compliance history except for the one incident of noncompliance.

If the client has multiple years of penalties, request an FTA for the first year if the prior three years have a clean compliance history. If applicable, other arguments, such as reasonable cause, can be presented for subsequent years.

Example: C filed late returns with a balance due for 2010 through 2012. As a result, the IRS assessed C failure-to-file and failure-to-pay penalties for all

years. She was also assessed an estimated tax penalty for all years as a result of not paying sufficient estimated taxes and withholding. These were the taxpayer's first instances of noncompliance. C's tax professional determines that she has a reasonable-cause argument for 2012, based on her facts and circumstances and the application of reasonable-cause criteria. The tax practitioner obtains an FTA for the 2010 failure-to-file and failure-to-pay penalties and submits a reasonable-cause penalty abatement request for 2012.

The estimated tax penalties cannot be abated with the FTA waiver.

The written FTA request should be sent to the IRS service center where the client is required to file paper returns.²⁵

IRS Abatement Determinations Often Flawed

When the taxpayer or practitioner calls or writes the IRS to request an FTA, the IRS evaluates the request using an automated tool. To uniformly apply penalty abatements, the IRS developed a decision-support software program called the Reasonable Cause Assistant (RCA). The program was designed to help IRS employees make penalty relief determinations for individuals (failure-to-file and failure-to-pay penalties) and businesses (failure-to-deposit penalty). The IRS requires its employees to use this program to make determinations on penalty abatement requests, including requests for an FTA.

Although the IRS has tried to uniformly and consistently apply penalty abatement determinations, the use of the automated RCA has led to unfair determinations, including FTA decisions. According to a 2011 IRS Advisory Council (IRSAC) report, the RCA makes incorrect determinations in 55% of all penalty abatement requests.²⁶ A 2012 TIGTA report stated that, of its sample of abatements determined using the RCA, 89% were incorrect. Further, in the TIGTA study sample, IRS employees corrected none of the inaccurate determinations, even though the determinations conflicted with IRM penalty abatement procedures.²⁷ IRS employees can, however, abort the RCA process when its determination conflicts with penalty abatement policy. If the IRS employee aborts the RCA, he or she can then make a decision based on whether the taxpayer's facts meet the clear criteria for FTA qualification.

Be prepared by researching the client's clean compliance history and applying the qualification rules before contacting the IRS. If the client qualifies but the IRS representative says the client does not, ask the representative to override the RCA determination. If the representative will not override it, ask for the representative's manager. Finally, if all other means have been exhausted, consider contacting the Taxpayer Advocate Service (TAS) for help.²⁸ Keep in mind that IRS representatives often simply do not know how to use the RCA, thus resulting in errors.²⁹ If the IRS representative is unsure about how to use the program, a practitioner who is sure the client qualifies can try calling back to request an FTA again.

In most circumstances, with proper knowledge of the client's facts and qualification, a practitioner can obtain an FTA from the IRS PPS representative, who has oral statement authority on FTA.

FTA Confirmation

A client to whom the IRS grants an FTA will receive Letter 3502C or 3503C³⁰ for individual failure-to-file and failure-to-pay penalty abatement and Letter 168C (or its equivalent)³¹ for business failure-to-deposit penalty abatement. The letter usually arrives about four weeks after the IRS grants the FTA.

The Future of FTA

Encouraging compliance is one of the IRS's major goals as it focuses on closing the \$450 billion annual tax gap.³² The proper use of penalties helps deter noncompliance, and it is clear that the IRS has been using penalties to that end. During the past 11 years, the number of penalties assessed increased by 34%, from 28.3 million penalties in 2002 to 37.9 million in 2012.³³ However, to increase voluntary compliance, the IRS must administer penalties fairly and consistently.

In the spirit of consistency, why not give an FTA to every qualifying taxpayer? The TAS has suggested this very concept to promote fairness. In its 2010 *Report to Congress*,³⁴ the TAS proposed that the FTA waiver be automatically applied before the penalty is assessed rather than requiring taxpayers to request an FTA. The intent of the FTA waiver is to reward past compliance and promote future compliance. However, as the TAS noted in its 2010 report, the total number of penalty abatements has decreased as the number of penalties assessed has increased, demonstrating that penalty relief options, including FTA, are not fulfilling their intended purpose of encouraging compliance.

However, granting an FTA to all qualifying taxpayers could undermine penalty administration. The fact that a taxpayer has to request abatement and receive a letter represents a tangible opportunity for the IRS to promote compliance. The abatement notice and accompanying discussion constitute a quantifiable event in which the IRS communicates with the taxpayer and the taxpayer understands the consequences of future noncompliance.

The IRS stated in its response to the 2010 TAS *Report to Congress* that it is studying whether FTA increases compliance and whether a system to grant FTA waivers prior to penalty assessment should be implemented. To date, the IRS has not concluded the study.

To ensure uniformity among all penalty abatement requests, the IRS needs to create a more uniform policy to remove errors caused by reliance on its RCA and train assigned personnel to review penalty abatement requests. In 2011, the IRSAC Small Business/Self-Employed subgroup recommended that the IRS develop a clear penalty abatement request form that would guide taxpayers in evaluating their circumstances against penalty abatement criteria, including FTA. This form would eliminate confusion about how to request penalty abatement, define the criteria for removing penalties, and facilitate fairness and consistency. Practitioners should look for this form in the future.

The report points out that Form 843, *Claim for Refund*, can be used for penalty abatement but that it is not designed for penalty abatement because it does not guide the taxpayer to address abatement requirements. IRSAC states that the Form 843 instructions for penalty abatement are "confusing at best." The form is also not designed for unpaid penalties. The very name of the form implies that it should be used for post-payment refund requests, not penalty nonassertion or abatement requests prior to payment of a penalty.³⁵ Form 843 instructions were changed in December 2012, but not to enable it to better address possible penalty abatement arguments and simplify abatement requests.

With TIGTA and TAS reports highlighting the IRS's inconsistent application of penalty abatement, the IRS will likely make some changes in its requirements and procedures for requesting and granting penalty abatements in the future. For now, if the client qualifies, the

practitioner can effectively request and receive relief for the client's penalties using this largely unknown and beneficial administrative waiver.

Footnotes

¹ IRS Policy Statement 20-1 (6/29/04) at Internal Revenue Manual (IRM) §1.2.20.1.1. See also IRM §20.1.1.2.1(4).

² Treasury Inspector General for Tax Administration (TIGTA), *Penalty Abatement Procedures Should Be Applied Consistently to All Taxpayers and Should Encourage Voluntary Compliance*, Rep't No. 2012-40-113 (Sept. 19, 2012).

³ Id.

⁴ *IRS Data Book*, Table 17, "Civil Penalties Assessed and Abated, by Type of Tax and Type of Penalty," at 42 (2012).

⁵ The number of penalties assessed for individual, business, and employment taxes for delinquency, failure-to-pay, failure-to-deposit, and S corporation/partnership late-filing penalties exceeded 28 million in 2012. See *IRS Data Book*, Table 17.

⁶ Form 843, *Claim for Refund and Request for Abatement*, does not allow requests for penalty abatement under FTA. Line 5a of the form allows abatement due to erroneous written advice by the IRS, reasonable cause, or other reasons allowed under the law. FTA is an administrative waiver and does not qualify as an "other reason allowed under the law." See Form 843 Instructions, December 2012.

⁷ TIGTA Rep't No. 2012-40-113.

⁸ Searching "penalty abatement" on IRS.gov yields a "top recommendation" among search results of IRS Tax Tip 2012-74, dated April 17, 2012, titled "Failure to File or Pay Penalties: Eight Facts." First-time abatement is not mentioned.

⁹ IRM §20.1.1.3.6.1 (11/25/11). See also exceptions at paragraph (8).

¹⁰ Id.

¹¹ IRM §20.1.1.3.6.1(5)(a) states that the taxpayer cannot have a tax period in the prior three years in TDI (taxpayer delinquency investigation) status 02 or 03, or IMF (individual master file) status 04 (delinquent return status codes). To qualify, the taxpayer should not have any required returns outstanding in the past six years. See IRS Policy Statement 5-133 at IRM §1.2.14.1.18.

¹² IRS Memorandum SBSE-20-0413-0690 (4/5/13), adding new paragraph (1)(b) to IRM §20.1.1.3.6.1, amending paragraph (9), and making minor syntactical and formatting revisions elsewhere.

¹³ IRM §20.1.1.3.6.1(5)(b).

¹⁴ Id. The IRS redacts the explanation of "significant amount." This is a facts-and-circumstances test, and the IRS should not use a bright line in determining whether the amount is significant. Many IRS representatives look for the presence of a penalty using penalty transaction codes on the taxpayer account to determine qualification and thus avoid making a subjective determination of whether the penalty amount is significant.

¹⁵ IRM §20.1.1.3.6.1(1).

¹⁶ IRM §20.1.1.3.6.1(3). If the taxpayer is requesting relief for penalties assessed on two or more tax periods, FTA criteria can apply to the earliest tax period, as long as the taxpayer meets the clean penalty history criteria for the three tax years prior to the earliest tax period.

¹⁷ Practitioner Priority Service: 866-860-4259.

¹⁸ Web portal here.

¹⁹ See IRM §20.1.5.4 for post-assessment abatement procedures, which state that the function responsible for the penalty assessment should decide whether the penalty should be abated.

²⁰ See IRM §20.1.1.3.1 (11/25/11) for oral requests for penalty abatement.

²¹ The author requested information regarding first-time abatement, including the oral statement authority amount, under the Freedom of Information Act (FOIA); however, the IRS denied the request, citing several FOIA exemptions, including Sec. 6103(e)(7), which precludes releasing information that could potentially impair tax administration.

²² See IRM §§20.1.1.3.6.5 and .6.

²³ IRM §20.1.1.3.1(5).

²⁴ Although the threshold amount is unpublished, the author has experienced FTA thresholds of less than \$1,000 to be routinely allowed by the IRS without a written request.

²⁵ See Form 843 instructions at “Where to File.”

²⁶ IRS Advisory Council, *2011 Public Report*, “Small Business/Self-Employed Subgroup Report,” at 73 (Nov. 16, 2011).

²⁷ TIGTA Rep’t No. 2012-40-113.

²⁸ A Taxpayer Advocate Service memo, “Interim Guidance on Penalty Relief Advocacy, and Using the Reasonable Cause Assistant (RCA),” dated Feb. 7, 2012 (Control No. TAS-13-0212-007), states that the TAS does not have delegated authority to make penalty abatement determinations under Delegation Order No. 13-2 (3/3/08). However, the memo explains, the delegated authorities do not preclude the TAS from making specific recommendations to the IRS to abate penalties.

²⁹ TIGTA Rep’t No. 2012-40-113. The IRS agreed to RCA modifications and to provide training to its employees on using the RCA.

³⁰ IRM §20.1.1.3.6.1(9).

³¹ This letter adjusts the failure-to-deposit penalty. It states that the abatement action has been taken based solely on the fact that the taxpayer has a good history of timely filing and paying, that the abatement is a one-time consideration, and that any future penalty relief decisions will be made based on reasonable-cause criteria.

³² News Release IR-2012-4, IRS estimate for tax year 2006.

³³ *IRS Data Book*, Table 17; historical data available here.

³⁴ National Taxpayer Advocate, *2010 Annual Report to Congress*, Most Serious Problem No. 14, “The IRS’s Over-Reliance on Its ‘Reasonable Cause Assistant’ Leads to Inaccurate Penalty Abatement Determinations,” at 202 (Dec. 31, 2010).

³⁵ IRS Advisory Council, *2011 Public Report*, “Small Business/Self-Employed Subgroup Report,” at 74–78.

EditorNotes

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http://www.aicpa.org/Publications/TaxAdviser/2013/July/Pages/Buttonow_July2013.html.aspx

Fresh Start Offer in Compromise

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Offer in Compromise

If you can't pay your full tax debt, or if paying it all would create a financial hardship for you, an offer in compromise (OIC) may be an option. An OIC is an agreement between you and the IRS, where the IRS agrees to accept less than the full amount you owe.

There are two main reasons the IRS may agree to accept less than the full amount you owe:

- **Doubt as to Collectability:** This means you don't have enough income or assets to pay your debt in full.
- **Effective Tax Administration:** You can pay your full debt, but it would create an economic hardship, or would be unfair or inequitable.

Another reason the IRS may accept payment of less than the full amount of tax owed is **doubt as to liability** (that is, you don't believe you owe the tax, or you don't believe the amount is correct).

NOTE: You can't submit an offer if your debt has been established by a final court decision or judgment about the tax or the amount.

Offer in Compromise Payment Options

There are two kinds of payment options for an offer in compromise — you must select one of them and include payment with your offer. The amount of the first and following payments will depend on the total amount you offer and which payment option you choose.

- **Lump Sum Offer:** Generally requires you to pay 20% of the total amount you are offering when you submit the offer. You'll need to pay the rest in 5 (or fewer) payments, within 5 (or fewer) months of the date the IRS accepts the offer.
- **Periodic Payment Offer:** Generally, you'll make the first payment when you submit the offer and the rest within 24 months, according to the terms of your proposed offer.

For the IRS to accept an offer, you have to file all tax returns due and be current with estimated tax payments or withholding. If you own a business and have employees, you must file all returns and be current on all your federal tax deposits.

NOTE: If you or your business is currently in an open bankruptcy proceeding, you're not eligible to apply for an offer. Any resolution of your debts generally must take place within the context of your bankruptcy proceeding.

After the IRS notifies you that it has accepted your offer and you pay the reduced amount you've agreed to, your entire tax debt is considered resolved as long as you fulfill the terms of the offer agreement.

If the IRS rejects your offer, it will not return the application fee or any other payments made with the offer. The IRS will apply these non-refundable fees and payments to your tax liability. *(For more possible outcomes, see How will this affect me? below)*

The offer in compromise process can be lengthy. Keep close track of the dates —if your offer is not rejected, returned, or withdrawn **within two years** of the date the IRS receives it, then the offer is deemed accepted.

What should I do?

Review the tax debt to make sure you owe it

If you feel you do not owe tax or the amount is incorrect

If the tax you owe is a result of an audit that you didn't know about or were not able to present any information for, you might be able to get an audit reconsideration. If you made a mistake on your return, filing an amended return may remove the debt. Most options are easier and less time consuming than submitting an offer in compromise, so it's worth seeing if there is anything else you can do to resolve the debt before filing an offer.

If you've exhausted other options, and you think an offer is the best action, you can submit IRS Form 656L, *Offer in Compromise (Doubt as to Liability)*. Include a written statement explaining in detail why you believe the IRS is in error, and attach supporting documentation. There is no application fee for this type of offer, but you must include an offer of more than \$0.

If the amount is owed and correct

- First, review all the other options that might be available to you. Some of these will have lower fees and can be easier and faster to obtain.
- Before submitting an application, use the IRS Offer in Compromise Pre-Qualifier Tool to see if you may be eligible to make an offer in compromise. This tool is only a guide. You can still discuss questions you have about filing an offer by contacting the IRS.
- If you decide to submit an offer, you'll need to give the IRS complete financial information. Make a list of your income, expenses, assets and any debts owed against those assets. Follow the instructions in IRS Form 656B Booklet, *Offer in Compromise Booklet*, to prepare and file your offer.

How will this affect me?

Before you decide to submit an Offer in Compromise, you should be aware of several things:

You'll have to pay an application fee of \$186 and make offer payments (based on the method you choose) with your offer submission, unless you meet certain low income guidelines, which are in the IRS OIC Booklet.

If the IRS rejects your offer, it will not return the application fee or any other payments made with the offer. The IRS will apply these non-refundable fees and payments to your tax liability.

The IRS usually has ten years from the date of assessment to collect a tax debt. However, filing an offer will extend the time the IRS has to collect all of your debt.

While the IRS generally puts other collection activities (such as a levy on your wages or bank account) on hold while your offer is pending, the IRS may still file a Notice of Federal Tax Lien to protect its lien interest in any property you own and to notify other creditors of that interest.

If you're not current with return filing or tax payment obligations, the IRS may return your offer. File any federal tax returns due before you submit an OIC.

The IRS will keep any refund, including interest, for tax periods extending through the calendar year that the IRS accepts the offer. For example, if your offer is accepted in 2013 and you file your 2013 Form 1040 on April 15, 2014 showing a refund, the IRS will apply your refund to your tax debt. The refund is not considered a payment toward your offer.

The IRS is required to explain how it calculates your ability to pay and how much it could potentially collect from you. You'll receive correspondence and be able to contact the offer examiner or specialist assigned to you.

If the IRS rejects your offer, you have the right to appeal the rejection, but must do so within 30 days of the date of the rejection letter. To appeal a rejection, use IRS Form 13711, *Request for Appeal of Offer in Compromise*.

If the IRS accepts your offer, you'll need to abide by the terms you agreed to, and stay current with filing and paying your taxes for five years after that.

Submitting an offer does not guarantee the IRS will accept your offer. It starts the process of evaluating your situation, your ability to pay, and the amount you are offering. You can submit an offer on taxes owed individually and for your business.

Make sure you don't owe taxes next year

If your offer is accepted but you don't file and pay all taxes on time for the 5 years after the acceptance, the OIC will terminate and you'll *owe your full debt* (not the reduced amount of the offer).

Here are some ways to make sure you can pay your taxes:

- Increase your tax withholding from your pay, by filing Form W-4, *Employee's Withholding Allowance Certificate*, with your employer.
- Increase the amount of estimated taxes you pay.

Learn more about tax withholding: IRS.gov: Tax Withholding

What are my resources?

IRS Form 656B Booklet, *Offer in Compromise Booklet*

IRS.gov - Offer in Compromise

If you disagree with the IRS decision to reject your offer in compromise, you can appeal that decision within 30 days by filing IRS Form 13711, *Request for Appeal of Offer in Compromise*.

I can't pay my taxes

What are my rights?

The right to pay no more than the correct amount of tax

The right to appeal an IRS decision in an independent forum. If you disagree with the IRS decision to reject your offer in compromise, you can appeal that decision within 30 days by filing IRS Form 13711, *Request for Appeal of Offer in Compromise*.

The right to finality

The right to a fair and just tax system

Wait, I still need help.

Have a different tax issue? Browse common issues and situations at Get Help.

Is your tax problem more complex? If your issue is causing you financial hardship, you have tried repeatedly and are not receiving a response from the IRS, or you feel your taxpayer rights are being violated, consider contacting TAS.

Do you feel that you need help from a tax professional but can't afford one? You may be eligible for representation from an attorney, CPA, or enrolled agent associated with a Low Income Taxpayer Clinic.

<http://www.taxpayeradvocate.irs.gov/get-help/offers-in-compromise>