The Inside Secrets of Offers-in-Compromise

Presented by:

Eric L. Green, Esq.

TRN
TAX REP NETWORK

Inside Secrets to Offers-in-Compromise

- Preparing for the Offer
- Which Offer to File
- Issues with Offers
- Rescuing the Defaulted Offer

Before you file the Offer

- Tax Compliance
- The RCP calculation
- Adjust the calculation
- Clean Up Issues

Get the Client Current


Form 1040-ES Department of the Treasury Internal Revenue Service

2013 Estimated Tax

Payment Voucher 2

OMB No. 1545-0074

Calendar year—Due June 17, 2013

File only if you are making a payment of estimated tax by check or money order. Mail this voucher with your check or money order payable to **"United States Treasury."** Write your social security number and "2013 Form 1040-ES" on your check or money order. Do not send cash. Enclose, but do not staple or attach, your payment with this voucher.

Amount of estimated tax you are paying by check or money order. Dollars Cents

Print or type

Your first name and initial | Your last name | Your social security number

If joint payment, complete for spouse

Spouse's first name and initial | Spouse's last name | Spouse's social security number

Address (number, street, and apt. no.)

City, state, and ZIP code. (If a foreign address, enter city, also complete spaces below.)

Foreign country name | Foreign province/county | Foreign postal code

- Current payments
- Last 6 years of tax returns
- Utilize assets to get compliant?

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Review the RCP Calculation

Expense	Actual or Allowable
Food, Clothing and Misc	National Standard
Housing and Utilities	Lesser of Actual or Local Standard
Automobile - Ownership	Lesser of Actual or National Standard
Automobile - Operating	Local Standard
Public Transportation	National Standard
Health Insurance	Actual
Out of Pocket Health Care Costs	Higher of Actual or National Standard
Court Ordered Payments	Actual
Child/Dependent care expenses	Actual (must be necessary)
Life Insurance	Actual (must be reasonable)
Current Year Taxes	FIT, FICA or SE, SIT, Local
Secured Debts	Actual
Delinquent State Taxes	Percentage of State v. Federal Debt

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Adjust the RCP calculation

New expenses?

1. Health Insurance
2. Life Ins.
3. Disability Ins.
4. New Car

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Which Offer to File

- Lump Sum vs. Deferred?
- Depends upon the RCP calculation
  1. The higher the Future Income, the more expensive the deferred becomes
  2. If little or no future income, deferred may be the better deal

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Issues During the Offer

- Dissipated Assets
- Non-Cash expenses but cash flow payments
- Asset valuation
- Orders of Restitution
- Salvaging compliance

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Issues During the Offer

- Circular 230 issues
  1. No contingent fees
  2. Conflicts of Interest
  3. No filing purely to delay

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Defaulted Offers

- Taxpayer's who find they cannot make the offer payment may be able to compromise the compromise
- IRM 5.8.9.4 (01-12-2017) contemplates that a taxpayer may propose an alternative to a defaulted offer.

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Compromise of the Compromise

- IRM 5.8.9.5 (04-23-2018)--"Compromise of a Compromise".
- Compromise of a compromise should be rare
- If the taxpayer is unable to pay the balance of an accepted offer the IRS may determine

a. the Government would better benefit to not accept a compromise of a compromise

b. May decide it is better to compromise the compromise

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Compromise of a Compromise

it may be in the best interest of the government to

1) adjust the payment terms
2) formally compromise the existing compromise or
3) obtain managerial approval to settle for the amount already paid and not default the offer.

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Compromise of a Compromise

- IRM 5.19.7.2.15 (01-31-2017)—"Compromise of an Accepted Offer"—provides the requirements for a compromise of a compromise.
- The taxpayer must be current with their filing and payment compliance requirements.
- The taxpayer must submit the request to compromise an accepted compromise in letter format (not by filing a new form 656).
- A current financial statement will be required.

Taxpayers in Bankruptcy

- 1999 WV: The IRS's policy of refusing to consider a post-petition offer in compromise submitted by a taxpayer in bankruptcy to be a violation of the anti-discrimination provision of the Bankruptcy Code. *See* Mills v. United States (In re Mills), 240 B.R. 689 (Bankr. S.D. W. Va. 1999).

Taxpayer's in Bankruptcy

- 2013 NC: Same where the taxpayer enters bankruptcy after the compromise has been entered but before all of the terms of the contract have been satisfied, i.e., the compromise has not yet been paid off. *See In re Mead*, Case No. 12-01222-8-JRL (Bankr. E.D.N.C. 2013).
- Also, 2003 NE: "In this case, the IRS may either process an offer in compromise, which the tax code authorizes any taxpayer to submit, or take seriously its stated position that it will, in good faith, consider accepting less than the bankruptcy code requires in a Chapter 13 plan."

Questions? Email or Post Them!