



SIX STEPS TO DO RIGHT NOW

TO SOLVE

YOUR CLIENT'S TAX PROBLEMS

by Eric Green & Tax Rep Network

STEP # 1

GET INTO COMPLIANCE

What is “tax compliance?”

In order to work out any kind of a deal the taxpayer must be in tax compliance, meaning that all tax returns have been filed and they are making their current tax payments properly.

So often new clients arrive in our office that are perfect Offer-in-Compromise candidates except they are unable to get into tax compliance! Therefore, it is critical from the beginning that clients understand the need to get into tax compliance and maintain compliance going forward.

This means that:

- All tax returns due are filed when you begin trying to work out a deal with the IRS¹;
- If your client is an employee, that sufficient taxes are withheld to cover the tax bill at the end of the year;
- If the clients are self-employed that they are making estimated tax payments each quarter as required;
- If the client is a business, it is depositing its payroll taxes on time for the current quarter; and
- All future tax returns due are filed on time.

Clients need to understand that without their tax compliance there can be no deal reached with the IRS because lack of compliance automatically voids the deal the client just reached with the government. In essence, why should the IRS agree to anything for the future when the client cannot even stay compliant now?

Tax compliance is something the client must take care of immediately. Get the old returns completed and filed, and have the clients adjust their ways so they can make the proper tax payments to avoid running up yet another debt.

¹ Compliance is defined as returns being filed for the last 6 years. IRM 1.2.1.6.18

STEP # 2

WORK OUT THE RCP

How much does the client need to pay on their installment agreement? Can I compromise the debt away, and, if so, how much should the client offer?

The client's ability to pay, whether through a payment plan or through an Offer-in-Compromise, is a formula referred to as Reasonable Collection Potential, or "RCP". There are a lot of rules to calculating RCP², but at its core, it is a fairly simple and straight-forward formula that looks at the taxpayer's net equity in assets and future income.

When it comes to an installment agreement, the IRS will seek the equity in assets, though it generally does not seek to obtain the equity in a taxpayer's vehicle (unless it is a collectable or extremely expensive), though the client will be limited to just one vehicle per spouse. Other vehicles (viewed as unnecessary by the IRS), will be required to be sold and the equity paid over. Or, if those vehicles have no payment on them, the IRS will assume the Taxpayer can keep the vehicle without the payment and disallow the payment claimed for vehicle that is either being leased or financed.

An Offer-in-Compromise is an offer to settle the debt for a set amount of money, so the IRS here will want to make sure it is getting every dime of equity it would otherwise be able to collect through enforcement. Hence, the IRS will include in its calculation all the equity in all of the taxpayer's assets, including their vehicles.

Now, there are some notable exceptions to these rules, but basically the amount to pay will be driven by the RCP formula. It is critical that you review this calculation to see:

1. Can the taxpayer full-pay the liability (which means they are not eligible for an Offer-in-Compromise)
2. If the taxpayer cannot full-pay, then what is the RCP that the IRS will calculate and is that amount a number that the taxpayer can handle to settle the debt?

The RCP calculation will be the big driver in determining what resolution option works best for the client, and if it is an Offer-in-Compromise, what amount needs to be offered to settle the issue once and for all.

² See [The Accountant's Guide to Resolving Tax Debts](#) for an in-depth discussion of how to properly calculate the client's RCP.

STEP # 3

CONTACT THE IRS

We know that nobody likes to call the IRS. We do this every day, and even we often do not feel like calling the IRS. However, it is critical to speak with the IRS, understand where the client's case is, negotiate for holds on collection and arrange for payment plans. Even First-Time Penalty Abatements can be done right over the phone.

The key is to get through to the IRS quickly, and for that let us introduce you to Call ENQ. This is a service used by the true tax rep professionals to get through to the IRS in under three minutes!

Whether you want to do this the old-fashioned way and stay on hold for an hour or two, or use a service like ENQ and get through in 30 seconds, you will need to pick up a phone and call the IRS.³

Make sure to have your Power of Attorney in hand. The IRS Power of Attorney is a Form 2848, and without it the IRS will not speak to you.⁴ Without the 2848 the IRS will only deal with the client, and allowing the client to try and handle these issues is a huge mistake. Have the completed and signed Form 2848 in hand and ready for when the IRS picks up so you can fax it to them and then discuss the case.

³ The Tax Rep Network Special can be found here: <https://callenq.com/trn/>

⁴ To be a representative on an IRS Power of Attorney you must be either a licensed attorney, a licensed CPA, or an Enrolled Agent ("EA").

STEP # 4

FIRST TIME? ASK FOR FTA

The IRS allows taxpayer's a "First-Time Penalty Abatement", or "FTA", if the taxpayer has not been penalized within the last 3 years.⁵ For us, we always try and review the taxpayer's transcripts prior to calling the IRS so we know the taxpayer's history and know if the FTA will be available. For instance, the table below from our software shows that the taxpayer has been penalized every single year since 2001, so there is no FTA!⁶

PENALTY AND INTEREST DASHBOARD

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*	Accrued Interest	Assessed Interest	Total Interest
2020	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2019	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2018	Original	N			\$147,801.15		\$0.00	\$147,801.15	\$8,717.03	\$121,835.40	\$130,552.43
2017	Original	N			\$63,295.94		\$0.00	\$63,295.94	\$0.00	\$48,928.11	\$48,928.11
2016	Amended	N	Y		\$93,701.63		\$0.00	\$93,701.63	\$0.00	\$52,011.86	\$52,011.86
2015	Amended	N	Y		\$18,314.56		\$0.00	\$18,314.56	\$0.00	\$74.80	\$74.80
2014	Amended	N	Y		\$62,065.80		\$0.00	\$62,065.80	\$0.00	(\$715.32)	(\$715.32)
2013	Original	N			\$21,256.24		\$0.00	\$21,256.24	\$0.00	\$9,829.42	\$9,829.42
2012	Original	N			\$21,156.48		\$0.00	\$21,156.48	(\$0.73)	\$9,694.70	\$9,693.97
2011	Original	N			\$22,879.56		\$0.00	\$22,879.56	\$0.00	\$10,798.64	\$10,798.64
2010	Original	N			\$13,672.62		\$0.00	\$13,672.62	\$0.00	\$7,838.33	\$7,838.33
2009	Original	N			\$9,100.33		\$0.00	\$9,100.33	\$0.00	\$5,867.29	\$5,867.29
2008	Original	N			\$49,332.13		\$0.00	\$49,332.13	\$0.00	\$28,906.92	\$28,906.92
2007	Original	N			\$58,617.62		\$0.00	\$58,617.62	\$0.00	\$40,252.35	\$40,252.35
2006	Original	N			\$14,215.04		\$0.00	\$14,215.04	\$0.00	\$13,972.08	\$13,972.08
2005	Original	N			\$1,928.49		\$0.00	\$1,928.49	\$0.00	\$2,514.92	\$2,514.92
2004	Original	N			\$6,166.78		\$0.00	\$6,166.78	\$0.00	\$6,290.80	\$6,290.80
2003	Original	N			\$17,477.34		\$0.00	\$17,477.34	\$5.35	\$13,160.87	\$13,166.22
2002	Original	N			\$15,795.96		\$0.00	\$15,795.96	\$0.00	\$11,335.74	\$11,335.74
2001	Original	?			\$15,528.70		\$0.00	\$15,528.70	\$0.00	\$15,165.28	\$15,165.28
2000	-						-	-	-	\$0.00	-
1999	-						-	-	-	\$0.00	-
1998	-						-	-	-	\$0.00	-
1997	-						-	-	-	\$0.00	-
1996	-						-	-	-	\$0.00	-
1995	-						-	-	-	\$0.00	-
1994	-						-	-	-	\$0.00	-
1993	-						-	-	-	\$0.00	-
1992	-						-	-	-	\$0.00	-
1991	-						-	-	-	\$0.00	-
1990	-						-	-	-	\$0.00	-
Totals				\$0.00	\$652,306.37	\$0.00	\$0.00	\$652,306.37	\$8,721.65	\$397,762.19	\$406,483.84

The IRS provides first-time penalty relief for the following penalties:

- Failure to file (FTF) penalty under IRC 6651(a)(1), IRC 6698(a)(1), or IRC 6699(a)(1),
- Failure to pay (FTP) penalty under IRC 6651(a)(2) and/or IRC 6651(a)(3), and
- Failure to deposit (FTD) penalty under IRC 6656.

⁵ IRM § 20.1.1.3.3.2.1

⁶ We utilize Tax Help Software for our transcripts and tax resolution practice. If you are interested in trying it go to www.TaxHelpSoftware.com, use the code TAXREPTRIAL for a free 2-week trial, and TAXREP10 to save 10%!

Note that the FTA does NOT apply to accuracy penalties or civil fraud penalties, nor does it apply to the trust-fund recovery penalty for responsible individuals for unpaid employment taxes.

One other critical issue for penalty abatement: the abatement, if approved, abates only those penalties that have accrued up until that moment, so any additional penalties that accrue continue to do so. For instance, if a taxpayer files their return with a balance due, and when the billing notice is received six months of failure to pay penalties have accrued. If the client (or you as practitioner) call the IRS and request the FTA then, those six months will be abated. If there is a balance still unpaid, then the penalty for failure to pay the balance (.5% a month) will continue to accrue on that balance going forward until it is paid or until the 50 months for the penalty has run out.

Because any abatement only removes those penalties that have accrued means it might make sense to wait until the balance is paid before requesting the relief. By waiting until the balance is paid, the Taxpayer would get the most relief from the abatement, however, only those amounts paid within the last two years can be refunded. The timing of the request, therefore, is critical and should be discussed with the taxpayer so the client can make the most informed choice.

STEP # 5

PREPARE AND FILE THE FINANCIAL PACKAGE

The famous quote about preparation being key to success is: “Every battle is won or lost before it is ever fought.” This is every bit as true in the IRS representation arena. It is critical that you be prepared, whether it’s for the IRS Examiner’s arrival, the appeals hearing, or the Offer-in-Compromise package you are filing. By doing the work and making sure your argument and package are complete you may have won the outcome before the package is ever looked at by someone at the IRS.

So be sure to get your retainer up front, take the time to speak with the taxpayer about his or her situation, collect the back-up documents and assure your proposal is supported by the documents you submitted. By preparing you also will see any issues and can help the client obtain the documentation they need.

Your client’s case will have a much better chance of success because of your preparation.

STEP # 6

DON'T BE AFRAID TO APPEAL

The IRS chose years ago to centralize most of its functions into campuses that would specialize in that one area of tax administration. For instance, all Offers-in-Compromise are submitted to COIC, or “Centralized Offer-in-Compromise”, and all innocent spouse claims are sent to the Centralized Innocent Spouse campus in Covington, Kentucky.

The goal was to standardize the reviews of these cases so outcomes would be consistent. And they achieved this goal, as the outcomes are almost always consistently bad. So how do you help your clients? Make sure they know from the moment the case is filed they should expect to have to take their case to Appeals.

At Green & Sklarz, we get more than 90% of our Offers-in-Compromise accepted. I tell you that for three reasons:

1. To brag
2. To demonstrate that we do a particularly good job of analyzing the client’s RCP and only file those Offers-in-Compromise that the IRS should accept based
3. Most of those successes are won up at Appeals, and in the case of innocent spouse cases, in United States Tax Court.

I think it’s important to prepare the client for the more than likely possibility that the case will need to be pursued to the Appeals level. It helps the client get comfortable with the long road ahead, manages their expectations and avoids them blaming you when the inevitable denial shows up and the Appeal needs to be taken.

IN CONCLUSION...

There were more than 25 million taxpayers in trouble BEFORE the Coronavirus ever showed up in this country, and the number is only going up exponentially. By following the six steps laid out above you can make money and help taxpayers resolve their worst tax nightmare. If you are already helping taxpayers, then good for you, and keep going and building your practice. If you have not yet started representing taxpayers, then you need to get started today, because the only thing holding you back is you.

A handwritten signature in blue ink, appearing to be 'E. J. Y.', with a long, sweeping horizontal line extending to the right.



ABOUT ERIC L. GREEN, ESQ.

Eric is a managing partner in Green & Sklarz LLC, a boutique tax firm with offices in Connecticut and New York. The focus of Attorney Eric L. Green's practice is civil and criminal taxpayer representation before the Department of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services. He is a frequent lecturer on tax topics for many national organizations, including Insightful Accountant, CCH, the NAEA, the NATP, the ABA Tax Section and the Connecticut Society of CPAs. Attorney Green has served as adjunct faculty at the *University of Connecticut School of Law*. He was the author and lecturer of the *CCH IRS Representation Certificate Program*, and has served as a columnist for *CCH's Journal of Practice & Procedure*. He is the founder of *Tax Rep LLC* which coaches accountants and attorneys on building their own IRS Representation practices, and is the host of the weekly *Tax Rep Network Podcast*.

Mr. Green is the author of *The Accountant's Guide to IRS Collection*, *The Accountant's Guide to Resolving Tax Debts* and *The Accountant's Guide to Resolving Payroll Tax Debts*. He is a contributing author for *Advocating for Low Income Taxpayers: A Clinical Studies Casebook, 3rd Edition*, and has also been quoted in *USA Today*, *Consumer Reports*, *The Wall Street Journal's Market Watch*, *TheStreet.com*, *The Wall Street Journal* and *CreditCard.com*.

Prior to practicing law Attorney Green served as a senior tax consultant for KPMG and Deloitte & Touche.

Attorney Green was the 2010 Nolan Fellow of the American Bar Association and has served as Chair of the American Bar Association's Closely Held Businesses Tax Committee. Attorney Green is a past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section. Eric is a Fellow of the *American College of Tax Counsel* ("ACTC").

Attorney Green is also a member of the Connecticut, Massachusetts and New York Bar Associations, as well as the American Bar Association. Attorney Green is admitted to practice in Massachusetts, New York and Connecticut Superior Courts, the United States Tax Court, The Federal Court of Claims and the Federal District Court for Connecticut. Attorney Green received his Bachelor of Business Administration degree in Accounting with a minor in International Business from Hofstra University and is an honors graduate from New England School of Law. He earned a Masters of Laws in Taxation (LL.M.) from Boston University School of Law.

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