

State Tax Debt & IRS Representation

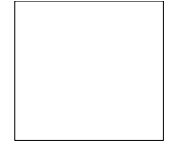
Catharine O'Connor, Esq. Head of Education, Tax Mentor



- Licensed to practice in Florida since 2012
- Practiced Tax Controversy from 2012-2020 for one of the largest national tax resolution companies.
- Resolved millions in tax debts, logged thousands of call hours with IRS collections personnel, and worked with hundreds of clients to resolve their tax controversy issues.
- Subject matter expert in tax issues facing small businesses, particularly payroll tax debts, with years of practical experience in achieving excellent results for my client.



Acronyms Used in Presentation



ACRONYM	MEANING	CONTEXT
CIS	Collections Information Statement	Financial (aka Budget) taken by the IRS determine a taxpayer's ability to pay (can be verbal or on approved form). i.e. 433F, 433A, & 433B
CNC	Currently Non Collectible Status	\$0 month resolution offered by the IRS. Have to prove that income is exceeded by the reasonable & necessary living expenses of the taxpayer. NOT a forgiveness program, the taxpayer still owes the balance due.
CSED	Collection Statute Expiration Date	The IRS has a limited time to collect a tax debt, starting 10 years from the date of assessment (plus tolling events). The CSED is the date the debt is no longer legally enforceable.
IA	Installment Agreement	Monthly repayment plan to the IRS, may or may not have a set term.
OIC	Offer in Compromise	OIC is the debt settlement program offered by the IRS. Acceptable amount is determined by the RCP, therefore each taxpayer will be unique.
PPIA	Partial Pay Installment Agreement	Anyone who prepares or assists in preparing federal tax returns for compensation must have a valid 2021 PTIN before preparing returns. All enrolled agents must also have a valid PTIN
RCP	Reasonable Collections Potential	In evaluating an OIC the IRS determines the RCP of a taxpayer over the remaining life of the debt by looking at the equity in assets and disposable monthly income. An offer less than the RCP is more likely to be rejected.

States WITHOUT Income Tax



Alaska

Florida

New
Hampshire*

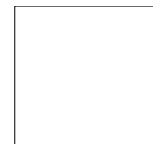
South
Dakota

Tennessee

Texas

Washington*

Wyoming



State vs IRS

Compliance - IRS



- ▶ In order to qualify for an Installment Agreement (IA) or Offer in Compromise the IRS generally requires that a taxpayer be in filing compliance.
- ▶ Generally, this is the current year PLUS prior 5.

Compliance - States



- ▶ Compliance requirements vary by state.
 - ❑ Some are Shorter
 - ❑ Most are a few years longer
 - ❑ Some are FOREVER (Wisconsin)

- ▶ Best Practice: ASK the state what returns they are seeking (don't assume) in order to be eligible for an Installment Agreement.

Collection Statute Expiration Date - IRS



- ▶ The IRS has a limited time to collect on delinquencies.
- ▶ The IRS has 10 years from date of assessment PLUS any tolling events.
- ▶ Examples of tolling events include Bankruptcy, Pending Installment Agreements, and Offers in Compromise.

Collection Statute Expiration Date - State



- ▶ Timeframes for collections vary by state.
 - ❑ Many are actually shorter which impacts allowed installment agreement terms.
 - ❑ California is an example which has a longer CSED of 20 years
- ▶ IRS has the option to reduce liens (i.e unpaid balances) to judgement prior to expiration of the CSED but this is not often utilized. States on the other hand will be much more aggressive in pursuing this option.
 - ❑ Often the State Lien will outlive any applicable CSED

Wage Levy - IRS



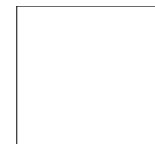
- ▶ When the IRS issues a wage levy the employer is instructed to remit ALL income except the exemption amount (see Pub. 1494)
- ▶ The wage levy can be released upon a showing of hardship and/or entering into an Installment Agreement.

Wage Levy - States



- ▶ Typically, a state wage levy instructs the employer to remit a certain percentage of the taxpayer's wages (25% is typical).
- ▶ Once in place they usually cannot be released. Many states allow for a reduction based on hardship.
- ▶ Place on IRS 433 as a court ordered payment.

Bank Levy - IRS



- ▶ When the IRS issues a bank levy it is considered a one time levy and only attaches to the funds in the account at time of receipt.
- ▶ There is a 21 day remittance period in which to attempt to secure a full or partial release.

Bank Levy - States



- ▶ Bank levy terms vary by state.
- ▶ Many are also one time in that it only attaches to the funds in the account at time of receipt BUT many have shorter remittance periods.
- ▶ Some state utilize continuous levies which collect all funds in the account for a set period of time.

Installment Agreements - IRS



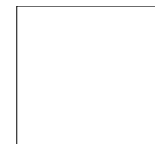
- ▶ Streamline Installment Agreements
 - ❑ Approximately 6 years to repay
- ▶ Non Streamline Installment Agreements
 - ❑ Up to 10 years to repay
- ▶ Partial Pay Installment Agreements
 - ❑ Repayment based on IRS Collection Determination

Installment Agreements - States



- ▶ States are ALWAYS looking for full pay, the only variable being how long they will allow the taxpayer to repay the debt.
 - ❑ 24-48 months is pretty standard
 - ❑ Have seen as low as 11 months and as high as 72 months.

Hardship - IRS



- ▶ The IRS defines hardship as the inability for a taxpayer to pay their necessary & reasonable living expenses.
- ▶ The IRS cannot demand a payment that would cause financial hardship allowing taxpayers the opportunity to pursue a Currently Non Collectible (CNC), Partial Pay Installment Agreement (PPIA), or Offer in Compromise (OIC).

Hardship - States



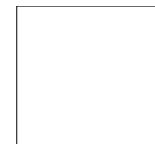
- ▶ Most states do not have options equivalent to Currently Non Collectible (CNC) or a Partial Pay Installment Agreement (PPIA).
- ▶ Proving financial hardship usually just allows the taxpayer to extend the term of repayment but they are still expected to full pay.

Offer in Compromise - IRS



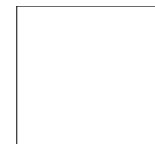
- ▶ In most circumstances an acceptable amount for the IRS to compromise a debt will be based on the Reasonable Collection Potential (RCP).
- ▶ The RCP generally represents the max amount the IRS could collect over the life of the debt without causing hardship.

Offer in Compromise - States



- ▶ Not all states offer an Offer in Compromise equivalent.
- ▶ Some states require that the IRS have approved an OIC before considering one themselves.
- ▶ Even where states have an OIC program the acceptable amount can often feel more arbitrary than the RCP under IRS OIC program.

Private Collection Agencies - IRS

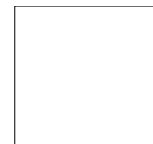


- ▶ The FAST Act required the IRS to send certain overdue shelved balances to Private Collection Agencies.
- ▶ The Private Collection Agencies have limited authority in collecting IRS balances.
- ▶ A Levy CANNOT be initiated by the Private Collection Agency on an IRS debt.

Private Collection Agencies - States



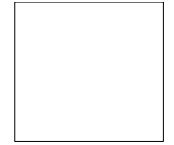
- ▶ States also use Private Collection Agencies, including the same ones the IRS contracts with.
- ▶ The states often give the agencies more power to collect and have designated teams to coordinate between them.
- ▶ A levy CAN be issued on a state debt while assigned to a Private Collection Agency.



Sales Tax

A Uniquely State Issue

States WITHOUT Sales Tax



Alaska*

Delaware

Montana

New
Hampshire

Oregon

Sales Tax Enforcement



- ▶ Sales tax is a type of trust tax as well as a massive source of revenue for most states and localities.
- ▶ Sales Tax delinquencies tend to be enforced quickly and aggressively.
- ▶ Failure to resolve can result in loss of business license, padlocking of premises, and seizure.

Beware of Estimates



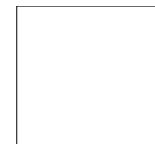
- ▶ When a business stops filing, or never files, sales tax reports it is VERY common to see the state step in and prepare estimates.
 - ❑ Similar to an IRS Substitute for Return but happens much faster.
- ▶ This can represent an opportunity to correct balance dues when these estimates are present.

Compliance is KEY to Resolving

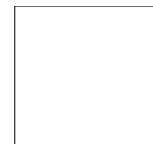


- ▶ Filings must be brought up to date; past, estimates, and present.
 - ❑ Can end up being a LOT of filings depending on required frequency.
- ▶ If a sales tax requirement still exists, the taxpayer needs to be filing and paying on time moving forward.
 - ❑ Ongoing issues can lead to harsher consequences.

Audits

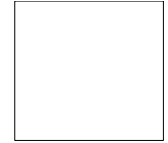


- ▶ Representing (or Disputing) a Sales Tax Audit is generally time consuming and laborious.
 - Recommend hourly fees with a retainer.
- ▶ Going straight to the auditor (or their office) is usually the best way to get paperwork.
- ▶ Be selective and screen the taxpayer.



State Tax Representation

First Contact



- ▶ Taxpayer is NOT a good source for the Big Picture.
- ▶ To begin strategizing need to go straight to the source.
- ▶ Push for Options!

State Tax Debt 1st Contact Worksheet - Individual

Date: _____
 Taxpayer/Client: _____
 Phone Number Called: _____ Rep Name: _____

POA on File?

Yes

No Fax #: _____ Call Back Date: _____

- Balance Check

Tax Period	Tax Type	Filing Status	Original?	Balance	Tax	Interest	Penalties	In Collections

- Repayment Options: _____

Who Has Priority?



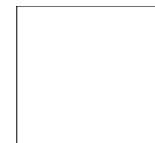
- ▶ The IRS takes the position that they are a more senior creditor than state tax delinquencies in many instances.
- ▶ States show little interest in ceding priority to the IRS as evidenced by their speed and aggression in collecting.
- ▶ Taxpayers can end up caught between a rock and a hard place when there are not enough funds to go around.

Notice of Federal Tax Lien



- ▶ 5.17.2.7.1.16 (1) Unlike the property tax, which has a superpriority status under IRC 6323(b)(6), a state, county, or municipal lien for taxes (e.g., sales taxes, income taxes, franchise taxes, etc.) can achieve priority over the federal tax lien only on the basis that such lien is a choate lien prior in time to the federal tax lien arising, which occurs when the federal tax liability is assessed. Then the doctrine of "first in time, first in right" is applicable. *United States v. City of New Britain*, 347 U.S. 81 (1954).

Installment Agreements



- ▶ IRM 5.15.1.11(4)(b) sets out how the IRS can apportion an **existing** state IA, i.e. not allowing the entire amount when a Collection Information Statement is provided.

Category	Amount/Percentage
IRS Tax Liability	\$10,000.00
State or Local Tax Liability	\$5,000.00
Total	\$15,000.00
IRS percentage	$10,000.00/15,000.00 = .67$
State or Local percentage	$5,000.00/15,000.00 = .33$
Taxpayer's net disposable income (see Note below)	\$400.00
IRS Payment (400 x .67)	\$268.00
State or Local Payment (400 x .33)	\$132.00

Who First – State or IRS?



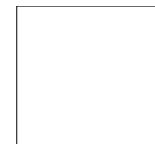
- ▶ Best practice is almost always to resolve the state first as the IRS is generally going to have longer repayment and/or more flexible financial based options.
 - ❑ Also need to already be established in order be considered an expense (in full or in part) on a Collection Information Statement.
- ▶ States are also usually the first to get aggressive frequently making them a higher priority.

Strategies



- ▶ Don't do the IRS' job for them!
 - If the State IA is apportioned, consider calling the state back to renegotiate a lower IA.
- ▶ If taxpayer has funds/equity (and liens are not problematic) recommend application to state IF it will improve their overall position.

Engagement



- ▶ Not a 2-for-1 engagement; IRS and State Tax Issues should be separate engagements and fees.
 - ❑ Also stipulate any necessary compliance returns are a separate engagement.
- ▶ Flat Fee or Hourly with Retainer?
 - ❑ Would align fee structure with IRS representation unless you believe there are substantial differences.

Three Takeaways



- ▶ State Taxing Agencies \neq Internal Revenue Service. You should not apply the same rules or strategies.
- ▶ States have less options for Hardship, full payment is the general rule.
- ▶ Establishing a payment plan on state debt FIRST is usually the best strategy.