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# A Practitioner's Viewpoint on Fairness and Efficiency in OICs and Installment Agreements

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# AGENDA

- Offers in Compromise
- Installment Agreements
- Case Studies

# COLLECTION ALTERNATIVES

- Options include:
  - **Offer in Compromise**
  - **Installment Agreements**
  - Currently Not Collectible
  - Bankruptcy
  - Innocent Spouse Relief

# OFFERS IN COMPROMISE

- An offer in compromise (OIC) is an agreement between the taxpayer and the Department that settles tax liabilities, and any penalties and interest, for less than the full amount owed.
- Generally, states allow OICs in the following situations:

1. Doubt as to Collectibility;
2. Doubt as to Liability;
3. Economic Hardship / Effective Tax Administration.

# OFFERS IN COMPROMISE

- Doubt as to Collectibility:
  - Taxpayer is unable to pay taxes, penalties, and interest in full either by liquidating assets or through installment agreement.
  - Reasonable Collection Potential (RCP):

    (1) Equity in assets +

    (2) Average monthly income after expenses projected over the period of time proposed for paying the amount offered (e.g., 12 or 24 months).

    1 + 2 = Offer Amount

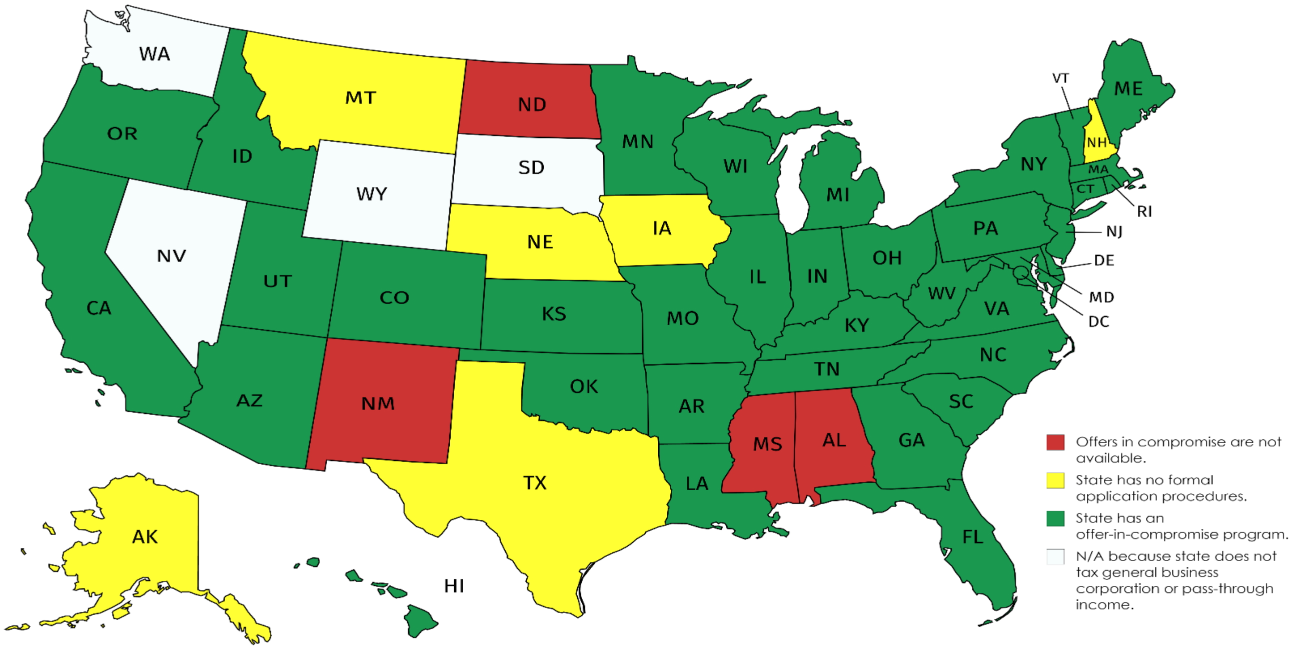
# OFFERS IN COMPROMISE

- Doubt as to Liability:
  - Legitimate doubt exists as to whether the taxpayer owes part or all of the assessed tax liability.
  - No legitimate doubt exists where the liability has been established by final court decision or judgment concerning the existence or amount of the liability.
  - Usually appropriate where:
    - An examiner made a mistake interpreting the tax law;
    - An examiner failed to consider evidence presented; or
    - New evidence is available to support a change in the assessment.

# OFFERS IN COMPROMISE

- Economic Hardship / Effective Tax Administration:
  - There is no doubt that the tax is correct and there is potential to collect the full amount of tax, but exceptional circumstance(s) warrant considering an offer.
  - Exceptional circumstances:
    - Economic Hardship; or
    - Public Policy or Equity Grounds.

# MAP OF AVAILABILITY OF OFFER-IN-COMPROMISE PROGRAMS



# FAIRNESS

## NEGATIVES

- Departments have wide discretion in determining whether to accept or terminate an offer in compromise.
- Decisions are typically final and not subject to administrative or judicial review.
- Agreements usually cannot be revised, even if there is a change in the taxpayer’s circumstances.
- States usually rescind offers in compromise when taxpayers make late payments or fail to file and pay required taxes.
- Offer generally must equal or exceed the taxpayer’s “reasonable collection potential”.
  - Some expenses that taxpayers consider necessary are not counted.

# FAIRNESS

| POSITIVES |
|---|
| • While compromise decisions are made on a case-by-case basis, many states provide criteria upon which a decision will be made, which reduces uncertainty and disparate treatment among taxpayers.<br>• Collection efforts may, but not always, cease while an offer is pending. |

# EFFICIENCY

| NEGATIVES |
| --- |
| • Taxpayers are required to file specific, comprehensive forms and submit ALL paperwork required. Failure to do so may result in automatic rejection. |
| • Some states require exhaustion of administrative remedies prior to submitting an offer in compromise. |
| • Departments and the IRS have been unable to implement a joint offer in compromise program. |

# EFFICIENCY

| POSITIVES |
| --- |
| • In general, processing an offer in compromise is fast (90 days or less from an application being deemed complete).<br>• Usually, if an offer amount is insufficient, the Department will convey an acceptable amount to the taxpayer without requiring the taxpayer to re-file an application. |

# LIMITATIONS

An OIC is generally only available to taxpayers who are in full reporting compliance, including all business tax filings and license fees.

Taxpayers typically may not have a bankruptcy pending.

Some states only accept agreements where the business discontinues or has liquidated or become insolvent.

States generally do not accept OICs if criminal charges are pending.

# PRACTICAL TIPS

- Information Gathering:
  - Have all tax returns been filed?
  - Are there any pending assessments?
  - Does the client have proper withholding or, if self-employed, then is the client current with estimated tax payments?
  - Are there any increases or decreases in income expected in the near future?
  - Is the client in bankruptcy?

## PRACTICAL TIPS

- Meet the client in person and spend time talking about the OIC as it relates to their situation.
  - Ask questions:
    - How did the tax liability arise?
    - How are things now?
    - Can the client stay in compliance with filing and paying taxes?
    - Does the client have a dependable accountant / tax preparer?
    - Is the self-employed or business client using a payroll provider?

# PRACTICAL TIPS

- Ensure that the client understands the OIC **process**:
  - Filing considerations
  - Making sure the OIC package is accurate and complete before signing
  - Outline the steps for the client
  - Timeline
  - Ensure that the client is not submitting the OIC simply to delay collection efforts

# PRACTICAL TIPS

- Ensure that the client understands the OIC **requirements**:
  - Refund offsets
  - Pausing the period of limitations on collection
  - Department will investigate the accuracy of the OIC, including using public information
  - Client normally must be compliant for five years after acceptance
  - Go through all of the “Offer Terms”

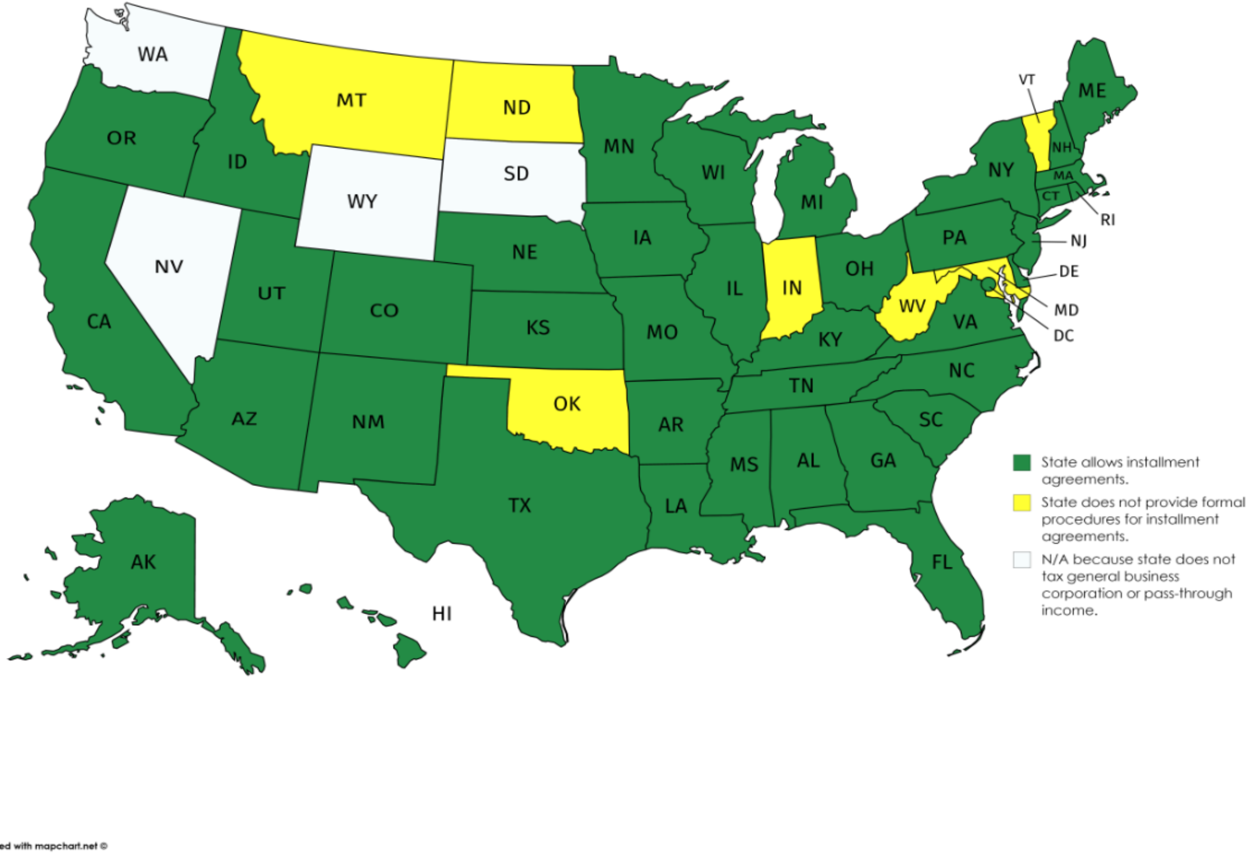
# TRAPS FOR THE UNWARY


- Offers in compromise made through the IRS must be provided to the state and may impact the state's decision.
- Some states provide that taxpayers may not challenge or protest *any* obligations for a period of time after an offer in compromise is accepted.
- States generally require full or partial payments shortly after an offer is accepted.
- Some states require remittance of a portion of the offer and/or an application fee upon application and that amount is nonrefundable.
- The filing of an offer in compromise usually does not stay the period of limitation for which a taxpayer may request administrative or judicial review.
- The filing of an offer in compromise usually stays the period of limitation for collection.
- Approved offers are often open to public inspection.

# INSTALLMENT AGREEMENTS

- An installment agreement is an agreement between a taxpayer and the Department that allows the taxpayer to pay the tax debt in monthly payments.
- Like OICs, installment agreements can be negotiated, including payment term length and payment of interest or penalties.
- Most states will allow installment agreements, even states that do not allow OICs.
  - Some states provide for them statutorily.
  - Some states provide for them in their taxpayer bills of rights.
  - Some states will informally enter into installment agreements with taxpayers.

# MAP OF AVAILABILITY OF INSTALLMENT AGREEMENTS



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# FAIRNESS

| NEGATIVES |
| --- |

- Departments have wide discretion in denying a request for or terminating any installment agreement.
- Decisions are typically final and not subject to administrative or judicial review.
- Agreements usually cannot be revised, even if there is a change in the taxpayer’s circumstances.
- States usually rescind installment agreements when taxpayers make late payments or fail to file and pay required taxes.
- Some states add a separate fee for entry into an agreement.
- Many states require financial condition updates.

# FAIRNESS

| POSITIVES |
| --- |
| • While Departments have broad authority and decisions are made on a case-by-case basis, many states provide criteria upon which a decision to deny or terminate an agreement will be made, which reduces uncertainty and disparate treatment among taxpayers.<br>• Collection efforts may, but not always, cease while an installment agreement is pending. |

# EFFICIENCY

| NEGATIVES |
| --- |
| • Negotiation of installment agreements may be a detailed and time-consuming process that sometimes requires substantial knowledge of state regulations and guidance.<br>• While states generally cease levy actions during the installment agreement period, they may still file a tax lien to secure compliance with the plan. |

# EFFICIENCY

| POSITIVES |
|---|
| • Gives taxpayers a defined, manageable payment plan.<br>• Often can be an informal agreement with the taxing authority, requiring less verification paperwork than OICs.<br>• States may allow taxpayers to make payments online or through direct deposit, reducing the risk of inadvertent default. |

# LIMITATIONS

Unlike offers in compromise, might not reduce the assessed tax liability.

An installment agreement is generally only available to taxpayers who are in full reporting compliance, including all business tax filings and license fees.

Some states provide for installment agreements for only specified tax types.

Some states limit installment agreements to taxpayers who owe tax less than a specified amount.

# PRACTICAL TIPS

- Information Gathering:
  - Have all tax returns been filed?
  - Are there any pending assessments?
  - Does the client have proper withholding or, if self-employed, then is the client current with estimated tax payments?
  - Are there any increases or decreases in income expected in the near future?
  - Is the client in bankruptcy?

# PRACTICAL TIPS

- Meet the client in person and spend time talking about the installment agreement as it relates to their situation.
  - Ask questions:
    - How did the tax liability arise?
    - How are things now?
    - Can the client stay in compliance with filing and paying taxes?
    - Does the client have a dependable accountant / tax preparer?
    - Is the self-employed or business client using a payroll provider?

# PRACTICAL TIPS

- Ensure that the client understands the IA **process**:
  - Outline the steps for the client
  - Timeline

- Ensure that the client understands the IA **requirements**:
  - Refund offsets
  - Pausing the period of limitations on collection
  - Department will require financial condition updates
  - Client must be compliant for five years after acceptance
  - Go through all of the terms of the agreement

## TRAPS FOR THE UNWARY


- With most installment agreements, in the event of default, the full amount of the tax will be due and payable.
- Some states will only consider installment agreements if the tax has not been litigated or otherwise challenged first.
- Some states limit the use of installment agreements under default:
  - For example, if a taxpayer defaults on an installment agreement in Pennsylvania, they cannot enter into another for 3 years.
- Entering into an installment agreement usually does not stay the period of limitation for which a taxpayer may request administrative or judicial review.
- Entering into an installment agreement usually stays the period of limitation for collection.
- Some states will not allow a taxpayer that has a pending OIC application to enter into an installment agreement.

# CASE STUDY # 1

- The taxpayer filed a tax return reporting stock options as valued by the taxpayer's employer, which created a large tax liability including Alternative Minimum Tax (AMT). The taxpayer paid part of the tax debt, but could not pay the full amount owed. The taxpayer later discovered that the stocks were not worth as much as originally reported. This was due to fraudulent acts by the broker and/or the taxpayer's employer. The taxpayer filed a claim for a refund based on the reduced value of stock options. The Department told the taxpayer that the full amount of the tax debt had to be paid before it could consider the claim and denied the claim for refund.
  - Should the taxpayer be made to pay the full amount of the tax debt or should the taxpayer be allowed to enter into an offer in compromise? Installment agreement?
  - If an OIC, what type of offer may the taxpayer qualify for?
  - If an OIC, what is the most efficient way to get the offer processed?

*Based on example in IRS Form 656-L

# CASE STUDY # 2

- A taxpayer contracted with a payroll service provider (PSP) to handle all the payroll tax matters of the business. The taxpayer utilized a PSP that had been in business for several years and contacted references of other businesses using the PSP who stated the PSP had acted appropriately. The taxpayer monitored the tax deposits via their bank account withdrawals and the state's electronic payment system. When it was determined the PSP may have missed deposits, the business immediately started verifying tax deposits on their due date.
  - Should the taxpayer be made to pay the full amount of the tax debt or should the taxpayer be allowed to enter into an offer in compromise? Installment agreement?
  - If an OIC, what type of offer may the taxpayer qualify for?
  - If an OIC, what is the most efficient way to get the offer processed?

*Based on IRM 5.8.11.2.2.1 (08-05-2015)

# CASE STUDY # 3

- Married taxpayers owe $100,000 in back income taxes from 2015 to 2018. The wife was a W-2 employee and was withholding at the correct level. However, the husband was self-employed during tax years 2015-2018 but did not make any estimated tax payments. He is now a W-2 employee. The taxpayers own a home that is valued at $250,000 and is subject to a $200,000 mortgage; a 2010 car with no loan attached and a book value of $10,500; a 2012 car with no loan attached and a book value of $12,500; and savings and checking accounts worth around $1,000. Their average monthly income after allowable expenses based on the national collection standards is $1,000.
    - How should the taxpayer's case be resolved?

# THE END

**QUESTIONS?**

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