

## IRS Collection Process

- Tax is assessed.
- The first billing notice is sent and goes unpaid.
- The IRS places a silent lien, by statute, on all assets owned and later acquired by the taxpayer.
- The IRS sends a final notice of intent to levy the taxpayer's income and assets. This begins the statutory 30-day window for the taxpayer to request a collection due process hearing (CAP appeal).
- The IRS files a Notice of Federal Tax Lien in public records, if the tax balance is greater than \$10,000.
- Assuming that a CAP appeal is not filed, the IRS begins seizing assets. This can include the garnishment of wages, taking money from bank accounts and attempting to collect from third parties that owe the taxpayer money.
- The IRS will repeat any of the previous steps as needed until either the full tax balance is paid in full or the taxpayer contacts the IRS to settle the debt.
- This process is generally the same regardless of whether the taxpayer is an individual or business.

## General Information

If you believe or know that you have an issue with the Internal Revenue Service (IRS) or a particular state, you should consider doing the following:

- File any missing returns for the past six years as soon as possible.
- Make any estimated tax payments when they are due for the current year.

- The IRS will not accept any collection alternatives until all returns are submitted for the prior six years and all estimated payments are current.
- Open any mail received from the IRS or state.
- Respond to any requests from the IRS or state in a timely fashion.
- Do not assume that the IRS or state doesn't know about your tax issues simply because you haven't heard from them!

It is always better to be proactive as soon as you know you have a tax issue as opposed to waiting for the phone calls and notices to start.

## Installment Agreements

In General:

- A payment plan that allows taxpayers to work towards paying off their tax balance in equal monthly payments.
- Available through the IRS and state.
- A good option for taxpayers who can make monthly payments towards their tax balance, have assets that make an offer for less than the amount of the tax balance likely to not be accepted, or who have expenses equal to or greater than their monthly income.
- Can be tailored to what a taxpayer can afford regardless of the overall tax balance.
- Many types of agreements can be established with a call to the IRS.
- Once completed, an agreement will end all collection activities, provided payments are made consistently.

## Installment Agreement Types

- Short-term – fully pay a balance over 180 days
- Guaranteed – an automatically accepted agreement for balances less than \$10,000
- Streamlined – an agreement with a \$50,000 balance limit and a 72-month payment timeline
- Regular – A general agreement that requires taxpayer disclosure of financial information to establish the plan. If the balance is fully paid by the monthly payment, the agreement is classified as a regular installment agreement.
- Partial Pay – This agreement is very similar to a regular installment agreement except that the monthly payment will not be enough to fully pay the balance before the collection statute runs out. The IRS will review the agreement every two years to verify that nothing has changed.

## Offers-in-Compromise

In General:

- An offer-in-compromise allows a taxpayer to settle their tax debt for less than the amount owed.
- Requires full disclosure of taxpayer income, expenses and assets.
- If the value of the net equity in the assets plus the available monthly income is less than what can be collected before the collection statute expires, an offer for a reduced amount will likely be accepted.
- An offer can either be paid in one lump sum or in monthly payments over 24 months.

### Offers-in-Compromise Types

- **Doubt-as-to-Collectability:** The amount of taxes is not disputed, but the taxpayer cannot afford to pay the balance in full.
- **Doubt-as-to-Liability:** The taxpayer refutes that they owe some or all of the balance to the IRS. The taxpayer will need to provide documentation to support that the tax balance is incorrect.
- **Doubt-as-to-Collectability with Special Circumstances and Effective Tax Administration:** These two offer types provide relief to taxpayers who warrant acceptance for less than the amount of the calculated offer. To qualify, the taxpayer must be able to support that a higher offer would lead to economic hardship or should be accepted based on public policy or equity grounds.

### Currently Not Collectible (CNC)

- IRS collection status for a taxpayer who has no available asset equity and insufficient funds to cover IRS allowable expenses.
- CNC stops IRS enforced collection for as long as the status is active.
- Penalties and interest will continue to accrue while in CNC status.
- The IRS will periodically review taxpayer financial information to determine if situation has improved. If it has, the IRS will resume enforced collection.

### Innocent Spouse

- Relief for a spouse who believes they owe taxes due to errors on a joint tax return filed by their spouse or ex-spouse.
- Must have filed a joint return that has an understatement of tax due to errors made by their spouse.
- Innocent spouse cannot have known about errors.
- Very fact driven analysis

### Penalty Abatement

#### First-Time Penalty Abatement:

- The IRS will grant an automatic penalty abatement for one tax year provided that all tax returns were filed on time for the previous three years, any taxes due for the previous three years were fully paid and there are no other tax related offenses over the prior three years.
- A first-time penalty abatement must be requested by calling the IRS or submitting a request in writing.

#### Regular Penalty Abatement:

- A regular penalty abatement is a request to remove all penalties for reasonable cause.
- Examples of reasonable cause include death or serious medical conditions to the taxpayer or the taxpayer's family, flood, fire or natural disaster, and IRS error.

- Penalty abatements have low rate of success. Approval is very fact driven.

### Lien Subordination

- The IRS will allow a federal tax lien to be subordinated if it improves the overall collectability of the underlying tax debt.
- Reasons for subordination include using proceeds to pay down the IRS tax balance, increasing monthly payments to the IRS or creating additional equity in the asset.
- If the taxpayer can prove that subordinating the federal tax lien is in the best interest of the IRS, the request will likely be granted.
- A request for subordination must be made in writing prior to completing the new loan.

### Lien Withdrawal

- Federal tax liens may be withdrawn by the IRS provided that a direct debit installment agreement is in place and the first three payments have been made, the assessed balance is \$25,000 or less at the time of the request and the total tax liability will be fully paid in 60 months.
- Withdrawal requests must be made in writing to the IRS once the above conditions are met.



This Collection Alternatives Quick Reference Guide was prepared and distributed by Plunkett Cooney's Tax Law Practice Group. The information contained herein is for informational purposes only and does not constitute legal advice for any specific matter. Any questions or comments concerning this guide may be addressed to **Joe A. Peterson** at (248) 433-7158 • [jpeterson@plunkettcooney.com](mailto:jpeterson@plunkettcooney.com).