

# TAX PLANNING LETTER

APRIL 2018, #302

## Choices for Taxpayers Who Can't Pay Their Federal Income Tax Bills

The April 17<sup>th</sup> deadline arrives this month . . . and sometimes it happens . . . you don't have the cash to pay the balance due on your return. You can avoid the Late Filing of Return Penalty if you file an extension (generally, six months). But the money is still due meaning that the Late Payment of Tax Penalty and Interest come into play. This Tax Planning Letter reviews methods by which financially distressed taxpayers may be able extend the payment of their income taxes including:

- Offers-in-compromise with the IRS
- Installment Agreements (Note: fees are now waived or refunded for certain low-income taxpayers under a recent law change)

### Paying in full within 120 days

A taxpayer can pay the full amount owed within 120 days, without having to pay any fee, but interest and any applicable penalties continue to accrue until the tax is paid in full. To use this method, taxpayers can:

- Use an online payment application ([www.irs.gov/individuals/online-payment-agreement-application](http://www.irs.gov/individuals/online-payment-agreement-application)), or
- Call IRS at 800-829-1040 (individuals) or 800-829-4933 (businesses).

### Installment agreements

For taxpayers for whom paying within 120 days is not an option, entering into an installment agreement with the IRS may be an option. This method is applied for using:

- Form 9465, Installment Agreement Request, and
- Form 433-F, Collection Information Statement ([www.irs.gov/individuals/payment-plans-installment-agreements](http://www.irs.gov/individuals/payment-plans-installment-agreements))

There are different rules for taxpayers who owe \$10,000 or less, and for taxpayers who owe \$50,000 or less.

### Balances due of ≤\$10,000

The IRS is required to honor a taxpayer request for installment agreement if the total amount of the liability (e.g. exclusive of penalties, interest and any other additions to tax) does not exceed \$10,000, and meet the following additional criteria:

- During the previous five tax years, the taxpayer (inclusive of spouse if a MFJ return is filed):
  - Has filed all income tax returns,
  - Has paid any income tax due, and
  - Has not entered into a previous installment agreement
- The agreement must require the repayment of the full amount by the taxpayer within three years, during which time taxpayer complies with all Code provisions; and
- The taxpayer is financially unable to pay the liability in full when due and, if requested by the IRS, must submit information (such as a financial statement) to the IRS to allow them to make this determination.

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**Observation:** *It should be noted that, in spite of the last bullet above, the Internal Revenue Manual (at 5.14.5.3), provides that the IRS will grant guaranteed installment agreements even if the taxpayer is able to pay his or her liability in full, as a matter of policy.*

**Balances due of ≤\$50,000**

For Installment Agreements in the amount of \$50,000 or less, a streamlined procedure exists in which the IRS may accept such application without requiring a financial statement from the taxpayer(s), if the taxpayer:

- Owes \$50,000 or less in combined tax, assessed penalties and interest,
- Has filed all returns, and
- Will pay up within 72 months or will pay in full before expiration of the collection statute of limitations, whichever comes first.

**Observation:** The IRS currently has a test program in force through 9/30/18, in which the criteria for streamlined processing is also applicable to individual taxpayers who agree to pay balances due up to \$100,000 within a 7-year period.

**Installment Agreement Fees (low-income taxpayers excepted)**

\$ 225	Regular Installment Agreements	Taxpayer contacts IRS in per, by phone, or mail and sets up an agreement to make manual payments over a period of time either by any electronic method other than direct debit, such as direct pay or debit/credit card, or by check or money order.
\$ 107	Direct Debit Installment Agreements	Taxpayer contacts IRS by phone or mail and sets up an agreement to make automatic payments over a period of time through a direct debit from a bank account.
\$ 149	Online Payment Agreements	Taxpayer sets up an installment agreement Online Payment Agreement application on <a href="http://www.irs.gov">www.irs.gov</a> and agrees to make manual payments over a period of time by any electronic method other than direct debit, such as direct pay or debit/credit card, or by check or money order.
\$ 31	Direct Debit Online Payment Agreements	Taxpayer sets up an installment agreement Online Payment Agreement application on <a href="http://www.irs.gov">www.irs.gov</a> and agrees to make automatic payments over a period of time through a direct debit from a bank account.

**Benefits Applicable to Qualifying Low-Income Taxpayers**

- Qualifying low-income taxpayers are afforded a \$43 reduction of the aforementioned fees for the first three Agreements.
- The Bipartisan Budget Act of 2018 provides that no user fee is imposed in arrangements in which the low-income taxpayer enters into an installment agreement under which the taxpayer agrees to make electronic debit installment payments through a debit account.
- In the case of low-income taxpayers unable to agree to make such electronic payment, the user fee continues to apply, however it will be reimbursed upon completion of the installment agreement.

**Offer in compromise (OIC)**

OIC is defined as “an agreement between a taxpayer and IRS that settles the taxpayer's tax liabilities for less than the full amount owed”.

Taxpayers who are able to pay 100% of their liabilities through an installment agreement or other means, would therefore not generally qualify for an OIC. IRS states that taxpayers must meet the following criteria to qualify for an OIC:

- all tax returns must of have been filed,
- all required estimated tax payments for the current year must have been made, and
- all required federal tax deposits for the current quarter must have been made (if the taxpayer is a business owner with employees). ([www.irs.gov/taxtopics/tc204.html](http://www.irs.gov/taxtopics/tc204.html))

The grounds under which the IRS may offer an accommodation of a taxpayer's tax liability are as follows:

**Doubt as to liability** - There is a dispute as to the existence of amount of the correct tax debt.

**Doubt as to collectability** - Doubt exists in any case where the full amount of the tax liability exceeds the taxpayer's assets and income.

**To promote effective tax administration** - The potential for acceptance of an offer under this ground requires that the following criteria be considered:

- collection in full of the tax owed could be achieved, but
- requiring payment in full would either create an economic hardship or would be unfair and inequitable due to exceptional circumstances.

To request an OIC, the taxpayer:

- must apply via Form 656, Offer in Compromise.
- must submit Form 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed Individuals, and/or
- must submit Form 433-B (OIC), Collection Information Statement for Businesses.

A taxpayer submitting an OIC based on doubt as to liability must:

- Form 656-L (PDF), Offer in Compromise (Doubt as to Liability), instead of Form 656 and Form 433-A (OIC) and/or Form 433-B (OIC).

The OIC application generally must be accompanied by a \$186 application fee (for certain low-income taxpayers, or if the OIC is based on doubt as to liability, the fee is waived).

Therefore, with the exception of OIC applications filed by low-income taxpayers, or based only on doubt as to liability, an OIC must be accompanied by a nonrefundable payment based on the payment method outlined below.

- If a taxpayer proposes to pay in a lump sum (i.e., an offer payable in 5 or fewer installments within five or fewer months after the offer is accepted), a payment equal to 20% of the offer amount must accompany Form 656 . . . in addition to the \$186 application fee.
- If a taxpayer proposes to make periodic payments (i.e., 6 or more monthly installments made within 24 months after the offer is accepted), a payment equal to the 1<sup>st</sup> proposed installment payment must accompany Form 656 . . . in addition to the \$186 application fee.

### Temporarily delay the collection process

If payment of the liability due would create financial hardship, one final option is to ask IRS to delay collection until the taxpayer is able to pay. If a determination is made that the taxpayer cannot pay any of his or her tax debt, the IRS may classify the taxpayer's account as currently not collectible and temporarily delay collection until such time as the taxpayer's financial condition improves. Interest/penalties of course continue to accrue until the tax debt is fully paid. (<https://www.irs.gov/businesses/small-businesses-self-employed/temporarily-delay-the-collection-process>)

Under this delay option, a Collection Information Statement (Form 433-F, Form 433-A or Form 433-B) may be requested from the taxpayer, as well as proof of financial status (this may include information about assets and monthly income and expenses). This is perhaps the least favorable option from a credit rating perspective because, while the temporary delay is in force, IRS may also file a Notice of Federal Tax Lien to protect the government's interest in the taxpayer's assets. A request to temporarily delay the collection process or to discuss other payment options is initiated by contacting the IRS at (800) 829-1040 (individuals), or (800) 829-4933 (businesses).



### Questions?

For more details on information presented in this Tax Planning Letter or other issues, please feel free to call Roger Rossmeisl, CPA direct at (714) 325-0442 or via e-mail at [roger@khopatel.com](mailto:roger@khopatel.com).

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