

The IRS Offer In Compromise Program (Or the “Oh I Can’t” Defense)

Non-processable! No, this isn’t a rejection for a visa into the United States, and it is not a warning label for something that doesn’t belong in the kitchen blender – It is the famous IRS euphemism for circumventing a program they designed to advance compliance with the tax code. Yes, it is the IRS’ way of telling you, “Unfortunately you are not eligible for their Offer in Compromise program (the Oh I Can’t (OIC) defense).

The OIC program was authorized by congress in 1986 as a way to bring delinquent taxpayers back in to the system, and as a professional, I believe it serves a useful purpose. Invariably, people who owe back taxes drop out of the system – they never pay the back taxes and stop filing in the future, depriving the fisc of revenues and wasting IRS manpower. So, does the OIC program fulfill its mission? If it was administered by an independent outside source capable of dispassionately judging an individual’s circumstances to craft an agreeable solution it might have had a chance. Unfortunately, the first level of review for an OIC is often started by a collection officer, or a former collections officer. IRS collection officials have been trained to do one thing – collect the maximum amount of revenue with the least amount of effort. Sort of like the fox who becomes the mother of the chicken. Only rarely does the chicken survive. Why would an IRS official, trained to maximize revenue, willingly and most of all non-confrontationally reduce the amount of taxes that someone owes? After all, as a recent appeals officer said to me, “I pay my taxes, why can’t he”?

So the story will not seem unusual for someone who tried to embrace the program as I have. About 10 years ago, before the reforms of the system to prevent the “abuse” I am about to describe, we submitted an “offer” for a client of ours. For those not familiar with this process, it is excruciatingly painful. Detailed financial statements must be filled out (Form 433-A). If a business is involved 433-B is required also. Pages of questions, etc. also must be completed. We assist the client as best we can and submit the paperwork expecting a dialogue to occur. Weeks, maybe months, go by and eventually the paperwork you submitted is returned stamped “non-processable” (The Oh I Can’t syndrome is just starting). Phone calls ensue, much toing and froing and the paperwork is resubmitted. More weeks / months go by and the phone rings. Since it has been months from the resubmission of the original data please resubmit the whole package again with “fresh” data. This is a variation on a theme. Instead of a third go around of being “non-processable” it is now just stale data. Pointing out that their own delays can encourage an endless excuse of “stale data” which would prolong the process into perpetuity is met with the old bureaucratic lament, “I’m just doing my job!”

New, fresh data is submitted. The same process occurs again. Because a box is not checked or one missing item omitted the whole package is returned again “non-

processable”. The client moves to Florida and the process begins again. My recollection is that the entire package was returned at least 5 times when a single phone call and a faxed page sent with the correction would have solved most of the issues in minutes. (Incidentally, this offer process took at least 3 years)

Changes to the system don't allow the whole package to be sent back (non-processable anymore), but the improvements are no better... Now instead of the non-processable excuse being used, it is the “stale data” one that produces the same result – Oh I Can't. I've attached an exhibit of a timeline from a recent case redacted to protect the innocent. As you can see the process is going on 3 years. So what should be done?

First, the process should be taken out of collection agent's hands and put outside the IRS. Competent CPAs might qualify, who are incentivised to resolve cases quickly.

Second, a true ex parte wall should be established between the agent originally on the case and appeals. Too often, the prejudicial write up of the agent unduly influences appeals. This is often exacerbated because after a file hangs around for 3 years an agent just wants to get rid of the case and often does not properly address all of the issues submitted by the taxpayer. In one case, a meeting with Appeals opened with the comment, “this file is smelly” when in reality it was just a complicated case not fully written up by the agent.

Third, a safe harbor default should be established. If a case is not resolved within a certain period of time, (not due to a lack of cooperation by the taxpayer) the taxpayer's offer must be accepted. This would encourage 2 things: a) the taxpayer to cooperate because they would have a better chance of compromise and b) avoiding ministerial delays by the IRS.

Fourth, taxpayers need recourse for an outside review, even of appeals, since the ex parte system that works for 1040 audits does not appear to work for the OIC program.

With the four steps above, maybe the program can be renamed - **Oh I Can!**

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Exhibit: Actual redacted IRS Offer in Compromise timeline:

Offer in compromise timeline:

- **8/7/2001** - Offer submitted
- **10/29/01** - Letter requesting additional information received.
- **11/14/01** - All additional information sent to IRS office in ABC.
- **4/3/02** - Letter received regarding offer, IRS determined that they could process it, sent to IRS office in DEF.
- **5/21/02** - In a phone call made from our office, we were notified that the case was re-transferred and assigned to IRS office in GHI.
- **10/11/02** – received letter from GHI office, requesting “updated” OIC information (bank statements, records of expenses, divorce information) by November 8, 2002.
- **11/6/02** - All above requested information submitted in a timely manner.
- **11/20/03** - Formal letter of rejection of offer received 11/20/03 from GHI office
- **12/18/03** - Response to rejection letter sent from our office. UCC financing statements attached showing loans owed by the client were secured. Sent to GHI office as requested.
- **1/5/04** – After no response from IRS based on additional information submitted, client began to receive lien notices. Spoke with collections officer in GHI office. Once a formal rejection is handed down, the process moves to appeals. Officer placed a stay on the accounts, as we were in the process of appealing the rejection, in an effort to stop lien notices.
- **1/28/04** - Received letter stating that Appeals in JKL had the case.
- Hearing requested, granted 4/9/04 in JKL.
- The saga continues...