IRS & FTB Offers in Compromise

December 12, 2012

Thank you for attending this seminar. Your work on behalf of ALRP clients can reduce, or eliminate, the financial burdens that result from having tax problems.

FEDERAL OFFERS IN COMPROMISE – May 2012

Offer processing was taking too long. IRS responded to the Treasury Inspector General for Tax Administration with Taxpayer-friendly changes to the Offer program.

Highlights:

A. Twelve months, not forty eight months, is the multiplier for future value of income for CASH OFFERS paid in FIVE MONTHS or less.
B. Twenty four months, not sixty months, is the multiplier for future value of income for DEFFERED OFFERS. A DEFFERRED OFFER is any offer that is not paid in five months or less.
C. IRS no longer forces the Taxpayer to offer every dollar he or she has. IRS allows $1,000 plus allowable monthly living expenses to be subtracted from the computation.
D. Taxpayers are allowed an additional $3,450 in equity in up to two cars per household. Test: used for production of income, or Health & Welfare of family.
E. Autos with >75,000 miles or six years old are allowed an additional $200 per month of operating expense.
F. Minimum payments allowed for post-secondary student loans secured by Federal Government.
G. Delinquent State Taxes allowed, but not much. Complex formula.
H. Miscellaneous: Minimum payment on credit cards? To be decided.

Do Not Rely on this information to prepare an Offer. The information presented herein is not legal advice. To competently represent a client, one must stay abreast of changes in the Internal Revenue Manual and United States Tax Code.

DIVISION OF RESPONSIBILITY BETWEEN ATTORNEY AND CLIENT

	Attorney	Client
Timely provide accurate personal information for inclusion on IRS/FTB forms	No	Yes
Obtain income and expense information reported to IRS/FTB	Yes	No
Fully and accurately disclose the nature, source, and extent of assets and liabilities, income and expenses	Yes	Yes
Assess likelihood of Offer or installment agreement being accepted	Yes	No
Obtain third party documents that support client's current income and expenses *Attorney can provide form letter for client to request income and expense information	No*	Yes
Fees for Offer, copies of statements, etc.	No	Yes
Know what must be done to stay in compliance with terms of Offer or installment agreement	Yes	Yes
Stay in compliance with the terms of the Offer or installment agreement	No	Yes

QUESTIONS TO ASK

Short term goals: narrative substance for Offer and general information gathering
Long term goal: successful compliance with terms of Offer

1. Have you ever owed money to IRS? FTB? Any other tax agency? When? How much? How was that liability resolved?

2. What prevented you from paying your taxes?

3. What is your commitment and financial ability to stay in compliance during the term of the installment agreement and Offer process?

4. Do you own real property anywhere in the United States?

5. Even if it is not the first name, is your name on title to any real property in the United States?

6. Have you ever owned real property in the United States? When did you sell it or give it away?

7. Do you own real property outside of the United States? Ex: cottage outside London.

8. Do you have any accounts outside of the United States? Ex: bank account in Germany.

9. Does a boyfriend, girlfriend, friend, parent or sibling give you cash?

10. Do you pay all of your expenses?

11. Is your phone, PG&E, water, trash, car loan, rent agreement in your name? If yes, for how long? If no, please describe.

12. Is your name on any type of account with anyone else?

13. What was your employment history before your illness?

14. What is your daily medicine regimen? What symptoms of the illness do you suffer? Physical limitations? How have your daily life activities changed?

15. Are you a veteran?

Do Not Rely on this information to prepare an Offer. The information presented herein is not legal advice. To competently represent a client, one must stay abreast of changes in the Internal Revenue Manual and United States Tax Code.

Excerpted from IRS website on 12/10/12:

General

Collection Financial Standards are used to help determine a taxpayer's ability to pay a delinquent tax liability. Allowable living expenses include those expenses that meet the necessary expense test. The necessary expense test is defined as expenses that are necessary to provide for a taxpayer’s (and his or her family's) health and welfare and/or production of income.

National Standards for food, clothing and other items apply nationwide. Taxpayers are allowed the total National Standards amount for their family size, without questioning the amount actually spent.

National Standards have also been established for minimum allowances for out-of-pocket health care expenses. Taxpayers and their dependents are allowed the standard amount on a per person basis, without questioning the amount actually spent.

Maximum allowances for housing and utilities and transportation, known as the Local Standards, vary by location. In most cases, the taxpayer is allowed the amount actually spent, or the local standard, whichever is less.

Generally, the total number of persons allowed for necessary living expenses should be the same as those allowed as exemptions on the taxpayer’s most recent year income tax return.

If the IRS determines that the facts and circumstances of a taxpayer’s situation indicate that using the standards is inadequate to provide for basic living expenses, we may allow for actual expenses. However, taxpayers must provide documentation that supports a determination that using national and local expense standards leaves them an inadequate means of providing for basic living expenses.

National Standards: Food, Clothing and Other Items

National Standards have been established for five necessary expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous.

The National Standard for Food, Clothing and Other Items includes an amount for miscellaneous expenses. This miscellaneous allowance is for expenses taxpayers may incur that are not included in any other allowable living expense items, or for any portion of expenses that exceed the Collection Financial Standards and are not allowed under a deviation.

The standards are derived from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey (CES). The survey collects information from the Nation's households and families on their buying habits (expenditures), income and household characteristics.

Additional information and the standard amounts are available on our National Standards for Food, Clothing and Other Items web page. You may also download the standards in PDF format for printing.

National Standards: Out-of-Pocket Health Care Expenses

Out-of-Pocket Health Care standards have been established for out-of-pocket health care expenses including medical services, prescription drugs, and medical supplies (e.g. eyeglasses, contact lenses, etc.).

The table for health care allowances is based on Medical Expenditure Panel Survey data and uses an average amount per person for taxpayers and their dependents under 65 and those individuals that are 65 and older.

The out-of-pocket health care standard amount is allowed in addition to the amount taxpayers pay for health insurance.

You may also download the standards in PDF format for printing. Additional information and the standard amounts are available on our Out-of-Pocket Health Care Standards web page.

Local Standards: Housing and Utilities

The housing and utilities standards are derived from U.S. Census Bureau, American Community Survey and BLS data, and are provided by state down to the county level. The standard for a particular county and family size includes both housing and utilities allowed for a taxpayer's primary place of residence. Housing and utilities standards are also provided for Puerto Rico.

Housing and Utilities standards include mortgage or rent, property taxes, interest, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service. The tables include five categories for one, two, three, four, and five or more persons in a household.

Additional information and the standard amounts are available by state or territory on our Housing and Utilities Standards web page. You may also download the standards in PDF format for printing. Please be advised that the housing and utilities document is 112 printed pages

---

Local Standards: Transportation

The transportation standards for taxpayers with a vehicle consist of two parts: nationwide figures for monthly loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by Census Region and Metropolitan Statistical Area (MSA). A conversion chart has been provided with the standards that lists the states that comprise each Census Region, as well as the counties and cities included in each MSA. The ownership cost portion of the transportation standard, although it applies nationwide, is still considered part of the Local Standards.

The ownership costs provide maximum allowances for the lease or purchase of up to two automobiles if allowed as a necessary expense. A single taxpayer is normally allowed one automobile.

The operating costs include maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking and tolls.

If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense. In both of these cases, the taxpayer is allowed the amount actually spent, or the standard, whichever is less.

There is a single nationwide allowance for public transportation based on BLS expenditure data for mass transit fares for a train, bus, taxi, ferry, etc. Taxpayers with no vehicle are allowed the standard, per household, without questioning the amount actually spent.

If a taxpayer owns a vehicle and uses public transportation, expenses may be allowed for both, provided they are needed for the health, and welfare of the taxpayer or family, or for the production of income. However, the expenses allowed would be actual expenses incurred for ownership costs, operating costs and public transportation, or the standard amounts, whichever is less.

Additional information and the standard amounts are available on ourTransportation Standards web page. You may also download the standards in PDF format for printing.

Six Year Rule for Repayment of Tax Liability

The Collection Financial Standards are used in cases requiring financial analysis to determine a taxpayer's ability to pay. The vast majority of installment agreements secured by Collection employees are streamlined agreements, which require little or no financial analysis and no substantiation of expenses.

In cases where taxpayers cannot full pay and do not meet the criteria for a streamlined agreement, they may still qualify for the six-year rule. The timeframe for this rule was increased in 2012 from five years to six years.

The six-year rule allows for payment of living expenses that exceed the Collection Financial Standards, and allows for other expenses, such as minimum payments on student loans or credit cards, as long as the tax liability, including penalty and interest, can be full paid in six years.

Taxpayers are required to provide financial information in these cases, but do not have to provide substantiation of reasonable expenses.

Recent Revisions

October 3, 2011

Housing and Utilities standards are now derived from U.S. Census Bureau, American Community Survey and BLS data.

The revised Housing and Utilities standards include allowances for cable television and internet service.

Housing and utilities standards are no longer provided for the territories of American Samoa, Guam, Northern Mariana Islands or Virgin Islands.

April 2, 2012

Additional items were added to the miscellaneous allowance under National Standards for Food, Clothing and Other Items, increasing the amount allowed for miscellaneous expenses.

Added information related to the six-year rule for repayment of a tax liability.

The revised standards are effective for financial analysis conducted on or after April 2, 2012.

Page Last Reviewed or Updated: 02-Aug-2012

A Few Words on FTB Offers

FTB Offers are more arduous and require more information than IRS. The applicant is arguably at a disadvantage because FTB standards are higher than IRS, but the outstanding FTB liability is generally lower than an outstanding IRS liability.

FTB requires more approvals than does IRS. FTB is more likely to request a collateral agreement. A collateral agreement provides that the applicant must remit a certain portion of his or her future income for years, if the applicant's income exceeds an agreed upon amount that is largely determined by FTB.

However since FTB is only addressing the problems of California, rather than the entire USA, FTB will spend more time reviewing the particular circumstances of an applicant. For example, FTB may review ongoing medical expenses, more carefully than IRS.

FTB generally contacts a delinquent taxpayer sooner than IRS for a liability stemming from the same year. FTB pays more attention to a taxpayer's compliance history than IRS.