

RESOLVING TAX PAYMENT PROBLEMS BY HAVING THEM CLASSIFIED AS CURRENTLY NOT COLLECTIBLE AS AN ALTERNATIVE TO OFFERS IN COMPROMISE

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A viable and practical alternative to an Offer in Compromise is to have the IRS classify the tax liability as “Currently Not Collectible.” If, after taking all the steps in the collection process, such as, requesting full payment, attempting an installment payment agreement, etc., the IRS determines that a tax liability is currently not collectible, the liability may be removed from the active inventory of collection cases. In such cases collection actions directed at the taxpayer by the IRS will cease. The IRS will consider a tax liability to be currently not collectible for a variety of reasons. Some of the most common are:

1. Collection of the liability would create an undue hardship for taxpayers by leaving them unable to meet necessary living expenses,
2. Death of an individual with no collection potential from the decedent estate or no collection potential for estate taxes,
3. Inability to locate the taxpayer or assets,
4. Inability to contact a taxpayer although the address is known and there is no means to enforce collection,
5. Complete expiration of the statutory period for collection or suit initiated to reduce tax claim to judgment,
6. A business is currently filing and paying taxes but is unable to pay back taxes, and
7. A business is inactive and defunct with no assets.

If a taxpayer has limited assets or income but it is determined that levy action would create a hardship, the liability may be considered by the IRS to be currently not collectible. However, in each case the IRS will make a determination as to whether the levy would result in actual hardship, as distinguished from mere inconvenience to the taxpayer.

When a tax liability is first classified as currently not collectible the IRS enters into their system a code for the taxpayer’s account. The codes vary depending on the reason for the classification and the IRS computer is programmed to follow-up certain codes automatically. This computer monitoring of currently not collectible accounts is called systemic follow-up. Systemic follow-up is limited to categories of hardship, inability to locate taxpayer, and inability to contact cases. If a taxpayer’s tax liability is deemed to be currently not collectible and he subsequently files a tax return with an increased level of income, the account will be put back into the active inventory of collection cases, and collection action against the taxpayer will resume.

When there is evidence that the taxpayer’s ability to pay the tax will improve and that the improvement will happen sooner than systemic reactivation can occur, the computer may be instructed to take mandatory follow-up procedures. Information will be entered into the computer documenting the specific follow-up actions and the dates on

which they are to be taken. For example, if financial information shows that the taxpayer's allowable expenses are equal to his income, and the taxpayer has equity in his home, but already has a second mortgage and cannot qualify for a third, and the second mortgage will be paid in 10 months, then the account is reported currently not collectible. In this case there would be a mandatory follow-up in 12 months to secure payment from the taxpayer through either a new second mortgage and/or an installment agreement. Generally, when mandatory follow-up is recommended the IRS expects that revenue will be collected as a result of the follow-up request.

There are times when a taxpayer may find it preferable to pay nothing to the IRS and have the tax liability classified as currently not collectible rather than to pay a compromised amount to the IRS. In some instances, an offer in compromise is rejected by the IRS even though it appears that all the conditions for acceptance exist. In such cases an acceptable alternative to the offer in compromise is to request that the IRS consider the tax liability be deemed currently not collectible. Collection action against the taxpayer would cease and after ten years in currently not collectible status the liability is usually written-off by the IRS.

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