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New York State Launches Online Applications for an Offer in Compromise

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New York State recently made applying for an Offer in Compromise easier. If your clients owe back taxes to the State, an Offer in Compromise (OIC) may allow them to settle their debt for less than the amount owed if they qualify. Previously, taxpayers could only apply by mail, but starting October 2019, the State now allows certain taxpayers to take advantage of its online application process.

Qualifying for an OIC

The OIC program applies to:

- Individuals and businesses discharged from bankruptcy
- Individuals and businesses that are insolvent
- Individuals (not businesses) for whom paying the debt in full would cause undue economic hardship.

Generally, undue economic hardship occurs when the taxpayer is unable to pay reasonable basic living expenses, which are limited to expenses that provide for the health, welfare, and production of income for the taxpayer and his or her family. They do not include costs related to maintaining an affluent lifestyle, such as private school, voluntary retirement contributions and the like. The State uses the IRS Collection Financial Standards to help determine allowable basic living expenses.

The State will consider the taxpayer's unique circumstances in determining his or her ability to pay.

Note that taxpayers must have filed all required New York State tax returns in order to qualify for an OIC.

Applying for an OIC online

While anyone can apply by mail, the online application process is only available if:

- The taxpayer is an individual,
- The taxpayer's debt is for personal income tax only,
- The taxpayer does not have an open formal protest for any of his or her liabilities,
- The taxpayer does not have an open bankruptcy, and
- The total amount owed the department is **\$10,000 or less**.

The online application includes the same information captured by Forms DTF-4.1 and DTF-5. While taxpayers may upload supporting documentation with their application, DTF-5 supporting documentation is not required to complete the application, but may be requested later if needed.

Proof required

Since the State is settling for less than the full amount due, the Offer in Compromise process is thorough and often document intensive. The taxpayer's offered amount must represent what the State could reasonably collect on the debt in a reasonable period of time ("Reasonable Collection Potential"), including from anticipated future income. As a result, taxpayers will be asked for proof regarding their assets, liabilities, monthly income, and monthly expenses.

For more information on New York State Offers in Compromise, visit the Department of Taxation and Finance website.

If your client has a tax problem, an experienced tax attorney can help you assess whether your client will qualify for an OIC, present a strong case to the State tax department for settlement, and advise regarding other options in the event your client does not qualify.

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