

# Steps You Can Take When You Can't Pay Your Taxes

Tenenbaum Law, P.C.  
*Tax Attorneys*

By Karen Tenenbaum, Tax Attorney at Tenenbaum Law, P.C.

As the restaurant industry continues to struggle with the impact of COVID-19, tax bills are presenting yet another problem. Shut-downs, continuing restrictions on capacity and added costs to protect workers and patrons have left restaurants and owners with little cash to pay income and sales taxes. Fortunately, there are payment options that can help restaurants save their businesses and potentially reduce their tax liability.

## **Consequences of Failing to Pay Taxes**

The IRS and state tax department have an arsenal of tools they can use to compel individuals and businesses to pay their taxes. For example, they have the power to:

- file a lien against the taxpayer's property
- levy bank accounts
- garnish wages
- impose stiff penalties
- revoke passports
- suspend driver's licenses
- prosecute taxpayers criminally

With respect to collecting sales tax, the state also may be able to seize and shut down the business for failure to pay sales tax. During seizure, the state may have locks changed at the taxpayer's place of business, take cash the taxpayer has on hand (or in a cash register), and remove the taxpayer's inventory and store it elsewhere to sell at a tax auction. The business also could have its Certificate of Authority revoked, which is its authorization to collect sales tax. A taxpayer who had a Certificate of Authority revoked may be prevented from receiving another Certificate of Authority, even for another business.

Notably, restaurant owners and other individuals involved in the business may be found personally liable for taxes owed by the business. In other words, the government can go after personal assets instead of just the assets of the business. This applies to [state](#) withholding and sales taxes and [IRS](#) income taxes, social security taxes, and Medicare taxes withheld from employee paychecks.

## **Addressing Tax Problems**

The earlier taxpayers deal with a tax problem, the more options they have to resolve it. The IRS and state tax department will notify taxpayers of an audit and assessment by mail but may not always

provide prior notice of a collection action. For example, the IRS does give prior notice of a levy but not for a lien. In both cases, however, the IRS does grant taxpayers the right to appeal. In contrast, in New York, taxpayers are not entitled to prior notice of a tax warrant (i.e., a lien) or levy and they have no appeal rights. Because the rules and legal options for taxpayers vary under federal and state law, the first step for any taxpayer who receives a notice is to speak to a tax professional as soon as possible.

Where a taxpayer owes taxes but is not yet under investigation, coming forward offers benefits. Many states have a [voluntary disclosure program](#) wherein taxpayers admit to owing taxes and pay what is owed, and thereby avoid significant penalties.

If a taxpayer has already received a notice from the IRS or state tax department, there are several collection alternatives that can help. The most common ones include the following:

- 1. Installment Agreement.** This option permits payment of taxes over time. However, interest and penalties will continue to accrue on unpaid tax balances. As a result, this option is often best for taxpayers who have adequate income, but who cannot obtain a loan to pay the bill at once. There are several types of [installment agreements](#), including a Partial Pay Installment Agreement (PPIA) which allows taxpayers to pay only a portion of the total balance due. PPIA only applies to taxes owed to the IRS, not New York State. Note that the IRS and state have their own requirements to obtain an installment agreement, which may vary.
- 2. Offer in Compromise (OIC).** An offer in compromise allows taxpayers to settle their tax liability for less than the full amount owed. Again, most states and the IRS have this option, but requirements may vary. For the [IRS OIC](#), taxpayers must show one of three grounds:
  - Doubt as to liability – the taxpayer can establish a genuine dispute as to the existence or amount of the correct tax debt under the law;
  - Doubt as to collectability – the taxpayer’s assets and income are less than the full amount of the tax liability; or
  - Effective tax administration – the taxpayer may be able to fully pay the tax, but such payment would cause an economic hardship or there are compelling public policy or equity considerations.
- 3. Penalty Abatement.** Some taxpayers may qualify for relief from penalties. For example, the IRS may grant penalty abatement if the taxpayer had [reasonable cause](#) for not filing a return or paying taxes. This is a fact-specific analysis. In addition, the IRS offers a first time penalty abatement waiver, which applies to taxpayers who have not been assessed any other penalties of a “significant amount” on the same type of tax return within the past three years and are in compliance with all filing and payment requirements.
- 4. Temporary relief from collections.** Where the IRS or state has initiated collections, there may be a way to obtain temporary relief from a specific collection action. For instance, taxpayers may obtain relief from an IRS levy by demonstrating [economic hardship](#). However, a levy release does not mean the taxpayer is exempt from paying the taxes owed. Taxpayers must still take steps to resolve their tax debt. The available collection alternatives are an installment agreement, offer in compromise, and Currently Not Collectible (CNC) status. CNC status is where the IRS agrees the taxpayer cannot both pay his or her taxes and basic living expenses. While the taxpayer’s account is in CNC status,

the IRS generally won't try to collect, but will still assess interest and penalties and may keep and apply tax refunds to the tax debt. The IRS will conduct a periodic review of the taxpayer's income and may collect the balance owed if the taxpayer's financial situation has improved.

This is just a partial list of remedies when taxes are owed. As a result, taxpayers should consult a tax professional regarding the best way to resolve their specific tax problems.



Karen Tenenbaum, Esq., LL.M. (Tax), CPA is founder and managing partner of Tenenbaum Law, P.C. ([www.litaxattorney.com](http://www.litaxattorney.com)), a tax law firm in Melville, which focuses its practice on the resolution of IRS and New York tax controversies. She can be reached at [ktenenbaum@litaxattorney.com](mailto:ktenenbaum@litaxattorney.com) and at 631-465-5000.