

New York State Enforcement Update:

Offers in Compromise

By Karen Tenenbaum, Esq.



A New York State Offer in Compromise (OIC) is a program that allows qualified financially distressed taxpayers to pay less than what they owe. OICs are granted as part of the State's mandate to be fair to taxpayers. However, since the State is forgiving part of the debt owed, OICs are not granted freely and taxpayers must meet strict requirements. In a recent webinar, the New York State Department of Taxation and Finance (NYSDTF) provided an update on OIC applications that demonstrates just how often they are approved.

Who Qualifies For an OIC?

OICs are intended for those who lack sufficient assets and income to pay their debts and are unlikely to be able to afford to do so without demonstrated difficulties. Accordingly, taxpayers are only eligible if they are:

- Individuals or businesses that are insolvent or discharged in bankruptcy or
- Individuals (not businesses) who are not insolvent or bankrupt, but payment in full would create undue economic hardship.

Generally, undue economic hardship occurs when the taxpayer is unable to pay reasonable basic living expenses (i.e., expenses that provide for the health, welfare, and production of income for the taxpayer and his or her family). The State will analyze the taxpayer's finances, including assets, liabilities, monthly income, and monthly expenses. In addition, it will look at the taxpayer's unique circumstances such as their age, employment status, employment history, medical conditions or disabilities that may affect their ability to work, and other relevant factors.

How Can a Taxpayer Apply for an OIC?

Taxpayers can apply by mail and in some cases via the NYSDTF website. 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 bankruptcy or open formal protest for any of his or her liabilities and has not committed a tax crime, and
- The total amount owed is \$15,000 or less.

What Are the Terms and Conditions of an OIC?

Once an offer is accepted, taxpayers must agree to file their tax returns and pay taxes owed as required for five years. They must also agree to allow the NYSDTF to apply tax refunds, credits, or other funds eligible for offset—for the period before and including the calendar year in which the offer is accepted—to the original outstanding liability.

How Many Offers in Compromise Were Accepted in 2021?

In Fiscal Year 2021, CED received 2,572 applications for Offers in Compromise (OICs) and accepted 48% (1,247), while 18% (460) were withdrawn and 34% (865) were denied. Of the ones accepted, 5% (63) were over \$100,000, 51% (635) were between \$15,000-\$100,000 and 44% (548) were under \$15,000. Notably, only about 30% of the OICs eligible for the online service were completed online.

Conclusion

A significant portion of OICs are accepted. However, to help ensure success, submit an offer that is well-supported by the taxpayer's documentation. 🚫



Karen Tenenbaum, Esq.
LL.M (Tax), CPA

Founder and Managing Partner, Tenenbaum, P.C.

Tenenbaum Law, P.C. (www.litaxattorney.com), is a tax law firm in Melville, N.Y., which focuses its practice on the resolution of IRS and New York State tax controversies. Karen can be reached at ktenenbaum@litaxattorney.com

SCBA Nominating Committee Soliciting Expressions of Interest From Members

The Nominating Committee of the Suffolk County Bar Association is soliciting recommendations and expressions of interest from members interested in holding a Director position, a three year term ending 2026. One Directorship will be accorded to the new Dean of the Academy this year. Résumés may be sent to the SCBA in an envelope marked "confidential" addressed to the Nominating Committee. Current members of

the Nominating Committee are: **Lynn Poster-Zimmerman; Jennifer A. Mendelsohn; Sean Campbell; Hon. Caren Loguercio; Hon. Derrick J. Robinson; Arthur E. Shulman; Daniel J. Tambasco; Sheryl L. Randazzo; Cynthia Vargas.** The Nominating Committee will hold an organizational meeting at the Bar Center in late December or early January 2023.

~LaCova