CHANGES TO THE IRS OFFER IN COMPROMISE PROGRAM: GOOD FOR TAXPAYERS?

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This article examines changes that will impact taxpayers who are submitting an Offer in Compromise to resolve their outstanding tax liabilities.

The IRS made changes in April 2022 that will impact taxpayers who are submitting an Offer in Compromise to resolve their outstanding tax liabilities. These include revisions to the Collection Financial Standards that the IRS uses to determine a taxpayer's reasonable collection potential, as well as changes to the information and documentation a taxpayer must provide when applying for an Offer in Compromise. Taxpayers planning to submit an Offer in Compromise to the IRS must be aware of these rules to maximize approval chances and prevent any undue delay.

Changes to Collection Financial Standards

The Collection Financial Standards set by the IRS are used to determine an individual taxpayer's necessary *monthly* expenses, based on the taxpayer's age, geographic location, and family size. These necessary expenses include food, clothing, housing and utilities, out-of-pocket healthcare, transportation, and other miscellaneous items.

As of 4/25/2022, the IRS has increased these standards in an effort to relieve some pressure from taxpayers who are struggling to cope with the 40-year high inflation rate. This is great news for taxpayers, as it will give taxpayers with an outstanding tax liability with the IRS a greater allowance regarding their necessary living expenses.

The new allowances are as follows:

Food, clothing, and other items:[1]

- Food: In 2021, the IRS allowed $400 per month for food expenses for a household of one, $724 for a household of two, $838 for three, and $955 for four. In 2022, these increased by 8% to $431 for a household of one, $779 for a household of two, $903 for three, and $1,028 for four.
- Housekeeping: In 2021, the IRS allowed $41 per month for housekeeping supply expenses for a household of one, $76 for a household of two, $69 for three, and $79 for four. In 2022, these changed to $40 for a household of one, $82 for a household of two, $74 for three, and $85 for four.
- Clothing: In 2021, the IRS allowed $92 per month for clothing and apparel expenses for a household of one, $150 for a household of two, $191 for three, and $259 for four. In 2022,

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these increased by roughly 8% to $99 for a household of one, $161 for a household of two, $206 for three, and $279 for four.

- Personal care: In 2021, the IRS allowed $42 per month for personal care expenses for a household of one, $76 for a household of two, $72 for three, and $89 for four. In 2022, these increased by approximately 8% to $45 for a household of one, $82 for a household of two, $78 for three, and $96 for four.
- Miscellaneous: In 2021, the IRS allowed $148 per month for other miscellaneous expenses for a household of one, $266 for a household of two, $303 for three, and $358 for four. In 2022, these increased by 15% to $170 for a household of one, $306 for a household of two, $349 for three, and $412 for four.

Out-of-pocket healthcare:[2]

- Under 65 years old: In 2021, the IRS allowed $68 per month for out-of-pocket healthcare for taxpayers under the age of 65. In 2022, the IRS increased this amount by 10%, allowing $75 for out-of-pocket healthcare expenses for those under 65.
- Over 65 years old: In 2021, the IRS allowed $142 per month for out-of-pocket healthcare for taxpayers who are 65 or older. In 2022, the IRS increased this amount by 8%, allowing $153 for out-of-pocket healthcare expenses for those 65 and older.

Housing and utilities: The IRS does not provide a single standard for housing and utility expenses; instead, they are based on the cost of living in a given area. Taxpayers can determine the allowance amounts for their location on the IRS's website.[3] For illustration purposes, this article is going to touch upon three New York State counties.

- New York County: In 2021, the IRS allowed $3,073 per month for other housing and utility expenses in New York County, NY, for a household of one, $3,609 for a household of two, $3,803 for three, and $4,240 for four. In 2022, these increased by 7% to $3,282 for a household of one, $3,855 for a household of two, $4,062 for three, $4,529 for four, and $4,602 for five.
- Nassau County: In 2021, the IRS allowed $2,995 per month for other housing and utility expenses in Nassau County, NY, for a household of one, $3,518 for a household of two, $3,707 for three, and $4,133 for four. In 2022, these increased by 7% to $3,199 for a household of one, $3,757 for a household of two, $3,959 for three, $4,414 for four, and $4,486 for five.
- Suffolk County: In 2021, the IRS allowed $2,639 per month for other housing and utility expenses in Suffolk County, NY, for a household of one, $3,099 for a household of two, $3,266 for three, and $3,642 for four. In 2022, these increased by 7% to $2,821 for a household of one, $3,313 for a household of two, $3,491 for three, $3,892 for four, and $3,955 for five.

Transportation:[4] The IRS provides national standards for public transportation expenses and ownership costs of a vehicle if applicable. Note that a taxpayer cannot claim both public transportation expenses and vehicle ownership/operating expenses. There is no single national standard for vehicle operating expenses, but as an example, New York's standards are set forth below.

- National public transportation: In 2021, the IRS allowed $217 per month for public transportation expenses. In 2022, the IRS increased this amount by approximately 12% to $242.
- National vehicle ownership costs: In 2021, the IRS allowed $533 per month for vehicle ownership expenses for a single vehicle, and $1,066 for two vehicles. In 2022, the IRS increased this amount by approximately 10% to $588 for one vehicle, and $1,176 for two.
- New York vehicle operating costs: In 2021, the IRS allowed $355 per month for vehicle operating expenses for a single vehicle, and $710 for two vehicles. In 2022, the IRS increased this amount by approximately 14% to $406 for one vehicle, and $812 for two. Keep in mind that these standards are specific to New York.

These increases will help taxpayers who are seeking to enter into a payment arrangement or Offer in Compromise with the IRS to resolve an outstanding tax liability. The IRS uses these Collection Financial Standards by comparing them to a taxpayer's household income, and the remaining amount is what the IRS will want the taxpayer to remit each month.

Changes to the Offer in Compromise program

There are two big changes to the program that taxpayers should be aware of when submitting an Offer in Compromise.

The first change is in relation to the IRS's traditional policy of keeping a taxpayer's tax refund through the year in which the taxpayer's Offer in Compromise is accepted. This means that if a taxpayer had an offer accepted in 2021 for a tax debt from 2018, the taxpayer would not see their 2021 refund. Now, however, the IRS will no longer adhere to this policy, and submitting an Offer in Compromise for a previous year will not jeopardize the taxpayer's current year's refund. This is great news for taxpayers, as it is one less caveat to worry about when attempting to resolve an outstanding tax debt.

The second change may require a taxpayer to submit much more information and documentation than what was previously necessary when submitting an Offer in Compromise. However, this only applies to taxpayers who have an ownership interest in a business.

[1] https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-food-clothing-and-other-items.

[2] https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-out-of-pocket-health-care.

[3] https://www.irs.gov/businesses/small-businesses-self-employed/local-standards-housing-and-utilities.

[4] https://www.irs.gov/businesses/small-businesses-self-employed/local-standards-transportation.

Previously, if a taxpayer had an ownership interest in a business but the taxpayer's tax debt was strictly personal (e.g., 1040 Income), the taxpayer need only submit Form 433-A (OIC), Form 656, and all relevant documentation. Now, that same taxpayer with the same personal tax liability must submit Form 433-B in addition to the other forms. This would require the taxpayer to provide the profit and loss information of the business for 6 to 12 months prior to submitting the Offer in Compromise, as well as the business's bank statements, loan statements, notes and accounts receivable, and other pertinent documentation. Unfortunately, this is another hurdle for taxpayers who fall into this category in attempting to resolve their tax debt.

Conclusion

While several of these changes are beneficial to taxpayers, it is best to work with a tax professional who can help determine and substantiate an appropriate Offer in Compromise amount.