Offers in Compromise

Currently Not Collectable Status

Installment Agreements

and more…

TRI Tax Resolution Institute

Tax Resolution

Do-it-yourself-kit

- Tax Liens
- Bank Levies/Wage Garnishment
- Installment Agreements
- Currently Not Collectable Status
- Offers in Compromise

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Introduction

While it would be ideal if everyone could resolve their tax issues by hiring a highly qualified professional, the fact is there are some instances in which delinquent taxpayers owe more than they can afford to pay but the amount owed is too low to warrant paying for representation services.

In other instances, delinquent taxpayers will owe a substantial amount in back taxes but do not have the ability to pay a qualified representative to resolve their tax matters.

It is always the “Right” choice to retain a qualified representative to assist you in resolving your tax concerns; but the “Right” choice is not always the practical choice.[i]

If you fall into either of the two above-mentioned categories, it is important for you to realize that either the inability to pay for representation, or having a liability that is too low to warrant representation does not preclude you from needing to take action.

In this package, you will find instructions to assist you if you have a tax concern but are unable to pay for tax representation services, or have a liability is too low to warrant paying for outside help. To begin, we will introduce some basic information that will acquaint you with the tax resolution process.

Steps to resolving your tax issues

File all of your tax returns[ii]

Whether or not you can afford to pay your tax liability, you are better off filing your tax returns timely. If you fail to file your Federal income tax return in a timely manner, you will be charged an additional 5% of the tax due per month for the first 5 months after the original due date the of the tax return. This equates to paying an additional 25% above the original tax liability due plus other significant penalties and interest on both the tax owed and penalties.

You may ask "Why should I file if I cannot afford to pay?" Aside from the additional liability that continues to accrue by not having filed all of your returns, you are not in compliance. By definition, compliance requires that all tax returns, current and past be filed, that the taxpayer has paid current tax estimates and/or liabilities and that the taxpayer will continue to do so going forward. The IRS and most State taxing agencies will not negotiate with a taxpayer who is not in compliance.

It is easier to pay someone to prepare and file a tax return each year rather than paying someone a much larger sum of money to prepare tax returns for multiple years all at one time. In the latter, the taxpayer is usually scrambling to gather information that is now several years old and to add additional stress, many taxpayers are required to prepare and file returns while their funds which were most likely limited to begin with, are now tied up due to a bank levy or wage garnishment. If you missed the boat to file your tax returns timely, file them as soon as possible.

Contact the Taxing Agency (before they contact you)

Whether you owe the IRS or your local State taxing agency, it makes sense to make contact sooner than later. Aside from the stress of not knowing what they expect from you, you face the threat of collection activity. Once a taxpayer becomes delinquent, they will receive several notices increasing in degree of seriousness. If a taxpayer continues to ignore these series of notices, they will surely encounter one of two types of collection.

The first type of collections is **passive collection.** Passive collection involves the taxing agencies filing a tax lien against the taxpayer. Typically, a lien is filed within the county in which the taxpayer lives. In this instance, there is no inherent call to action.

Either the taxpayer owns real property to which a lien will attach, or owns no real property in which case the lien will exist, but cause little to no burden. In either case, a lien will not affect the day-to-day finances of the taxpayer.

This may be quite a different story if the taxpayer is trying to purchase or sell real property. A lien may also affect the taxpayer if he or she is trying to purchase personal property. In these cases, a credit report comes into play, and the lien will raise issues. Unlike active collection, the taxpayer typically has time to plan when addressing their tax concerns if they are only faced with the threat of passive collection.

Active collection on the other hand can affect the taxpayer more directly. If a taxpayer is facing active collection, they may be subject to having the funds in their bank accounts frozen, having their wages garnished (reduced) to amount equivalent to earning minimum wage, or having the vendors that would usually pay them, now be required to pay the IRS or the State instead. Active collection is used to “wake up” the taxpayer. If someone owing tax initially ignores delinquent notices, they have two choices. The first is to “fall off the grid” and bury their head in the sand. The second is to “fess up” by contacting the government and get into compliance so that they may reach an agreement amenable to both parties.

It makes sense to contact the government prior to the commencement of collection activity rather than to wait until one is being actively collected upon. As arduous as it may be to address one’s tax concerns in general, it becomes exponentially worse when under a time constraint or with one’s funds frozen by the IRS or even worse…taken.

In the following section of this manual **Entering Into an Installment Agreement**, you will learn how to prepare the paperwork necessary to enter yourself into an agreement. Note that this manual is geared toward submitting an IRS installment agreement or Offer in Compromise. If you are planning on submitting a State installment agreement or State Offer in Compromise the principles herein will apply but the forms will vary.

Contact your State taxing agency or search on the web for the applicable State forms. In some States, Federal forms are accepted if no State form exists.

This manual also contains detailed instructions on how to submit an Offer in Compromise. See below to determine which section of this manual to which you should place your focus. **We recommend you read this entire manual prior to proceeding with submission of an Offer in Compromise or an Installment Agreement**.

You should be aware that you have been assigned to one of two IRS departments depending on varying circumstances, primarily the amount you owe. To determine which department, you have been assigned, either contact the IRS or look at the most recent IRS notice you received.

If you have been assigned to the IRS Automated Collections Service ("ACS") and want to:

1. enter into an Installment Agreement go to Page 6 of this manual and complete a Form 433-F. Blank forms appear in the Blank Forms section at the end of this manual.

2. enter into an Offer in Compromise go to Page 19 of this manual and complete a Form 433-A (OIC) and a Form (656). Blank forms appear in the Blank Forms section at the end of this manual.

If you have been assigned to an IRS Revenue Officer and want to:

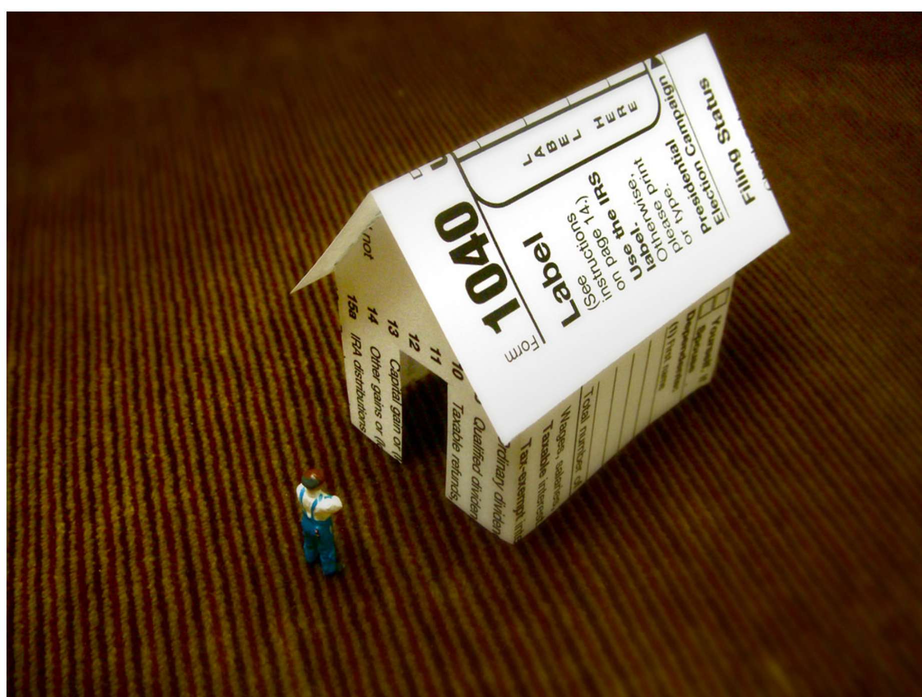
1. enter into an Installment Agreement go to Page 6 of this manual to read about installment agreements and complete a Form 433-A. Blank forms appear in the Blank Forms section at the end of this manual.

2. enter into an Offer in Compromise go to Page 19 of this manual and complete a Form 433-A (OIC) and a Form (656). Blank forms appear in the Blank Forms section at the end of this manual.

Tax Liens

If a tax lien has been filed against you, there are some steps you may be able to take to remove the lien. It is important to understand that this can only be accomplished in a very limited number of circumstances. In general, if you owe tax, the government will file a lien against you to protect their interest.

The action taken by the taxing agencies of filing a lien is what we refer to as "passive collection". That is, aside from collecting upon disposal of the property to which the lien is attached, no action will be taken to collect against the lien. If you own a home and plan to sell or refinance, this obviously is a different story, and thus becomes a real concern.



Another instance in which you may be concerned with regard to a tax lien relates to financing in general. If you want to borrow money either for personal or business reasons, having a tax lien on your record becomes a burden to say the least. In certain circumstances, if you have financing already in place, it may be cancelled and the debt may be called immediately if a tax lien gets filed subsequent to taking out the loan. This is common when a company is financing their accounts receivable, also known as factoring.

Removing a Tax Lien

If an individual taxpayer owes less than $25,000 to the IRS, and can full-pay their liability in 6 years or less, they can request that a tax lien not be filed. In some instances, following this same fact pattern, they can also request that a tax lien that has been filed be removed.

In almost all other cases, aside from either paying off their liability or settling for and paying off a lesser amount via an offer in compromise the taxing agencies will not remove a tax lien.

There are few exceptions in which tax liens may be removed such as negotiating an accelerated payment plan, but these are rare and typically require that a professional be involved in order to be successful.

In short, if you have a tax lien but own no property (or have no equity in property you own), you have little to worry about in terms of active collection relating to the lien.

If on the other hand, you own property with equity or are looking for financing, you will have to address the tax lien at some point. But in this case as well as above, the lien will not affect your day-to-day ability to pay your necessary and reasonable living expenses.

Bank Levies/Wage Garnishments

There a good chance that you are reading this booklet because a taxing agency has either levied your bank account, garnished your wages, or served a 3rd-party levy on vendors that owe you money.

Levies and garnishments while effective, are not done with the intent to collect unpaid taxes in full. Rather, these methods are used as effective calls to action.

A bank levy is accomplished by freezing the available funds in one's bank account or accounts. After a waiting period (21 days for the IRS), the funds will be remitted to the taxing agency unless the taxpayer can (1) prove they do not owe the money, (2) prove they qualify for hardship status or (3) in some instances enter into an alternative agreement to pay. Keep in mind that upon levy, the money is tied up and is for all intents and purposes in the taxing agency's "court". We say, "whoever has the money…wins".

Simply asking for the money back rarely works. A bank levy is a one-time occurrence but new levies can recur indefinitely. If the IRS is successful in getting funds from a levy, they will most likely do it more than once. For this reason, people either work to resolve their tax matters or attempt to make themselves "levy-proof" by living off the grid. As you may guess, the second alternative is not easy to do and rarely makes sense.

Unlike a bank levy, a wage garnishment is not a one-time event. A wage garnishment is served on one's employer and requires that the employer withhold and remit funds to the taxing agencies for back taxes. The amount of garnishment may vary, but the IRS has the ability to collect everything someone earns beyond minimum wage. Again, a garnishment is not done to put someone in an impossible situation but rather to "wake them up" so that they may negotiate a more reasonable solution.

3rd party levies are served upon clients and others that pay non-employees. Typically, these levies apply to self-employed individuals. A third-party levy is the most burdensome in that the payor is required to remit to the taxing agency, 100% of the amount they owe the delinquent taxpayer until the tax debt is paid in full. Like the other collection tools, this is used to force the taxpayer into addressing their problem and not to collect the entire debt.

In each case referenced above, you are better off entering into a manageable agreement, rather than worrying about active collection or even worse, waking up one day to find out your money has been taken.

It takes years of experience to be able to negotiate releases of garnishments and levies. For this reason, we recommend you preemptively address your tax matters.

If by chance that ship has sailed, you can always contact the taxing agencies to request a release. Below is a list of points to consider when doing so

Things to Consider When Requesting a Levy/Garnishment Release

1. Don't just ask for your money back. Provide valid reason/s why you need it. It is important to be specific here. You should list specific expenses that are due very soon and that you will not be able to pay if your funds are compromised.
2. The most effective reason to request a release is hardship. If you can prove that you are unable to pay your necessary and reasonable expenses, you may be able to have some or all of your funds returned to you
3. If possible try and calculate a reason installment agreement amount (see Installment Agreements below) and have backup to support your number. If you can enter into an agreement, sometimes you can also obtain a release
4. Have contact information of the person, bank or business on which the levy/garnishment was served. Before you contact the IRS, you should have a fax number of the person or department that process the levy/garnishment. If the taxing authorities agree to issue a release, they will ask you where to send it. If you do not have this information ready, you may need to call back risking the chance of speaking with someone different that changes their mind about issuing the release
5. Request that a 2nd copy of the release be sent to you directly. If you are successful in request a release, you should follow up with the person or department to which the levy/garnishment was served to verify (1) they received the release and (2) that they are not going to remit funds to the tax agencies. If by chance they have not received the release, you can fax them a copy yourself assuming you have a one.
6. Don't wait until the last minute. It often takes more than one call to have a levy or garnishment released. If the IRS requires documentation you don't have ready, you may have blown your chance if the funds are to be remitted in a day or two. Remember you only have 21 days for the IRS and sometimes less for your State to request that a levy be released.

Entering into an **Installment Agreement**

There are several avenues one may take to resolve their tax matters. Most of them are extremely complex and it is near-impossible to reach one's desired outcome without having years of experience in practicing tax resolution.

The best chance for a lay-person to reach a reasonable result is to request an installment agreement. Keep in mind that requesting and being granted an installment agreement in and of itself is not that difficult. Many CPA's enter their clients into installment agreements and because they are not experts in the area of tax collection they do not receive the optimal outcome. Someone skilled in this arena will enter their client into an agreement that they can afford to pay over the life of the collection statute which for the IRS is 10 years from the date of filing.

With the IRS and most other taxing agencies, you are expected to pay based upon not how much you owe but rather your ability to pay. If you can full-pay over a given period of time, you will probably be able to resolve your tax matters without much resistance. However, if you cannot afford to pay the entire liability within a given period of time or even an extended period of time, you must claim hardship.

To claim hardship, you must show that your monthly disposable income is less than the amount that would be required to full-pay your liability over the given number of months.

Here is the formula used by the IRS to determine personal monthly disposable income:

Income	***-***	***Expenses***	***=***	***MDI***
(Monthly Net)		***(Necessary and Reasonable)***		***Monthly Disposable Income***

Examples
Income

Wages	***Rent/Mortgage***
Net Business Income	***Utilities***
Rental Income	***Auto Payments***
	Auto Maintenance
	Food/Clothing/Misc.
	Health Insurance premiums
	Out of Pocket Medical Costs
	Term Life Insurance premiums

The key is to show that your Monthly Disposable Income ("MDI") is as low as possible. Better to be **required** to pay a low monthly amount and pay more if desired, than to be required to pay a higher monthly sum that one cannot continue to pay consistently. The issue lies in making sure that the numbers you include in the forms (typically 433-A, 433-B or 433-F – see the forms in this packet as well as at ***www.irs.gov***) are both accurate and allowable.

You can diminish the result you receive (and your credibility with the IRS) by providing inaccurate information. For example, if you receive a paycheck and get paid every two weeks you must calculate your income by taking the amount you take home for each check, multiply it by 26 (# of pay periods per year) and then divide it by 12 to get your average net monthly income. Most people will just double the amount they take home and call it the monthly amount. By doing so you underestimate your monthly net income and will therefore have higher MDI than you indicate. The IRS will "catch" this and increase your monthly payment accordingly

Keep in mind that just because you have an expense, does not mean it will be allowed by the IRS. For instance, the IRS provides National and Local Standards for items such as housing, food, clothing and car payments. If you exceed the standard amount, the difference may be disallowed. In addition, the IRS claims they allow credit card payments but their "allowance" does not carry much leverage for the taxpayer. They allow credit card payments under the "Food/Clothing/Misc." category. The amount they allow will barely cover food let alone clothing and other items. Therefore, it is important that the taxpayer not assume that large credit card payments will offset their income. They will not! In fact, aside from basic living expenses the IRS will disallow almost everything else (see above).

Streamlined Installment Agreements

If a taxpayer is in compliance and able to pay his or her liability in full over a given period of time (up to 72 months), they may qualify for a **Streamlined Installment Agreement**. In order to qualify the taxpayer must owe less than $50,000. If the taxpayer owes less than $25,000 then the qualifications become even easier as less forms are required and the taxpayer may be able to keep a Federal tax lien from being filed or have a lien removed if one exists.

Installment Agreement Forms

The IRS states that the taxpayer should use Form 9465 to request a monthly installment plan if they cannot pay the full amount they owe. Generally, one has up to 72 months to pay. In certain circumstances, they may take longer to pay or their agreement may be approved for an amount that is less than the amount of tax you owe. However, before requesting an installment agreement, the IRS states that the taxpayer should consider other less costly alternatives, such as getting a bank loan or using available credit on a credit card. In most cases, neither of these alternatives is practical.

If you are claiming hardship, the IRS will in almost every instance require you to complete a collection information statement. You will be assigned to one of two IRS departments depending on varying circumstances, primarily the amount you owe. The first is IRS Automated Collection Service ("ACS") and the second is being assigned to a Revenue Officer. If you have been **assigned to ACS** the IRS will most likely request that you **complete a Form 433-F** found in **Case Study 1 on the Page** 6 as well as in **blank forms section at the end of this manual**.

If you owe a higher amount, you have probably been assigned to a Revenue Officer. Your **Revenue Officer will most likely request that you complete a Form 433-A**. If this is the case, you will f**ind Form 433-A at the end of this manual in the blank forms section**. You still should read Case Study 1 to understand why you are filling out a Collection Information Statement.

In the following pages, you will review a case study showing how to compete a Form 433-F. If you are required to complete a 433-A the information is quite similar but must be provided in greater detail.

Summary

Without question, a negotiated payment plan in the form of an **Installment Agreement** is more favorable than a Wage Garnishment, Bank Levy, Third Party Levy or Asset Seizure. If one cannot afford to pay their back taxes in full and at the present time, and they do not qualify for an **Offer in Compromise** (see the following chapter) or placement into **Currently Not Collectible** ("**CNC**" – in essence a $0 installment agreement) status an **Installment Agreement** may be the best option in resolving one's tax debt.

Installment Agreement Preparation Analysis

If you are going to request a streamlined installment agreement for your client, little information is needed and the forms are self-explanatory. Assuming your client qualifies, this task should be simple.

In order to prepare and submit an installment agreement request based upon hardship, we need to look at areas within the collection information statement where issues typically arise.

We begin by looking at the taxpayer's income, expenses, assets and liabilities as input into a collection information statement. If the taxpayer is in automated collections, you will need to complete a 433-F. If a Revenue Officer has been assigned to their case, you will need to prepare and submit a 433-A.

To access these and many other forms visit the TRI online forms library at:

https://www.taxresolutioninstitute.org/forms-library/

The information entered into the above-mentioned collection information statements is used to calculate, on a monthly basis the amount a taxpayer must pay toward their delinquent taxes. It is important to be thorough and accurate when completing this form. It is also important to note that in addition to providing income and expense information, you are providing the IRS supplementary collection information. For instance, the 433-F requires you enter the county of residence for the delinquent taxpayer. This information helps the IRS file a lien. They also look at assets which may not be applicable to the installment agreement at hand, but may be levied upon if the taxpayer falls out of compliance.

At first appearance, the 433-F and even the 433-A seem like simple forms to complete. The information requested in each form is similar to what one would find in a loan application. When the client sees the form, they wonder why they are paying you to complete this process.

Here is why. If you fill out a loan application incorrectly, it may be rejected. This would be disappointing but having learned your lesson, you can apply for another loan and move on. On the other hand, if you fill out a 433-F or 433-A incorrectly, you could be sentencing your client to ten years of paying a much higher monthly installment amount than they can otherwise afford.

Completing IRS Form 433F

IRS Form 433-F (Page 1)

The first section of the form is where you will enter your client's static information. Make sure you are accurate when entering their name and tax identification number. Spell everything correctly and include middle initials if they appear on the client's tax returns. The IRS will often cross reference this information with the information they have on file.

Below the top section, you will see a section requesting basic business information. This section pertains to taxpayers that are self-employed. Once again be sure to enter the requested business information accurately. If you are a wage earner, you should enter "N/A" in the first box in this section and move onto the next section.

Note that whenever something does not apply to your client, always enter "N/A" in the first box of the section. This lets the IRS know that you did not miss the inapplicable section by mistake. Also, be sure to enter "$0" in the dollar amount box for the same reason.

Where indicated, enter both the number of people in the household that are under 65, and over age of 65. The IRS uses this information to determine which Out-of-Pocket health costs national standard applies to your client. In order to include someone as part of your client's household expenses, they should appear in the client's prior filed tax return as a taxpayer, spouse, or dependent.

The subsequent section, **Section 'A'** of the form asks for bank, investment and retirement account information. Be sure to include **ALL** applicable accounts. The IRS will most likely have at least a snapshot of this information and if something is excluded from the form, it will reflect poorly on the accuracy of all information included and may negatively affect the outcome of your installment agreement request.
If there are too many accounts to fit on the form, include an addendum that lists the additional accounts, and place the total sum of all accounts on the main form.

Section 'B' of the form covers real property that you own. As mentioned earlier, be complete and thorough when completing this and all other sections. If the current value of the client's property is less than the balance owed (the property has negative equity), enter $0 in the equity box. Do not enter a negative amount. If you have two house payments (i.e. a 1st mortgage and a 2nd mortgage), be sure to include all applicable information.

Section 'C' of the form lists personal property you own or lease. The majority of information listed in this section pertains to vehicles. Note that if you are single, the IRS will usually allow the ownership cost of only one vehicle. If you are marred, the IRS will typically allow for two vehicles. If a person or couple has more than one vehicle per person, the IRS will not allow the cost to own or lease the additional vehicles. In some cases, the IRS has disallowed the second vehicle because only one spouse was working.

IRS Form 433-F (Page 2)

Section 'D' of IRS Form 433-F is where you enter your client's credit card information. It is important to know that credit card payments are for practical purposes, not considered to be an allowable expense. While the IRS contends that minimum credit card payments are allowable, they consider these payments as part of the Food, Clothing and Miscellaneous Items allowance in the section below. In a minute when we cover that portion, you will see why credit card payments carry no practical bearing with regard to an allowable expense.

Section 'E' of the form is where a self-employed person will enter their business-related asset and liability information. You will notice that this section is similar to the bank account and credit card sections we covered previously. As is always the case, be complete and accurate when entering information in this section. If your information does not fit on the form, include additional information in an addendum as necessary and enter the sum of information in the "Total" box on the form.

Section 'F' of the form is a critical section. Here you will enter your client's employer, wage and income information. Even if you client is not an employee earning a wage, you should at least enter the static information for the company for which they work. You will see check boxes in this section asking for the frequency in which your client receives pay.

PAY CLOSE ATTENTION TO THIS SECTION. When you calculate your client's take-home pay, be sure to do the math properly. When estimating what, your client will need to pay as a monthly installment payment, you determine their take-home pay and subtract out necessary and reasonable living expenses. If you calculate the take-home pay incorrectly, you will lose substantial leverage in negotiation.

If your client gets paid monthly, the math is easy. If they get paid semi-monthly, once again it is not hard to calculate. On the other hand, if they get paid weekly, be sure to multiply the average net income of the checks you are including as substantiation by 52 and divide by 12. If your client gets paid every other week, you must multiply the average net income of the substantiated pay periods by 26 and divide by 12. On the following page, we have provided examples of a taxpayer being paid monthly, semi-monthly, every two weeks and once per week. In the second and third examples the check amounts are the same. Note the scenario in these two examples change the monthly average for the net take-home pay.

Wage earner's take-home pay calculation for installment agreements and offers

Examples below are based upon approximately 3-month's pay

1. **Monthly** (sum 3 checks; divide by 3)

Check 1:	$6,000
Check 2:	$5,200
Check 3:	$8,000
Monthly Average:	**$6,400**

2. **Bi-monthly** (sum 6 checks; divide by 3)

Check 1:	$3,300	Check 4:	$1,900
Check 2:	$2,700	Check 5:	$4,400
Check 3:	$3,300	Check 6:	$3,600
		Monthly Average:	**$6,400**

3. **Every two weeks** (sum 6 checks; divide by 6; multiply times 26; divide by 12)

Check 1:	$3,300	Check 4:	$1,900
Check 2:	$2,700	Check 5:	$4,400
Check 3:	$3,300	Check 6:	$3,600
		Monthly Average:	**$6,933**

(note that the same check amounts equate to more take home pay when compared to bi-monthly)

4. **Weekly** (sum 12 checks; divide by 12; multiply times 52; divide by 12)

Check 1:	$1,600	Check 4:	$1,000	Check 7:	$900	Check 10:	$1,000
Check 2:	$1,400	Check 5:	$2,200	Check 8:	$1,100	Check 11:	$1,000
Check 3:	$1,600	Check 6:	$1,800	Check 9:	$900	Check 12:	$1,100
				Monthly Average:			**$5,633**

In most cases, when determining what amount to include in the form as gross pay and corresponding taxes withheld, you will take the monthly over a three-month period. If you can show that your client earned less over an expanded period of time, you may go back 6 months, 1 year, or up to 2 years.

Section 'G' of the form addresses other types of income. Here you will include income other than wages including social security income and self-employed net business income. If you are self-employed and have net business income, the IRS may ask for additional substantiation which may include a Profit and Loss Statement to tie into the amount included in the form.

Section 'H' is the final section on Form 433-F. Like Section 'F', this section plays directly into how much your client will pay in monthly installments. The amounts included in this section, along with the income, car payment and mortgage payment amounts entered earlier in the form will determine how much your client will pay.

In "#1: of this section, you will enter the amount your client spends on Food, Clothing & Miscellaneous Items. In "#2" of this section, you enter the amount your clients spends on either Transportation operating costs or public transportation. In #4 if this section you enter your client's Out of Pocket Health Care. In all three of the above-mentioned sections, you enter the current IRS national or local standards. These standards can be found in the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library/

Remember that each standard increases as the number of people in the household goes up. For the three items listed above, the IRS will allow you to enter the standard without providing substantiation.

As mentioned earlier, minimum credit card payments are in theory, allowed under the Food, Clothing and Miscellaneous items section. Because the entire standard is allowed with no substantiation, if credit card payments are included in this section they, in essence will be reducing other standard amounts. This means, they have no practical bearing and will make your client no better off in terms of their ability to pay.

The other amounts you enter into the form including amounts for Housing and Utilities, health insurance and the remainder of items listed under section #5 "Other" should reflect the actual amounts your client pays. Keep in mind that **<u>all</u>** income and expenses other than the few times listed above need to be substantiated.

To substantiate the amount, you take home in pay, provide three-months paycheck stubs if you are a wage earner. If you are self-employed, provide three-months bank statements showing deposits.

To substantiate non-standard expenses, you need to provide three-months proof of expense in addition to proof of payment. Simply owing something does not make it an allowable expense. In addition, you must provide three-months bank statements for all personal accounts listed on page one, and all business accounts listed on page two.

Be sure to include the amount your client paid for CURRENT estimated tax payments as well as the amount they paid for delinquent tax payments to governmental agencies other than the IRS. **Do not include a current IRS installment payment because the IRS will assume your client is able to cover this expense and will require you to include it as part of the proposed payment amount you are submitting**.

Once the form is complete, calculate your client's net take-home pay and subtract out the necessary and reasonable living expenses. The result will determine a proposed payment amount for the client's monthly installment agreement.

The information that the IRS requires to be entered into IRS form 433-F (the short form) is similar to that requested in IRS form 433-A. The main difference is that the 433-A requires that more detail be given for each item listed on the form.

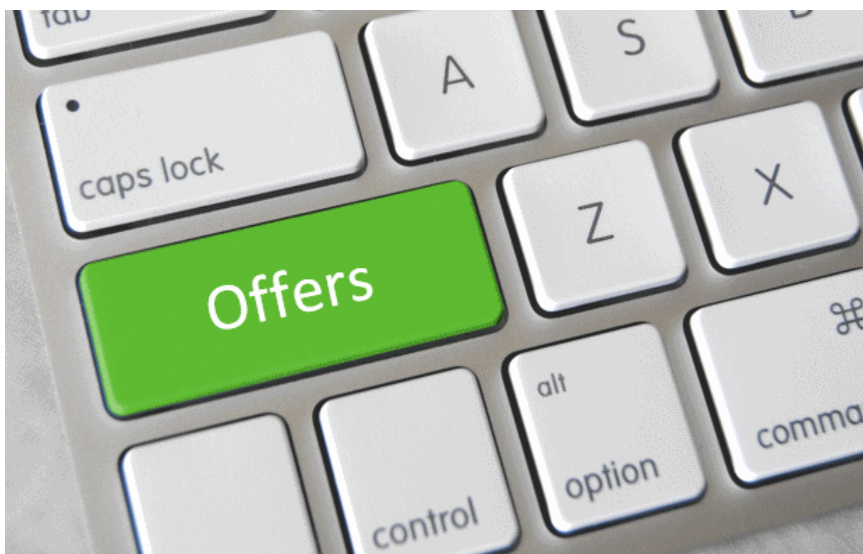
The amounts you enter into the form, and the disposable income you calculate on both forms should come out the same. Be sure to enter accurate numbers that are rounded at most to the nearest dollar. Do not round beyond that. If the IRS believes you are estimating amounts, they will ask you to revise the information provided in the form. When preparing these documents, both form and function play an important role.

Submitting an
Offer in Compromise

Submitting an **Offer in Compromise** is a process in which a taxpayer may reduce their Internal Revenue Service or State tax debt by negotiating with the taxing agency to accept an amount less than the actual amount they owe. This process is often referred to as settling one's taxes for "pennies on the dollar". The IRS or State has the authority to settle or "compromise" Federal and State tax liabilities by accepting less than full payment under certain circumstances. A Federal tax debt may be legally compromised under one of the following conditions…

1. **Doubt as to Collectability** - Doubt exists that a taxpayer could pay the full amount of tax owed within the collection statute.
2. **Doubt as to Liability** - Doubt exists as to whether the tax should have been assessed to the taxpayer.
3. **Effective Tax Administration** - There is no doubt the tax is correct, and no doubt that the amount owed could be collected, but an exceptional circumstance exists that allows the IRS to consider a taxpayer's offer. To be eligible for this type of compromise, the taxpayer must demonstrate that collection of the tax would create an economic hardship or would be unfair and inequitable.

The majority of the taxpayers fall into the first category (i.e. you owe the tax but you cannot pay the IRS the full amount of what is owed). For the IRS to consider an **Offer in Compromise,** you must at least offer to pay an amount equal to the quick sale value of all your assets plus all the money the IRS "believes" they can collect from your future disposable income for a period of 12 or 24 months (this time period was reduced from 48 or 60 months as part of the Fresh Start Initiative).



The IRS uses a formula that combines an analysis of a taxpayer's current net worth along with a determination of the taxpayer's future ability to pay. In March of 1999, the IRS created a new offer referred to as a Deferred Payment Offer, which allows an individual to pay the discounted value of his assets plus monthly payments for the remainder of the statute of limitations for collection.

When the IRS receives an **Offer in Compromise** they first determine if the offer is processable. The offer is then sent to an Offer Specialist for the IRS district in which it was submitted. Once it is determined that an offer is processable, it is sent to the service center for a search of the tax records to determine the exact amount of the tax due. The offer will not be accepted if an individual is not in current compliance.

There are three basic plans for the payment of an **Offer in Compromise**. An offer may be paid upon acceptance in full or over 5 months once an offer has been accepted. In order to pay off the offer using either of the above-mentioned options, the taxpayer must submit a non-refundable down payment of 20% of the full offer amount with the paperwork initially. There is also a Periodic Payment option which requires no down payment but requires regular payments be made throughout the process of determining if the offer will be accepted. In this case the offer must be paid in no more than 23 monthly payments.

A taxpayer submitting an offer must include as part of his/her offer the realizable value of their assets (quick sale value) plus the total amount that the IRS could collect over a 12-month period.

The IRS bases its acceptance of the offer using the following formula:

> ***Quick sale value of assets plus present value of income equals the Offer in Compromise settlement amount (QSV + PVI = OIC). The IRS determines the Quick Sale Value of all of the client's assets and then adds that amount to the present value of the amount they are able to pay***.

In determining the amount of the offer, the IRS uses a quick sale value of assets. The IRS also looks at the amount that can be collected from future income. For example, pension plans may be a problem in negotiating an **Offer in Compromise**. The Internal Revenue Manual gives the following guidelines:

1. *"Where under the terms of employment, a taxpayer is required to contribute a percentage of his gross earnings to a retirement plan and the amount contributed, plus any increments, cannot be withdrawn until separation, retirement, demise, etc., this asset will be considered as having no realizable equity.*
2. *Where the taxpayer is not required as a condition of employment to participate in a pension plan, but voluntarily elects to do so, the realizable equity for compromise purposes shall be the gross amount in the taxpayer's plan reduced by the employer's contributions. However, in these situations each case should stand on its own merits.*
3. *If the taxpayer is permitted to borrow up to the full amount of his equity in a plan, this should be taken into consideration in the computation of realizable equity.*
4. *The current value of property deposited in an IRA or Keogh Act Plan Account should be considered in the computation of realizable equity. Cash deposits should be included at full value. If assets other than cash are invested (e.g. stock, mutual funds), the IRS should be valued at the quick sale value, less expenses. The penalty for early withdrawal should be subtracted in computing net realizable equity."*

The Revenue Officer generally accepts the valuation of personal items that is listed on the financial statement. If the taxpayer has jewelry, paintings, antiques, coin, stamp or gun collections, the Revenue Officer will probably look closer at the situation.

The IRS may grant special relief for property that is held in tenancy by the entirety because they cannot seize it if the spouse does not owe back taxes. (IRM 57(10)(13).92). If property is held in joint tenancy or tenancy in common, the IRS will want a 50% chunk of the value.

The Revenue Officer will look at the individual's budget as it is shown on the Form 433-A. He will also look at the future job prospects of the taxpayer including his education, profession, age, experience, and past income. The IRS will determine a present value based on the individual's ability to pay. If the citizen makes a cash offer, the Service will decide how much he can pay per month and then multiply it by 12 months to determine its present value. If the individual requests a short term deferred offer, the IRS will use 24 months to determine the present value.

Some IRS districts seem to be stricter in their acceptance of **Offers in Compromise** than other districts. The **Offer in Compromise** works best for an individual who has few assets and not much disposable income. If you wish to file an **Offer in Compromise**, it is best to look very carefully at all aspect of the case including reviewing the bankruptcy statutes so that you don't inadvertently extend the statute of limitations.

IRS Form 433-A (OIC)

This form can be found in the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library

We will now take the income, expenses, assets and liabilities to see how they are to be entered into the offer in compromise collection information statement (433A-OIC). This form is similar to the 433-F described in earlier pages of this manual.

There are two significant differences. The first is that this form takes 7 pages to input information that was covered in two pages in the 433-F. It is very important to be thorough and accurate when completing this form. The second difference is that, unlike the 433-F where you can input actual expenses for items such as housing and utility payments and car payments, in this form you must include the amount you pay up to the IRS standard. If you pay more than the IRS standard for living expenses, the amount over the standard is disallowed for purposes of an offer.

In our example, the taxpayer’s adjusted assets for the purpose of the offer, equal $4,438. We used the word adjusted because the IRS considers the quick sale value of assets, not the “retail” value one would receive by selling their assets in an open market. This amount included in the offer equates closer to what one would receive selling their stuff at a garage sale.

The taxpayer’s Monthly Disposable Income (“MDI”) for purposes of the offer equals $919 per month. Inputting these numbers into the offer in compromise forms, equates to an offer amount of $15,466. This is significantly less than the $247,000 they currently owe. See the formula below to see how the offer amount was calculated.

MDI: $919

Months per lump sum offer: 12
$11,028

Quick sale value of assets: $4,438

Income (12 x MDI)		Assets (QSV)		Offer Amount
11,028	+	4,438	=	$15,466

When completing the offer in compromise forms, be careful to see how each section should be completed. You will note that each section has a total box where you enter the sum of amounts for each category. If the taxpayers do not have anything to enter in a particular section, you should input "$0" in the "Total" box and place an "N/A" in the first description box of the applicable section.

Each section has a total box where you add all of the elements included in that section. It is important to calculate these totals properly. You will notice that 'Box A' on page 4 and 'Box B' on Page 5 show the totals of boxes from their related sections. Do not forget to enter numbers in these boxes. They are used to calculate your offer on Page 7.

Be careful when completing Page 6 of the form. Here you enter the taxpayer's expenses similar to completing IRS Form 433-F. The difference once again, is that the entries may not exceed the IRS National and Local Standards. In our example, the housing and utilities payment made by the taxpayers was higher than the IRS standard.
To have the offer accepted, we must input the standard and not the higher actual amount into the form. In this case the difference will be added to the taxpayer's MDI. This will require them to pay 12 times the difference in housing and utilities toward the offer.

On Page 7 of Form 433-A (OIC) you will transfer numbers from the previous section totals to calculate the amounts to include in the offer. You will see that you have a 12-month option and a 24-month option. Yes, you read this correctly. The Offer in Compromise MDI amount is double if you decide to pay in more than 5 months from the date of acceptance of the offer. It almost always makes sense to choose the 12-month option.

Finally, page 8 is a checklist of items to include with the offer. Be sure that each item on the list is either not applicable or included with the offer. Do not forget to sign and date the form. Once this form is complete, you will move onto completing the actual offer application, Form 656. This is covered after the 433-A (OIC) sample form that follows.

IRS Form 656

This form can be found in the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library

The Offer in Compromise application Form 656 (we refer to this form as the "cover sheet") is much simpler to complete than the 433-A (OIC). This 7-page form consists of information easy to obtain. Page 1 of the form is where you enter your static information including the type of tax you owe, and the years or periods for which you owe. It is important to know for exactly which years or periods you owe. If you accidentally exclude a year or quarter, the amount you owe for said year or quarter will be excluded from the offer if it is accepted. If the amount is significant, this could wipe out the benefit of entering into an offer.

On page 2 of the offer, you enter business related information. In addition, you will enter what type of offer you are submitting. For example, doubt as to collectability, the most common type.

The last information you will enter on this page is a brief explanation of why your Client is submitting the offer. It is advantageous to show extenuating circumstances as to why they were unable to pay the tax. For example, if your Client was sick or disabled, you should mention their condition here. Also, if your Client is of retirement age and they are unable to work or must cut down on work, that should be mentioned here as well. At the **Tax Resolution Institute,** we also include a cover letter including an expanded explanation of why the offer is being submitted.

At the top of Page 3 is where you calculate the down payment and the 5 lump sum payments. These amounts come from the offer amount calculated on page 7 of the 433-A (OIC). The offer down payment is derived from 20% of the total offer amount. The down payment must be submitted in addition to the offer application fee of $186 with the offer. Subsequently, break down the remaining 80% of the offer amount into 5 payments. These payments must be made within 5 months of acceptance of the offer.

Leave the bottom of page 3 blank. In the next section on page 4 you explain where your client is obtaining the funds to pay the offer. It is best if your client is borrowing the funds from family and/or friends. Page four also asks a few questions pertaining to compliance. Be sure to check all that apply and just as important, make sure your client is in current compliance and remains so during the offer consideration period.

Page 5 sets forth the offer terms. Page 6 of the offer is where your client inputs their signature and date, and you do the same if you are acting as their preparer. Page 7 of the offer is a checklist. Do not ignore this page. It helps ensure you are submitting a complete offer.

Once the offer is complete you will mail it into the processing unit in your region. In order to determine to which processing unit, refer to the 656 booklet. This can be found in the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library

IRS National and Local Standards

If you are unable to pay your taxes, the IRS allows you to either full-pay them over time or more often than not, pay less than you owe by claiming hardship.

The IRS and most States allow you to pay either on a monthly basis (installment agreement) or lump sum (offer in compromise) an amount less than you based not on the amount you owe but rather on your ability to pay. In order to calculate what you can afford to pay, the IRS uses the amount you take home in income and subtracts out necessary and reasonable living expenses. The amount left over is referred to as disposable income and will be taken to pay back taxes.

You may be saying to yourself "I spend all of my money on necessary and reasonable living expenses." While in your opinion, this may be the case, the IRS has determined which expenses are allowable and have calculated amounts for these living expenses which are broken down into four categories. They are as follows:

- Housing and Utilities (local standard)
- Food, Clothing and Other Items (national standard)
- Transportation (local standard)
- Out-of-Pocket Health Care (national standard)

The IRS has determined what an individual and their family should spend on expenses encompassing the above-mentioned categories. These expense amounts are updated once or twice a year. In some instances, the amounts vary depending on where one lives (local standards). In other instances, the amounts are uniform throughout the nation (national standards).

Note that Food, Clothing and other items are a national standard. It seems to us, that a person living in New York would pay substantially more than a person living in Montana for these items. In this example, we are talking about like item as opposed to varying degrees of taste for more expensive items.

As you can see just looking at the one example, the amounts the IRS comes up with may be more than reasonable for some and completely unrealistic for others. The good news is that the IRS will allow actual expenses as opposed to their standards when calculating an installment agreement. As long as the expense amounts are within reason, which of course is subjective.

Even if the amount is what the IRS would consider to be unreasonable, they will usually allow the taxpayer one year to adjust their spending down.

There are several other expenses the IRS will allow not covered under the standards. Some of these include childcare expenses, health insurance premiums, life insurance premiums and student loan debt. Another allowable expense is payments to other taxing agencies for both delinquent and estimated tax payments. These payments can provide a lot of leverage for taxpayers owing both the IRS and State.

If you are considering submitting an offer in compromise to the IRS, you will need to stay within the standards. For food and clothing and out of pocket medical expenses, you can use the full standard amount with no substantiation.

For transportation and housing, you can use the amount you actually pay up to the standard amount. For these standards you must substantiate the amount with both proof of expense and proof of payment.

To view these standards, visit the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library/

Tips and Traps

("a must read")

Installment Agreements

1. Be sure to complete Form 433-F or 433-A before you contact the IRS.

2. The information in Form 433-F is often supplied to the IRS over the phone. Be sure to fill on all boxes in sections that apply to you. The IRS does not like blanks.

3. Create a separate sheet showing your income and expenses. Calculate your take-home income minus your living expenses prior to contacting the IRS. This will be the amount the IRS will expect you to pay on a monthly basis.

4. The installment agreement calculation may be negative. If the amount is less than zero, request to be placed into Currently Not Collectable status.

5. If your calculation is too low (i.e. substantially below zero) then the IRS may not consider your expenses to be real.

6. The IRS will compare your bank account deposits with the amount you claim as take-home income. Be sure that either these amounts match or that you can trace excess deposits as non-income (i.e. loans, transfers from savings, transfers from other accounts listed on the 433).

7. Provide three months billing statements, invoices, etc. to substantiate living expenses. Also, include proof of payment either as copies of checks or bank statements showing the paid expenses. Simply owing the money is not enough to make an expense allowable.

8. If you have more Monthly Disposable Income ("MDI") than you are able to pay to the IRS as an ongoing installment payment, you can increase your expenses to lower your MDI. For example, you could:

    a. Trade in a car you own outright and lease or purchase another car. Note that leasing a car will add a new allowable expense without adding an additional asset.

    b. If you are self-employed you can make or increase estimated tax payments for the current tax year. This will lower your disposable income and increase the chance of staying in compliance moving forward.

c. If you are an employee, you can increase your withholding tax if you typically owe taxes at the end of the year. Be careful not to over withhold as refunds will be kept by the IRS and applied to the back taxes owed.

d. Buy term life insurance. This is an allowable expense that carries no cash value.

9. Ask for 72 months to pay. If your MDI is too high, try taking your total liability and dividing it by 72. If the amount is less than your MDI, you may request that your full liability be paid over the 6-year period. This does not always work but it is worth a try.

Offers in Compromise

1. It can take up to two years for an Offer to be accepted or rejected. By IRS definition an Offer is deemed accepted if no answer is given within the 2-year period. The **Tax Resolution Institute** has yet to see an Offer be accepted based upon this rule.

2. A typical Offer takes 12-18 months to be accepted.

3. It can take up to 6 months for an Offer just to be deemed processable.

4. If an Offer is not processable, the taxpayer must correct the items that deem it non-processable and resubmit the Offer.

5. The chance of having an Offer accepted is much lower than the chance of entering into a manageable installment agreement.

6. There is a 10-year statute of limitation for the IRS to actively collect against a tax assessment. Submitting an Offer freezes the statute for the time the Offer is under consideration plus a time period following if the Offer is rejected or accepted and then the taxpayer defaults on the Offer.

7. If a taxpayer is near the end of their collection statute, it may make sense to forgo an Offer and request an installment agreement based upon hardship.

8. Acceptance of an Offer is based upon a taxpayer's ability to pay over the life of the statute of limitations on collection. Just because a taxpayer is unable to pay at the time an Offer is submitted, does not mean that their situation will not improve within the 10-year collection period. One example of this may be a realtor in a down market or a Lawyer that has been laid off by previously earned a significant salary.

9. A taxpayer must stay in compliance for 5 years after an Offer has been accepted. If they default on the Offer, the original liability, penalties and interest are placed back on the taxpayer's account and they will again be exposed to collection.

10. A taxpayer is often required to resubmit financial substantiation within the time period an Offer is being considered.

11. The IRS will often negotiate certain parts of an Offer in lieu of rejecting an Offer outright.

12. When an Offer is rejected, the IRS' reason is almost always that the taxpayer has the ability to full-pay their liability within the collection statute.

13. The amount to be paid for an Offer is formula based. That is 12 or 24 times one's monthly disposable income plus the quick-sale value of their assets. Some people, in planning for an Offer may try and sell, give away or transfer their assets in order to lower the Offer amount. If this is done solely with the intention of lowering one's Offer amount or done within a certain period of time prior to submission of the Offer, the asset in question may still be included in the Offer calculation by the IRS. For example, if a person refinances their home to pay off credit card debt, the IRS may include the cash taken out of the refinance as a dissipated asset for Offer purposes. Their contention is that Federal taxes should be paid prior to credit card companies.

14. When entering bank balances on Form 433-A (OIC) it is prudent to put the ending balance of the most current bank statement if the amount is relatively low. If not include the lowest average daily balance within the three-month period of the statements being submitted.

About the Authors

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Peter Y. Stephan's early research into IRS tax code led him to specialize in IRS practices and procedures; in particular, the area of collection which led him to enter into practicing tax resolution. Peter built his firm by combining his unique blend of skills in the areas of accounting, taxation, and business consulting.

In addition to practicing tax resolution, Mr. Stephan is frequently retained by fellow CPAs and Attorneys to perform forensic accounting and provide litigation support including expert witness services relating to various accounting, fraud and tax compliance matters.

Peter is qualified by the State Bar of California, California Board of Accountancy and the Internal Revenue Service to provide continuing professional education to Attorneys, Certified Public Accountants and Enrolled Agents in the area of tax resolution.

In addition to authoring this textbook The Ultimate Guide to Tax Resolution, Peter has created several tax resolution manuals providing fellow professionals with "one-of-a-kind" instruction allowing them to resolve all types of tax resolution issues. As a professional speaker, Mr. Stephan frequently appears at seminars and radio talk show programs relating to tax matters. In addition, Peter has been quoted in newspaper and magazine articles. Mr. Stephan is a member of the California Society of Certified Public Accountants as well as the American Institute of Certified Public Accountants.

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Matthew Cohen is the Chief Strategy Officer at the Tax Resolution institute. Matthew attended the University of California at San Diego where he graduated with a degree in Economics. Mr. Cohen came to the Tax Resolution Institute with more than 15 years management experience.

His extensive knowledge in the areas of taxation, business logistics, development and strategic planning bring a valuable asset to the TRI.

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[i] The **Tax Resolution Institute** recommends without exception that you hire a qualified professional to resolve your tax matters. We understand that some taxpayers are either unable to hire a professional because they lack the means to pay for services or owe an amount less than would warrant paying for services. We have created this manual as guideline for taxpayers that have determined they are qualified to represent themselves and thus doing so is by their determination their best option. If you have purchased this manual and are unable to resolve your tax matters to your satisfaction, you may contact the Tax Resolution Institute at info@ssttax.com or (877) 829-8370 to inquire about enlisting our services.

[ii] Regardless of whether you attempt to resolve your collection issues on your own, you should always hire a qualified professional to prepare your tax returns. If you cut corners by hiring someone that is unqualified or attempt to prepare the returns yourself, you risk higher chance of having deductions disallowed as well as foregoing the chance to realize substantial tax savings that may far outweigh the amount you save by having the returns prepared by someone unqualified.