STRATEGIES IN SUBMITTING AN OFFER IN COMPROMISE

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Situation: Your client was flying high in the 1980's as a real estate developer with numerous real estate investments. Then the market headed south on her. She was forced to liquidate her holdings. Large amounts of tax were owed as a result, although she received no cash from the investments to pay the tax. As a result, she is in way over her head and sees no way that she can pay off her IRS liability with the new job that she has taken.

1. An offer in compromise is a possibility. This is usually submitted when there is doubt as to collectibility.

2. IRS realizes that it is sometimes better off taking what the taxpayer offers, forgetting about the rest, and moving on to the collection of other delinquent accounts.

3. The amount of the offer, at a minimum, must exceed what the Revenue Officer determines to be the quick sale value of your client's assets. In other words, if IRS could seize and sell assets and get more than what your client is offering, the offer will be rejected. The offer must also include provision for your client's "future income." For example, if your client can pay the IRS $100 per month, and there are five years left on the collection statute of limitations, then the IRS will want the offer to include the present value of that income stream that it would receive if there were an installment agreement in effect.

4. There is no clear dividing line between an offer that is acceptable and an offer that is unacceptable. It depends on the particular circumstances involved. IRS must be convinced that it is receiving now the reasonable collection potential for the future. If IRS thinks it can get more over time by waiting, it will reject the offer. Typically, an offer involves borrowing money -- giving the IRS something that it could not otherwise get. For example, a taxpayer might borrow a sum of money from relatives, thereby offering IRS more than IRS could reasonably expect to obtain by seizing assets and getting monthly payments over time.

5. There are a number of considerations to keep in mind in deciding whether to make an offer in compromise.

    a. Acceptance rates in the Pacific-Northwest District are running at approximately the 50% level. Nationally, taxpayers are paying about 15 to 20 cents on the dollar.

    b. Consideration of an offer takes a long time. It can easily take six months to one year from the time of submission to have an offer in compromise accepted or rejected.

c. The statute of limitations on collection is suspended during the period of time the offer in compromise is pending, plus one year.

d. Collection activity is usually withheld unless collection of the tax is jeopardized.

e. An offer in compromise can also be made when there is doubt as to liability. Also, an offer could be based both on doubt as to collectibility and doubt as to liability.

6. The 1998 Tax Act makes some important changes:

   a. Congress has instructed the IRS to make it easier for taxpayers to enter into offers in compromise.

   b. The IRS is required to develop national and local expense allowance guidelines that provide for adequate means to meet basic living expenses and to recognize that it might not make sense to apply such guidelines in a particular taxpayer's case.

   c. The IRS must implement procedures for independent administrative review for proposed rejections of offers, which review must take place prior to communication of the rejection to the taxpayer.

   d. Congress expects the IRS to consider factors other than doubt as to liability or doubt as to collectibility in certain circumstances; factors such a equity, hardship and public policy are to be taken into account.

7. Additional strategy questions:

   a. Are all tax liabilities not included in the offer taken care of?

   b. Is there a track record of a year or two in which the taxpayer is in compliance?

   c. Is it better to submit on behalf of someone who is unemployed or wait until they have a job?

   d. How low can the offer amount be?

   e. Is it best to lowball the offer amount at the beginning?

   f. Is it possible to have an acceptable offer without the taxpayer borrowing the money?

g. How is the value of the taxpayer’s house determined?

h. How is the value of the taxpayer’s business determined?