

Occasionally, taxpayers find themselves overwhelmed with state tax liabilities. Often the liability can be resolved through structured payment plans with the Department of Revenue. Some taxpayers are able to obtain relief through bankruptcy. Sometimes the liability is more than a taxpayer will ever be able to pay but it is not dischargeable in bankruptcy. The Commissioner of Revenue does recognize this predicament and proposes another option.

Most states and the Internal Revenue Service have an "Offer in Compromise" program for unpaid taxes. The Governor of Mississippi, on the advice of the Commissioner of Revenue, has long had the statutory authority to settle doubtful tax claims of the State of Mississippi. However, no statewide program had been developed to encourage the utilization of an Offer in Compromise for taxes. The Commissioner of Revenue is now implementing such a program. This program will allow a taxpayer who would otherwise never be able to pay off their tax liability a fresh start by settling the debt for less than the full tax due.

The Commissioner of Revenue is charged with determining and collecting the actual amount of tax due from Mississippi taxpayers. Thus, recommending to the Governor to accept an amount less than the tax due will only occur in extraordinary circumstances. To keep this process as open and transparent as possible, a waiver will be required eliminating the protection of the confidentiality provisions of the Mississippi Code for all documents reviewed in determining whether or not to recommend compromise to the Governor.

Tax Debts and Taxpayers Eligible for Offer in Compromise Program

An Offer in Compromise of a doubtful claim must be based on the taxpayer's true ability to pay. A doubtful claim includes finally determined tax liabilities enrolled as a lien on the Mississippi Uniform State Tax Lien Registry where the ordinary collection processes have not collected the entire liability. While some states can accept an Offer in Compromise for a disputed liability, Mississippi does not have the statutory authority to do

so. Taxpayers wishing to contest the amount of tax due must either timely appeal an assessment or go through the informal review process to request adjustments to an assessment.

Both individuals and entities may participate in the Offer in Compromise program. However, certain taxpayers will not be eligible. Taxpayers who have not filed all required tax returns or who do not submit a complete application for an Offer in Compromise will not be eligible to participate until all such requirements are met. Taxpayers who are currently in bankruptcy must wait until the bankruptcy is complete or closed prior to participating in this Offer in Compromise program. Taxpayers who actually collected the tax from others can not participate in this program nor can taxpayers who have a pending criminal investigation or prosecution relating to the tax liability.

Offer Amounts and Terms of Payment

Offers in Compromise for less than the tax amount must be for a lump sum, not multiple payments over time. Twenty percent (20%) of the Offer or one hundred dollars (\$100.00), whichever is greater, is required to accompany an application for an Offer in Compromise. This payment will be applied toward the taxpayer's liability regardless of whether the Offer in Compromise is accepted. If the Offer is accepted, the amount due will be reduced by this payment. No other payments made prior to acceptance of the Offer in Compromise or through other Department collection activities will reduce the compromised amount. Although the Department does enter into payment plans, tax amounts due will not be compromised or reduced.

Collection efforts will not stop just because a taxpayer has made an Offer in Compromise. State tax liens will not be released until the Offer is accepted and the amount offered is paid in full. There is no appeal of the Commissioner's decision not to recommend an Offer in Compromise.



It is important for Offers to be reasonable. Offers of \$0.00 will not be considered. Offers should be, at a minimum, all monthly disposable income for a year plus the market value of non-necessary assets. Necessary assets are considered to be similar to the exempt assets debtors are generally allowed to keep when filing bankruptcy. Monthly disposable income is all income less all necessary expenses. Expenses related to luxury items such as private school tuition, boat payments and insurance, luxury car payments and insurance, etc. should not be deducted to determine disposable income. Excessive expenses for food, housekeeping supplies, apparel, services, and other products will not be allowed.

Additional information and applications for an Offer in Compromise are currently available at www.dor.ms.gov. The Offer in Compromise is still only one method to resolve tax liabilities with the State of Mississippi. If a taxpayer is not eligible for an Offer in Compromise, the taxpayer may still timely dispute the amount of taxes due or enter into a payment plan with the Department. Although an Offer in Compromise must be in the best interest of the State of Mississippi, we are hopeful that this new program will also assist hardworking Mississippi taxpayers to get their feet back under them.

By Ashley May, MS Department of Revenue Chief Counsel