SUMMARY OF IRS COLLECTIONS

Index

I. Fresh Start Initiative

A. Background. By the Year 2009, the U.S. economy was well into what some economists have described as the worst economic crisis since the Great Depression. Household net worth fell $11 trillion or 18%, during the course of this crisis. A record number of homeowners falling behind on their mortgage payments and the loss of jobs at an alarming rate resulted in taxpayers facing financial difficulties that affected their ability to meet their tax obligations. From Years 2008 to 2009, the unemployment rate jumped from 5.8% to 9.3%. After peaking at 9.6% in Year 2010, the unemployment rate started declining in Year 2011.

When the economy started to weaken, the IRS implemented or reemphasized provisions that would help economically distressed taxpayers. In January 2009, the IRS announced some existing and new alternatives available to taxpayers facing financial challenges and having difficulties paying their balance due because of the declining economy. Depending on the circumstances, taxpayers in hardship situations were able to adjust payments for back taxes, avoid defaulting on payment agreements, or possibly defer collection action. The IRS notified taxpayers, tax preparers, and its employees of the new and existing collection alternatives. These changes were implemented by February 2009.

In February 2011, the IRS began implementing the first of several new initiatives to assist economically distressed taxpayers by offering viable collection alternatives to help resolve their delinquent balance due accounts. The IRS established these "**Fresh Start Initiatives**" anticipating that they would help individuals and small business taxpayers meet their tax obligations by providing taxpayers more payment options, while the IRS would use fewer resources reviewing detailed financial statements. Over the course of 17 months, the IRS made several policy changes that involved the following three collection methods:

1. Installment Agreements. In March 2011, the IRS increased the dollar threshold for taxpayers to qualify for streamlined In-Business Trust Fund (IBTF) Express Installment Agreements so that more struggling small business taxpayers would qualify. The threshold in unpaid tax liabilities increased from $10,000 to $25,000, and the taxpayer is required to pay off the agreement within 24 months. The taxpayer must also enter into a Direct Debit Installment Agreement. IBTF Express Installment Agreements reduce taxpayer burden because full financial reviews are not required to set up the agreement.

In January 2012, the IRS increased the dollar threshold for taxpayers to qualify for Streamline Installment Agreements so that more struggling individual taxpayers would qualify. The threshold in unpaid tax liabilities increased from $25,000 to $50,000, and the time to pay the tax debt off also increased from 60 months to 72 months. Streamline Installment Agreements reduce taxpayer burden because they require less documentation from the taxpayer than traditional installment agreements.

2. Offers in Compromise. In February 2011, the IRS expanded the Streamline Offers in Compromise (OIC) program to include taxpayers with less than $50,000 in tax liabilities and less than $100,000 in annual income. Previously, the maximum amounts were $25,000 and $50,000, respectively. Streamline OICs reduce taxpayer burden because less documentation is required from the taxpayer.

In May 2012, the IRS further expanded the Streamline OIC program to cover all taxpayers requesting an OIC (with no dollar limitations).

3. Notices of Federal Tax Lien. In March 2011, the IRS doubled the dollar threshold of the delinquent tax amount for which a Notice of Federal Tax Lien (NFTL) is generally issued, from $5,000 to $10,000.

This change reduced taxpayer burden because many taxpayers with delinquencies in this dollar range were not issued an NFTL, which can adversely affect their credit rating.

In April 2011, the IRS began withdrawing NFTLs when requested by taxpayers who either entered into a new Direct Debit Installment Agreement or converted a traditional installment agreement to a Direct Debit Installment Agreement. NFTLs were also withdrawn for taxpayers who had existing Direct Debit Installment Agreements with unpaid assessments of $25,000 or less. Unlike an NFTL release, a withdrawal removes implementation approach and time frame. Several of the Fresh Start Initiatives were based on CPS recommendations.

In June 2011, the IRS began approving taxpayers' NFTL withdrawal requests after taxpayers received an NFTL release (generally for taxpayers who fully paid their delinquent tax).

In addition, the IRS provided relief to unemployed taxpayers who had been assessed a failure to pay penalty. Specifically, from March to October 2012, the IRS did not assess the failure to pay penalty on certain wage earners and self-employed individuals (business taxpayers were not eligible). To qualify, the taxpayer's delinquent balance could not be more than $50,000, and income had to be below specific thresholds ($200,000 for married taxpayers filing jointly, and $100,000 for single and head of household taxpayers). Taxpayers benefited from this relief because they were not required to pay a penalty when they requested a filing extension.

Prior to the Fresh Start Initiatives, the Deputy Commissioner for Services and Enforcement chartered the Collection Process Study (CPS) to conduct a broad-based review of the current IRS Collection processes, identify opportunities for improvement, and recommend specific actions that could be implemented to improve collection potential from delinquent taxpayers. The study examined all areas across the IRS enterprise engaged in, or supporting, collection activities. Each CPS recommendation contained a description of the current situation, its business and financial impacts, a summary of key considerations, associated risks, dependencies and points of integration needed to successfully implement the recommendation, and proposed implementation approach and time frame. Several of the Fresh Start Initiatives were based on CPS recommendations.

B. Current Status. Since its inception in 2011, the IRS Fresh Start Initiative has changed to meet the needs of taxpayers. Its scope has expanded in several ways to cushion the blow of back taxes and penalties.

Taxpayers unable to pay their entire federal tax bills can apply for an Offer in Compromise (***"OIC"***) to reduce their tax burdens. Essentially, the OIC allows taxpayers to settle their delinquent federal tax bills for less than the full amount that they owe. An OIC also streamlines the process of investigations and shortens the time that taxpayers spend repaying the IRS. Taxpayers with complicated tax returns should employ the assistance of a tax relief professional to negotiate a fair OIC agreement.

Taxpayers who do not qualify for an OIC can negotiate manageable monthly payments through an IRS installment agreement. Previously, taxpayers who owed more than $25,000 in back taxes were subject to an invasive income examination process to determine the amount of their monthly payments. The IRS Fresh Start Initiative has raised that limit to $50,000, making it possible for more taxpayers to negotiate a streamlined installment agreement. However, taxpayers owing less than $50,000 may still wish to consult with a financial professional to ensure that a prospective installment agreement is mutually beneficial, not just for the IRS.

One method the government uses to recover back taxes and penalties is the filing of liens against taxpayers′property. This could mean real estate, business assets, and vehicles. A tax lien against property can make it difficult to get credit and can also result in property being auctioned off. Originally, tax liens would be filed automatically for taxpayers with delinquent federal taxes of at least $10,000. The IRS Fresh Start Initiative has raised the lien-triggering amount to $50,000, although the IRS still has the latitude to file liens for taxpayers who owe less.

The IRS Fresh Start program makes it easier for taxpayers to pay back taxes and avoid tax liens. Even small business taxpayers may benefit from Fresh Start. Here are three important features of the Fresh Start program:

1. **Tax Liens.** The Fresh Start program increased the amount that taxpayers can owe before the IRS generally will file a Notice of Federal Tax Lien. That amount is now $10,000. However, in some cases, the IRS may still file a lien notice on amounts less than $10,000.

a. When a taxpayer meets certain requirements and pays off their tax debt, the IRS may now withdraw a filed Notice of Federal Tax Lien. Taxpayers must request this in writing using Form 12277, Application for Withdrawal.

b. Some taxpayers may qualify to have their lien notice withdrawn if they are paying their tax debt through a Direct Debit installment agreement. Taxpayers also need to request this in writing by using Form 12277.

c. If a taxpayer defaults on the Direct Debit Installment Agreement, the IRS may file a new Notice of Federal Tax Lien and resume collection actions.

2. **Installment Agreements.** The Fresh Start program expanded access to streamlined installment agreements. Now, individual taxpayers who owe up to $50,000 can pay through monthly direct debit payments for up to 72 months (six years). While the IRS generally will not need a financial statement, they may need some financial information from the taxpayer. The easiest way to apply for a payment plan is to use the Online Payment Agreement tool at IRS.gov. If you don't have Web access you may file Form 9465, Installment Agreement, to apply.

Taxpayers in need of installment agreements for tax debts more than $50,000 or longer than six years still need to provide the IRS with a financial statement. In these cases, the IRS may ask for one of two forms: either Collection Information Statement, Form 433-A or Form 433-F.

3. **Offers in Compromise.** An Offer in Compromise is an agreement that allows taxpayers to settle their tax debt for less than the full amount. The Fresh Start Initiative expanded and streamlined the OIC program. The IRS now has more flexibility when analyzing a taxpayer's ability to pay. This makes the offer program available to a larger group of taxpayers.

Generally, the IRS will accept an offer if it represents the most the agency can expect to collect within a reasonable period of time. The IRS will not accept an OIC if it believes that the taxpayer can pay the amount owed in full as a lump sum or through a payment agreement. The IRS looks at several factors, including the taxpayer's income and assets, to make a decision regarding the taxpayer's ability to pay.

II. What To Do When You Owe Federal Taxes

A. Do you owe taxes? If you do not pay your tax in full when you file your tax return or the IRS adjusts your taxable income, you will receive a bill for the amount you owe. This bill starts the collection process, which continues until your account is satisfied or until the IRS may no longer legally collect the tax; for example, when the time (or period for collection)has expired.

The first notice you receive will be a letter that explains the balance due and demands payment in full. It will include the amount of the tax, plus any penalties and interest accrued on your unpaid balance from the date the tax was due.

B. Has the IRS started collection activities? Once you've received a tax bill, if you cannot pay in full, you should send in as much as you can with the notice and explore other payment arrangements. For tax payment options, see **Subsection C** below.

The unpaid balance is subject to interest that compounds daily and a monthly late payment penalty. It is in your best interest to pay your tax liability in full as soon as you can to minimize the penalty and interest charges. You may want to investigate and consider other methods of financing full payment of your taxes such as obtaining a cash advance on your credit card or getting a bank loan. Often, the rate and any applicable fees your credit card company or bank charges is lower than the combination of interest and penalties imposed by the Internal Revenue Code.

If you are unable to pay your balance in full immediately, we may be able to offer you a monthly installment agreement. To request an installment agreement, complete Form 9465 (PDF), Installment Agreement Request, and mail it in with your bill. (see IRS website (LINK)for Online Payment Agreements). In some cases, you can automatically qualify for and establish an installment agreement (i.e. a Streamlined Installment Agreement).

Direct debit installment agreements allow taxpayers who owe more than $25,000 and less than $50,000 to qualify for an automatic/streamlined installment agreement, which does not require review of your personal financial position. Additionally, by electing to pay using direct debit offers a lower user fee than other installment agreements and help you to avoid defaulting on your agreement by allowing timely payments automatically. To have the payment directly debited from your bank account, complete lines 13a and 13b of Form 9465. Interest and late payment penalties will continue to accrue while you make installment payments. For additional information on installment payments, refer to **IRS Website Topic 202**.

If you cannot full pay under an installment agreement, you may propose an offer in compromise (OIC). An OIC is an agreement between a taxpayer and the IRS that resolves a taxpayer's tax liability by payment of an agreed upon reduced amount. Before an offer can be considered, all filing and payment requirements must be current. Taxpayers in an open bankruptcy proceeding are not eligible. To confirm eligibility, MyFreshStart.com will provide you insight into whether you qualify for an Offer In Compromise or what you would need to qualify for an Offer in Compromise

If you need more time to pay, you may ask that the IRS delay collection and report your account as currently not collectible (CNC). If the IRS determines that you cannot pay any of your tax debt due to a financial hardship, the IRS may temporarily delay collection by reporting your account as currently not collectible until your financial condition improves. Being currently not collectible does not mean the debt goes away. It means the IRS has determined you cannot afford to pay the debt at this time. Prior to approving your request to delay collection, you will have to complete a Collection Information Statement (Form 433-F (PDF), Form 433-A (PDF) or Form 433-B (PDF)) and provide proof of your financial status (this may include information about your assets and your monthly income and expenses). If IRS agrees to delay collecting from you, your debt will increase because penalties and interest are charged until you pay the full amount. The IRS may temporarily suspend certain collection actions, such as issuing a levy (explained below), until your financial condition improves. However, the IRS may still file a Notice of Federal Tax Lien (explained below) while your account is suspended. Typically, the IRS will revisit CNC status in 12-18 months. For additional information on currently not collectible, refer to **Subsection C** below.

If you are a member of the Armed Forces, you may be able to defer payment. **See IRS Publication 3, Armed Forces Tax Guide.**

It is important to evaluate the 3 choices and make contact with IRS to make arrangements to pay the tax due voluntarily. If your request is accepted, all collection activities will stop; otherwise, if you do not make arrangements for 1 of your 3 choices, the IRS may take action to collect the taxes including:

1. Filing a Notice of Federal Tax Lien
2. Serving a Notice of Levy
3. Offsetting a refund to which you are entitled or
4. Seizing/garnishing your assets

A federal tax lien is a legal claim to your property, including property that you acquire after the lien arises. The federal tax lien arises automatically when you fail to pay in full the taxes you owe within ten days after the IRS makes an assessment of the tax and send the first notice of taxes owed and demand for payment. The government may also file a Notice of Federal Tax Lien in the public records, which publicly notifies your creditors that the IRS has a claim against all your property, including property acquired by you after the filing of the Notice of Federal Tax Lien. The filing of a Notice of Federal Tax Lien may appear on your credit report and may harm your credit rating. Once a lien arises, the IRS generally cannot release the lien until the tax, penalty, interest, and recording fees are paid in full or until the IRS may no longer legally collect the tax.

The IRS will withdraw a Notice of Federal Tax Lien if the Notice was filed while a bankruptcy automatic stay was in effect. The IRS may withdraw a Notice of Federal Tax Lien if the IRS determines:

1. The Notice was filed too soon or not according to IRS procedures
2. You enter into an installment agreement to satisfy the liability unless the installment agreement provides otherwise
3. Withdrawal will allow you to pay your taxes more quickly or
4. Withdrawal is in your best interest, as determined by the National Taxpayer Advocate, and the best interest of the government.

The IRS may levy (seize) assets such as wages, bank accounts, Social Security benefits and retirement income. The IRS also may seize your property including your car, boat or real estate to sell the property to satisfy the tax debt. In addition, any future federal tax refunds or state income tax refunds that you are due, may be seized and applied to your federal tax liability. If you are granted an OIC you cannot get the lien removed until paid in full. **See IRS Website Tax Topic 203** for more information.

C. There are only 3 choices (See IRS Tax Topic 202) for Alternate Payment Arrangements. If you are not able to pay the tax you owe by your original filing due date for any tax return, the balance is subject to interest and a monthly late payment penalty. There is also a penalty for failure to file a tax return, so you should file timely even if you cannot pay your balance in full. It is always in your best interest to pay in full as soon as you can to minimize the additional charges.

There are electronic payment and direct deposit methods of payment available, as discussed in IRS Tax Topic 202. If you decide to pay by mail, enclose a check or money order with a copy of your tax return or notice. Make it payable to the United States Treasury and provide your name, address, daytime phone number, SSN, tax period, and form number (i.e 2014 Form 1040) on the front of your payment.

If you cannot pay in full, you should pay as much as possible to reduce the accrual of interest on your account. Please refer to **IRS Tax Topic 158** for information needed to ensure that your payment is credited properly. You should consider financing the full payment of your tax liability through loans, such as a home equity loan from a financial institution, an advance/loan from your employer, friends, family or a credit card. The interest rate and any applicable fees charged by a bank or credit card company are usually lower than the combination of interest and penalties imposed by the Internal Revenue Code.

1. <u>Installment Agreements</u>. If you are unable to pay your balance in full immediately, you may qualify for a monthly installment agreement. To request an installment agreement, complete Form 9465 (PDF), Installment Agreement Request, and mail it to the IRS. An installment agreement allows you to make a series of monthly payments over time. The IRS offers various options for making monthly payments, such as:

   a. Direct debit from your bank account
   b. Payroll deduction from your employer
   c. Payment by Electronic Federal Tax Payment System (EFTPS)
   d. Payment by credit card via phone or Internet or
   e. Payment by check or money order

Before a proposed installment agreement can be considered, <u>all filing and payment requirements must be current.</u> Taxpayers in an open bankruptcy proceeding are not eligible.

The IRS charges a one-time installment agreement user fee when you enter into a standard installment agreement or a payroll deduction installment agreement. If you choose to pay through a direct debit from your bank account, the user fee is lower. Taxpayers with income at or below 250% of the Department of Health and Human Services poverty guidelines may apply for a further reduced user fee. You can request the reduced fee by using Form 13844 (PDF), Application For Reduced User Fee For Installment Agreements. Note: There is also a user fee for restructuring or reinstating an established installment agreement.

If you enter into an installment agreement, you should base your monthly payment on your ability to pay and it should be an amount that you can pay each month to avoid defaulting.
If you have not filed your return yet, you may submit Form 9465 (PDF) or attach a written request for a payment plan that includes the monthly payment amount and due date to the front of your return.

If you have filed your tax return and cannot pay in full, you may request an installment agreement on your current tax liabilities even if the IRS has not yet issued you a bill (a balance due notice). If you have filed your tax return and cannot provide full payment after receiving a bill from the IRS, you may still request an installment agreement by submitting Form 9465.

You must specify the amount you can pay and the day of the month, any day from the 1st to the 28th, on which you wish to make your payment each month. The IRS will expect to receive your payment on the date you indicate, so be sure to figure mailing time (10 days) into the date you select, which is another benefit of direct deposit arrangements. The IRS will respond to your request, usually within 30 days, to advise you if your request has been approved or denied or if more information is needed.

Installment agreements by direct debit and payroll deduction enable you to make timely payments automatically and reduce the possibility of default. These convenient payment methods also allow you to avoid the time and expense of mailing monthly payments.

For a direct debit installment agreement, you must provide your checking account number, your bank routing number, and written authorization to initiate the automated withdrawal of the payment. You may apply online using the Online Payment Agreement application, contact the IRS by phone or in person, or submit Form 9465 (PDF) through the mail. The form has space for you to write your checking account number and your bank routing number or you may staple a voided check to the form.

For a payroll deduction installment agreement, submit Form 2159 (PDF), Payroll Deduction Agreement. Your employer must complete Form 2159, as it is an agreement between you, your employer, and the IRS. In some situations, the IRS may set up a regular installment agreement for you and convert it to a payroll deduction agreement upon receipt of the completed Form 2159 from your employer.

Full payment agreements of up to 120 days are also available for taxpayers who can not pay in full the tax due on a tax return being filed. If you cannot pay in full immediately, you may qualify for additional time, up to 120 days to pay in full. There is no user fee for a full payment agreement request; however, interest and any applicable penalties will continue to accrue until your liability is paid in full. For information on full payment agreements of up to 120 days. **See IRS Tax Topic 202.**

2. Offer in Compromise. If you cannot pay in full and you can't afford an installment agreement, you may want to propose an offer in compromise (OIC). An OIC is an agreement between a taxpayer and the IRS that resolves the taxpayer's tax liability by payment of an agreed upon reduced amount. Before an offer can be considered, all filing and payment requirements must be current. Taxpayers in an open bankruptcy proceeding are not eligible. To confirm eligibility and ensure use of the current application forms, use the MyFreshStart.com program or the Offer in Compromise Pre-Qualifier tool, available on IRS.gov. For additional information on OICs, refer to **IRS Website Tax Topic 204**.

3. Temporarily Delay Collection with Currently Not Collectible Status: If you cannot pay any of the amount due because payment would prevent you from meeting basic living expenses, you can request that the IRS delay collection until you are able to pay. If the IRS determines that you cannot pay any of your tax debt due to a financial hardship, the IRS may temporarily delay collection by reporting your account as currently not collectible until your financial condition improves. Being currently not collectible does not mean the debt goes away, it means the IRS has determined you cannot afford to pay the debt at this time. Penalties and interest will continue to be added to the debt. Prior to approving your request to delay collection, the IRS may ask you to complete a Collection Information Statement (Form 433-F (PDF), Form 433-A (PDF) or Form 433-B (PDF)) and provide proof of your financial status (this may include information about your assets and your monthly income and expenses). The IRS may temporarily suspend certain collection actions, such as issuing a levy (refer to subsection A. above) until your financial condition improves. However, the IRS may still file a Notice of Federal Tax Lien (refer to subsection A. above) while your account is suspended.

It is important to respond to an IRS notice. If you do not pay your tax liability in full or make one of the Alternative Payment Arrangements (i.e. 1-3 above), the IRS is entitled to take collection action. Refer to **Subsection A** above for information about the collection process.

If you are unable to make any payment when due, you must remember that you have rights and protections throughout the collection process; see Taxpayer Bill Of Rights on IRS.gov and Publication 1 (PDF), Your Rights as a Taxpayer. If you would like information on arrangements to pay your bill, installment agreements, and what happens when you take no action to pay, refer to Publication 594 (PDF), The IRS Collection Process.

III. Offer In Compromise

A. In general. An offer in compromise (OIC) is an agreement between a taxpayer and the Internal Revenue Service that settles the taxpayer's tax liabilities for less than the full amount owed. Taxpayers who can fully pay the liabilities through an installment agreement or other means, will not be eligible for an OIC in most cases. For information concerning tax payment options including installment agreements, refer to **Subsection B** above. In order to be eligible for an OIC, the taxpayer must have filed all tax returns, made all required estimated tax payments for the current year and made all required federal tax deposits for the current quarter if the taxpayer is a business owner with employees.

In most cases, the IRS will not accept an OIC unless the amount offered by a taxpayer is equal to or greater than the reasonable collection potential (the "***RCP***"). The RCP is how the IRS measures the taxpayer's ability to pay. The RCP includes the value that can be realized from the taxpayer's assets, such as real property, automobiles, bank accounts, and other property. In addition to property, the RCP also includes anticipated future income less certain amounts allowed for basic living expenses.

The IRS may accept an OIC based on three grounds:

First, the IRS can accept a compromise if there is doubt as to liability. A compromise meets this only when there is a genuine dispute as to the existence or amount of the correct tax debt under the law.

Second, the IRS can accept a compromise if there is doubt that the amount owed is fully collectible. Doubt as to Collectability exists in any case where the taxpayer's assets and income are less than the full amount of the tax liability. The IRS uses a formula, which is contained in Form 433 A for Individuals and Form 433B for Businesses.

Third, the IRS can accept a compromise based on Effective Tax Administration (i.e. economic hardship). An offer may be accepted based on effective tax administration when there is no doubt that the tax is legally owed and that the full amount owed can be collected, but requiring payment in full would either create an economic hardship or would be unfair and inequitable because of exceptional circumstances.

When submitting an OIC based on doubt as to collectability or based on effective tax administration, taxpayers must use the most current version of Form 656, Offer in Compromise, and also submit Form 433-A (OIC) (PDF), Collection Information Statement for Wage Earners and Self-Employed Individuals, and/or Form 433-B (OIC) (PDF), Collection Information Statement for Businesses. A taxpayer submitting an OIC based on doubt as to liability must file a Form 656-L (PDF), Offer in Compromise (Doubt as to Liability), instead of Form 656 and Form 433-A (OIC) and/or Form 433-B (OIC). Form 656 is available in the Offer in Compromise Booklet, Form 656 (PDF).

In general, a taxpayer must submit an application fee with Form 656, as well as to make payment towards the balance owed (see discussion below). Do not combine this fee with any other tax payments. However, there are two exceptions to this requirement:

First, no application fee is required if the OIC is based on doubt as to liability.

Second, the fee is not required if the taxpayer is an individual (not a corporation, partnership, or other entity) who qualifies for the low-income exception. This exception applies if the taxpayer's total monthly income falls at or below 250 percent of the poverty guidelines published by the Department of Health and Human Services. Section 1 of Form 656 contains the Low Income Certification guidelines to assist taxpayers in determining whether they qualify for the low-income exception. A taxpayer who claims the low-income exception must complete Section 1 of Form 656.

Taxpayers may choose to pay the offer amount in a lump sum or in installment payments. A "lump sum offer" is defined as an offer payable in 5 or fewer installments, within 5 or fewer months after the offer is accepted. If a taxpayer submits a lump sum offer, the taxpayer must include with the Form 656 a nonrefundable payment equal to 20 percent of the offer amount. This payment is required in addition to the $186 application fee. The 20 percent payment is "nonrefundable" meaning it will not be returned to the taxpayer even if the offer is rejected or returned to the taxpayer without acceptance. Instead, the 20 percent payment will be applied to the taxpayer's tax liability. The taxpayer has a right to specify the particular tax liability to which the IRS will apply the 20 percent payment.

An offer is called a "periodic payment offer" under the tax law if it is payable in 6 or more monthly installments and within 24 months after the offer is accepted. When submitting a periodic payment offer, the taxpayer must include the first proposed installment payment along with the Form 656. This payment is required in addition to the $186 application fee. This amount is nonrefundable, just like the 20 percent payment required for a lump sum offer. Also, while the IRS is evaluating a periodic payment offer, the taxpayer must continue to make the installment payments provided for under the terms of the offer. These amounts are also nonrefundable. These amounts are applied to the tax liabilities and the taxpayer has a right to specify the particular tax liabilities to which the periodic payments will be applied.

Ordinarily, the statutory time within which the IRS may engage in collection activities is suspended during the period that the OIC is under consideration, and is further suspended if the OIC is rejected by the IRS and where the taxpayer appeals the rejection to the IRS Office of Appeals within 30 days from the date of the notice of rejection.

If the IRS accepts the taxpayer's offer, the IRS expects that the taxpayer will have no further delinquencies and will fully comply with the tax laws. If the taxpayer does not abide by all the terms and conditions of the OIC, the IRS may determine that the OIC is in default. For doubt as to collectability and effective tax administration OICs, the terms and conditions include a requirement that the taxpayer timely file all tax returns and timely pay all taxes for 5 years from the date of acceptance of the OIC. When an OIC is declared to be in default, the agreement is no longer in effect and the IRS may then collect the amounts originally owed (less payments made), plus interest and penalties. Additionally, any refunds due within the calendar year in which the offer is accepted will be applied to the tax debt.

If the IRS rejects an OIC, the taxpayer will be notified by mail. The letter will explain the reason that the IRS rejected the offer and will provide detailed instructions on how the taxpayer may appeal the decision to the IRS Office of Appeals. The appeal must be made within 30 days from the date of the letter. In some cases, an OIC is returned to the taxpayer rather than rejected, because the taxpayer has not submitted necessary information, has filed for bankruptcy, has failed to include a required application fee or nonrefundable payment with the offer, or has failed to file tax returns or pay current tax liabilities while the offer is under consideration. A return is different from a rejection because there is no right to appeal the IRS's decision to return the offer.

B. How to Qualify for an Offer In Compromise (OIC).

1. <u>In General</u>. As discussed above, there are exactly three bases for an OIC. They are summarized in this paragraph, and discussed in more detail in the paragraphs below.

a. Doubt as to Collectability ("***DATC***"). This variety of OIC is applicable to resolve the account where the financial analysis reveals taxpayer will not have resources sufficient to pay the debt. Treas Reg. Section 301.7122-1(b)(2). In part, Treas Reg. Section 301.7122-1(c)(2).

b. Effective Tax Administration. These kinds of offers include two distinct situations. Both are viewed in the regulations as situations that fall within the "Effective Tax Administration" basis for compromising the tax liability.

(i) Economic hardship type. This situation is described at Treas Reg. Section 301.7122-1(b)(3)(i).

(ii) Compelling public policy and equity type: This authorized basis for compromise is for situations where the other three bases for compromise don't seem applicable, but there just ought to be some relief provided out of "fairness." These situations are described in Treas Reg. Section 301.7122-1(b)(3)(ii).

c. Doubt as to Liability ("***DATL***"). This kind of offer is based upon taxpayer's assertion that there is some error. It can be a systemic error, an expired state of limitations, computational error, or perhaps an error in the application of the substantive provisions of the tax law. Treas Reg. Section 301.7122-1(b)(1). Where taxpayer can soundly assert a basis to negate liability for the entire assessment, the matter might first be submitted as a request for "Reconsideration." As stated in resources links below, "DATL" is not appropriate where taxpayer claims to owe nothing at all.

Form 656 is used to request an OIC in compromise of a liability when there is either DATC or Effective Tax Administration, and Form 656-L is used to request an OIC when there is DATL.

2. **"DATC" (No "Special Circumstances") Rules and Procedures:**

a. The IRS has a procedure for its agents to follow when analyzing a request for an OIC based upon DATC and a set of guidance for these agents found in the Internal Revenue Manual (IRM).

(i) IRM 5.8.1.1.3. Policy Statement P 5-100 - The government intends to collect the entire balance due.

(ii) IRM 5.8.1.1.4. The stated objective: Collect as much as possible, as soon as possible, at the least cost.

(iii) IRM 5.8.7.7(4). The most common reason for rejecting an OIC is because the processes followed by the IRS indicate taxpayer's ability to pay is greater than the amount offered and taxpayer will not increase the amount offered to that level.

(iv) Reasonable collection potential (***"RCP"***). The offer must match "RCP" defined as "the amount that can be collected from all available means, including administrative and judicial collection remedies." IRM 5.8.4.3.

b. The following items describe the processes and procedures involved in computing RCP. It is IRS 5.8.5 that guides the analysis and development of RCP.

(i) Effect of Revenue Officer's (the "***RO***") work.

(A) IRM 5.8.5.1: RO's prior conclusions will not be displaced.

(B) OE's follow identical guidelines. Offer Examiners/Investigators (***"OE"***) are instructed to apply the provisions of IRM 5.15.1, the "Financial Analysis Handbook." That is exactly the same resource that is followed when the RO was conducting the financial analysis discussed at IRS Financial Analysis. The point is that for all practical purposes, the general range of RCP is usually known as a result of the RO's analysis of the financial data.

(ii) OE's analysis of the offer:

(A) IRM 5.8.4.3.1: Four components of collectability. When the OIC arrives the OE will analyze the file first to assure the RO's work seems complete and sufficiently recent. There are **four** specific **"collectability components"** discussed at IRM 5.8.4.3.1 that provide the big-picture guidance to the OE. Then, as discussed below, the specific guidance at IRM 5.8.5 will be followed to thoroughly analyze those four components.

(B) Verify taxpayer's claims and disclosures.

(1) Verification processes – internal resources. See the chart at IRM 5.8.5.3.1.1. The IRS will still be scouring everything for assets that were either omitted from Form 433 or misrepresented. The chart describes the sources that will be explored and the issues OEs are looking for.

(2) Dissecting taxpayer's condition. Look at the subparagraphs at IRM 5.8.3.1.2 and IRM 5.8.5.3.1.3. The provisions there illustrate specific kinds of scrutiny that will be applied to documentation submitted by taxpayer. The verification process is intended to be thorough. Obtaining credit reports is authorized. Where necessary, further extensive direct contact with the taxpayer is authorized.

c. The amount collectible from the taxpayer's net realizable equity in assets.

(i) Scrutinizing Assets**.** At IRM 5.8.5.3.1.3 there is a chart that lists a significant variety of documentation the investigator will specifically seek and probably scour for the purposes described in that chart. However, it is probable that the RO's prior work will already have produced exactly the kind of meticulous gathering and analysis of the same kind of information. Depending upon how much time has passed since the RO's work was done, and whether taxpayer asserts changed circumstances, taxpayer may be required to produce more. At IRM 5.8.5.3.1.3 there is a chart that lists a significant variety of documentation the investigator will specifically seek and probably scour for the purposes described in that chart. However, it is probable that the RO's prior work will already have produced exactly the kind of meticulous gathering and analysis of the same kind of information. Depending upon how much time has passed since the RO's work was done, and whether taxpayer asserts changed circumstances, taxpayer may be required to produce more recent documentation for review and financial analysis. LOOK SPECIFICALLY at the following for the detailed information concerning the analysis of specific classes of assets:

a) Cash records: IRM 5.8.5.6
b) Securities: IRM 5.8.5.7
c) Life insurance: IRM 5.8.5.8
d) Retirement plans and funds: IRM 5.8.5.9
e) Vehicles, planes, boats: IRM 5.8.5.11
f) Real estate: IRM 5.8.5.12
g) Receivables: IRM 5.8.5.13
h) Inventory, machinery, equipment: IRM 5.8.5.14
i) Business as going concern: IRM 5.8.5.15 – this will likely result in the involvement of a valuation specialist within the IRS.

(ii) Analyze values in all assets**.**

(A) Equity and net realizable equity ***("NRE")*** **IRM 5.8.5.4.** This is the value placed on marketable assets for purposes of computing the "RCP" and the amount that the OIC must propose. At IRM 5.8.5.1(2) NRE is defined as "quick sale value (QSV) less amounts owed to secured lien holders with priority over the federal tax lien." It is important to understand NRE because it actually has the effect of contributing to the RCP by producing property values that are less than full FMV, but greater than the "minimum bid" value the government would set in a forced sale. Taxpayer must be effectively offering to liquidate everything to be included among the non-exempt assets in order to fund the entire amount of the offer.

(1) "***QSV***" is defined as an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the owner to sell in a short period of time, usually 90 calendar days or less. Generally, QSV is an amount less than fair market value (FMV), but greater than forced sale value (FSV). FSV is defined as no less than 75% of FMV.

(2) Normally, QSV is calculated at 80% of MFV. A higher or lower percentage may be applied in determining QSV when appropriate, depending on the type of asset and current market conditions. *If*, based on the current market and area economic conditions, *it is believed that the property would quickly sell at full FMV, then it may be appropriate to consider QSV to be the same as FMV.* This is occasionally found to be true in real estate markets where real estate is selling quickly at or above the listing price. As long as the value chosen represents a fair estimate of the price a seller could get for the asset in a situation where the asset must be sold quickly (usually 90 calendar days or less) then it would be appropriate to use a percentage other than 80%. Generally, it is the policy of the IRS to apply QSV in valuing property for offer purposes.

(B) Income-producing assets and assets used in a trade or business.

It can be very helpful to understand how the manuals guide the determinations that must be made concerning income-producing assets. See IRM 5.8.5.5.1 and the information organized in the two analytic charts provided there. Depending upon how such assets are involved in the offer being made, it may be necessary to make adjustments to "available income" reasonably expected to occur depending upon how the asset is involved I the planned resolution of the case.

(iii) Future income included in RCP: IRM 5.8.5.18. This is the amount determined to be collectible from the taxpayer's expected future income after deducting "allowed" living expenses. The period to be analyzed depends upon the kind of payment plan selected. Taxpayer's available income will reflect a sum-certain that is a component of the amount of RCP. The offer must include that "value" in the amount of the offer. See description of the analysis of future income at IRM 5.8.5.18.

(iv) Future income - the prescribed periods and calculation – IRM 5.8.5.23. The IRM states, "Future income is defined as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, for a specific number of months into the future. The number of months used depends on the payment terms of the offer." The present version of Form 656 (Rev. 2-2016) does not explain anything about the future income requirement. The prior version of Form 656-B at the 21st page) explained:

"We generally determine the amount we could collect from your future income by subtracting necessary living expenses from your monthly income over a set number of months. For a lump sum cash offer paid in five months or less, you must offer what you could pay in monthly payments over 48 months (or the remainder of the 10-year statutory period for collection, whichever is less). For a Lump Sum Cash Offer paid in more than 5 months or a Short Term Periodic Payment Offer, you must offer what you could pay in monthly payments over 60 months (or the remainder of the statutory period for collection, whichever is less). For a deferred periodic payment offer, you must offer what you could pay in monthly payments during the remaining time we could legally receive payments."

Though the future income period is not described in the new Form 656, it is still part of the process and is described at IRM 5.8.5.23(2).

(A) Modifying projected income. IRM 5.8.5.18(4) also discusses circumstances that warrant modifications to projected available income (including the possibility that a liquidating bankruptcy might be filed). It is valuable information. Factors required to be taken into consideration include such things as age, health, marital status number and age of dependents, level of education or occupational training, and work experience, anticipated income increase/decrease, unemployment or underemployment history, an anticipated bankruptcy, etc.

(B) Available income is still going to be computed by applying the standardized "living expense" tables. Actual expenses are considered, but any amounts that exceed the table-based maximum are to be disallowed. The only way to establish a greater "allowance" is by proof of "necessity." You might want to look at the *Income/Expense* worksheet from the IRMs.

(C) Amount collectible from third parties. The amount the IRS could expect to collect from third parties through administrative or judicial action. For example, amounts collectible through assertion of a TFRP, a transferee assessment, nominee lien, or suit to set aside a fraudulent conveyance." Whatever this amount is determined to be, it must become a component of value in the RCP and therefore the offer taxpayer submits."

(D) Foreign assets and/or income. Resources that are available to the taxpayer but are beyond the reach of the government are described as "Assets that the lien will not attach, such as equity in assets located outside the country." The value of such items is also to be included in computing the RCP and the amount of the offer.

(E) Dissipation. IRM 5.8.5.16 discusses dissipation. Representatives may benefit from reading these rules because where the facts indicate a dissipation has occurred, there is some probability that the amount of dissipation must also be included in the offer. Several examples of how agents are to view and treat dissipation are expressed at IRM 5.8.5.16(5). Dissipation is when the taxpayer transfers assets to reduce his/her RCP.

3. Effective Tax Administration

a. Promotion of Effective Tax Administration is achieved when the IRS determines that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship – Treas Reg. Section 301.7122-1(b)(3). Therefore, it is possible to negotiate a settlement lower than what is currently owed. Economic Hardship occurs when a taxpayer is unable to pay reasonable basic living expenses; however, this ability to pay must be put into the context of your personal facts.

The existence of economic hardship criteria does not dictate that an OIC must be accepted. An acceptable offer must still be determined based on a full financial disclosure, analysis and negotiation between yourself and the IRS that will be based upon facts presented by the taxpayer in their Form 433-A Collection Information Statement and the explanation of circumstances attachment.

b. Factors supporting a determination that collection would cause economic hardship include Treas Reg. Section 301.7122-1(c)(3):

(i) Taxpayer is incapable of earning a living because of a long-term illness medical condition, or disability and it is reasonably foreseeable that the taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;

(ii) Although taxpayer has certain monthly income that income is exhausted each month in providing for the care of dependents with no other support; and

(iii) Although the taxpayer has certain assets the taxpayer is unable to borrow against the equity in those assets liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses.

Treas Reg. Section 301.7122-1(c)(3) further provides examples of fact scenarios that create economic hardship for a taxpayer. Therefore, when filing for an OIC the attachment, which describes the economic hardship, must have sufficient detail for the agent reviewing the OIC application and assess whether the taxpayer would incur an economic hardship if the debt owed were collected in full.

c. IRM 33.3.2 provides the IRS with the authority to compromise any civil case. As reflected in Policy Statement P-5-100 the IRS views OIC as a viable collection tool not to be abused. For the review of Effective Administration Offers, IRM 33.3.2.3.3 provides that where there are no other grounds for compromise on collectability or liability grounds, a compromise may be entered into to promote effective tax administration where collection in full would either (i) create an economic hardship within the meaning of Treas Reg. Section 301.6343-1; or (ii) where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability Treas Reg. Section 301.7122-1(b).

d. IRM 5.8.11 re "Effective Tax Administration" provides instructions for agents to assess an application for an OIC. Although the definition used by the IRS is extremely similar to Treas Reg. Section 301.7122-1(c)(3) the IRM cites Treas Reg. Section 301.6343-1 for their authority. This IRM further provides public policy considerations for agents to consider consider compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for accepting less than full payment. Taxpayers seeking compromise on this basis bear the burden of demonstrating circumstances that are compelling enough to justify compromise. There are specific factors with examples in IRM 5.8.11.2.2.1. When an OIC agent is determining what is acceptable offer amount to accept IRM 5.11.4.3.1 provides facts to consider whether payment in full would:

(i) Negatively impact the ability of the taxpayer to pay current and future expenses in a timely manner;
(ii) Negatively impact the ability of the taxpayer to meet other tax obligations;
(iii) Potentially result in the need for taxpayer to lay off employees;
(iv) Result in the reduction of goods and/or services provided to the community;
(v) Impair the ability of the taxpayer's business to remain operational;
(vi) Negatively impact the local economy if the taxpayer's business fails.

e. Throughout all of the authority for compromising collection of the full amount of the liability owed to the federal government for effective tax administration there is a reoccurring statement that the taxpayer must adequately explain their hardship. Attention should be paid to the items that the agents are being instructed to look for to be certain that those items are addressed where applicable.

f. This is an underserved area of the law that has deep roots in public policy as well as directly provided for in the Treasury Regulations.

4. Doubt As To Liability ("*DATL*") IRM 5.8.5.20.3.

a. Not appropriate where taxpayer contests the entire tax liability. "DATL" is also not available where judgment has been entered. Treas Reg. Section 301.7122-1(b).

According to Form 656, taxpayers are advised DO NOT USE OIC where taxpayer concludes that none of the assessment is owed. There are a variety of other procedures to be used and they are all listed at the beginning of Form 656-L, the form that must be filed to submit a DATL offer. However, see IRM 5.8.5.20.3(5) where IRS employees are specifically directed to eliminate the assessment and obtain a withdrawal of the OIC when the administrative file does not support the asserted liability. What this is really indicating is that the taxpayer submitted a processable OIC. The example assumes processability requirements were met, meaning taxpayer's offer included some proposed payment to resolve the dispute. It is stated, "The taxpayer must offer a dollar amount. An offer for aero dollars on this basis is not acceptable and is subject to perfection requirements. The amount may be a cash or deferred offer, but must be payable within 90 days of acceptance." The IRS is making room for those situations where the assessment was clearly erroneous and taxpayer should pay no part of it even though taxpayer's offer includes some amount to resolve the unpaid assessment. Where there is a sound basis for negating the entire assessment the better approach might be to first attempt resolution through *Reconsideration* procedures.

(i) DATL never requires a financial analysis because it is only the issue of liability that is involved. Treas Reg. Section 301.7122-1(d)(1).

(ii) No fees are required with submission of DATL offers. See the new version of Form 656 (released in Feb. 2016) at IRS web site.

IV. Installment Agreement

A. In general. If you can't afford to pay your taxes, you may be able to qualify for an installment plan with the Internal Revenue Service. An installment plan allows you to pay your taxes over time while avoiding garnishments, levies or other collection actions. You'll still owe penalties and interest for paying your taxes late, but it can help make the payments more affordable. The minimum monthly payment for your plan depends on how much you owe.

1. Minimum monthly payment. You can apply for an installment agreement online, over the phone, or via various IRS forms. To some degree, you get to choose how much you want to pay every month. The IRS will ask you what you can afford to pay per month, encouraging you to pay as much as possible to reduce your interest and penalties. If you choose not to answer, select too low of an amount, or let the IRS pick a payment amount for you, your minimum payment will be the amount that you owe divided by 72.

2. Fees for IRS installment plans. If you can pay off your balance within 120 days, it won't cost you anything to set up an installment plan. Otherwise, you'll owe $52 for setting up a direct debit agreement with the IRS, or $105 for a standard or payroll deduction agreement. If you're a lower-income taxpayer, you may be able to reduce the fee to $43.

B. How to Qualify for an Installment Agreement.

1. Balance of $10,000 or below. If you owe less than $10,000 to the IRS, your installment plan will generally be automatically approved as a "guaranteed" installment agreement. Under this type of plan, as long as you pledge to pay off your balance within three years, there is no specific minimum payment required. For balances above $10,000, you may have to provide additional information in order to qualify.

2. Balance between $10,000 and $25,000. With a balance due above $10,000, you can qualify for a streamlined installment plan. While acceptance isn't guaranteed, the IRS doesn't usually require additional financial information to approve these plans. With a streamlined plan, you have 72 months to pay. A minimum payment does kick in, equal to your balance due divided by the 72-month maximum period.

3. Balance between $25,000 and $50,000. Qualifying for a plan with a higher balance due requires additional information. The IRS will want to know about your income and expenses on a collection information statement (i.e. either Form 433-A or 433-F). Your minimum payment will be your balance due divided by 72, as with balances between $10,000 and $25,000. You can avoid financial disclosure by providing a bank account for electronic fund deposits or direct pay from your employer. It is suggested that taxpayers

establish a dedicated bank account that is used for sole purpose of making monthly payments to IRS.

4. Balance over $50,000. The IRS will conduct a more thorough review of your finances if you owe more than $50,000 in taxes. On Form 433-A, you'll have to provide detailed information on your investments, assets, income and bank accounts. If you have any meaningful assets, you might have to sell some to pay down your outstanding balance. Your minimum payment in this situation will be unique to the specific agreement you strike with the IRS.

V. Currently Not Collectible

A. In general. If, after taking all steps in the collection process, it is determined that an account receivable is currently not collectible, it should be so reported in order to remove it from active inventory.

1. Hardship. As a general rule, accounts will be reported as currently not collectible when the taxpayer has no assets or income, which are, by law, subject to levy.

However, if there are limited assets or income but it is determined that levy action would create a hardship, the liability may be reported as currently not collectible. A hardship exists if the levy action prevents the taxpayer from meeting necessary living expenses. In each case a determination must be made as to whether the levy would result in actual hardship, as distinguished from mere inconvenience to the taxpayer.

Currently not collectible status protects you from the IRS, stopping levies, threatening letters and collection enforcement. It forces the IRS to simply leave you alone without requiring any payment on your end.

The IRS will consider your account to be currently not collectible if we provide them a collection information statement verifying that there would be a financial hardship if the IRS forced you to pay them.

To the IRS, currently not collectible is "putting a debt on the shelf" – they take your case out of their active collection inventory (shelving it). The Treasury Inspector General reports that from 2008-2013, the IRS reported 5.7 million delinquent accounts as currently not collectible.
In many cases, I have seen clients become uncollectible and remain there until the time frame the IRS has to collect (10 years) expires, after which the IRS debt is permanently removed and forgiven.

But what would make the IRS want to remove you from their inventory of uncollectible cases to determine if you are no longer entitled to financial hardship status?

To begin with, to remain uncollectible, the IRS requires that you file and pay all of your future taxes on time. That means if you are self-employed and previously had trouble setting aside money to pay your taxes, you have to do that to stay uncollectible.

In addition to remaining current on your future taxes, what else should you be aware of if you are uncollectible?

a. Increases in your income indicating to the IRS that you may no longer be in financial hardship. The IRS will be looking at your future tax returns, and comparing that your income levels when they determined that you were currently not collectible. If there are significant increases in your income, the IRS may contact you for a new collection information statement to see if the increased income translates into an ability to pay.

b. Sometimes, when the IRS places your account in currently not collectible status, they will mark a follow-up date for review of your account. If this occurs, in most situations, the IRS will give you two years as uncollectible until the follow-up date kicks in. The IRS usually marks a case for future review only if there is an indicator when you're are placed in uncollectible status that there could be an increase to your ability to pay later. This could be the case if, for example, you earned significantly more last year, but had a dip this year and you cannot make payments to the IRS, they may mark your case for later review of whether the hardship continues.

c. The IRS has the right to review your uncollectible status for any reason or no reason at all. After all, the money is owed to them, and they have the right to determine your situation has changed. Denying the IRS a request for a new collection information statement is a surefire way to increase their curiosity and make them really, really want it.

That being said, it is more the exception than the rule for the IRS to come back on their own later and review whether you should be knocked out of currently not collectible status. The most likely occurrence will be defaulting on your future tax filings and payments – and that is within your control.

Currently not Collectible puts the IRS at bay, and allows you to live your life without IRS intrusions into your bank accounts, wages and property. When combined with the expiration of the statute of limitations on collection, it is a legitimate method of resolution for your IRS tax debt.

B. How to Qualify for Currently Not Collectible Status.

1. Currently not collectible legal authority and framework can be found in IRM 1.2.14.1.14 (11-19-1980)/IRS Policy Statement 5-71, which provide the authority for reporting accounts as currently not collectible and defines Hardship for this purpose as either:

a. The taxpayer has no assets or income, which by law, are subject to levy; or

b. If there limited assets or income and levying these assets would prevent the taxpayer from meeting necessary living expenses.

For each case a determination must ne made whether the levy would result in actual hardship as distinguished from mere inconvenience for the taxpayer.

2. IRM 5.16.1 provides the procedures for determining when an account is collectible, which includes:

a. In correspondence request currently not collectible status;

b. Include the appropriate collection information statement; and

c. Include an attachment explaining the taxpayer's hardship.

If you currently burdened by tax debt, visit MyFreshStart.com. We offer a Do-it-Yourself Tax Relief Solution for resolving federal tax debt through the IRS Fresh Start Initiative. This is an easy to use, low cost solution that will simplify your decision process and recommend the best option for you.